



Local Government Standards Panel

Complaint Number	SP 2022-0020
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Donald Mervyn Green
Respondent	Councillor Michael Separovich
Local Government	City of Cockburn
Regulation	Regulation 20 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Mr Tim Fraser (Presiding Member) Ms Elanor Rowe (Deputy Member) Councillor Peter Rogers (Member)
Heard	7 April 2022 Determined on the documents
Finding	1 x Breach of Regulation 20(2)(b)

FINDING AND REASONS FOR FINDING

Delivered 29 September 2022

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. The Local Government Standards Panel ("the Panel") found that Councillor Michael Separovich ("Cr Separovich"), an elected member for the City of Cockburn ("the City") committed one breach under the *Local Government Act 1995* (WA) ("the Act") and Regulation 20(2)(b) of the *Local Government (Model Code of Conduct) Regulations 2021* ("Regulations") when he threatened the City's Complaints Officer in relation to a minor breach complaint that was made against him by a member of the public.

Jurisdiction and procedural fairness

2. The Act makes provision for the circumstances in which a council member commits a minor breach.¹
3. On 17 December 2021, the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form ("Complaint"). The Complaint was signed by Mr Donald Mervyn Green ("the Complainant") and contained one allegation of a breach of Regulation 20(2)(b) by Cr Separovich when he threatened the City's Complaints Officer in relation to a minor breach complaint that was made against him by a member of the public.
4. On 9 February 2022, the Department advised Cr Separovich of the Complaint and invited him to respond. The Department sent Cr Separovich copies of the original Complaint and all the supporting documents provided by the Complainant.
5. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.² On 7 April 2022 the Panel convened to consider the Complaint.
6. The Panel:
 - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Cr Separovich was a councillor at the time of the alleged breach, and was still a Councillor when the Panel met on 7 April 2022;
 - (b) was satisfied the Complaint had been made within six months after the alleged breach is said to have occurred³;
 - (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches⁴; and
 - (d) was satisfied that the Department had provided procedural fairness to Cr Separovich.
7. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting

¹ Section 5.105 of the Act.

² Section 5.110(2)(a) of the Act.

³ Section 5.107(4) of the Act

⁴ Sections 5.107, 5.108, 5.109 of the Act.



the relevant Minister at the time instead of considering the Complaint itself.⁵ Cr Separovich had not previously been found to have committed any minor breaches of the Regulations. He had been found to have committed six minor breaches of the former *Local Government (Rules of Conduct) Regulations 2007* that preceded the current Regulations. On this occasion, the Panel decided to not send the Complaint to the Chief Executive Officer of the Department.

8. Based on the information referred to in paragraphs 3 to 7 above, the Panel found it had jurisdiction to determine whether Cr Separovich had breached Regulation 20 in connection with the Complaint.

Panel's role

9. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
10. Any finding, that a councillor has committed a minor breach, must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).⁶
11. In order to find the allegation, proposition or conduct has been established, and where direct proof is not available, the Panel must be satisfied from the evidence that it is more probable than not that it has occurred. The Panel cannot make a finding that the alleged fact, proposition, or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.⁷
12. For a finding that a councillor has breached a particular regulation, the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

Regulation 20(2)(b)

13. Regulation 20 regulates Councillors' interactions with local government employees. In this case, it was alleged that Cr Separovich had breached Regulation 20(2)(b):

"20. Relationship with local government employees

(1) In this clause —

***local government employee** means a person —*

- (a) employed by a local government under section 5.36(1) of the Act; or*
- (b) engaged by a local government under a contract for services.*

(2) A council member or candidate must not —

⁵ Sections 5.110(2)(b), 5.111(1) of the Act.

⁶ Section 5.106 of the Act.

⁷ *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.



-
- (b) *attempt to influence, by means of a threat or the promise of a reward, the conduct of a local government employee in their capacity as a local government employee;”*

Elements of Regulation 20(2)(b)

14. The essential issues or elements which need to be satisfied in order for a contravention of Regulation 20(2)(b) to have occurred are that it is more likely than not that the person against whom the Complaint was made:

- a. was a councillor at the time of the alleged breach;
- b. attempted to influence, by means of a threat or the promise of a reward, the conduct of a local government employee; and
- c. the employee was acting in their capacity as a local government employee at the time of the alleged misconduct.

