



Local Government Standards Panel

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| Complaint Number | 20230213 |
| Legislation | <i>Local Government Act 1995</i> |
| Complainant | Ms Helen Hawke |
| Respondent | Councillor Jenny Davis |
| Local Government | City of Belmont |
| Regulation | Regulation 22 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> |
| Panel Members | Mr Tim Fraser (Presiding Member) Ms Elanor Rowe (Deputy Member) Councillor Peter Rogers (Member) |
| Heard | 27 April 2023 Determined on the documents |
| Outcome | One breach of Regulation 22 |

FINDING AND REASONS FOR FINDING

Published 2 June 2023

DEFAMATION CAUTION

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Summary of the Panel's decision

1. The Local Government Standards Panel ("the Panel") found that Councillor Jenny Davis ("Cr Davis"), a councillor for the City of Belmont ("the City") committed one breach under the *Local Government Act 1995 (WA)* ("the Act") and Regulation 22 of the *Local Government (Model Code of Conduct) Regulations 2021* ("the Regulations"). The Panel found that Cr Davis failed to declare an interest in relation to a Code of Conduct matter concerning herself at a Council Meeting held on 13 December 2022.

Jurisdiction and procedural fairness

2. The Act makes provision for the circumstances in which a council member commits a minor breach.¹
3. On 28 February 2023, the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form ("Complaint"). The Complaint was signed by Ms Helen Hawke, ("the Complainant") and contained one allegation of a breach of Regulation 22 relating to Cr Davis's conduct at the Council Meeting held on 13 December 2022 when she allegedly failed to declare an interest in relation to a Code of Conduct matter concerning herself.
4. On 14 March 2023, the Department advised Cr Davis of the Complaint and invited her to respond. The Department sent Cr Davis copies of the original Complaint and all the supporting documents provided by the Complainant.
5. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.² On 10 November 2022, the Panel convened to consider the Complaint.
6. The Panel:
 - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Cr Davis was a councillor at the time of the alleged breaches, and was still a Councillor when the Panel met on 10 November 2022.
 - (b) was satisfied the Complaint had been made within six months after the alleged breaches are said to have occurred.
 - (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches³; and
 - (d) was satisfied that the Department had provided procedural fairness to Cr Davis.
7. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting

¹ Section 5.105 of the Act.

² Section 5.110(2)(a) of the Act.

³ Sections 5.107, 5.108, 5.109 of the Act.



the relevant Minister at the time instead of considering the Complaint itself.⁴ Cr Davis had not previously been found to have committed any breaches of the Regulations. Therefore, the Panel decided to not send the Complaint to the Chief Executive Officer of the Department.

8. Based on the information referred to in paragraphs 2 to 8 above, the Panel found it had jurisdiction to determine whether Cr Davis had breached Regulations 22 and 34D in connection with the Complaint.

Panel's role

9. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
10. Any finding, that a councillor has committed a minor breach, must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).⁵
11. In order to find the allegation, proposition or conduct has been established, and where direct proof is not available, the Panel must be satisfied from the evidence that it is more probable than not that it has occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.⁶
12. For a finding that a councillor has breached a particular regulation, the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

Regulation 22

13. Regulation 22 provides:

"22. Disclosure of interests

(1) In this clause —

*(a) **interest** 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 person who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —

a. in a written notice given to the CEO before the meeting; or

⁴ Sections 5.110(2)(b), 5.111(1) of the Act.

⁵ Section 5.106 of the Act.

⁶ *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.



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

b. that the matter in which they had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.

(5) If, under subclause (2)(a), a council member discloses an interest in a written notice given to the CEO before a meeting, then —

a. before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and

b. at the meeting the person presiding must bring the notice and its contents to the attention of the persons present immediately before any matter to which the disclosure relates is discussed.

(6) Subclause (7) applies in relation to an interest if –

(a) under subclause (2)(b) or (4)(b) the interest is disclosed at a meeting; or

(b) under subclause (5)(b) notice of the interest is brought to the attention of the persons present at a meeting.

