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## Local Government Standards Panel

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Complaint Number	SP 2020-025
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Julia Meldrum</b>
<b>Respondent</b>	<b>Councillor Ian Earl</b>
Local Government	Shire of Augusta Margaret River
Regulation	Regulation 11 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Deborah Hopper (Deputy Member)
Heard	16 June 2020 Determined on the documents
Finding	Two breaches of Regulation 11

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### FINDING AND REASONS FOR FINDING

Delivered 21 July 2020

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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. The Local Government Standards Panel ("the Panel") found that Shire President, Councillor Ian Earl ("Cr Earl"), a councillor for the Shire of Augusta Margaret River ("the Shire"), committed two breaches under the *Local Government Act 1995* (WA) ("the Act") and regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") when he failed to declare an impartiality interest in the matter of the transition of bushfire brigades to the Department of Fire and Emergency Services at Council meetings held on 27 November 2019 and 12 February 2020.

## Jurisdiction and procedural fairness

2. The Act makes provision for the circumstances in which a council member commits a minor breach.<sup>1</sup>
3. On 17 March 2020 the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form dated 11 March 2020 ("Complaint") signed by Councillor Julia Meldrum ("the Complainant"). The Complaint contained three allegations of breaches of Regulation 11 by Cr Earl when he failed to declare an impartiality interest arising from his membership of the Cowaramup Bush Fire Brigade at Council meetings held on 25 September 2019, 27 November 2019 and 12 February 2020, in matters relating to the transition of bushfire brigades to the Department of Fire and Emergency Services ("DFES").
4. On 20 March 2020, the Department advised Cr Earl of the Complaint and invited him to respond. The Department sent Cr Earl a copy of the original Complaint and all the supporting documents provided by the Complainant.
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.<sup>2</sup> On 16 June 2020, the Panel convened to consider the Complaint.
6. The Panel:
  - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Cr Earl was a councillor at the time of the alleged breaches, having been elected on 21 October 2017, and was still a Councillor when the Panel met on 16 June 2020;
  - (b) was satisfied the Complaint had been made within six months after the alleged breaches are said to have occurred<sup>3</sup>;
  - (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches<sup>4</sup>; and
  - (d) was satisfied that the Department had provided procedural fairness to Cr Earl.

<sup>1</sup> Section 5.105 of the Act.

<sup>2</sup> Section 5.110(2)(a) of the Act.

<sup>3</sup> Section 5.107(4) of the Act

<sup>4</sup> Sections 5.107, 5.108, 5.109 of the Act.

7. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting the relevant Minister at the time instead of considering the Complaint itself.<sup>5</sup> Cr Earl has not previously been found to have committed any minor breaches, and therefore the Panel did not consider sending the Complaint to the Chief Executive Officer of the Department.
8. Based on the information referred to in paragraphs 2 to 7 above the Panel found it had jurisdiction to determine whether Cr Earl had breached Regulation 11 in connection with the Complaint.

### Panel's role

9. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
10. 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).<sup>6</sup>
11. 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 from the evidence that it is more probable than not that it has 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.<sup>7</sup>
12. For a finding that a councillor has breached a particular regulation the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

### Regulation 11

13. Regulation 11 provides:

#### ***"11. Disclosure of interest***

- (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*

<sup>5</sup> Sections 5.110(2)(b), 5.111(1) of the Act.

<sup>6</sup> Section 5.106 of the Act.

<sup>7</sup> *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.

*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) If, under subregulation (2)(a), a person who is a council member discloses an interest in a written notice given to the CEO before a meeting then —*

- a. before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and*
- b. at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.*

*(6) If —*

- a. under subregulation (2)(b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or*
- b. under subregulation (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting,*

*the nature of the interest is to be recorded in the minutes of the meeting."*

#### Elements of Regulation 11(2)

14. The essential elements of a breach of regulation 11(2) are that it is more likely than not that:

- a person who is a current council member ("*member*");
- subject to regulation 11(3), had a private or personal interest ("*relevant interest*") in a matter ("*matter*") that is more likely than not a conflict of interest or a bias (apparent or real) that does adversely affect, or might adversely affect the member's impartiality in considering the matter, and includes an interest arising from kinship, friendship, membership of an association, or another circumstance;
- the member attended at the council or committee meeting concerned and was present when the matter under consideration came before the meeting and was discussed;

- the member did not disclose the nature of the relevant interest in the matter in either of the two ways required by regulation 11(2)(a) or 11(2)(b); and
- regulation 11(4) does not apply.

