



Local Government Standards Panel

Complaint Number	20240343
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Angus Money
Respondent	Councillor Amanda Spencer-Teo
Local Government	City of Canning
Regulation	Regulation 18 Regulation 19 Regulation 20 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member)
Heard	23 February 2024 Determined on the documents
Finding	1 x Breach Regulation 18 1 x Breach Regulation 19 No Breach Regulation 20

FINDING AND REASONS FOR FINDING Delivered 22 March 2024

DEFAMATION CAUTION

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Summary of the Panel's decision

1. On 23 February 2024, the Panel found that Councillor Amanda Spencer-Teo a councillor of the City of Canning (**"the City"**):
 - a. did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* (**"the Regulations"**);
 - b. did commit a minor breach pursuant to the Act and Division 4 and Regulation 19 of the Regulations; and
 - c. did not commit a minor breach pursuant to the Act and Division 4 and Regulation 20 of the Regulations,when she and another councillor of the City placed signs on the public reserve of the City to *"look out for ducks"* as further set out in paragraph 17 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a *"local law as to conduct"* is a minor breach pursuant to the Act.
6. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.¹
7. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
8. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate²; and

¹ Section 5.106 of the Act

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



- b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding³.
9. The Panel does not possess investigative or supervisory powers.⁴ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.
10. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
11. The Panel also must have regard to the general interests of local government in Western Australia⁵.
12. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Jurisdiction and Procedural Fairness

13. On 9 January 2024 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 8 January 2024.
14. In the complaint form, the Complainant alleges that Cr Spencer-Teo has breached regulation 18, regulation 19 and regulation 20 of the Regulations when she and another councillor of the City placed signs on the public reserve of the City to "*look out for ducks*" as referred to in paragraph 17 below ("**the Complaint**").
15. The Panel convened on 23 February 2024 to consider the Complaint.
16. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Cr Spencer-Teo was:
 - i. elected to the Council of the City in October 2021 for a term expiring in October 2025; and
 - ii. a Councillor when the Panel met on 23 February 2024;
 - b. was satisfied the Complaint was made within six months after the alleged breach occurred⁶;
 - c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁷;

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

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

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

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

⁷ Section 5.107 and 5.109 of the Act



- d. was satisfied the Department had provided procedural fairness to Cr Spencer-Teo; and
- e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

17. The Complainant provided the following comments and arguments in respect to the Complaint as summarised by the Panel:
 - a. Certain councillors have taken it upon themselves to pay for and then installed 2 signs on a public reserve, with photos of the Councillors and a personal message that duplicates existing City of Canning signage to 'look out for ducks' (**"the Signs"**). These Signs remain up outside the local election period.
 - b. Under the guise of protecting ducks, Councillors are unfairly leveraging their position in Office, placing personal promotional signage in public spaces.
 - c. In an email chain with the City's staff confirmed in writing that the administration did not wish to enforce the Code of Conduct or the requirements of the City's Signage local law. They invited the Complainant to not 'look into this too deeply'.
 - d. The Complainant is not aware of the advice or guidance provided by staff to the Councillors but this correspondence demonstrates that the City will openly defend / protect the Councillors' unauthorised actions.
 - e. The Complainant attempted to resolve this matter at a low level, to seek advice, guidance and provide an opportunity for Councillors involved to reflect on the alleged minor breach - however the Complainant received an email from the staff stating that my concerns are 'noted', which was highly unsatisfactory.
 - f. The Complainant did not intend to make a formal complaint however as a resident concerned with the integrity of local democracy the Complainant has been stonewalled and therefore have no other option but to make this complaint.
18. The Complainant also provided:
 - a. Images of the Signs as follows:



- b. A copy of an Email chain between the Coty and the Complainant (**"the Email"**).



The Respondent's Response

19. By an email dated 12 January 2024, Cr Spencer-Teo provided a response to the Complaint.
20. Cr Spencer-Teo denies that she has committed any minor breach.
21. Cr Spencer-Teo provided the following comments and arguments regarding the Complaint:
 - a. It was a surprise to see this Complaint given that a was made complaint directly to the City of Canning staff and they had dealt with and closed the complaint.
 - b. The Complainant did not directly raise this issue with Cr Spencer-Teo or Cr Kunze, and instead chose to go through the formal complaints process with the City. Cr Spencer-Teo is confident that if he had contacted them directly, this could have been resolved without the need to waste valuable staff resources and rate payer funds on two formal standards panel complaints.