(7) The nature of the interest must be recorded in the minutes of the meeting.”

Elements of Regulation 22(2)

14. The essential elements of a breach of Regulation 22(2) are that it is more likely than not that:

- a person who is a current council member (“*member*”);
- subject to Regulation 22(3), had a private or personal interest (“*relevant interest*”) in a matter (“*matter*”) that is more likely than not a conflict of interest or a bias (apparent or real) that does adversely affect, or might adversely affect the member’s impartiality in considering the matter, and includes an interest arising from kinship, friendship, membership of an association, or another circumstance;
- the member attended at the council or committee meeting concerned and was present when the matter under consideration came before the meeting and was discussed;



- the member did not disclose the nature of the relevant interest in the matter in either of the two ways required by Regulation 22(2)(a) or 22(2)(b); and
- Regulation 22(4) does not apply.

Substance of the Complaint

15. At the Council Meeting that was held on 13 December 2022, Item 14 listed on the Agenda was a Code of Conduct matter (“Matter”) concerning Cr Davis:

14 Matters for which the meeting may be closed

Note:

The Presiding Member advised that in accordance with Section 5.23(2) of the Local Government Act 1995 in order to discuss Confidential Item 14.1 Council will need to go behind closed doors, and requested that the Director Corporate and Governance and Manager Governance, Strategy and Risk remain for the discussion.

8.28pm Rossi moved, Carter seconded that in accordance with Section 5.23(2) (h) of the Local Government Act 1995, the meeting proceed behind closed doors to discuss Confidential Item 14.1 - Code of Conduct Matter.

Carried 7 votes to 0

8.28pm Members of the public gallery departed the meeting.

8.29pm The Director Development and Community Services, Acting Director Infrastructure Services, Manager PR and Stakeholder Engagement and Acting Manager City Facilities and Property departed the meeting and did not return.

8.29pm The Chief Executive Officer, Governance and Compliance Adviser and Senior Governance Officer departed the meeting.

16. Cr Davis had not declared an interest of impartiality relating to the Matter and had stayed in the Chamber:

3 Declarations of interest that might cause a conflict

3.1 Financial Interests

Nil.

3.2 Disclosure of interest that may affect impartiality

| Name | Item No and Title | Nature of Interest (and extent, where appropriate) |
|-----------|---|--|
| Cr Carter | Item 13.2.1 Notice of Motion (Cr Carter) Peet Park Facilities Upgrade | Life Member |
| Cr Rossi | Item 14.1 Code of Conduct Matter | I have known the complainant in the matter before Council for a number of years. |

17. At the Agenda Briefing Session that was held the week prior, on 6 December 2022, Cr Davis had also then not declared an impartiality interest in the Matter.

Cr Davis’s Response

18. Cr Davis did not accept the information contained within the Complaint nor that she had committed the alleged misconduct.

19. The confidential Minutes confirmed that she had left the Council Meeting when it came to Item 14. She had not been present nor had she taken part in any discussion, debate or voting of the Code of Conduct Matter. Therefore, no disclosure of interest was necessary.



The Presiding Member invited Cr Davis to make a statement on the matter.

8.32pm Cr Davis departed the Chamber

Panel's Consideration

20. The Panel finds that the essential elements of Regulation 22(2) have been satisfied and that Cr Davis had not disclosed a relevant interest in the Matter that was discussed at the Council Meeting:

- a. To find that a councillor has breached a particular Regulation, the Panel must be satisfied that every element of the particular Regulation has been established to the required standard of proof. In this case, it was clear that at the time of the alleged misconduct, Cr Davis:
 - was a Council member;
 - attended the Council Meeting; and
 - Regulation 22(4) did not apply.

Therefore, the material question was if Cr Davis had not disclosed a relevant interest in the Matter discussed at the Council Meeting.

