

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:

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| CCT Reference | F21/4770 |
| Subject Councillor | Councillor James Hansen (the councillor) 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 |
| Council | Fraser Coast Regional Council |

2. Decision (s150AQ):

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| Date: | 28 July 2023 |
| Decision: | Allegation One It is alleged that between 31 July 2020 and 27 February 2021, Councillor James Hansen, a councillor of the Fraser 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 the trust placed in him as a councillor, either knowingly or recklessly, in that it was inconsistent with local government principle 4(2)(c), being ‘democratic representation, social inclusion and meaningful community engagement’, the councillor’s responsibility to provide ‘high quality leadership to the |

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.

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local government and community' (section 12(3)(b) of the Act) and the Code of Conduct for Councillors in Queensland, adopted on 4 August 2020.

Particulars of the alleged conduct which could amount to misconduct are as follows:

- a. On 29 January 2020, a public health emergency was declared in the State of Queensland in response to the COVID-19 pandemic.
- b. Between approximately 1 August 2020 and 27 February 2021, Councillor Hansen shared posts and made comments on his personal Facebook page in relation to public health issues surrounding the COVID-19 pandemic.
- c. The following posts and/or comments were made by Councillor Hansen on his personal Facebook page:
 - i. On an unknown date before 4 August 2020, Councillor Hansen posted comments stating, *"I personally think the whole COVID thing is a wank 99% survival rate"* and further, *"Yes it's sad but in compared. [sic] to how many die from the flu , it's a wank , crowd control"*.
 - ii. On 29 January 2021 at 4:50 pm, Councillor Hansen shared images of various couples kissing while wearing masks and wedding attire. Above the images, Councillor Hansen posted, *"How stupid, welcome to the new world order run by evil people"*.
 - iii. On 31 January 2021 at 2:25 pm, Councillor Hansen shared an image containing text between two cartoon individuals in relation to mask wearing. The text reads:
 - A. Individual 1 (wearing a mask): *"You not wearing a mask puts myself & family at risk"*;
 - B. Individual 2 (not wearing a mask): *"Your obedience to Elite Pedophiles, Criminal Government, Pharma Cartel, Corrupt Media, and Dark Agenda puts myself & my family at risk."*
 - iv. On 5 February 2021 at 7:28 pm, Councillor Hansen posted, *"Gotta fly to Tassie on Monday , I gotta wear a stupid F...ing mask , I'm going to illustrate it , say something like wank , plandemic [sic] , new world order , ect, [sic] and only put it on when threatened with jail"*.
 - v. Multiple Facebook users subsequently commented on the abovementioned post. Councillor Hansen interacted with two of the comments as follows:
 - A. A. One Facebook user commented, *"We'll look out for you in the news on the TV, in the newspapers, and on the radio. FCRC Councillor arrested for wearing obscene Face Mask lol. Words will probably be okay, just don't do any drawings on*

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it (with the laughing emoji)". Councillor Hansen responded to the comment stating, "I'll make it extra special (with the laughing emoji)".

- B. Another Facebook user commented with a graphic of a face mask depicting male genitalia stating, *"Get one of these one [sic]"*. Councillor Hansen *"Liked"* the comment.
- vi. On 26 February 2021 at 1:01 pm, Councillor Hansen shared a news.com graphic titled *"75% of Australians now 'Anti-Vaxxers'"*. The post shared by Councillor Hansen includes text from another Facebook user which states, *"To think myself and others were once in the minority. I always believed people would figure out the trust. Welcome to all my new found friends. And goodbye to all the dodgy bs 19 fraudsters and your Bs 19 dodgy vaxx. Our entire Government needs to resign including all politicians who have supported the Bs 19 fraud."*
- vii. On the abovementioned post, Councillor Hansen commented, *"I and my family certainly won't be getting it, Not a conspiracy mate, it's a plan by Bill Gates and the new world order to cull people"*.
- d. Councillor Hansen's conduct, is inconsistent with local government principle 4(2)(c) being 'democratic representation, social inclusion and meaningful community engagement' and his responsibility to provide 'high quality leadership to the local government and community', in that his commentary publicly undermines the seriousness and legitimacy of the COVID-19 pandemic and fails to support and encourage community members to follow public health directives put in place by the Chief Health Officer, in relation to a public health crisis.
- e. Councillor Hansen's conduct is also inconsistent with the Code of Conduct for Councillors namely:
 - i. 1.2 – Respect and comply with all policies, procedures and resolutions of Council and/or
 - ii. 2.3 – Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare and/or
 - iii. 3 – Ensure conduct does not reflect adversely on the reputation of Council.

