



Local Government Standards Panel

Complaint Number	20220008
	<i>Local Government Act 1995</i>
Complainant	Ms Karen Gail Barbera
Respondent	Councillor Amanda Spencer-Teo
Local Government	City of Canning
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member)
Heard	5 May 2022 Determined on the documents
Finding	1 x Breach Regulation 18(1)(b)

FINDING AND REASONS FOR FINDING

Delivered 27 June 2022

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.



Summary of the Panel's decision

1. On 5 May 2022, the Panel found that Councillor Amanda Spencer-Teo a councillor of the City of Canning ("**the City**") did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* ("**the Act**") and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* ("**the Regulations**") when on 8 December 2021 she asserted that the Complainant had made defamatory comments regarding Cr Spencer-Teo in an article in the Canning Examiner Newspaper as further set out in paragraph 17 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
6. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.¹
7. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
8. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate²; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding³.
9. The Panel does not possess investigative or supervisory powers.⁴ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence

¹ Section 5.106 of the Act

² *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

³ *Briginshaw v Briginshaw* (1938) 60 CLR 336

⁴ *Re and Local Government Standards Panel* [2015] WASC 51 (at paragraph 24)



presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.

10. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
11. The Panel also must have regard to the general interests of local government in Western Australia⁵.
12. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Jurisdiction and Procedural Fairness

13. On 27 January 2022 the Panel received a complaint from Mr Graeme Bride acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 20 January 2022.
14. In the complaint form, the Complainant alleges that Cr Spencer-Teo has breached regulation 18 of the Regulations when on 8 December 2021 she improperly and incorrectly asserted that the Complainant had made defamatory comments regarding Cr Spencer-Teo in an article in the Canning Examiner Newspaper as further set out in paragraph 17 below (together "**the Complaint**").
15. The Panel convened on 5 May 2021 to consider the Complaint.
16. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Cr Spencer-Teo was:
 - i. elected to the Council of the City in October 2021 for a term expiring in October 2025;
 - ii. a candidate at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 5 May 2022;
 - b. was satisfied the Complaint was made within six months after the certain of the alleged breaches occurred⁶;
 - c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁷;
 - d. was satisfied the Department had provided procedural fairness Cr Spencer-Teo; and
 - e. found it had jurisdiction to consider the Complaint.

⁵ Section 8(6) of Schedule 5.1 of the Act

⁶ Section 5.107(4) and 5.109(2) of the Act

⁷ Section 5.107 and 5.109 of the Act



The Specifics of the Complaint

17. The Complainant provided the following comments and arguments in respect to the Complaint as summarised by the Panel:

- a. On the 8th of December Cr Spencer-Teo caused an advert to be placed in the Canning Examiner Newspaper (**“the Advertorial”**) that names the Complainant as a person responsible for publishing a defamatory post as follows:

“Richard Aldridge, a former acting President of the Riverton Rossmoyne Shelley Residents Association inc. along with Secretary Gail Barbera published defamatory comments about me on the Association’s Facebook page, website and in an email to their members and followers.”

and

“Richard Aldridge and Gail Barbera have since apologised in writing for their conduct and retracted their defamatory statements.”

(“the Comments”).

- b. There is no legal proof that the statement posted on Facebook in December 2020 (**“the Post”**) was defamatory and the Complainant received legal advice to that effect.
- c. The Complainant and Cr Spencer-Teo exchanged various correspondence via their legal representatives in respect to the alleged defamatory Post.
- d. A letter issued by Solicitors Hammond Legal clearly articulated that the Complainant did not accept the statement was defamatory.
- e. The Complainant agreed to issue an apology under the condition that the matter was over, which was formally agreed.
- f. Two weeks later the Advertorial was issued in the local newspaper, naming the Complainant and stating that she had admitted the statement was defamatory.
- g. This has caused the Complainant detriment with her peers and within her local community and she believes it was done intentionally with the aim of advantaging Cr Spencer-Teo’s own political agenda.
- h. The Defamation Act legislation states that an apology is not in any way an admission of guilt and cannot be used as such.
- i. The behaviour displayed by Cr Spencer-Teo is capricious and vindictive.
- j. The ongoing nature of Cr Spencer-Teo’s actions have caused the Complainant anxiety and is not acceptable for a person holding a position in public office.
- k. As the "employer", the City of Canning has vicarious responsibility for this inappropriate, unprofessional and vindictive behaviour.



