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## Local Government Standards Panel

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Complaint Number	SP 19,20 and 22 of 2018 [DLGSC20180254, DLGSC20180267, DLGSC20180269]
Legislation	<i>Local Government Act 1995</i>
Complainant	<b>Mr Kieran Emery</b> <b>Mr Thomas Carlin</b> <b>Ms Lorna Hardy</b>
Respondent	<b>Councillor Steve Kepert</b>
Local Government	<b>City of Melville</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Councillor P Kelly (Member) Mrs E Power (Member)
Heard	4 September 2018 Determined on the documents
Finding	Three (3) Breaches of Regulation 7(1)(b)

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### FINDING AND REASONS FOR FINDING

Delivered 1 October 2018

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#### 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. In relation to each of the three complaints made, the Panel found on 4 September 2018 that Councillor Steve Kepert, a councillor of the City of Melville (**"the City"**) did commit a minor breach under the Local Government Act 1995 (WA) (**"the Act"**) and regulation 7 of the Local Government (Rules of Conduct) Regulations 2007 (**"the Regulations"**) when he posted various Facebook comments on 28 January 2018 on:
  - a. the Melville City Chat Facebook page;
  - b. his personal Facebook Page; and
  - c. Cr Karen Wheatland's Facebook page,as further described in paragraph 17 to paragraph 22 inclusive 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.<sup>1</sup>
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.<sup>2</sup>
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 accurate<sup>3</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>4</sup>.
7. The Panel does not possess investigative or supervisory powers.<sup>5</sup> The Panel makes decisions about complaints regarding minor breaches solely upon the evidence 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 Australia<sup>6</sup>.

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<sup>1</sup> Section 5.105 of the Act

<sup>2</sup> Section 5.106 of the Act

<sup>3</sup> *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

<sup>4</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336

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

<sup>6</sup> Section 8(6) of Schedule 5.1 of the Act



10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

### **Regulation 7**

11. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for either themselves or another party or cause detriment to another party and specifically provides as follows:

#### ***“7. Securing personal advantage or disadvantaging others***

- (1) *A person who is a council member must not make improper use of the person’s office as a council member —*
- (a) *to gain directly or indirectly an advantage for the person or any other person; or*
  - (b) *to cause detriment to the local government or any other person.*
- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*

### **Jurisdiction and Procedural Fairness**

12. The Panel received three separate complaints regarding Cr Kepert forwarded by Mr Marten Tieleman, the Complaints officer of the City (**“the Complaints Officer”**) as follows:
- a. on 13 March 2018 a letter from the Complaints Officer dated 12 March 2018 enclosing a Complaint of Minor Breach Form dated 6 March 2018 with attachments completed by Mr Kieran Emery (**“Complaint 1”**);
  - b. on 15 March 2018 a letter from the Complaints Officer dated 14 March 2018 enclosing a Complaint of Minor Breach Form dated 16 February 2018 with attachments completed by Mr Thomas Carlin (**“Complaint 2”**); and
  - c. on 15 March 2018 a letter from the Complaints Officer dated 14 March 2018 enclosing a Complaint of Minor Breach Form dated 11 March 2018 with attachments completed by Ms Lorna Hardy (**“Complaint 3”**),
- (together **“the Complaints”**).
13. Each complaint refers to the same series of conduct by Cr Kepert and the Panel has decided it is appropriate to deal with the alleged breaches in one decision.
14. The Complaints Officer confirmed that a copy of the Complaints had been sent to Cr Kepert setting out the specifics of the alleged conduct and minor breaches.
15. The Panel convened on 4 September 2018 to consider the Complaints.
16. The Panel:
- a. accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission’s website, that Cr Kepert was:
    - i. last elected to the Council of the City in October 2017 for a term expiring in October 2021;
    - ii. a City Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 4 September 2018;



- b. was satisfied the Complaints were made within two years after the alleged breach occurred<sup>7</sup>;
- c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements of the Act for dealing with complaints of a minor breach<sup>8</sup>;
- d. was satisfied the Department had provided procedural fairness to Cr Kepert; and
- e. found it had jurisdiction to consider the Complaint.

