

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 8 of 2015 DLG 20150050
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Leon William Walker
Subject of complaint	Councillor David Griffiths
Local Government	City of Gosnells
Regulation	Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Member)
Heard	3 September 2015 (Determined on the documents)
Outcome	Four breaches established

FINDINGS AND REASONS FOR FINDING

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

1. Summary of the Panel's Decision

- 1.1 The Panel found that during each of the Ordinary Meetings of the Council of the City held on 22 October 2013, 12 November 2013, 11 November 2014 and 16 December 2014, Mayor Griffiths breached regulation 11(2) of the *Local Government (Rules of Conduct) Regulations 2007 (Regulations)* by failing to declare an interest when voting on applications for leaves of absence from the Council made by his son, Cr Peter Griffiths (**Son's Applications**).

2. Procedural Note

- 2.1 This matter was first considered by the Panel (including its then Deputy Legal Member) on 13 May 2015. Prior to the Panel publishing its Findings and Reasons, the then Deputy Legal Member ceased to be a member of the Panel.
- 2.2 The matter was then reconsidered by the Panel on 3 September 2015, constituted as it was on 13 May 2015, save for the substitution of the Legal Member for the former Deputy Legal Member.
- 2.3 On each occasion the Panel made the same determination.

3. Jurisdiction

- 3.1 On 10 March 2015 the Panel received from the Shire's Complaints Officer a complaint submitted by Leon William Walker (**Complaint**) alleging that during each of the Ordinary Meetings of the Council held on 22 October 2013, 12 November 2013, 11 November 2014 and 16 December 2014 (**Relevant OCMs**), Mayor Griffiths breached regulation 11(2) of the *Regulations* by failing to declare a relevant interest prior to voting on motions relating to his Son's Applications.
- 3.2 A breach of regulation 11(2) is a "minor breach" and the Panel is required to make a finding as to whether the breach occurred or to send the Complaint to the Chief Executive Officer of the Department of Local Government and Communities under section 5.111 of the *Local Government Act 1995 (LG Act)*.
- 3.3 The Panel finds that the Complaint was made and has been dealt with in accordance with the requirements of Division 9 of the *LG Act*, that the Complaint is not one that should be dealt with under section 5.111 and that the Panel has jurisdiction to determine whether the breach occurred.

4. Regulation 11

- 4.1 Regulation 11 provides as follows:

"11(1) In this regulation —

"interest" means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

- (2) A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —

- (a) in a written notice given to the CEO before the meeting; or
 - (b) at the meeting immediately before the matter is discussed.
- (3) Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.
- (4) Subregulation (2) does not apply if —
- (a) a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or
 - (b) a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.

...”

5. The Panel’s Role

- 5.1 The Panel observes that its members are required to have regard to the general interests of local government in Western Australia¹; it is not an investigative body and determines complaints solely upon the evidence presented to it; a finding of a minor breach may affect an individual both personally and professionally and that in order for the Panel to make a finding that a minor breach has been committed by a Councillor, the finding is to be “based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur”² (**Required Standard**).
- 5.2 When assessing whether it is satisfied to the Required Standard:
- (a) the Panel considers, amongst other things, the seriousness of the allegations made in the Complaint, the likelihood of an occurrence of the given description and the gravity of the consequences flowing from a particular finding; and
 - (b) where direct proof is not available, the Panel considers that it must be satisfied that the circumstances appearing in evidence give rise to a reasonable and definite inference of a breach, not just to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture.

6. Documents

- 6.1 The Documents considered by the Panel (**Documents**) are set out in Attachment “A”.

7. The Complaint

- 7.1 The essence of the Complaint is that during each of the Relevant OCMs Mayor Griffiths breached regulation 11(2) of the *Regulations* by failing to declare a relevant interest prior to voting on motions relating to his Son’s Applications.

¹ Clause 8(6) of Schedule 5.1 of the *LG Act*

² *LG Act*, s 5.106.

8. The Response

- 8.1 By letter posted 8 April 2015 the Department sent a copy of the Complaint (together with a Complaint Summary) to Mayor Griffiths and asked him if he wished to make any comments in relation to the Complaint.
- 8.2 Mayor Griffiths responded to the Department, by a completed Elected Member's Response to the Matters set out in the Complaint Summary and an accompanying memorandum in which he:
- (a) accepted that Cr Peter Griffiths was his son and that he had not disclosed that fact prior to voting on motions relating to his Son's Applications³;
 - (b) denied that he was obliged to make any such disclosure contending, amongst other things, that:
 - (i) regulation 11(2) only applies where a councillor has an interest "in any matter to be discussed at a council ... meeting"; and
 - (ii) an application for a leave of absence is an "administrative matter", upon which a vote is taken, but is not a matter to be "discussed" at a council meeting.