18. The Complainant also provided:
 - a. a copy of the Advertorial containing the Comments;
 - b. a detailed background regarding the matter; and
 - c. copies of various legal letters relating to the allegedly defamatory initial Post.

The Respondent's Response

19. By an email dated 1 March 2022, Cr Spencer-Teo provided a response to the Complaint.
20. Cr Spencer-Teo denies that she has committed any minor breach.
21. Cr Spencer-Teo makes the following comments in respect to the Complaint as summarised by the Panel:
 - a. Both Ms Barbara and Aldridge are current serving committee members of the Riverton Rossmoyne Shelley Residents' Association Inc ("**RRSRA**"), a resident's group that, under their leadership, has been hostile towards me since Cr Spencer-Teo's election in the 2020 Local Government Extraordinary Election.
 - b. As a consequence of Mr Aldridge and Ms Barbera's conduct, Cr Spencer-Teo was forced to instigate civil defamation proceedings against them to correct false claims they were making and publishing about Cr Spencer-Teo in the Canning community.
 - c. The result of the action (which was settled prior to a hearing) was that all parties agreed that a written public apology and retraction from Aldridge and Ms Barbera to Cr Spencer-Teo would be issued, in her capacity as Councillor.
 - d. Aldridge and Ms Barbera provided (through Counsel) written permission to publish their apology as Cr Spencer-Teo "sees fit".
 - e. The parties were represented by legal counsel at the time of the apology being negotiated and agreed to.
 - f. The circumstances of the Post required Cr Spencer-Teo to defend herself not just on social media, but in telephone conversations, email exchanges and in person conversations at her local cafes and shopping centres.
 - g. After receiving an apology and retraction from Ms Barbera and Mr Aldridge, with permission to publish it, Cr Spencer-Teo chose to set the record straight via social media and the local newspaper, (Canning Examiner), as these were the mechanisms used by Mr Aldridge and Ms Barbera to publish the original comments and statements that damaged her reputation.
 - h. At no time did Cr Spencer-Teo have the intention of causing a detriment to the Complainant or the local government in which she is elected to represent.



- i. Cr Spencer-Teo did not publish the apologies lightly and wanted to ensure she did so in a manner which would not only clear her name, but also repair any damage to the City of Canning's reputation and its efforts to provide an inclusive community for all its residents.
- j. Cr Spencer-Teo went to great effort and engaging a public relations company (again at her own expense) to write and publish the advertorial.
- k. In her complaint to the Panel Ms Barbera states:

“ At no time did I agree or indicate that the original post was defamatory”
- l. In the apology signed and received by Ms Barbera, she states

“ I accept the statements in the Facebook post and on the RRSRA webpage did not reflect the reasons Councillor Amanda Spencer-Teo voted against the motion and were capable of being understood as being defamatory of her”.
- m. In saying this, this clearly indicates an acceptance that the comments were defamatory, or at the very least capable as being understood as being defamatory. This may not be by law, but certainly by definition.
- n. Cr Spencer-Teo wish to make a distinction on her use of the word defamatory in the advertorial.
- o. When making the Comments Cr Spencer-Teo was referring to the definition and broadly accepted meaning of the word defamation, being;

“ The wrong of injuring another’s reputation without good reason or justification; calumny; slander or libel” (Macquarie Dictionary)
- p. It had been made clear that their apology was not an admission of defamation by law. Nevertheless, their comments had been defamatory (by definition) and evidence of the injury caused to Cr Spencer-Teo's reputation can be substantiated. Aldridge and Barbera may not have been admitting guilt, however in the definition of the word they had defamed Cr Spencer-Teo and the comments made by them had been defamatory.
- q. As Ms Barbera allowed Councillor Amanda Spencer-Teo to publish the apology *“as she sees fit.”* she therefore authorised Cr Spencer-Teo as a Councillor, to publish her apology.
- r. The purpose for publishing the Advertorial was to “set the record straight”, restore Cr Spencer-Teo's reputation in the community, not to cause a detriment or secure an advantage as Ms Barbera alleges.
- s. Cr Spencer-Teo did so with the permission of the Complainant.
- t. The information contained in the Advertorial is factual and simply contains information that the community would likely wish to know. The wording in the Advertorial makes it clear that the offending posts by Aldridge and Barbera were made in their official capacities as Acting President and Secretary of



the Association, however their apologies were signed as individuals, something they had full control over at the time of negotiating and signing the apologies.

