

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995 (WA)*

Complaint Number	SP 13 of 2016 [DLG 20160039]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Anthony Nottle
Subject of complaint	Councillor Kaye McGlew
Local Government	Shire of Dandaragan
Regulation	Regulations 4 and 10(3) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Heard	22 November 2016 Determined on the documents
Outcome	Breach of regulation 10(3)(a)

FINDING AND REASONS FOR FINDING

Published 10 January 2017

DEFAMATION CAUTION

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Summary of the Panel's decision

1. The Panel found that Councillor Kaye McGlew (Cr McGlew), a councillor for the Shire of Dandaragan (the Shire), committed a minor breach under the *Local Government Act 1995* (WA) (the Act) and regulation 10(3)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) when she made a statement at an ordinary council meeting on 24 March 2016 (the OCM) that one or more local government officers were incompetent or dishonest when putting an item about corporate rebranding before Council.
2. The Panel found that Cr McGlew did not breach regulation 4 of the Regulations at the OCM.

Jurisdiction

3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. On 15 April 2016, the Panel received a complaint of two minor breaches from the Shire's Complaints Officer (the Complaint). The complainant, Mr Anthony Nottle, the Shire's Chief Executive Officer, alleged that during the OCM Cr McGlew:
 - breached regulation 4 by making audible and physical objectionable expressions at the OCM; and
 - breached regulation 10(3) by making an oral statement at the OCM suggesting and confirming that staff had been dishonest and/or incompetent during the OCM when members of the public were present.
5. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.² If the alleged conduct may amount to a "recurrent breach", the Panel may instead send the complaint to the Chief Executive Officer of the Department of Local Government and Communities (the Department).³
6. On 22 November 2016 the Panel met to consider the Complaint.
7. The Panel considered the documents listed in Attachment A to these Reasons, including the Statement of Facts in Attachment B to these Reasons. The Panel was satisfied that the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with the Complaint.⁴
8. Cr McGlew had not previously been found to have committed a minor breach, so the Panel was not required to consider sending the Complaint to the Chief Executive Officer of the Department.
9. Based on the information referred to in paragraphs 3 to 8 above the Panel found it had jurisdiction to determine whether Cr McGlew had committed minor breaches under regulations 4 and 10(3).

¹ Section 5.105 of the Act

² Section 5.110(2)(a) of the Act.

³ Sections 5.110(2)(b), 5.111(1) of the Act.

⁴ Sections 5.107, 5.108, 5.109 of the Act.

Panel's role

10. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
11. Any finding that a councillor has committed a minor breach must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).⁵
12. Where direct proof of an alleged fact, proposition or conduct is not available, in order to find the allegation, proposition or conduct has been established, the Panel must be satisfied on the evidence that it is more probable than not that the alleged fact, proposition or conduct occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.⁶
13. For a finding that a councillor has breached a particular regulation the Panel must be satisfied to the required standard of proof that every element of the particular regulation has been established.

Complaint and Response

14. Mr Nottle provided his Complaint Form, a copy of Cr McGlew's email to him and other councillors dated 21 March 2016 and a witness statement dated 7 April 2016 from Mr Clinton Strugnell, a member of the public who attended the OCM (the witness statement).
15. Cr McGlew documented her response to both allegations in a five page document dated 12 August 2016 comprising her Elected Member's Response form, a section titled "Please see further context below" and a section titled "Further relevant explanation context" (her Response).

Regulation 4

16. Regulation 4 provides:

"4. Contravention of certain local laws

(1) In this regulation —

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

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

17. A local government can make "local laws", including laws that are necessary or convenient to enable the local government to perform its functions.⁷

⁵ Section 5.106 of the Act.

⁶ Bradshaw v McEwens Pty Ltd (1951) 217 ALR 1, paragraph 5.

⁷ Section 3.51 of the Act.

18. A council member who contravenes a “local law as to conduct” commits a minor breach.⁸ A “local law as to conduct” includes a local law about the conduct of councillors at meetings.⁹ The Shire’s Standing Orders (SOs) are local laws about the conduct of councillors at meetings.

