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## Local Government Standards Panel

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Complaint Number	20230398
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Ms. Glenda Mippy</b>
<b>Respondent</b>	<b>Shire President Harvey Nichols</b>
Local Government	<b>Shire of Meekatharra</b>
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Ms Emma Power (Presiding Member) Ms Suleila Felton (Member) Cr Peter Rogers (Member)
Heard	10 June 2024 Determined on the documents
Finding	1 x Breach Regulation 18

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### FINDING AND REASONS FOR FINDING

21 August 2024

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#### DEFAMATION CAUTION

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



## Summary of the Panel's decision

1. On 10 June 2024, the Panel found that Shire President Harvey Nichols a councillor of the Shire of Meekatharra ("**the Shire**") did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* ("**the Act**") and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* ("**the Regulations**") when he made various comments during a radio interview with ABC News on 16 December 2023 entitled "*The troubling similarities in the custodial deaths of Cleveland Dodd and John Pat*" as further set out in paragraph 17 below.

## The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
6. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.<sup>1</sup>
7. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
8. In considering whether a minor breach is established the Panel must consider:
  - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate<sup>2</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>3</sup>.
9. The Panel does not possess investigative or supervisory powers.<sup>4</sup> The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.

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

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

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

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



10. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
11. The Panel also must have regard to the general interests of local government in Western Australia<sup>5</sup>.
12. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

### **Jurisdiction and Procedural Fairness**

13. On 14 April 2024 the Panel received a complaint from Mr Kelvin Matthews acting as complaints officer of the Shire ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 20 February 2024.
14. In the complaint form, the Complainant asserts that President Nichols has breached regulation 18 of the Regulations when he showed a lack of cultural undertaking and sensitivity when he made various comment during a radio interview with ABC News on 16 December 2023 entitled "*The troubling similarities in the custodial deaths of Cleveland Dodd and John Pat*" as further referred to in paragraph 17 below ("**the Complaint**").
15. The Panel convened on 10 June 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, President Nichols was:
    - i. last elected to the Council of the Shire in October 2023 for a term expiring in October 2027;
    - ii. a Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 10 June 2024;
  - b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>6</sup>;
  - c. was satisfied that the Shire's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>7</sup>;
  - d. was satisfied the Department had provided procedural fairness to President Nichols; and
  - e. found it had jurisdiction to consider the Complaint.

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

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

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



## The Specifics of the Complaint

17. The Complainant provided following comments and arguments in respect to the Complaint as summarised by the Panel:
- a. Following the death of Cleveland, on 16 December 2023, President Nichols participated in an interview with ABC News *“The troubling similarities in the custodial deaths of Cleveland Dodd and John Pat” (“the Interview”)*.
  - b. President Nichols’ recent comments which have deeply distressed the Complainant’s family as they mourn the tragic loss of the Complainant’s Grandson, Cleveland Dodd. This complaint outlines several concerns:
    - i. President Nichols suggestion of using a dog squad to deal with troubled teens is unacceptable.
      - A. Advocating for violence against children is not only inappropriate but raises serious ethical concerns. The use of dogs against Aboriginal people has been an issue for many years. A lot of people in the Meekatharra community are angry about this comment and are very hurt and upset.
      - B. No one should be calling for dogs to be used in communities such as Meekatharra.
      - C. If the role of the Shire President is to speak on behalf of the local government, and to provide leadership and guidance to the community then the Complainant wonders if the Meekatharra Shire is in agreeance with the following statement made by Mr Nichols in the interview:

*“ But if they can't, I think the dog squad would be a start, too.  
Dogs only respond to poor behaviour - if you're a nice, polite kid you've got nothing to fear.”*
    - ii. President Nichols asserts that there is no one to blame for Cleveland's situation, attributing it to Cleveland destroying his own hope.
      - A. It is crucial to clarify that Cleveland did not destroy his own hope. President Nichols seems to be unaware that Cleveland was scheduled to come home that day, but bureaucratic obstacles prevented his release. Cleveland had genuine hope for a positive change in his circumstances.
    - iii. President Nichols comments show a broader lack of understanding of the significant intergenerational trauma that Aboriginal families endure.
      - A. By making generalised and marginalising statements, President Nichols shows a lack of cultural sensitivity and awareness. Such comments contribute to an environment that perpetuates racial stereotypes and undermines the complexities of the challenges faced by Aboriginal families.