Regulation 18

- c. The Signs were not installed to provide an advantage to anyone other than the ducks and their ducklings, this has been confirmed by our City executive manager in his Email provided by the Complainant.
- d. The Signs were placed in several locations from September 2023 throughout Canning where residents have sighted or requested signage near river locations.
- e. Cr Spencer-Teo and Cr Kunze have been removing the signage from various locations when we have received confirmation from the residents who requested them that the ducks are no longer crossing the road, or have moved on from that location.
- f. Cr Spencer-Teo created the artwork and personally paid for the production of the signs, Cr Kunze did not.
- g. Cr Spencer-Teo was not up for re-election, therefore there was no advantage to be had to herself.
- h. The City officers do not believe Cr Spencer-Teo and Cr Kunze have contravened any local laws, or breached the Code of Conduct.
- i. The signs in question have since been removed as we received confirmation from the resident who requested them that the ducks no longer cross the road at that location.

Regulation 19

- j. Had City officers requested the removal of the signs at any time, Cr Spencer-Teo would have done so. Cr Spencer-Teo fails to see how the installation of signs, which are in the public interest and were by the request of the public, constitute improper involvement in local government administration, especially



when the City's management does not support the assumptions and allegations made by the Complainant.

Regulation 20

- k. The Complainant seems to be unhappy with the response received from the City officers, however Cr Spencer-Teo fails to see how his dissatisfaction at the officers' response constitutes as a breach by Cr Spencer-Teo of regulation 20.

Conclusion

- l. Given the above, and that fact that the Complainant admitted that he himself is considering running for the Canning Council, the Complainant respectfully requests the Panel consider this complaint frivolous, trivial, misconceived or without substance under section 5.110 (3A) of the Act.
- m. I also request the Panel inform/remind The Complainant that the email address associated with his employment is a resource of Local Government and his position and resources should not be used to make frivolous complaints against local government elected members.

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 of the Regulations the Panel must be satisfied to the required standard that:
 - a. Cr Spencer-Teo was an elected member or a candidate at the time of the alleged breach and the time of the determination;
 - b. Cr Spencer-Teo made use of her office as Council member or candidate of the City;
 - c. when viewed objectively, such use was an improper use of Cr Spencer-Teo's office in that it:



- i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
 - d. Cr Spencer-Teo engaged in the conduct with the intention of gaining an advantage for herself or another party.
24. As the Complainant has not alleged any detriment was intended to be caused, the Panel has only considered regulation 18(1)(a) in this case.

Code of Conduct

25. The City adopted the *City of Canning Code of Conduct for Council Members, Committee Members and Candidates* on 23 May 2021 (“**the Code of Conduct**”) which governs the conduct of elected members.
26. A breach of the Code of Conduct may indicate that an elected member has acted improperly in breach of Regulation 18.
27. The relevant provisions of the Code of Conduct are as follows:

“ 4. Personal integrity

- (1) *A council member, committee member or candidate should —*
- (a) *act with reasonable care and diligence; and*
 - (b) *act with honesty and integrity; and*
 - (c) *act lawfully; and*
 - (d) *identify and appropriately manage any conflict of interest; and*
 - (e) *avoid damage to the reputation of the local government.”*

“ 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.”*

Panel Consideration of Elements of Breach – Regulation 18

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

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

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

- 30. In this case the Panel has considered the relevant facts of the matter and comments as follows:
- 31. The Signs clearly show the faces of both Cr Spencer-Teo and Cr Kunze on them as well as the names “Amanda and Ben”.
- 32. Cr Spencer-Teo asserts that the Signs were erected as they were in the “public interest” and due to the requests of local residents.
- 33. The Panel further considers that placing the Signs is not a matter that Cr Spencer-Teo would have undertaken in her personal capacity, but was fundamentally linked to her role as councillor.
- 34. Therefore, the Panel finds that it is more likely than not that Cr Spencer-Teo was acting in her capacity as an elected member and made use of her office as a council member when undertaking the conduct.
- 35. This element is met.

Cr Spencer-Teo’s use was improper

- 36. 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.

37. 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.
38. 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.
39. 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 or her purpose or intention in exercising the power will be important factors in determining whether the power has been abused⁸.
40. In this case the Panel has reviewed the City of Canning *Local Government Property and Public Places Local Law 2021* ("**the Local Law**") which deals with the placing of signs and advertising on local government property.
41. The applicable section is Part 5 of the Local Law, the relevant portions being as follows:

" PART 5—ADVERTISING SIGNS

5.1 General prohibitions

A person must not erect or place a sign—

.....

