



Local Government Standards Panel

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| Complaint Number | 20220029 |
| | <i>Local Government Act 1995</i> |
| Complainant | Mr Richard Aldridge |
| Respondent | Councillor Amanda Spencer-Teo |
| Local Government | City of Canning |
| Regulation | Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> |
| Panel Members | Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member) |
| Heard | 5 May 2022 Determined on the documents |
| Finding | 1 x Breach Regulation 18(1)(b) |

FINDING AND REASONS FOR FINDING

Delivered 27 June 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. On 5 May 2022, the Panel found that Councillor Amanda Spencer-Teo a councillor of the City of Canning ("**the City**") did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* ("**the Act**") and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* ("**the Regulations**") when on 8 December 2021 she asserted that the Complainant had made defamatory comments regarding Cr Spencer-Teo in an article in the Canning Examiner Newspaper as further set out in paragraph 17 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 and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
6. 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.¹
7. 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.
8. 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 accurate²; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding³.

¹ Section 5.106 of the Act

² *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

³ *Briginshaw v Briginshaw* (1938) 60 CLR 336



9. The Panel does not possess investigative or supervisory powers.⁴ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.
10. 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.
11. The Panel also must have regard to the general interests of local government in Western Australia⁵.
12. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Jurisdiction and Procedural Fairness

13. On 22 December 2021 the Panel received a complaint from Mr Graeme Bride acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 9 December 2021.
14. In the complaint form, the Complainant alleges that Cr Spencer-Teo has breached regulation 18 of the Regulations when on 8 December 2021 she improperly and incorrectly asserted that the Complainant had made defamatory comments regarding Cr Spencer-Teo in an article in the Canning Examiner Newspaper as further set out in paragraph 17 below (together "**the Complaint**").
15. The Panel convened on 5 May 2021 to consider the Complaint.
16. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Cr Spencer-Teo was:
 - i. elected to the Council of the City in October 2021 for a term expiring in October 2025;
 - ii. a candidate at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 5 May 2022;
 - b. was satisfied the Complaint was made within six months after the certain of the alleged breaches occurred⁶;

⁴ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁵ Section 8(6) of Schedule 5.1 of the Act

⁶ Section 5.107(4) and 5.109(2) of the Act



- c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁷;
- d. was satisfied the Department had provided procedural fairness Cr Spencer-Teo; and
- e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

- 17. The Complainant provided the following comments and arguments in respect to the Complaint as summarised by the Panel:
 - a. On the 8th of December Cr Spencer-Teo caused an advert to be placed in the Canning Examiner Newspaper ("**the Advertorial**") in which it stated:

"Richard Aldridge, a former acting President of the Riverton Rossmoyne Shelley Residents Association inc. along with Secretary Gail Barbera published defamatory comments about me on the Association's Facebook page, website and in an email to their members and followers."
 - and
 - "Richard Aldridge and Gail Barbera have since apologised in writing for their conduct and retracted their defamatory statements."*
 - ("the Comments")**.
 - b. The alleged defamatory comment related to a statement posted on face book in December 2020 ("**the Post**"), comments made on the Riverton Rossmoyne Shelley Residents' Association Inc ("**RRSRA**") website ("**the Website**") and further email.
 - c. Both of the above Comments inherently imply that the original Post and Website comments were in fact defamatory not merely defamatory in the opinion or allegation of Cr Spencer-Teo.
 - d. Stating this opinion in a widely read Local Newspaper through paid advertising has caused detriment to Richard Aldridge, Gail Barbera and the RRSRA.
 - e. The letter send by the Complainant's legal representation makes it clear that the Post and Website page were not considered defamatory.
 - f. An apology and retraction were agreed to avoid substantial legal expenses and long legal battle.

