



Local Government Standards Panel

Complaint Number	SP 2020-136
Legislation	<i>Local Government Act 1995</i>
Complainant	Councillor Morgan Byas
Respondent	Councillor Robert Coales
Local Government	Shire of Serpentine-Jarrahdale
Regulation	Regulation 4 Regulation 6 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Cr Peter Rogers (Member) Mrs Emma Power (Member)
Heard	15 January 2021 Determined on the documents
Finding	1 x Breach of Regulation 6

FINDING AND REASONS FOR FINDING

Delivered 11 February 2021

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 15 January 2021, the Panel found that Councillor Robert Coales, a councillor for the of Shire of Serpentine Jarrahdale (**"the Shire"**):
 - a. did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and regulation 6 of the *Local Government (Rules of Conduct) Regulations 2007* (**"the Regulations"**) when he disclosed information from a confidential document regarding the appointment of community members to an advisory group at an Ordinary Council Meeting of 20 July 2020; and
 - b. did not commit a minor breach pursuant to the Act and regulation 4 of the Regulations when he when he failed to withdraw his comments and apologise for disclosing personal details about an applicant for an advisory group during the Ordinary Council Meeting of 20 July 2020,as set out in paragraph 15 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 provides for the circumstances in which a council member commits a minor breach.¹
4. 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.²
5. 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.
6. 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 accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336

⁵ *Re and Local Government Standards Panel* [2015] WASC 51 (at paragraph 24)



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

8. 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.
9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. 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

11. On 26 October 2020 the Panel received a complaint from Mr Paul Martin, acting as complaints officer of the Shire (**"the Complaints Officer"**). The same enclosed a Complaint of Minor Breach Form dated 17 October 2020.
12. In the complaint form, the Complainant alleges that at the Ordinary Council Meeting of 20 July 2020 Cr Coales allegedly breached:
 - a. Regulation 6 when he when he disclosed information from a confidential document regarding the appointment of community members to an advisory group at an Ordinary Council Meeting of 20 July 2020 (**"Allegation 1"**); and
 - b. Regulation 4 when he failed to withdraw his comments and apologise for disclosing personal details about an applicant for an advisory group during the Ordinary Council Meeting of 20 July 2020, and in particular breached:
 - i. Standing Order Clause 9.8 - Members Not to Interrupt - when Cr Coales disregarded a call for order by the Presiding Member (**"Allegation 2"**);
 - ii. Standing Order - Clause 15.1 - The Person Presiding to Preserve Order - when Cr Coales disregarded a call for order by the Presiding Member (**"Allegation 3"**); and
 - iii. Standing Order 15.2 Demand for Withdrawal – when Cr Coales refused to withdraw his comments, instead stating *"I've already said it, so what are you going to do, report me? Go ahead, do it"* (**"Allegation 4"**),
as set out in paragraph 15 (**"the Complaint"**).
13. The Panel convened on 15 January 2021 to consider the Complaint.
14. 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 Coales was:
 - i. elected to the Council of the Shire in October 2017 for a term expiring in October 2021;

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



- ii. a Councillor at the time of the alleged breach; and
- iii. a Councillor when the Panel met on 15 January 2021;
- b. was satisfied the Complaint was made within six months after the alleged breach occurred⁷;
- c. was satisfied that the Shire's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;
- d. was satisfied the Department had provided procedural fairness to Cr Coales; and
- e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

15. The Complainant provided the following comments and arguments in respect to the Complaint:
- a. At the Shire of Serpentine Jarrahdale's Ordinary Council Meeting of 20 July 2020 ("**the OCM**") Council considered item 10.4.2 - Equine Advisory Group - Appointment of Community Members (SJ3224).
 - b. The purpose of the item was for Council to consider, select, and appoint community members to the Equine Advisory Group.
 - c. The item was not a confidential item, however the report did contain two confidential attachments, these being:
 - i. 10.4.2- CONFIDENTIAL attachment 1 - Expressions of Interest Summary (E20/2491); and
 - ii. 10.4.2 - CONFIDENTIAL attachment 2 - All Expressions of Interest (E20/7668).
 - d. The confidential attachments were supplied to all Elected Members both electronically and in physical copy. Both versions were clearly labelled CONFIDENTIAL. The physical copies and the document envelopes they were contained in were stamped CONFIDENTIAL.
 - e. Both confidential attachments contained the personal information of community members which were not included in the publicly available officer's report.
 - f. During debate Cr Coales read details from attachment 1 and named one of the applicants and stated the date of the submission of the relevant Expression of Interest.
 - g. This was done with members of the public and media in the gallery.
 - h. On realising Cr Coales' error, the Complainant moved a point of order, drawing the Presiding Member's attention to the fact Cr Coales had just disclosed

⁷ Section 5.107(4) and 5.109(2) of the Act

⁸ Section 5.107 and 5.109 of the Act



confidential information in a public meeting. The Complainant requested the Presiding Member to bring Cr Coales to order, have him withdraw his comments and apologise for disclosing the personal details of the applicant.

