

Councillor Conduct Tribunal: Decision and Reasons Misconduct Application

Local Government Act 2009: Sections 150AQ and 150AS

Application details:

Reference No.	F21/4833
Date of Applications from the IA	29 June 2021
Applicant:	Independent Assessor
Respondent:	Former Councillor Jonathan Sri (the Councillor)
Council:	Brisbane City Council (the Council)
Complainant¹:	The Tribunal is not permitted to publish the name or identifying details of the Complainant in the Summary of this decision to be published on the Tribunal's webpage (section 150AS(5)(b)(ii)).
Public Interest Disclosure:	No
Allegations:	<p>Allegation One</p> <p>1. It is alleged that on 11 June 2020, Councillor Jonathan Sri, a councillor of Brisbane City Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly, in that his conduct was inconsistent with the local government principle in section 4(2)(e), requiring the 'ethical and legal behaviour of councillors'.</p> <p>Particulars</p> <p>Particulars of the alleged misconduct are as follows:</p> <ol style="list-style-type: none"> a. On 11 June 2020, Councillor Sri was in attendance at protests surrounding the Kangaroo Point Central Hotel & Apartments (the protests). b. During the protests, Councillor Sri engaged in the following conduct, which was captured on video:

¹ Section 150AS(5)(a): The conduct tribunal must not give another entity any information that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*, unless giving the information is required or permitted by another Act.

- i. Councillor Sri blocked a section of Lockerbie Street, Kangaroo Point to vehicle traffic.
 - ii. As part of the blockage, Councillor Sri's council-owned vehicle with registration number 107WND was parked and blocking a section of the road.
 - iii. When asked by officers of the Queensland Police Service (QPS) whether he had a permit to close the road, Councillor Sri stated, "yeah, I'm the local councillor, mate".
- c. Councillor Sri's conduct involved a breach of the trust placed in him as a councillor, in that his conduct was inconsistent with the local government principle in section 4(2)(e) of the Act, being 'ethical and legal behaviour of councillors', in that:
- i. Councillor Sri did not have authority to block the road in his capacity as a councillor;
 - ii. Councillor Sri used a council-owned vehicle to block the road; and
 - iii. Councillor Sri stated to QPS officers that he was authorised to block the road by virtue of his position as a councillor.

Allegation Two

It is alleged that on 12 June 2020, Councillor Jonathan Sri, a councillor of Brisbane City 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 his conduct was inconsistent with the local government principle in section 4(2)(e), requiring the 'ethical and legal behaviour of councillors'.

Particulars

Particulars of the alleged misconduct are as follows:

- a. On 12 June 2020, Councillor Sri was in attendance at protests surrounding the Kangaroo Point Central Hotel & Apartments (the protests).
- b. During the protests, the following conduct occurred and was captured on video (the conduct):
 - i. Councillor Sri unlatched the rear compartment of a Bidfood Australia delivery truck ("the truck") and opened the doors;
 - ii. After another individual indicated that they wanted to get into the truck, Councillor Sri opened the door wider to enable the individual to climb into the truck's rear compartment;
 - iii. Councillor Sri was filmed by the media engaging in the conduct;
 - iv. Councillor Sri addressed the media in relation to the conduct as follows:

