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## Local Government Standards Panel

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Complaint Number	20220119
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Amanda Spencer-Teo</b>
<b>Respondent</b>	<b>Councillor Craig Sweeney</b>
Local Government	<b>City of Canning</b>
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> Regulation 34D of the <i>Local Government (Administration) Regulations 1996</i>
Panel Members	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member)
Heard	14 October 2022 Determined on the documents
Finding	Breach x 1 of Regulation 18 No Breach x 1 Regulation 18 No Breach x 2 Regulation 34D

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### FINDING AND REASONS FOR FINDING

Delivered 20 January 2023

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#### DEFAMATION CAUTION

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## Summary of the Panel's decision

1. On 14 October 2022, the Panel found that Councillor Craig Sweeney, a councillor of the City of Canning (**"the City"**):
  - a. did not 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 he made an inappropriate comment about voting; and
  - b. did commit a minor breach pursuant to the Act and Regulation 18 of the Regulations when he made an allegedly improper Post on his councillor Facebook page;
  - c. did not commit a minor breach pursuant to the Act and Regulation 34D of the *Local Government (Administration) Regulations 1996* (**"the Administration Regulations"**) when he made an inappropriate comment about voting; and
  - d. did not commit a minor breach pursuant to the Act and Regulation 34D when he made an allegedly improper Post on his councillor Facebook page,as set out in 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.<sup>1</sup>
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:

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<sup>1</sup> Section 5.106 of the Act



- a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate<sup>2</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>3</sup>.
9. The Panel does not possess investigative or supervisory powers.<sup>4</sup> 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 Australia<sup>5</sup>.
  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 19 August 2022 the Panel received a complaint from Mr Michael Littleton acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 16 August 2022.
14. In the Complaint of Minor Breach Form the Complainant has alleged that Cr Sweeney has breached:
  - a. Regulation 18 of the Regulations when:
    - i. during the Ordinary Council Meeting 21 June 2022 Cr Sweeney made an inappropriate comment about voting ("**Allegation 1**"); and
    - ii. on 22 June 2022 Cr Sweeney made an allegedly improper Post on his councillor Facebook page ("**Allegation 2**"); and
  - b. Regulation 34D of the Administration Regulations when:
    - i. during the Ordinary Council Meeting 21 June 2022 Cr Sweeney made an inappropriate comment about voting ("**Allegation 3**"); and
    - ii. on 22 June 2022 Cr Sweeney made an allegedly improper Post on his councillor Facebook page ("**Allegation 4**"),

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<sup>2</sup> Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

<sup>3</sup> Briginshaw v Briginshaw (1938) 60 CLR 336

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

<sup>5</sup> Section 8(6) of Schedule 5.1 of the Act



as set out further in paragraph 17 (“**together the Complaint**”).

15. The Panel convened on 14 October 2022 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 Sweeney was:
    - i. elected to the Council of the City in October 2019 for a term expiring in October 2023;
    - ii. a Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 14 October 2022;
  - b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>6</sup>;
  - 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 breach<sup>7</sup>;
  - d. was satisfied the Department had provided procedural fairness to Cr Sweeney; 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. Cr Sweeney breached:
    - i. Regulation 34D twice in particular the following clauses of the *City of Canning Standing Orders Local Law 2015* (“**the Local Law**”):
      - A. 7.17 (1) - A member must not reflect adversely on a decision of the Council or a committee except on a motion that the decision be revoked or changed; and
      - B. 7.17 (2) (a) – A member is not to reflect adversely on the character or actions of another member or employee.
    - ii. Regulation 18 (1)(b) – to cause detriment to the local government or any other person,

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<sup>6</sup> Section 5.107(4) and 5.109(2) of the Act

<sup>7</sup> Section 5.107 and 5.109 of the Act



by publishing the following statement on his Canning Councillor Social Media Page.

