



Local Government Standards Panel

Complaint Number	SP 2020-021
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Timothy Clarke
Respondent	Councillor Tanya Richardson
Local Government	City of Swan
Regulation	Regulation 7 Regulation 8 of the <i>Local Government</i> (<i>Rules of Conduct</i>) <i>Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Cr Peter Rogers (Member) Mrs Emma Power (Member)
Heard	10 June 2020 Determined on the documents
Finding	One breach of Regulation 7(1)(b) No Breach of Regulation 7(1)(a) or Regulation 8

FINDING AND REASONS FOR FINDING

Delivered 12 August 2020

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 2020, the Panel found that Councillor Tanya Richardson, a councillor of the City of Swan (**"the City"**):
 - a. did not commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and:
 - i. regulation 7(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (**"the Regulations"**); and
 - ii. regulation 8 of the Regulations; and
 - b. did commit a minor breach pursuant to the Act and regulation 7(1)(b) of the Regulations,
when she allegedly aggressively used her position of councillor to try and gain access to a meeting of the Ellenbrook Community Collective, on 4 February 2020 when she was not a member or an invitee as set out in paragraph 15 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 provides for the circumstances in which a council member commits a minor breach.¹
4. 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.²
5. 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.
6. 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 accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. 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.

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336

⁵ *Re and Local Government Standards Panel* [2015] WASC 51 (at paragraph 24)



9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. 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

11. On 13 March 2020 the Panel received a complaint from Mr Michael Foley acting as complaints officer of the City (**"the Complaints Officer"**). The same enclosed a Complaint of Minor Breach Form dated 12 March 2020.
12. In the complaint form, the Complainant alleges that Cr Richardson has breached:
 - a. regulation 7 of the Regulations; and
 - b. regulation 8 of the Regulations,when she allegedly aggressively used her position of councillor to try and gain access to a meeting of the Ellenbrook Community Collective (**"the ECC"**), on 4 February 2020 when she was not a member or an invitee as set out in paragraph 15 (together **"the Complaint"**).
13. The Panel convened on 10 June 2020 to consider the Complaint.
14. The Panel:
 - a. accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission's website, Cr Richardson was:
 - i. at the time the Panel met, elected to the Council of the City in October 2019 for a term expiring in October 2023;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 10 June 2020;
 - b. was satisfied the Complaint was made within six months after the alleged breach occurred⁷;
 - 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 breach⁸;
 - d. was satisfied the Department had provided procedural fairness to Cr Richardson; and
 - e. found it had jurisdiction to consider the Complaint.

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

⁷ Section 5.107(4) and 5.109(2) of the Act

⁸ Section 5.107 and 5.109 of the Act



The Specifics of the Complaint

15. The Complainant provided the following background and arguments in respect to the Complaint:
- a. At the Ellenbrook Community Collective Annual General Meeting (**“the AGM”**) on 4 February 2020 the Complainant was requested by the Chairperson to take the membership and invitee list to the door and only allow those on the list to enter. The attendance to the AGM was only open to those on the list and the public were not invited to attend.
 - b. A small group of loud, disruptive people, including Councillor Richardson tried to gain entry. The Complainant’s response was *“if you are not on the list you cannot come in, it is an AGM for members and invitees and is not open to the public”*.
 - c. The group continued to try and bully their way in. The authorised members that were trying to get into the meeting were physically blocked or pushed by this disruptive group. This group, including Councillor Richardson, were yelling and quoting regulations that, according to them, all AGMS were open to the public.
 - d. The Complainant’s response remained the same. Councillor Richardson began to get frustrated and began yelling loudly. She had a baby in her arms and her yelling was clearly distressing to the child. She did give the child away however after that the councillors yelling and demands to let them enter became louder and more enraged.
 - e. This councillor stated that all AGMs are open to the public and they had a right to be in the meeting. This is not correct and depends on the rules of the association.
 - f. The Complainant could understand this type of behaviour from the general public or common thugs but not from a representative of the council who has been entrusted to be part of the decision-making process for the community. This blatant abuse of the position they hold should not be tolerated, and is a clear breach of Regulations.
 - g. In respect to Regulation 7:
 - i. Cr Richardson was obviously using her position to lead this disruptive group by yelling and quoting incorrect regulations.
 - ii. Cr Richardson was clearly not acting as a private citizen and this became more obvious with the questions that were presented at the next Swan City Council meeting.
 - iii. The councillor's aggressive and loud behaviour was purely to gather support for herself and show how she could stand up for a small disorderly group trying to disrupt the meeting.
 - iv. Unfortunately, Councillor Richardson and her fellow councillor (Councillor Johnson) chose to lead a group of community trouble and misquoted regulations regarding their right to be admitted into that AGM .
 - v. This performance is a very poor representation of the City of Swan which reflects directly on local government including the Mayor, the CEO, other councillors and the staff of the City of Swan.