⁷ Section 5.107 and 5.109 of the Act



- g. The Defamation Act, with which Cr Spencer-Teo is familiar, with states that an apology does not constitute an expressed or implied admission of fault or liability.
 - h. The banner at the top of the Advertorial and Signature at end of document leave no doubt that the Advertorial was made Cr Spencer-Teo in the capacity of a councillor and/or office of Councillor of the City of Canning.
 - i. The Comments are not factual but only opinion are detrimental to the Local Government.
 - j. Paying for and publishing statements that state defamation has occurred as a fact, while knowing that no express or implied admission of fault or liability in connection with this matter has occurred is an improper use of office and detrimental to Richard Aldridge, Gail Barbera.
 - k. The publication by Cr Spencer-Teo is detrimental to the RRSRA as it implies wrong-doing on by the association / officers of the RRSRA.
 - l. The publication was undertaken after Cr Spencer-Teo had officially withdrawn her Concerns Notice. The withdrawal of concern signifies a resolution of the dispute between Cr Spencer-Teo and the RRSRA.
18. The Complainant also provided:
- a. The original Post;
 - b. a copy of the Advertorial containing the Comments; and
 - c. copies of various letters from legal representatives relating to the allegedly defamatory initial Post.

The Respondent's Response

19. By an email dated 1 March 2022, Cr Spencer-Teo provided a response to the Complaint.
20. Cr Spencer-Teo denies that she has committed any minor breach.
21. Cr Spencer-Teo makes the following comments in respect to the Complaint as summarised by the Panel:
 - a. The Complainant is vexatious complainant who continues to drain the City's resources through a litany of complaints against select elected members.
 - b. This Complaint is the result of a civil defamation action Cr Spencer-Teo brought against Mr Aldridge.
 - c. Mr Aldridge made various claims at Council meetings, in the press, on social media, and in emails to former and current members of RRSRA. which presented a distorted and unfavourable view of Cr Spencer-Teo as an elected member.



- d. Mr Aldridge made imputations and defamatory comments about Cr Spencer-Teo as a Councillor - however there is no mechanism offered by the system for an elected member to counter misinformation, provide the facts or to clear their name so to speak. Therefore, the matter was handled civilly, at great financial and personal expense.
- e. Unlike Mr Aldridge and Ms Barbera, Cr Spencer-Teo can provide evidence of reputational damage and financial losses associated with this civil action.
- f. This has also been a significant strain on Cr Spencer-Teo 's mental health and caused her a great deal of distress. Cr Spencer-Teo had to defend herself not just on social media, but in telephone conversations, email exchanges and in person conversations at local cafes and shopping centres.
- g. After receiving an apology and retraction from Ms Barbera and Mr Aldridge, with permission to publish it, Cr Spencer-Teo chose to set the record straight via social media and the local newspaper, (Canning Examiner), as these were some of the mechanisms used by Mr Aldridge and Ms Barbera to publish the original comments and statements.
- h. At no time did Cr Spencer-Teo have the intention of causing a detriment to the complainant/s or the local government in which she is elected to represent.
- i. Cr Spencer-Teo did not publish the apologies lightly and wanted to ensure she did so in a manner which would not only clear her name, but also repair any damage to the City of Canning's reputation and its efforts to provide an inclusive community for all its residents.
- j. Cr Spencer-Teo went to great effort and expense by engaging a public relations company (again at her own expense) to write and publish the advertorial.
- k. In the apology signed and received by Ms Barbera, she states

“ I accept the statements in the Facebook post and on the RRSRA webpage did not reflect the reasons Councillor Amanda Spencer-Teo voted against the motion and were capable of being understood as being defamatory of her”
- l. Mr Aldridge has failed to include the apology signed by him as evidence in his Complaint. In this he states:
 - “a. *I apologise if the lack of information in the post lead to any reader to make the assumption that Councillor Amanda Spencer-Teo or Councillor Ben Kunze are in any way ableist, against children living with disabilities or against the rights of children with disabilities having access to play areas.*