### **Substance of the Complaint**

15. At the Council meeting held on 12 February 2020 ("Third Meeting"), the Complainant proposed a motion relating to the "*transition of LG bushfire brigades to DFES in the AMR Shire*" ("Matter"). According to the Complainant, Cr Earl did not declare an impartiality interest in the Matter. This was so, despite the fact Cr Earl was for thirty years (and continues to be) a member of the Cowaramup Bush Fire Brigade ("Cowaramup Brigade").
16. The Matter was also discussed at two previous Council meetings, held on 25 September 2019 ("First Meeting") and 27 November 2019 ("Second Meeting"). At all three Meetings, Cr Earl did not declare an impartiality interest in regards to the Matter, either prior to each meeting in writing or at the time of the item being discussed.
17. It was also all alleged that Cr Earl had been vocally and openly opposed to the transition of local government brigades to DFES for many years.

### **Cr Earl's Response**

18. Cr Earl does not accept the information detailed in the Complaint nor does he accept that he committed the alleged conduct.
19. Cr Earl confirmed that he is and has been a member of the Cowaramup Brigade for almost 39 years. He also confirmed that he has taken part in debate and decision-making regarding the Matter.
20. Cr Earl submits that at the First Meeting (held on 25 September 2019), he did declare an impartiality interest, as the matter involved the Cowaramup Brigade (of which he is a member).
21. However, he states that he did not declare an interest on the other two occasions, as the items put forward did not involve / affect the Cowaramup Brigade.
22. It has always been his understanding that as an ordinary member of an organisation, he does not need to declare an impartiality interest.
23. The allegation that he has been vocally and openly opposed to the transition of the brigades, is false and without foundation. It is also clear that the majority of people in the community know that he is a veteran fire fighter as he always speaks strongly in support of their efforts.

### **Panel's consideration**

24. Regulation 11(2) deals with the circumstances in which council members must disclose an interest in a matter to be discussed at a Council or committee meeting attended by the member.



25. For a finding that a councillor has breached a particular regulation the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

Was the person a council member

26. Cr Earl was a councillor at the time of the alleged conduct.

Did Cr Earl have a relevant interest in the Matter

27. Both parties accept that the Matter was discussed at the First, Second and Third Meetings. It is alleged that Cr Earl had a “*relevant interest*” in the Matter at all three Meetings arising from his membership as a volunteer of the Cowaramup Brigade.

*First Meeting*

28. At the First Meeting, the Cowaramup Brigade specifically was discussed. It is accepted by both parties that as a member of the Cowaramup Brigade, Cr Earl did have an interest in the Matter.

*Second and Third Meetings*

29. Cr Earl denies that he had an interest in the Matter when it arose at the Second and Third Meetings because the Cowaramup Brigade itself was not discussed. He submits that as “*an ordinary member of an organisation*”, he was not under a duty to declare an impartiality interest.
30. However, an “*interest*” under Regulation 11 includes one that arises from “*...membership of an association*” and the Cowaramup Brigade was part of a larger association of Volunteer Bush Fire Brigades in the region and Western Australia.
31. Therefore, the Panel finds that Cr Earl did have an interest in the Matter arising at the Second and Third Meetings and that the interest could, or could reasonably be perceived to, adversely affect his impartiality in considering the Matter.

Did the member attend at the council or committee meeting concerned and was present when the matter under consideration came before the meeting and was discussed.

32. Cr Earl attended the First, Second and Third Meetings and was present when the Matter was discussed at each Meeting. This element of Regulation 11 is not in dispute.

The member did not disclose the nature of the relevant interest in the matter in either of the two ways required by regulation 11(2)(a) or 11(2)(b)

33. In relation to the First Meeting (on 25 September 2019), the Panel finds that Cr Earl disclosed his interest in the Matter in accordance with the Regulations. The following was noted in the Minutes to the First Meeting:

*Cr Earl disclosed an impartiality interest as he is a member of the Cowaramup Bush Fire Brigade.*



34. However, with regard to the Second and Third Meetings, the Panel finds (and it is not in dispute), that Cr Earl did not disclose an interest in the Matter.

Does Regulation 11(4) apply?

35. The Panel finds that Regulation 11(4) does not apply in the circumstances.

**Findings**

36. Accordingly for the above reasons, the Panel finds that Cr Earl did breach Regulation 11 at both the Second Meeting held on 27 November 2019 and the Third Meeting on 12 February 2020 when he did not disclose an interest in the Matter arising from his membership of the Cowaramup Brigade.

