

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number	SP 42 of 2015 [DLG 20150189]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Ian Hill
Subject of complaint	Councillor Mark Burns
Local Government	City of Subiaco
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Member)
Heard	23 February 2016 (Determined on the documents)
Outcome	Public apology ordered

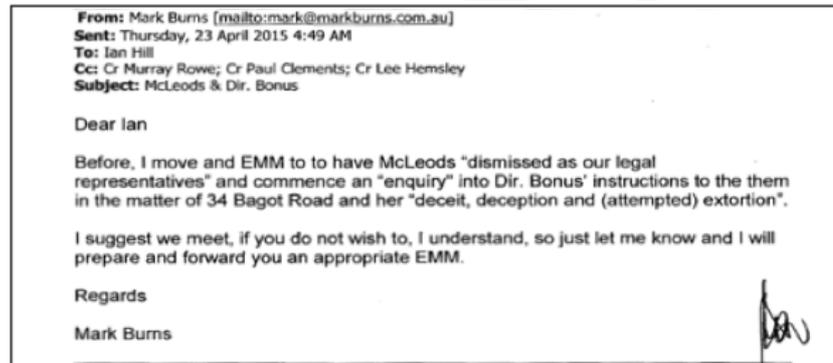
DECISION AND REASONS FOR DECISION

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

1. Summary of Breach Findings

- 1.1 At its meeting on 29 September 2015 the Panel made a finding that Cr Mark Burns, a member of the Council of the City of Subiaco committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (Regulations)* by sending the Email set out below (**Email**) to Ian Hill (the City's then Chief Executive Officer) and to Councillors Rowe, Clements and Hemsley:



(Minor Breach)

2. Summary of Decision

- 2.1 The Panel considered how the Minor Breach is to be dealt with under section 5.110(6) of the *Local Government Act 1995 (Act)* and concluded, for the following reasons, that Cr Burns should be ordered to make a public apology in terms of Attachment "A" hereto.

3. Notice of the Minor Breaches

- 3.1 By letter dated 17 December 2015, Cr Burns was notified of the Panel's finding of a Minor Breach, provided with a copy of the Panel's Findings and Reasons for Finding (**Findings**) and offered Cr Burns an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.
- 3.2 During January 2016, Cr Burns advised the Department that Mr Martin Bennett, Principal of Bennett & Co, was his legal representative and that Mr Bennett would be making a submission to the Panel on his behalf.
- 3.3 By letter dated 20 January 2016, Mr Bennett advised the Department that he acted on behalf of Cr Burns and was writing in response to the Department's letter of 17 December 2015 to Cr Burns.
- 3.4 This letter did not make submissions to the Panel in relation to the sanction to be imposed on Cr Burns, but focussed on paragraph 9.2(a) of the Findings. Which provides as follows:

"9.2 The Panel considers that by threatening in the Email that he would seek to have an "enquiry" held into Ms Bonus' "deceit, deception and (attempted) extortion" regarding a matter involving [the Property], Cr Burns:

- (a) made improper use of his office as councillor of the City (*as any concerns he had with Ms Bonus' conduct ought to have been raised with the Complainant (or the City's human resources department) and not his fellow councillors*); and

- (b) so acted to cause detriment to Ms Bonus, as an accusation that she had engaged in “deceit, deception and (attempted) extortion” amounted to an egregious (and unfounded) attack on her honesty and the integrity and therefore her fitness to work for the City.”
- 3.5 Mr Bennett contended that the above italicised words in paragraph 9.2(a) had never been put to Cr Burns, that he had accordingly been denied the opportunity to make submissions on that issue and advised that Cr Burns had in fact raised his concerns with Ms Bonus’ conduct with the Complainant (or the City’s human resources department).
- 3.6 By letter dated 29 January 2016 Mr Bennett also advised the Panel that the matters raised in his letter of 20 January 2015 should be taken as a submission on penalty in the event that the Panel did not afford Cr Burns a further opportunity to make submissions on whether the Minor Breach had occurred.
- 3.7 As expressed in paragraph 9.2 of the Findings, the Panel considers that Cr Burns made improper use of his office as councillor of the City “by threatening in the Email [which was sent to Complainant and to Crs Rowe, Clements and Hemsley] that he would seek to have an “enquiry” held into Ms Bonus’ “deceit, deception and (attempted) extortion” regarding a matter involving [the Property]”.
- 3.8 In its Findings the Panel expressed the view “any concerns [Cr Burns] had with Ms Bonus’ conduct ought to have been raised with the Complainant (or the City’s human resources department) and not his fellow councillors”. [emphasis added]
- 3.9 If, as Mr Bennett contends, Cr Burns did raise his concerns with the Complainant (or the City’s human resources department), it does not alter the fact that he also raised his concerns with Crs Rowe, Clements and Hemsley.
- 3.10 Nevertheless, for the purposes of imposing a sanction the Panel will assume that Cr Burns did raise his concerns with the Complainant (or the City’s human resources department).

