



Local Government Standards Panel

Complaint Number	20220050
Legislation	<i>Local Government Act 1995</i>
Complainant	Ms Jane Buckland
Respondent	Councillor Ian Gibb
Local Government	Shire of Nannup
Regulation	Regulation 20 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 20(4)

FINDING AND REASONS FOR FINDING

Delivered 27 June 2021

DEFAMATION CAUTION

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



Summary of the Panel's decision

1. On 8 April 2021, the Panel found that Councillor Ian Gibb, a councillor of the Shire of Nannup (**"the Shire"**) did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* (**"the Regulations"**) and regulation 20 of the Regulations when, at the Shire's Concept Forum held on 25 November 2021, he made a verbal statement suggesting that a local government employee was incompetent, 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.
9. The Panel does not possess investigative or supervisory powers.⁴ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence

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

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



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 17 March 2022 the Panel received a complaint from Mr David Taylor acting as complaints officer of the Shire ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form 9 March 2022.
14. In the complaint form, the Complainant alleges that Cr Gibb has breached regulation 20 of the Regulations when, at the Shire's Concept Forum held on 25 November 2021, he made a verbal statement suggesting that a local government employee was incompetent as set out in paragraph 17 ("**the Complaint**").
15. The Panel convened on 10 June 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 Gibb was:
 - i. elected to the Council of the Shire in October 2021 for a term expiring in October 2025;
 - ii. a Councillor 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 alleged breach occurred⁶;
 - c. was satisfied that the Shire's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁷;
 - d. was satisfied the Department had provided procedural fairness to Cr Gibb; and
 - e. found it had jurisdiction to consider the Complaint.
17. This conduct was also the subject of two further complaints made directly to Council under regulations 11 and 12 of the Regulations, which found at the Special Council

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

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

⁷ Section 5.107 and 5.109 of the Act



meeting of 10 March 2022 Cr Gibb Cr Gibb breached the Code of Conduct for bringing the “name of a Shire of employee into disrepute”.

18. The Council resolved that Cr Gibb make a public apology.

The Specifics of the Complaint

19. The Complainant provided the following comments and arguments in respect to the Complaint:
 - a. During the Shire’s Concept Forum on 25th November 2021 (“**the Forum**”) in the presence of various elected members and four local government employees Cr Ian Gibb breached Regulation 20(4)(a) by making a verbal statement suggesting that a local government employee was incompetent or dishonest in undertaking their role as Deputy Returning Officer during the local government elections in October 2021.
 - b. At the Forum Cr Gibb stated that in the absence of the Returning Officer, that the Shire’s Governance Officer & Deputy Returning Officer for the 2021 Local Government elections, did not adequately deal with inconsistencies which were printed in a local newspaper regarding whether or not an election was to be held for the Shire of Nannup South Ward and she prevented eligible voters from participating in the voting process on the day of the election.
 - c. Cr Gibb made certain statements regarding the Officer’s actions on the day of the election as part of his reasoning that the Shire should not run in-person elections themselves as they do not have competent staff capable of doing so.

The Respondent’s Response

20. By an email dated 29 March 2022, Cr Gibb provided a response to the Complaint.
21. Cr Gibb denies that he has committed any minor breach.
22. Cr Gibb provided the following comments and arguments regarding the Complaint as summarised by the Panel:
 - a. Cr Gibb provided a detailed background regarding the conduct of the relevant local government elections and the actions of the relevant officer which is not reproduced here.
 - b. Cr Gibb has provided several letters to the CEO and Council in an effort that Council would understand his position and there were attempts at resolution.
 - c. Cr Gibb did provide offers to resolve the situation on a without prejudice basis as he was being threatened with the matter being taken to the Standards Panel.
 - d. Cr Gibb tried to resolve this situation with a conditional apology, recognising that there were other courses of action far less disruptive, and also offered to sit down with Cr Dean to work on a way forward in the future. This was declined.
 - e. Council met on 10 March 2022 to consider the following resolution which was passed:



