

LOCAL GOVERNMENT ACT 1993

SECTION 440I

STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I COUNCILLOR FRED CLANCY – WARRUMBUNGLE SHIRE COUNCIL

1. I, Tim Hurst, Acting Chief Executive, Office of Local Government, having considered a departmental report prepared under section 440H of the *Local Government Act 1993*, am satisfied that Councillor Fred Clancy of Warrumbungle Shire Council has engaged in misconduct within the meaning of section 440F of the *Local Government Act 1993* and as a result, disciplinary action is warranted pursuant to section 440I of the *Local Government Act 1993*.

RELEVANT LEGISLATION

2. "Misconduct" is defined under section 440F of the Act as any of the following:
 - (a) a contravention by the councillor of this Act or the regulations,
 - (b) a failure by the councillor to comply with an applicable requirement of a code of conduct under section 440,
 - (c) a failure by a councillor to comply with an order issued by the Departmental Chief Executive under this Division,
 - (d) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,
 - (e) an act or omission of the councillor intended by the councillor to prevent the proper or effective functioning of the council or a committee of the council.
3. Section 440H(5A) provides that the Departmental Chief Executive may arrange for a departmental report to be prepared in relation to an investigation conducted under this section. The preparation of such a report is a prerequisite to a decision by the Departmental Chief Executive to take disciplinary action against the councillor.
4. Section 440I(1) provides that the Departmental Chief Executive may take disciplinary action against a councillor if satisfied that:
 - (a) the councillor has engaged in misconduct (whether on the basis of a department report or a report by the Ombudsman or Independent Commission Against Corruption), and
 - (b) disciplinary action is warranted.
5. Section 440I(2) authorises the Departmental Chief Executive to take one or more of the following disciplinary actions:
 - (a) counsel the councillor,
 - (b) reprimand the councillor,

- (c) by order, direct the councillor to cease engaging in the misconduct,
 - (d) by order, direct the councillor to apologise for the misconduct in the manner specified in the order,
 - (e) by order, direct the councillor to undertake training,
 - (f) by order, direct the councillor to participate in mediation,
 - (g) by order, suspend the councillor from civic office for a period not exceeding 3 months,
 - (h) by order, suspend the councillor's right to be paid any fee or other remuneration to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 3 months (without suspending the councillor from civic office for that period).
6. Section 440J provides that the Departmental Chief Executive may take no further action against the councillor if satisfied that no further action is warranted or, instead of taking disciplinary action, may refer the matter to the council or to the NSW Civil and Administrative Tribunal.

THE MATTER

7. On 29 June 2016 an incident occurred within the Council's Administration building between Cllr Clancy and a Council employee. The incident occurred in front of a Council contractor and involved Cllr Clancy arguing with the Council employee in an aggressive manner which included pointing a finger at the face of the employee and speaking in a raised voice whilst in close proximity to the employee.

REASONS FOR REQUIRING COUNCILLOR CLANCY TO APOLOGISE, CEASE ENGAGING IN MISCONDUCT AND SUSPENSION FROM CIVIC OFFICE FOR A PERIOD OF ONE MONTH

8. I have carefully considered the Departmental Report under s.440H(5A) of the *Local Government Act 1993* into the conduct of Councillor Clancy.
9. I understand Councillor Clancy is an experienced councillor and has previously been found to have breached the code of conduct by engaging in similar conduct to that the subject of the current matter. For this reason Councillor Clancy should be ordered to cease engaging in misconduct.
10. I note Councillor Clancy has not demonstrated an acknowledgement that his conduct was unacceptable nor an understanding of the impact of his behaviour on the Council employee. I am also aware of the imbalance of power and authority between Councillor Clancy and the Council employee which, in my opinion, exacerbates the breaches of the code of conduct.
11. Further, while Councillor Clancy previously received a warning and training to remedy his conduct, his repeated conduct is unacceptable,

particularly given it is of a similar nature. I am therefore of the opinion this warrants the imposition of one or more of the available more serious penalties.

12. Taking into account the above, I am satisfied that Councillor Clancy's misconduct warrants his suspension from civic office for one (1) month, that he is directed to cease engaging in misconduct and directed to apologise in writing to Council's Children's and Community Services Manager for his inappropriate behaviour towards her on 29 June 2016, and the apology to be tabled at the first available Council meeting but within three (3) months.
13. In determining to suspend Councillor Clancy I have taken into account that suspension of a councillor means that some residents will be deprived of their representation during this period. On balance, I consider Councillor Clancy's misconduct to be sufficiently serious to warrant this.
14. I have carefully considered Councillor Clancy's submission on penalty, and while I acknowledge his recent ill health, I am of the opinion that it is an irrelevant consideration to my decision on penalty.

DATED: 5 October 2017



Tim Hurst
Acting Chief Executive
Office of Local Government

LOCAL GOVERNMENT ACT 1993

SECTION 440I(2)(c), (d) and (g)

ORDER REQUIRING COUNCILLOR FRED CLANCY OF WARRUMBUNGLE SHIRE COUNCIL TO APOLOGISE, CEASE ENGAGING IN MISCONDUCT AND SUSPENDING HIM FROM CIVIC OFFICE FOR A PERIOD OF ONE MONTH

1. I, Tim Hurst, Acting Chief Executive, Office of Local Government, by **ORDER, direct** that Councillor Fred Clancy of Warrumbungle Shire Council:
 - *apologise in writing to Council's Children's and Community Services Manager for his inappropriate behaviour towards her on 29 June 2016 and the apology be tabled at the first available Council meeting, but within three (3) months (s.440I(2)(d) of the Local Government Act 1993).*
 - *cease engaging in misconduct (s.440I(2)(c)).*

2. I, Tim Hurst, Acting Chief Executive, Office of Local Government, hereby **ORDER** Councillor Fred Clancy of Warrumbungle Shire Council:
 - *be suspended from civic office for a period of 1 (one) month (s.440I(2)(g)).*

The period of suspension commences on 16 October 2017 and ends on 15 November 2017.

Dated: 5 October 2017



TIM HURST

Acting Chief Executive, Office of Local Government