



Local Government Standards Panel

Complaint Number	20230216
Legislation	<i>Local Government Act 1995</i>
Complainant	Mayor Greg Milner
Respondent	Councillor Stephen Russell
Local Government	City of South Perth
Regulation	Regulation 18(1)(b) of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Mr Tim Fraser (Presiding Member) Ms Elanor Rowe (Deputy Member) Councillor Peter Rogers (Member)
Heard	27 April 2023 Determined on the documents
Finding	One breach of Regulation 18(1)(b)

FINDING AND REASONS FOR FINDING

Delivered 24 July 2023

DEFAMATION CAUTION

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



Summary of the Panel's decision

1. The Local Government Standards Panel ("the Panel") found that Councillor Stephen Russell ("Cr Russell"), an elected member for the City of South Perth ("the City") committed one breach under the *Local Government Act 1995 (WA)* ("the Act") and Regulation 18(1)(b) of the *Local Government (Model Code of Conduct) Regulations 2021* when he sent emails to a local ratepayer association on 4 and 5 February 2023 regarding a petition that was considered at the Council Meeting held on 27 September 2022.

Jurisdiction and procedural fairness

2. The Act makes provision for the circumstances in which a council member commits a minor breach.¹
3. On 10 March 2023, the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form ("Complaint") dated 9 March 2023. The Complaint was signed by the City's Mayor, Councillor Greg Milner ("the Complainant") and contained one allegation of a breach of Regulation 18(1)(b) of the *Local Government (Model Code of Conduct) Regulations 2021* by Cr Russell when he sent emails to a local ratepayer association on 4 and 5 February 2023 regarding a petition that was considered at the Council Meeting held on 27 September 2022.
4. The Department advised Cr Russell of the Complaint and invited him to respond. The Department sent Cr Russell copies of the original Complaint and all the supporting documents provided by the Complainant.
5. Under the Act the Panel is required to consider complaints of minor breaches and make findings as to whether the alleged breach occurred.² On 27 April 2023, the Panel convened to consider the Complaint.
6. The Panel:
 - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Cr Russell was a councillor at the time of the alleged breach, and was still a Councillor when the Panel met on 27 April 2023;
 - (b) was satisfied the Complaint had been made within six months after the alleged breach is said to have occurred³;
 - (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches⁴; and
 - (d) was satisfied that the Department had provided procedural fairness to Cr Russell.

¹ Section 5.105 of the Act.

² Section 5.110(2)(a) of the Act.

³ Section 5.107(4) of the Act

⁴ Sections 5.107, 5.108, 5.109 of the Act.



7. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting the relevant Minister at the time instead of considering the Complaint itself.⁵ Cr Russell had not previously been found to have committed any minor breaches. Therefore, the Panel decided to not send the Complaint to the Chief Executive Officer of the Department.
8. Based on the information referred to in paragraphs 3 to 7 above, the Panel found it had jurisdiction to determine whether Cr Russell had breached the Regulations in connection with the Complaint.

Panel's role

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

Regulation 18(1)(b)

13. Regulation 18(1)(b) provides:

“18. Securing personal advantage or disadvantaging others

(1) A council member must not make improper use of their office –

....

(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.”

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

⁶ Section 5.106 of the Act.

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



14. The Panel decided that the alleged conduct was not conduct that contravened section 5.93 of the Act or section 83 of *The Criminal Code*.

Elements of Regulation 18(1)(b)

15. In order to find a breach of Regulation 18(1)(b), the Panel must be satisfied to the required standard of proof that:

- (a) the person, the subject of the Complaint, engaged in the alleged conduct (first element);
- (b) the person, the subject of the Complaint, was a council member both at the time of the conduct and the time when the Panel makes its determination (second element);
- (c) by engaging in the conduct, the person, the subject of the complaint, made use of his or her office as a council member (in the sense that he or she acted in their capacity as a councillor, rather than in some other capacity) (third element);
- (d) when viewed objectively, such use was an improper use of the person's office as a council member in that it:
 - (i) involved a breach of the standards of conduct that would be expected of a person in the position of a councillor, by reasonable persons with knowledge of the duties, power and authority of the councillor and the circumstances of the case; and
 - (ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;(fourth element);
- (e) the person engaged in the conduct in the belief that detriment would be suffered by the local government or any other person. (fifth element).

