



Local Government Standards Panel

Complaint Number	20220103
Legislation	<i>Local Government Act 1995</i>
Complainant	Mayor Keri Shannon
Respondent	Councillor Gary Mack
Local Government	Town of Cambridge
Regulation	Regulation 18, Regulation 21 and Regulation 22 - of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> Regulation 34D - of the <i>Local Government (Administration) Regulations 1996</i>
Panel Members	Mrs Emma Power (Presiding Member) Cr Peter Rogers (Member) Ms Darelle Merritt (Deputy Member)
Heard	1 September 2022 Determined on the documents
Finding	Breach x 3 of Regulation 18 Breach x 1 of Regulation 21 No Breach of Regulation 22 Breach x 1 of Regulation 34D

FINDING AND REASONS FOR FINDING

Delivered 2 December 2022

DEFAMATION CAUTION

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Summary of the Panel's decision

1. On 1 September 2022, the Panel found that Councillors Gary Mack, a councillor of the Town of Cambridge (**"the Town"**):
 - a. did commit three minor breaches 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"**); and
 - b. did commit a minor breach pursuant to the Act, and Division 4 and Regulation 21 of the Regulations;
 - c. did not commit a minor breach pursuant to the Act, and Division 4 and Regulation 22 of the Regulations;
 - d. did commit a minor breach pursuant to the Act and Regulation 34D of the *Local Government (Administration) Regulations 1996* (**"the Administration Regulations"**),at the Ordinary Council Meeting of 23 November 2021 as set out in 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,

¹ Section 5.106 of the Act



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 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 7 June 2022 the Panel received a complaint from Mr Karl Heiden acting as complaints officer of the Town ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 22 May 2022.
14. In the Complaint of Minor Breach Form the Complainant has alleged that, at the Ordinary Council of 23 November 2021, Cr Mack has breached:
 - a. Regulation 18 of the Regulations by making the following comments in respect a motion brought before Council:
 - i. *"I waive any right to confidentiality in the second item"* – **Allegation 1**;
 - ii. *"I will not leave the room - the decision is outrageous - what have you got to hide Mayor? What have you got to hide? What have you got to hide?"* - **Allegation 2**;
 - iii. *"I am subject to work practices and bullying and harassment that is totally unacceptable"* - **Allegation 3**
 - iv. *"it has been brought on as an abuse of power done with bad faith, for an improper purpose and with malice...he has been subject to bias."* - **Allegation 4**; and
 - v. that the Council was *"misusing its powers for political benefit"* – **Allegation 5**;

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)

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



- b. Regulation 21 of the Regulations when he allegedly failed to disclose a financial interest in respect to a matter before Council - **Allegation 6**; and
- c. Regulation 22 of the Regulations when he allegedly disclosed confidential information – **Allegation 7**; and
- d. Regulation 34D of the Administration Regulations when he interrupted the Presiding member in breach of the *Town of Cambridge Meeting Procedures Local Law 2019* - **Allegation 8**.

as further set out in paragraph 17 (“**the Complaint**”).

- 15. The Panel convened on 1 September 2022 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 Mack was:
 - i. elected to the Council of the Town in October 2019 for a term expiring in October 2023;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 1 September 2022;
 - b. was satisfied the Complaint was made within six months after the alleged breach occurred⁶;
 - c. was satisfied that the Town’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 to Cr Mack; and
 - e. found it had jurisdiction to consider the Complaint.

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 morning of 23 November 2021 the Mayor had circulated two motions as urgent business.
 - b. One motion concerned a possible Prosecution under the Local Government Act (“**the Motion**”).
 - c. At the Ordinary Council Meeting on 23 November 2021 (“**the OCM**”) the Mayor moved for the Motion to go behind closed doors.