- i. The Presiding Member, Shire President Cr. Michelle Rich, requested Cr Coales withdraw and apologise, to which he angrily responded: *"I've already said it, so what are you going to do, report me? Go ahead, do it."*
- j. When challenged by the Presiding Member on his inappropriate remarks, Cr Coales became increasingly aggressive and incoherent, before standing and storming out of the meeting.
- k. Cr Coales breached Regulation 6 by his conduct.
- l. Cr Coales also breached Regulation 4 by acting inappropriately and unprofessionally when the Presiding Member attempted to bring him to order. In particular Cr Coales breached:
 - i. Standing Order Clause 9.8 - Members Not to Interrupt - When the Presiding Member called Cr Coales to order, he disregarded the instruction, speaking over the Presiding Member using aggressive language.
 - ii. Standing Order Clause 15.1 The Person Presiding to Preserve Order - When the Presiding Member called Cr Coales to order, he disregarded the instruction, speaking over the Presiding Member using aggressive language.
 - iii. Standing Order Clause 15.2 Demand for Withdrawal - When the Presiding Member called Cr Coales to order and directed him to withdraw his comments - as per the point of order - Cr Coales refused, instead stating: *"I've already said it, so what are you going to do, report me? Go ahead, do it"*.
- m. The Complainant believes an appropriate outcome for this Complaint is for Cr Coales to:
 - i. issue a public apology for his inappropriate and unprofessional conduct at the OCM, both in relation to disclosing confidential information but also for his inappropriate and unprofessional behaviour;
 - ii. provide a written apology to the Presiding Member for the aggressive and inappropriate behaviour he demonstrated towards her when she was executing her function as Chair attempting to preserve order; and
 - iii. be required to attend training to remediate his deficient understanding of confidentiality.

The Respondent's Response

16. By an email dated 4 November 2020, Cr Coales provided a response to the Complaint.



17. Cr Coales accepts that he breached Regulation 6 but denies that he has committed a minor breach in respect to Regulation 4.
18. Cr Coales provided the following comments and arguments regarding the Complaint:
 - a. Cr Coales acknowledges that he did refer to a named person in a confidential attachment.
 - b. This was an oversight and accordingly he self-reported this to the Standards Panel.
 - c. Cr Coales rejects the allegation that he was rude to the presiding member and further he unequivocally refutes the allegation that he used aggressive language.
 - d. Cr Coales was concerned with an earlier issue in the meeting regarding the behaviour of the Presiding Member.
 - e. When Cr Byas raised his concerns about Cr Coales' disclosure, the President Member was at a loss as to what to do, so Cr Coales explained that she could report him, and he admitted to naming an applicant.
 - f. Cr Coales further attempted to engage in debate and at this point the Presiding Member gagged him by turning off his microphone.
 - g. At this time, after experiencing the earlier behaviour of the Presiding Member, in an attempt to maintain a sense of decorum, Cr Coales stood up and left the chamber.
 - h. Cr Coales did not use aggressive language – he only advised the Presiding Member to report him as it appeared she was at a loss as to what to do.
 - i. Cr Coales left the meeting in an orderly manner.
 - j. The minutes of the OCM do not support Cr Byas' accusation as no point of order is raised or recorded in the minutes.
 - k. Cr Coales takes Governance very seriously and he has completed the Australian Company Directors Course. This was not an error due to being uneducated, rather he was rattled by what had happened earlier in the meeting. He accidentally let the name slip and for that he apologised and self-reported.
 - l. This is a vexatious and frivolous complaint.

Panel's Consideration

Regulation 6

19. Regulation 6 prevents the disclosure of confidential or restricted information obtained by a councillor and reads as follows:

“(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 to clearly show that the information in the document is not to be disclosed;

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

- (2) A person who is a council member must not disclose —
- (a) information that the council member derived from a confidential document; or
 - (b) information that the council member acquired at a closed meeting other than information derived from a non-confidential document.
- (3) Subregulation (2) does not prevent a person who is 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.”
20. To make a finding of a minor breach in respect to regulation 6 the Panel must be satisfied that:
- a. Cr Coales 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 Coales 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 Coales 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 Coales 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 6(3).