- iv. Leaders should possess an understanding of the diverse experiences within our community and demonstrate empathy and respect, qualities absent in President Nichols' recent statements.
- v. It is important to note that President Nichols has known the family for an extended period.
  - A. Despite this, during an encounter at the local pub, he denied making comments about Cleveland, creating a sense of betrayal and mistrust. It is in black and white what he said. To deny saying that he was talking about Cleveland is insulting.
- vi. President Nichols' comment about the town hoping Cleveland would go to jail earlier than he did is beyond hurtful.
  - A. It has made the family cry. It has made the family hurt. President Nichols did not know Cleveland.
  - B. Our family was grieving and trying to bury Cleveland when this interview was made.
- vii. President Nichols claimed that addressing troubled teens was "*above his pay grade*".
  - A. Therefore, it raises questions as to why he was speaking on the matter in the first place.
  - B. Is his role really just about "*rates, roads and rubbish*"? He is supposed to be a leader in this community.
- c. The Complainant requests the Meekatharra Shire Council to conduct a thorough investigation into these matters, considering the impact of President Nichols' actions on our family and the wider community.
- d. The Complainant would like to see the following happen:
  - i. That an investigation be opened into the comments made by President Nichols in the ABC article and the matter be taken seriously by the Meekatharra Shire;
  - ii. Cultural sensitivity training for all shire councillors;
  - iii. Councillors to abide by the code of conduct in their role as representatives of our community.
- e. The Complainant urges the Shire to take appropriate actions to address these concerns and ensure such incidents do not occur in the future.
- f. We believe that President Nichols may not be acting in accordance with the Shire Code of Conduct, particularly the sections in Part 3 Part 4 and Part 5.
- g. The Complainant also supplied an extract from article "*Aboriginal Legal Service of WA condemns brutal police dog attack on Indigenous child*" and link to the article.
- h. The Panel was provided with a copy of the transcript of the Interview.



## The Respondent's Response

18. Despite being given an opportunity to make submissions, President Nichols did not provide any response to the Department.

## Regulation 18

19. 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.”*
20. To make a finding of a minor breach of regulation 18(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. President Nichols was an elected member at the time of the alleged breach and the time of the determination;
  - b. President Nichols made use of his office as Council member of the Shire;
  - c. when viewed objectively, such use was an improper use of President Nichols'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. President Nichols engaged in the conduct in the belief that detriment would be suffered by another person.
21. The Complainant has not made any allegation of any advantage allegedly sought by President Nichols so the Panel has only considered regulation 18(1)(b) in this instance.

## Code of Conduct

22. The Shire has a Code of Conduct Elected Members, Committee Members and Candidates adopted by Council 20 February 2021 (**“the Code”**).
23. The relevant provisions of the Code are as follows:



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**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*
  - .....
  - (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.”*

**“ 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.*
- (2) *A council member or committee member —*
- ....
- (b) *must comply with all policies, procedures and resolutions of the local government.”*

**“ 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.....”*

**PANEL CONSIDERATION**

**Allegation 1 – Facebook Post**

President Nichols was an Elected Member at the relevant times

24. President Nichols was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.



25. This element is met.

President Nichols made use of his office as Council Member of the Shire

26. It is clear that the Interview was given by President Nichols in his capacity as President of the Shire.

27. In this case:

- a. President Nichols, was introduced as the Shire President;
- b. President Nichols was discussing matters directly related to the Shire of Meekatharra; and
- c. President Nichols was purporting to communicate with and guide the community in the local municipality, and other members of the public.

28. the Panel finds that it is more likely than not that President Nichols was acting in his capacity as an elected member made use of his office as a council member when undertaking the relevant conduct.