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

⁷ Section 5.107 and 5.109 of the Act



- d. Cr Mack interjected and said *"I want to let the meeting know that I waive any right to confidentiality - I do not need it and I am the subject matter. I don't want it to go behind closed doors."*
- e. Cr Cutler and Cr Barlow moved and seconded respectively the motion to go behind closed doors.
- f. Cr Mack again said *"I waive any right to confidentiality in the second item."*
- g. The Mayor was explaining the nature of the motion to go behind closed doors to the two new councillors who were attending their first council meeting.
- h. Cr Mack said *"this is outrageous"* and then *"this is serious"*.
- i. As the Mayor tried to put the motion to go behind closed doors to the vote Cr Mack said *"I waive it entirely"*.
- j. In doing so Cr Mack made improper use of his office to gain an advantage for himself and to disadvantage the Mayor and the local government as Cr Mack suggested there was a right to confidentiality that he could waive. Council was entitled to go behind closed doors to discuss the matter.
- k. Cr Mack continued to interrupt the Mayor which is contrary to Meeting Procedure Local Law 8.16. In so doing Cr Mack breached Regulation 34D.
- l. The motion to go behind closed doors was put to the vote and passed 5/3.
- m. Cr Mack said *"this is outrageous - no it is outrageous"*
- n. The Mayor warned Cr Mack against continuing to debate the issue and Cr Mack interrupted saying *"I will continue"* and stated *"I will not leave the room - the decision is outrageous - what have you got to hide Mayor? What have you got to hide? What have you got to hide?"*.
- o. The Mayor advised Cr Mack he was now behaving inappropriately. Cr Mack replied *"I am not"*.
- p. In interrupting and arguing with the Presiding Member Cr Mack implied that the Mayor is putting the motion to go behind closed doors was behaving dishonestly and this damaged the reputation of the Council and Mayor.
- q. Cr Mack continued to interrupt contrary to the Meeting Law Procedures.
- r. Shortly following, the Chief Executive Officer ("**CEO**") advised the councillors that he would be recording an impartiality interest and that any councillors could also record an impartiality interest.
- s. Cr Fredericks and Cr Mack declared impartiality interests however Cr Mack did not declare any financial interest in the matter. Cr Mack has a financial interest in the matter as any Prosecution would result in a fine against Cr Mack for breach of the offence under the Local Government Act.
- t. Cr Mack also said:
 - i. *"he was being bullied"*;



- ii. *“I am subject to work practices and bullying and harassment that is totally unacceptable”*
 - iii. *“it has been brought on as an abuse of power done with bad faith, for an improper purpose and with malice ..he has been subject to bias. “*
 - iv. the Council was *“misusing its powers for political benefit”*;
 - u. All these statements were to disadvantage the Mayor and advantage himself.
 - v. The statements by Cr Mack at the time the meeting considered the motion to go behind closed doors were published verbatim in the Post Newspaper and the Western Suburbs Weekly.
 - w. Cr Mack was quoted in the Post saying *“I still feel bullied and harassed by the whole process.”*
 - x. Cr Mack's comments to the media before the matter went behind closed doors were inappropriate and were designed only to gain advantage for Cr Mack over the Mayor.
 - y. It wasn't disclosed what or who the prosecution related to and Cr Mack disclosed this information by his comments.
18. The Complainant also provided:
- a. Email dated 23 November 2021 regarding the Motion;
 - b. Post Newspaper article dated 27 November 2021; and
 - c. Western Suburbs Weekly article dated 25 November 2021; and
 - d. A copy of the OCM recording.

The Respondent's Response

19. By an email dated 4 August 2022, Cr Mack provided a response to the Complaint.
20. Cr Mack provided the following comments and arguments regarding the Complaint:
- a. Cr Mack and denies the Mayor's assertions that he has breached the Act or Regulations.
 - b. The Mayor's Motion sought to bring a prosecution by the Council, an authority that did not conduct the election against an elected member.
 - c. It was the WAEC that conducted the election and neither the Town of Cambridge nor the Council of the Town. The WA Electoral Commission conducted the October 2021 election and decided NOT to prosecute on the basis that it was not in the public interest to do so.
 - d. The Mayor brought the notice of motion for improper purpose and in bad faith for political purpose rather than for the purpose of the administration of justice.
 - e. Cr Mack rejects there was any financial interest involved. The Mayor's assertion is based on the presumption that the prosecution would be launched by the



Council and be successful, that is a guilty verdict would be the conclusion with a fine being payable