	<ul style="list-style-type: none">I. Councillor Sri stated: any time a large vehicle tries to enter or leave the complex, we're checking the inside of the vehicle to make sure the government is not removing any refugees.II. When queried by a journalist as to whether he is allowed to do that, Councillor Sri stated, well I think it's under the circumstances it's an appropriate action because what is happening to these refugees is a violation of international human rights obligations. It is unlawful for the government to be holding refugees in detention. <p>c. The driver of the truck ("the driver") has indicated as follows in relation to the conduct in an Affidavit:</p> <ul style="list-style-type: none">i. A man wearing a pink shirt (identifiable as Councillor Sri), walked in front of and directed him to stop while he was travelling along a public road namely Walmsley Street, Kangaroo Point;ii. A woman, wearing overalls, also directed the truck to stop;iii. As a result of the actions of Councillor Sri and other individuals, he stopped the truck on a public road;iv. Once the truck had stopped, the woman wearing overalls laid under the front right-side wheel of the truck;v. A man with a yellow cap was also in front of the truck;vi. At least three camera crews were filming;vii. He did not know what was going on;viii. The man in the yellow cap walked over to the driver side door of the truck and banged on the door and said words to the effect of "open up the truck";ix. He was concerned about the situation he was in, people were aggressively banging on the truck and he felt threatened;x. He could not drive away because of the people in front of the truck including the woman under the front wheel of the truck;xi. He had locked the cabin doors of the truck but he thought the people might smash the windows of the truck;xii. Another man, wearing a blue shirt approached the closed driver-side window of the truck and said to him through the closed window words to the effect of "We just want to check the back and we will let you on your way, to make sure no one is in the back", after which:<ul style="list-style-type: none">I. He decided to allow the people to do what they wanted and just go along with it;II. He did not feel safe to get out of the truck;
--	---

	<p>III. He said: "If you want to have a look it's open but I'm not getting out";</p> <p>IV. He could feel the movement of someone opening the back doors, and then the movement of the doors shutting.</p> <p>xiii. After he was let go he felt rattled and overwhelmed by the incident.</p> <p>d. Councillor Sri's conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly, in that his conduct was not consistent with local government principle 4(2)(e), being 'ethical and legal behaviour of councillors', in that:</p> <ul style="list-style-type: none">i. Councillor Sri did not have free and voluntary consent of the driver to stop the truck or to allow another individual to enter the truck;ii. Councillor Sri's conduct caused the driver of the truck to feel concerned and threatened;iii. Councillor Sri addressed the media and was filmed by the media engaging in the conduct and was able to be identified as a councillor;iv. The conduct was not authorised by way of an authorised public assembly under the <i>Peaceful Assemblies Act 1992</i> (sections 7,8,9 and 10);v. The conduct may have impacted the rights and freedoms of the driver of the truck, having regard to section 2(1)(c)(iii) of the <i>Peaceful Assemblies Act 1992</i>;vi. The conduct may have amounted to trespass into the truck, which is not affected by the operation of the <i>Peaceful Assemblies Act 1992</i> (section 3(2)).
--	---

Decision (section 150AQ):

Date:	23 February 2024
Decision:	<p>Allegation One:</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 11 June 2020, Councillor Jonathan Sri, a councillor of Brisbane City 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 his conduct was inconsistent with the local government principle in section 4(2)(e), requiring the 'ethical and legal behaviour of councillors' has been sustained.</p> <p>Allegation Two:</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 12 June 2020, Councillor Jonathan Sri, a councillor of Brisbane City 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 his conduct was inconsistent with the local government principle in section 4(2)(e), requiring the 'ethical and legal behaviour of councillors' has not been sustained.</p>

Orders and/or recommendations (section 150AR - disciplinary action):

Date of orders:	23 February 2024 23 July 2024
Order/s and/or recommendations:	Pursuant to Section 150AR(1)(a) of the Act, the Tribunal orders that no action be taken against Former Councillor Jonathan Srianganathan

Tribunal:

Chairperson:	Troy Newman
Member:	Carolyn Ashcroft

Conflict of interest disclaimer/declaration (section 150DT)

1. Having reviewed the material provided, all Tribunal members confirmed that they did not have a real or perceived conflict of interest in proceeding to decide the complaint.

Hearing (section 150AP & Chapter 7, Part 1):

Time and Date:	10am, 20 November 2023
-----------------------	------------------------

Heard at:	By telephone conference with both members in attendance.
Appearances: (where applicable)	<p>This matter was heard and determined on the documents pursuant to section 150AP(2) of <i>the Local Government Act 2009</i> with no parties appearing.</p> <p>The Tribunal considered the provisions of section 298 of the Regulation and determined that it was appropriate in the circumstances of this matter to conduct the hearing in private. Accordingly, the Tribunal directed that the hearing be held in private².</p>

Reasons for decision:

Abbreviations

The following abbreviations have been used in this determination:

- the Act the *Local Government Act 2009*
- the Department the Department of State Development, Infrastructure, Local Government and Planning
- the Regulation the *Local Government Regulation 2012*
- the CEO the Chief Executive Officer of the Council
- the complainant the person who lodged the complaint
- the Council Brisbane City Council
- the Councillor Jonathan Srianganathan ('Sri') (the Respondent)
- the IA The Independent Assessor (the Applicant)
- the Tribunal the Councillor Conduct Tribunal constituted to hear and determine the allegations made by the IA concerning the Councillor's conduct.
- CoBA *City of Brisbane Act 2010*

Background

2. From the material received by the Tribunal, the Tribunal noted that:
 - a. The former Councillor was first elected as the Greens Councillor for the Gabba Ward of the Council in March 2016 and served two terms until he stepped down in April 2023.
 - b. The Councillor has announced his candidacy for the position of Lord Mayor of the Council in the March 2024 election.
 - c. On 20 May 2021 the Independent Assessor served the Councillor with a section 150AA notice and Opportunity to respond to the alleged misconduct subject to this report.

² Section 298 of the *Local Government Regulation 2012* requires that a hearing must be held in public unless the decision-maker directs the hearing is to be held in private.

- d. On 14 June 2021 the Councillor disputed the alleged misconduct.
- e. On 29 June 2021 the Applicant filed an application with the Tribunal pursuant to sections 150W(1)(c) and 150AJ of the Act.
- f. Directions were issued by the Tribunal on 8 August 2023. Those directions were subsequently amended by consent of the parties on 15 September 2023.

Conduct of hearing

3. The hearing was conducted on the documents.

Considerations pursuant to the *Human Rights Act 2019 (Qld)*

4. In the circumstances of this matter, the Tribunal considers it has discharged its obligation to observe and protect the former Councillor's human rights by conducting a procedurally fair hearing pursuant to the provisions of the *Local Government Act*. Furthermore, the Tribunal considered these human rights in the context of sections 21 (freedom of expression), 23 (taking part in public life) and 25 (privacy and reputation) of the Human Rights Act to be potentially engaged.

The Tribunal was satisfied during the hearing process that in dealing with the matter before it that any limitation of rights protected and applicable by the provisions are reasonable and lawful in the context of the empowering statute which prescribes the Tribunal's powers and role.

5. The Tribunal also has a statutory duty, imposed by section 58 of the HRA, to act compatibly and make decisions compatibly with human rights. In making a decision as a "*decision maker*" under the Act, the Tribunal is also bound to give "*proper consideration to a human right relevant to the decision*".
6. Section 31 of the HRA is engaged because the Tribunal conducted a hearing in relation to the Applicant's application of 29 June 2021. Although the Tribunal is not a criminal or civil proceeding in the strict sense, the Respondent has the right to "*have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing*".
7. The Hearing of this application was not in public; however, section 31(2) of the HRA permits a court or tribunal to "*exclude...the general public from all or part of a hearing in the public interest or the interests of justice*". The Tribunal is empowered by section 150AP(2)(a) of the Act and section 298 of the *Local Government Regulations 2012 (Qld)* to hold private hearings if "*the conduct tribunal considers it appropriate in all the circumstances*", which was the case in the present matter.
8. Further, the decision of this proceeding will be made publicly available in accordance with the provisions of the Act and consistent with section 31(3) of the Act.
9. The Respondent equally has a right to be treated as a person before the law under section 15(1) of the HRA and has been treated as such throughout this hearing. The Tribunal is satisfied, on the basis of the above procedural history, that it has offered the Respondent sufficient opportunity to be heard and take part in the hearing that may result in a decision adverse to his interests.

10. The Tribunal noted various items of procedural compliance required prior to conducting a hearing.³

Standard of Proof

11. The standard of proof in the hearing is the balance of probabilities (section 150AP(4) of the Act). In making its decision the Tribunal considered *Briginshaw v Briginshaw (1938)* 60 CLR 336 at 361-362 where it was said by Dixon J as he then was:

"Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proven to the reasonable satisfaction of the tribunal".