19. The SOs relevant to the allegation of breach of regulation 4 provide:

“1.2 Application

All meetings of the council or a committee and other matters as prescribed are to be conducted in accordance with the Act, Regulations and these Standing Orders.

...

Part 8 – Conduct of Persons at Council and Committee Meetings

...

8.4 Adverse Reflection

...

(2) No member of the Council or a committee is to use offensive or objectionable expressions in reference to any member, employee of the Council, or any other person.”

20. Mr Nottle alleged Cr McGlew breached regulation 4 at the OCM during debate in relation to Item 9.1.4, “Corporate Branding – Shire of Dandaragan”.

21. The Minutes of the OCM (the Minutes) for Item 9.1.4 was about a proposal to develop a Corporate Brand Policy and Style Guide to apply to all Shire correspondence and publications.

22. Mr Nottle’s report to the Councillors for Item 9.1.4 included some background comments and the recommendation that:

“Council ... approve the development of a Corporate Brand Policy and Style Guide, including updated brand images and logos where applicable, that outlines the application of brand images, logos, colours, fonts, taglines and the Shire’s existing logo as a corporate seal, in all Shire of Dandaragan correspondence and publications.”

23. In his Complaint Form Mr Nottle said (italics used by the Panel for emphasis):

“When a member of the public ... stated that he would like the opportunity to speak on the item during the meeting, the President advised that this will not be the case, and that the opportunity to ask questions during public question time was the appropriate avenue.

Following the response from the (Shire) President, Cr. McGlew *made audible and physical objectionable expressions* in relation to this response. This continued throughout the public question time as the President responded to the questions raised.

...

⁸ Section 5.105(1)(b), regulation 4 of the Regulations.

⁹ Regulation 4(1) of the Regulations.

During the course of debate in Item 9.1.4, other elected members took part in the debate. Cr. McGlew continued to use *audible and physical offensive and objectionable expressions* while the others were speaking.”

Response

24. Cr McGlew denied she breached regulation 4.
25. In her “Further context” section Cr McGlew said:
 - During question time, when a member of the public was denied the opportunity to speak, she “indicated facially towards him that there was nothing I could do, with shoulder movement or eyes”.
 - “I may have shrugged my shoulders or eyes expression only towards (members of the public who asked questions), to indicate I could do nothing” when they were confused after not receiving any answers to their questions.
 - A councillor sitting next to her made “strong negative comments about the character of a person ... As his comments were possibly directed at me I may have expressed incredulity in my facial expression (raised eyebrows/eyes) as I could not believe the negative comments he was making and the fact that the presiding member was allowing this to occur in a Council Meeting.”
26. In her “Further relevant explanation” section Cr McGlew denied she used “physical offensive and objectionable expressions while others were speaking or audible objections.”

Requirements for a minor breach under regulation 4

27. The Panel finds that SO 8.4(2) is a local law as to conduct at council meetings, within the meaning of regulation 4(1), and that a contravention of SO 8.4(2) is a minor breach under the Act and regulation 4(2).
28. In order to find that Cr McGlew committed a breach under regulation 4 and SO 8.4(2) the Panel must be satisfied that it is more likely than not that:
 - the alleged conduct occurred at a council meeting; and
 - Cr McGlew used an “expression” at the meeting; and
 - if she used an “expression”, it was “offensive or objectionable”; and
 - if she used an offensive or objectionable expression she did so “in reference to” a councillor, Shire employee or any other person.
29. There is no dispute that Cr McGlew was at a council meeting at the time of the alleged conduct.

Meaning of expression”

30. The Macquarie Dictionary¹⁰ defines “expression” as “a particular word, phrase, or form of words”. The Shorter Oxford English Dictionary¹¹ defines “expression” as a “manner

¹⁰ Revised Third Edition

¹¹ Sixth Edition

or means of expressing in language, wording, diction" and "a word, a phrase, or form of speech."