- f. As to disclosure of confidential information, Cr Mack rejects and denies this.
- g. Cr Mack denies that he disclosed any information in the Mayor's Notice of Motion. The Mayor's assertion is speculative in the sense the Mayor assumes that Cr Mack would be incentivised to breach confidentiality. In fact, the opposite is true.
- h. Cr Mack was well aware that the Mayor would seek any opportunity to cause him detriment. As a result, he was acutely aware that the Mayor would form the assumption that Cr Mack would leak the Notice of Motion and would seek any opportunity validate this assumption.
- i. As a consequence, Cr Mack was mindful of not disclosing any information about the Notice of Motion and in fact he did not disclose confidential information about the Mayor's Notice of Motion.
- j. Some other elected members were shocked and dismayed by the Mayor's Notice of Motion and may have disclosed that information, but there is no evidence of this.
- k. Also, when the doors of the Council Chamber were closed, the Post Journalist was sitting immediately outside of the closed meeting attempting to listening to the confidential discussion.
- l. Section 1(f) of the Local Government Act defines confidential information to include personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs. Section 10D describes the grounds and method for closing part of meeting.
- m. Cr Mack tried to explain to Council that in effect, that if Council was concerned that the Motion concerned a personal matter particular to him, then this was of no concern to him, and he waived any need or right to confidentiality regarding the personal nature of the Notice of Motion.
- n. Given this, and absent anything else, Council should have considered discussing the matter in an open meeting as this would be in the public interest.

PANEL'S CONSIDERATION

ALLEGATIONS 1 to 5

Regulation 18



21. 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.”*

22. 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 Mack was an elected member or a candidate at the time of the alleged breach and the time of the determination;
- b. Cr Mack made use of his office as Council member or candidate of the Town;s
- c. when viewed objectively, such use was an improper use of Cr Mack’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 Mack 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 Mack engaged in the conduct in the belief that detriment would be suffered by another person.

Code of Conduct

23. The Town has a *Code of Conduct for Council Members, Committee Members and Candidates* adopted 27 April 2021 (“**the Code of Conduct**”) which governs the conduct of elected members.
24. A breach of the Code of Conduct may indicate that an elected member has acted improperly in breach of Regulation 18.
25. The relevant provisions of the Code of Conduct Code are as follows:

“ 4. Personal integrity

- (1) *A council member, committee member or candidate should —*



- (a) *act with reasonable care and diligence; and*
 - (b) *act with honesty and integrity; and*
 - (c) *act lawfully; and*
 - (d) *identify and appropriately manage any conflict of interest; and*
 - (e) *avoid damage to the reputation of the local government.*
- ...

“5. Relationship with others

- (1) *A council member, committee member or candidate should —*
 - (a) *treat others with respect, courtesy and fairness; and*
 - (b) *respect and value diversity in the community.*
- (2) *A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.”*

“9. Relationship with others

- A council member, committee member or candidate —*
- (a) *must not bully or harass another person in any way; and*
 - (b) *must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and*
 - (c) *must not use offensive or derogatory language when referring to another person; and*
 - (d) *must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and*
 - (e) *must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.”*

Regulation 18

Cr Mack was an Elected Member or a candidate at the relevant times

- 26. Cr Mack was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
- 27. This element is met.

Cr Mack made use of his office as Council Member or candidate of the Town

- 28. Due to the facts that:
 - a. the relevant conduct occurred during the OCM; and



- b. Cr Mack was present at the OCM and acting in his role as elected member; and
- c. Cr Mack made the relevant comments in his capacity as an elected member, the Panel finds that it is more likely than not that Cr Mack was acting in his capacity as an elected member and made use of his office as a council member when undertaking the conduct.