15. The word “*threat*” has the following meaning:

“a suggestion that something unpleasant or violent will happen, especially if a particular action or order is not followed.”⁸

Substance of the Complaint

16. At 11.44am on Monday, 15 November 2021, the Complainant sent Cr Separovich an email (“First Email”) advising him that a complaint (“Minor Breach Complaint”) had been lodged against him by a member of the public. At the time, the Complainant was the City’s Complaints Officer. A copy of the First Email is as follows:

On Mon, 15 Nov 2021, 11:44 am Don Green, <don@cockburn.wa.gov.au> wrote:

Dear Michael

Please find attached a Minor Breach Complaint lodged against you from a member of the public. The Complaint has been forwarded to the Local Government Standards Panel in accordance with the statutory requirements.

Regards

Don Green
Executive Governance and Strategy
P 08 9411 3444
E don@cockburn.wa.gov.au

17. The Complainant had sent the First Email in accordance with Section 5.107(3)(b) of the Act:

“5.107. Complaining to complaints officer of minor breach

⁸ Cambridge Dictionary online



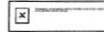
(3) *Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to*

.....

(b) *give to the council member about whom the complaint is made a copy of the complaint.”*

18. At 12.21pm on the same day, Cr Separovich sent the following response to the Complainant (“Second Email”):

From: Michael William Separovich <michael.separovich@gmail.com>
Sent: Monday, 15 November 2021 12:21 PM
To: Don Green <don@cockburn.wa.gov.au>
Subject: Re: FW: Complaint of Minor Breach - Cr Michael Separovich



External Email: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Hi don.

How exactly are the results of the election and the state administrative tribunal throwing out your past complaints considered to be me securing personal advantage?

Have you learnt nothing from the past complaints that have been thrown out?

As these complaints quite clearly do not constitute a breach, i will be regarding this as yet another vexatious complaint that has been approved by you.

If by chance theres another presiding member of the standards panel who has the same lack of standards as michael connolly and i end up having to beat this in the SAT AGAIN. I will not be asking for the ratepayers of cockburn to be reimbursing my legal costs. I will be asking for you personally to refund them, as you should have known better than to have lodged such a ridiculous complaint.

19. In the Second Email, Cr Separovich questioned the Complainant’s role in the minor breach complaints process and stated as follows:

“I will be regarding this as yet another vexatious complaint that has been approved by you”.

20. In relation to any potential legal costs Cr Separovich might incur in relation to the Minor Breach Complaint itself, he went on to state:

“I will be asking for you personally to refund them, as you should have known better than to have lodged such a ridiculous complaint”.

21. At 12.35pm, the Complainant sent an email (“Third Email”) to Cr Separovich stating that the Complaint remained confidential until the Panel had dealt with the matter:

On Mon, 15 Nov 2021, 12:35 pm Don Green, <don@cockburn.wa.gov.au> wrote:

Dear Michael

Please note that this Complaint remains **confidential** until the Standards Panel has dealt with the matter and it is otherwise an offence to disclose information about the Complaint in the meantime.

Regards

Don Green
Executive Governance and Strategy
P 08 9411 3444
E don@cockburn.wa.gov.au



22. Cr Separovich responded at 12.43pm (“Fourth Email”) and informed the Complainant that he had disclosed the lodgement of the Minor Breach Complaint to some of his other fellow elected members. The reason he gave for doing so was that *“it is pertinent to the elected members decision of who they appoint as complaints officer”*.

From: Michael William Separovich <michael.separovich@gmail.com>
Sent: Monday, 15 November 2021 12:43 PM
To: Don Green <don@cockburn.wa.gov.au>
Subject: Re: FW: Complaint of Minor Breach - Cr Michael Separovich



External Email: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Oh ive disclosed it to some fellow elected members as it is pertinent to the elected members decision of who they appoint as complaints officer. Im wondering why you still have this position and why the responsibility of complaints officer wasnt given to emma milne when she resumed her position of executive of governance and strategy.

23. The Complainant responded to Cr Separovich at 12.51pm (“Fifth Email”). In the Fifth Email, he provided further information in relation to the Minor Breach Complaint. The Complainant also made the point that Cr Separovich’s reaction to the matter was entirely inappropriate and that his behaviour may represent a further breach.