- vi. The Complainant believes that this councillor requires training and reminding of their code of conduct and how to behave whilst serving in the positions they hold.
- vii. Being a councillor is a very prestigious position and does not give them the right to act in this way.
- h. In respect to Regulation 8:
 - i. Cr Richardson made use of her position as a councillor, that position being a local government position, meaning that position is a local government resource.
 - ii. Cr Richardson was not authorised to use the resource by the Act (that is, the use was not associated with her fulfilling her role as a council member).
 - iii. The Act does not allow a councillor to use their position in the way this councillor used their position during the incident. It was a complete lack of professionalism and a clear breach of the code of conduct.
 - iv. Cr Richardson was not authorised to use the resource by the council or Chief Executive Officer (such as through a direct authorisation or a documented policy);
 - v. Cr Richardson was not authorised by the council or the CEO to attend the meeting in her capacity as a councillor and to act in such a manner; and
 - vi. The council member's use of the resource was not made under the same conditions as any person who is not a council member is able to do so.
- i. For the Complainant, the verbal abuse and aggressive, pushy, behaviour he received was absolutely humiliating.
- j. This incident happened in public and if Cr Richardson was brave enough to embarrass the Complainant in his community and in public then this councillor should be brave enough to state she were wrong and apologise to him in person and in public.

Respondent's Response

- 16. By an email dated 31 March 2020, Cr Richardson provided a response to the Complaint.
- 17. Cr Richardson denies that she has committed any minor breach.
- 18. Cr Richardson makes the following comments in respect to the Complaint:
 - a. Cr Richardson was only trying to attend the Ellenbrook Community meeting to seek clarification about the organisation and the work that it performs.
 - b. Cr Richardson didn't behave in an aggressive way but asked questions as to why the public meeting was no longer open to the public.
 - c. Cr Richardson was there with other former members of the Ellenbrook collective who asked her to attend to seek clarity around accusations that were being made around the group.
 - d. As a local councillor for the area Cr Richardson bases her facts around evidence and not being able to attend the meeting had caused unrest in the community.

Other people at the door became very frustrated with the response from people inside the meeting.

- e. The community of Ellenbrook have a lot of unanswered questions around this group and lots of accusations are being made against them, so the ECC are on the defence.
- f. Cr Richardson disagrees with the comments and bully tactics that are being used by ECC to stop her from attending community groups. Cr Richardson chose to attend on the day at the last minute to support community members in Ellenbrook and understand the working of the ECC.
- g. It had been explained to her this is usually an open meeting to the public and that Cr Richardson should attend. The closed-door nature of the meeting was not disclosed to the community members or that this was no longer a community group and only selected members could attend.
- h. Cr Richardson was not the only one trying to attend the meeting and she has witness accounts that she did not barge the door.
- i. There have been other complaints relating to this incident and there are many inconsistencies with all the complaints. Cr Richardson would like them to produce the evidence.
- j. Cr Richardson has video footage of the event and can uncover some incorrect information that was explained at the door by senior members of the council.
- k. The video evidence also shows Cr Richardson not barging the door but other community members doing this due to frustration that Cr Cate McCullough decided to make it a closed meeting and not disclosing this to the public.
- l. Cr Richardson does not accept that she has committed any code of conduct offense but was trying to understand why the Ellenbrook community were complaining about the ECC and trying to obtain information on why she had received so many complaints about this organisation.
- m. Cr Richardson is a firm believer in obtaining the truth so she tried to attend to see if the complaints were warranted.
- n. The complaints range from bully tactics, fraud, and dishonesty to the community and there are a lot of community's members aggrieved by the acts of Cr Cate McCullough and the ECC board.
- o. Cr Richardson was not accusing anyone of being dishonest but trying to obtain facts and closing the meeting only raises more suspicion about the ECC.