Fourth element - meaning of "to make improper use of....office"

16. The Macquarie dictionary definition of "*improper*" is "*not in accordance with propriety of behaviour, manners, etc; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.*"⁸ The Shorter Oxford dictionary definition is "*irregular, wrong; unsuitable, inappropriate; unbecoming, unseemly.*"⁹

17. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a councillor, and all the circumstances of the particular case, form the view that the councillor had breached the standards of conduct expected of a councillor?¹⁰ "*For behaviour to be improper it must be such that a right-thinking person would regard the conduct*

⁸ Macquarie Dictionary, Revised Third Edition.

⁹ Shorter Oxford English Dictionary, Sixth Edition.

¹⁰ *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.



as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.”¹¹

18. Under the Act Panel members must have regard to the general interests of local government in Western Australia.¹² It is in the interests of local government that councillors are, and are seen to be, professional and respectful in their dealings with fellow councillors, local government employees and members of the public.
19. The meaning of “*improper*” must be considered in the context of relevant legislation, such as the Act and the Regulations, and other rules and standards that apply to a councillor’s role and conduct, such as the circumstances and context of the case.¹³ All these provisions form part of the backdrop to the Regulations and give context to a complaint but the alleged conduct must also be judged in the particular circumstances.
20. Conduct can be improper even though the councillor’s judgement is that it isn’t improper. A councillor’s use of his or her office can be improper even though the councillor is intending to benefit the local government, the council or the ratepayers and residents.¹⁴

Fifth element - meaning of “to cause detriment to the local government or any other person”

Detriment

21. “*Detriment*” means loss, damage or injury.¹⁵ It includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage. A person can suffer detriment through others thinking less favourably of them.¹⁶
22. For Regulation 18(1)(b) to be satisfied it is not necessary to show that the local government or the person concerned actually suffered detriment.¹⁷ However, it is not enough to show that the local government or the person concerned suffered detriment or could have suffered detriment. The Panel must find that it is more likely than not that the councillor believed that his or her actions would cause detriment and intended to cause detriment.¹⁸
23. “*To cause detriment*” has been interpreted as meaning “*in order to*” or “*for the purpose of*” causing detriment, or “*with the will to*” cause detriment.¹⁹ There can be a finding of intent if, after considering all the evidence, the only reasonable inference is that the councillor intended to cause detriment.²⁰

¹¹ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

¹² Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

¹³ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10.

¹⁴ *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby* 2010.

¹⁵ Macquarie Dictionary Revised Third Edition, 2001.

¹⁶ *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.

¹⁷ *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

¹⁸ *Re and Local Government Standards Panel* [2014] WASAT 111, paragraph 51, referring to *Australian Securities and Investments Commission v Australian Property Custodian Holdings Ltd* [2013] FCA 1342.

¹⁹ *Chew* 2010.

²⁰ *Treby* 2010.



Substance of the Complaint

24. Prior to the Council Meeting held on 27 September 2022 ("September Council Meeting") the Council received a petition ("Petition") from a local resident ("Resident") regarding the City's proposed Recreation and Aquatic Facility project ("RAF Project").

25. On the Agenda for the September Council Meeting, the Officer Recommendation for Item 8.1.1 ("Item 8.1.1") read as follows:

"That the petition received from George Watts of Yallambee Place, Karawara, together with 2016 verified signatures and 58 unverified signatures in relation to the Recreation and Aquatic Facility (RAF) be forwarded to the relevant Director for consideration."