12. In *Qantas Airways Limited v Gama (2008) FCAFC 69*, Branson J commented on the above statements and said:

"His Honour made plain that before accepting the truth of evidence of a particular allegation, the tribunal should give consideration to the nature of the allegation and the likely consequences which will follow should it be accepted".

Evidence and material considered

13. The Tribunal has considered the evidence provided to it although it has not found it necessary to refer to, or comment on, each item of that evidence. In considering any allegation of complaint, the Tribunal is obliged to decide, in terms of sections 150AL & 150AP of the Act, whether or not former Cr Sri engaged in misconduct as defined in section 150(L)(1)(b)(i) of the Act.

A. Documentary Evidence

Initial documentation provided to the Tribunal including:

- Relevant Documents
 - Annexure A – Statement of Facts
 - Annexure B – 150AA Notice and Opportunity to Respond
 - Annexure C – Response to 150AA Notice
 - Annexure D – Brief of Evidence;
 - Item 3.1, Exhibits ET-8-14
 -

Witness Statements

- Affidavit of Jeremy John PHILP affirmed on 25 August 2023.
 - Exhibits JJP-01 – JJP-29.

³ See paragraph 2 (c)(d)(e)&(f) of this report.

- Affidavit of Jonathan SRIRANGANATHAN affirmed on 15 September 2023.
 - Exhibit JS-01.
- Relevant training undertaken by the Councillor;
- Disciplinary history of the Councillor;
- Submissions by the Applicant dated 29 September 2023.
- Submissions on behalf of the Respondent dated 23 October 2023.
- Submissions in Reply on behalf of the Applicant dated 1 November 2023.

Discussion and findings

14. The particulars of the alleged conduct are contained on pages 1-4 of this report. Those particulars are not disputed by the Respondent, other than that disputing that his actions constituted misconduct.⁴
15. The particulars are also supported by the evidence provided by the Applicant and the Tribunal therefore accepts that the Respondent engaged in the conduct the subject of the allegations, whilst challenging that his conducted constituted misconduct.

Definition of Misconduct

16. The applicable definition of misconduct is contained in section 150L(1)(b)(i) of the Act, which relevantly provides:

150L What is misconduct

*(1) The conduct of a councillor is **misconduct** if the conduct—*

...

(b) is or involves—

(i) a breach of the trust placed in the councillor, either knowingly or recklessly; ...⁵

A Councillor's Responsibilities

17. The responsibilities of councillors are set out in section 12 of the Act, which relevantly provides:

12 Responsibilities of councillors

(1) A councillor must represent the current and future interests of the residents of the local government area

...

(3) All councillors have the following responsibilities—

⁴ Submissions on behalf of the Respondent, dated 23 October 2023, at paragraph [3].

⁵ The remainder of section 150L(1)(b)(i) of the Act is not relevant to this matter and has been omitted.

- (a) ensuring the local government—
 - (i) discharges its responsibilities under this Act; and
 - (ii) achieves its corporate plan; and
 - (iii) complies with all laws that apply to local governments;
- (b) providing high quality leadership to the local government and the community;
- (c) participating in council meetings, policy development, and decision making, for the benefit of the local government area;
- (d) being accountable to the community for the local government’s performance.

...

- (6) When performing a responsibility, a councillor must serve the overall public interest of the whole local government area.

The Local Government Principles

18. The Local Government Principles are set out in section 4 of the Act and relevantly provide:

4 Local government principles underpin this Act

(1) To ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires—

- (a) anyone who is performing a responsibility under this Act to do so in accordance with the local government principles; and*
- (b) any action that is taken under this Act to be taken in a way that—*
 - (i) is consistent with the local government principles; and*
 - (ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.*

(2) The local government principles are—

- (a) transparent and effective principles, and decision-making in the public interest; and*
- (e) ethical and legal behaviour of councillors....*

19. The Tribunal has also considered the Code of Conduct, being the *Code of Conduct for Councillors in Queensland* of 4 August 2020. This Code of Conduct is a requirement under section 150D of the Act, and must set standards of behaviour for Councillors in the performance of their responsibilities as Councillors.

