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## Local Government Standards Panel

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Complaint Number	SP 2020-060
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Mr Darryl Curley</b> on behalf of the Yulella Aboriginal Corporation
<b>Respondent</b>	<b>Councillor Phillip Moses</b>
Local Government	<b>Shire of Meekatharra</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mrs Emma Power (Member) Cr Peter Rogers (Member) Mr Gordon MacMile (Member)
Heard	12 August 2020 Determined on the documents
Finding	1 x Breach of Regulation 7(1)(b)

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### FINDING AND REASONS FOR FINDING

Delivered 31 August 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. On 12 August 2020, the Panel found that Councillor Phillip Moses, a councillor of the Shire of Meekatharra (**"the Shire"**) did commit one minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* (**"the Regulations"**) when he made derogatory remarks towards a member of the Yulella Aboriginal Community while at the Royal Hotel, Meekatharra on 17 April 2020 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.<sup>1</sup>
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.<sup>2</sup>
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 accurate<sup>3</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>4</sup>.
7. The Panel does not possess investigative or supervisory powers.<sup>5</sup> 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.
9. The Panel also must have regard to the general interests of local government in Western Australia<sup>6</sup>.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

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

<sup>2</sup> Section 5.106 of the Act

<sup>3</sup> *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

<sup>4</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336

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

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



### Jurisdiction and Procedural Fairness

11. On 30 June 2020 the Panel received an email from Mr Roy McClymont acting as complaints officer of the Shire (**“the Complaints Officer”**). The same enclosed a Complaint of Minor Breach Form dated 28 May 2020.
12. In the complaint form, the Complainant alleges that Cr Moses breached regulation 7 of the Regulations when he made derogatory remarks towards a member of the Yulella Aboriginal Community while at the Royal Hotel, Meekatharra on 17 April 2020 as set out in paragraph 15 (**“the Complaint”**).
13. The Panel convened on 12 August 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 Moses was:
    - i. at the time the Panel met, the elected to the Council of the Shire in 2019 for a term expiring in 2021;
    - ii. a Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 12 August 2020;
  - b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>7</sup>;
  - c. was satisfied that the Shire’s Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>8</sup>;
  - d. was satisfied the Department had provided procedural fairness to Cr Moses; and
  - e. found it had jurisdiction to consider the Complaint.

### The Specifics of the Complaint

15. The Complainant provided a letter dated 28 May 2020 to the Shire, which comprises the content of the Complaint and the following arguments and comments in respect to the Complaint:
  - a. The Complainant is made on behalf of the Yulella Aboriginal Corporation.
  - b. The Complainant was informed of derogatory remarks made Cr Phillip Moses towards the Yulella Aboriginal Corporation at the Royal Mail Hotel on 17 March 2020.
  - c. As community members, Yulella staff and its members contribute significantly to our town, as one of the biggest rate payers, as a local employer and providing on-going support to the Shire.
  - d. Our Director Alan Franklin was confronted with:
    - i. terms like *“Yulella c\*\*ts, will get f\*\*k all help from me”*;
    - ii. coughing and looking at Mr Franklin referring to the virus and saying *“Yulella c\*\*ts”*.

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<sup>7</sup> Section 5.107(4) and 5.109(2) of the Act

<sup>8</sup> Section 5.107 and 5.109 of the Act

- e. The Complainant understands that Council members are entitled to their own options and should be free to enjoy socialising at the town's establishments. But the Complainant will not tolerate, nor should the Shire, intoxicated councillors making inappropriate comments that have a significant ripple effect on the Complainant's reputation and the community.
  - f. With the current pressure everyone is facing with the uncertainty of the coronavirus, this is a time where the community requires strong leadership from our local council.
  - g. This includes ensuring Council members understand and take their roles, and the impact of their roles, seriously within the community.
  - h. Cr Moses' implied by his comments and attitude towards Yulella, that Yulella's current works and future contracts the Shire would be affected.
  - i. The Complainant is seeking a formal apology from Cr Moses for his behaviour at the Royal Mail Hotel.
16. In the letter comprising the Complaint the Complainant also:
- a. referred to a recent incident relating Mr Moses' spouse in the community;
  - b. requested a response from the Shire as to the matter, explaining as a minimum what measures the Shire has or will put in place to ensure each councillor has a clear understanding what is expected of them in a role of a council member;
  - c. asked the Shire to confirm that making the Complaint would not have any future impact on Yulella's current buildings works for the Shire or its ability to bid for, and be awarded, contracts with the Shire; and
  - d. offered to make time to discuss this matter further and to work collaboratively on strengthening a two-way communication between the community the Complainant represents and the Council.
17. The Shire also provided a copy of the letter dated 30 April 2020 from the Chief Executive Officer to the Complainant responding to the matters set out in the Complaint.