29. This element is met.

President Nichols' use was improper

30. 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.

31. 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.

32. 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.

33. In the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused<sup>8</sup>.

34. The Complainant has made version specific allegations which are asserted to be improper.

35. In particular, it is alleged that President Nichols showed a lack of cultural sensitivity and awareness, particularly towards the family of Cleveland Dodd by undertaking the Interview and in particular he:

- a. suggested that a dog squad could be used to deal with troubled teens;
- b. stated that there was no-one to blame for Cleveland Dodd's death; and
- c. stated that the Shire had hoped Cleveland Dodd would go to jail sooner.

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





36. The Panel has reviewed the transcript of the Interview and the various statements made by President Nichols.
37. The relevant subject matter was extremely topical and attracted significant media coverage.
38. Pursuant to section 2.8(1)(d) of the Act it is an express function of the President of a shire to be a spokesman on behalf of the local government.
39. Although it is natural that the Shire, and the Shire President, to have a position on matters that affect a significant proportion of the local community, the relevant matters being discussed was substantially concerned with issues that are not strictly Shire matters, particularly the issues of policing the local population, the criminal record of a juvenile offender and deaths in custody.
40. As such, President Nichols should have been very careful to differentiate between what may have been his personal opinion, and what was the stated position of the Shire and, further, to not use his position as Shire President to undertake an interview on matter which did not strictly relate to the operation of the Shire.
41. Further, although the Interview took place immediately before, the Interview was aired on the day of Cleveland Dodd's funeral. It is clear from the transcript that President Nichols knew the funeral was occurring the next day.
42. President Nichols should have reasonably known in those circumstances that his comments would have been considered hurtful and offensive to Cleveland Dodd's family and were inappropriate in the circumstances.
43. President Nichols even refers to the matter as being "above my paygrade" and acknowledges "I'm not a specialist", and states that that he didn't know the answer to various questions, and further refers to the scope of his job being limited to "rates, roads and rubbish". However, this did not stop his from expressing his strong opinions.
44. President Nichols should have been aware that giving opinions on the suicide of a young person, and the handling of that person's particular legal and court history was not within his purview as Shire President. Due to his position as Shire President, President Nichols' comments would naturally have a larger audience and could easily be misconstrued as the position of the Shire on the relevant matters.
45. In relation to the particular statements by President Nichols the subject of the Complaint, the Panel finds that the same are in breach of the Code as follows:
  - a. Clause 4(1)(a) – *to act with reasonable care and diligence*:
    - i. President Nichols did not act with reasonable care and diligence in making the relevant statements relating to:
      - A. the suicide of Cleveland Dodd and speculating on the cause of the same;
      - B. a dog squad being an appropriate method of controlling youth in the Shire;
      - C. the Shire hoping that Cleveland Dodd should have been in jail sooner,



- in the context that Cleveland Dodd had passed away in detention and the funeral was to shortly occur.
- ii. Such statements were highly likely to have been found to be offensive and upsetting by Cleveland Dodd's family and also a large portion of the local community who had any ties with that family.
- b. Clause 5(1)(a) - *to treat others with respect, courtesy and fairness*:
    - i. It was not treating Cleveland Dodd's family with respect, courtesy or fairness to make the relevant comments at the relevant time, in in a manner that gave the comments more exposure and greater authority than if such comments were made by individual not being the official spokesperson for the Shire.
  - c. Clause 8(1)(a) - *to ensure that their use of social media and other forms of communication complies with this code*:
    - i. Due to the other breaches noted, the Interview was not compliant with the Code.
46. Given the above, the Panel finds that it is more likely than not that the relevant conduct was improper as:
- a. the conduct was in breach of the Code;
  - 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.
47. This element is met.