### The Specifics of the Complaints

17. In Complaint 1, Mr Emery alleges that Cr Kepert breached regulation 7 of the Regulations when he posted certain Facebook messages on 28 January 2018 and, in particular, that:
  - a. Cr Kepert made overt threats to the reputation of Mr Thomas Carlin, the administrator of the "Melville City Chat" Facebook Page; and
  - b. Cr Kepert's actions were extremely damaging to Mr Carlin's standing in the community and as a respected real estate agent.
18. The specific posts by Cr Kepert referred to in Complaint 1 were made 28 January 2018 were comments posted as responses on the Melville City Chat Facebook page as follows:
  - a. Post 1:

**" Steve Kerpert  
Tom Carlin Are you sure you want to damage your reputation in the Melville area? This is obscene. Remove these trolls immediately or I consider you to be complicit in the facilitation of cyber bullying in our community."**
  - b. Post 2:

**" Steve Kerpert  
Tom Carlin Absolutely disgusting behaviour. You've made a very big mistake Tom. You have crossed the line and are facilitating cyber bullying. As a community leader I have to recommend to the residents that they will be unsafe on your page."**
19. In Complaint 2, Mr Carlin alleges that Cr Kepert breached regulation 7 of the Regulations when he posted certain Facebook messages on 28 January 2018 and, in particular, that:
  - a. Cr Kepert accused Mr Carlin of engaging in cyber bullying;
  - b. Cr Kepert identified Mr Carlin by name, by reference to his role as "admin" of the Melville City Chat Facebook Page and also as a local real estate agent;
  - c. Cr Kepert's actions were damaging to Mr Carlin's personal and professional reputation and business; and
  - d. Cr Kepert engaged in public abuse of Mr Carlin and implied that he was either a nutter or a troll or both.
20. The specific Facebook posts referred to in Complaint 2 are as follows:

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<sup>7</sup> Section 5.107(4) and 5.109(2) of the Act

<sup>8</sup> Section 5.107 and 5.109 of the Act



- a. Post 3A made on Cr Kepert's personal Facebook page and repeated (Post 3B) on Cr Kepert's Councillor Facebook Page as follows:
- “ Dear friends and Melville community, as a community leader I must act on the explosion in cyber bullying in the Melville community. It is being perpetrated by individuals poised to benefit from Melville Council matters and members of certain political parties.*
- Concerned for community safety I advise people not to engage on these pages.*
- I consider Melville City Chat, administered by real estate agent Tom Carlin, to facilitate cyber bullying in the community. Melville Community Chat is administered by a fake profile dame Jamie Kay (formerly Jamie Krakour) and was obviously purpose-built to slander anyone critical of the Melville City's operations and certain elected members.*
- I advise all users to leave these pages immediately. Please share in your networks.*
- Councillor Steve Kepert*  
*City of Melville* ”
- b. Post 1 and Post 2 referred to in paragraph 18 above;
- c. Post 4 being a reply to a post on another councillor (KW)'s Facebook page as follows:
- “ **Steve Kepert**  
Absolutely disgusting behaviour by Tom Carlin. He is about to find out how well connected we are. ”*
- d. Post 5 being a comment on KW's Facebook page as follows:
- “ **Steve Kepert**  
Yes, sadly cyber bullying is rife in Melville and nurtured by a few nutters who can't stand democracy. I intend to draw bigger attention to this issue and point out the neighbourhood trolls. ”*
21. In Complaint 3, Ms Lorna Hardy alleges that Cr Kepert breached regulation 7 of the Regulations when he posted certain Facebook messages on 28 January 2018 and, in particular, that:
- a. Cr Kepert breached the City of Melville's Code of Conduct for expected behaviour by:
- failing to act with respect, dignity and integrity; and
  - in engaging in bullying, harassment, discrimination, unwarranted offence or embarrassment;
- b. Cr Kepert is argumentative, intimidating, abusive and unpleasant in a public forum when comments or opinions are different to his own; and
- c. Cr Kepert has directed this behaviour towards Mr Carlin to cause detriment.
22. Complaint 3 also attaches Post 4 as described in Paragraph 20.c above.

