

LOCAL GOVERNMENT ACT 1993

SECTION 440I

STATEMENT OF REASONS FOR SUSPENSION OF COUNCILLOR BOB GRAHAM - WYONG SHIRE COUNCIL

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 Bob Graham has engaged in misconduct within the meaning of section 440F of the Act and that a suspension of his right to be paid any fee or other remuneration is warranted.

RELEVANT LEGISLATION

1. "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.
2. 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.
3. 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.
4. 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.

5. 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).

6. Section 440J of the Act provides for alternatives to disciplinary action.

THE MATTER

7. It was alleged that, in or about October 2013, Councillor Graham released a confidential conduct review's report into allegations that he had breached Council's code of conduct.

REASONS FOR SUSPENDING COUNCILLOR GRAHAM'S RIGHT TO BE PAID ANY FEE OR REMUNERATION TO WHICH HE WOULD OTHERWISE BE ENTITLED AS THE HOLDER OF THE CIVIC OFFICE FOR A PERIOD OF TWO MONTHS UNDER SECTION 440I(2)(h) OF THE LOCAL GOVERNMENT ACT 1993

8. I have carefully considered the departmental report under section 440H of the Act into the conduct of Councillor Graham.

9. I am satisfied that Councillor Graham's action in releasing the confidential conduct reviewer's report constitutes a breach of section 664 of the Act and breached clauses 7.8, 7.9, 7.10(a)-(c) and 8.13 of the Council's Code of Conduct.

10. 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.

11. 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.
12. I am satisfied that, by his failure to comply with section 664 of the Act, and clauses 7.8, 7.9, 7.10(a)-(c) and 8.13 of Council's Code, Councillor Graham has engaged in misconduct within the meaning of section 440F of the Act.
13. Councillor Graham's action falls below the standard expected of elected representatives and breaches section 664 of the *Local Government Act 1993* which prohibits disclosure of confidential information.
14. Maintaining confidentiality of documents is vital for the maintenance of trust in council processes and any breach of those obligations requires serious consideration.
15. The maximum penalty for a breach of section 664 of the Act is currently \$5,500. This disclosure, while serious, was not the most serious disclosure that could have occurred.
16. Taking into account his long record of public service, I am nevertheless satisfied that Councillor Graham's misconduct warrants suspension of his right to be paid any fee or other remuneration, to which he would otherwise be entitled as the holder of the civic office.
17. I have, accordingly, determined to suspend Councillor Graham's right to be paid remuneration as the holder of civic office for a period of 2 months commencing on 1 July 2015 and ending on 31 August 2015. This will produce a financial penalty of \$3,800.00

DATED: 29/5/15



Marcia Doheny

Chief Executive, Office of Local Government

LOCAL GOVERNMENT ACT 1993

SECTION 440I(2)(h)

ORDER SUSPENDING THE RIGHT OF COUNCILLOR BOB GRAHAM, WYONG SHIRE COUNCIL, TO BE PAID ANY FEE OR OTHER REMUNERATION FOR A PERIOD OF 2 MONTHS

I, Marcia Doheny, Chief Executive, Office of Local Government, hereby **ORDER** that Councillor Bob Graham of Wyong Shire Council be suspended from being paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office, for a period of two months commencing on 1 July 2015 and ending on 31 August 2015.

Dated: *29 May 2015*



MARCIA DOHENY

Chief Executive, Office of Local Government