31. Cr McGlew said she may have shrugged her shoulders or made "facial expressions". The Panel's view is that this is a colloquial use of "expression" and that the proper meaning of "expression" involves a person using words.
32. Mr Nottle alleges Cr McGlew used "expressions" described as ... audible, physical and objectionable but does not refer to any words, phrases or form of words that would constitute an "expression" within the meaning of SO 8(4)(2).
33. Cr McGlew did not say anything in her Response to indicate she used any words in the part of the OCM giving rise to this allegation.

Finding

34. The Panel is not satisfied that Cr McGlew used "an expression", so finds she did not breach SO 8.4(2) or regulation 4.

Regulation 10(3)

35. Regulation 10(3) provides:

"10. Relations with local government employees

...

- (3) *If a person, in his or her capacity as a council member, is attending a council meeting, committee meeting or other organised event and members of the public are present, the person must not, either orally, in writing or by any other means —*
 - (a) *make a statement that a local government employee is incompetent or dishonest; or*
 - (b) *use offensive or objectionable expressions in reference to a local government employee."*

Complaint

36. Mr Nottle alleges that at the OCM (the Panel uses italics for emphasis):

"... Cr. McGlew stated that she had spoken to (a Department officer) to seek advice on the processes of the Strategic Community Plan.

Cr. McGlew continued to repeat her interpretation of the discussion with (the Department officer) *suggesting* that a removal of the corporate branding from the Strategic Community Plan and the fact that it still remained in the Corporate Business Plan was done *intentionally or by mismanagement*.

The President, Cr Holmes, advised Cr. McGlew that she had had the floor for '17 minutes' and that, 'Are you suggesting that the staff *have been dishonest or incompetent?*'

Cr. McGlew's response was, 'I believe so, yes.'

...

The response Cr. McGlew gave was clearly audible to the other Councillors, the public gallery and Shire staff.”

37. Cr McGlew's said in her email dated 21 March 2016:

- she didn't support the officer's recommendation in the Agenda for the OCM;
- Councillors needed to assess the ethics of the process so far to determine the next step;
- she was not against reviewing Shire branding as long as there was a clear objective and an open and transparent democratic process;
- she had been concerned with due diligence when the branding matter had been discussed previously as part of the Strategic Community Plan;
- she was not sure why the rebranding issue was being raised again because Council decided to give the issue a “Delete” status in 2015; and
- in November/December 2015 staff told her that the new item was “corporate brand” not “Shire brand”, which she considered to be a matter of semantics.

38. In his witness statement Mr Strugnell said (the Panel uses italics for emphasis):

“When Cr McGlew spoke against the motion (relating to the adoption of a corporate brand for the Shire) her primary argument related to the fact that the issue of corporate branding had been removed from the Shire’s Strategic Community Plan but remained in the Corporate Business Plan. Cr McGlew advised that she had sought advice on the matter from the (Department). Cr McGlew repeated her position a number of times stating that the item should not be considered by Council as it should not be in the Corporate Business Plan and should have been removed at the same time it was deleted from the Community Strategic Plan.

At this point, Cr McGlew said, ‘The only reasons the issue is identified in the Corporate Plan is that it has been *deliberately included or by mismanagement*’.

The Shire President then asked Cr McGlew, ‘Are you *suggesting* the staff have been incompetent or dishonest?’ Cr McGlew responded, ‘Yes’.

As a member of the public and an elector in the Shire, I considered the comments by Cr McGlew to be inappropriate and disrespectful to the staff involved. The conduct reflected poorly on our local government.

Subsequent to the meeting, I received contact from Tony Nottle, Chief Executive Officer at the Shire, asking if I had a clear recollection of the debate on Item 9.1.4 and if I would be prepared to document that recollection.”

Response

39. In her Response Cr McGlew said:

- branding is a matter that falls within the scope of the Shire’s Strategic Community Plan ("), not its Corporate Business Plan (CBP), and must involve community consultation;
- a “no further action is contemplated” decision on 24 September 2015 was recorded in the SCP as “Delete”;

- Shire communities knew “absolutely nothing” about the fact that corporate branding was coming up again as Item 9.1.4;
- if Council had set the SCP Action Status to “Delete” in September 2015 the matter should be taken back to the community to be clarified through the 2016 Strategic Community Planning process;
- she should have asked the President to repeat the question because she “thought ... (the President) was indicating were staff involved as part of this process - and (she) responded I believe so, yes”;
- the President’s alleged question was “leading”, this was not what she had been saying, and the alleged question was also “misleading”;
- she didn’t say or intentionally indicate that staff were dishonest or incompetent;
- she would not have used and did not use the word “mismanagement”; and
- she indicated councillors and staff had a part to play.

