

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:

CCT Reference	F21/3089
Subject Councillor	Former Councillor Michael Yam (the councillor) <i>Note that the name of the councillor may be included on the register if the Tribunal decided the councillor engaged in misconduct. Where misconduct by the councillor has not been sustained the councillor needs to agree to their name being included (s150DY(3)).¹</i>
Council	Kowanyama Aboriginal Shire Council

2. Decision (s150AQ):

Date:	12 May 2023
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that on 19 September 2018, the Respondent engaged in misconduct as defined in section 176(3)(b)(ii) of the Act, in that his conduct involved a breach of the trust placed in him as a councillor, in that he did not inform the meeting of his personal interest in the matter as required by section 175E(2) of the Act, which was inconsistent with the local government principles in section 4(2)(a) and 4(2)(e) of the Act has not been sustained.
Particulars:	The Particulars of the alleged conduct:

¹ This notice should be delayed until 7 days after the date of the Tribunal letter advising the councillor of the decision and reasons in relation to the complaint, to enable the councillor time to indicate if they would like their name included in the publication or not.

	<ul style="list-style-type: none"> a. On 14 June 2018, Kowanyama Aboriginal Shire Council paid \$5,834.00 (including GST) for the funeral expenses of Mr Philip Yam. b. On 19 September 2018, an ordinary council meeting was held. One of the agenda items was Item 6(d) – YAM Funeral Contribution. c. The related officer’s report proposed that Council approved funding of \$2,500 as a contribution to the funeral expenses of Philip Yam (Brolga). It was proposed that this amount would be paid from the Community Grants Program. d. The matter was not an ordinary business matter. e. Councillor Yam attended the ordinary council meeting and was present during agenda item 6(d). f. Councillor Yam had a personal interest in the matter in that: <ul style="list-style-type: none"> i. the resolution was for Council to approve a \$2,500 contribution from the Community Grants Program towards the funeral expenses of the late Mr Yam, paid by the Council on 14 June 2018; and ii. the late Mr Yam was Councillor Yam’s cousin. g. Councillor Yam’s personal interest in the matter did not arise merely because of the circumstances specified in section 175D(2) of the Act. h. Councillor Yam did not inform the meeting of his personal interest in the matter as required by section 175E(2) of the Act. i. Councillor Yam’s personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest. j. Councillor Yam voted on the matter and the resolution was carried unanimously.
<p>Reasons:</p>	<ul style="list-style-type: none"> 1. This case alleged a failure to declare a conflict of interest during a Council meeting, where an agenda item contemplated the reimbursement of certain funeral expenses for a member of the Council community. 2. The conflict was alleged to arise because the expenses related to the late cousin of the Respondent, and the Respondent took no steps to disclose the conflict or deal with it in a transparent and accountable way. 3. The Tribunal was not willing to accept the Respondent’s submission that the family connection was “well known” within Council. The relative state of knowledge of other Councillors is not relevant in determining a conflict of interest exists. 4. However, there was evidence provided to the Tribunal regarding:

	<p>a. the reimbursement of funeral expenses as a common occurrence in the Council;</p> <p>b. that such practices had existed for ten years; and</p> <p>c. the unique nature of First Nations local government (where Councils are far more intricately involved in service provision than metropolitan Councils).</p> <p>5. The Tribunal found that the payment of funeral expenses for a member of the Kowanyama Aboriginal Shire Council community met the definition of “<i>ordinary business matter</i>” in the Act, and that no conflict of interest could therefore arise.</p> <p>6. The Tribunal also found that the Respondent had “<i>no greater personal interest in the matter than that of other persons in the local government area</i>”. This was because although there was a family connection between the Respondent and the deceased, his connection was also to a member of the community who received no more and no less than any other member of the Kowanyama local government area would have received.</p> <p>7. The Tribunal was careful to note that nothing in this decision should be read as encouraging Councillors anywhere in Queensland to conceal or ignore relationships (whether by blood, marriage or kin) with persons whose matters come before Council for deliberation and decision. Concealing or ignoring conflicts of interest strikes at the very heart of transparent and accountable local government decision-making and will not be condoned.</p>
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3. Orders (s150AR - disciplinary action):

Date of orders:	12 May 2023
Orders:	Pursuant to section 150AR(1)(a) of the Act, no orders are necessary.