- u. The Complainant cannot retrospectively condition her apology after the fact.
- v. The defamatory comments made by Aldridge and published by Ms Barbera were against Cr Spencer-Teo solely as a Councillor – If Cr Spencer-Teo was not a Councillor, they would not have been made – any subsequent action or issues related to this matter, including the advertisement commissioned, had to be done as a Councillor.
- w. Cr Spencer-Teo did not use her position as a Councillor to cause Ms Barbera a detriment, rather she sought to respond and defend herself against hurtful and false comments made against her as a councillor.
- x. Aldridge and Barbera were unsuccessful in the civil proceedings and are now using the Panel as a cost-free instrument to cause Cr Spencer-Teo a detriment – something they are able to do given her position as an elected member.
- y. Cr Spencer-Teo did not cause a detriment.
- z. Cr Spencer-Teo's intention was to repair the damage to not only her own reputation but also the damage caused to the City of Canning
- aa. Cr Spencer-Teo genuinely believes she did so with Ms Barbera's permission as outlined in her written apology.
- bb. Ms Barbera has provided no evidence of loss, injury, or damage, despite claiming it exists. In addition, Ms Barbera has also failed to provide any evidence or even articulate the advantage in which she alleges Cr Spencer-Teo has received.
- cc. It is my view that Ms Barbera and Mr Aldridge should not be permitted to use the Standards Panel as a pseudo arbiter in a civil legal dispute. The matter has been settled out of court and the apology and retraction has been published in accordance with the terms of this settlement.

Regulation 18

22. Regulation 18 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

“ 18. Securing personal advantage or disadvantaging others

(1) A council member must not make improper use of their office —

(a) to gain, directly or indirectly, an advantage for the council member or any other person; or

(b) to cause detriment to the local government or any other person.



(2) *Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*"

23. To make a finding of a minor breach of regulation 18(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Spencer-Teo was an elected member or a candidate at the time of the alleged breach and the time of the determination;
 - b. Cr Spencer-Teo made use of her office as Council member or candidate of the City;
 - c. when viewed objectively, such use was an improper use of Cr Spencer-Teo's office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
 - d. Either:
 - i. In respect to regulation 18(1)(a) – Cr Spencer-Teo engaged in the conduct with the intention of gaining an advantage for herself or another party; and
 - ii. In respect to regulation 18(1)(b) - Cr Spencer-Teo engaged in the conduct in the belief that detriment would be suffered by another person.

PANEL'S CONSIDERATION

Regulation 18

Cr Spencer-Teo was an Elected Member or a candidate at the relevant times

24. Cr Spencer-Teo was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
25. This element is met.

Cr Spencer-Teo made use of her office as Council Member or candidate of the City

26. Cr Spencer-Teo has argued that she was not acting in her capacity as councillor, but rather that the initial allegedly defamatory comment related to her as a councillor, so the response was required to be in her capacity as a councillor.
27. With due respect to Cr Spencer-Teo, this argument is illogical. The matter was solely related to Cr Spencer-Teo's position as an elected member and her actions in that role.
28. Further, the Advertorial:
- a. related to a matter previously considered by Council;



- b. purported to communicate with the community in the local municipality; and
- c. was signed by Cr Spencer-Teo as follows:

“Amanda Spencer-Teo

Councillor - City of Canning”

- 29. The above elements indicate that Cr Spencer-Teo was acting in her role as an elected member.
- 30. The Panel therefore finds that it is more likely than not that Cr Spencer-Teo was acting in her capacity as an elected member and made use of her office as a council member when she wrote the Comments and Advertorial.
- 31. This element is met.