- b. *I have also stated at RRSRA and Council meetings and to the media, words to which could be interpreted as meaning that the troubles faced by the RRSRA and which nearly caused it to be wound up, were because of a defamation threat by Councillor Amanda Spencer-Teo.*”
- m. When combining the two apologies, although they may not be used as an admission in a court of law, it is an acknowledgment that the comments were defamatory at least by the true definition of the word.
- n. When making the Comments Cr Spencer-Teo was referring to the definition and broadly accepted meaning of the word defamation, being;
- “ *The wrong of injuring another’s reputation without good reason or justification; calumny; slander or libel*” (Macquarie Dictionary)”
- o. It had been made clear by Counsel that the apologies were not an admission of by law and should Cr Spencer-Teo bring a further case against the parties for defamation these apologies could not be used as an admission of guilt. Nevertheless, their publications and comments had been defamatory (by definition) and evidence of the injury to Cr Spencer-Teo’s reputation can be substantiated.
- p. In the same apology Mr Aldridge allows Councillor Cr Spencer-Teo to publish the apology & retraction “as she sees fit.”. Mr Aldridge therefore authorised Cr Spencer-Teo to publish the apology.
- q. The purpose for publishing the advertorial was to “set the record straight”, restore Cr Spencer-Teo reputation in the community, and inform residents of the status of the playground decision and that the comments about the winding up of the association were incorrect - not to cause a detriment or secure an advantage as Mr Aldridge alleges.
- r. Cr Spencer-Teo believes she did so with the permission of both complainants.
- s. The information contained in the advertorial is factual and simply contains information that the community would likely wish to know.
- t. The defamatory comments made by Aldridge and published by Ms Barbera were against Cr Spencer-Teo solely as a Councillor – If she was not a Councillor, they would not have been made – any subsequent action or issues related to this matter, including the advertisement she commissioned, had to be done as a Councillor.
- u. Cr Spencer-Teo did not use her position as a Councillor to cause Mr Aldridge or Ms Barbera a detriment, rather she sought to respond and defend herself against hurtful and false comments made against her as a Councillor.



- v. Aldridge and Barbera were unsuccessful in the civil proceedings, and so are now using the Panel as a cost-free instrument to cause Cr Spencer-Teo a detriment – something they can do given her position as an elected member.
 - w. Every action Cr Spencer-Teo took was to respond to actions taken by the Complainant.
 - x. The Complainant cannot retrospectively condition his apology after the fact.
 - y. Mr Aldridge has gone out of his way to dilute the apology since its publication, on social media, at Council meetings and in conversations with members of RRSRA, essentially claiming it was made under duress.
 - z. Cr Spencer-Teo's intention was to repair the damage to her reputation, and she genuinely believes she did so with the permission of both complainants and as outlined in the settlement.
 - aa. It is also Cr Spencer-Teo's view that Mr Aldridge should not be permitted to use the Standards Panel as a pseudo arbiter in a civil legal dispute. The matter has been settled out of court and the apology and retraction has been published in accordance with the terms of this settlement.
22. Cr Spencer-Teo also provided a detailed account of her past negative dealings with the Complainant.

Regulation 18

23. Regulation 18 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:
- “ 18. Securing personal advantage or disadvantaging others**
- (1) *A council member must not make improper use of their office —*
 - (a) *to gain, directly or indirectly, an advantage for the council member or any other person; or*
 - (b) *to cause detriment to the local government or any other person.*
 - (2) *Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.”*
24. To make a finding of a minor breach of regulation 18(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Spencer-Teo was an elected member or a candidate at the time of the alleged breach and the time of the determination;
 - b. Cr Spencer-Teo made use of her office as Council member or candidate of the City;



- c. when viewed objectively, such use was an improper use of Cr Spencer-Teo's office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
 - d. Cr Spencer-Teo engaged in the conduct in the belief that detriment would be suffered by another person.
25. As the Complainant has not alleged any advantage has been sought, the Panel has only considered regulation 18(1)(b) of the Regulations in this case.