40. In another part of her Response Cr McGlew said she said, “Yes, I believe so”.

Requirements for a minor breach under regulation 10(3)

41. Mr Nottle did not specify whether he was alleging a breach under 10(3)(a) or 10(3)(b). For a finding of breach of regulation 10(3)(a) or (b) the Panel must be satisfied that:

- Cr McGlew was attending a council meeting at the time of the alleged conduct;
- Cr McGlew was acting in her capacity as a councillor at the time of the alleged conduct; and
- members of the public were present when the alleged conduct occurred.

Was Cr McGlew acting in her capacity as a councillor and attending a council or committee meeting?

42. There is no doubt that at the time of the alleged breach Cr McGlew was attending the OCM in her capacity as a councillor.

Were members of the public present?

43. According to the Minutes eight Observers attended the OCM. The Minutes record that the meeting was closed to the public while Council dealt with Item 11.1. There is nothing in the Minutes to indicate that any members of the public were excluded for Item 9.1.4. The Panel is satisfied that members of the public were present at the time of the alleged conduct.

Did Cr McGlew make an oral or written statement?

44. The allegation concerns an oral statement.

45. The Macquarie Dictionary¹² defines:

- “statement” as “something stated, a communication or declaration in speech or writing setting forth facts, particulars, etc. ... the act or manner of stating something”;
- “communication” as “the act or fact of communicating; transmission; the imparting or interchange of thoughts, opinions, or information by speech, writing, or signs”; and
- “communicate” as “to give to another as a partaker; impart; transmit; to impart knowledge of; make known”.

46. In *Yates v Local Government Standards Panel [2013] WASCA 8 (Yates)* the Supreme Court of WA considered a councillor’s appeal from a decision of the State Administrative Tribunal (SAT) in relation to regulation 10(3)(a). SAT had decided (as had the Local Government Standards Panel) that a Town of Bassendean councillor, Cr Yates, breached regulation 10(3)(a) when making a statement that the Town’s Manager of Asset Services (the Town officer) had exaggerated budget figures put to the Council concerning proposed roadworks.

47. In relation to the meaning of “statement”, the Court quoted and agreed with SAT, which said:

“The term ‘statement’ is not defined in the legislation. According to its most apposite ordinary meaning, a ‘statement’ is ‘a communication or declaration in speech or writing setting forth facts, particulars, etc’ (*The Macquarie Dictionary*, 5th edition, 2009, page 1609). A communication or declaration in speech or in writing can be made by implication, provided that the implication is sufficiently clear. Expressed in another way, a ‘statement’ does not have to be expressly made.”

48. Council meetings involve discussion and debate. It is reasonable for one councillor in this environment to ask another councillor to clarify what that other councillor was intending to communicate. The Panel’s view is that an answer to a question can, in combination with the question, amount to an oral communication, thus an oral statement within the meaning of regulation 10(3)(a).

49. There is no dispute that the President asked a question, but the precise wording is disputed. Cr McGlew admits she answered, “I believe so, yes”, or “Yes, I believe so”.

50. The Panel finds that Cr McGlew made a statement when answering the President’s question, but the meaning of the statement needs to be considered next.

Was the statement about a local government employee?

51. Section 10 of the *Interpretation Act (WA) 1984* provides that:

“In any written law —

...

¹² Revised Third Edition

(c) words in the singular number include the plural and words in the plural number include the singular.

52. Taking this into account and that any breach of regulation 10(3)(a) occurs when members of the public are present, the Panel's view is that it is not necessary to determine specifically whether the councillor was referring to one or several employees (although in some cases this will be clear).
53. Neither is it necessary that the councillor identify which employee or employees (by name or position) the councillor is referring to. This interpretation contemplates that members of the public may form a view about staff generally from a councillor's statement.