26. At the September Council Meeting, the Council made the decision ("Decision") to vote against the Officer Recommendation:

Officer Recommendation AND COUNCIL DECISION

Moved: Councillor Carl Celedin

Seconded: Councillor Glenn Cridland

That the petition received from George Watts of Yallambee Place, Karawara, together with 2016 verified signatures and 58 unverified signatures in relation to the Recreation and Aquatic Facility (RAF) be forwarded to the relevant Director for consideration.

LOST (4/5)

For: Mayor Greg Milner, Councillors Carl Celedin, Glenn Cridland and Stephen Russell.

Against: Councillors André Brender-A-Brandis, Mary Choy, Blake D'Souza, Ken Manolas and Jennifer Nevard.

27. The Decision was not received well by the local community and attracted a considerable amount of negative media coverage.

28. On 2 October 2022, Cr Russell sent an email to the City's Chief Executive Officer ("CEO"). The email was copied to the Director of Corporate Services ("Director"), the City's Governance Department and all Councillors. Cr Russell's email queried the application of the City's *Standing Orders Local Law 2007* ("Standing Orders") and the Council's handling of petitions received from the community. In particular, Cr Russell made an allegation that the City and the Complainant had been at fault with regard to the handling of Item 8.1.1 at the September Council Meeting.

29. Subsequently, this issue was followed by a significant amount of email correspondence between Councillors and the City's administration. Several parties, including the CEO, the City's Governance team and other councillors disputed what they perceived as Cr Russell's incorrect view of the application of the Standing Orders to Item 8.1.1.

30. On 7 October 2022, the CEO sent an email to all Councillors (including Cr Russell) which included the following remarks:



"It is noted that Councillor Manolas did attempt to raise an Alternative Motion, however, the Mayor did not allow this and rightly so because it would have to have been received by 12pm on Monday 26th September to comply with Standing Orders.

Given that the Petition was deemed to comply with Standing Orders, there was likely only one motion that was in order and that was the one contained in the Officer's Recommendation.

The decision by the Presiding Member regarding debate on the motion, if disagreed with, should have been disagreed with on the night (using Clause 11). This did not happen and the meeting moved on. Whether debate should occur is a matter for the Mayor and Council to decide at the meeting not after the event. If a Councillor had raised a point of order or a motion that the Presiding Member be disagreed with, then Administration could and would have provided advice.

....

Continuing to try and assign blame for the current situation does no one any good. Administration has provided Council with the way forward that complies with the Standing Orders and the Community and each of the elected members will have an opportunity to express their views in an appropriate manner at the next OCM."

31. On 8 November 2022, the City held an Electors' Special Meeting ("Electors' Special Meeting"):

Electors' Special Meeting

The Electors' Special Meeting was held in response to an electors' petition received for the purpose of:

"Allowing the community to express that they have no confidence in Deputy Mayor D'Souza, Councillor Choy, Councillor Manolas, Councillor Brender-A-Brandis, Councillor Nevard for:

- a) *Setting a disturbing precedent which fundamentally impinges upon the democratic rights of the South Perth community by voting to not accept a community Petition with almost 2,500 signatures.*
- b) *Voting to breach the City's funding agreement with the Commonwealth thereby putting at risk \$20 million in grants funding and incurring a liability for ratepayers to pay back with interest grant funds already received and potentially increasing rates and*
- c) *Failing to implement the City's Strategic Community Plan."*

In accordance with Section 5.28 of the *Local Government Act 1995* and the Local Government (Administration) Regulations 1996, the Order of Business was as follows:

32. At the Electors' Special Meeting, the application of the Standing Orders to Item 8.1.1 was the subject of considerable discussion. The CEO had made the following statements confirming that the Standing Orders had been complied with in relation to Item 8.1.1:

"The Standing Orders were complied with at the Ordinary Council Meeting of 27 September 2022. The petition was presented correctly under clause 5.2 (1) part 8.1 Petitions. This has been the City's long-standing practice with regard to petitions."