20. Before assuming public office, Councillors must:

- a. Understand and commit to complying with the local government principles and obligations of Councillors in accordance with section 169 of the Act, as well as the standards of behaviour set out in this Code of Conduct;

- b. Make a declaration of office, during which Councillors must declare that they will abide by this Code of Conduct.

21. The relevant sections of the Code of Conduct to these allegations are:

...

2.3 Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare.

3. Ensure conduct does not reflect adversely on the reputation of Council.

22. Both allegations in this matter relate to the conduct of the Applicant in the protest that took place outside the Kangaroo Point Hotel between May and July 2021. The Tribunal notes that the hotel was situated in the Applicant's electorate.

23. The Applicant submitted that due to their role and public profile as civic leaders, the responsibility of Councillors to provide high quality leadership may be engaged even when acting in a personal capacity. The Applicant further submitted the Respondent's own position was that his involvement in the protest was in furtherance of his role as a councillor.⁶

Allegation One

Applicant's submissions

24. The Applicant submits that the Respondent breached the trust placed in him as a Councillor, either knowingly or recklessly, by engaging in unethical and/or illegal behaviour when he blocked a road without authorization, yet through his actions and words, implied to police that he was authorised to block the road by virtue of his position as a councillor.⁷

Respondent's submissions

25. The Respondent detailed that his broad approach to political representation has always been centred on 'the recognition that we have an unjust and inequitable system in terms of how government decisions are made, and in terms of how economic systems function'. The Respondent identified that he uses his platform as an elected representative to elevate the voices of oppressed and marginalised people.⁸

26. The Respondent stated that a particular focus of his was advocating for refugee rights, this involved, inter alia, supporting protests. The Applicant explained that in doing so he was responding to residents in his electorate and members of his community who were calling on him to do so.⁹

⁶ Applicant's submissions dated 29 September 2023 at paragraph [13-14].

⁷ Ibid [21].

⁸ Respondent's affidavit affirmed 15 September 2023 at paragraph [11].

⁹ Respondent's affidavit affirmed 15 September 2023 at paragraph [23].

Applicant's submissions in reply

27. The Applicant did not file submissions in reply.

Tribunal's decision

28. The evidence provided to the Tribunal demonstrated that the Respondent identified himself to the Queensland Police Service Office as a Councillor, and appeared to suggest, falsely, that his authority as a councillor allowed him to close a public road without a permit.

29. When questioned by the police officer whether he had a permit to close the road the Respondent said, "Yeah, I'm the local councillor mate." The Tribunal finds that the Respondent implied that he was authorised to block the road by virtue of his position as a councillor.

30. The Respondent provided evidence confirming that there was no formal road closure in place on 11 June 2020.¹⁰

31. The Tribunal noted the Respondent used 'road closed' signs and traffic cones which were in his council-owned utility, albeit the vehicle being available (on his evidence) for his personal use also.¹¹

32. It is not clear on the evidence whether the road closed signs and traffic cones were permitted by the Council for the personal use of the Respondent.

33. The Respondent admitted putting the road close signs and traffic cones out onto Lockerbie Street, blocking the Road.¹²

34. The Tribunal does not accept the Respondent's submission that at the time of blocking the road, the Respondent was acting in an emergency context for the safety of people spilling out onto the road. The video footage was viewed, and it did not support that assertion, nor was there any commentary by police officers at the time to that effect. Further, the Respondent conceded in his own affidavit that it was a very low traffic, low volume side street.¹³

35. The Respondent admitted that he commented he was the 'local councillor' in the context of being asked whether he had a permit to close the road.¹⁴

36. The Tribunal was therefore satisfied on the evidence that there was a clear link between the Councillor's actions in relation to Allegation One and his role as a Councillor.

¹⁰ Ibid [50].

¹¹ Ibid [51].

¹² Ibid [51].

¹³ Ibid [53].

¹⁴ Respondent's affidavit affirmed 15 September 2023 at paragraph [60].