*“Wow! Joined the council to be a voice for the community, but apparently that’s no longer an option – issues are put to the vote before councillors are even allowed to ask any questions.”*

**(“the Post”)**

- b. In the Post Cr Sweeney negatively reflected on the decision of Council to put the matter to the vote. In addition, he reflected adversely on the actions of those members who moved, seconded and voted in support of the procedural motion.
- c. The Post further implies that Cr Sweeney was silenced, gagged or prevented from being a voice to his community by the decision made by his fellow elected members. This is evidenced by the comments on the Post.
- d. The Post was made with the intention of showing the Council in a bad light and making the public think less of the Canning Council (with the exception of himself).
- e. The Presiding Member and six other Councillors, including the Complainant who voted in favour of putting the matter the vote suffered and continue to suffer a detriment as the Post is still active.
- f. The Post was shared to various community groups and reached a far and wide audience of constituents within Canning which brought the standing of the Complainant and Cr Kunze down in the community’s eyes, as evidenced in the comments to the Post.
- g. The adverse comments and reflection made by Cr Sweeney both during the meeting and in the subsequent social media publication (as detailed further in this complaint), with respect to the raising the motion to put the item to the vote implies that Council acted improperly and did not allow Cr Sweeney to ask questions or be a voice for his community.
- h. The Complainant found the language used by Cr Sweeney just before the matter was put the vote was extremely offensive and embarrassing. The words he used were:

*“I don’t even know what we’re f\*\*ng voting for”*

**(“the Comment”)**

- i. The conduct and language used by Cr Sweeney was inappropriate and not keeping with the conduct that would be expected of a Councillor. His behaviour and actions have caused embarrassment not only to the Complainant but to the Council as a whole.
- j. As shown by his participation in prior similar votes, Cr Sweeney was aware of the process of putting a motion to vote as per 10.1(c) in the Standing Orders.
- k. Many persons, including children were listening to the live streamed audio.





- g. Cr Sweeney made the Presiding Member (Deputy Mayor Kunze) aware of the difficulty he was having with hearing what was being communicated.
- h. Several times throughout the OCM, Cr Sweeney became quite frustrated as the audio problem appeared to intensify as the meeting progressed and he was losing focus on items due to a constant static noise.
- i. Cr Sweeney remembers leaving his microphone muted and regularly checking to ensure the microphone remained muted unless Cr Sweeney was about to speak. However, it appeared this was not the case and at times the microphone was active.
- j. During the relevant item the malfunctions made it extremely difficult to understand any decisions or outcomes prior to the casting of the vote.
- k. Cr Sweeney's tolerance had worn thin and in hindsight, he probably should have excused himself from the meeting within the first half hour.
- l. Cr Sweeney felt he wasn't given enough consideration or understanding by the Presiding Member when he tried to seek some clarity about the status of the agenda item and given no opportunity to ask a question.
- m. When the vote was made, Cr Sweeney's Ipad microphone was continuing to emit interference through the audio, which was cutting in and out, but he remembers seeing the muted sign for the microphone indicating he could not be heard.
- n. As Cr Sweeney was closed off from the meeting, he wasn't acting as a councillor at that moment, as he was in the privacy of his own home and somewhat relieved the meeting was finally over.
- o. It was at this point when Cr Sweeney looked away from the screen to mutter to himself an expletive word out of frustration at not being able to hear or ask questions.
- p. Cr Sweeney had no idea the Presiding Member or anyone else had heard this expletive word.
- q. Cr Sweeney was also unaware that the Presiding Member then advised him not to swear at a live council meeting as he could not hear him.
- r. It wasn't until Cr Sweeney received this Complaint and reviewed the audio recording that he realised what the Presiding Member had responded to the expletive.
- s. It should be obvious from the audio recording that it was not Cr Sweeney's intention to deliberately secure an advantage or disadvantage anybody, and especially not to deliberately disadvantage the Local Government
- t. Cr Sweeney subsequently arranged with the City of Canning IT department to exchange the Ipad.