On Mon, 15 Nov 2021, 12:51 pm Don Green, <don@cockburn.wa.gov.au> wrote:

Michael

The allegation is for “securing personal advantage or **disadvantaging others**”. The latter is the intent of the Complaint.

However, by your threatening response to me highlighted below, I will consider a further Complaint to be lodged against you for an allegation of a breach related to Regulation 20 “Relationship with local government employees”.

As previously mentioned, these matters are **confidential** until dealt with by the Panel, so I suggest you do not engage in any further correspondence with me until you are otherwise advised.

24. Cr Separovich responded at 12.54pm (“Sixth Email”). In reference to the Complainant, he stated that *“the only one that has been using their office for advantage would be the one using it to lodge vexatious complaints”*.

Don Green

From: Michael William Separovich <michael.separovich@gmail.com>
Sent: Monday, 15 November 2021 12:54 PM
To: Don Green
Subject: Re: FW: Complaint of Minor Breach - Cr Michael Separovich
Attachments: image004.png



External Email: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Don the only one that has been using their office for advantage would be the one using it to lodge vexatious complaints.

Also, it has been 7 weeks and i still havent seen anything regarding having my \$605 reimbursed from beating your last round of baseless complaints.



25. At 1.20pm, the Complainant sent Cr Separovich an email (“Seventh Email”) and explained that it was the Chief Executive Officer of the City that was responsible for designating who the City’s Complaints Officer was, and not the Council. The Complainant also stated that Cr Separovich should desist from making inflammatory remarks which could result in more Complaints being lodged against him.

On Mon, 15 Nov 2021, 1:20 pm Don Green, <don@cockburn.wa.gov.au> wrote:

Michael

Please note that is Section 5.120 of the Act which provides that the CEO (not Council) now designates who is to be the Complaints Officer. Again, disclosing this information now represents a potential (serious) breach by you which I will need to consider. I would strongly urge you to restrict any responses to this matter to formally responding to the complaint when contacted by the Panel.

Thanks

Don Green
Executive Governance and Strategy
P 08 9411 3444
E don@cockburn.wa.gov.au



26. In a final email at 1.46pm (“Eighth Email”), Cr Separovich responded by claiming that the Complainant had continued to lodge baseless and “*ridiculous complaints*” against him. He also stated:

“Its going to be very entertaining to watch the standards panel try to justify that defeating their baseless findings in the state administrative tribunal is using my office to disadvantage the people lodging complaints.”

From: Michael William Separovich <michael.separovich@gmail.com>
Sent: Monday, 15 November 2021 1:46 PM
To: Don Green
Subject: Re: FW: Complaint of Minor Breach - Cr Michael Separovich
Attachments: image004.png



External Email: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Leaving you with... 6 or 7 months to continue lodging ridiculous complaints that you know have no basis?

I dont think i would be doing my job of providing good governance to the city if i left such a glaring issue untended for so long.

I'm not mad though. Its going to be very entertaining to watch the standards panel try to justify that defeating their baseless findings in the state administrative tribunal is using my office to disadvantage the people lodging complaints.

I still want my \$605 reimbursed by the way. Read the policy if you have to.

27. The Complainant submitted that Cr Separovich regards him as a personal opponent who has used his role as Complaints Officer in a biased manner against him specifically. Cr Separovich continues to be “*oblivious to proper standards of decency*” and cannot contain his inflammatory remarks and statements made towards the Complainant.

28. The Complainant had endeavoured to remain professional and courteous in his interactions with elected members at all times, despite having endured “*continuous anti-social remarks*” by Cr Separovich. In this case, Cr Separovich clearly suggested in a threatening manner that he would be asking the Complainant to personally refund any legal costs he incurred in having “*to beat this in the SAT again*”.



29. The Complainant stated that he would be shortly retiring, and therefore the role of Complaints Officer would be transferred to another executive staff member at the City. The Complainant believed that if Cr Separovich was the subject of future Complaints, then whoever takes on the role of Complaints Officer would find such direct attacks unnerving and unsettling.

Cr Separovich's Response

30. On 9 February 2021, the Panel requested comment from Cr Separovich. Cr Separovich did not respond within the required period of time. Further emails were sent to Cr Separovich, requesting comment. However, Cr Separovich still did not respond.