President Nichols intended to cause a disadvantage

48. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
49. It is not necessary to find whether any detriment was actually suffered<sup>9</sup>, but an *intent* to cause such detriment must be established.
50. In this case the Panel has carefully looked at the actual language used by President Nichols.
51. Given the negative and consistent reference to Cleveland Dodd's "charges" and "crimes" as well as his interactions with, and influence on, the local area along with other problems within the community, the Panel considers that the only reasonable position is that President Nichols intended to denigrate Cleveland Dodd and certain other young people in the community (and particularly Aboriginal young people) and for the parties listening to the Interview to think less of those people.
52. Even if President Nichols did not *expressly* intend to cause a detriment, to make the comments immediately prior to the funeral of Cleveland Dodd indicates a negligent

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



disregard to the impact of his statements on a portion of the local community, particularly Cleveland Dodd's family.

53. The Panel finds that the comments relating to the use of a dog squad were insensitive and ill-informed but not intended to cause a detriment.
54. Given:
  - a. the public nature of the relevant comments;
  - b. the express naming of Cleveland Dodd as well as his legal and incarceration history, and
  - c. the reference to the local Aboriginal community and youth in conjunction with a discussion as to youth detention, criminal activity and its impact in the local area,the Panel finds that the only reasonable characterisation of President Nichols' comments in the Interview was to disparage Cleveland Dodd and other Aboriginal youth in the Shire and make the public think less of them.
55. The Panel therefore finds that it is more likely than not that President Nichols intended to cause a detriment to Cleveland Dodd specifically, and the Aboriginal community in generally, in Meekatharra.
56. This element is met.

#### Conclusion

57. Given the above, the elements required to find a breach of regulation 18 of the Regulations have been met.



### **Panel's Findings**

58. President Nichols did commit a breach of Regulation 18 of the Regulations and therefore did commit a minor breach.

### **Signing**

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

Emma Power (Member)

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

Suleila Felton (Deputy Member)

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

Peter Rogers (Member)



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## Local Government Standards Panel

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Complaint Number	20240398
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Ms Glenda Mippy</b>
<b>Respondent</b>	<b>Shire President Harvey Nichols</b>
Local Government	<b>Shire of Meekatharra</b>
Regulation	Regulation 18 <i>of the Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for Penalty Consideration	Mr Tom Griffiths (Presiding Member) Ms Emma Power (Member) Mr Peter Rogers (Member)
Heard	10 June 2024 Determined on the documents
Penalty Considered	11 November 2024
Outcome	Public Apology

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### DECISION AND REASONS FOR DECISION

17 December 2024

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#### DEFAMATION CAUTION

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## 1. Introduction

2. At its meeting on 10 June 2024, the Panel found that Shire President Harvey Nichols, the Shire President of the Shire of Meekatharra (**“the Shire”**), 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 made various improper comments during a radio interview with ABCNews on 16 December 2023 entitled *“The troubling similarities in the custodial deaths of Cleveland Dodd and John Pat”* (**“the Minor Breach”**).

## 3. Jurisdiction and Law

4. The Panel convened on 11 November 2024 to consider how it should deal with the Minor Breaches.
5. 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 Shire President Nichols had ceased to be, or was disqualified from being, a councillor.
6. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).<sup>1</sup>
7. By a letter dated 21 August 2024, Shire President Nichols 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*.

## 8. Possible Sanctions

9. 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:
  10. *ordering that no sanction be imposed; or*
  11. *ordering that —*
    - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
      1. *or*
    - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*
      1. *or*
    - (iii) *the person against whom the complaint was made undertake training as specified in the order;*