Regulation 7

19. Regulation 7 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:

“7. Securing personal advantage or disadvantaging others

- (1) *A person who is a council member must not make improper use of the person's office as a council member —*
 - (a) *to gain directly or indirectly an advantage for the person or any other person; or*



- (b) *to cause detriment to the local government or any other person.*
- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*

Regulation 8

20. Regulation 8 prohibits the use of government resources in certain circumstances and provides as follows:

“8. Misuse of local government resources

A person who is a council member must not either directly or indirectly use the resources of a local government —

- (a) *for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918; or*
 - (b) *for any other purpose,*
- unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.”*

Panel’s Consideration

Regulation 7

21. To make a finding of a minor breach of regulation 7 of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Richardson was an elected member at the time of the alleged breach and the time of the determination;
 - b. Cr Richardson made use of her office as Council member of the City;
 - c. when viewed objectively, such use was an improper use of Cr Richardson’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. Either:
 - i. for Regulation 7(1)(a) - Cr Richardson engaged in the conduct with the intention to gain directly or indirectly an advantage for any person; OR
 - ii. for Regulation 7(1)(b) - Cr Richardson engaged in the conduct in the belief that detriment would be suffered by another person.

Cr Richardson was an Elected Member at the relevant times

22. Cr Richardson was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
23. This element is met.

Cr Richardson made use of her office as Council Member of the City



24. In this instance Cr Richardson:
 - a. attended the relevant meeting in her capacity as an elected member to seek information in respect to complaints received from community members; and
 - b. identified herself as a councillor of the City.
25. As such the Panel finds to the required standard that Cr Richardson was acting in her capacity as an elected member when she attended the ECC meeting.
26. This element is met.

Cr Richardson's use was improper

27. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom⁹. 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.
28. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent¹⁰.
29. 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 a councillor's formal role and responsibilities.
30. In the Complaint the Complainant asserts that Cr Richardson acted improperly as she was:
 - a. aggressive, yelling loudly and demanding access to a member's only AGM; and
 - b. incorrectly quoting regulations relating to public access to the AGM.
31. Cr Richardson concedes she was present and tried to gain access.
32. Where the Panel is provided with more than one complaint that uses substantially the same wording and accusations in relation to two separate councillors (as has occurred in this case) it is difficult for the Panel to make an accurate judgment as to the exact facts of the matter.
33. The Panel has considered the evidence supplied and is satisfied to the required standard that Cr Richardson engaged in the following behaviour:
 - a. attempting to gain entrance to the ECC meeting along with an unruly group of people; and
 - b. raising her voice and engaging in a public and heated exchange with the Complainant.
34. The City has a "*Code of Conduct for Councillors and Committee Members*" published in September 2015 ("**the Code**") which sets out certain expectations in respect to the conduct of Councillors and is to be read in conjunction with the Regulations. The relevant sections of the Code are as below:
 - a. Values – Leadership:
*We will provide clear direction and inspire people to reach their full potential.
This can be achieved through:*
 - *Leading by example, with a professional pride in our City*

⁹ Complaint of Minor Breach No. SP 3 of 2013

¹⁰ *Chew v R* [1992] HCA 18



b. High Ethical Standard

“Councillors and Committee Members of the City of Swan should aspire to high ethical standards including those in Regulation 3(1) of the Local Government (Rules of Conduct) Regulations 2007. The standards in Regulation 3(1) prescribe the following conduct:-

....

4. Avoid damage to the reputation of the local government; and

....

7. Treat others with respect and fairness; and

.....”

c. Personal Behaviour

“(a) Councillors and Committee Members will:

(i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;.....”

35. In the relevant circumstances, the Panel finds it more likely than not that Cr Richardson breached the above sections of the Code as she acted in a manner that:
- a. did not provide a suitable example of behaviour to the community;
 - b. did not treat others with respect and fairness; and
 - c. was likely to damage the reputation of the local government.
36. The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position. Generally speaking, it is not considered acceptable behaviour for any person, let alone a councillor, to aggressively shout to demand entrance to a location that was asserted to be holding a private function.
37. Further, the severity of this behaviour was aggravated by the fact it took place in public and that Cr Richardson was part of a group of local community members.
38. As such, the Panel finds that it was more likely than not that the conduct by Cr Richardson was not acceptable, was improper and not justified in the circumstances irrespective of her frustration of not being able to attend the ECC meeting.
39. In respect to the misquoting of the association's rules, the Panel finds to the required standard that this was not improper. It may have been prudent for Cr Richardson to have confirmed the correctness of her position, but her failure to do so appears to be merely an oversight or misunderstanding.
40. The Panel acknowledges that Cr Richardson thought that the ECC meeting was public in nature and that she would be permitted to attend. Despite this, once she had been denied access, and the Complaint had asserted that the meeting was private, it would have been more appropriate to leave the meeting peacefully.
41. Even if the conduct did not cause any physical harm or unduly frightened or offended any person, a group acting in that manner would have the potential to, and Cr Richardson should have been aware of this fact.
42. Given the above, the Panel finds that it is more likely than not the conduct by Cr Richardson was improper as:
- a. the conduct in question was in breach of the City's Code of Conduct;