Cr Spencer-Teo’s use was improper

- 32. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom. It requires an abuse of power or the use of the councillor’s position in a manner that such councillor knew (or ought to have known) was not authorised.
- 33. Impropriety does not depend on a councillor’s consciousness of impropriety. It is to be judged objectively and does not involve an element of intent.
- 34. Any decision as to what is “improper” cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor’s formal role and responsibilities.
- 35. In the case of impropriety arising from an abuse of power, a councillor’s alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused⁸.
- 36. The Complainant contends that the Comments are inaccurate and not in accordance with the settlement between the parties and the apology issued by the Complainant.
- 37. Cr Spencer-Teo asserts that:
 - a. Cr Spencer-Teo was using a “broadly accepted” definition of “defamatory” rather than a legal definition;
 - b. in the Complainant’s apology, the Complainant admitted the assertion was defamatory; and
 - c. Cr Spencer-Teo was entitled to make use of the agreed apology in any way she saw fit.
- 38. The argument that Cr Spencer-Teo intended to use “broadly accepted” definition of defamatory is not compelling.

⁸ Treby and Local Government Standards Panel [2010] WASAT 81 (at 31); Chew v The Queen (1992) 173 CLR 626 (at 640 - 641 [Dawson J]); R v Byrnes (1995) 183 CLR 501 – (at 514 - 515 [Brennan, Deane, Toohey and Gaudron JJ] and at 521 [McHugh J].



39. Cr Spencer-Teo had, via legal representation, recently issued proceedings against the RRSRA and a legal demand to the Complainant.
40. In such situation Cr Spencer-Teo:
 - a. had accused the Complainant's actions as part of the RRSRA of defamation in a purely legal sense; and
 - b. should have had a clear understanding of the definition and scope of defamatory conduct in a legal sense.
41. Further, in the context that Cr Spencer-Teo used the word "defamatory" twice in the Advertorial, and the fact that Cr Spencer-Teo clearly considered the matter serious enough to publish the Advertorial, there is no indication that such word was used in any other manner than its usual legal one.
42. Even if a member of the public had considered Cr Spencer-Teo used the words in a "broadly accepted" way, it is commonly known that defamation is a circumstance where one party has acted wrongfully and that can, and does, lead to legal claims and liability.
43. Cr Spencer-Teo also expressly acknowledges she knew the apology was not an admission of defamatory conduct.
44. The words:

" I accept the statements in the Facebook post and on the RRSRA webpage did not reflect the reasons Councillor Amanda Spencer-Teo voted against the motion and were capable of being understood as defamatory of her."

contained in the apology, cannot reasonably be seen as an admission of defamation. Clearly the same is worded in order to exclude such express admission.
45. In this context, the Panel finds that the only reasonable conclusion was that Cr Spencer-Teo knew there was no admission of liability of defamation, and had expressly agreed to settle the matter by way of apology on that basis, yet still chose to assert that the conduct was defamatory.
46. Further, Cr Spencer-Teo was authorised to *publish* the apology how she saw fit. This only extends to distributing the same, not the ability to unilaterally add to the apology, or to give the apology more than its intended scope or meaning.
47. Given the above, the Panel finds that it is more likely than not that Cr Spencer-Teo acted improperly as she used the word "defamatory" in a context which either she knew, or did not care, would mislead readers into thinking that:
 - a. the Complainant had made defamatory comments; and
 - b. the Complainant had expressly admitted such comments were defamatory, in a legal sense.
48. For the reasons given above, the Panel finds that it is more likely than not that the Post was improper as:



- a. Cr Spencer-Teo knew there has been no admission that the conduct by the Complainant was defamatory but chose to use language which strongly implied such conduct was legally defamatory; and
- b. the conduct was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
- c. the conduct is deserving of a penalty.