(c) *on or within 2 metres of a carriageway;*

.....

5.2 Signs requiring a permit

(1) *In this clause—*

thoroughfare *does not include a footpath or any other part of a thoroughfare that is specified in clause 5.1.*

(2) *A person must not, without a permit—*

(a) *erect or place a sign on a thoroughfare; or*

(b) *post any bill or paint, place or affix any advertisement on a thoroughfare.*

5.3 Exemptions

(1) *The following advertising signs are exempt from the requirement of clause 5.2—*

....

(d) *an election sign, provided that—*

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



- (i) *the sign is placed or erected on a thoroughfare not more than 28 days before or more than 7 days after the relevant election day;*
- (ii) *the sign is no greater than 2 metres squared in area;*
- (iii) *the sign is erected at least 30 metres from any intersection; and*
- (iv) *the sign is free standing and is not fixed to any sign, post, power or light pole, or similar structure.*

(2) *The CEO or an authorised person may exempt a person from compliance with clause 5.2.*

5.4 Impounding of advertising signs

A sign which contravenes clause 5.1 or clause 5.2 may be removed, impounded or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.”

- 42. In this case it appears, from the photographs provided that the Signs are located within 2 metres of a carriageway, being in breach of section 5.1(c) of the Local Law.
- 43. In the relevant context and looking at the content of the Signs, the Panel does not consider that the Signs constitute an election sign for either of the Councillors named.
- 44. However, the Panel notes the definition of “advertising sign” in the Local Law:
 - “ **advertising sign** means a sign used for the purpose of advertisement or to draw attention to a product, business, person or event and includes a home open sign, a garage sale sign, a display e sign, an election sign and a portable sign;”
- 45. Due to this definition, it appears likely that, due to the inclusion of Cr Spencer-Teo’s and Cr Kunze’s faces in the Sign, the same would be considered to be an advertising sign.
- 46. The public should be satisfied that local councillors will uphold all local laws and model the highest level of community behaviour.
- 47. Further it is a breach of the Code of Conduct to not “act lawfully”, which would include compliance with all local laws.
- 48. In addition, the Panel refers to its comments below with respect to placement of like signage (not being election material) not being within the scope of the role of a local councillor.
- 49. Even where a councillor may consider a matter to be “in the public interest” or harmless in nature, this does not diminish the statutory requirements for the strict separation of the roles of elected members and the administrative staff of the local government.
- 50. Despite the above, the Panel notes that the purpose of the Minor Breach System to identify and discourage the conduct of local councillors which interferes with the proper and usual operation of the local government.
- 51. Although the nature of the conduct certainly entertained the Panel, the Panel comments that the response from the City was perfectly reasonable and acceptable



in the circumstances. The only recourse open to the City was a discretion to remove the Signs. They elected not to do so.

52. The complaint to the Panel therefore appears unnecessary to protect *“the integrity of ducks and local democracy”* as the Complainant asserts to be concerned with in his Emails to the City.
53. The conduct complained of is really only a technical breach and cannot be said to reflect poor governance or to be particularly disruptive to the operation of the City. Certainly, the City employees were not concerned as to the impact of the same.
54. Despite the minor nature of the Complaint, the Panel notes that:
 - a. the Panel is required by statute to review every matter that comes before the it; and
 - b. it is not in the interests of the local government to ignore the strict separation between the strategic role of local councillors from the administrative role of local government employees as is enshrined in the Act.
55. The relative minor nature of the breach is something that will be taken into account by the Panel in the decision as to a suitable penalty (if any).
56. The Panel further notes Cr Spencer-Teo’s comments as to the Complainant’s use of his employment email to make the Complaint. The Complainant is not an elected member, therefore:
 - a. this is not a breach of the Act or Regulations; and
 - b. in any event, has no material impact on the contents of the Complaint.
57. Given the above, the Panel finds that it is more likely than not the Post was improper as:
 - a. the conduct was not in breach of a Local Law;
 - b. the conduct was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
 - c. the conduct is deserving of a penalty.
58. This element is met.