29. This element is met.

Cr Mack's use was improper

- 30. 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.
- 31. 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.
- 32. 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.
- 33. 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.
- 34. In this case, the Complainant has alleged that Cr Mack has acted improperly as his comments implied that in putting the Motion to go behind closed doors Mayor Shannon was behaving dishonestly.
- 35. Cr Mack asserts there was no improper use of his office.
- 36. In this case the relevant comments made are as follows:
 - a. *"I waive any right to confidentiality in the second item" – ("Comment 1");*
 - b. *I will not leave the room - the decision is outrageous - what have you got to hide Mayor? What have you got to hide? What have you got to hide?" - ("Comment 2");*
 - c. *"I am subject to work practices and bullying and harassment that is totally unacceptable" - ("Comment 3");*
 - d. *"it has been brought on as an abuse of power done with bad faith, for an improper purpose and with malice...he has been subject to bias." - ("Comment 4");* and

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]).



- e. that the Council was “*misusing its powers for political benefit*” – (“**Comment 5**”)
37. In respect to Comment 1, the Panel cannot see that there is anything improper in this comment. The fact that it may not have been possible to waive confidentiality in that manner does not mean that the same was improper.
38. In Comment 2 Cr Mack expressly asks “*What have you got to hide?*” to the Mayor several times. This makes the public implications that the Mayor was attempting to hide the contents of the Motion in an underhanded manner.
39. Irrespective of whether the Motion was, in fact, made in bad faith or improperly, making such an assertion was in breach of:
- Clause 9(d) of the Code of Conduct to not “*disparage the character of another council member*”; and
 - Clause 9(e) of the Code of Conduct to not “*impute dishonest or unethical motives to another council member*”.
40. On review of Comment 3, Cr Mack commences this sentence with “*In my view...*”. He was also speaking in the context of speaking about factionalism and dysfunction in the Town. Although Comment 3 refers to work practices of bullying and harassment, in the context of the other comments made this appears to be a relatively minor assertion about his personal view. The Panel finds that it is more likely than not that this comment can be characterised as being imprudent rather than being improper.
41. In respect to Comment 4, there is an express accusation of the Motion being an “*abuse of power*” by the Mayor and being brought in “*bad faith*”.
42. Whether or not this characterisation may have been accurate, this was not the appropriate place or manner to make that allegation.
43. Similarly to Comment 2, Comment 4 is in breach of clause 9(d) and clause 9(e) of the Code of Conduct.
44. Comment 5 is of a similar nature to Comment 4 and the Panel finds that the same breaches the Code of Conduct in the same manner.
45. The Panel also notes that this exchange was heated and mostly down to interrupting the Presiding Member. As such, generally the manner in which the Comments were made were in breach of clause 5(1)(a) of the Code of Conduct to treat others with “*respect and courtesy*.”
46. In respect to the exchange and other comments that occurred at the OCM being quoted in the Post newspaper, that was not conduct undertaken by Cr Mack. That was the journalist repeating the comments already made at the OCM.
47. Given the above the Panel finds, to the required standard that Comment 2, Comment 4 and Comment 5 are improper in that:
- the conduct was in breach of the Code of Conduct;
 - the conduct was of such a nature that a reasonable individual, with an understanding of the nature and background of the issue, 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.

48. This element is met with respect to Comment 2, Comment 4 and Comment 5 only.

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

49. 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.

50. 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.⁹

51. It is not necessary to find whether any advantage actually gained¹⁰ but an intent to gain such advantage must be established.

52. The Complaint has alleged that the comments were made to:

- a. generally advantage Cr Mack; and
- b. suggest there was a right to confidentiality that Cr Mack could waive to the advantage of Cr Mack.

53. In respect to Comment 2, Comment 4 and Comment 5 the Panel cannot see that there was any particular intention to advantage Cr Mack.

54. These comments are negative in nature and therefore more correctly characterised as an attempt to disadvantage a party.

55. This element is not met

Regulation 18(1)(b) Cr Mack intended to cause a disadvantage

56. "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.

57. It is not necessary to find whether any detriment was actually suffered¹¹, but an intent to cause such detriment must be established.

58. The Complaint has alleged that the comments were made to:

- a. suggest there was a right to confidentiality that Cr Mack could waive to the disadvantage of the Mayor and the Council; and
- b. damaged the reputation of the Council and Mayor.

59. The Panel does not find that an implication there could be a waiver of confidentiality to be able to be characterised as an intended disadvantage to any party.