PANEL'S CONSIDERATION

Regulation 18

Cr Spencer-Teo was an Elected Member or a candidate at the relevant times

26. Cr Spencer-Teo was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
27. This element is met.

Cr Spencer-Teo made use of her office as Council Member or candidate of the City

28. Cr Spencer-Teo has argued that she was not acting in her capacity as councillor, but rather that the initial allegedly defamatory comment related to her as a councillor, so the response was required to be in her capacity as a councillor.
29. With due respect to Cr Spencer-Teo, this argument is illogical. The matter was solely related to Cr Spencer-Teo's position as an elected member and her actions in that role.
30. Further, the Advertorial:
 - a. related to a matter previously considered by Council;
 - b. purported to communicate with the community in the local municipality; and
 - c. was signed by Cr Spencer-Teo as follows:

*"Amanda Spencer-Teo
Councillor - City of Canning"*
31. The above elements indicate that Cr Spencer-Teo was acting in her role as an elected member.



32. The Panel therefore finds that it is more likely than not that Cr Spencer-Teo was acting in her capacity as an elected member and made use of her office as a council member when she wrote the Comments and Advertorial.

33. This element is met.

Cr Spencer-Teo's use was improper

34. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.

35. 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.

36. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.

37. In the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused⁸.

38. The Complainant contends that the Comments are inaccurate and not in accordance with the settlement between the parties and the apology issued by the Complainant.

39. Cr Spencer-Teo asserts that:

- a. Cr Spencer-Teo was using a "broadly accepted" definition of "defamatory" rather than a legal definition;
- b. the Complainant's apology demonstrated that the Post and other comments were defamatory; and
- c. Cr Spencer-Teo was entitled to use apology in any way she saw fit.

40. With due respect to Cr Spencer-Teo, the argument that she intended to use "broadly accepted" definition of "defamatory" is not compelling.

41. Cr Spencer-Teo had, via legal representation, recently issued proceedings against the RRSRA and a legal demand to the Complainant. In such situation she:

- a. had accused the Complainant's actions as part of the RRSRA of defamation in a purely legal sense; and
- b. should have had a clear understanding of the definition of defamatory conduct in a legal sense.

⁸ Treby and Local Government Standards Panel [2010] WASAT 81 (at 31); Chew v The Queen (1992) 173 CLR 626 (at 640 - 641 [Dawson JJ]); R v Byrnes (1995) 183 CLR 501 – (at 514 - 515 [Brennan, Deane, Toohey and Gaudron JJ] and at 521 [McHugh J]).



42. In the context that Cr Spencer-Teo used the word “defamatory” twice in the Advertorial, and the fact that Cr Spencer-Teo clearly considered the matter serious enough to publish an advertorial, there is no indication that such word was used in any other manner than its usual legal one.
43. Even if a member of the public had considered Cr Spencer-Teo used the words in a “broadly accepted” way, it is commonly known that defamation is a circumstance where one party has acted wrongfully and that can, and does, lead to legal claims and liability.
44. Cr Spencer-Teo also expressly acknowledges that she knew, and had received legal advice that, the apology was not an admission of defamatory conduct and could not be relied on as evidence as such.
45. The Complainant’s apology reproduced in paragraph 21.I is qualified in content and does not contain any admission of defamatory conduct.
46. In this context, the Panel finds that the only reasonable conclusion was that Cr Spencer-Teo knew there was no admission of liability of defamation and had expressly agreed to settle the matter by way of apology on that basis, yet still chose to assert that the conduct was defamatory.
47. Further, Cr Spencer-Teo was authorised to *publish* the apology how she saw fit. This only extends to distributing the same, not the ability to unilaterally add to the apology, or to give the apology more than its intended scope or meaning.
48. Given the above, the Panel finds that it is more likely than not that Cr Spencer-Teo acted improperly as she used the word “defamatory” in a context which either she knew, or did not care, would mislead readers into thinking that:
 - a. the Complainant had made defamatory comments; and
 - b. the Complainant had admitted such comments were defamatory,in a legal sense.
49. For the reasons given above, the Panel finds that it is more likely than not that the Post was improper as:
 - a. Cr Spencer-Teo knew there has been no admission that the conduct by the Complainant was defamatory but chose to use language which strongly implied such conduct was legally defamatory; and
 - b. the conduct was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
 - c. the conduct is deserving of a penalty.
50. This element is met.