"Council was not asked to vote on any matter that was the subject of the petition. At that meeting, a report dealing with the subject matter was dealt with at the subsequent meeting. So in all cases, the Standing Orders were complied with."

33. Cr Russell was present at the Electors' Special Meeting. Therefore, he would have heard these statements by the CEO.
34. Approximately four months later, on 1 March 2023, Cr Russell sent an email to all Councillors advising that on 4 and 5 February 2023, he had provided a written



"*opinion*" to the President ("President") of the City of South Perth Residents Association ("COSPR"). COSPR is one of the most prominent and outspoken community groups in the City. At the time, COSPR had been engaged in a very public, and misleading, campaign against the City's proposed RAF Project.

35. Cr Russell's emails to COSPR ("COSPR Emails"), had included the following statements:

First Statement

"The Mayor did not use his discretion under SO10.3 "Unopposed Business" to ask if anyone wished to oppose the motion. This is not a breach of the SO, however as the Mayor called for a vote immediately after the motion being seconded then SO10.5 "Order of Debate" was not followed. Hence, IMO Standing Orders 10.5 was breached. In effect this prevented any member who wished to speak against the motion or even amend the motion, from being heard; a failure of process and consequently a failure to apply natural justice."

Second Statement

"As there was a discussion with Cr Monolas in regards to an Alternative Motion, then it is obvious that Cr Manolas wished to at least be given the opportunity to speak against, debate or to be heard on the item. The Mayor should have had the presence of mind to understand this and therefore in order to provide natural justice the Mayor should have reverted to SO10.5(c) in the process. The Mayor did not do so and therefore IMO did not fulfil the following principle as laid out in the attachment with regards to Members be given fair opportunity:

1.3.1 Relationships between the Mayor/President and Councillors

The Mayor/President has responsibility for presiding at council meetings and controlling the debate. To facilitate good relationships, the Mayor/President must ensure that all councillors with a desire to speak are given a fair opportunity."

Third Statement

"In regards to point 5(d)(iii) although the standing orders are silent, the position of Council is that where an alternative motion has been previously submitted as per SO 10.1A, then this can only come to the floor if foreshadowed during the 'at-hand' motion debate. As no alternative motion was submitted by Cr Manolas, then no alternative motion could even be foreshadowed. Hence the City were correct in advising the Mayor post the vote, that no other motion could come to the floor. Hence, IMO there was a failure of Cr Manolas in asking for an alternative motion to be put and a failure of the Mayor in advising Cr Manolas that he could if the officer recommendation was lost i.e. both Cr Manolas and the Mayor did not understand the standing orders in this respect and therefore both added to the resulting friction."

36. In the COSPR Emails, Cr Russell also stated that he had "*no issues*" with their content being publicly distributed by COSPR.

The City's Councillor Code of Conduct May 2022 ("Code")

37. In addition to an alleged breach of Regulation 18(1)(b), the Complainant also referred to the following relevant sections of the Code:



a. Clause 4(1)(e):

"A council member, committee member or candidate should... avoid damage to the reputation of the local government."

b. Clause 5(1)(a):

"A council member, committee member or candidate should... treat others with respect, courtesy and fairness."

c. Clause 5(2):

"A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment."

d. Clause 9(d):

"A council member, committee member or candidate... 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;"

Cr Russell's Response

38. Cr Russell denied that he had committed the alleged misconduct and submitted that the Complainant had not provided all the relevant information in relation to the background and circumstances of the Complaint.

39. Cr Russell regretted the fact that he had not shared the COSPRA Emails with Council earlier. However, there had been no malicious intent behind the delay; it had been a simple oversight. When Cr Russell realised his error, he acted honestly and in a principled manner by belatedly copying in the Council.