Allegation Two

It is alleged that between 16 January 2021 and 26 January 2021, Councillor James Hansen, a councillor of the Fraser Coast Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the *Local Government Act 2009* (the Act), in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly, in that it was

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inconsistent with local government principle 4(2)(c), being 'democratic representation, social inclusion and meaningful community engagement', the councillor's responsibility to provide 'high quality leadership to the local government and community' (section 12(3)(b) of the Act), and the Code of Conduct for Councillors in Queensland, adopted on 4 August 2020.

The particulars of the alleged conduct which could amount to misconduct are as follows:

- a. Between 16 January 2021 and 26 January 2021, Councillor Hansen shared racially insensitive posts and comments on his personal Facebook page.
- b. The following posts and/or comments were made by Councillor Hansen on his personal Facebook page:
 - i. Post 1: On 17 January 2021 at 7:13 pm, Councillor Hansen shared an image of the puppet head of "Agro", holding a doll, with "Coon" cheese in the background. The image includes the following text, "Show me on this doll where "coon cheese" hurt your fucking feelings!". In sharing the image, Councillor Hansen commented, "I'd say bugger you all the snow Flakes, so sick of the wankers".
 - ii. Post 2: On 20 January 2021 at 9:44 pm, Councillor Hansen shared a link to an article by AdvanceAustralia.org.au titled, "Zali Steggall calls for a minute of silence to mourn....on Australia Day". In sharing the article, Councillor Hansen commented, "Stupid woman , Australia was settled".
 - iii. Post 3: On 21 January 2021 at 9:17 pm, Councillor Hansen shared an image of a member of The Greens standing in front of the Aboriginal flag wearing a t-shirt containing the text, "Change the date". The bottom half of the image shows another individual and the text, "Change ya fucken country". In sharing the image, Councillor Hansen commented, "Here here, the only good green is ummmm none".
 - iv. Post 4: On 24 January 2021 at 7:09 pm, Councillor Hansen shared a link to an article by The Weekend Australian titled, "ABC defends use of 'Invasion Day' to mark Australia Day celebrations". In sharing the article, Councillor Hansen commented, "Stupid ABC , socialists full bore , can you imagine if Australia wasn't settled ?? Anyway I'll be carting hay all day on Australia Day".
 - v. Post 5: On 25 January 2021 at 8:44 pm, Councillor Hansen shared an image of what appear to be protestors holding a sign that states, "You are on stolen land! Always was always will be aboriginal land". The bottom half of the image shows a movie character and the text, "So what, you're on centrelink!".

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- c. Councillor Hansen’s conduct, is inconsistent with local government principle 4(2)(c) being ‘democratic representation, social inclusion and meaningful community engagement’ and his responsibility to provide ‘high quality leadership to the local government and community’, in that his commentary and the images shared are culturally insensitive and disrespectful, particularly to Aboriginal and/or Torres Strait Islander peoples.
- d. Councillor Hansen’s conduct is also inconsistent with the Code of Conduct for Councillors namely:
 - i. 1.2 – Respect and comply with all policies, procedures and resolutions of Council and/or
 - ii. 2.3 – Have proper regard for other people’s rights, obligations, cultural differences, safety, health and welfare and/or
 - iii. 3 – Ensure conduct does not reflect adversely on the reputation of Council.