⁹ Complaint SP 12 and 13 of 2011

¹⁰ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]

¹¹ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



60. Rather Comment 2, Comment 4 and Comment 5 deal with express accusations of wrongdoing.
61. The Panel finds that it is more likely than not that Cr Mack's intention was to characterise the Mayor's actions in bringing the Motion as underhanded and an abuse of power and to make people think less of the Mayor as attempting to do something improper.
62. The Panel does not find that the relevant comments extend to implying that the Council as a whole was acting improperly.
63. This element is met with respect to Comment 2, Comment 4 and Comment 5 only.

Conclusion

64. Given the above the elements required to find three breaches of regulation 18(1)(b) of the Regulations have been met.

ALLEGATION 6

Regulation 21

65. Regulation 21 prevents the disclosure of confidential or restricted information obtained by a councillor and reads as follows:

"21. Disclosure of information

- (1) *In this regulation —*

closed meeting means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;

confidential document means a document marked by the CEO, or by a person authorised by the CEO, to clearly show that the information in the document is not to be disclosed;

document includes a part of a document;

non-confidential document means a document that is not a confidential document.

- (2) *A council member must not disclose information that the council member —*
 - (a) *derived from a confidential document; or*
 - (b) *acquired at a closed meeting other than information derived from a non-confidential document.*
- (3) *Subclause (2) does not prevent a council member from disclosing information —*



- (a) *at a closed meeting; or*
 - (b) *to the extent specified by the council and subject to such other conditions as the council determines; or*
 - (c) *that is already in the public domain; or*
 - (d) *to an officer of the Department; or*
 - (e) *to the Minister; or*
 - (f) *to a legal practitioner for the purpose of obtaining legal advice; or*
 - (g) *if the disclosure is required or permitted by law.”*
66. To make a finding of a minor breach in respect to regulation 21 of the Regulations the Panel must be satisfied that:
- a. Cr Mack was an elected member at the time of the breach and at the time the matter was determined; and
 - b. that it is more likely than not that:
 - i. Cr Mack disclosed information to someone who at the time was not also a Councillor of the same local government; and
 - ii. the disclosed information was acquired by Cr Mack either:
 - A. from a confidential document; or
 - B. at a council or committee meeting, or a part of a council or committee meeting, that was closed to members of the public under section 5.23(2) of the Act; and
 - iii. if the information was acquired at a closed council or committee meeting, Cr Mack did not derive the disclosed information from a non-confidential document; and
 - iv. the disclosed information was not information already in the public domain or the disclosure did not occur in any of the ways identified in regulation 21(3).

Regulation 21

Cr Mack was an elected member at the relevant times

67. Cr Mack was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

68. This element is met.

Cr Mack disclosed the information to a person or persons not being another elected member of the Town



69. The relevant information was disclosed during the OCM which was a meeting of Council open to the public.

70. This element is met.

The disclosed information was information Cr Mack acquired:

- from a confidential document; or
- at a council or committee meeting (or part thereof) that was closed to members of the public under section 5.23(2) of the Act

71. The Complainant has alleged that at the OCM Cr Mack disclosed that the relevant Motion was in regard to himself and that such information was derived from confidential material.

72. The Panel has reviewed the matter and, in particular, whether the information was derived from:

- a. a part of a council or committee meeting that was closed; or
- b. a confidential document; or

73. In this case Cr Mack's comment that he was "*the subject matter*" of the Motion occurred before the meeting had gone behind closed doors, that element cannot be met in that regard.

74. The Regulations describe a confidential document as being "*a document marked by the CEO, or by a person authorised by the CEO, to clearly show that the information in the document is not to be disclosed*".

75. The relevant attachment in respect to the Motion was:

- a. Sent to all councillors prior to the OCM by the Senior Governance Officer at the express request of the CEO; and
- b. was entitled "CONFIDENTIAL – PROSECUTION UNDER LOCAL GOVERNMENT ACT"; and
- c. was signed and dated by the CEO.

76. As such, the Panel finds that:

- a. the relevant attachment was a Confidential Document as defined in the Regulations; and
- b. the relevant information disclosed was that Cr Mack was the subject of the Motion, which was at that stage, confidential.