Panel's Consideration

31. In this case, the Panel finds that the essential elements of Regulation 20(2)(b) have been satisfied:

- a. Cr Separovich was a Councillor at the time of the alleged misconduct, on 15 November 2021, when he corresponded with the Complainant regarding the Minor Breach Complaint that had been lodged against him. The Complainant was an employee of the City and was then acting in his capacity as an employee.
- b. By use of a threat, Cr Separovich attempted to influence the conduct of the Complainant, the City's designated Complaints Officer⁹, who had received a complaint from a person who believed that Cr Separovich had committed a minor breach.
- c. The Act mandates the process that a local government complaints officer must follow when a minor breach complaint is made against an elected member. The complaints officer must give a copy of the complaint to the Council member (about whom the complaint is made) within fourteen days after the day they receive the complaint¹⁰. They must also send a copy of the complaint to the Panel¹¹.
- d. After receiving a complaint, the Panel is required to either make a finding as to whether the breach alleged in the complaint occurred or send the complaint to the Departmental Chief Executive Officer¹².
- e. Clearly, the complaints officer fulfils a purely administrative role in the minor breach process and is not responsible for determining whether or not a minor breach has actually occurred in any particular instance.
- f. In this case, in the First Email, the Complainant advised Cr Separovich that a Minor Breach Complaint had been made against him by a member of the public. In doing so, the Complainant acted in accordance with the prescribed process for dealing with minor breach complaints under the Act.

⁹ Section 5.120 of the Act

¹⁰ Section 5.107(3)(b) of the Act

¹¹ Section 5.107(3)(c) of the Act

¹² Section 5.110(2) of the Act



- g. However, Cr Separovich responded by accusing the Complainant instead of acting in a vexatious manner by “*approving*” the Complaint:

“How exactly are the results of the election and the state administrative tribunal throwing out your past complaints considered to be me securing personal advantage?”

Have you learnt nothing from the past complaints that have been thrown out?

As these complaints quite clearly do not constitute a breach, I will be regarding this as yet another vexatious complaint that has been approved by you.”

- h. Cr Separovich then threatened to seek costs from the Complainant if ultimately the matter was taken to the State Administrative Tribunal (“SAT”)

“I will not be asking for the ratepayers of Cockburn to be reimbursing my legal costs. I will be asking for you personally to refund them, as you should have known better than to have lodged such a ridiculous complaint.”

- i. It was clear that Cr Separovich tried to influence the Complainant who was only acting in his capacity as the City’s Complaints Officer, by threatening the Complainant personally with legal costs unless he acted contrary to the legislation and did not deal with any minor breach complaints made against Cr Separovich lawfully. Moreover, Cr Separovich’s remarks to the Complainant, who had simply been executing his administrative duties, were wholly derogatory and made in an insulting manner.
- j. In the Fourth Email, Cr Separovich further attempted to intimidate the Complainant by stating that he had disclosed the Minor Breach Complaint to some of his fellow elected members as it was “*pertinent*” to their decision as to who to appoint as the City’s Complaints Officer. Clearly that was intended to undermine the Complainant and affect his ability to perform his prescribed functions as the City’s Complaints Officer.
- k. Cr Separovich’s threat to the Complainant to not act in accordance with the minor breach complaints legislation/process clearly constituted a breach of the Regulations.

32. Therefore, the Panel finds that the essential elements that are required in order for a contravention of Regulation 20(2)(b) to have occurred, have been satisfied.



Findings

33. Accordingly, for the above reasons, the Panel finds that Cr Separovich did breach Regulation 20(2)(b) in relation to the Complaint.

A handwritten signature in black ink, appearing to be 'Tim Fraser'.