Regulation 18(1)(a) – Cr Spencer-Teo intended to gain an advantage

59. The definitions of the noun ‘advantage’ in the Shorter Oxford English Dictionary (6th ed) include: a favouring circumstance; something which gives one a better position, benefit; increased well-being or convenience or pecuniary profit.
60. The Panel considers the term ‘advantage’ in regulation 18(1)(a) is to be construed widely, and includes a financial or a non-financial benefit, gain or profit, or any state, circumstance, opportunity or means specially favourable.⁹

⁹ Complaint SP 12 and 13 of 2011



61. It is not necessary to find whether any advantage actually gained¹⁰ but an intent to gain such advantage must be established.
62. Cr Spencer-Teo asserts that the Signs were only to advantage duck and ducklings, however, the Panel notes that this could be achieved by placing signs that did not include Cr Spencer-Teo's and Cr Kunze's faces or names or, alternatively, by passing on the request to the appropriate department of the City.
63. The Panel finds that, it is more likely than not, that the signs were used to create exposure for Cr Spencer-Teo and Cr Kunze and to make the local community to think more favourably of them in their capacity as local councillors.
64. This element is met.

Conclusion

65. The elements required to find a breach of regulation 18(1)(a) of the Regulations have been met.

Regulation 19

66. Regulation 19 prohibits councillors engaging in conduct that is intended to be undertaken by the administration of a local government and specifically provides as follows:

"9. Prohibition against involvement in administration

- (1) A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or by the CEO to undertake that task.*
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting."*

67. To make a finding of a minor breach of regulation 19 of the Regulations the Panel must be satisfied that:
 - a. Cr Spencer-Teo was a councillor at the time of the alleged breach and at the time the determination was made;
 - b. it is more likely than not that:
 - i. Cr Spencer-Teo took on, or was involved in, or participated in, the performance, attempted performance, or part performance of a function or responsibility under which the Act or by delegation it is for the local government's CEO to perform or direct;
 - ii. such taking on, involvement or participation contributed something to the administration of the local government;

¹⁰ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



- iii. such taking on, involvement or participation was not done as part of the deliberations at a council meeting; and
- iv. the Council or CEO did not authorise such taking on, involvement or participation¹¹.

Panel Consideration of Elements of Breach – Regulation 19

Was Cr Spencer-Teo a Councillor at the relevant times

68. Cr Spencer-Teo was a councillor at the time of the alleged breach and at the time the Panel considered the Complaint.
69. This element is met.

Cr Spencer-Teo took on the performance of an administrative function of the City

70. The Act distinguishes between the roles of council and the staff employed by the local government, or the “administration”. Local governments are bodies corporate of which the Council is the governing body.
71. A council discharges its role by formulating policy and overseeing the performance of a local government's functions. The day to day management of a local government is entrusted to the CEO¹².
72. Neither the Act nor the Regulations specifically define what tasks contribute to the administration of the local government, however:
 - a. section 2.7(1) of the Act provides that the role of the Council is to “*govern the local government's affairs*” with section 2.10 setting out the specific role of councillors; and
 - b. section 5.36 of the Act provides for the appointment of a Chief Executive Officer and section 5.41 sets out the Chief Executive Officer's functions which include the following:
 - i. advise the council in relation to the functions of a local government under this Act and other written laws;
 - ii. ensure that advice and information is available to the council so that informed decisions can be made; and
 - iii. be responsible for the employment, management supervision, direction and dismissal of other employees.
73. In this case, it is alleged that Cr Spencer-Teo took on an administrative function when she installed signs on local government property regarding a duck crossing.

¹¹ Yates and Local Government Standards Panel [2012] WASAT 59

¹² *Town of Cambridge v The Hon David Templeman MLA, Minister for Local Government; Heritage; Culture and the Arts* [2020] WASC 350 - Tottle J at 91



74. The Panel notes that it is common for local governments to provide safety signs as to local wildlife or animals such as swooping or nesting signs or dog leash signage.
75. It would be wholly within the role of a local councillor to bring an item to Council to create and install duck crossing signage. However, the elected members themselves would never *implement* that decision, that is part of the administrative role of the employees of the City.
76. Although it appears the conduct was undertaken in good faith and had no adverse impact, it is simply not open for a local councillor to ignore the bounds of their designated role under the Act.
77. It is noted that the City officers that were contacted by the Complainant were not unduly worried about the Signs, confirmed that they did not have any negative impact and elected not to exercise their right to remove the same.
78. However, they were incorrect that a City resource had not been used. A government resource includes items under the care, control and management of the local government, which clearly include local reserves and parks.
79. This Complaint is analogous to *Yates and Local Government Standards Panel [2012] WASAT 23* where it was found that the placing of signage by a local councillor on a fence of an oval under a management order of the local government was considered to be a “*use of a government resource*”.
80. Similarly placing a sign on a local government controlled park or area is a use of that government resource and local councillors should be reflect on the appropriateness of placing any signs on local government property, irrespective for what reason.
81. Given the above, the Panel finds it is more likely than not that Cr Spencer-Teo did take on, involve himself with or undertake an administrative function of the City when she place signage to do with local wildlife in a local government reserve/park.
82. This element is met.