77. This element is met.

Cr Mack did not derive the disclosed information from a non-confidential document, or that the exceptions set out in regulation 21(3) do not apply

78. As noted above, the disclosure was made in respect to a confidential document.

79. There has been no evidence presented that any of the relevant exceptions set out in regulation 22(3) apply in this case.



80. This element is met.

Conclusion

81. The elements required to find a breach of regulation 21 of the Regulations have been met.
82. Despite this finding the Panel notes that this finding is of a technical nature.
83. Cr Mack only indicated his own involvement with the item and otherwise did not describe or confirm what the Motion was about. The only party that could have been reasonably seen to be disadvantaged by the disclosure was Cr Mack.
84. The Panel considers bringing a Complaint with respect to the same to be unreasonable and punitive on the part of the Complainant.

ALLEGATION 7

Regulation 22

85. Regulation 22 requires a councillor to disclose what is commonly referred to as an “impartiality interest”. The relevant parts of regulation 22 provide:

“22. Disclosure of interests

(1) In this clause —

interest —

- (a) means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest; and*
 - (b) includes an interest arising from kinship, friendship or membership of an association.*
- (2) A council member who has an interest in any matter to be discussed at a council or committee meeting attended by the council member must disclose the nature of the interest —*
- (a) in a written notice given to the CEO before the meeting; or*
 - (b) at the meeting immediately before the matter is discussed.*
- (3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.*
- (4) Subclause (2) does not apply if a council member fails to disclose an interest because the council member did not know —*
- (a) that they had an interest in the matter; or*



89. The Minutes of the OCM indicate that Cr Mack was present during the discussion of the Motion behind closed doors.
90. The Complainant notes Cr Mack duly declared an impartiality interest but has asserted that Cr Mack had an undeclared financial interest in the matter.
91. In regulation 22(1) an “interest” is defined as:
- “**interest** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.”*
92. This is commonly referred to as an “impartiality interest”.
93. Other interests that may be held by councillors contemplated by the Act (although not Regulation 22) are:
- a. a direct or indirect financial interest as described in section 5.61 or section 5.60A of the Act; and
 - b. a proximity interest under section 5.60B of the Act.
94. These two types of interest are expressly excluding from consideration under the Regulations pursuant to regulation 22(3).
95. As such, this element cannot be met.
96. The Panel further notes that it finds the argument that the Motion should be a considered to have a “financial interest” as it could *possibly* result in a fine imposed against Cr Mack to be contrived and spurious.

Cr Mack did not disclose the nature of the relevant interest in the matter AND regulation 22(4) does not apply

97. As the above element is not met, the Panel has not further considered these elements here.

Conclusion

98. The elements required to find a breach of regulation 22 of the Regulations have not been met.

ALLEGATION 8

Regulation 34D of the Administration Regulations

99. Regulation 34D of the Administration Regulations reads:

“(1) In this regulation —



“local law as to conduct” means a local law relating to conduct of people at council or committee meetings.

(2) *The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.”*

100. Section 5.105(1)(b) of the Act states as follows:

“A council member commits a minor breach if he or she contravenes

...

(b) a local law under this Act, contravention of which the regulations specify to be a minor breach.”

101. To make a finding of a minor breach of regulation 34D of the Administration Regulations the Panel must be satisfied, to the required standard, that:

- a. Cr Mack was a councillor at the time of the alleged breach and the time of the determination;
- b. the conduct occurred during a council or committee meeting; and
- c. Cr Mack breached a valid provision of a local law as to conduct being the *Town of Cambridge Meeting Procedures Local Law 2019 (“the Meeting Procedures”)*;

Allegation 8 - Panel’s Consideration – Regulation 34D

Cr Mack was a Councillor at the relevant times

102. Cr Mack was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.

103. This element is met.

The conduct occurred at a council or committee meeting

104. The relevant conduct occurred during the Ordinary Council Meeting of 23 November 2021.

105. This element is met.

Cr Mack breached a valid provision of the *Town of Cambridge Meeting Procedures Local Law 2019*

106. It is an essential element to find a minor breach of Regulation 4 that the breach is of a *“local law relating to conduct of people at council or committee meetings”*.