4. Panel’s views

- 4.1 Section 5.110(6) of the *Act* specifies the sanctions that may be imposed by the Panel for a Minor Breach. The Panel may:
 - (a) dismiss the Complaint;
 - (b) order that —
 - (i) the person against whom the Complaint was made be publicly censured as specified in the order;
 - (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
 - (c) order 2 or more of the sanctions described in paragraph (b).

- 4.2 Pursuant to clause 8(6) of Schedule 5.1 to the *Act*, each of the Panel's members is to have regard to the general interests of local government in the State.
- 4.3 In considering an appropriate sanction or sanctions for the present breach the Panel notes that Cr Burns:
- (a) has not previously been found to have breached the *Regulations*;
 - (b) has not demonstrated any contrition for having sent the Email; and
 - (c) via Mr Bennett, has contended that the appropriate sanction should not extend beyond an order "directing undertaking of training" as "[a]nything beyond that would involve the Panel requiring [Cr Burns] to apologise on a basis that is factually mistaken or alternatively would involve the censure of [Cr Burns] again on a mistaken factual basis".
- 4.4 The Panel does not consider that dismissal of the Complaint is appropriate as this would effectively condone Cr Burn's conduct in sending the email.
- 4.5 Nor does the Panel consider that ordering Cr Burns to undergo further training is appropriate or an adequate sanction.
- 4.6 Because of this, the only options available to the Panel are to order the publication of a Notice of Public Censure or to order Cr Burns to make a Public Apology (or both).
- 4.7 When the Panel makes an order that a Notice of Public Censure be published, that Notice is published by the local government's CEO at the expense of the local government and such expense is significant where the Notice is to be published in a newspaper or newspapers.
- 4.8 In the present case, on the evidence available to the Panel, the Panel does not consider that it should order a public censure.
- 4.9 In the circumstances of the matter, the Panel considers that Cr Burns should be ordered to make a public apology to Ms Kathleen Bonus and his fellow councilors in terms of Attachment "A" hereto.
- 4.10 This is a significant sanction, as it serves as a reprimand aimed at the reformation of Cr Burns and the prevention of further offending acts and also as a measure in support of the institution of local government and those council members who properly observe the standards of conduct expected of them.

5. Panel decision

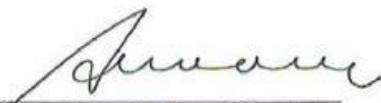
- 5.1 Having regard to the Findings, the matters set out in paragraphs 4 and 5 above and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under section 5.110(6) of the Act, is that pursuant to subsection (b)(ii) of that section, Cr Burns should be ordered to publicly apologise to Ms Kathleen Bonus and his fellow councilors as set out in Attachment "A" hereto.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Peter Doherty (Member)

NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (**Panel**) hereby gives notice that:

- (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."*

Attachment "A"

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Heard	23 February 2015 (Determined on the documents)

ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Mark Burns, Councillor of the City of Subiaco, apologise publicly to Ms Kathleen Bonus, as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the next City of Subiaco Ordinary Council Meeting immediately following the expiration of 28 days from the date of service of this Order on Mark Burns:

- (a) Mark Burn shall request the presiding person for his/her permission to address the meeting immediately following Public Question Time or during the Announcements part of the meeting or at such time during the meeting when it is open to the public as the presiding member thinks fit, for the purpose of Mark Burns making a public apology to Ms Kathleen Bonus; and
- b) Mark Burns shall verbally address the Council as follows, without making any introductory words prior to the address, and without making any comment or statement after the address:

“I advise this meeting that:

- 1. A Complaint has been made to the Local Government Standards Panel, in which it was alleged that I contravened a provision of the Local Government (Rules of Conduct) Regulations 2007 by sending an email to three councilors of the City in which I made allegations concerning Ms Kathleen Bonus.*
 - 2. The Local Government Standards Panel has considered the Complaint, and has made a finding of a minor breaches of regulations 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 against me by sending the email.*
 - 3. I accept that I should not have sent that email to the councilors of the City and apologise to Ms Bonus and my fellow councillors for having done so”*
3. If Cr Burns fails or is unable to comply with the requirements of paragraph 2 above within 14 days after the next City of Subiaco Ordinary Council Meeting immediately following the expiration of 28 days from the date of service of service of this Order on him, Mark Burns shall cause the following Notice of Public Apology to be published, in no less than 10 point print, as a one-column or a two-column display advertisement in the first 20 pages of the Subiaco Post newspaper.

PUBLIC APOLOGY

1. *A Complaint has been made to the Local Government Standards Panel, in which it was alleged that I contravened a provision of the Local Government (Rules of Conduct) Regulations 2007 by sending an email to three councilors of the City in which I made allegations concerning Ms Kathleen Bonus.*
2. *The Local Government Standards Panel has considered the Complaint, and has made a finding of a minor breaches of regulations 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 against me by sending the email.*
3. *I accept that I should not have sent that email to the councilors of the City and apologise to Ms Bonus and my fellow councillors for having done so”*

Mark Burns