

# Case Alert

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## Ipswich City Councillors' claim for reinstatement dismissed with costs

### *Ipswich City Council v Wendt & Ors [2020] QIRC 164*

16 OCTOBER 2020

#### AT A GLANCE

- In 2018, the Queensland Government passed the *Local Government (Dissolution of Ipswich City Council) Act 2018* (the Act), resulting in the dissolution of the Ipswich City Council (the Council) and the end of each councillor's term. An administrator was appointed to act in place of the councillors.
- Seven former councillors of the Council at the time (the Councillors) lodged applications for reinstatement and remuneration in the Queensland Industrial Relations Commission. The Councillors alleged they had been unfairly dismissed by the Council following the passing of the Act.
- The Commission found in favour of the Council and concluded that the Councillors could not be characterised as employees under the *Industrial Relations Act 2016* (Qld) (the IR Act).
- In an otherwise no costs jurisdiction, the Commission ordered the Councillors to pay the Council's legal costs.
- Wotton + Kearney acted for the Council in defending the proceedings and obtaining costs orders.

#### BACKGROUND

Following the dissolution of the Council in 2018 and the appointment of an administrator to act in the place of councillors, the Councillors brought the proceedings in the Queensland Industrial Relations Commission, seeking reinstatement to their former positions and also remuneration.

The Council applied to have the proceedings dismissed for want of jurisdiction, on grounds that the Councillors were not employees of the Council, but rather they had been elected by the people of the Ipswich local government area under the *Local Government Act 2009* (Qld) (the LG Act). The Council argued the Councillors were prevented by law from concurrently being employees and were therefore ineligible to commence

proceedings under the IR Act.

The Councillors argued that they were both Councillors and employees at the time of the dissolution. They asserted that the Council (being the employer) had been required to terminate their respective employment positions when the administrator had been appointed.

On 14 January 2020, the Commission found in favour of the Council and dismissed the proceedings. The Commission found that the Councillors, having been appointed to the elected office of councillor under the LG Act, could not be characterised as 'employees' within the meaning of the IR Act.

The Council subsequently applied for the Commission to exercise its discretion in awarding costs to the Council in circumstances where the proceedings had been instituted without reasonable cause and it ought to have been apparent that the proceedings had no reasonable prospects of success.

The Councillors argued that the proceedings were made with reasonable cause and filed based on legal advice regarding the merits of their respective claims.

### General rule on costs under the IR Act

Under the IR Act, the general rule is that a person must bear their own costs regarding a proceeding before the Commission. However, in limited and exceptional circumstances, the Commission may exercise its discretion to require a party to pay some or all of the costs of another party. The discretion to award costs must be exercised with caution and only where a clear case in support of an order is presented.

### CONSIDERATION IN AWARDING COSTS

In determining whether the Councillors had instituted the proceedings without reasonable cause, the Commission considered whether the applications had reasonable prospects of success at the time that they had been filed.

The Commission was satisfied the following circumstances existed at the time:

- *“the Councillors were aware they had been elected to Council during the most recent local council elections;*
- *the Councillors had not been hired by the Council to perform services or to provide labour to Council;*
- *the Councillors’ remuneration was set by regulation outside of the control of the Council;*
- *the Council had no capacity to employ or dismiss a councillor; and*
- *it is not possible under the LG Act for a Councillor to concurrently hold the role of both Councillor and employee.”*

The Commission also considered the fact that the Council’s solicitors (Wotton + Kearney) had filed detailed submissions in support of the position that the

Councillors were not employees of the Council. Those submissions had been filed before the conciliation conference and well before the hearing of the application to dismiss the proceedings.

The Commission concluded that the proceedings had been instituted without reasonable cause. Further, it determined that the proceedings had no reasonable prospects of success and were doomed to fail, entitling the Commission to exercise its discretion in awarding costs.

The Commission ordered the Councillors to pay the Council’s costs of the proceedings, as well as the application for costs.



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### THE SIGNIFICANCE OF THIS DECISION FOR INSURERS

This decision demonstrates that the Commission will exercise its discretion in awarding costs where appropriate, particularly in circumstances where a party is required to defend what is clearly a hopeless case.

Given that the Council had to meet a case that lacked substance, the Commission determined it was proper to exercise its discretion in awarding costs in favour of the Council.

Insurers may rely on this case in seeking costs in the Commission, in circumstances where an application has been commenced vexatiously, without reasonable cause, or where it would have been reasonably apparent that the application had no reasonable prospect of success.

## Need to know more?

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