107. This has two requirements being that:

- a. the same is a “local law”, being the formal gazetted meeting procedures or standing orders local law¹² (the Meeting Procedures is such a law); and

¹² See *Ryan and Local Government Standards Panel* [2009] WASAT 154 and *Steck and Local Government Standards Panel* [2011] WASAT 117.



- b. the relevant Meeting Procedure clause breached must relate to “conduct” rather than being concerned as to procedure.
108. The Complainant has alleged that Cr Mack has breached clause 8.16 of the Meeting Procedures. Clause 8.16 provides as follows:

“ 8.16 Members not to interrupt

No Member of the Council or a Committee is to interrupt another Member of the Council or Committee whilst speaking unless—

(a) to raise a point of order;

(b) to call attention to the absence of a quorum.”

109. In this case the Panel has reviewed the OCM recording and Cr Mack did interrupt the Presiding Member several times when the relevant item was about to go behind closed doors.
110. The Panel finds to the required standard there was a breach of Regulation 34D of the Administration Regulations.
111. This element is met

Conclusion

112. The elements required to find a breach of regulation 34D of the Regulations have been met.



PANEL'S FINDINGS

113. With respect to Allegations 1 to 5 inclusive - Cr Mack did commit three breaches of Regulation 18 of the Regulations and therefore did commit three minor breaches.
114. With respect to Allegation 6 - Cr Mack did commit a breach of Regulation 21 of the Regulations and therefore did commit a minor breach.
115. With respect to Allegation 7 - Cr Mack did not commit a breach of Regulation 22 of the Regulations and therefore did not commit a minor breach.
116. With respect to Allegation 8 - Cr Mack did commit a breach of Regulation 34D of the Administration Regulations and therefore did commit a minor breach.

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

Emma Power (Presiding Member)

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

Peter Rogers (Member)

A handwritten signature in black ink, appearing to read 'D Merritt'.

Darelle Merritt (Deputy Member)



Local Government Standards Panel

Complaint Number	20220103
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mayor Keri Shannon
Respondent	Councillor Gary Mack
Local Government	Town of Cambridge
Regulation	<i>Regulation 18 of the Local Government (Administration) Regulations 2021</i> <i>Regulation 21 of the Local Government (Administration) Regulations 2021</i> <i>Regulation 34D of the Local Government (Administration) Regulations 1996</i>
Panel Members for Penalty Consideration	Mrs Emma Power (Presiding Member) Ms Suleila Felton (Deputy Member) Cr Peter Rogers (Member)
Heard	1 September 2022 Determined on the documents
Penalty Considered	2 March 2023
Outcome	Public Apology

DECISION AND REASONS FOR DECISION

Delivered 22 March 2023

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 1 September 2022, the Panel found that Councillor Gary Mack, a councillor for the Town of Cambridge (**“the Town”**), committed:
 - a. three minor breaches 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 he made certain comments during the Ordinary Council Meeting of the Town held 23 November 2021;
 - b. the Act and regulation 21 of the Regulations when he mentioned that a confidential item related to himself; and
 - c. the Act and regulation 34D of the *Local Government (Administration) Regulations 1996* (**“the Administration Regulations”**) when he interrupted the Presiding Member several times during the Ordinary Council Meeting of the Town held 23 November 2021,
(together **“the Minor Breaches”**).

Jurisdiction and Law

2. The Panel convened on 2 March 2023 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 Mack 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 2 December 2022, Cr Mack 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

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



- (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;*
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 Mack's Submissions