Tim Fraser (Presiding Member)

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

Elanor Rowe (Deputy Member)

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

Peter Rogers (Member)



Local Government Standards Panel

Complaint Number	20220020
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Donald Mervyn Green
Respondent	Councillor Michael Separovich
Local Government	City of Cockburn
Regulation	Regulation 20 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for Penalty Consideration	Mr Tim Fraser (Presiding Member) Councillor Peter Rogers (Member) Ms Elanor Rowe (Deputy Member)
Heard	7 April 2022 Determined on the documents
Penalty Considered	10 November 2022
Outcome	Public Apology, Censure & Monetary Penalty

DECISION AND REASONS FOR DECISION

9 March 2023

DEFAMATION CAUTION

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



Introduction

1. At its meeting on 7 April 2022, the Panel found that Councillor Michael Separovich (“Cr Separovich”), an elected member for the City of Cockburn (“the City”), committed one minor breach under the Local Government Act 1995 (WA) (“the Act”) and Regulation 20 of the *Local Government (Model Code of Conduct) Regulations 2021* (“the Regulations”) when he threatened the City’s Complaints Officer in relation to a minor breach complaint that was made against him by a member of the public.
2. On 29 September 2022, the Panel published its Finding and Reasons for Finding (“Finding”) stating that Cr Separovich had committed one minor breach. The Panel reviewed all the evidence presented to it and made the following observations:

“31

....

- b. *By use of a threat, Cr Separovich attempted to influence the conduct of the Complainant, the City’s designated Complaints Officer, who had received a complaint from a person who believed that Cr Separovich had committed a minor breach.*
- c. *The Act mandates the process that a local government complaints officer must follow when a minor breach complaint is made against an elected member. The complaints officer must give a copy of the complaint to the Council member (about whom the complaint is made) within fourteen days after the day they receive the complaint. They must also send a copy of the complaint to the Panel.*
- d.
- e. *Clearly, the complaints officer fulfils a purely administrative role in the minor breach process and is not responsible for determining whether or not a minor breach has actually occurred in any particular instance.*
- f. *In this case, in the First Email, the Complainant advised Cr Separovich that a Minor Breach Complaint had been made against him by a member of the public. In doing so, the Complainant acted in accordance with the prescribed process for dealing with minor breach complaints under the Act.*
- g. *However, Cr Separovich responded by accusing the Complainant instead of acting in a vexatious manner by “approving” the Complaint:*
“How exactly are the results of the election and the state administrative tribunal throwing out your past complaints considered to be me securing personal advantage?
Have you learnt nothing from the past complaints that have been thrown out?
As these complaints quite clearly do not constitute a breach, I will be regarding this as yet another vexatious complaint that has been approved by you.”
- h. *Cr Separovich then threatened to seek costs from the Complainant if ultimately the matter was taken to the State Administrative Tribunal (“SAT”)*



“I will not be asking for the ratepayers of Cockburn to be reimbursing my legal costs. I will be asking for you personally to refund them, as you should have known better than to have lodged such a ridiculous complaint.”

- i. It was clear that Cr Separovich tried to influence the Complainant who was only acting in his capacity as the City’s Complaints Officer, by threatening the Complainant personally with legal costs unless he acted contrary to the legislation and did not deal with any minor breach complaints made against Cr Separovich lawfully. Moreover, Cr Separovich’s remarks to the Complainant, who had simply been executing his administrative duties, were wholly derogatory and made in an insulting manner.*
- j. In the Fourth Email, Cr Separovich further attempted to intimidate the Complainant by stating that he had disclosed the Minor Breach Complaint to some of his fellow elected members as it was “pertinent” to their decision as to who to appoint as the City’s Complaints Officer. Clearly that was intended to undermine the Complainant and affect his ability to perform his prescribed functions as the City’s Complaints Officer.*
- k. Cr Separovich’s threat to the Complainant to not act in accordance with the minor breach complaints legislation/process clearly constituted a breach of the Regulations.”*

Jurisdiction and Law

3. The Panel convened on 10 November 2022, to consider how it should deal with the Minor Breach. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (“the Department”) that on this date there was no available information to indicate that Cr Separovich had ceased to be, or was disqualified from being, a councillor.

Possible Sanctions

4. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by:
 - (a) *ordering that no sanction be imposed; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
or
 - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*
or
 - (iii) *the person against whom the complaint was made undertake training as specified in the order;*
or



(iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;*

or

(c) *ordering 2 or more of the sanctions described in paragraph (b).*

5. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. Under section 5.110(6)(a), the Panel may order that no sanction be imposed; not to reverse the finding of a breach, but to however indicate that in all the circumstances the relevant councillor should not be penalised further.