### **Respondent's Response**

18. By an email dated 17 July 2020, Cr Moses provided a response to the Complaint.
19. Cr Moses denies that he has committed any minor breach.
20. Cr Moses also makes the following comments with respect to the Complaint:
- a. Both people involved in the Complaint have personally borrowed money off Cr Moses in the past. Cr Moses has helped them both in personal regards (without the inclusion of Yulella).
  - b. It is incorrect that Cr Moses was intoxicated at the time of this incident. Cr Moses was at the Royal Mail Hotel for dinner with his partner and had only consumed a couple of beers.
  - c. At no stage did Cr Moses call either person, others or the organisation they work for "*Black c@#\$*" or anything else that could be considered racist.

- d. Cr Moses did say don't come to me for money ever again as you both spread vicious rumours about myself and my partner, and made my partner cry over allegations of coronavirus.
- e. Cr Moses did refer to them as a pair of "c#s!", however, Cr Moses would also like it stated it was tried on every occasion and platform to dispel and educate people about coronavirus related to the recent travel of himself and his partner.
- f. To be called a racist hurts Cr Moses very much.
- g. Cr Moses has spent his entire life in this area and has never been subjected to such hurt as detailed in this Complaint.
- h. Cr Moses has a long association with the families of the parties involved and growing up on a station Cr Moses' father had indigenous workers and he has always been proud to say they all sat at the same table to eat.
- i. Cr Moses feel this is a personal attack on him.

## **Regulation 7**

21. 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.*
22. The Complainant has not made any allegation that there was any intention to provide an advantage to any particular party, so the Panel has only considered regulation 7(1)(b) of the Regulations in this decision.

## **Panel's Consideration**

23. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Moses was an elected member at the time of the alleged breach and the time of the determination;
  - b. Cr Moses made use of his office as Council member of the Shire;
  - c. when viewed objectively, such use was an improper use of Cr Moses' 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. Cr Moses engaged in the conduct in the belief that detriment would be suffered by another person.

Cr Moses was an Elected Member at the relevant times

24. Cr Moses was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
25. This element is met.

Cr Moses made use of his office as Council Member of the Shire

26. Various elements may indicate whether a Councillor is acting in their capacity as a councillor when interacting with others including:
  - a. the subject matter of the communication and the degree to which the same are related to the Council or local community;
  - b. the public or private nature of the communication;
  - c. the passive or active nature of the communication; and
  - d. the audience with which the communication is shared.
27. The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position. Once a person occupies a public position, and that public position is generally known, is a difficult undertaking to separate that person's actions undertaken in their public capacity from that person's actions in their capacity as an individual.
28. In this case, due to the prior association with the parties involved in the incident and the small population of the area, the parties were all aware that Cr Moses was a local councillor.
29. It also appears that Cr Moses had both a personal association and a professional association (via the Council and Yulella) with Mr Franklin.
30. Cr Moses appears to assert in his response that this was a personal interaction due to his past dealings of lending money to the parties.
31. However, due to the fact that the Complainant was concerned enough about the comments to write to the Shire to confirm that their current work and future contracts would not be jeopardised, the Panel is satisfied that it is more likely than not that some reference was made to the Yulella Aboriginal Corporation by Cr Moses.
32. Such reference to the corporation implied that Cr Moses was referring to Mr Franklin in a professional context, not solely a personal context, which infers Cr Moses was making the comments predominantly as an elected member, who had the capacity to influence outcomes for Yulella Aboriginal Corporation.
33. Given the above, the Panel finds that it is more likely than not that Cr Moses was acting in his capacity as an elected member when he made the comments.
34. This element is met.