7. By an email dated 23 January 2023, the Department received a response from Cr Mack.
8. Cr Mack provided the following comments and arguments as to penalty, as summarised by the Panel:
 - a. Cr Mack submits that no penalty should be imposed.
 - b. The events that lead to the breach of the Regulations were extraordinary due to the nature of the Notice of Motion being circulated which:
 - i. denied Cr Mack procedural fairness; and
 - ii. ambushed Cr Mack;
 - iii. was based upon a political bias against Cr Mack; and
 - iv. was not brought in good faith or for proper purpose but to harass Cr Mack.
 - c. Due to the nature of the Notice of Motion Cr Mack had heightened a sense of injustice as the Council was being used as a vehicle for bullying (seeking to harm, intimidate and coerce someone in a vulnerable position) and harassment (aggressive pressure and intimidation) towards Cr Mack.
 - d. From Cr Mack's perspective, protecting his reputation and standing in the community required robust defence. Given the personal nature of this attack, it was unavoidable that the response was a highly emotional one.
 - e. Other remedies such as lodging a complaint with the Standards Panel would have been too late as Cr Mack would have had to spend significant sum of money in mounting a defence or seeking other remedies such as stays.
 - f. Cr Mack's objective in debate was to neutralise such disadvantages and threats and he felt at the time required robust argument beyond that of ordinary debate concerning ordinary council business.
 - g. The Panel infers that Cr Mack's intention waste characterise the actions of the Mayor as being "*underhanded*". At no stage did Cr Mack have the thought of or intention "*...to make people think less of the Mayor*".
 - h. However, it is hard to characterise the Mayor's actions as "*proper*" or as being in the community's interest or being part of the ordinary business of council.



- i. Therefore, Cr Mack seeks that no penalty be imposed regarding the breaches.
- j. If the Panel is not satisfied with this submission and has a view that a penalty be imposed then Cr Mack requests the completion of relevant WALGA or AICD course on meeting procedure or similar.
- k. For the reasons given Cr Mack should not have to apologise to the Mayor.

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 the circumstances giving rise to the breaches were personal to Cr Mack and likely to give rise to heightened emotions.
13. The Panel further acknowledges that the breach of regulation 21 was largely of a technical nature and that the portion of the Complaint relating to the same was generally unwarranted in the circumstances.
14. The Panel appreciates that the situation would have been difficult, however, the alleged poor, or improper, conduct of other councillors of the Council does not excuse or permit:
 - a. publicly accusing another councillor of wrongdoing; or
 - b. breaching the *Town of Cambridge Meeting Procedures Local Law 2019* by continually interrupting the Presiding Member.

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



15. These are not the standards to which elected members should strive to uphold, especially in public meetings.
16. The conduct by Cr Mack cannot be said to have positively affected the outcome of the decision nor to have assisted in Cr Mack in preventing the conduct by the Presiding Member that was allegedly improper.
17. The Panel considers that due to the public nature of the conduct it is appropriate that Cr Mack makes a public apology.
18. 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.
19. 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 Mack recoup to the Town the costs of the Department incurred with respect to the Complaint.

Panel's decision

20. 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 and regulation 21 of the Regulations and regulation 34D of the Administration Regulations, Cr Mack make a public apology in terms of the attached Order.

Signing

Emma Power (Presiding Member)

Peter Rogers (Member)

Suleila Felton (Deputy Member)

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).*



ORDER

Delivered 22 March 2023

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Gary Mack, a councillor for the Town of Cambridge **publicly apologise** as specified in paragraph 3; OR
2. Failing compliance with paragraph 3 within the specified timeframe, then paragraph 4 shall apply.

Public Apology

3. On the ordinary council meeting of the Town of Cambridge first occurring after the expiration of **28 days** from the date of service of this Order on him, Cr Mack 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 and regulation 21 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* and regulation 34D of the *Local Government (Administration) Regulations 1996* when I made certain comments and interrupted the presiding member during the Ordinary Council meeting of 23 November 2021.
- ii. The Panel found that I breached those Regulations by my conduct.
- iii. I acknowledge that I should have endeavoured to maintain a higher standard of conduct in a Council meeting.
- iv. I now apologise to my fellow councillors and the members of the public viewing the meeting."



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

PUBLIC APOLOGY BY COUNCILLOR GARY MACK

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 and regulation 21 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* and regulation 34D of the *Local Government (Administration) Regulations 1996* when I made certain comments and interrupted the presiding member during the Ordinary Council meeting of 23 November 2021.

The Panel found that I breached those Regulations by my conduct.

I acknowledge that I should have endeavoured to maintain a higher standard of conduct in a Council meeting.

I apologise to my fellow councillors and the members of the public viewing the meeting.



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."*