40. By way of background, Cr Russell explained that at the Special Electors' Meeting, a resident had asked a question open to all Elected Members in relation to the wording of the Petition and Item 8.1.1. At the time, Cr Russell had explained that there were differences between "*procedural*" and "*formal*" motions and stated that in his opinion, Item 8.1.1 was a formal motion.

41. Despite Cr Russell's explanation, the President of COSPRA informed him that there was ongoing confusion amongst the community regarding the handling of the Petition. Therefore, he had volunteered to put his opinion on the matter in writing.

42. Cr Russell explained that the contents and information provided by him in the COSPRA Emails, was based upon true events, and he had used objective reasoning. Moreover:

a. The Complainant had not refuted Cr Russell's comment regarding the order of events when the Matter came to the floor at the September Council Meeting.

b. He had limited his opinion to when Item 8.1.1 was presented to Council and how thereafter it had been managed on the floor.



- c. Cr Russell had only spoken to Part 10 of the Standing Orders "*Debate of Substantive Orders*" ("Part 10") which related to the management of substantive orders. He had not discussed Standing Order 6.9 ("SO 6.9") which deals with the management of petitions. The functions of Part 10 and SO 6.9 are totally independent of each other and are to be treated differently.
 - d. The Petition had been presented to, and managed by, the Council (under the stewardship of the Mayor) as a formal motion. Therefore, it fell under Part 10.
 - e. None of the statements made by Cr Russell in the COSPRA Emails had been untrue. He had referred to the Standing Orders and the Department's Guidance notes where applicable and had explained the following points in a clear and methodical manner:
 - i. what a formal or substantive motion was;
 - ii. where a formal motion was covered under the Standing Orders (Part 10);
 - iii. the process to manage a formal motion by the Presiding Member in accordance with Part 10;
 - iv. the actual process undertaken by the Complainant/Mayor (as Presiding Member) in managing the Motion when Item 8.1.1 was presented to Council; and
 - v. that by not invoking SO10.3, and by going straight to the vote after the Motion had been seconded, the Complainant had bypassed and breached elements of SO10.5.
43. According to Cr Russell, it was indisputable that the Complainant had not understood the Standing Orders with respect to the application of Alternative Motions.
44. Obviously, there had been confusion within the community as to how Council had managed the Petition when it came to the floor at the September Council Meeting. Therefore, it would have been dishonest for Cr Russell to have ignored a member of the public when they had asked him for his opinion. Indeed, to have done so, would only have exacerbated the issue. In this case, he had no choice but to disagree with the City, but when responding, he had only highlighted where the process had failed.
45. The allegation had been made that Cr Russell could and should have directed COSPRA to the City's administration, but instead, decided to ignore the stated position of the CEO and provide his own "*opinion*". Cr Russell's response was that the City had again only spoken to SO 6.9, whereas COSPRA had sought his opinion regarding when Item 8.1.1 had come to the floor at the September Council Meeting as a Motion.



46. With respect to the allegation that: “*There was absolutely no need for Cr Russell to draft and send the COSPRA Emails*”, Cr Russell stated in response that his opinion had been based upon logic and truth. He had neither encouraged nor facilitated the COSPRA Emails to be made public and that action was purely at the discretion of COSPRA. All he had noted was that he had no objections to the contents being made public. He had simply fulfilled his Elected Member obligations to be open and accountable to the community in an honest manner.
47. Finally, in his Response, Cr Russell confirmed that from time to time, as would be expected of a ratepayer association, COSPRA had requested his (and other Elected Members), opinions, analysis, advice and so on, on matters concerning the City. However, he had no association with the President of COSPRA or COSPRA itself. He treated COSPRA as equally as other associations or groups within the City.

Panel’s Consideration

48. The Panel finds that Cr Russell engaged in the conduct that is the subject of the Complaint, and that he was a councillor and was acting as a councillor at all relevant times. The first, second and third elements are established.