49. This element is met.

Regulation 18(1)(a) - Cr Spencer-Teo intended to gain an advantage

50. The definitions of the noun 'advantage' in the Shorter Oxford English Dictionary (6th ed) include: a favouring circumstance; something which gives one a better position, benefit; increased well-being or convenience or pecuniary profit.
51. The Panel considers the term 'advantage' in regulation 18(1)(a) is to be construed widely, and includes a financial or a non-financial benefit, gain or profit, or any state, circumstance, opportunity or means specially favourable.
52. It is not necessary to find whether any advantage actually gained but an intent to gain such advantage must be established.
53. The Complainant has alleged that Cr Spencer-Teo published the Advertorial with the aim of advantaging her own political agenda.
54. Cr Spencer-Teo asserts that the Advertorial was made to "set the record straight".
55. The Panel has previously found that the "advantage" gained by presenting a matter in a certain manner in an attempt to make oneself look better, or generally to promote a "political agenda" is not the type of advantage which falls under regulation 18(1)(a).
56. In that case the relevant conduct complained about is the use of the words "defamatory" with respect to the Complainant not the fact the Advertorial was published at all. As such the Panel considers that the Complaint is more properly an assertion of an intended detriment under regulation 19(1)(b).
57. This element is not met.

Regulation 18(1)(b) Cr Spencer-Teo intended to cause a disadvantage

58. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
59. It is not necessary to find whether any detriment was actually suffered, but an intent to cause such detriment must be established.
60. In this case Cr Spencer-Teo has argued that:
 - a. she wrote the Advertorial to "set the record straight"; and
 - b. retire and repair Cr Spencer-Teo's reputation in the community.



61. This argument is not compelling. In the event that this was the sole motivation for publishing the Advertorial:
- a. there was no requirement to assert that the Complainant had engaged in, or admitted to, defamatory conduct;
 - b. the Advertorial could have achieved such stated purpose without the use of the word “defamatory” in each case; and
 - c. apology could have been published without such references.
62. Given this, the Panel finds that it is more likely than not that Cr Spencer-Teo specifically chose to include the word “defamatory” with the intention to damage the Complainant’s reputation, to make others think less favourably of her and to imply that the Complainant had engaged in illegal conduct.
63. The Panel finds to the required standard Cr Spencer-Teo did have an intention to cause a detriment specifically to the Complainant and Mr Richard Aldridge and, more generally, the RRSRA.
64. This element is met.

Conclusion

65. Given the above the elements required to find a breach of regulation 18(1)(b) of the Regulations have been met.

Panel’s Findings

66. Cr Spencer-Teo did commit a breach of Regulation 18(1)(b) of the Regulations and therefore did commit a minor breach.

Tim Fraser (Presiding Member)

Emma Power (Legal Member)

Peter Rogers (Member)



Local Government Standards Panel

Complaint Number	20220008
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Ms Karen Barbera
Respondent	Councillor Amanda Spencer Teo
Local Government	City of Canning
Regulation	Regulation 18 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member)
Heard	5 May 2022 Determined on the documents
Penalty Considered	14 October 2022
Outcome	Public Apology

DECISION AND REASONS FOR DECISION

Delivered 22 December 2022

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents



Introduction

1. At its meeting on 5 May 2022, the Panel found that Councillor Amanda Spencer-Teo, a councillor for the City of Canning (“**the City**”), committed one minor breach under the *Local Government Act 1995 (WA)* (“**the Act**”) and regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* (“**the Regulations**”) when, in an advertorial in the Canning Examiner Newspaper, she asserted that the Complainant had made defamatory comments regarding Cr Spencer-Teo (“**the Minor Breach**”).

Jurisdiction and Law

2. The Panel convened on 14 October 2022 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (“**the Department**”) that on this date there was no available information to indicate that Cr Spencer-Teo had ceased to be, or was disqualified from being, a councillor.
4. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
5. By a letter dated 8 July 2022, Cr Spencer-Teo was:
 - a. notified of the Panel’s finding of the Minor Breach;
 - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
 - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

Possible Sanctions

6. Section 5.110(6) of the *Local Government Act 1995 (WA)* (“**the Act**”) provides that the Panel is to deal with a minor breach by:
 - (a) *ordering that no sanction be imposed; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
or
 - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*
or
 - (iii) *the person against whom the complaint was made undertake training as specified in the order;*

¹ *Local Government Act 1995 (WA)*, s 5.110(5).