Allegation Three

It is alleged that between 29 January 2021 and 4 February 2021, Councillor James Hansen, a councillor of the Fraser Coast Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the *Local Government Act 2009*, in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly, in that it was inconsistent with local government principle 4(2)(c), being ‘democratic representation, social inclusion and meaningful community engagement’, the councillor’s responsibility to provide ‘high quality leadership to the local government and community’ (section 12(3)(b) of the Act), and the Code of Conduct for Councillors in Queensland, adopted on 4 August 2020.

Particulars of the alleged conduct which could amount to misconduct are as follows:

- a. Between 29 January 2021 and 4 February 2021, Councillor Hansen shared posts relating to the participation of transgender persons in sports and in doing so added comments on his personal Facebook page that are discriminatory towards transgender people.
- b. The following comments were made by Councillor Hansen on his personal Facebook page:
 - i. Comment 1: On 30 January 2021 at 7:17 am, Councillor Hansen shared a post containing an image of a transgender athlete and text which comments on the athlete’s achievements in male hurdles compared to female hurdles. Councillor Hansen made the following comments in relation to this article “*Yeah the world has gone mad, fancy letting a bloke compete against women*” and “*It’s*

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| | <p><i>a bloody man a poor excuse for one, the bastard would last five minutes working on a farm”.</i></p> <p>ii. Comment 2: On 3 February 2021, Councillor Hansen shared a post containing an image of a transgender athlete and text which includes, “...a Transgender male beats a female athlete to win the State Wrestling, and Championship”. In sharing the post, Councillor Hansen stated, “It’s nothing but a piss weak Man”.</p> <p>c. Councillor Hansen’s conduct is inconsistent with local government principle 4(2)(c) being ‘democratic representation, social inclusion and meaningful community engagement’ and his responsibility to provide ‘high quality leadership to the local government and community’, in that his commentary in respect to the images that he shared is discriminatory towards transgender people.</p> <p>d. Councillor Hansen’s conduct is also inconsistent with the Code of Conduct for Councillors in Queensland namely:</p> <ul style="list-style-type: none"> i. 1.2 – Respect and comply with all policies, procedures and resolutions of Council and/or ii. 2.3 – Have proper regard for other people’s rights, obligations, cultural differences, safety, health and welfare and/or iii. 3 – Ensure conduct does not reflect adversely on the reputation of Council. |
| <p>Reasons:</p> | <ol style="list-style-type: none"> 1. This matter concerned three allegations that the Respondent had made posts, comments or “likes” on Facebook which were inappropriate statements relating to the COVID-19 pandemic (Allegation 1), or were offensive, racist and discriminatory towards Indigenous (Allegation 2) and transgender (Allegation 3) persons. 2. The Respondent admitted making all the impugned posts, comments and likes, but denied that they were misconduct, stating that they were his personal opinion, expressed on his personal Facebook account. The Tribunal was therefore satisfied that the Respondent made the posts, comments and likes as alleged by the Applicant. 3. The matter raised questions about whether the Act, and the <i>Code of Conduct for Councillors in Queensland</i> (“the Code”), unfairly impinged the Councillor’s human rights (under the <i>Human Rights Act 2019</i> (Qld) or his implied freedom of political communication. 4. When examining the Respondent’s conduct, it was clear to the Tribunal that many of his posts, comments and posts were not regarding “government or political matters”, and so were unlikely to be protected by the implied freedom of political communication. |