### **Respondent's Response**

23. By an email dated 26 June 2018 Cr Kepert provided a response to the Complaints.
24. Cr Kepert denies any breach occurred in relation to the Complaints.



25. In relation to Complaint 1 Cr Kepert makes the following arguments:
- a. there is no supporting documentation or substance or any source of any alleged incident;
  - b. the date of the incident claimed on the breach form is indistinct and incorrect;
  - c. the claim that Cr Kepert made “overt threats” and was “threatening” are completely false and vexatious;
  - d. the complaint is false and vexatious and it is unknown what Mr Emery is accusing Cr Kepert of in the complaint;
  - e. it is unclear how making “overt threats” and being “threatening” constitutes creating a disadvantage to others as contemplated by the Act. Mr Emery has not demonstrated how Regulation 7 is breached;
  - f. the images supplied are taken on a mobile phone, the source is unknown and are unable to be verified for authenticity. In addition, the images are incomplete;
  - g. the images supplied also show abusive language from Mr Carlin, Ms Hardy and Mr John Staunton. The profile of Mr John Staunton is fake and was subsequently removed from Facebook;
  - h. Mr Emery is an extremely strong and vocal supporter of certain projects in the City and of the Liberal Party;
  - i. the Melville Community Chat Facebook page was created by fake profiles in the lead up to the Local Government Elections in October 2017 and it continues to be administered by fake and anonymous profiles;
  - j. Mr Emery was one of the first profiles to be added to the Melville Community Chat page and he has been extremely active in its promotion and growth; and
  - k. Cr Kepert has blocked Mr Emery from several Facebook pages he administers due to recurrent abuse. He has created multiple profiles to continue trolling activities.
26. In relation to Complaint 2 Cr Kepert makes the following comments:
- a. the date of the “incident” is shown as “on or about 28<sup>th</sup> January 2018”, as such, the basis of the complaint cannot be verified for authenticity and relevance;
  - b. the screen shots provided showing the Facebook Posts are from an unknown source and cannot be verified for authenticity and relevance;
  - c. Mr Carlin has not demonstrated or made clear how the incident has been “damaging” to his reputation;
  - d. he has made an attempt to verify the supporting documentation but cannot locate the same on the Melville City Chat Facebook page, of which Mr Carlin is the sole administrator;
  - e. the images provided by Mr Carlin appear to contain abusive language toward Cr Kepert;
  - f. on the Melville City Chat page, Mr Carlin personally and very publicly ridiculed members of the Melville community who attempted to contact him over the level of abuse on his page;
  - g. Mr Carlin resides in close proximity to the proposed wave park project at Tompkins Park and is a potential beneficiary of the project;



- h. Mr Carlin has accused him of identifying him as a real estate agent and this is true;
  - i. Mr Carlin's claims that the posts were "*damaging to my reputation and business both personally and professionally*" is not supported by any evidence and therefore regulation 7 has not been breached;
  - j. Mr Carlin's claims as to what pages Cr Kepert posted on are unclear.
  - k. there is no evidence that Cr Keeper engaged in "*further public abuse on the Melville City Chat public page*" as is claimed;
  - l. image D provided with Complaint 2 (showing Post 4) also contains a statement by Mr Carlin that Cr Kepert did not have the decency to message him. This is a false statement;
  - m. Mr Carlin has made comments where he considers "*himself to hold himself better than I*" (sic) and labels him hypocritical. Cr Kepert rejects these accusations; and
  - n. it is false that Cr Kepert implied that Tom Carlin was a nutter or a troll.
27. In relation to Complaint 3 Cr Kepert makes the following comments:
- a. Ms Hardy only mentions "January 2018" as the date of the incident and therefore it is inconclusive what she is referring to in the complaint;
  - b. it is incorrect that Cr Kepert has breach regulation 7 of the Regulations;
  - c. Ms Hardy's complaint is handwritten and illegible and the same is vexatious and without basis;
  - d. Ms Hardy has included in the supplied screenshot (showing Post 4) comments that are abusive towards Cr Kepert by Mr Carlin;
  - e. Ms Hardy is an extremely strong and vocal supporter of certain projects in the City and of the Liberal Party;
  - f. the Melville Community Chat Facebook page was created by fake profiles in the lead up to the Local Government Elections in October 2017 and it continues to be administered by fake and anonymous profiles;
  - g. Ms Hardy was one of the first profiles to be added to the Melville Community Chat page and he has been extremely active in its promotion and growth; and
  - h. Cr Kepert has blocked Ms Hardy from several Facebook pages he administers due to recurrent abuse.