Was the statement that a local government employee is incompetent or dishonest?

54. A councillor's words can amount to a statement that an employee "is incompetent or dishonest" even if the councillor does not use these particular words. It is enough if the words, in their context and in all the circumstances, imply incompetence or dishonesty.
55. In Yates Cr Yates spoke against the Town officer's recommendation. He said:

"I seriously question some of the budget figures that are coming out that are being put before Council ... In other words it's a report at a pricing to stop the budget.

... so many items that are coming out now where the pricing that comes before the Council to consider *appears to be exaggerated*. (Emphasis added by the Panel.)

...

For example there is a cost in there, I think it is for about \$5,000 for safety signage, road management related costs. Now these particular people on contract earn typically about \$100/hour. What you are suggesting with a budget of something like \$5,000 they're going to be there for a week. For a week to put in a slip road and nib suggests that again that *the costing has been exaggerated*."(Emphasis added by the Panel.)

56. The Court upheld SAT's decision that Cr Yates made a statement that the officer was "incompetent or dishonest" within the meaning of regulation 10(3)(a) even though he didn't use those precise words. It was enough to satisfy the requirements of 10(3)(a) that the councillor used words that implied incompetence or dishonesty.
57. The allegation in this case is that after speaking for 17 minutes Cr McGlew responded to the question, "Are you suggesting that the staff have been dishonest or incompetent?" by saying "I believe so, yes".
58. Cr McGlew's email dated 21 March 2016 gives the Panel some context. She was concerned about why the rebranding issue was being raised again and why staff told her the new rebranding item was different from that which Council had already decided on. The gist of her view was that officers knew or should have known about the SCP decision and were ignoring the proper process by bringing it to the OCM as a CBP item. She thought the proper process was for Council, not the officers, to revisit corporate branding through an SCP process, in consultation with the community.

59. The Panel notes that the Complaint Form and the witness statement are both dated 7 April 2016. They contain almost identical words:
- (1) "Cr McGlew ... (suggested) ... the fact that it (corporate branding) still remained in the Corporate Business Plan was done intentionally or by mismanagement" (Complaint Form), and "Cr McGlew said, 'The only reasons the issue is identified in the Corporate Plan is that it has been deliberately included or by mismanagement' " (Witness statement); and
 - (2) "The President said 'Are you suggesting that the staff have been dishonest or incompetent' " (Complaint Form), and "the Shire President then asked Cr McGlew 'Are you suggesting that staff have been incompetent or dishonest?' " (Witness statement).
60. It is unclear whether Mr Nottle used the witness statement to complete parts of the Complaint Form. This is possible, as according to Mr Strugnell, Mr Nottle asked him to document his recollection, but the Panel cannot be sure. The Panel's view is that the similarity in the wording affects the weight of this evidence and takes this into account.
61. The Minutes do not record any discussion or debate about Item 9.1.4.
62. The Panel has no reason to doubt that Cr McGlew spoke against the motion for 17 minutes. Cr McGlew admits she said, "Yes, I believe so". It is the wording of the question that is in dispute.
63. For a finding of a breach of regulation 10(3)(a) it is not necessary to establish that Cr McGlew used the words "incompetent" or "dishonest" (see Yates). It is enough if the question together with the answer amount to a "statement" which implies that staff were incompetent or dishonest.
64. The Panel's view is that regulation 10(3)(a) can be satisfied if the Panel finds that Cr McGlew implied that the staff were "incompetent or dishonest", and that it is not necessary to make a decision about each individual word, "incompetent" and "dishonest".
65. The Panel is satisfied that is more likely than not that:
- the President listened to Cr McGlew for 17 minutes and formulated her question based on what Cr McGlew said in opposition to the motion;
 - the President asked "Are you suggesting that the staff have been dishonest or incompetent?" or "Are you suggesting the staff have been incompetent for dishonest?";
 - Cr McGlew responded "I believe so, yes" or "yes, I believe so" which, combined with the question, amounted to a "statement"; and
 - Cr McGlew's statement implied that the author of the report in the Agenda, and/or other officers, were incompetent or dishonest because they sought to deal with the rebranding item without following the proper process.
66. In *Hargreaves and Local Government Standards Panel [2008] WASAT 300 at [17]*; Deputy President of SAT, Judge Chaney (as his Honour then was) said:
- "I accept that reg 10(3) is designed to ensure that councillors do not use their position

to publicly criticise employees within their local government. It is predicated on the proposition that concerns about the performance of employees should be dealt with within the local government organisation and through proper channels, rather than aired publicly in a council or committee meeting.”