- 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.

43. This element is met.

In respect to Regulation 7(1)(a) Cr Richardson intended to gain directly or indirectly an advantage

- 44. 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.
- 45. The Panel considers the term 'advantage' in regulation 7(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.¹¹
- 46. It is not necessary to find whether any advantage was actually gained¹², but an intent to gain such advantage must be established.
- 47. The Complainant asserts that Cr Richardson acted to gather support for herself and show how she could stand up for a small disorderly group trying to disrupt the meeting.
- 48. Cr Richardson asserts that she attended the meeting with the intention to seek clarification about the ECC and the work that it performs.
- 49. Although "advantage" is to be construed widely, the Panel does not consider that the asserted "advantage" to Cr Richardson of gathering support is the type of "advantage" contemplated to be controlled by regulation 7(1)(a) of the Regulations.
- 50. The Panel finds that it is more likely than not Cr Richardson's conduct was not intended to secure an advantage to herself or any other party in the manner that the word "advantage" is intended to be understood in the Regulations.
- 51. This element is not met

In respect to Regulation 7(1)(b) Cr Richardson intended to cause a disadvantage

- 52. "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.
- 53. It is not necessary to find whether any detriment was actually suffered¹³, but an intent to cause such detriment must be established.
- 54. The Complainant argues that Cr Richardson embarrassed and humiliated him and that her conduct reflects negatively on local government including the Mayor, the CEO, other councillors and the staff of the City of Swan. However, the Complainant made no specific argument as to the intentions of Cr Richardson to cause such detriment.

¹¹ Complaint SP 12 and 13 of 2011

¹² *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]

¹³ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



55. As noted above, Cr Richardson asserts that she attended the meeting with the intention to seek clarification about the ECC and the work that it performs.
56. Although this may have been Cr Richardson's initial intention, once it was made apparent that the meeting was closed in nature, and Cr Richardson continued to seek entrance, the Panel finds, to the required standard, that the intention to merely seek information was overridden by an intention to intimidate and harass the persons attending and operating the ECC meeting, by creating a loud and public display, until she was admitted to the meeting or received the information she sought.
57. This intimidation and harassment can be deemed to be a detriment for the purposes of the Regulations.
58. Despite this, the Panel finds that it is more likely than not that Cr Richardson did not intend to cause any detriment to the City, Mayor, CEO or other Councillors of the City, but considered that she was undertaking her role as a councillor in investigating concerns voiced by her constituents.
59. As such, the Panel finds that it is more likely than not that Cr Richardson did have an intent to cause a detriment to the persons preventing access to the ECC meeting (including the Complainant) and, generally, the ECC members present at the meeting.
60. This element is met.

Conclusion

61. Given the above:
 - a. the elements required to find a breach of regulation 7(1)(a) of the Regulations have not been met;
 - b. the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met.

Regulation 8

62. To find a breach of Regulation 8 the Panel must be satisfied that it is more likely than it is not that:
 - a. Cr Richardson directly or indirectly used her local government's resources;
 - b. Cr Richardson used such resources for an identified electoral purpose or any other purpose; and
 - c. such purpose was not authorised under the Act or by the council or the Shire's CEO.

Cr Richardson directly or indirectly used her local government's resources

63. The term 'resource' is not defined in the Regulations or in the Act. However, the term 'local government property' is defined in section 1.4 of the Act to mean 'anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, the local government'.....The noun 'resource' is relevantly defined in The Macquarie Dictionary (5th ed, 2009) at page 1408 as '(Often plural) Money or any property which can be converted into money; assets'. The noun 'asset' is defined



in The Macquarie Dictionary as ‘a useful thing or quality’ and ‘an item of property; an economic resource’.¹⁴

64. The Complainant asserts that the “resource” used by Cr Richardson was her position as a councillor.
65. This argument is not persuasive, the personal efforts or actions of councillors are not considered a “resource” or item of property that could reasonably belong to, or be under the care and control of, the City.
66. This element is not met.