or

- (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;*

or

- (c) *ordering 2 or more of the sanctions described in paragraph (b).*

Cr Spencer-Teo's Submissions

7. By an email dated 4 August 2022, the Department received a response from Cr Spencer-Teo.
8. Cr Spencer-Teo's legal representative provided the following comments and arguments as to penalty, as summarised by the Panel:
 - a. Cr Spencer-Teo accepts the findings made against her, but her level of culpability needs to be seen within the light of the fact that she relied on the services of a Public Relations Consultant, which services she used for the specific purpose of minimising the risks of breaches such as have been determined to have occurred.
 - b. Cr Spencer-Teo maintains she did not intend to cause the Complainant or the Riverton Rossmoyne Shelley Residents' Association Inc ("**RRSRA**") any detriment or harm. Her sole intent was to vindicate her reputation.
 - c. Cr Spencer-Teo took extraordinary measures to ensure harm was not brought to the Association. This includes with respect to the original defamation concerns notice process, throughout which she was at pains to emphasise to Ms Barbera and Mr Aldridge that her grievance was with them and not with the RRSRA.
 - d. The Public Relations Consultant at Clarity Communications had local government experience and relied on them to prevent any breach (supporting correspondence provided).
 - e. Cr Spencer-Teo recognised that she did not have the time nor expertise to craft the wording of the advertisement, which needed to be carefully worded to ensure that it achieved her goal, which was to vindicate her reputation without breaching the Code of Conduct.
 - f. To that end, Cr Spencer-Teo engaged Clarity Communications to achieve the goal. Clarity Communications handled all aspects of the wording and design of the advertorial and its placement.
 - g. Cr Spencer-Teo (mistakenly) believed that by publishing the Apology with accompanying commentary she would be minimising the risk of an adverse finding by the Standards Panel.
 - h. Cr Spencer-Teo was given an implicit assurance that the service she was being provided by Clarity Communications was a way to minimise her risk of an adverse finding by the Standards Panel.
 - i. This is a situation where having regard to the fact that the Elected Member has actually taken steps to avoid being in breach of the Code of Conduct by engaging a service provider who holds itself out to her as specifically having



skills to, and will take steps to, avoid that occurrence, shows insight on her part about the desirability and the importance of avoiding being in breach.

- j. There should be no sanction because:
 - i. to face a public censure or need to give a public apology, in circumstances where her intention was the opposite, and the steps she took should have theoretically been commendable, would not be a proportionate or fair sanction;
 - ii. the publication of the Standard Panel findings, which are unfavourable to Cr Spencer-Teo, is a form of sanction in and of itself;
 - iii. a fair-minded analysis of the sequence of events, having regard to the Elected Member from beginning to end taking the right steps to obtain appropriate legal advice and public relations advice (or so it seemed), justifies no sanction;
 - iv. in future, as a result of the experience of going through this Standards Panel process, Cr Spencer-Teo would not place herself in a situation when she would outsource reputation management in a similar manner to non-lawyers; and
 - v. there is no need for specific deterrence.
- k. This is a situation where the sardonic phrase that "No good deed goes unpunished" should not apply.
- l. If there is to be a sanction, it is submitted that training, and perhaps training about appropriate communication, is a fairer sanction compared to a public apology or public censure.

Panel's Consideration

9. Section 5.110(6) is solely about penalty. The Panel does not have the power to review any finding of a breach.
10. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
11. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
 - a. the nature and seriousness of the breaches;
 - b. the councillor's motivation for the contravention;
 - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor's disciplinary history;
 - f. likelihood or not of the councillor committing further breaches of the Act;
 - g. personal circumstances at the time of conduct, and of imposing the sanction;
 - h. need to protect the public through general deterrence and maintain public confidence in local government; and