67. It is not relevant that Cr McGlew didn't actually believe the staff were incompetent or dishonest. The question is, what did her words at the time imply – how would a reasonable person hearing the words perceive what she was saying in their context and in all the circumstances? The Panel accepts Mr Strugnell's evidence that he found Cr McGlew's comments to be inappropriate and disrespectful of the staff involved, and reflected poorly on the local government.
68. Notwithstanding Cr McGlew's good intentions to ensure proper process, including community consultation, Cr McGlew must meet the standards of conduct expected, and legislated for, in council meetings.

Finding

69. The Panel finds that Cr McGlew made a statement at the OCM that one or more local government employees were incompetent or dishonest, in breach of regulation 10(3)(a).
70. As the Panel has made this finding it is not necessary to consider whether Cr McGlew breached regulation 10(3)(b).

Panel's decision

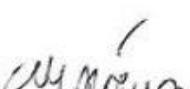
71. The Panel finds that Cr McGlew did not breach regulation 4, however breached regulation 10(3)(a).



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Reasons – 10 January 2017

Attachment A

The available information

Doc ID	Description	Page #
Attachment B	Statement of Facts	11
01.Doc	Copy of Complaint of Minor Breach No. SP 13 of 2016 and supporting information dated 11 April 2015 made by Mr Tony Nottle.	12
02.Doc	Copy of Request for Comments letter including attachments (Complaint Summary, Form A, copy of Complaint) to Councillor McGlew dated 12 July 2016.	21
03.Doc	Copy of Cr McGlew's response to the allegations, dated, 12 August 2016.	35
04.Doc	Copy of Witness Statement of Clinton Strugnell	41
05.Doc	Copy of Shire of Dandaragan Standing Orders Local Law	42
06.Doc	Copy of minutes of OCM 24 March 2016	71

Attachment B

Statement of facts

- The complaint was received by the Presiding Member of the Standards Panel on 15 April 2016
- The Complaints Officer complied with his obligations under section 5.107(3) and the complaint was made in writing in the form approved by the Minister pursuant to section 5.107(2).
- The complaint was sent to the Complaints Officer within two years after the breaches alleged in it occurred, as required by section 5.107(4).
- Regulation 4 and Regulation 10(3) is a rule of conduct for the purposes of section 5.104(1). Accordingly, a contravention of Regulation 4 or 10(3) is a minor breach under section 5.105(1)(a).
- Cr McGlew was elected to Council on 15 October 2011.

DANDARAGAN WARD				
Vacancies	(5) Councillors			
Expiry of term	17 October 2015			
Total electors	2,339			
Turnout rate	52.07%			
Candidates	Votes	Percentage	Expiry of Term	
HOLMES, Leslee	614	13.74%	17 October 2015	
GIBSON, Wayne	648	14.5%	17 October 2015	
CLEAR, Herb	258	5.77%		
KENT, David	588	13.16%	17 October 2015	
LOVE, Shane	771	17.25%	17 October 2015	
LOVELAND, Ken	495	11.08%		
HOWE, K R	373	8.35%		
MCGLEW, Kaye	722	16.16%	17 October 2015	
Total valid votes	4,469	100%		

- At the time of the alleged contravention of the Regulations, Cr McGlew was an elected member of the Shire and continues to be so.
- On 12 July 2016 the Department advised Cr McGlew of the complaint and provided her with an opportunity to provide her comments and any information she desires in relation to the allegation contained within.
- On 12 August 2016 Cr McGlew provided a response to the allegation.
- Cr McGlew has not previously been found under Part 5 Division 9 of the Act to have committed a minor breach.