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| | <ol style="list-style-type: none">5. Further, the Tribunal considered that the Act and the Code imposed reasonable and appropriate restrictions on the human rights of the Respondent (and all Councillors), where the human right to freedom of expression is already curtailed by several Acts of Parliament (such as those outlawing vilification, hate speech, and defamatory statements).6. This is because persons must voluntarily seek election as Councillors. They must campaign for election, convince their constituents that they will honestly and faithfully act as elected representatives on Council, and abide by the decisions of electors at election time. Once elected, Councillors are given significant training on their obligations and responsibilities arising under the Act. Councillors are also not “<i>locked in</i>” to their role: they may resign, retire, or not seek re-election at any time and for any reason (or for no reason). They may in fact resign if they disagree with the limitations imposed on their freedoms as required by the Act and the Code of Conduct.7. Therefore, it is a necessary and legitimate restriction on persons who voluntarily seek election as Councillors – to achieve a local government that is “<i>accountable, effective, efficient and sustainable</i>” as required by the Act – that their conduct be circumscribed by a set of standards, which were endorsed by Parliament in full recognition of the potential implications of those standards on the human rights of persons so affected.8. Put a different way, behavioural limits on the conduct of Councillors are absolutely necessary to achieve the purpose of the Act. Without such limits, Councillors would be unregulated, unanswerable to anyone except their constituents and only then at election time, and they would be free to act and say anything they wanted at any time, for any reason. The Act could never hope to achieve a “<i>sustainable</i>” and “<i>accountable</i>” local government if such an interpretation were allowed to prevail.9. The Respondent’s position that his private Facebook account has “<i>absolutely nothing to do with my position as Councillor</i>” cannot be accepted. As this Tribunal has pointed out in cases such as <i>Glasgow, Gleeson and Stewart</i>, what a Councillor says and does in their “down time” can (and frequently does) reflect upon their appointment and the Council more generally.10. The Tribunal found that the posts, comments and likes were a breach of trust for the following reasons: |
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| | <p>a. He was visually identifiable and easily recognizable as a Councillor of Council, which runs the risk of his posts, comments and likes being interpreted as statements of Council, particularly where the Respondent took no steps in the posts to indicate that any of them were his personal opinion;</p> <p>b. The Respondent’s statements regarding the COVID-19 pandemic could easily have been viewed as his dissent against the Council’s attempts to enforce public health measures, and would therefore qualify as statements which <i>“may diminish [Council’s] standing, authority or dignity”</i> under section 3.3 of the Code of Conduct;</p> <p>c. The Respondent’s statements about Indigenous and transgender persons were also inappropriate, and did not accord with the requirement under section 2.3 of the Code of Conduct to have <i>“proper regard for other people’s rights, obligations, cultural differences, safety, health and welfare”</i>;</p> <p>d. The statements alleged under Allegations One, Two and Three also did not meet the local government principle of <i>“democratic representation, social inclusion and meaningful community engagement”</i> under section 4(2)(c) of the Act;</p> <p>e. Allegations Two and Three the Respondent did not comply with the local government principle of engaging in <i>“ethical and lawful behaviour”</i> required by section 4(2)(e) of the Act. As the Respondent’s behaviour was – by reference to Parliament’s prohibition of discriminatory conduct in the Code of Conduct – not <i>“ethical”</i>, i.e., <i>“conforming to accepted standards of conduct”</i>.</p> <p>11. The Applicant’s submission, which the Tribunal endorses, requires that councillors provide this leadership as <i>“civic leaders who have sought public office and have been elected by their constituents to represent the current and future interests of all residents”</i>.</p> <p>12. To the extent that the Tribunal must find, it finds that the Respondent breached the trust reposed in him recklessly. It was plainly apparent that the Respondent was aware – based on his previous finding of misconduct on 28 June 2019 – that the making of inappropriate, offensive, or discriminatory statements on Facebook could result in a finding of misconduct. The proper course for the Respondent should have been to ensure that his statements on Facebook were consistent with his obligations under the Act and the Code of Conduct.</p> |
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3. Orders and/or recommendations (s150AR - disciplinary action):