9. Essential elements of a contravention of regulation 11(2)

- 9.1 For present purposes, the essential elements of a breach of regulation 11(2) of the *Regulations* are that it is more likely than not that:
- (a) a person who is a current council member;
 - (b) had an interest in a matter to be discussed at a Council meeting;
 - (c) the matter was discussed at a Council meeting at which the person attended; and
 - (d) the person did not disclose the nature of his or her interest in either of the ways required by regulation 11(2)(a) or 11(2)(b) of the *Regulations*.

10. Findings

- 10.1 The Minutes of the Relevant OCMs record that:
- (a) at the OCM of 22 October 2013, the requested leave of absence was granted unanimously, upon a motion moved by Cr Mitchell;
 - (b) at the OCM of 12 November 2013, the requested leave of absence was granted unanimously, upon a motion moved by Cr Brown;
 - (c) at the OCM of 11 November 2014, the requested leave of absence was granted unanimously but only from 11 November 2014, not 5 November 2014 as requested, upon a motion moved by Cr Mitchell; and

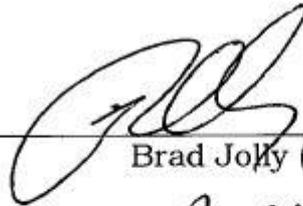
³ This is confirmed by the Minutes of the Relevant OCMs.

- (d) at the OCM of 16 December 2014, the requested leave of absence was granted by a majority of 6 votes to 5, with the Mayor casting a second vote in favour of a motion, which had been moved by Cr Mitchell.
- 10.2 Pursuant to section 2.25(1) of the *LG Act* a “council may, by resolution, grant leave of absence, to a member”. A resolution of Council is made upon a motion moved and seconded by councillors.
- 10.3 A Council *may* therefore, in the exercise of this discretion, grant or refuse leave [*LG Act*, s 2.25(3)] and in the circumstances prescribed by sections 2.25(2) and (3A) (which are not relevant for present purposes) *must* refuse to grant leave.
- 10.4 When considering how to vote on an application for a leave of absence, councillors are entitled to ask questions and engage in discussions with other councillors. Whether councillors do so or not will depend upon the circumstances of the case at hand.
- 10.5 In the Panel’s view:
- (a) when regulation 11(2) refers to a “matter to be discussed at a Council meeting”, it is referring to a matter to be “considered” at a Council meeting and it is not necessary that a discussion actually take place before a vote is taken on a relevant motion; and
- (b) this view is reinforced by the requirement that notice of a relevant interest ought to generally be given prior to the Council meeting at which the relevant matter is to be considered, at which time it will not be known whether discussions will take place before a vote is taken on the relevant motion.
- 10.6 It follows that the Panel does not accept Mayor Griffiths’ contention that regulation 11(2) does not apply to his Son’s Applications.

10.7 On the evidence available to the Panel it is satisfied to the Required Standard that:

- (a) Cr Griffiths is presently, and was on the date of each of the Relevant OCMs, a councillor of the City;
- (b) as the father of Cr Peter Griffiths, he had a relevant “interest” in each of his Son’s Applications, which interest could, or could reasonably be perceived to, adversely affect his impartiality in relation to those applications (**Relevant Interest**);
- (c) his Son’s Applications were considered at the Relevant OCMs; and
- (d) Mayor Griffiths ought to have disclosed the Relevant Interest, prior to voting on his Son’s Applications, but failed to do so;

and the Panel accordingly finds that Mayor Griffiths committed four breaches of regulation 11(2) – being one breach in relation to each of the Relevant OCMs.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Peter Doherty (Member)

Attachment "A"

Doc ID	Description	Page #
	Complaints Officer originating correspondence:	
01.doc	Copy of (1-page) letter from Mr Grant Bradbrook ('Mr Bradbrook'), the City of Gosnells' Director Governance and Complaints Officer, dated 9 March 2015.	15
	The complaint (and its accompanying information, if any):	
02.doc	Copy of (1-page) letter from Mr Leon Walker ('Mr Walker') to Mr Bradbrook dated 1 March 2015.	16
03.doc	Copy of (3-page) Complaint of Minor Breach No. SP 8 of 2015 dated 28 February 2015 made by Mr Walker.	17
04.doc	Copy of (3-page) pages 2, 3 and 6 of the City Ordinary Council Meeting ('OCM') held on 22 October 2013.	20
05.doc	Copy of (2-page) pages 2 and 8 of the City OCM held on 12 November 2013.	23
06.doc	Copy of (2-page) pages 2 and 5 of the City OCM held on 11 November 2014.	25
07.doc	Copy of (2-page) pages 2 and 8 of the City OCM held on 16 December 2014.	27
	Correspondence with the Cr complained about:	
08.doc	Copy of (3-page) Request for Comments letter and attachment to Cr David Griffiths dated 7 March (sic, April) 2015.	29
10.doc	Copy of (1-page) letter from Cr David Griffiths dated 20 April 2015.	32
11.doc	Copy of (1-page) completed Form A.	33
12.doc	Copy of (2-page) attachment referred to in 11.doc.	34