- u. On the night of the OCM Cr Sweeney was not given the opportunity to apologise at the time of the incident because the Presiding Member did not request a retraction or an apology.
- v. Had he done so at the time, Cr Sweeney would have realized the Ipad microphone had activated and of course retracted the comment and apologised.
- w. If the Presiding Member thought Cr Sweeney was speaking in the role of a councillor, he would have asked for an apology and retraction as per local law 7.18. but he did not so, it can only be assumed he too thought this incident was accidental.
- x. Cr Sweeney has now:
  - i. apologised to his fellow councillors and explained this incident was an accident after experiencing poor technology issues on the night of the OCM;
  - ii. spoken to and apologised to City staff and members of the public who he knows listen in regularly and they all realize it was a mistake and that the comment was accidental because of frustration due to technical issues
- y. The Comment did not adversely reflect on a decision of council, nor did it single out a name, or adversely reflect on any individual Elected Member.
- z. This incident is the equivalent of Cr Sweeney cussing after stubbing a toe or knocking an elbow. It was unintentional and very unlikely to occur in the future.
- aa. It was an accidental comment, thought to be said in private, an innocent mistake.
- bb. In respect to the Post made on social media (Facebook):
  - i. Cr Sweeney did not say these comments and he did not post this statement on Facebook;
  - ii. Cr Sweeney has nothing to do with this social media platform, he never looks at it, as he feels there are better ways to connect with his community without using unreliable, non-factual social forums;
  - iii. this social page is administrated by Cr Sweeney's wife, and she posted the comment without his knowledge after listening to the live stream audio of the OCM; and
  - iv. the statement posted on Facebook also reflects someone else making the comment due to the phrasing.
- cc. Cr Sweeney did not say this statement. In this case his wife published the comments as the administrator of the Facebook account and his wife is not an Elected Member.
- dd. Cr Sweeney only became aware of the Facebook post a few days ago after he had received the Complaint. This Post has now been removed.
- ee. Included in the Complaint was an email allegedly sent from Deputy Mayor Kunze dated Tuesday 28 June 2022.





- ff. Cr Sweeney did not ever receive this email from Deputy Mayor Kunze.
  - gg. If Deputy Mayor Kunze did not receive a reply as claimed, why didn't he speak to Cr Sweeney about this?
  - hh. Cr Sweeney finds it strange this did not occur and submits the Standards Panel should disregard the same as the contents and confirmation of send and receipt times cannot be verified and the contents cannot be relied upon.
  - ii. There are also several format discrepancies in the email which raises questions over credibility of certain documents.
21. Cr Sweeney also provided the following supporting documentation:
- a. A list of examples of the Ipad malfunctioning;
  - b. A note of discrepancies in email evidence provided by the Complainant; and
  - c. examples of posts made by Cr Sweeney's wife as administrator of Cr Sweeney's Facebook page.

## **PANEL'S CONSIDERATION**

### **Regulation 18**

22. 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.”*
23. 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 Sweeney was an elected member or a candidate at the time of the alleged breach and the time of the determination;
  - b. Cr Sweeney made use of his office as Council member or candidate of the City;



- c. when viewed objectively, such use was an improper use of Cr Sweeney'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 Sweeney engaged in the conduct in the belief that detriment would be suffered by another person.
24. 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.
25. 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.
26. 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.
27. 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 abused<sup>8</sup>.
28. "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.
29. It is not necessary to find whether any detriment was actually suffered<sup>9</sup>, but an intent to cause such detriment must be established.

### **Code of Conduct**

30. The City has a *Code of Conduct for Council Members, Committee Members and Candidates* adopted 23 May 2021 ("**the Code of Conduct**") which governs the conduct of elected members.

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<sup>8</sup> 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].

<sup>9</sup> Yates and Local Government Standards Panel [2012] WASAT 59 at [72]



31. A breach of the Code of Conduct may indicate that an elected member has acted improperly in breach of Regulation 18.
32. The relevant provisions of the Code of Conduct Code are as follows:

**“ 5. Relationship with others**

- (1) *A council member, committee member or candidate should —*
- (a) *treat others with respect, courtesy and fairness; and*
  - (b) *respect and value diversity in the community.*
- (2) *A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.”*

**“ 8. Personal Integrity**

- (1) *A council member, committee member or candidate —*
- (a) *must ensure that their use of social media and other forms of communication complies with this code; and*
  - (b) *must only publish material that is factually correct.*
- ...”