Remaining elements

67. As the above element cannot be met, it is not necessary to consider the remaining elements.

Conclusion

68. The elements required to find a breach of regulation 8 of the Regulations have not been met.

Panel’s Findings

69. Cr Richardson did not commit a breach of Regulation 7(1)(a) of the Regulations and therefore did not commit a minor breach.
70. Cr Richardson did commit a breach of Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.
71. Cr Richardson did not commit a breach of Regulation 8 of the Regulations and therefore did not commit a minor breach.

Mick Connolly (Presiding Member)

Emma Power (Member)

Peter Rogers (Member)

¹⁴ Yates and Local Government Standards Panel [2012] WASAT 23 at [30] – [37]



Local Government Standards Panel

Complaint Number	SP 2020-021
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Timothy Clarke
Respondent	Councillor Tanya Richardson
Local Government	City of Swan
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for	Mr Gordon MacMile (Presiding Member)
Penalty Consideration	Ms Elanor Rowe (Deputy Member) Ms Deborah Hopper (Deputy Member)
Heard	10 June 2020 Determined on the documents
Penalty Considered	17 September 2020
Outcome	Public Apology

PENALTY DECISION AND REASONS FOR DECISION

Delivered 17 October 2020

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 10 June 2020, the Panel found that Councillor Tanya Richardson ("Cr Richardson"), a council member of the City of Swan ("the City") committed one breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) ("the Regulations") when she aggressively used her position as a councillor to try and gain unauthorised access to an Annual General Meeting of the Ellenbrook Community Collective held on 4 February 2020.
2. On 12 August 2020, the Panel published its Finding and Reasons for Finding ("Findings") and found that Cr Richardson had breached Regulation 7(1)(b). The Panel reviewed all the evidence presented to it and said:

"33. *The Panel has considered the evidence supplied and is satisfied to the required standard that Cr Richardson engaged in the following behaviour:*

- a. attempting to gain entrance to the ECC meeting along with an unruly group of people; and*
- b. raising her voice and engaging in a public and heated exchange with the Complainant.*

.....

35. *In the relevant circumstances, the Panel finds it more likely than not that Cr Richardson breached the above sections of the Code as she acted in a manner that:*

- a. did not provide a suitable example of behaviour to the community;*
- b. did not treat others with respect and fairness; and*
- c. was likely to damage the reputation of the local government.*

36. *The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position. Generally speaking, it is not considered acceptable behaviour for any person, let alone a councillor, to aggressively shout to demand entrance to a location that was asserted to be holding a private function.*

37. *Further, the severity of this behaviour was aggravated by the fact it took place in public and that Cr Richardson was part of a group of local community members.*

.....

41. *Even if the conduct did not cause any physical harm or unduly frightened or offended any person, a group acting in that manner would have the potential to, and Cr Richardson should have been aware of this fact.*

.....

56. *Although this may have been Cr Richardson's initial intention, once it was made apparent that the meeting was closed in nature, and Cr Richardson continued to seek entrance, the Panel finds, to the required standard, that the intention to merely seek information was overridden by an intention to intimidate and harass the persons attending and operating the ECC meeting, by creating a loud and public display, until she was admitted to the meeting or received the information she sought.*



57. *This intimidation and harassment can be deemed to be a detriment for the purposes of the Regulations.*

.....

59. *As such, the Panel finds that it is more likely than not that Cr Richardson did have an intent to cause a detriment to the persons preventing access to the ECC meeting (including the Complainant) and, generally, the ECC members present at the meeting."*

Jurisdiction

3. The Panel convened on 17 September 2020 to consider how it should deal with the Minor Breach. 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 Richardson had ceased to be or was disqualified from being a councillor.

Possible Sanctions

4. 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;*
 - (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).*

Councillor Richardson's Submissions

5. 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
6. By a letter dated 13 August 2020, Cr Richardson was:
- i. notified of the Panel's finding of the minor breach;
 - ii. provided with a copy of the Panel's Findings; and

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



- iii. offered an opportunity to make submissions as to how the minor breaches should be dealt with under section 5.110(6) of the *Act*.