Whether Cr Russell acted improperly (fourth element)

49. Based on the evidence before it, the Panel is satisfied that the fourth element has been established and that Cr Russell acted improperly when he sent the COSPRA Emails:
- a. The presiding over of Council meetings is a formal process. This is because of the importance of local government meetings, and to ensure fairness and accountability. At the September Council Meeting, it was the role of the Mayor (the Complainant), to preside.
 - b. Item 8.1.1 concerned the Petition. The Officer Recommendation was that the Petition should be forwarded to the relevant employee as per SO6.9(2), which states:

“Upon receiving a petition, the City is to submit the petition to the relevant employee to be included in his or her deliberations and report on the matter that is the subject of the petition.”
 - c. When the vote was put to the Council, the motion (“Motion”) to adopt the Officer Recommendation was lost 4/5 (both the Complainant and Cr Russell voted in favour of the Motion).
 - d. Subsequently, on 2 October 2022, Cr Russell sent an email to members of the City’s administration team and all elected members, raising the issue of whether the Standing Orders had been adhered to in relation to the Motion. That topic was then subject to extensive discussion between the parties in a series of emails that followed. Cr Russell made it clear that his position was that prior to the vote on the Motion, elected members should have been given the opportunity to debate the matter. He submitted that Part 10 of the Standing Orders had thus been breached.



- e. However, at the September Council Meeting itself, Cr Russell had not objected to the Complainant's conduct as Presiding Member and nor had he raised a point of order in relation to the handling of the Petition/Motion. As per the CEO's email dated 7 October 2022 which was sent to all Councillors:

"The decision by the Presiding Member regarding debate on the motion, if disagreed with, should have been disagreed with on the night (using Clause 11). This did not happen and the meeting moved on. Whether debate should occur is a matter for the Mayor and Council to decide at the meeting not after the event. If a Councillor had raised a point of order or a motion that the Presiding Member be disagreed with, then Administration could and would have provided advice."

- f. Further clarification/confirmation on the issue was again provided by the CEO at the Electors' Special Meeting held on 8 November 2022, when he stated:

"The Standing Orders were complied with at the Ordinary Council Meeting of 27 September 2022. The petition was presented correctly under clause 5.2 (1) part 8.1 Petitions. This has been the City's long standing practice with regard to petitions."

"Council was not asked to vote on any matter that was the subject of the petition. At that meeting a report dealing with the subject matter was dealt with at the subsequent meeting. So in all cases the Standing Orders were complied with."

- g. However, regardless of the fact that the CEO had confirmed on at least two occasions that the Standing Orders had been complied with and that the Complainant had acted properly, and had made public statements confirming such, Cr Russell (in the COSPRA Emails), made several serious accusations against the Complainant and the manner in which he had presided over the September Council Meeting. He alleged that the Complainant had:

- breached the Standing Orders;
- prevented *"any member who wished to speak against the motion or even amend the motion, from being heard"*;
- acted in an unfair manner and denied his fellow elected members natural justice;
- failed in having the *"presence of mind"* to run the September Council Meeting in a fair or proper manner; and
- not understood the Standing Orders.

- h. Cr Russell claimed that it was his duty to provide guidance to COSPRA regarding the handling of the Petition at the September Council Meeting due to general confusion amongst community members, and that is why he sent the COSPRA Emails.

- i. However, in the case, the Panel finds that Cr Russell's Statements regarding the Complainant clearly crossed the line of impropriety. He



showed a lack of respect for the Complainant and failed to act in a collegiate manner. He not only undermined the Complainant, who held a crucial role as Mayor of the City and Presiding Member of the September Council Meeting, but he also accused him of denying his fellow elected members the unyielding principle of procedural fairness.

- j. The Panel finds that Cr Russell's Statements in relation to the Complainant and the manner in which he communicated with COSPRA (without the knowledge of other elected members or the City) showed a lack of integrity on his part. Moreover, his Statements did not enhance any meaningful or productive discussion on the handling of petitions, but rather he used the opportunity to criticise the Complainant instead.