### Panel's Consideration

28. The Complaints do not allege that Cr Kepert secured any advantage to himself or other person, but that he caused Mr Carlin to suffer a detriment. As such, the relevant regulation to be considered is 7(1)(b).
29. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied that:
  - a. Cr Kepert was a councillor at the time of the alleged breach and the time of the determination; and
  - b. Cr Kepert made use of his office as Council member of the City;



- c. when viewed objectively, such use was an improper use of Cr Kepert's office in that:
    - i. it involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons<sup>9</sup>; and
    - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty<sup>10</sup>; and
  - d. Cr Kepert engaged in the conduct in the belief that detriment would be suffered by another person.
30. For the purposes of clarification, the Panel considers that it is more likely than not that:
- a. the screenshots of the various posts supplied by the Complainants are accurate; and
  - b. Cr Kepert made the posts in question.
31. This is supported by the fact several of the posts are replicated in the Complaints. In addition, several of the relevant Posts still appear publicly on Facebook.
32. Cr Kepert's assertions that the source of the screenshots and posts "*cannot be verified for authenticity and relevance*" are not compelling. The Panel notes, however, that Cr Kepert does not outright deny he made such posts and comments.
33. Further, Cr Kepert has made many assertions that are simply not relevant to these proceedings and show a fundamental misunderstanding of the nature of the Complaints and regulation 7(1) of the Regulations.

#### Was Cr Kepert a Councillor at the relevant times

34. Cr Kepert was a councillor at the time of the alleged breaches and at the date the Panel considered the Complaints.

#### Cr Kepert made use of his office as Council member of the City:

35. The Posts the subject of the Complaints are made both from Cr Kepert's personal Facebook profile and his Councillor Facebook profile.
36. Post 3B is made using Cr Kepert's Councillor Facebook profile and is, without question, made in his capacity as a council member for the City.
37. In Post 1, Post 2, Post 3A, Post 4 and Post 5 Cr Kepert is posting using his personal Facebook profile.
38. However, even while using this profile it is inferred that he is discussing the matter in his capacity as councillor as:
- a. Post 1 and Post 2 are comments on a thread of Melville City Chat where he was highly likely to be recognised in his capacity as a councillor of the City. He is, in fact, identified as a councillor in subsequent comments by third parties;
  - b. further, in Post 1 Cr Kepert refers to "our community" and in Post 2 (posted shortly after Post 1) he mentions his role as a "community leader";
  - c. in Post 3A he specifically signs off as "Councillor Steve Kepert"; and
  - d. Post 4 and Post 5 are written as responses to a post made by Cr Kepert on KW's councillor Facebook Page (in relation to the same matter of online behaviours in

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<sup>9</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81 at [26] – [34]

<sup>10</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48 at [9]





the Melville community and the Melville City Chat page). It is reasonable to presume that Cr Kepert was making such comments in his capacity as a local councillor in support of that councillor.

39. All of the above indicate that all such posts were made in Cr Kepert's capacity as a councillor of the City.
40. Given the above, the Panel finds, to the required standard, that any reasonable person would conclude that for the purposes of all the Complaints, Cr Kepert was acting in his role as councillor and therefore making use of his office as a council member.