Cr Spencer-Teo intended to cause a disadvantage



51. “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 and disadvantage.
52. It is not necessary to find whether any detriment was actually suffered , but an intent to cause such detriment must be established.
53. In this case Cr Spencer-Teo has argued that:
 - a. she wrote the Advertorial to “set the record straight”; and
 - b. retire and repair Cr Spencer-Teo’s reputation in the community.
54. This argument is not compelling. In the event that has been the sole motivation for publishing the Advertorial:
 - a. there was no requirement to assert that the Complainant had engaged in, or admitted to, defamatory conduct;
 - b. the Advertorial could have achieved such stated purpose without the use of the word “defamatory” in each case; and
 - c. apology could have been published without such reference.
55. Given this, the Panel finds that it is more likely than not that Cr Spencer-Teo specifically chose to include the word “defamatory” with the intention to damage the Complainant’s reputation, to make others think less favourably of him and to imply that the Complainant had engaged in illegal conduct.
56. The Panel finds to the required standard Cr Spencer-Teo did have an intention to cause a detriment specifically to the Complainant and Ms Barbera and, more generally, the RRSRA.
57. This element is met.



Conclusion

58. Given the above the elements required to find a breach of regulation 18(1)(b) of the Regulations have been met.

Panel's Findings

59. Cr Spencer-Teo did commit a breach of Regulation 18(1)(b) of the Regulations and therefore did commit a minor breach.

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

Tim Fraser (Presiding Member)

A handwritten signature in black ink, appearing to be 'E Power'.

Emma Power (Legal Member)

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

Peter Rogers (Member)



Local Government Standards Panel

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| Complaint Number | 20220029 |
| Legislation | <i>Local Government Act 1995 (WA)</i> |
| Complainant | Mr Richard Aldridge |
| Respondent | Councillor Amanda Spencer Teo |
| Local Government | City of Canning |
| Regulation | Regulation 18 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i> |
| Panel Members for Penalty Consideration | Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member) |
| Heard | 5 May 2022 Determined on the documents |
| Penalty Considered | 14 October 2022 |
| Outcome | No Sanction |

DECISION AND REASONS FOR DECISION

Delivered 21 December 2022

DEFAMATION CAUTION

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Introduction

1. At its meeting on 5 May 2022, the Panel found that Councillor Amanda Spencer-Teo, a councillor for the City of Canning (“**the City**”), committed one minor breach under the *Local Government Act 1995 (WA)* (“**the Act**”) and regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* (“**the Regulations**”) when, in an advertorial in the Canning Examiner Newspaper, she asserted that the Complainant had made defamatory comments regarding Cr Spencer-Teo (“**the Minor Breach**”).

Jurisdiction and Law

2. The Panel convened on 14 October 2022 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 Spencer-Teo had ceased to be, or was disqualified from being, a councillor.
4. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
5. By a letter dated 8 July 2022, Cr Spencer-Teo 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
 - 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*.

Possible Sanctions

6. Section 5.110(6) of the *Local Government Act 1995 (WA)* (“**the Act**”) provides that the Panel is to deal with a minor breach by:
 - (a) *ordering that no sanction be imposed; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
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;*