**“ 9. Relationship with others**

- A council member, committee member or candidate —*
- (a) *must not bully or harass another person in any way; and*
  - (b) *must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and*
  - (c) *must not use offensive or derogatory language when referring to another person; and*
  - (d) *must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and*
  - (e) *must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.”*

**Regulation 18 - Allegation 1**

Cr Sweeney was an Elected Member or a candidate at the relevant times

33. Cr Sweeney was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
34. This element is met.



Cr Sweeney made use of his office as Council Member or candidate of the City

35. In respect to Allegation 1, Cr Sweeney has argued that he was not acting as an elected member as he:
  - a. was acting privately in his own home; and
  - b. thought his microphone was off/muted.
36. With due respect to Cr Sweeney, this argument is misconceived.
37. Irrespective of whether the OCM was not in person, but undertaken electronically, Cr Sweeney was present at the OCM and was voting on matters at the OCM in his capacity as an elected member.
38. The mere fact that he thought the microphone was muted does not mean he was not present at the OCM at that time, any more than an elected member would be considered to be not present at an “in person” OCM while their microphone was muted and they were not actively speaking on a matter.
39. Cr Sweeney had made no indication to the meeting that he was leaving the room or otherwise not participating (despite the technical difficulties he was experiencing).
40. Further, the fact that the Presiding Member did not at that time require Cr Sweeney to apologise cannot be extrapolated to mean that Cr Sweeney was not acting as a elected member.
41. Due to the facts that:
  - a. the relevant conduct occurred during the Ordinary Council Meeting of 21 June 2022; and
  - b. as noted above, Cr Sweeney was present and acting in his role as a councillor, the Panel finds that it is more likely than not that Cr Sweeney was acting in his capacity as an elected member and made use of his office as a council member when undertaking the conduct.
42. This element is met.

Cr Sweeney’s use was improper

43. There is no argument that the words used by Cr Sweeney in the Comment were not inappropriate.
44. The Panel appreciates that the same were said in the heat of the moment in frustrating circumstances, however, this does not detract from the improper nature of the phrasing.
45. The Panel finds that it is more likely than not that making the Comment was improper as:
  - a. the conduct was of such a nature that a reasonable individual, with an understanding of the nature and background of the issue, would consider the



same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and

b. the conduct is deserving of a penalty.

46. This element is met.

Regulation 18(1)(b) Cr Sweeney intended to cause a disadvantage

47. The Panel affirms, it is not necessary for any disadvantage to actually occur due to the conduct. It is the intention of the elected member when engaging in such conduct that the Panel must consider.

48. In this case Cr Sweeney asserts that the Comment was an accidental comment, thought to be said in private and was an innocent mistake.

49. The Panel agrees with this characterisation and considers that the Comment was made due to frustration and not in any attempt to cause a disadvantage to any party.

50. The Panel finds that it is more likely than not that Cr Sweeney did not intend to cause any detriment to any person or the local government in general.

51. This element is not met.

Conclusion

52. Given the above the elements required to find a breach Regulation 18(1)(b) of the Regulations have not been met in respect to Allegation 1.

**Regulation 18 - Allegation 2**

Cr Sweeney was an Elected Member or a candidate at the relevant times

53. Cr Sweeney was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

54. This element is met.

Cr Sweeney made use of his office as Council Member or candidate of the City

55. In respect to the Allegation 2, Cr Sweeney has argued that he was not acting as an elected member as his wife made the Facebook Post.

56. The fact that Cr Sweeney's wife is the administrator and may have made the relevant Post is not necessarily determinative of whether Cr Sweeney was acting in his capacity as an elected member.

57. In this case the relevant Facebook page is entitled "*Councillor Craig Sweeney – City of Canning*". The same shows a photograph of Cr Sweeney and also includes a banner photo of the whole of the Council.



58. It is apparent that Cr Sweeney's wife is expressly authorised to be the administrator of the Facebook page. It is noted that the Post was made, not by her as an administrator, but using Cr Sweeney's identity.
59. The Panel further disagrees with Cr Sweeney's argument that the wording of the Post implies it is made by a third party. No reasonable person would believe that. The words "*joined the council to be a voice of the community*" clearly and unequivocally indicate that the comment was intended to be seen as a comment by Cr Sweeney as a member of Council.
60. The Facebook page is therefore clearly intended to be to be seen as a medium by which Cr Sweeney is communicating with the community.
61. The Panel finds that Cr Sweeney's wife was expressly authorised to make posts (including the Post) on Cr Sweeney's behalf, either as his agent or representative, and that due to this, he is deemed to be the person who made the Post, by express authorisation.
62. This is the same situation as if Cr Sweeney had hired an expert or management firm to undertake his social media activities. Cr Sweeney remains liable for the comments made on his behalf.
63. If Cr Sweeney did not wish to be so represented on social media, then he should not hold a Facebook account as a councillor nor allow other parties to make posts on his behalf.
64. The Panel finds that due to the facts that:
  - a. the Facebook Page is specifically noted as being the councillor page of Cr Sweeney;
  - b. the Post, to any person using Facebook, appears to have been made personally by Cr Sweeney or authorised on his behalf; and
  - c. the Post purports to communicate with and lead the community with respect to a matter related to the City and Council,it is more likely than not that Cr Sweeney was acting in his capacity as an elected member and made use of his office as a council member.
65. This element is met.