“ That Council determine that Cr Gibb has breached the 'Shire of Nannup Code of Conduct for Council Members, Committee Members and Candidates 2021' specifically Division 2 - General Principles, Clause 5 Subclause 1a and 2, and Division 3-Behaviour, Clause 9 Subclause d and e, and implement the following remedies to be carried out by Thursday 28th April 2022:

a) An apology at an ordinary Council meeting, the text of which reads as: "In addressing the Council on the 25th November 2021 at the Concept Forum meeting I acknowledge the selection of words I used breached sections of the 'Shire of Nannup Code of Conduct for Council Members, Committee Members and Candidates 2021' and have the potential to bring the name of a Shire employee into disrepute. I unreservedly retract those comments and apologise for my actions on that day."

- f. Cr Gibb made a further attempt to resolve the status of an apology which was refused in favour of another Council initiated apology.
 - g. On 16 March Cr Gibb advised the CEO by email that he would agree to the apology in Council Resolution 22042 and also agreed to undertake training.
 - h. Cr Gibb was about to make this without prejudice apology on the basis that the matter would be settled.
 - i. Cr Gibb was not aware of the Standards Panel Complaint until 21 March 2022.
 - j. Cr Gibb was justified in describing the actions of the Deputy Returning Officer to demonstrate as being incompetent and negligent, albeit from a lack of training.
 - k. It was not and is not Cr Gibb's intention to pursue any thing to do with the regulations when considering this whole even it was to demonstrate the seriousness of not having adequately trained staff.
 - l. Cr Gibb is further concerned that the Council will decide to publish the decision as to Cr Gibb's apology and training in which case he may elect to reply.
 - m. Cr Gibb offered several attempts to provide a conditional apology. The conditional apology recognized the failings of not having trained staff to carry out an election. These attempts were unacceptable to the Council in favour of apologies that describe Cr Gibb as ignorant and other derogatory descriptions which he would not agree to.
 - n. Cr Gibb was prepared to make a considered apology for the sake of a resolution.
23. Cr Gibb also proved various supporting documentation and correspondence.



Regulation 20

24. Regulation 20 regulates councillors' interactions with local government employees:

“ 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 —*

(a) *direct or attempt to direct a local government employee to do or not to do anything in their capacity as a local government employee; or*

(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; or*

(c) *act in an abusive or threatening manner towards a local government employee.*

(3) *Subclause (2)(a) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.*

(4) *If a council member or candidate, in their capacity as a council member or candidate, is attending a council or committee meeting or other organised event (for example, a briefing or workshop), the council member or candidate must not orally, in writing or by any other means —*

(a) *make a statement that a local government employee is incompetent or dishonest; or*

(b) *use an offensive or objectionable expression when referring to a local government employee.*

(5) *Subclause (4)(a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV.”*

25. In this case the Panel considers that it is alleged Cr Gibb breached Regulation 20(4)(a).

26. To make a finding of a minor breach of regulation 20(4)(a) of the Regulations the Panel must be satisfied that it is more likely than not that:

- a. Cr Gibb was a councillor at the time of the alleged breach and was acting in his capacity as a councillor at the time of the alleged conduct;
- b. Cr Gibb was attending a council meeting, committee meeting or other organised event at the time of the alleged conduct; and



- c. Cr Gibb made a comment that state or imply that the government employee was incompetent or dishonest.

Panel's Consideration

Regulation 20(4)

Cr Gibb was a councillor and was acting in his capacity as a councillor at the time of the alleged conduct

27. Cr Gibb was a councillor at the time of the alleged breach and at the time the Panel considered the Complaint.
28. This element is met.

Cr Gibb was attending a council meeting, committee meeting or other organised event at the time of the alleged conduct

29. The relevant conduct occurred at Shire's Concept Forum held on 25 November 2021 being a meeting organised by the Shire in accordance with the Act.
30. This element is met.

