

LOCAL GOVERNMENT ACT 1993

SECTION 440I

**STATEMENT OF REASONS FOR SUSPENSION OF COUNCILLOR JOHN
TOUGH – NARRABRI SHIRE COUNCIL**

1. I, Marcia Doheny, Chief Executive, Office of Local Government, having considered a departmental report prepared under section 440H of the Local Government Act 1993 (the Act), am satisfied that Councillor John Tough has engaged in misconduct within the meaning of section 440F of the Act and that his suspension from civic office is warranted.

RELEVANT LEGISLATION

2. "Misconduct" is defined by 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 Director-General under this Division,
 - (d) an act of disorder committed by the councillor at a meeting of the council or a committee of the council.
3. Section 440H(5) of the Act provides that the Director-General may conduct an investigation for the purpose of determining whether a councillor has engaged in misconduct.
4. Section 440H(5) of the Act provides that the Director-General may arrange for a departmental report to be prepared in relation to an investigation conducted under this section. By operation of section 440H(6), the preparation of a departmental report is a prerequisite to a decision by the Director-General to take disciplinary action against a councillor unless the disciplinary action is taken on the basis of a report by the Ombudsman or Independent Commission Against Corruption.
5. Section 440I(1) provides that the Director-General may take disciplinary action against a councillor if satisfied that:
 - (a) the councillor has engaged in misconduct (whether on the basis of a departmental report or a report by the Ombudsman or Independent Commission Against Corruption), and

- (b) disciplinary action is warranted.
6. Section 440I(2) empowers the Director-General 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).
7. Section 440J of the Act provides for alternatives to disciplinary action.

THE MATTER

10. It was alleged that Councillor Tough slapped a female Council employee across the buttocks, while making comment and laughing, on Council premises on 17 September 2013.

REASONS FOR SUSPENSION OF COUNCILLOR TOUGH FOR A PERIOD OF TWO MONTHS UNDER SECTION 440I(2)(g) OF THE LOCAL GOVERNMENT ACT 1993

11. I have carefully considered the departmental report under section 440H of the Act into the conduct of Councillor Tough.
12. I am satisfied that Councillor Tough intentionally made inappropriate and unauthorised physical contact with a Council employee on Council premises on 17 September 2013, and that this conduct contravened clauses 3.1, 3.1(c), 3.1(d) and 3.3 of Council's adopted Code of Conduct. I accept the evidence of the Council employee and note that it is largely corroborated by a number of witnesses. Councillor Tough's evidence is inconsistent and largely without corroboration.

13. Pursuant to section 440(5)(a) of the Act, councillors, members of staff and delegates must comply with the applicable provisions of the council's adopted code of conduct.
14. Section 440F(1)(a) and (b) of the Act includes within the definition of misconduct a contravention of the Act and a failure by a councillor to comply with an applicable requirement of a code of conduct under section 440.
15. I am satisfied that, by his failure to comply with section 440(5)(a) of the Act, and clauses 3.1, 3.1(c), 3.1(d) and 3.3 of Council's Code, Councillor Tough has engaged in misconduct within the meaning of section 440F of the Act.
16. I am satisfied that Councillor Tough's misconduct warrants his suspension from civic office. Councillor Tough's behaviour fell well below the standard expected of elected representatives. He has not demonstrated sincere acknowledgement that his behaviour was unacceptable nor an understanding of the impact of his behaviour on the Council employee. There is an imbalance of power and authority between Councillor Tough and the Council employee which exacerbates the breaches. The likely embarrassment and discomfort that this action has created for the Council employee is also a relevant consideration.
17. I have, accordingly, determined to suspend Councillor Tough from civic office for a period of two months commencing on 23 June 2015 and ending on 22 August 2015. In doing so, I have taken into account that suspension of a councillor means that some residents will be deprived of their representation during this period. I consider the councillor's conduct sufficiently serious to warrant this.

DATED: 29 May 2015



Marcia Doherty

Chief Executive, Office of Local Government

LOCAL GOVERNMENT ACT 1993

SECTION 440I(2)(g)

ORDER SUSPENDING COUNCILLOR JOHN TOUGH, NARRABRI SHIRE
COUNCIL, FROM CIVIC OFFICE

I, Marcia Doheny, Chief Executive, Office of Local Government, hereby **ORDER** that Councillor John Tough of Narrabri Shire Council be suspended from civic office for a period of two months commencing on 23 June 2015 and ending on 22 August 2015.

Dated: 29/5/15



MARCIA DOHENY

Chief Executive, Office of Local Government