Cr Moses' use was improper

35. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom<sup>9</sup>. 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.
36. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent<sup>10</sup>.
37. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
38. Regulation 3 of the Regulations is intended for guidance of the conduct of councillors. Although a contravention of Regulation 3 does not amount to a minor breach, the same may indicate whether a councillor's conduct can reasonably be considered improper.
39. Regulation 3(1) relevantly provides:
  - "(1) General principles to guide the behaviour of council members include that a person in his or her capacity as a council member should —*  
....
    - (d) avoid damage to the reputation of the local government; and*  
....
    - (f) base decisions on relevant and factually correct information; and*
    - (g) treat others with respect and fairness; and..."*
40. In this case it is acknowledged that the Mr Franklin was called an inappropriate term.
41. There is some disagreement whether such term was "racist", however, the Panel does not find that the use of the word "black" is determinative of the matter. Conduct can be deemed racist due to other contextual factors.
42. Further, it is not necessary to find that the conduct was racist, only that it was "improper".
43. In this case, it is generally considered that referring to people as "c\*\*ts" is considered improper behaviour and not treating others with respect in violation of Regulation 3. Further, such interactions are likely to be generally considered damaging to the reputation of councillors and the local government as a whole.
44. Further, the Panel finds that it is more likely than not that Cr Moses made implied threats as to Mr Franklin, and the Yulella Aboriginal Corporation, not receiving any more money, or other assistance, from him.
45. Due to Mr Franklin's knowledge that Cr Moses was an elected member, and the fact that there are only seven elected members in the Shire, it is a reasonable assumption that one councillor could make things difficult for a corporation dealing with the Council. The contents of the Complaint letter support the presumption that Mr Franklin viewed Cr Moses' comments in that manner.
46. To make an implied threat that a personal dispute between the parties could affect Cr Moses' conduct in his capacity as a councillor can be considered improper and

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<sup>9</sup> Complaint of Minor Breach No. SP 3 of 2013

<sup>10</sup> *Chew v R* [1992] HCA 18



generally in breach of the guiding principle that councillors should only base decisions on relevant and factually correct information.

47. Given the above, the Panel finds that the comments by Cr Moses were more likely than not improper as such conduct:
- a. breached the guidelines of behaviour of councillors as set out in Regulation 3 of the Regulations;
  - b. 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. is deserving of a penalty.
48. This element is met.

#### Cr Moses intended to cause a disadvantage

49. "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.
50. It is not necessary to find whether any detriment was actually suffered<sup>11</sup>, but an intent to cause such detriment must be established.
51. Given the context that:
- a. Cr Moses was angry with Mr Franklin (and possibly other parties) regarding the recent treatment of his wife;
  - b. the fact the words used are generally considered to be derogatory and insulting; and
  - c. Cr Moses referred to the Yulella Aboriginal Corporation and improperly implied they would not receive money or other assistance from him,
- the Panel finds that it is more likely than not that Cr Moses intended to derogate and intimidate Mr Franklin and, more generally the Yulella Aboriginal Corporation.
52. This element is met.

#### Conclusion

53. The elements required to find a breach of regulation 7(1)(b) of the Regulations have been met.

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<sup>11</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]





### Panel's Findings

54. Cr Moses did commit a breach of Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.

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

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Emma Power (Member)

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

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Peter Rogers (Member)

A handwritten signature in blue ink, appearing to read 'G MacMile'.

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Gordon MacMile (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	SP 2020-060
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Mr Darryl Curley on behalf of the Yulella Aboriginal Corporation</b>
<b>Respondent</b>	<b>Councillor Philip Moses</b>
Local Government	<b>Shire of Meekatharra</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for	Mrs Emma Power (Presiding Member)
Penalty Consideration	Cr Peter Rogers (Member) Mr Gordon MacMile (Member)
Heard	12 August 2020 Determined on the documents
Penalty Considered	7 October 2020
Outcome	Training and Public Apology

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## DECISION AND REASONS FOR DECISION

22 October 2020

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### DEFAMATION CAUTION

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## Introduction

1. At its meeting on 12 August 2020, the Panel found that Councillor Philip Moses, councillor for the Shire of Meekatharra (**“the Shire”**), committed a minor breach under the Local Government Act 1995 (WA) (**“the Act”**) and Regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**“the Regulations”**) when he made derogatory remarks towards a member of the Yulella Aboriginal Corporation while at the Royal Hotel, Meekatharra on 17 April 2020 (**“the Minor Breach”**).

## Jurisdiction and Law

2. The Panel convened on 7 October 2020 to consider how it should deal with the Minor Breach.
3. 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 Moses had ceased to be, or was disqualified from being, a councillor.
4. 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>
5. By a letter dated 1 September 2020, Cr Moses was:
  - a. notified of the Panel’s finding of the Minor Breaches;
  - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
  - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

## Possible Sanctions

6. 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;*  
*or*
    - (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*

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



*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 Moses' Submissions**

7. By an email dated 18 September 2020, the Department received a response from Cr Moses requesting that the Minor Breach be dealt with by public apology so all involved can move on for the betterment of the Shire and Cr Moses can strive to improve.