37. The Local Government principles require councillors to engage in ethical and legal behaviour. It is uncontroversial that the Respondent did not have proper authorisation to block Lockerbie Street. The Tribunal finds that the Respondent, by implying to police that he did have authorisation to block the road (as he was the local Councillor), was a knowingly unethical misstatement. The Tribunal additionally considers that the conduct of blocking a road in these circumstances was potentially a traffic offence (albeit no criminal charges are known to have been commenced). That no criminal charge/s have been commenced by QPS is not determinative that the Respondent's actions did not breach a traffic law.
38. However, should the Tribunal be wrong that a traffic law may have been breached, the Tribunal still accepts the Applicant's submission that it is not necessary to establish illegal conduct in order for the Respondent to have acted unethically and to have breached the trust placed in him as a Councillor. Which the Tribunal so finds.
39. Considering all of the evidence received, the Tribunal has determined that on the balance of probabilities Allegation One has been sustained.

Allegation Two:

Applicant's submissions

40. The Applicant submitted that the Respondent breached the trust placed in him as a Councillor, either knowingly or recklessly, by engaging in unethical and/or illegal behaviour when he stopped a truck without the driver's voluntary consent and allowed another individual to enter the truck, thus causing the driver of the truck to feel threatened.
41. The Applicant submitted that the Respondent's conduct:
- a. was not authorised under the *Peaceful Assemblies Act 1992* (Qld),
 - b. potentially impacted the rights and freedoms of the driver having regard to section 2(1)(c)(iii) of the *Human Rights Act 2019* (Qld), and
 - c. may have amounted to trespass into the truck.¹⁵
42. The Applicant submitted that in order for consent to be freely given, it must be in the absence of any threat, duress, or coercion. The Applicant further submitted that it was not reasonable for the Respondent to have thought that the driver's consent was freely and voluntarily given in circumstances where:¹⁶
- a. A protester had paced their body in front of the truck's wheels;
 - b. Protesters were aggressively banging on the truck door causing the driver to feel threatened;
 - c. People were saying, "open up the truck";
 - d. The driver could not drive away because there were people in front of the truck including a woman under his front wheel.

¹⁵ Applicant's submissions dated 29 September 2023 at paragraph [29].

¹⁶ Applicant's submissions dated 29 September 2023 at paragraph [33].

43. In the alternative, the Applicant submitted that even if the Tribunal found the driver did consent to the protesters opening the back door of the truck, the consent was exceeded by the actions of the Respondent, in concert with another activist, as any consent did not include them entering the vehicle and conducting a search.¹⁷

Respondent's Submissions

44. Again, the facts of the matter were largely undisputed.¹⁸

45. The Respondent provided evidence that on 12 June 2020 various activists involved in that day's protest would search vehicles that were leaving the compound to ensure asylum seekers were not being removed.¹⁹

46. The Respondent accepted that he stood in front of the truck as part of the protest and indicated for it to stop. When the truck stopped, he went up to the driver's window and spoke to the driver.²⁰

47. Notably the Respondent stated he did this as 'I perceived that it was better for me to do this than other activists, who might have gotten a bit carried away'.²¹ Concerningly to the Tribunal, this comment indicated that the situation was or could become tense and possibly dangerous.

48. Whilst due to the time that has passed since this incident the Respondent cannot recall the exact words he used when speaking to the driver, he recalls that the response the driver gave him conveyed to him the clear understanding that the driver did not object to protesters looking in the back of his truck and he gave his consent.

49. The Respondent raised that he honestly and reasonably thought that he had the driver's free and voluntary consent to open the back doors of the truck.²²

50. The Respondent conceded that he could not speculate on how the truck driver thought or felt at that minute. However, submitted that there was not anyone present that was going to damage or smash the windows of the truck or hurt the driver.²³

51. The Respondent submitted that at all times he had fairly and properly represented the interests of his constituents. In support of that assertion, the Respondent supplied three letters of support from elected representatives and 192 letters received from his constituents providing written support.

¹⁷ Ibid [34].