#### Cr Kepert's use was improper

41. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom<sup>11</sup>.
42. Impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of that person's position as a councillor and the circumstances of the case<sup>12</sup>.
43. It requires unsuitable or inappropriate behaviour that a councillor knew (or ought to have known) was not authorised.
44. 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<sup>13</sup>.
45. In addition, any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context. Such context will include the specifics of the relevant event as well as councillor's formal role and responsibilities.
46. It is clear that there were ongoing issues in relation to Cr Kepert, other councillors of the City, the Melville City Chat Facebook Page and other Facebook chat sites and that concerns were held as to online behaviours in the community.
47. The role of a councillor includes "representing the interests of electors, ratepayers and residents of the district, providing leadership and guidance to the community in the district"<sup>14</sup>. However, in undertaking this role a councillor must act in accordance with their fiduciary duties and any relevant code of conduct.
48. The City has a Code of Conduct for Elected Members (Policy CP-041) adopted by the Council 18 March 2014 ("**the Code**") which prescribes guidelines for dealing with others (including members of the public) including the following specific provisions:

- a. "**1.4.6 Respect**

*To treat people with respect, courtesy and sensitivity and recognise their interests, rights, safety and welfare."*

- b. "**2.1 PERSONAL BEHAVIOUR**

*Elected Members will:*

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<sup>11</sup> Complaint of Minor Breach No. SP 3 of 2013

<sup>12</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59

<sup>13</sup> *Chew v R* [1992] HCA 18

<sup>14</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81 at [27] and *Hipkins and Local Government Standards Panel* [2014] WASAT 48 at [8] to [11]



(a) *act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;*

.....

(d) *make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and....”*

c. **“3.5 BEHAVIOUR OF MEMBERS**

*Elected Members should make no allegations which are improper or derogatory. In the performance of their official duties they should refrain from any form of conduct which may cause any reasonable person unwarranted offence or embarrassment.”*

49. The language used in the various Posts is intimidating and can be construed both as threatening and intending to damage Mr Carlin. In particular, the following comments directed to Mr Carlin are of concern:
- “Tom Carlin Are you sure you want to damage your reputation in the Melville area?”;*
  - “You’ve made a very big mistake Tom”;*
  - “I have to recommend to the residents that they will be unsafe on your page.”;* and
  - “He is about to find out how well connected we are.”.*
50. Several comments are also derogatory and specifically focused on Mr Carlin’s actions such as:
- “This is obscene”;*
  - “Absolutely disgusting behaviour.”;* and
  - “Absolutely disgusting behaviour by Tom Carlin”.*
51. The above comments are not in keeping with Cr Kepert’s obligations pursuant to the Code to act with respect and courtesy and not to cause unwarranted offence or embarrassment.
52. If Cr Kepert’s aim was to raise concern in the local community as to dangerous online activities, this could have been done in a respectful manner without using Mr Carlin’s name or directing aggressive and negative comments directly to Mr Carlin. As such, the manner in which the comments were made was unwarranted.
53. In respect to Compliant 1, Compliant 2 and Complaint 3, the Panel considers that Cr Kepert’s Facebook posts are of such a nature that a reasonable individual would consider the same to:
- be inappropriate;
  - constitute an improper use of Cr Kepert’s position; and
  - be deserving of a penalty.

Cr Kepert intended detriment to be suffered by another person

54.

55.