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



1. 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;*

(v) or

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

### **13. Shire President Nichols' Submissions**

14. By an email dated 19 September 2024 the Department received a response from Shire President Nichols.
15. The legal advisors for Shire President Nichols provided the following comments and arguments, as summarised by the Panel:
- a. Shire President Nichols has served on the Shire's Council for over 20 years.
  - b. He has an unblemished record in the local government industry and has no prior history of complaints being made against him.
  - c. Earlier this year, the Shire President was presented with the Merit Award at the WALGA Local Government Awards 2024 in recognition of notable contributions to WALGA, local government, and the local government sector.
  - d. The Shire President agreed to participate in an interview with the ABC on 30 November 2023, the day prior to the funeral of Cleveland Dodd on 1 December 2023.
  - e. The transcript of the interview shows that the interview ran for just over 22 minutes.
  - f. The full interview was never published. Instead, on 16 December 2023 (i.e. more than two weeks after the funeral), the ABC published an online article together with a video titled "*The troubling similarities in the custodial deaths of Cleveland Dodd and John Pat*".
  - g. The Shire President was not consulted in relation to content of the Article or the Video, or the ABC's messaging in those publications.
  - h. The Video is 4 minutes and 34 seconds in length. Despite the interview of 22 minutes and the Video of just under 5 minutes, the Video only contains extracts from the interview totalling less than 30 seconds (at about 2:34 to 3:05 of the Video).
  - i. The ABC's hand-picking of comments made by Shire President Nichols was supremely unfair to Shire President Nichols. The comments were taken out of context, and were used to support a story line developed by the ABC without Shire President Nichols' knowledge or approval.
  - j. The Shire President has lived in Meekatharra for most of his life and has no media training. Naturally he was caught off guard by the ABC's conduct. He



had no opportunity to, and was ultimately unable to, confirm whether he agreed with the ABC's story line in his capacity as a spokesperson for the Shire.

- k. The Panel's assessment is disagreed with on a number of fronts:
- l. The Shire President did not intend to cause detriment to Cleveland Dodd, or anyone else. It is, as a matter of law, not possible to cause detriment to a deceased person,
- m. It is submitted that the correct and preferable outcome in relation to the breach against the Shire President is ordering that no sanction be imposed.
- n. That submission is made for the following reasons:
  - (i) The Shire President has been an elected member for over two decades;
  - (ii) The Shire President has an unblemished record as an elected member;
  - (iii) The Shire President is a person of exceptional standing in the community and in local government, and was presented with the Merit Award at the WALGA Local Government Awards 2024 in recognition of notable contributions to WALGA, local government, and the local government sector;
  - (iv) The interview was a one off and isolated matter;
  - (v) The interview was not made public;
  - (vi) What was made public is the ABC's Article and Video after the interview. The Shire President was not consulted in relation to content of the Article or the Video, or the ABC's messaging in those publications. The ABC used less than 30 seconds from the interview, and the comments used were taken out of context;
  - (vii) The Shire President did not intend to cause detriment to Cleveland Dodd, or anyone else. He was speaking about broader issues in the community including about a lack of external services;
  - (viii) The Shire President has not had any media training;
  - (ix) The conduct, in all the circumstances, is not deserving of a penalty.
- o. The Shire President acknowledges that the issues discussed in the interview were sensitive and that, on reflection, he ought to have more carefully considered the words he was using in circumstances where he was attending the interview in his capacity as the Shire President.
- p. As the Shire President was first elected to the Shire's Council over 20 years ago, the Shire has no record of the training completed by the Shire President upon becoming an elected member. To the extent training was completed, it was a long time ago.





- q. If the Panel is minded to impose a sanction then the Panel should consider requiring the Shire President to undertake training, being Module 3 of the Council Member Essentials course titled “Serving on Council” via eLearning
16. The Panel has not reproduced the comments regarding the manner in which Shire President Nichols’s legal advisor’s disagrees with the Panel’s finding of minor breach. In the event Shire President Nichols wishes to appeal the decision and penalty, the State Administrative Tribunal is the appropriate forum for such submissions.

### **17. Panel’s Consideration**

18. Section 5.110(6) is solely about penalty. The Panel does not have the power to review any finding of a breach.
19. 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.
20. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
- a. the nature and seriousness of the breaches;
  - b. the councillor’s motivation for the contravention;
  - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
  - d. whether the councillor has breached the Act knowingly or carelessly;
  - e. the councillor’s disciplinary history;
  - f. likelihood or not of the councillor committing further breaches of the Act;
  - g. personal circumstances at the time of conduct, and of imposing the sanction;
  - h. need to protect the public through general deterrence and maintain public confidence in local government; and
  - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness<sup>2</sup>.
21. In this case the Panel notes that, Shire President Nichols has shown limited insight into:
- a. how his comments were inappropriate in the context of his role as Shire President; and
  - b. how his comments would have affected Cleveland Dodd’s family.