Cr Sweeney's use was improper

66. In this case, the Complainant has argued that the Post was improper as it:
  - a. negatively reflected on the decision of Council to put the matter to the vote; and
  - b. reflected adversely on the actions of those members who moved, seconded and voted in support of the procedural motion.
  - c. implies that Cr Sweeney was silenced, gagged or prevented from being a voice to his community by the decision made by his fellow elected members.



67. The Panel finds that the Post strongly implied that:
- he was not permitted to ask questions;
  - Cr Sweeney was prevented from undertaking his role as an elected member; and
  - that Council had somehow acted improperly in the way it had managed voting at the OCM.
68. The Panel finds that the above is in breach of the Code of Conduct as the Post:
- did not treat the Council as a whole with respect, courtesy in accordance with clause 5(1)(a) of the Code of Conduct;
  - imputed dishonest or unethical motives to the Council members by implying that Cr Sweeney was not permitted to speak or undertake his role properly in breach of clause 9(e) of the Code of Conduct; and
  - was not made in accordance with Cr Sweeney's obligations under the Code of Conduct in breach of clause 8(1)9a) of the Code of Conduct.
69. The Panel notes that although the Local Law does not apply to the conduct (as it did not occur during a council or committee meeting) it is generally considered improper to adversely reflect on the actions of other council members or adversely reflect on a prior decision of Council.
70. The Panel finds that the Post amounts to adversely reflecting on the character or actions of the other Council members, however, is not specific enough to be referring to a past decision of Council, but rather appears to be referring to the process of voting that took place.
71. The Panel finds that it is more likely than not that making the Comment was improper as:
- the conduct was in breach of the Code of Conduct;
  - the Post adversely reflected on the charter or actions of other Council Members;
  - the conduct was of such a nature that a reasonable individual, with an understanding of the nature and background of the issue, would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
  - the conduct is deserving of a penalty.
72. This element is met.

Regulation 18(1)(b) Cr Sweeney intended to cause a disadvantage

73. The Complaint asserts that the Post was made with the intention of showing the Council in a bad light and making the public think less of the Canning Council (with the exception of Cr Sweeney).



74. Cr Sweeney does not address the issue of intent, except to note his wife made the relevant Post.
75. In this case, the Panel finds that the nature of the Post was clearly intended to make members of the community reading the Post think less of the Council, and the City of Canning for the manner in which a vote was managed.
76. There is no reasonable interpretation that the Post was benign in content or tone. It clearly implies wrongdoing by the Council.
77. The Panel finds that it is more likely than not that Cr Sweeney did intend to cause any detriment to the Councillors of the Council and the local government in general.
78. This element is met.

#### Conclusion

79. Given the above the elements required to find a breach Regulation 18(1)(b) of the Regulations have been met in respect to Allegation 2.

#### **Regulation 34D of the Administration Regulations**

80. Regulation 34D of the Administration Regulations reads:

*“(1) In this regulation —*

*“**local law as to conduct**” means a local law relating to conduct of people at council or committee meetings.*

*(2) The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.”*

81. Section 5.105(1)(b) of the Act states as follows:

*“A council member commits a minor breach if he or she contravenes*

*...*

*(b) a local law under this Act, contravention of which the regulations specify to be a minor breach.”*

82. To make a finding of a minor breach of regulation 34D of the Administration Regulations the Panel must be satisfied, to the required standard, that:
  - a. Cr Sweeney was a councillor at the time of the alleged breach and the time of the determination;
  - b. the conduct occurred during a council or committee meeting; and
  - c. Cr Sweeney breached a valid provision of a local law as to conduct being the *City of Canning Standing Orders Local Law 2015 (“**the Local Law**”)*;