Cr Separovich's Submissions

6. 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

7. By a letter dated 29 September 2022, Cr Separovich was:

- i. notified of the Panel's Finding of the Minor Breach;
- ii. provided with a copy of the Panel's Findings; and
- iii. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.

8. No response was received from Cr Separovich.

Panel's Consideration

9. The purpose of the imposition of a sanction under the Act is generally for the protection of the public and the maintenance of standards of council members. Furthermore, it reflects the disapproval of a contravention of the Regulations, dissuades councillors from other local governments from engaging in similar conduct and facilitates the maintenance of appropriate standards of behaviour by councillors. Guidance on the factors which the Panel may consider in determining the appropriate penalty to impose, include, but are not limited to:

- a. the nature and seriousness of the breaches;
- b. the councillor's motivation for the contravention;
- c. whether or not the councillor has shown any remorse and insight into his / her conduct;
- d. whether the councillor has breached the Act knowingly or carelessly;
- e. the councillor's disciplinary history;

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



- f. the likelihood or not of the councillor committing further breaches of the Act;
 - g. the councillor's personal circumstances at the time of the conduct, and at the time of imposing the sanction;
 - h. the need to protect the public through general deterrence and maintain public confidence in local government; and
 - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness.
10. In this case, the Panel found that Cr Separovich breached Regulation 20 as set out in paragraphs 1 and 2 above. Cr Separovich's behaviour, the subject of the Minor Breach Findings, was considered a very serious matter.
11. When deciding what sanction to impose, the Panel must consider how the penalty will help to guide other councillors and dissuade them from engaging in similar conduct.
12. The Panel does not consider it appropriate to impose no sanction in relation to the Minor Breach, as this would indicate that it was so minor that no penalty is warranted.
13. The Panel also did not consider that training would be a suitable sanction. When Cr Separovich was given the opportunity to respond to both the initial Complaint and how the Panel should deal with the Minor Breaches, he failed to provide any response. That demonstrated an unwillingness on the part of Cr Separovich to consider his actions to help him not engage in similar conduct in the future.
14. In this case the Panel finds it fair and reasonable that Cr Separovich makes a public apology to the party he acted improperly towards, Mr Donald Mervyn Green. The standards of behaviour expected of elected members are of a generally higher standard than a member of the public, due to their prominent positions in the community.
15. 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 an elected member's conduct:
- a. adversely affects a particular individual or party; and / or
 - b. does not meet the standards other councillors seek to uphold.
- An apology will go some way to make amends for Cr Separovich's wholly disrespectful conduct towards the Complainant and to help repair the damage caused.
16. In addition, the Panel also considers it appropriate that Cr Separovich be publicly censured. The health, safety and welfare of employees must be protected within a workplace. The City's Complaints Offices was entitled to carry out his duties without the threat of harassment or punishment.
17. A censure is a public statement of disapprobation of a councillor's conduct. Such a penalty will send a message to the community and other councillors, that Cr Separovich's conduct was unacceptable and deserving of a serious penalty.



18. Finally, in deciding what sanction to impose, the Panel must consider how the penalty will help to guide other councillors and dissuade them from engaging in similar conduct. Sub-section 5.110(6)(b)(iv) (in respect of a monetary sanction) was introduced in 2019 to allow the Panel to require a councillor to personally bear the cost of dealing with a complaint, which in other circumstances, would be paid by the local government concerned. This ensures the cost of a breach is borne by the councillor individually, and not simply passed onto the local government and therefore, ultimately, rate payers. In the circumstances, the Panel considers that the imposition of a monetary sanction is also appropriate.

Panel's Decision

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

- a. make a public apology, pursuant to subsection (b)(ii) of that section;
- b. be publicly censured, pursuant to subsection (b)(i) of that section; and
- c. pay to the local government 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.

Signing

Tim Fraser (Presiding Member)

Peter Rogers (Member)

Elanor Rowe (Deputy Member)



ORDER

Delivered 9 March 2023

DEFAMATION CAUTION

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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Michael Separovich (“Cr Separovich”), an elected member for the City of Cockburn, publicly apologise, as specified in paragraph 4 below, or failing compliance with paragraph 4, then paragraph 5 below.
2. Cr Separovich be publicly censured, as specified in paragraph 6 below.
3. Cr Sepaorvich make the monetary payment set out in paragraph 7 below.