Whether Cr Russell intended to cause detriment to the local government or any other person

50. The Panel is satisfied that Cr Russell intended to cause detriment to the Complainant when he sent the COSPRA Emails:

- a. Cr Russell had not raised any objections regarding the handling of the Petition and whether there should be debate on the Motion at the September Council Meeting itself. If he had done so, then any issues he had would have been dealt with and resolved at the time.
- b. Cr Russell submitted that following the September Council Meeting, members of the community expressed their confusion/dissatisfaction with the manner in which the Petition was handled, and that is why he decided to send the COSPRA Emails. However, as referred to above, the City's CEO had already explained and confirmed to Councillors and members of the community (at the Electors' Special Meeting) that the Standing Orders had been complied with.
- c. COSPRA is a very active residents' association in the City whose mission, according to its website, is to "*preserve and enhance the City of South Perth area.*" The RAF Project, which was the subject of the Petition, was (and remains) a highly contentious and controversial issue for all stakeholders concerned.
- d. When sending the COSPRA Emails and making the First, Second and Third Statements (as set out at paragraph 35 above) almost four months after the September Council Meeting, it would have been abundantly clear to Cr Russell that he was potentially further igniting an already tense situation. By clearly stating that the Complainant had acted wrongfully and was also incompetent, the only reasonable inference was that he intended to cause damage to the Complainant's reputation.
- e. The lack of disregard that he showed for the Complainant was compounded by the fact that Cr Russell also advised that he had no issue with the COSPRA Emails being made public.



Findings

51. Accordingly, for the above reasons, the Panel finds that Cr Russell did breach Regulation 18(1)(b) in relation to the Complaint.

Signing

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

Tim Fraser (Presiding Member)

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

Elanor Rowe (Deputy Member)

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

Peter Rogers (Member)



Local Government Standards Panel

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Complainant	Mayor Greg Milner
Respondent	Councillor Stephen Russell
Local Government	City of South Perth
Regulation	<i>Regulation 18 of the Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for Penalty Consideration	Tim Fraser (Presiding Member) Ms Emma Power (Member) Mr Peter Rogers (Member)
Heard	27 April 2023 Determined on the documents
Penalty Considered	7 September 2023
Outcome	Public Apology

DECISION AND REASONS FOR DECISION

Delivered 29 September 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 27 April 2023, the Panel found that Councillor Stephen Russell, a councillor for the City of South Perth (**“the City”**), committed a 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 he sent emails to a local ratepayer association regarding a petition that was considered at a prior Council Meeting (**“the Minor Breach”**).

Jurisdiction and Law

2. The Panel convened on 7 September 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 Russell 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 24 July 2023, Cr Russell 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;*
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*

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



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).

Councillor Russell's Submissions

7. By an email dated 3 August 2023 the Department received a response from Cr Russell.
8. Cr Russell provided the following comments and arguments, as summarised by the Panel:
 - a. Cr Russell asks that the Panel to provide leniency on this matter and not sanction for the following reasons:
 - i. this is his first transgression of the City's Code of Conduct; and
 - ii. Cr Russell believes he has entered this transgression with naivety.
 - b. Cr Russell honestly believed his analysis at that time was that Part 10 of the Standing Orders was effective for the item.
 - c. Hence, he felt compelled or duty bound as a public figure to provide an exhaustive analysis to what occurred, if any member of the public were to ask for such.
 - d. Cr Russell however acknowledges that any kind of commentary, no matter how forthright he feels in the correctness of such, that would bring another person into a wrongful disadvantaged or a hurtful position, then this is not becoming of Cr Russell as a public figure acting within the intent of the Code of Conduct.
 - e. Cr Russell has been humbled by the Panel's decision, he has learnt from this experience and it will not happen again.
 - f. Cr Russell does consider himself to be a person of fairness and integrity which is not reflective of this singular transgression.
 - g. Cr Russell says this as he did advise COSPRA that if his analysis were to be made public then the full ownership (and the now subsequent consequence of a breach) would be his and his alone. COSPRA are not at fault here.
 - h. Cr Russell also asks the Panel to consider that he also advised the Council members of his email with COSPRA and he was therefore being honest, accountable and upfront with the Council including the Mayor. Cr Russell made no attempt to white ant or background the Mayor.
 - i. If the above is not acceptable to the Panel, then Cr Russell is agreeable to a public apology which the Mayor requested.