### **Regulation 34D - Allegation 3**

#### Cr Sweeney was a Councillor at the relevant times

83. Cr Sweeney was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.
84. This element is met.

#### The conduct occurred at a council or committee meeting

85. The relevant conduct occurred during the Ordinary Council Meeting of 21 June 2022.
86. This element is met.

#### Cr Sweeney breached a valid provision of the *City of Canning Standing Orders Local Law 2015*

87. It is an essential element to find a minor breach of Regulation 4 that the breach is of a “local law relating to conduct of people at council or committee meetings”.
88. This has two requirements being that:
- a. the same is a “local law”, being the formal gazetted meeting procedures or standing orders local law<sup>10</sup> (the Local Law is such a law); and
  - b. the relevant Meeting Procedure clause breached must relate to “conduct” rather than being concerned as to procedure.
89. The Complainant has alleged Cr Sweeney breached clauses 7.17(1) and (2) of the Local Law being as follows:
- (1) *A Member must not reflect adversely on a decision of Council except on a motion that the decision be revoked or changed;*
  - (2) *A member is not to –*
    - (a) *reflect adversely on the character or actions of another Member or employee; or*
    - (b) *impute any motive to a Member or employee,*  
*unless the meeting resolves, without debate, that the matter before the meeting cannot otherwise be adequately considered.*
  - (3) *A Member, or a member of the public, must not use offensive or objectionable expressions in reference to any Member, employee or other person...*

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<sup>10</sup> See *Ryan and Local Government Standards Panel* [2009] WASAT 154 and *Steck and Local Government Standards Panel* [2011] WASAT 117.



90. The Panel finds that the Comment does not amount to a breach of clause 7.17.
91. The same is not an adverse reflection and does not impute any motive. Although the language used can be considered offensive, the same was not in relation to any “*Member, employee or other person*”.
92. Clause 7.10 of the Standing Orders provides as follows:
- “ 7.10 Relevance
- (2) *The Presiding Member, at any time, may call the attention of the meeting to—*
- (a) *any irrelevant, repetitious, offensive or insulting language by a Member;*  
*or*
- (b) *any breach of order or decorum by a Member.*”
93. Although this clause clearly allows the Presiding Member to deal with a “*breach of decorum*” by a Member (which the Comment clearly was) this is not a rule as to conduct (i.e. it does not specially prohibit a breach of decorum). Rather it is a procedural rule describing the process that the Presiding Member may follow after the conduct has occurred.
94. Given the above, the Panel finds to the required standard there was no breach of Regulation 34D of the Administration Regulations with respect to the Comment.
95. This element is not met

### Conclusion

96. The elements required to find a breach of regulation 34D of the Regulations have not been met with respect to Allegation 3.



### **Regulation 34D - Allegation 4**

#### Cr Sweeney was a Councillor at the relevant times

97. Cr Sweeney was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.
98. This element is met.

#### The conduct occurred at a council or committee meeting

99. It is an essential element to find a breach of Regulation 34D of the Administration Regulations that the conduct occurred at a council or committee meeting.
100. The relevant conduct the subject of Allegation 4 is a Facebook Post, as such this element cannot be met.
101. This element is not met.

#### Remaining Elements

102. As the above element cannot be met, the Panel has not further considered the remaining elements.

#### Conclusion

103. The elements required to find a breach of regulation 34D of the Regulations have not been met with respect to Allegation 4.



### **PANEL'S FINDINGS**

104. With respect to Allegation 1 – Cr Sweeney did not commit a breach of Regulation 18 of the Regulations and therefore did not commit a minor breach.
105. With respect to Allegation 2 – Cr Sweeney did commit a breach of Regulation 18 of the Regulations and therefore did commit a minor breach.
106. With respect to Allegation 3 – Cr Sweeney did not commit a breach of Regulation 34D of the Administration Regulations and therefore did not commit a minor breach.
107. With respect to Allegation 4 – Cr Sweeney did not commit a breach of Regulation 34D of the Administration Regulations and therefore did not commit a minor breach.