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



22. The Panel further finds certain of submissions made by Shire President Nichols' legal advisors to indicate that there is limited remorse, compassion or consideration for community members.
23. Even *if* the Article took comments out of context or misrepresented Shire President Nichols' intended meaning, this was a subject which primarily related to juvenile justice and deaths in custody which was not a matter which the Council or Shire should have had expressed any political position or view of, and Shire President Nichols should have been most careful as to any view he expressed.
24. The Panel considers that in this case Shire President Nichols overstepped the mark when commenting on this issue and was manifestly careless when making the relevant comments.
25. Shire President Nichols' lack of formal training or preparation is not a mitigating factor where it is a part of his statutory role to publicly speak on behalf of the Local Government.
26. The Panel emphasises that Councillors should always be cautious in making comments on topical matters that fall outside the scope of their role as a local councillor and recognise that comments on divisive issues have the potential to be interpreted as highly offensive by certain sections of the community.
27. As the conduct was undertaken in a public forum, reflected poorly on the Shire and also negatively affected Cleveland Dodd's family, the Panel considers that a public apology is the appropriate sanction in the circumstances.
28. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing<sup>3</sup>. It is a suitable and appropriate penalty when a councillor's conduct:
  - a. adversely affects particular individuals<sup>4</sup>; and/or
  - b. does not meet the standards other councillors seek to uphold.
29. 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 Shire President Nichols recoup to the Shire the costs of the Department incurred with respect to the Complaint.

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

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



### 30. Panel's decision

31. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the one breach of regulation 18 of the Regulations, Shire President Nichols make a public apology in terms of the attached Order.

### Signing

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

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Tim Fraser (Signed on behalf of Tom Griffiths)

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

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Emma Power (Member)

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

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Peter Rogers (Member)



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## ORDER

17 December 2024

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### DEFAMATION CAUTION

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

### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Shire President Harvey Nichols, the Shire President for the Shire of Meekatharra, **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 Shire of Meekatharra first occurring after the expiration of **28 days** from the date of service of this Order on him, Shire President Nichols 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 the *Local Government (Model Code of Conduct) Regulations 2021*, when I made certain comments during an ABC interview which related to the juvenile justice and incarceration issues in the community and the death in custody of Cleveland Dodd.
- ii. The Panel found that I breached Regulation 18 by my conduct which constituted an improper use of my role as Shire President and further showed a negligent disregard to as to the detrimental impact my



comments would have in the community.

- iii. I acknowledge that I should not have made the relevant comments and I now apologise to Cleveland Dodd's family, the local community, the Shire of Meekatharra, and my fellow councillors."

4. If Shire President Nichols 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 Shire of Meekatharra shall arrange for the notice of public apology to be published:
  - a. on the Facebook Page and any other social media page of the Shire of Meekatharra in no less than 10 point font size; and
  - b. in an appropriate place on the website of the Shire of Meekatharra shall in no less than 10 point font size; and
  - c. in the next occurring issue of any Shire of Meekatharra public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

#### **PUBLIC APOLOGY BY SHIRE PRESIDENT HARVEY NICHOLS**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021*, when I made certain comments during an ABC interview which related to the juvenile justice and incarceration issues in the community and the death in custody of Cleveland Dodd.

The Panel found that I breached Regulation 18 by my conduct which constituted an improper use of my role as Shire President and further showed a negligent disregard to as to the detrimental impact my comments would have in the community.

I acknowledge that I should not have made the relevant comments and I now apologise to Cleveland Dodd's family, the local community, the Shire of Meekatharra, and my fellow councillors

#### **Appeal**

5. In the event that, prior to the date for compliance with the above Orders, Shire President Harvey Nichols:
  - 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 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.”*