¹⁸ Respondents' submission dated 23 October 2023 at [3].

¹⁹ Respondent's affidavit affirmed 15 September 2023 at paragraph [70].

²⁰ Ibid [76]-[77].

²¹ Ibid [76].

²² Ibid [77]-[84].

²³ Respondent's affidavit affirmed 15 September 2023 at paragraph [81].

Tribunal's decision

52. The Tribunal accepted the Applicant's submission that the Respondent's right to express his views and to protest against the Federal Government's immigration policy were not superior to the rights of other persons.²⁴ The Tribunal also acknowledged that for consent to be freely given, it must be in the absence of any threat, duress or coercion.
53. The Tribunal determined the culpability of the Respondent in Allegation Two was distinguishable from Allegation One in that the Respondent did not make any reference to his councillor position when dealing with the truck driver. The Tribunal considered the Applicant's submission that the Respondent by virtue of his public profile was identifiable as a councillor,²⁵ however noted that the Truck driver made no mention that he recognised the Respondent.²⁶ The interaction is noted to have lasted less than a minute. The Truck driver speaks of confusion as to what was occurring²⁷ and noted that he saw at least 3 camera crews filming.²⁸ Also of note was that the Truck driver had been to the Serco site many times as it was part of his usual delivery run.²⁹
54. The Truck driver provided evidence that he was very concerned about the situation and felt threatened.³⁰ He had locked his doors. However, he stated that a man said through his closed window, *"We just want to check the back and we will let you on your way, to make sure no ones in the back."*³¹ The Truck driver provided evidence that he replied, *"If you want to have a look it's open but I'm not getting out."*³²
55. Whilst the Tribunal accepts the Truck driver felt threatened and unsafe, the Tribunal determined that the driver did give oral consent for the protestors to ambiguously look in the back of the truck. His comments, said to be made under duress, could also reasonably have been construed by the Respondent as blasé consent. The Tribunal noted that the Respondent took steps to satisfy himself that consent was given by the driver. Prominent to the Tribunal's decision was that there was no violence, threats, further harassment or menacing of the driver after the truck was quickly checked.
56. The Tribunal also found it important that the Respondent was not the person that actually entered the rear compartment of the truck. Subsequently, the Tribunal does not hold the Respondent accountable for the decision of the other protestor to enter the truck.
57. The Tribunal reflected on the Respondent's submission that had widespread support from his constituents. Whilst the number of letters provided in support of the Respondent was considerable, the Tribunal noted that it was in reality only a small percentage of the overall constituents for the Gabba Ward. The number of Votes in the 2020 Brisbane City Council elections for the Gabba ward was recorded as 21,074 persons.³³

²⁴ Applicant's submissions dated 29 September 2023 at paragraph [32](b).

²⁵ Applicant's submission in reply dated 1 November 2023 at [25].

²⁶ Affidavit of Teunis Van Tent, affirmed 30 November 2020.

²⁷ Ibid at [23].

²⁸ Ibid at [22].

²⁹ Ibid at [11].

³⁰ Affidavit of Teunis Van Tent, affirmed 30 November 2020 at [26]

³¹ Ibid at [30].

³² Ibid at [34].

³³ The Gabba (Key seat) - BCC Electorate, Candidates, Results - www.abc.net.au/news/elections/bcc/2020.

58. The Tribunal reflected on the standard of proof required and the gravity of a finding of misconduct. A finding of misconduct is a serious thing. Ultimately the Tribunal accepted on the balance of probabilities that the Respondent honestly and reasonably thought he had the driver's free and voluntary consent to open the back doors of the truck and therefore the Tribunal determined that Allegation Two was not sustained.

Discussion on orders/recommendations to be made:

(Amended) Tribunal Order:

59. The Respondent is a former Councillor. Section 150AR(5) excludes a number of orders and recommendations from being applied to former Councillors.