Mick Connolly (Presiding Member)

Elanor Rowe (Deputy Member)

Deborah Hooper (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	SP 2020-025
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Julia Meldrum</b>
<b>Respondent</b>	<b>Councillor Ian Earl</b>
<b>Local Government</b>	<b>Shire of Augusta Margaret River</b>
Regulation	Regulation 11 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Deborah Hopper (Deputy Member)
Heard	16 June 2020 Determined on the documents
Penalty Considered	21 August 2020
Outcome	Public Apology

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### PENALTY DECISION AND REASONS FOR DECISION

Delivered 18 September 2020

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#### DEFAMATION CAUTION

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## Introduction

1. At its meeting on 16 June 2020, the Panel found that Councillor Ian Earl (“Cr Earl”), a council member of the Shire of Augusta Margaret River (“the Shire”) committed two breaches of regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“the Regulations”) when he failed to declare an impartiality interest in the matter of the transition of bushfire brigades to the Department of Fire and Emergency Services at Council meetings held on 27 November 2019 and 12 February 2020.
2. On 21 July 2020 the Panel published its Finding and Reasons for Finding (“Findings”) and found that Cr Earl had breached Regulation 11 on two occasions. The Panel reviewed all the evidence presented to it and said:
  29. *Cr Earl denies that he had an interest in the Matter when it arose at the Second and Third Meetings because the Cowaramup Brigade itself was not discussed. He submits that as “an ordinary member of an organisation”, he was not under a duty to declare an impartiality interest.*
  30. *However, an “interest” under Regulation 11 includes one that arises from “...membership of an association” and the Cowaramup Brigade was part of a larger association of Volunteer Bush Fire Brigades in the region and Western Australia.*
  31. *Therefore the Panel finds that Cr Earl did have an interest in the Matter arising at the Second and Third Meetings and that the interest could, or could reasonably be perceived to, adversely affect his impartiality in considering the Matter.*

## Jurisdiction

3. The Panel convened on 21 August 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 Earl 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 Earl'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).<sup>1</sup>
6. By a letter dated 22 July 2020, Cr Earl was:
  - i. notified of the Panel's finding of the minor breaches;
  - ii. provided with a copy of the Panel's Findings; and
  - 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. In an email dated 22 July 2020, the Department received a response from Cr Earl in which he stated as follows:
  - a. he was happy with the Finding and thanked the Panel for its deliberation of the matter;
  - b. he gave an undertaking that in future he will declare an impartiality interest in all Bushfire Advisory and related items during his time on Council; and
  - c. he would be happy to make a public apology at a future council meeting.

### **Panel's consideration**

8. The Panel has considered Cr Earl's submissions as to how the Complaint should be dealt with. In his response, Cr Earl accepted the Panel's decision and proposed that he would give an undertaking to declare an impartiality interest in all future Bushfire Advisory and related matters. Furthermore, if necessary, he would be happy to apologise for his conduct at a future meeting.
9. The Panel found that Cr Earl failed to declare an impartiality interest at two separate meetings that were held months apart. In the circumstances and given that Cr Earl breached Regulation 11 on two occasions, 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 Earl's actions in this matter, as they are 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.

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



11. The options left for the Panel to consider are to order Cr Earl to undertake training, make a payment to the Shire of Augusta Margaret River or make a Public Apology.
12. In his response to the Decision, Cr Earl accepted the Panel's Finding and indicated that he understood why he was found to have committed two minor breaches of Regulation 11. Therefore, in the circumstances, the Panel considers a public apology to the Council and the City (rather than an order for training or payment to the Shire) is the appropriate penalty. An apology in public is appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold.

### **Panel's decision**

13. 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 Earl is ordered to publicly apologise for his conduct.

Mick Connolly (Presiding Member)

Elanor Rowe (Deputy Member)

Deborah Hopper (Deputy Member)



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## ORDER

Delivered 18 September 2020

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Ian Earl, a Councillor for the Shire of Augusta Margaret River publicly apologise to the Council and the City, 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 him, Councillor Earl 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 the Local Government (Rules of Conduct) Regulations 2007 (WA) on two occasions when I failed to declare an impartiality interest in the matter of the transition of bushfire brigades to the Department of Fire and Emergency Services at Council meetings held on 27 November 2019 and 12 February 2020.
- ii. The Panel found that by behaving in this manner I committed two breaches of Regulation 11 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 the Council and the City for having done so."



3. If Cr Earl 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, he 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 “Augusta-Margaret River Mail” newspaper:

**PUBLIC APOLOGY BY COUNCILLOR IAN EARL**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) on two occasions when I failed to declare an impartiality interest in the matter of the transition of bushfire brigades to the Department of Fire and Emergency Services at Council meetings held on 27 November 2019 and 12 February 2020.

The Panel found that by behaving in this manner I committed two breaches of Regulation 11 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 the Council and the City for having done so.

Mick Connolly (Presiding Member)

Elanor Rowe (Deputy Member)

Deborah Hopper (Deputy Member)



## 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."