### **Panel's Consideration**

8. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
9. The Panel may order under section 5.110(6)(a), that no sanction be imposed complaint not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
10. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
  - a. the nature and seriousness of the breaches;
  - b. the councillor's motivation for the contravention;
  - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
  - d. whether the councillor has breached the Act knowingly or carelessly;
  - e. the councillor's disciplinary history;
  - f. likelihood or not of the councillor committing further breaches of the Act;
  - g. personal circumstances at the time of conduct, and of imposing the sanction;
  - h. need to protect the public through general deterrence and maintain public confidence in local government; and
  - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness<sup>2</sup>.
11. In this case the conduct of Cr Moses was objectionable and offensive and was clearly not in keeping with the standard of behaviour that reasonable persons expected of elected members.
12. Such conduct is serious and must be publicly discouraged.
13. The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position.
14. In these circumstances, the Panel considers that the appropriate sanctions are that Cr Moses:

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



- a. make a public apology; and
  - b. undertake training.
15. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when a councillor's conduct:
  - a. adversely affects particular individuals<sup>3</sup>; and/or
  - b. does not meet the standards other councillors seek to uphold.
16. Further, the Panel deems that it is prudent that Cr Moses undertake training to refresh Cr Moses' understanding of leadership concepts and the behaviours required of Elected Members in their role as leaders of Council and prominent leaders in the community.
17. The sanction of an order to undertake training also aligns with the intent of the Act and the purpose of the civil penalties under the Act to ensure future compliance with the statutory obligations imposed on councillors for the better protection of the public.
18. In the relevant circumstances, the Panel considers that making a public apology and undertaking training is an adequate sanction and that it is not necessary to order that Cr Moses recoup to the Shire the costs of the Department incurred in accordance with Schedule 5.1 clause 9 with respect to the Complaint.

#### Panel's decision

19. The Panel orders pursuant to section 5.110(6)(b)(ii) and section 5.110(6)(b)(iii) and section 5.110(6)(c) of the Act that, in relation to the Minor Breach of regulation 7(1)(b) of the Regulations, Cr Moses:
  - a. make a public apology in terms of the attached Order; and
  - b. undertake training in terms of the attached Order.

Emma Power (Member)

Peter Rogers (Member)

Gordon MacMile (Deputy Member)

<sup>3</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).



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## ORDER

Delivered 22 October 2020

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### DEFAMATION CAUTION

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Philip Moses, a councillor for the Shire of Meekatharra **publicly apologise**, as specified in paragraph 3, or failing compliance with paragraph 3, then paragraph 4 below.
2. Councillor Philip Moses, a councillor for the Shire of Meekatharra, **undertake training** as specified in paragraph 5 below.

#### **Public Apology**

3. On the ordinary council meeting first occurring after the expiration of **28 days** from the date of service of this Order on him, Councillor Moses 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)* when I made certain objectional and offensive comments to Mr Alan Franklin of the Yulella Aboriginal Corporation.
- i. The Panel found that I breached regulation 7(1)(b) of the said Regulations as my conduct was wrongful, inappropriate and deserving of a penalty and, further, my comments were likely to cause detriment to the parties involved.
- ii. I accept that I should not have made the objectionable and offensive comments.



iii. I now apologise to Mr Alan Franklin, the Yulella Aboriginal Corporation, my fellow Councillors and the public.”

4. If Councillor Moses fails to, or is unable to, comply with the requirements of paragraph 3 above then, within the next **28 days** following the ordinary council meeting referred to in paragraph 3 above, THEN:
- a. Councillor Moses 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
    - i. the “Geraldton Guardian” community newspaper; AND
    - ii. the “Midwest Times” community newspaper;
  - b. the Chief Executive Officer shall arrange for the notice of public apology to be published:
    - i. on an appropriate place on the website of the Shire of Meekatharra in no less than 10 point font size; and
    - ii. be published in Shire of Meekatharra public newsletter (whether in electronic or print copy) (if any) in no less than 10 point font size.

#### **PUBLIC APOLOGY BY COUNCILLOR PHILIP MOSES**

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) when I made certain objectional and offensive comments to Mr Alan Franklin of the Yulella Aboriginal Corporation.

The Panel found that I breached regulation 7(1)(b) of the said Regulations as my conduct was wrongful, inappropriate and deserving of a penalty and, further, my comments were likely to cause detriment to the parties involved.

I accept that I should not have made the objectionable and offensive comments.

I apologise to Mr Alan Franklin, the Yulella Aboriginal Corporation, my fellow Councillors and the public.

#### **Training**

5. Within 4 months of the date of this Order, Councillor Philip Moses, a councillor for the Shire of Meekatharra, shall undertake:
- a. the training course for Elected Members “*Effective Community Leadership*” provided by WA Local Government Association (WALGA) for a period of no less than 7.5 hours, attending either in person or via e-learning (if available); or
  - b. a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a period of not less than 7.5 hours.





## 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."