60. The Respondent's previous findings of inappropriate conduct and misconduct were also noted by the Tribunal as per section 150AQ(2)(a) of the Act. The Respondent's considerable previous disciplinary history was outlined in the Applicant's submissions.³⁴

61. The Respondent cooperated early with the investigation and the Tribunal noted that the parties generally agreed on the facts surrounding the circumstances of the conduct, notwithstanding that the Respondent denied that his conduct amounted to misconduct. This cooperation was still deemed mitigating.

62. In determining the appropriate order or recommendation, the Tribunal must consider what order, or combination of orders, would best serve the objects of the disciplinary regime for councillors having the regard to the range of orders and recommendations available.

63. It is uncontroversial that the purpose of disciplinary proceedings and orders are protective rather than punitive. However, the Tribunal accepted the Applicant's submission that another important objective to proceedings such as these is that they serve to maintain high standards of conduct by councillors, which in turn ensures public confidence in the system of local government.

64. On 22 November 2023, and prior to the parties being advised of the Tribunal's decision, the *Local Government (Councillor Conduct) and other Legislation Amendment Act 2023* came into force, introducing section 150 AKA into the *Local Government Act 2009* ("the Act").

65. This section provided that the assessor, at any time before the application has been decided, may withdraw the application, in whole or in part, if the assessor is satisfied the withdrawal is in the public interest.

66. Section 150(2) AKA of the Act provided that if the office of the councillor is vacated before the application is decided, the assessor must withdraw the application.

³⁴ Applicant's submissions dated 29 September 2023 at [52] – [61].



67. This matter had already commenced and was with the Tribunal for determination.
68. The one-day hearing occurred on 20 November 2023. Section 150AQ of the Act provides that after conducting the hearing, the conduct tribunal must decide whether the councillor has engaged in misconduct. They are to further decide what action the conduct tribunal will take under section 150AR of the Act to discipline the councillor if misconduct is found to have occurred.
69. The date of this decision is recorded as the date of both tribunal members consented to/adopted the written decision. Here, that consent was reached on 23 February 2024.
70. This matter was not withdrawn by the applicant, and consequently the Tribunal had jurisdiction to hear and determine the matter.
71. The Tribunal decided under section 150AQ that the respondent engaged in misconduct. The Tribunal has determined that the misconduct finding cannot be repealed or amended by the Tribunal.
72. As the Tribunal formed the view that the respondent engaged in misconduct, the Tribunal was required to decide disciplinary action that it would take under section 150AR.
73. In this matter the respondent, via his legal representation, did not make any submission on an appropriate penalty in relation to the decision made on 23 February 2024. When the parties were advised of the original decision, it was uncommonly 'left open' by the Tribunal that the parties could make submissions as to a different form of order than that made on 23 February 2024.³⁵
74. Following the decision on 23 February 2024 it therefore remained open to this tribunal to make a different form of order, from any previous order.
75. The Applicant, via submissions by the parties after the 23 February 2024 decision, made a reasonable concession that, 'had they received notification/information from the tribunal that the matter had not been decided under section 150AQ prior to 22 November 2023, the matter would have been withdrawn accordingly, along with the many other matters withdrawn at the time'.³⁶ Consequently, the Tribunal has now decided to impose no sanction on the respondent in respect to Allegation 1.
76. The Tribunal amends the Order made 23 February 2024 so that pursuant to Section 150AR(1)(a) of the Act, the Tribunal orders that no action be taken against Former Councillor Jonathan Srianganathan.

³⁵ The original order provided, *'In relation to this proposed order, the parties are at liberty to provide submissions, within seven days, if they wish to argue for a different form of order. If no submissions are received, orders in those terms will be made.'*

³⁶ Applicant via their further submissions in reply dated 22 April 2024 at paragraph [16].

Notices

77. Following the finalisation of this report, the Tribunal will arrange for notices to be sent to relevant parties as required by sections 150AS(3) and (4) of the Act.

Troy Newman³⁷	Carolyn Ashcroft
Chairperson	Tribunal Member
Signed: 	
Date: 23 February 2024 23 July 2024	

³⁷ Authorised to sign this determination on behalf of the Tribunal by email from Carolyn Ashcroft dated ~~20 February 2024~~ 23 July 2024.