Cr Coales was an elected member at the relevant times

21. Cr Coales was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
22. This element is met.

The disclosed information was information Cr Coales 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
23. The Complainant has alleged that Cr Coales improperly disclosed information regarding the applicant and their Expression of Interest from a confidential document.
 24. A “*confidential document*” is defined in the Regulations as a document marked by the CEO to clearly show that the information in the document is not to be disclosed.
 25. The Panel finds to the required standard that the relevant information was obtained from the documents that has been marked confidential by the CEO and provided to councillors to assist them in considering the relevant item at the OCM.
 26. The Panel notes that this matter was further self reported by Cr Coales.
 27. This element is met.

Cr Coales did not derive the disclosed information from a non-confidential document

28. This element is not applicable as the information was obtained from a confidential document rather than at a closed Council or Committee meeting.

The information was not disclosed as set out in regulation 6(3).

29. The Panel finds to the required standard that the relevant confidential information was not:
 - a. disclosed by Cr Coales at a closed meeting; or
 - b. disclosed as specified or allowed by the Council; or
 - c. already in the public domain; or
 - d. disclosed to an officer of the Department, to the Minister; or
 - e. disclosed to a legal practitioner for the purpose of obtaining legal advice; or
 - f. disclosed as required or permitted by law.
30. This element is met.

Conclusion

31. The elements required to find a breach of regulation 6 of the Regulations have been met.



Regulation 4

32. Regulation 4 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.*”

33. 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.*”

34. To make a finding of a minor breach of regulation 4 of the Regulations the Panel must be satisfied, to the required standard, that:

- a. Cr Coales 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 Coales breached a valid provision of a local law as to conduct, being the *Shire of Serpentine Jarrahdale Standing Orders Local Law 2002 (“the Standing Orders”)*.

Allegation 2

Cr Coales was a Councillor at the relevant times

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

36. This element is met.

The conduct occurred at a council or committee meeting

37. The relevant conduct occurred during the Ordinary Council Meeting of 20 July 2020.

38. This element is met.

Cr Coales breached a valid provision of the Shire of Serpentine Jarrahdale Standing Orders Local Law 2002

39. The Complainant has alleged that Cr Coales is in breach of Regulation 4 by breaching Standing Order Clause 9.8 - Members Not to Interrupt by speaking over the Presiding Member using aggressive language.

40. 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”.



41. This has two requirements being that:
 - a. the same is a “local law”, being the formal gazetted meeting procedures or standing orders local law⁹; and
 - b. the relevant Standing Order breached must relate to “conduct”.
42. As such, to establish a breach under Regulation 4, a breach of a provision of the *Shire of Serpentine Jarrahdale Standing Orders Local Law 2002* (“**the Standing Orders**”) that relates to conduct of must be established.
43. The relevant Standing Order is as follows:

“ 9.8 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;*
 - (c) *to make a personal explanation under clause 10.17; or*
 - (d) *to move a motion under clause 11(1)(e)”*
44. The Panel finds that Standing Order 9.8 is a local law that relates to conduct of elected members.
45. It is also noted that it is alleged that Cr Coales was rude and aggressive. This Standing Order does not deal with such conduct, only interruption is contemplated.
46. In this case Cr Coales expressly rejects the Complainant’s version of events and asserts that his comment was to advise the Presiding Member to report him for the disclosure of confidential information.
47. The Panel notes that such reporting is, in fact, the appropriate outcome for a disclosure of confidential information and that Cr Coales did self-report in this instance.
48. The Minutes of the OCM are not helpful to the Panel in this case as they do not reflect that any point of order was made, nor specify that any request for withdrawal was requested. Neither was the relevant Meeting recorded.
49. Despite this, the Panel finds it is more likely than not that:
 - a. a point of order was raised by the Complainant;
 - b. Cr Coales was asked to apologise and withdraw the disclosure of confidential information; and
 - c. Cr Coales did not apologise or withdrawal the relevant disclosure.
50. It is often the case that exchanges in Council Meetings are robust in nature and that a certain amount of over-speaking will naturally occur. It is clear that there was some

⁹ See *Ryan and Local Government Standards Panel* [2009] WASAT 154 and *Steck and Local Government Standards Panel* [2011] WASAT 117.



kind of exchange involved as the Presiding Member subsequently turned off Cr Coales' microphone to prevent further debate on the matter and Cr Coales then left the meeting.