Regulation 20(4)(a) - The comments made state or imply that the government employee was incompetent or dishonest

31. Cr Gibb does not deny that he described the Deputy Returning Officer's actions as incompetent, although that this was due to lack of training.
32. Cr Gibb argues that, in the circumstances, his comments were justified and made for the purposes of improving election processes.
33. Irrespective of whether Cr Gibb believed his comments were justified or not, Regulation 20(4) clearly does not permit a comment of this nature to be made in a public, or organised, Shire meeting. This regulation imposes strict accountability for such conduct.
34. Although the Panel sympathises with Cr Gibb's frustrations as to this electoral matter, this is simply not the appropriate environment to negatively refer to an employee as incompetent. For instance, it would be acceptable to bring a motion to Council to change the method the election is dealt with (i.e. appoint external returning officers etc).
35. The WA Electoral Commission has specific powers to assist local governments in running elections and has high standard of probity and accountability.
36. The Panel finds it is more likely than not that Cr Gibb's comment implied that the relevant City employee was dishonest in breach of regulation 20(4)(a).
37. This element is met.



Conclusion

38. The elements required to find a breach of regulation 20(4)(a) of the Regulations have been met.
39. The Panel makes the further comment that the Regulations and Act do allow:
 - a. for a matter relating to the same conduct to be referred to both the Council under regulation 12 of the Regulations and to the Standards Panel under section 5.110(2) of the Act; and
 - b. any party to make a complaint to the Standards Panel, so long as the same is made within 6 months of the relevant conduct.
40. In each case the Council and the Panel is required under the Act to consider the relevant conduct and make a finding of whether a breach occurred.
41. Despite this, the Panel would, when considering any penalty, take into account any apology, implementation plan or penalty imposed by the Council under the Regulations and already undertaken by Cr Gibb.

Panel's Findings

42. Cr Gibb did commit a breach of Regulation 20(4) of the Regulations and therefore did commit a minor breach.

Tim Fraser (Presiding Member)

Emma Power (Legal Member)

Peter Rogers (Member)



Local Government Standards Panel

Complaint Number	20220050
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Ms Jane Buckland
Respondent	Councillor Ian Gibb
Local Government	Shire of Nannup
Regulation	Regulation 20 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 Roger (Member)
Heard	5 May 2022 Determined on the documents
Penalty Considered	14 October 2022
Outcome	No Sanction

DECISION AND REASONS FOR DECISION

Delivered 23 January 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 5 May 2022, the Panel found that Councillor Ian Gibb councillor for the Shire of Nannup (“**the Shire**”), committed one minor breach under the *Local Government Act 1995 (WA)* (“**the Act**”) and regulation 20(4) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* (“**the Regulations**”) when he made a verbal statement suggesting that a local government employee was incompetent (“**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 Gibb 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 Gibb was:
 - a. notified of the Panel’s finding of the Minor Breaches;
 - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
 - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

Councillor Gibb’s Submissions

6. Despite being given an opportunity to make submission, Cr Gibb did not provide a response to the Department.

Possible Sanctions

7. 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;*

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



or

- (iii) *the person against whom the complaint was made undertake training as specified in the order;*

or

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

or

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

Panel's Consideration

8. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
9. The Panel may order under section 5.110(6)(a), that no sanction be imposed with respect to the Complaint, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
10. 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.
11. In this case the Panel notes that:
 - a. the Council and Shire investigated the matter and liaised with Cr Gibb;
 - b. Cr Gibb publicly apologised regarding the comment; and
 - c. Cr Gibb is undertaking training with respect to the breach.

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



12. Due to the above, the Panel considers that:
- a. Cr Gibb has already received significant penalties due to the breach;
 - b. Cr Gibb is fully aware of his obligations under the Act and Regulations; and
 - c. there is a negligible risk of him reoffending.
13. As such, the Panel considers it appropriate that no further sanction is imposed.

Panel's decision

14. The Panel orders pursuant to section 5.110(6)(a) of the Act that, in relation to the Minor Breach of regulation 20(4) of the Regulations that no sanction be imposed upon Cr Gibb as set out in the attached Order.

Signing

Tim Fraser (Presiding Member)

Emma Power (Member)

Peter Rogers (Member)



ORDER

Delivered 23 January 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:

No further sanction be imposed on Councillor Ian Gibb.



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."*