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. The Panel appreciates that Cr Russell shows clear insight into, and takes full accountability for, his actions. Further, Cr Russell has no prior disciplinary history.
13. Therefore, the Panel is satisfied that Cr Russell did not intentionally set out to breach the Regulations and is of very low risk of reoffending.
14. Despite this, as the conduct involved publicly accusing the Mayor of not complying with the Standing Orders in his capacity as Presiding Member, a public apology is the appropriate sanction.
15. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing³. It is a suitable and appropriate penalty when a councillor's conduct:
 - a. adversely affects particular individuals⁴; and/or
 - b. does not meet the standards other councillors seek to uphold.
16. In the relevant circumstances, the Panel considers that making a public apology is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Cr Russell recoup to the City the costs of the Department incurred with respect to the Complaint.

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

³ *Treby and Local Government Standards Panel [2010] WASAT 81 (Pritchard J).*

⁴ *Treby and Local Government Standards Panel [2010] WASAT 81 [127] (Pritchard J).*



Panel's decision

17. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the one Minor Breach of regulation 18 of the Regulations, Cr Russell make a public apology in terms of the attached Order.

Signing

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 (Member)

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

Peter Rogers (Deputy Member)



ORDER

Delivered 29 September 2023

DEFAMATION CAUTION

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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Stephen Russell, a councillor for the City of South Perth **publicly apologise** as specified in paragraph 3; OR
2. Failing compliance with paragraph 3 within the specified timeframe, then paragraph 4 shall apply.

Public Apology

3. On the ordinary council meeting of the City of South Perth first occurring after the expiration of **28 days** from the date of service of this Order on him, Cr Russell shall:
 - i. attend the relevant ordinary council meeting;
 - ii. ask the presiding person, or acting presiding person, for his or her permission to address the meeting to make a public apology to the public;
 - iii. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - iv. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when I made a certain public statements regarding the manner in which Mayor Milner presided over an Ordinary Council Meeting of the City.
- ii. The Panel found that I breached Regulation 18 by my conduct.
- iii. I acknowledge that I should have not made the statements and I now apologise to Mayor Milner and my fellow councillors."



4. If Cr Russell fails to, or is unable to, comply with the requirements of paragraph 3 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 3 above the Chief Executive Officer of the City of South Perth shall arrange for the notice of public apology to be published:
 - a. on the Facebook Page of the City of South Perth shall in no less than 10 point font size; and
 - b. in an appropriate place on the website of the City of South Perth shall in no less than 10 point font size; and
 - c. in the next occurring issue of any City of South Perth shall public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

PUBLIC APOLOGY BY COUNCILLOR STEPHEN RUSSELL

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when I made a certain public statements regarding the manner in which Mayor Milner presided over an Ordinary Council Meeting of the City.

The Panel found that I breached Regulation 18 by my conduct.

I acknowledge that I should have not made the statements and I now apologise to Mayor Milner and my fellow councillors.

Appeal

5. In the event that, prior to the date for compliance with the above Orders, Cr Russell:
 - a. commences an appeal the decision of the Standards Panel to the State Administrative Tribunal in accordance with section 5.125 of the Local Government Act 1995; and
 - b. notifies the Complaints Officer of the Cr Russell of such appeal in writing,THEN:
 - c. compliance with the above Orders may be delayed until the State Administrative Tribunal has made a finding in respect to the decision; and
 - d. such Orders may be amended by an order of the State Administrative Tribunal.



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."*