- b. The Matter concerned a Code of Conduct complaint made against Cr Davis and in which she clearly had a relevant interest. The Confidential Minutes sent to the Panel confirmed that at the Council Meeting, Cr Davis made a statement in relation to the Matter and then left the Chamber prior to discussion on it. The Panel also noted that Cr Davis had been advised by the City's administration officers prior to the Council Meeting, that there was no obligation for her to declare an interest in the Matter.
- c. However, the Panel conducted extensive investigation into the question of whether Cr Davis complied with the specific requirement, under Regulation 22(2), to declare a relevant interest in the Matter (either in a written notice given to the CEO before the meeting or at the Council Meeting immediately before the Matter was discussed). On the evidence before it, it has been determined that she did not.
- d. While Cr Davis may have been under the impression, based on the City's advice, that she was not under an obligation to disclose an interest, the Act places specific obligations on elected members to act honestly and responsibly in carrying out their functions. Elected members must be mindful of their obligation to deal with personal interests and manage any potential conflict of interest according to Regulation 22. They are advised to err on the side of caution and disclose an interest in any matter before Council or a Council committee where they may, or may appear to have, an interest.



Findings

Accordingly, for the above reasons, the Panel finds that Cr Davis did breach Regulation 22.

Signing

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

Tim Fraser (Presiding Member)

A handwritten signature in black ink, appearing to be 'Elanor Rowe'.

Elanor Rowe (Deputy Member)

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

Peter Rogers (Member)



Local Government Standards Panel

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| Complaint Number | 20230213 |
| Legislation | <i>Local Government Act 1995 (WA)</i> |
| Complainant | Ms Helen Hawke |
| Respondent | Councillor Jenny Davis |
| Local Government | City of Belmont |
| Regulation | Regulation 22 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> |
| Panel Members for Penalty Consideration | Mr Tim Fraser (Presiding Member) Councillor Peter Rogers (Member) Ms Elanor Rowe (Deputy Member) |
| Heard | 27 April 2023 Determined on the documents |
| Penalty Considered | 28 July 2023 |
| Outcome | Training |

DECISION AND REASONS FOR DECISION

30 October 2023

DEFAMATION CAUTION

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Introduction

1. At its meeting on 27 April 2023, the Panel found that Councillor Jenny Davis (“Cr Davis”), an elected member for the City of Belmont (“the City”), committed one minor breach under the Local Government Act 1995 (WA) (“the Act”) and Regulation 22 of the *Local Government (Model Code of Conduct) Regulations 2021* (“the Regulations”) when she failed to declare an interest in relation to a Code of Conduct matter concerning herself at a Council Meeting held on 13 December 2022.
2. On 2 June 2023, the Panel published its Finding and Reasons for Finding (“Finding”) stating that Cr Davis had committed one minor breach. The Panel reviewed all the evidence presented to it and made the following observations:

“20.

.....

- b. The Matter concerned a Code of Conduct complaint made against Cr Davis and in which she clearly had a relevant interest. The Confidential Minutes sent to the Panel confirmed that at the Council Meeting, Cr Davis made a statement in relation to the Matter and then left the Chamber prior to discussion on it. The Panel also noted that it was the City Officers’ position that no declaration was required as Cr Davis was to leave the Chamber prior to the Matter being discussed.*
- c. However, the Panel conducted extensive investigation into the question of whether Cr Davis complied with the specific requirement, under Regulation 22(2), to declare a relevant interest in the Matter (either in a written notice given to the CEO before the meeting or at the Council Meeting immediately before the Matter was discussed). On the evidence before it, it has been determined that she did not.*
- d. While Cr Davis may have believed that she was not under an obligation to disclose an interest, the Act places specific obligations on elected members to act honestly and responsibly in carrying out their functions. Elected members must be mindful of their obligation to deal with personal interests and manage any potential conflict of interest according to Regulation 22. They are advised to err on the side of caution and disclose an interest in any matter before Council or a Council committee where they may, or may appear to have, an interest.”*

Jurisdiction and Law

3. The Panel convened on 28 July 2023, to consider how it should deal with the Minor Breach. 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 Davis had ceased to be, or was disqualified from being, a councillor.