The taking on, involvement or participation contributed to the administration of the local government

83. In order to “*contribute*” the relevant action must “*play a part in the achievement of a result*”¹³.
84. In this case, Cr Spencer-Teo’s actions resulted in the placement of signs which had a clear and identifiable result to a matter that is generally under the control of the administration of the City.
85. As such, the Panel finds that it is more likely than not that Cr Spencer-Teo did contribute to the administration of the local government.
86. This element is met.

The taking on, involvement or participation was not done as part of the deliberations at a council meeting

¹³ Yates and Local Government Standards Panel [2012] WASAT at 56



87. The production and placing of Signs were not undertaken by Cr Spencer-Teo as part of deliberations at a Council Meeting.
88. This element is met.

The Council or CEO did not authorise such taking on, involvement or participation

89. Although it is noted that the relevant City officers were not willing to enforce the removal of the Signs (as is permitted under the Local Law) it appears from the Email that the Signs were self-funded and that Cr Spencer-Teo and Cr Kunze of their own volition decided to create and place the Signs, as they were “passionate advocates” for local fauna.
90. The Panel therefore finds that is more likely than not that neither the Council nor the CEO did not authorise the taking on of the relevant involvement.
91. This element is met.

Conclusion

92. The elements required to find a breach of regulation 19 of the Regulations have been met.

Regulation 20

93. Regulation 20 regulates councillors’ interactions with local government employees:
- “ 20. Relationship with local government employees**
- (1) *In this clause —*
- local government employee means a person —***
- (a) *employed by a local government under section 5.36(1) of the Act;*
or
- (b) *engaged by a local government under a contract for services.*
- (2) *A council member or candidate must not —*
- (a) *direct or attempt to direct a local government employee to do or not to do anything in their capacity as a local government employee; or*
- (b) *attempt to influence, by means of a threat or the promise of a reward, the conduct of a local government employee in their capacity as a local government employee; or*
- (c) *act in an abusive or threatening manner towards a local government employee.*
- (3) *Subclause (2)(a) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.*
- (4) *If a council member or candidate, in their capacity as a council member or candidate, is attending a council or committee meeting or other organised event (for example, a briefing or workshop), the council*



member or candidate must not orally, in writing or by any other means

—

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

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

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

94. In this case the Panel notes that there is no allegation of Cr Spencer-Teo interacting with any City employee in any manner.
95. As such, the essential element required to find a breach of regulation 20 of the Regulations (being an interaction of some kind with, or making a statement relating to, a local Government employee) can possibly be met with respect to the Complaint.
96. Given the above, the Panel finds to the required standard that there is no breach of regulation 20 of the Regulations.



PANEL'S FINDINGS

97. Cr Spencer-Teo did commit a breach of Regulation 18 of the Regulations and therefore did commit a minor breach.
98. Cr Spencer-Teo did commit a breach of Regulation 19 of the Regulations and therefore did commit a minor breach.
99. Cr Spencer-Teo did not commit a breach of Regulation 20 of the Regulations and therefore did not commit a minor breach.

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)



Local Government Standards Panel

Complaint Number	20240343
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Angus Money
Respondent	Councillor Amanda Spencer-Teo
Local Government	City of Canning
Regulation	Regulation 18 and Regulation 19 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for Penalty Consideration	Mr Tim Fraser (Presiding Member) Ms Emma Power (Member) Cr Peter Rogers (Member)
Heard	23 February 2024 Determined on the documents
Penalty Considered	8 April 2024
Outcome	No Sanction

DECISION AND REASONS FOR DECISION

26 April 2024

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 23 February 2024, the Panel found that Councillor Amanda Spencer-Teo, a councillor for the City of Canning (“**the City**”), committed one minor breach under the *Local Government Act 1995 (WA)* (“**the Act**”) and regulation 18 and Regulation 19 of the *Local Government (Model Code of Conduct) Regulations 2021* (“**the Regulations**”) when and another councillor of the City placed signs on the public reserve of the City to “look out for ducks” (“**the Minor Breach**”).

Jurisdiction and Law

2. The Panel convened on 8 April 2024 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (“**the Department**”) that on this date there was no available information to indicate that Cr Spencer-Teo had ceased to be, or was disqualified from being, a councillor.
4. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
5. By a letter dated 22 March 2024, Cr Spencer-Teo 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*.