Public Apology

4. At the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Cr Separovich 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 (Model Code of Conduct) Regulations 2021* when I threatened the City's Complaints Officer in relation to a minor breach complaint that was made against me by a member of the public.
- ii. The Panel found that by behaving in this manner I committed one breach of Regulation 20 of the said Regulations.
- iii. I accept that I should not have acted in such a manner, and I now apologise to Mr Donald Mervyn Green, for having done so."

5. If Cr Separovich fails to, or is unable to, comply with the requirements of paragraph 4 above in the required timeframe then, within the next 28 days following the ordinary council meeting referred to in paragraph 4 above:
 - a. Cr Separovich shall cause the following notice of public apology to be published in no less than 10-point print, as a one-column or two-column display advertisement in the first 10 pages of the "*Cockburn Gazette*" newspaper; and
 - b. the Chief Executive Officer of the City of Cockburn shall arrange for the following notice of public apology to be published in no less than 10-point print or font:
 - i. on the Facebook page of the City of Cockburn; and
 - ii. in an appropriate place on the website of the City of Cockburn; and
 - iii. in the next occurring issues of all City of Cockburn community and public newsletters (if any) (whether in electronic or print copy):

PUBLIC APOLOGY BY COUNCILLOR MICHAEL SEPAROVICH

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the *Local Government (Model Code of Conduct) Regulations 2021* when I threatened the City's Complaints Officer in relation to a minor breach complaint that was made against me by a member of the public.


The Panel found that by behaving in this manner I committed one breach of Regulation 20 of the said Regulations.

I accept that I should not have acted in such a manner, and I now apologise to Mr Donald Mervyn Green, for having done so."



Public Censure

6. Within the period of 29 days to 43 days from the day following the date of service of this Order on Cr Separovich, the Chief Executive Officer of the City of Cockburn shall arrange for the following Notice of Public Censure to be published, in no less than 10-point print or font:
 - a. as a one-column or a two-column display advertisement in the first 15 pages of "*The West Australian*" newspaper;
 - b. as a one-column or a two-column display advertisement in the first 10 pages of "*Cockburn Gazette*" community newspaper;
 - c. in an appropriate place on the website of the City of Cockburn; and
 - d. in every City of Cockburn public newsletter (whether in electronic or print copy) (if any) in no less than 10 point font size.



Government of **Western Australia**
Local Government Standards Panel

**NOTICE OF PUBLIC
CENSURE**

The Local Government Standards Panel has found that Councillor Michael Separovich, a Councillor for the City of Cockburn, breached Regulation 20 of the *Local Government (Model Code of Conduct) Regulations 2021* when he threatened Mr Donald Mervyn Green, who at the time was the City's Complaints Officer, in relation to a minor breach complaint that was made against him by a member of the public

Councillor Separovich's conduct was wrongful and inappropriate and deserving of a penalty and, further, his comments were likely to cause detriment to Mr Green.

The Panel censures Councillor Separovich for the breach of Regulation 20 of the *Local Government (Model Code of Conduct) Regulations 2021*.

**LOCAL GOVERNMENT
STANDARDS PANEL**



Monetary Penalty

7. Within two (2) months of being advised of the sum total of the remuneration and allowances payable by the City in relation to the Complaint, Cr Separovich shall pay to the City that amount in full.

Date of Order: 9 March 2023



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a complaint **and** the person complained about each have the right to apply to the State Administrative Tribunal (the SAT) for a review of the Panel's decision in this matter. In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules an application to the SAT under its review jurisdiction **must be made within 28 days** of the day on which the Panel (as the decision-maker) gives a notice [see the Note below] under the *State Administrative Tribunal Act 2004 (SAT Act)*, section 20(1).
- (3) **The Panel's Breach Findings and these Findings and Reasons for Finding – Sanctions, constitute the Panel's notice (i.e. the decision-maker's notice) given under the SAT Act, section 20(1).**

Note:

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
 - (1) *Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.*** [Bold emphases added]
 - (2) *Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."*
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

 - (a) *by delivering the document to him personally; or*
 - (b) *by post in accordance with section 75(1); or*
 - (c) *by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or*
 - (d) *in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State."*