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| Date of orders: | 28 July 2023 |
| Order/s and/or recommendations: | <p>The Tribunal orders pursuant to section 150AR(1)(b)(ii) of the Act that the Councillor is reprimanded.</p> <p>The Tribunal also makes a recommendation pursuant to section 150AR(1)(b)(xi) of the Act that the Minister suspend the Councillor from office for not less than one (1) calendar month.</p> |
| Reasons: | <ol style="list-style-type: none"> 1. The Respondent had two previous instances of misconduct at the time of the hearing, both of which related to his activity on Facebook: <ol style="list-style-type: none"> a. On 12 February 2019, the Respondent was found to have engaged in misconduct regarding a post on Facebook relating to another Councillor. He claimed that the government and Premier were useless <i>“as tits on a bull”</i>. He also made racially insensitive comments about another person in that same post. Councillor Hansen was ordered to make a public admission of misconduct; b. On 24 September 2021, the Respondent was again found to have engaged in misconduct regarding a post on Facebook relating to the mass shootings occurred at the Noor Mosque and the Linwood Islamic Centre in Christchurch, New Zealand. The Respondent’s statements were reported in local media and the result of a number of complaints from members of the public. The Respondent was reprimanded and ordered to undergo a course of training to address the conduct. 2. The Tribunal notes that the allegations of the current matter pre-date the findings of the 24 September 2021 misconduct. The Respondent would not have had the educative effects of those orders to instil the proper course of conduct in relation to the present allegations. 3. That being said, there is a clear pattern in the Respondent’s words and actions, as evidenced by his response to the Tribunal Registry of 21 July 2023. The Respondent does not appear to have demonstrated any insight, remorse or understanding into the actions which have brought him before the Tribunal for a third time. 4. The Respondent’s <i>“personal opinion”</i> is not a matter for himself personally when he places it on social media, accessible to the world at large. It is also not a <i>“personal opinion”</i> where he makes no effort to explain that it is so in circumstances where he is an elected official and |

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| | <p>highly recognizable by persons in his community. It is also no longer a <i>“personal opinion”</i> where the statement is inflammatory, insulting, discriminatory, or hurtful, or where it defames, attacks or diminishes the legal standing of another person.</p> <p>5. The Tribunal’s jurisdiction is protective, not punitive. It does not act to punish the Respondent for his Facebook posts, as unacceptable as they may be viewed in a cosmopolitan and egalitarian society such as Australia. Instead, the Tribunal must act to protect the constituents of Council, as well as the reputation and standards of the office of Councillor. In this matter the Tribunal formed the view the Respondent did not rise to the level expected of his position.</p> <p>6. The Tribunal is aware that the allegations of conduct are quite old – the earliest of which relates to Facebook posts in January 2021, some two and a half years ago. Yet it is apparent from the Respondent’s email to the Tribunal on 21 July 2023 that he continues to hold his <i>“personal opinions”</i> and has shown no insight or remorse into his conduct.</p> <p>7. The Tribunal believes that the email of 21 July 2023 evidences the current state of mind of the Councillor. His statement that <i>“if we have two choices, either we are free to express an opinion or we are slaves”</i> in that email supports an inference that, without intervention by the Tribunal, the Respondent will continue to post material on Facebook which might not be consistent with the Respondent’s obligations under the Act. The Tribunal must therefore issue orders which appropriately seek to protect the Fraser Coast Council, but also the reputation of all other Councillors and the <i>“system of local government in Queensland that is accountable, effective, efficient and sustainable”</i> which the Act seeks to establish and maintain.</p> <p>8. The Tribunal will therefore make a recommendation to the Minister of State Development, Infrastructure, Local Government and Planning, pursuant to section 150AR(1)(xi) of the Act that Councillor Hansen be suspended from office as a Councillor for a period of not less than one (1) month.</p> <p>9. The purpose of this suspension is to protect the reputation of Councillors who properly and dutifully ensure their Facebook posts – even in their personal capacity – are in accordance with the Act and the Code of Conduct, and the reputation and accountability of local government generally.</p> |
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