Cr Spencer-Teo’s Submissions

6. By an email dated 25 March 2024, the Department received a response from Cr Spencer-Teo.
7. Cr Spencer-Teo provided the following comments and arguments, as substantially summarised by the Panel:

Regulation 18:

 - a. The Panel’s finding states the breach is technical and cannot be said to reflect poor governance or to be particularly disruptive. Therefore, given the Panel has, in the past imposed no sanction to a breach which is defined by the Panel themselves as technical in nature, Cr Spencer-Teo respectfully requests the Panel applies the same leniency in this case and impose no sanction for this breach.
 - b. In addition, where a person has been found in breach of regulations 18 but immediately removed the offending item (ie Facebook post or sign) once

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



a complaint had been made again, the Panel has imposed no sanction/penalty.

Regulation 19

- c. Cr Spencer-Teo again respectfully requests that no sanction be imposed. To impose a penalty of a public apology and/censure would only bring embarrassment to the City of Canning and its officers and potentially the complainant himself. It was members of the community who requested the signs because the City staff were unable to provide them.
- d. To publicly apologise for a good deed, that offended one individual, but satisfied so many others would only highlight the pettiness and waste of rate payer's funds in dealing with this complaint. Rather all the Complainant had to do was reach out to Cr Spencer-Teo directly and the signs would have been removed.
- e. In addition, it would be futile to apologise to staff for interfering with their role as they did not take issue and had they, again we would have removed the signs immediately.
- f. The signs were not placed for the intention assumed by the panel. It was what we considered a good deed in response to community requests that staff were unable to fulfil.
- g. Cr Spencer-Teo would also like to add that in most cases we did not place the signs in their end locations. The residents who requested them did. They were moved several times from private land holdings to City managed lands by residents as the ducks changed course.
- h. Should the Panel feel this is deserving of penalty and wishes to further punish this good deed, Cr Spencer-Teo could only suggest training, however having already completed all the training modules there are no specific scenarios or examples of this kind of breach in the training curriculum.
- i. In closing Cr Spencer-Teo cannot express how utterly deflated and disheartened she is with the complaint and the findings by the Panel. Had the complainant taken the issue up with the councillors directly they would have removed the signs immediately. They were not given that opportunity.
- j. Cr Spencer-Teo and Cr Kunze pride themselves on being some of the most proactive and responsive Councillors on the Canning Council. Given the Council's history of being sacked twice (before our time), we have worked incredibly hard and been instrumental in restoring the City's reputation and re- building a healthy and respectful relationship with our administration staff.
- k. Finally, given that this complaint has come from a disgruntled member of staff from another local government who has repeatedly applied for positions at the City of Canning it is incredibly disappointing that he has abused his position, without any judgment, comment or penalty by either his employer or the department.

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 seriousness².
12. The Panel notes in this case that:
 - a. the conduct was very minor in nature and did not cause any harm or disadvantage to any party whatsoever;
 - b. the breach was of a technical nature; and
 - c. the Complaint appeared to have been made for largely personal political reasons, not community benefit or protection.
13. The Panel is satisfied that Cr Spencer-Teo has shown insight into his conduct and that her likelihood of re-offending in the same manner is low.
14. There is simply not in the interests of the local government to impose a sanction on Cr Spencer-Teo for this conduct.
15. The Panel further reminds the Complainant that every complaint issued to the Panel results in a monetary cost that is borne by the relevant Local Government.
16. In addition, the Panel notes for the future, it would be permissible for:
 - a. Council to vote to allow individual councillors to place duck crossing signage on City land at their own cost; or
 - b. the CEO to expressly permit such action in writing,and that either such official authorisation would mean there would be no technical breach of the Regulations for this kind of conduct.
17. Due to the above the Panel considers it appropriate that no sanction is imposed.
18. The Panel further considers that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Cr Spencer-Teo recoup to the City the costs of the Department incurred with respect to the Complaint.

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



Panel's decision

19. The Panel orders pursuant to section 5.110(6)(a) of the Act that, in relation to the Minor Breach of Regulation 18 and Regulation 19 of the *Local Government (Model Code of Conduct) Regulations 2021* no sanction be imposed upon Cr Spencer-Teo as set out in 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

26 April 2024

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

No further sanction be imposed on Councillor Amanda Spencer-Teo.



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

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

Note:

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

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

 - (a) by delivering the document to him personally; or
 - (b) by post in accordance with section 75(1); or
 - (c) by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or



- (d) *in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State.”*