

CBO:CAT

IN THE INDUSTRIAL RELATIONS COMMISSION
OF NEW SOUTH WALES

DEPUTY PRESIDENT GRAYSON

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WEDNESDAY 11 AUGUST 2010

10 **IRC759/2010 - NOTIFICATION UNDER SECTION 130 BY THE
DEVELOPMENT AND ENVIRONMENTAL PROFESSIONALS
ASSOCIATION OF A DISPUTE WITH WAGGA WAGGA CITY COUNCIL
AND OTHERS**

Re complaint

15 **STATEMENT AND RECOMMENDATIONS**

20 HIS HONOUR: Having had the benefit of private conference with the parties,
and in that way, having had an opportunity to digest and discuss with the
parties the additional material provided, it now seems appropriate, if not
compelling, that the Commission express certain views in relation to this
dispute.

25 I note that the dispute has its origins in a complaint made against officers of
the Council by a person, Mr Hurst, engaged in housing and/or building
construction within the Wagga Wagga Council Municipality.

30 I note, without necessarily reciting the detail, that by letter of 15 June 2010 the
Council, under the hand of its General Manager, wrote to the complainant
rejecting allegations by the complainant, Mr Hurst, that Council employees had
received private benefits associated with their employment. I further note that
despite this response by the General Manager, that the complainant's
35 "allegations relating to personal gain or conflict of interest associated with
performance are therefore considered to be invalid", has not been reported by
the local media, has not drawn any apology or acknowledgement from the
complainant and as such has the potential to actually inflict damage to the
reputation and professional standing of persons, the subject of the complaint.

40 I further note from the material that the internal audit report which is marked
MFI 4 in the proceedings, into the "main allegation" that staff "have
manipulated undetermined development application numbers recorded to
Council for personal gain" and the finding of the internal auditors that, "it does
not appear as if there has been any fraudulent attempt to deceive through
incorrect reporting of development applications".

45 It is of significance in the context of these observations that the General
Manager yesterday wrote to the persons, the subject of complaint by Mr Hurst,
and said this, "These independent audit findings have now placed me in a
position where I can dismiss the Code of Conduct complaint lodged by
Mr Hurst in its entirety and I have now done so." It is, of course, trite to
50 observe, but nonetheless again in the context of these observations, entirely

appropriate, to observe that Council bears various obligations to its employees, including but not limited to the significant obligation of duty of care to protect employees against damage to their personal and professional reputation.

5 In those circumstances I propose to make and now make the following recommendations:

10 1. I recommend that the Council obtain legal advice as to whether any employee has been defamed by any person and in particular by the complainant, Peter Hurst and the Wagga Wagga Daily Advertiser. And in relation to the Daily Advertiser in editorial and journalistic content and the publication of blogs and thereafter that the Council take any legal action consistent with that advice

15 2. I recommend that the General Manger prepare a letter to the complainant, Mr Hurst, expressly rejecting the allegations made by the complainant in relation to personal gain, breaches of the Code of Conduct and alleged attempts to deceive by incorrectly reporting development applications.

20 A draft of this letter should be made available to the notifying Union by not later than 5pm tomorrow, that is, Thursday, 12 August 2010. And the Commission would expect in that regard that there can be agreement reached with the notifying Union on the content and terms of that letter.

25 3. I recommend that the letter be hand delivered to the complainant and that it contain, amongst other things, a request that he apologise to the staff, the subject of his complaints. That is to say, that he tender to those persons an apology in agreed form which is to be published as broadly as the allegations have been published by the complainant and that the complainant indicate
30 genuine remorse and a commitment to develop better interpersonal relationships in the future.

35 5. I recommend that the Council explore the publication of this letter as broadly as possible to local media and, in the absence of proper publication, be the subject of a paid advertisement, in particular in the aforementioned Daily Advertiser.

40 6. I recommend that the Council convene a meeting and extend invitations to the complainant, Mr Hurst, and other critical and/or hostile builders and developers in the City of Wagga Wagga, with a view to acknowledging the factual inaccuracies of the complaint and with a view to developing a positive civil and professional relationship for the future, with the further aim of securing an undertaking from the critics that the media campaign being waged against the Council is at an end.

45 I finally recommend that the Council, without delay, develop and implement a policy around its duty of care to employees and around its need within the employment relationship to protect them against personal and reputational damage in the future.

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