51. However, it is unclear whether such actions were due to an interruption of the Presiding Member, a failure to apologise or withdraw, or even simply personal recognition or embarrassment that Cr Coales had improperly disclosed confidential information.
52. The Panel cannot come to the conclusion, on the evidence supplied, that any further point of order was raised in respect to an interruption, or that the Presiding Member otherwise had to bring Cr Coales to order for interrupting.
53. Due to the lack of evidence in this case, the Panel cannot find that it was more likely than not that an interruption occurred in breach of Standing Order 9.8.
54. This element is not met.

Conclusion

55. Given the above, the elements required to find a breach of regulation 4 of the Regulations have not been met.

Allegation 3

Cr Coales was a Councillor at the relevant times

56. Cr Coales was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.
57. This element is met.

The conduct occurred at a council or committee meeting

58. The relevant conduct occurred during the Ordinary Council Meeting of 20 July 2020.
59. This element is met.

Cr Coales breached a valid provision of the Shire of Serpentine Jarrahdale Standing Orders Local Law 2002

60. The Complainant has alleged that Cr Coales is in breach of Regulation 4 by breaching Standing Order - Clause 15.1 The Person Presiding to Preserve Order - as the Presiding Member called Cr Coales to order, he disregarded the instruction, speaking over the Presiding Member using aggressive language.
61. The text of the relevant Standing Order is as follows:

“15.1 The Person Presiding to Preserve Order

The person presiding is to preserve order, and may call any member or other person in attendance to order, whenever, in his or her opinion, there is cause for so doing.”

62. As noted above in paragraphs 40 to 42 above, it is necessary that the relevant Standing Order relates to conduct.



63. In this case, the relevant Standing Order is of a procedural nature to allow the Presiding Member to maintain order in a meeting, rather than prescribing the conduct for elected members.
64. The Standing Order contains no requirement for a councillor to follow the direction of the Presiding Member, nor does it prescribe any penalty for failing to do so. Therefore it does not relate to the conduct of elected members.
65. As such, this element is not capable of being met.
66. This element is not met.

Conclusion

67. Given the above, the elements required to find a breach of regulation 4 of the Regulations have not been met.

Allegation 4

Cr Coales was a Councillor at the relevant times

68. Cr Coales was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.
69. This element is met.

The conduct occurred at a council or committee meeting

70. The relevant conduct occurred during the Ordinary Council Meeting of 20 July 2020.
71. This element is met.

Cr Coales breached a valid provision of the Shire of Serpentine Jarrahdale Standing Orders Local Law 2002

72. The Complainant has alleged that Cr Coales is in breach of Regulation 4 by breaching Standing Order 15.2 Demand for Withdrawal - When the Presiding Member called Cr Coales to order and directed him to withdraw his comments - as per the point of order - Cr Coales refused, instead stating: *"I've already said it, so what are you going to do, report me? Go ahead, do it"*.
73. As noted above in paragraphs 40 to 42 above, it is necessary that the relevant Standing Order relates to conduct.
74. The text of the relevant Standing Order is as follows:

"15.2 Demand for Withdrawal

A member or member of the public at a meeting of the Council or a committee may be required by the person presiding, or by a decision of the Council or committee, to apologise and unreservedly withdraw any expression which is considered to reflect offensively on another member or an employee, and if the member declines or neglects to do so, the person presiding may refuse to hear the member further upon the matter then under discussion and call upon the next speaker."