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 or disadvantage.
57. Irrespective of the observations in Cr Kepert’s response, it is not necessary to find whether any detriment was actually suffered<sup>15</sup> and only an intent to cause detriment must be established.
58. In Post 1, Post 2, Post 3A, Post 3B and Post 4 Cr Kepert mentions, or makes comments directly to, Mr Carlin.
59. In Post 3A and 3B Cr Kepert also specifically identifies Mr Carlin as a local business owner and uses language that a reasonable person would see either as threatening the reputation of Mr Carlin or as being derogatory.
60. The Panel finds that it is more likely than not that in Post 1, Post 2, Post 3A and 3B and Post 4 Cr Kepert did intend to single Mr Carlin out for derision and humiliation and to thereby cause detriment.
61. The Panel does not consider, however, that Post 5 can, to the required standard, be seen as Cr Kepert specifically targeting Mr Carlin to cause a detriment. Such Post is much more general in nature and does not mention Mr Carlin.
62. The Panel finds that it is more likely than not that, for the purposes of Complaint 1, Complaint 2 and Complaint 3, the Facebook posts were intended by Cr Kepert to cause a detriment to Mr Carlin.

### Conclusion

63. Given the above the Panel finds as follows:
  - a. Complaint 1 – the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met and Cr Kepert did commit a minor breach;
  - b. Complaint 2 – the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met and Cr Kepert did commit a minor breach; and
  - c. Complaint 3 – the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met and Cr Kepert did commit a minor breach.

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<sup>15</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



**Panel's Finding**

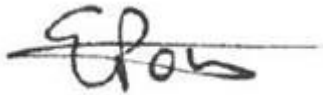
64. Cr Kepert did commit three breaches of regulation 7(1)(b) of the Regulations.



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Sheryl Siekierka (Presiding Member)



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Paul Kelly (Member)



Dated 1 October 2018



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## Local Government Standards Panel

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Complaint Number	SP 20 of 2018 [DLGSC 20180267]
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Mr Thomas Carlin</b>
<b>Respondent</b>	<b>Councillor Steve Keppert</b>
Local Government	<b>City of Melville</b>
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mrs Emma Power (Presiding Member) Councillor Paul Kelly (Member) Mr Mark Beecroft (Member)
Heard	4 September 2018 Determined on the documents
Penalty Considered	8 November 2018
Outcome	Public Apology

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### PENALTY DECISION AND REASONS FOR DECISION

Published 20 November 2018

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#### 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 4 September 2018, the Panel found that Councillor Steve Keppert, a Councillor for the City of Melville (“**the City**”) committed one breach of Regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* (“**the Regulations**”) when he posted various Facebook messages on 28 January 2018 (“**the Minor Breach**”).

## Jurisdiction

2. The Panel convened on 8 November 2018 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 Keppert had ceased to be, or was disqualified from being, a councillor.

## Possible Sanctions

4. 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) *dismissing the complaint;*
  - (b) *ordering 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) *ordering 2 or more of the sanctions described in paragraph (b).*

## Councillor Keppert’s Submissions

5. 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).<sup>1</sup>
6. By letter dated 2 October 2018, Cr Keppert 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

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<sup>1</sup> *Local Government Act 1995 (WA)*, s 5.110(5).



- 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*.
7. By email dated 16 October 2018, the Department received a response from Cr Keppert stating that he believes the Minor Breach should be dismissed:
  - a. as the Panel claims under the Panel's role that it "does not possess investigative or supervisory powers" yet it appears to have done so;
  - b. for various reasons, the strong conclusions that were made by the Panel were based on the very weak information with which it was provided;
  - c. as one of the complainants did not even submit a form and this was taken as legitimate;
  - d. due to the discrepancies between this outcome and another from a very similar complaint; and
  - e. as he was of the belief that he would have the opportunity to "face" the Panel and answer any questions and as such, only provided a response which specially addressed the information provided by the complainants and did not provide periphery, yet relevant, information that he believed would lead to a different finding.
8. Further, Cr Keppert states that he intends to appeal the matter to the State Administrative Tribunal.