7. The Department did not receive a submission from Cr Richardson within the fourteen-day timeframe provided to her. In addition, a further request was sent to Cr Richardson on 21 August 2020, and a follow up phone call was made, to which there was no further response.

Panel's consideration

8. The Panel found that Cr Richardson breached Regulation 7(1)(b) when she aggressively used her position as a councillor to try and gain unauthorised access to an Annual General Meeting of the Ellenbrook Community Collective held on 4 February 2020. The Panel found that Cr Richardson did not breach Regulation 7(1)(a) or Regulation 8 in relation to the same conduct.
9. A breach of regulation 7(1)(b) is a serious matter. Therefore, the Panel does not consider that ordering no sanction be imposed is appropriate because this would indicate that the breach is so minor that no penalty is warranted.
10. However, the Panel also does not consider it is appropriate to make an order for censure for Cr Richardson's actions, as they were not so serious to justify such an order. When the Panel makes an order that a Notice of Public Censure be published, the Notice is published by the local government's CEO, at the expense of the local government; such expense is significant where the Notice is to be published in a newspaper or newspapers. Likewise, the Panel also does not find that an order that Cr Richardson pay to the City a sum of money is warranted.
11. The options left for the Panel to consider are to order Cr Richardson to undertake training or make a Public Apology.
12. The circumstances in which it may be appropriate for the Panel to order that the council member concerned undertake training include where the member communicates to the Panel:
 - a. their acknowledgement that they have committed the minor breach, and their willingness to undertake training; or
 - b. their acknowledgement that they have committed the minor breach, but that such breach occurred through their lack of knowledge or education on the issue or issues concerned; or
 - c. their remorse or contrition for their offending conduct in committing the minor breach.
13. Cr Richardson did not take the opportunity to respond to how the Panel should deal with the breach. Therefore, in the circumstances, it is not the Panel's view that training (so to not repeat her offending conduct) will be of use to Cr Richardson.
14. As stated above, a breach of regulation 7(1)(b) involving improper conduct to cause detriment to another person is a serious matter. An apology in public to the other parties concerned is appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold.



15. Therefore, the Panel considers a public apology to Mr Timothy Clarke and the other persons preventing access to the Ellenbrook Community Collective Annual General Meeting held on 4 February 2020, and generally to the members of the Ellenbrook Community Collective who were present at the meeting, is the appropriate penalty.

Panel's decision

16. Having regard to the Findings, the matters set out herein, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under s5.110(6) of the Act, is that pursuant to subsection (b)(ii) of that section, Cr Richardson is ordered to publicly apologise for her conduct.

Gordon MacMile (Deputy Presiding Member)

Elanor Rowe (Deputy Member)

Deborah Hopper (Deputy Member)



ORDER

Delivered 17 October 2020

DEFAMATION CAUTION

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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Tanya Richardson, a Councillor for the City of Swan, publicly apologise to Mr Timothy Clarke and the other persons preventing access to the Ellenbrook Community Collective Annual General Meeting held on 4 February 2020, and the members of the Ellenbrook Community Collective who were present at the meeting, as specified in paragraphs 2 and 3 below.
2. At the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on her, Councillor Richardson shall:
 - a. attend the relevant ordinary council meeting;
 - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - c. 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
 - d. 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 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (WA) when I aggressively used my position as a councillor to try and gain unauthorised access to an Annual General Meeting of the Ellenbrook Community Collective held on 4 February 2020.
- ii. The Panel found that by behaving in this manner I committed one breach of Regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007.
- iii. I accept that I should not have acted in such a manner and I apologise to Mr Timothy Clarke and the other persons preventing access to the meeting, and to the members of the Ellenbrook Community Collective who were present at the meeting, for having done so."



3. If Cr Richardson fails or is unable to comply with the requirements of paragraph 2 above then within the next 28 days following the ordinary council meeting referred to in paragraph 2, she shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the “*Echo*” newspaper:

PUBLIC APOLOGY BY COUNCILLOR TANYA RICHARDSON

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (WA) when I aggressively used my position as a councillor to try and gain unauthorised access to an Annual General Meeting of the Ellenbrook Community Collective held on 4 February 2020.

The Panel found that by behaving in this manner I committed one breach of Regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007.

I accept that I should not have acted in such a manner and I apologise to Mr Timothy Clarke and the other persons preventing access to the meeting, and to the members of the Ellenbrook Community Collective who were present at the meeting, for having done so.



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."