75. The Panel finds that Standing Order 15.2 is a local law of a procedural nature to allow the Presiding Member to enforce consequences on an elected member when making a statement or *“expression which is considered to reflect offensively on another member or employee”*.
76. The Panel notes that Standing Order 15.2 comes into effect where a councillor makes a statement or *“expression which is considered to reflect offensively on another member or employee”*. In this case, it is not alleged that Cr Coales in fact made such a statement, but rather disclosed confidential information. Such disclosure does not fall under this Standing Order.
77. In addition, Standing Order 15.2 is somewhat unclear as although a person *“may be required”* by an elected member to apologise and withdraw the relevant expression or comment, the Standing Order also:
 - a. specifically considers that a councillor may *“decline or neglect”* to withdraw or apologise; and
 - b. specifies the procedure for the Presiding Member to deal with such conduct.
78. As such, the Panel finds that it is more likely than not that the predominate nature of this Standing Order is procedural in nature to guide the actions of the Presiding Member.
79. Where an adverse or offensive reflection is claimed to have occurred, it is more appropriate for a breach of Standing Order 8.4 to be alleged. This Standing Order specifically prohibits conduct in respect to making adverse or offensive comments and the State Administrative Tribunal has previously established that local laws substantially similar to Standing Order Item 8.4 relate to “conduct” for the purposes of Regulation 4 .
80. In any event, the Minutes do not reflect that any point of order was made, specify any offensive reflection, nor specify that any request for withdrawal was requested. As such the Panel is not able to find that anything other than the disclosure of confidential information occurred.
81. Given the above, Standing Order 15.2 cannot be “breached” by Cr Coales by failing to apologise or withdraw the disclosure of confidential information.
82. This element is not met.

Conclusion

83. Given the above, the elements required to find a breach of regulation 4 of the Regulations have not been met.

Panel’s Findings

84. In respect to Allegation 1, Cr Coales did commit a breach of Regulation 6 of the Regulations and therefore did commit a minor breach.
85. In respect to Allegation 2, Cr Coales did not commit a breach of Regulation 4 of the Regulations and therefore did not commit a minor breach.



86. In respect to Allegation 3, Cr Coales did not commit a breach of Regulation 4 of the Regulations and therefore did not commit a minor breach.
87. In respect to Allegation 4, Cr Coales did not commit a breach of Regulation 4 of the Regulations and therefore did not commit a minor breach.

A handwritten signature in blue ink, appearing to read 'Mick Connolly', written above a horizontal line.

Mick Connolly (Presiding Member)

A handwritten signature in black ink, appearing to read 'Emma Power', written above a horizontal line.

Emma Power (Member)

A handwritten signature in black ink, appearing to read 'Peter Rogers', written above a horizontal line.

Peter Rogers (Member)



Local Government Standards Panel

Complaint Number	SP 2020-136
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Councillor Morgan Byas
Respondent	Councillor Robert Coales
Local Government	Shire of Serpentine-Jarrahdale
Regulation	Regulation 6 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mrs Emma Power (Presiding Member) Cr Peter Rogers (Member) Mr Gordon MacMile (Member)
Heard	15 January 2021 Determined on the documents
Penalty Considered	25 March 2021
Outcome	No Sanction

DECISION AND REASONS FOR DECISION

30 April 2021

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 15 January 2020, the Panel found that Councillor Robert Coales, councillor for the City of Swan (“**the City**”), committed one minor breach under the *Local Government Act 1995 (WA)* (“**the Act**”) and regulation 6 of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* (“**the Regulations**”) when he disclosed information from a confidential document regarding the appointment of community members to an advisory group at a Council meeting held on 20 July 2020 (“**the Minor Breach**”).

Jurisdiction and Law

2. The Panel convened on 25 March 2021 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 Coales 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 15 February 2021, Cr Coales was:
 - a. notified of the Panel’s finding of the Minor Breaches;
 - 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*.

Councillor Coales’ Submissions

6. By an email dated 15 February 2021, the Department received a response from Cr Coales.
7. Cr Coales requests that as the matter caused no detriment and was initially self-reported, no further action be taken.

Possible Sanctions

8. 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;*

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



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).

Panel's Consideration

9. Section 5.110(6) is 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 with respect to the Complaint, 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.

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



12. The Panel notes that prior to this Complaint, Cr Coales self-reported the breach as soon as Cr Coales became aware of the same. The Panel duly dealt with this self reported complaint (being matter SP 2020-087).
13. Due to such self reporting and prior complaint process, the Panel considers that Cr Coales is fully aware of his obligations under the Act and Regulations and that there is a negligible risk of him reoffending.
14. As such, the Panel considers it appropriate that no further sanction is imposed.

Panel's decision

15. The Panel orders pursuant to section 5.110(6)(a) of the Act that, in relation to the Minor Breach of regulation 6 of the Regulations that no sanction be imposed upon Cr Coales as set out in the attached Order.

Emma Power (Presiding Member)

Peter Rogers (Member)

Gordon MacMile (Member)



ORDER

Delivered 30 April 2021

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

No further sanction be imposed on Councillor Coales.

Emma Power (Presiding Member)

Peter Rogers (Member)

Gordon MacMile (Member)



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.”*