### **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. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel's finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor's name.
10. The Panel notes that Cr Keppert does not agree with the Panel's findings of a breach nor make any apology for the same.
11. The Panel considers that Cr Keppert's submissions do not address the consideration of penalty, but are concerned with disputing the Panel's decision.
12. Regulation 7(1)(b) is intended to prevent conduct by Elected Members that in the particular circumstances would be a breach of the standards that would be expected of persons in the position of councillor and may cause a detriment to other parties.
13. The Panel found that in all the circumstances that Cr Keppert's conduct:
  - a. breached various provisions of the Code of Conduct for Elected Members (Policy CP-041) adopted by the Council 18 March 2014 in relation to councillors' interactions with other parties;
  - b. was intimidating and could be construed to threaten and cause a detriment to a member of the public;
  - c. was of such a nature that a reasonable individual would consider the same to:
    - i. be inappropriate;
    - ii. constitute an improper use of Cr Keppert's position; and



- iii. be deserving of a penalty.
  - d. was intended to cause a detriment to the member of the public in the form or derision and humiliation.
14. The Panel notes that Cr Keppert has acted as a councillor for only a short period of service. He has recently been found to have committed another two additional minor breaches for the first time for the same series of conduct.
15. It is not appropriate to dismiss the Minor Breach as this would condone Cr Keppert's conduct and trivialise the breach.
16. The Panel has considered all available sanctions under section 5.110(6) and also took into account the fact that the Panel, on the same date, considered sanctions against Cr Keppert for two further minor breaches.
17. In these circumstances, the Panel considers that the conduct is deserving of a penalty being that Cr Keppert make a public apology.
18. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when a councillor's conduct:
- a. adversely affects particular individuals<sup>2</sup>; or
  - b. does not meet the standards other councillors seek to uphold.

#### **Panel's decision**

19. The Panel orders pursuant to section 5.110(6)(b)(ii) and section 5.110(c) of the Act that, in relation to the breach of regulation 7(1) of the Regulations, Cr Keppert make a public apology in terms of the attached Order.

#### **Signing**

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Emma Power (Presiding Member)

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Paul Kelly (Member)

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Mark Beecroft (Member)

Date of Decision and Reasons 20 November 2018

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<sup>2</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).





### Attachment

Complaint Number	SP 20 of 2018 [DLGSC 20180267]
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Mr Thomas Carlin</b>
<b>Respondent</b>	<b>Councillor Steve Keppert</b>
Local Government	<b>City of Melville</b>
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members	Mrs Emma Power (Presiding Member)
Penalty Consideration	Councillor Paul Kelly (Member) Mr Mark Beecroft
Heard	4 September 2018 Determined on the documents
Penalty Considered	8 November 2018
Outcome	Public Apology

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### ORDER

Published 20 November 2018

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#### DEFAMATION CAUTION

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



## THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Steve Keppert, a Councillor for the City of Melville publicly apologise to Mr Tom Carlin, the public and his fellow City Councillors, as specified in paragraph 2 below.
2. On the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Councillor Keppert shall:
  - a. attend the relevant ordinary council meeting;
  - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
  - c. 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
  - d. 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 the Local Government (Rules of Conduct) Regulations 2007 (WA) on 28 January 2018:
  - A. firstly, when I made a post both on my personal and councillor Facebook pages that named Mr Tom Carlin as the administrator of Melville City Chat and stated that such group facilitated cyber bullying and was unsafe;
  - B. secondly, when I posted various comments in my capacity as local councillor on the Melville City Chat Facebook page that:
    1. named Mr Tom Carlin personally and accused Mr Carlin in being complicit in the facilitation of cyber bullying;
    2. stated that Mr Tom Carlin's behaviour was disgusting; and
    3. stated that Mr Carlin had made a big mistake, crossed the line and that I would recommend to residents that they would be unsafe on the Melville City Chat Facebook Page; and
  - C. thirdly, when I posted a comment on another Councillor's Facebook Page stating that Tom' Carlin's behaviour was disgusting and that he was about to find out how connected we were.
- ii. The Panel found that by posting the relevant comments I made improper use of my office as a Councillor with the intention of causing detriment to Mr Tom Carlin thereby committing a breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (WA).
- iii. I accept that I should not have posted the comments directed at Mr Carlin personally and that such comments were inappropriate in content.
- iv. I now apologise to Mr Carlin, the public and my fellow Councillors."

Date of Order 20 November 2018



## 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."*