### **Signing**

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Tim Fraser (Presiding Member)

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Emma Power (Member)

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Peter Rogers (Member)



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## Local Government Standards Panel

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Complaint Number	20220119
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Amanda Spencer-Teo</b>
<b>Respondent</b>	<b>Councillor Craig Sweeney</b>
Local Government	<b>City of Canning</b>
Regulation	Regulation 18 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Ms Emma Power (Presiding Member) Ms Suleila Felton (Deputy Member) Cr Peter Rogers (Member)
Heard	14 October 2022 Determined on the documents
Penalty Considered	7 March 2023
Outcome	No Sanction

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### DECISION AND REASONS FOR DECISION

Delivered 31 March 2023

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#### DEFAMATION CAUTION

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



## Introduction

1. At its meeting on 14 October 2022, the Panel found that Councillor Craig Sweeney 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 the *Local Government (Rules of Conduct) Regulations 2007 (WA)* (“**the Regulations**”) when he made an improper Post on his councillor Facebook page (“**the Minor Breach**”).

## Jurisdiction and Law

2. The Panel convened on 7 March 2023 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 Sweeney 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).<sup>1</sup>
5. By a letter dated 20 January 2023, Cr Sweeney 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 Sweeney’s Submissions

6. By an email dated 20 February 2023, the Department received a response from Cr Sweeney.
7. Cr Sweeney provided the following comments and arguments as to penalty, as summarised by the Panel:
  - a. Cr Sweeney accepts the Panel’s finding and takes responsibility for this incident.
  - b. Cr Sweeney had difficulty connecting to the Zoom streaming process and experienced technical difficulties throughout the meeting.
  - c. Towards the end of the meeting when the final agenda item was introduced Cr Sweeney’s tolerance had worn thin.
  - d. Cr Sweeney did let his frustration get the better of him.
  - e. Unbeknownst to Cr Sweeney his wife published her feelings and expressed them on his councillor Facebook page.
  - f. Cr Sweeney accepts the Panel’s view and takes responsibility for this post.

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



- g. Cr Sweeney should have jumped on this immediately but didn't know until a couple months later.
- h. Cr Sweeney's councillor Facebook page has been inactive since this matter was first raised in August last year and has now been taken down.
- i. Once Cr Sweeney became aware of this complaint, he immediately apologised to his councillor colleagues, administration staff and he reached out to other members of the public who he regularly meets with to also apologise and explain his lapse of behaviour.
- j. Cr Sweeney has always endeavoured to perform the role to the very best of his professional ability.
- k. There is no ill-will on Cr Sweeney's part, and he would prefer to put this all behind him and move on.
- l. Cr Sweeney feels now at this time, any further publicly imposed sanction will be detrimental to his character and something his election competitors will be aware of and certainly target.
- m. Cr Sweeney would ask the Panel to consider his previous unblemished record of public service, and the fact that he accepts the finding and takes full responsibility for the post on Facebook.
- n. Cr Sweeney can assure the Panel this was a once off event and it certainly won't happen again.
- o. If possible, Cr Sweeney would ask for some leniency given the circumstances and respectfully request that no sanction is imposed.

### **Possible Sanctions**

8. 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;*  
*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**

9. Section 5.110(6) is 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 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.
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 seriousness<sup>2</sup>.
12. In this case the Panel notes that:
  - a. Cr Sweeney was not the party that actually wrote the Facebook Post;
  - b. Cr Sweeney accepts responsibility for the conduct and shows insight to the situation; and
  - c. Cr Sweeney promptly took steps to apologise for the conduct.
13. Due to the above, the Panel considers that Cr Sweeney:
  - a. is fully aware of his obligations under the Act and Regulations; and
  - b. is highly unlikely to reoffend in the same or a similar manner.
14. As such, the Panel considers it appropriate that no further sanction is imposed.
15. 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 Sweeney recoup to the City the costs of the Department incurred with respect to the Complaint.

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





### Panel's decision

16. 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 Sweeney as set out in the attached Order.

### Signing

A handwritten signature in black ink, appearing to read 'E Power', written over a horizontal line.

Emma Power (Presiding Member)

A handwritten signature in black ink, appearing to read 'S Felton', written over a horizontal line.

Suleila Felton (Deputy Member)

A handwritten signature in black ink, appearing to read 'P Rogers', written over a horizontal line.

Peter Rogers (Deputy Member)



**ORDER**

**Delivered 31 March 2023**

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**DEFAMATION CAUTION**

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**THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:**

No further sanction be imposed on Councillor Craig Sweeney.



## 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.”*