Possible Sanctions



4. Section 5.110(6) of 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;*
 - 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).*
5. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. Under section 5.110(6)(a), the Panel may order that no sanction be imposed; not to reverse the finding of a breach, but to however indicate that in all the circumstances the relevant councillor should not be penalised further.
6. Sub-section 5.110(6)(b)(iv) (in respect of a monetary sanction) was introduced in 2019 to allow the Panel to require a councillor to personally bear the cost of dealing with a complaint, which in other circumstances, would be paid by the local government concerned. This ensures the cost of a breach is borne by the councillor individually, and not simply passed onto the local government and therefore, ultimately, rate payers.

Cr Davis's Submissions

7. 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
8. By a letter dated 2 June 2023, Cr Davis was:
- i. notified of the Panel's Finding of the Minor Breach;
 - ii. provided with a copy of the Panel's Findings; and
 - iii. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.

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



9. On 6 June 2023, the Department received a response from Cr Davis in which she stated that she accepted the Panel's Findings and apologised for her conduct.
10. She requested that no sanction be imposed as she had contacted the City who advised that they would provide her with training in relation to declaring an interest generally and specifically in matters of code of conduct and confidentiality.

Panel's Consideration

11. The purpose of the imposition of a sanction under the Act is generally for the protection of the public and the maintenance of standards of council members. Furthermore, it reflects the disapproval of a contravention of the Regulations, dissuades councillors from other local governments from engaging in similar conduct and facilitates the maintenance of appropriate standards of behaviour by councillors. Guidance on the factors which the Panel may consider in determining the appropriate penalty to impose, include, but are not limited to:
 - 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 remorse and insight into his / her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor's disciplinary history;
 - f. the likelihood or not of the councillor committing further breaches of the Act;
 - g. the councillor's personal circumstances at the time of the conduct, and at the time of imposing the sanction;
 - h. the 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 seriousness.
12. In this case, the Panel found that Cr Davis breached Regulation 22 as set out in paragraph 1 above.
13. When deciding what sanction to impose, the Panel must consider how the penalty will help to guide other councillors and dissuade them from engaging in similar conduct.
14. The Panel does not consider it appropriate to impose no sanction in relation to the Minor Breach, as this would indicate that it was so minor that no penalty is warranted. A significant element in deciding whether to disclose an impartiality interest is the likely public perception as to whether there may be an interest and that bias could creep in.
15. However, a public apology, monetary sanction or an order for censure are also not appropriate and would be overly punitive.



16. In this case, it was clear that Cr Davis had misunderstood the situation at the Council Meeting and genuinely believed that a declaration was not necessary. The Matter concerned a complaint that had been made against herself and she in fact left the Council chambers prior to it being discussed.
17. In addition, in Cr Davis's response to how the Minor Breach should be dealt with, she accepted that she had misjudged the situation and may require further training.
18. Therefore, the Panel finds it fair and reasonable that Cr Davis undertake the training provided to elected members to help them perform their role and responsibilities effectively. The sanction of an order to undertake training also aligns with the intent of the Act and the purpose of the civil penalties under it to ensure future compliance with the statutory obligations imposed on councillors.

Panel's Decision

19. Having regard to the Findings, the matters set out herein, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under s5.110(6) of the Act, is to order Cr Davis, in terms as set out in the attached Order, to undertake training, pursuant to subsection (b)(iii).

Signing

Tim Fraser (Presiding Member)

Peter Rogers (Member)

Elanor Rowe (Deputy Member)



ORDER

30 October 2023

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Jenny Davis (“Cr Davis”), an elected member for the City of Belmont, undertake training as specified in paragraph 2 below.

TRAINING

2. Within four (4) months of the Date of this Order, Cr Davis shall undertake:
 - a. the training course for Elected Members “*Conflicts of Interest*” provided by the WA Local Government Association for a period of three and a half (3.5) hours; or
 - b. a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a similar duration, but for a period of at least three (3) hours.
3. If Cr Davis has completed the training as set out at paragraph 2 above between the date of the original Minor Breach Finding (2 June 2023) and the date of this Order, there is no requirement on her to repeat the training.

Date of Order: 30 October 2023



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."*