- i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness².
12. In this case, it is noted that Cr Spencer-Teo takes responsibility for the breach and this was largely caused by outsourcing the advertorial to a Public Relations Consultant.
13. In this case, although the breach was unintentional in nature, the conduct still resulted in two parties having their name publicly associated with a defamatory conduct which, was incorrect and not in the spirit of the legal settlement the parties had made between each other.
14. Due to this, and the fact that both parties involved made a complaint to the Panel (being this complaint 20220008 and complaint 20220029) the Panel considers that it is suitable and appropriate that Cr Spencer-Teo makes an apology to those parties who were subject to that public comment.
15. The Panel further considers that training would not be of benefit in this situation where it was substantially another party's misunderstanding of the Act that resulted in the breach.
16. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing³. It is a suitable and appropriate penalty when a councillor's conduct:
 - a. adversely affects particular individuals⁴; and/or
 - b. does not meet the standards other councillors seek to uphold.
17. In the relevant circumstances, the Panel considers that making a public apology is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Cr Spencer-Teo recoup to the City the costs of the Department incurred with respect to the Complaint.

² *Chief Executive Officer, Department of Local Government and Communities and Scaffidi [2017] WASAT 67 (S)*

³ *Treby and Local Government Standards Panel [2010] WASAT 81 (Pritchard J).*

⁴ *Treby and Local Government Standards Panel [2010] WASAT 81 [127] (Pritchard J).*



Panel's decision

18. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the one Minor Breach of regulation 18 of the Regulations, Cr Spencer-Teo make a public apology in terms of the attached Order.

A handwritten signature in black ink, appearing to be 'T Fraser'.

Tim Fraser (Presiding Member)

A handwritten signature in black ink, appearing to be 'E Power'.

Emma Power (Legal Member)

A handwritten signature in black ink, appearing to be 'P Rogers'.

Peter Rogers (Member)



ORDER

Delivered 22 December 2022

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Amanda Spencer-Teo, a councillor for the City of Canning **publicly apologise**:
 - i. as specified in paragraph 2; OR
 - ii. failing compliance with paragraph 2 within the specified timeframe, then paragraph 3 shall apply;

Public Apology

2. On the ordinary council meeting of the City of Canning first occurring after the expiration of **28 days** from the date of service of this Order on him, Cr Spencer-Teo shall:
 - i. attend the relevant ordinary council meeting;
 - ii. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - iii. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - iv. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when I published an advertorial in the Canning Examiner Newspaper stating that certain parties had made defamatory statements and implying that those parties had agreed the statements were defamatory.
- ii. The Panel found that I breached regulation 18 of the said Regulations in making such statement and implication.
- iii. I acknowledge that I should not have made the relevant statement and



implication.

iv. I now apologise to Mr Richard Aldridge and Ms Gail Barbera for making such statement and implication.”

3. If Cr Spencer-Teo fails to, or is unable to, comply with the requirements of paragraph 2 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 2 above the Chief Executive Officer of the City of Canning shall arrange for the notice of public apology to be published:
 - a. on the Facebook Page of the City of Canning shall in no less than 10 point font size; and
 - b. in an appropriate place on the website of the City of Canning shall in no less than 10 point font size; and
 - c. in the next occurring issue of any City of Canning shall public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

PUBLIC APOLOGY BY COUNCILLOR AMANDA SPENCER-TEO

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when I published an advertorial in the Canning Examiner Newspaper stating that certain parties had made defamatory statements and implying that those parties had agreed the statements were defamatory.

The Panel found that I breached regulation 18 of the said Regulations in making the misleading statement and implication.

I acknowledge that I should not have made the relevant statement and implication.

I now apologise to Mr Richard Aldridge and Ms Gail Barbera for making such statement and implication.



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a **complaint** and the person complained about each have the right to apply to the **State Administrative Tribunal (the SAT)** for a review of the Panel's decision in **this matter**. In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules **an application to the SAT under its review jurisdiction must be made within 28 days** of the day on which the Panel (as the decision-maker) gives a notice [see the Note below] under the *State Administrative Tribunal Act 2004 (SAT Act)*, section 20(1).
- (3) **The Panel's Breach Findings and these Findings and Reasons for Finding – Sanctions**, constitute the Panel's notice (i.e. the decision-maker's notice) given under the *SAT Act*, section 20(1).

Note:

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
 - (1) *Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed** to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, **unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.*** [Bold emphases added]
 - (2) *Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."*
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

 - (a) *by delivering the document to him personally; or*
 - (b) *by post in accordance with section 75(1); or*
 - (c) *by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or*
 - (d) *in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State."*