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



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).*

Cr Spencer-Teo's Submissions

7. By an email dated 4 August 2022, the Department received a response from Cr Spencer-Teo.
8. Cr Spencer-Teo's legal representative provided the following comments and arguments as to penalty, as summarised by the Panel:
 - a. Cr Spencer-Teo accepts the findings made against her, but her level of culpability needs to be seen within the light of the fact that she relied on the services of a Public Relations Consultant, which services she used for the specific purpose of minimising the risks of breaches such as have been determined to have occurred.
 - b. Cr Spencer-Teo maintains she did not intend to cause the Complainant or the Riverton Rossmoyne Shelley Residents' Association Inc ("**RRSRA**") any detriment or harm. Her sole intent was to vindicate her reputation.
 - c. Cr Spencer-Teo took extraordinary measures to ensure harm was not brought to the Association. This includes with respect to the original defamation concerns notice process, throughout which she was at pains to emphasise to Ms Barbera and Mr Aldridge that her grievance was with them and not with the RRSRA.
 - d. The Public Relations Consultant at Clarity Communications had local government experience and relied on them to prevent any breach (supporting correspondence provided).
 - e. Cr Spencer-Teo recognised that she did not have the time nor expertise to craft the wording of the advertisement, which needed to be carefully worded to ensure that it achieved her goal, which was to vindicate her reputation without breaching the Code of Conduct.
 - f. To that end, Cr Spencer-Teo engaged Clarity Communications to achieve the goal. Clarity Communications handled all aspects of the wording and design of the advertorial and its placement.
 - g. Cr Spencer-Teo (mistakenly) believed that by publishing the Apology with accompanying commentary she would be minimising the risk of an adverse finding by the Standards Panel.
 - h. Cr Spencer-Teo was given an implicit assurance that the service she was being provided by Clarity Communications was a way to minimise her risk of an adverse finding by the Standards Panel.
 - i. This is a situation where having regard to the fact that the Elected Member has actually taken steps to avoid being in breach of the Code of Conduct by engaging a service provider who holds itself out to her as specifically having



skills to, and will take steps to, avoid that occurrence, shows insight on her part about the desirability and the importance of avoiding being in breach.

- j. There should be no sanction because:
 - i. to face a public censure or need to give a public apology, in circumstances where her intention was the opposite, and the steps she took should have theoretically been commendable, would not be a proportionate or fair sanction;
 - ii. the publication of the Standard Panel findings, which are unfavourable to Cr Spencer-Teo, is a form of sanction in and of itself;
 - iii. a fair-minded analysis of the sequence of events, having regard to the Elected Member from beginning to end taking the right steps to obtain appropriate legal advice and public relations advice (or so it seemed), justifies no sanction;
 - iv. in future, as a result of the experience of going through this Standards Panel process, Cr Spencer-Teo would not place herself in a situation when she would outsource reputation management in a similar manner to non-lawyers; and
 - v. there is no need for specific deterrence.
- k. This is a situation where the sardonic phrase that "No good deed goes unpunished" should not apply.
- l. If there is to be a sanction, it is submitted that training, and perhaps training about appropriate communication, is a fairer sanction compared to a public apology or public censure.

Panel's Consideration

9. Section 5.110(6) is solely about penalty. The Panel does not have the power to review any finding of a breach.
10. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
11. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
 - a. the nature and seriousness of the breaches;
 - b. the councillor's motivation for the contravention;
 - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor's disciplinary history;
 - f. likelihood or not of the councillor committing further breaches of the Act;
 - g. personal circumstances at the time of conduct, and of imposing the sanction;
 - h. need to protect the public through general deterrence and maintain public confidence in local government; and



- i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness².
12. In this case, it is noted that Cr Spencer-Teo takes responsibility for the breach and this was largely caused by outsourcing the advertorial to a Public Relations Consultant.
13. In this case, although the breach was unintentional in nature, the conduct still resulted in two parties having their name publicly associated with a defamatory conduct, which was incorrect and not in the spirit of the legal settlement the parties had made between each other.
14. Irrespective of this, it is acknowledged that another complaint was made in respect to the same conduct (being complaint 20220008).
15. The Panel also found in that instance that Cr Spencer-Teo had breached the Regulations and duly imposed a sanction under 5.110(6)(b)(ii) of the Act for Cr Spencer-Teo to make a public apology which refers to the Complainant as well as the complainant under complaint 20220008.
16. In these circumstances the Panel considers it appropriate that no further sanction is imposed in respect to this Complaint.
17. The Panel further considers that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Cr Spencer-Teo recoup to the City the costs of the Department incurred with respect to the Complaint.

Panel's decision

18. The Panel orders pursuant to section 5.110(6)(a) of the Act that, in relation to the Minor Breach of regulation 18 of the Regulations that no sanction be imposed upon Cr Spencer-Teo as set out in the attached Order.

Tim Fraser (Presiding Member)

Emma Power (Legal Member)

Peter Rogers (Member)

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



ORDER

Delivered 21 December 2022

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:

No sanction be imposed on Councillor Amanda Spencer-Teo.



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."*