

# Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website

*Local Government Act 2009: Sections 150AS(2)(c)*

Note that the Tribunal is prohibited from giving another entity information that is part of a Public Interest Disclosure unless required or permitted under another Act; or including in this summary the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person: S150AS(5)(a) and (b).

## 1. Complaint:

<b>CCT Reference</b>	F20/5086
<b>Subject Councillor</b>	Councillor Wayne Kimberley (the councillor)
<b>Council</b>	Cassowary Coast Regional Council

## 2. Decision (s150AQ):

<b>Date:</b>	8 March 2022
<b>Decision:</b>	The Tribunal has determined, on the balance of probabilities, that: The allegation, that on 6 December 2018, Councillor Wayne Kimberley, a councillor of Cassowary Coast Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a breach of trust placed in him as councillor, either knowingly or recklessly, in that it was inconsistent with local government principles in section 4(2)(a) of the Act, ‘transparent and effective processes, and decision-making in the public interest’ and or section 4(2)(e) of the Act ‘ethical and legal behaviour of councillors and local government employees’, in that Councillor Wayne Kimberley did not inform the meeting about his personal interests in the matter as required by section 175E(2) of the Act, is <b>sustained</b> .
<b>Reasons:</b>	1. The Tribunal found that, on 6 December 2018, the Councillor attended a Council meeting and voted on a recommendation to continue vexatious litigant proceedings against two constituents of Council, Mr and Mrs X.

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	<ol style="list-style-type: none"><li>2. However, the Councillor was at that time also engaged in litigation filed by Mr X and which had not been finalized. This litigation involved allegations that the Respondent had:<ol style="list-style-type: none"><li>a. Improperly disclosed Mr X's personal information; and/or</li><li>b. Given a false statement to the Queensland Civil and Administrative Tribunal (QCAT).</li></ol></li><li>3. If Mr X was successful, the Councillor may have been ordered to apologise, engage in certain conduct, or even pay a fine or compensation to Mr X.</li><li>4. The Tribunal was not satisfied that the Councillor had a personal interest in the vexatious litigant proceedings on their own. However, the Tribunal found he did have a personal interest in the effect of those proceedings, which would have meant that the litigation brought by Mr X in QCAT would have been stopped.</li><li>5. It was the effect of that significant legal protection which meant that the Councillor could not possibly bring a "<i>clear and impartial mind</i>" to the decision before Council. The Tribunal found that the interest of the Councillor (in having obtaining protection from the proceedings in QCAT) was clearly in conflict with the public interest, which requires that decisions made by Councillors are made impartially, transparently and without bias.</li><li>6. The Councillor could have disclosed the conflict and the other Councillors might have allowed him to stay and decide the matter. He might have been asked to contribute to the debate but asked by his peers to refrain from voting to preserve the integrity of the Council decision.</li><li>7. The Tribunal also noted that the Councillor made no attempts to disclose any interests in the Council decision, and in fact moved the recommendation as well as voting for it.</li><li>8. The Tribunal wishes to remind Councillors that it has repeatedly observed that, to discharge their obligations, Councillors need only raise their hand and advise a meeting of the possibility of a conflict. It is then for other Councillors at the meeting to determine the impact of that conflict and, if necessary, mitigate it accordingly.</li><li>9. The Tribunal found that the Councillor had recklessly breached the trust reposed in him as an elected official. There was insufficient evidence to prove he undertook any assessment of his interests, sought any advice (such as from the CEO, Mayor or Queensland Integrity Commissioner) or made any attempts to disclose his interests in the decision during the Council meeting.</li></ol>
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### 3. Orders and/or recommendations (s150AR - disciplinary action):

<b>Date of orders:</b>	8 March 2022
<b>Order/s and/or recommendations:</b>	<p>The Tribunal orders that within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:</p> <ol style="list-style-type: none"> <li>a. Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Kimberley be reprimanded for his misconduct;</li> <li>b. Pursuant to s 150AR(1)(b)(iv) of the Act, that Councillor Kimberley pay to the local government an amount of \$500.</li> </ol>
<b>Reasons:</b>	<ol style="list-style-type: none"> <li>1. The Councillor had previously engaged in misconduct in similar circumstances, by failing to declare his personal interest in litigation that also involved the Council.</li> <li>2. The Councillor had also had the benefit of a further year's training in his obligations, provided by both the Department and the LGAQ.</li> <li>3. The Councillor should have been plainly aware that his involvement in two separate proceedings in QCAT as a party was grounds for a personal interest. If Council had been successful in its vexatious litigant proceedings, the Respondent would have been protected from any criticism or orders from QCAT.</li> <li>4. The Councillor's conduct was found reckless, rather than knowing, as it appeared to the Tribunal that he did not adequately turn his mind to the possibility of his conflicts of interest bearing on the decision before him.</li> <li>5. As the second finding of misconduct in circumstances where the Councillor had received the benefit of additional training, the Tribunal considered a higher penalty was warranted to bring home the seriousness of the allegations against him.</li> </ol>