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## Local Government Standards Panel

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Complaint Number	SP 2020-061
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Mr Timothy Clarke</b>
<b>Respondent</b>	<b>Councillor Tanya Richardson</b>
Local Government	<b>City of Swan</b>
Regulation	Regulation 4 Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs Emma Power (Presiding Member) Cr Peter Rogers (Member) Mr Gordon MacMile (Deputy Member)
Heard	12 August 2020 Determined on the documents
Finding	1 x Breach of Regulation 4

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### FINDING AND REASONS FOR FINDING

Delivered 28 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 Tanya Richardson, a councillor of the City of Swan (**"the City"**) did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and regulation 4 of the *Local Government (Rules of Conduct) Regulations 2007* (**"the Regulations"**) when she called another council member a liar at the Ordinary Council Meeting of 11 March 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.
11. On 2 July 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 13 June 2020.

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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



12. In the complaint form, the Complainant alleges that Cr Richardson has breached regulation 4 of the Regulations when she called another council member a liar at the Ordinary Council Meeting of 11 March 2020 (**“the OCM”**) 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 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 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 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 breach<sup>8</sup>;
  - d. was satisfied the Department had provided procedural fairness to Cr Richardson; and
  - e. found it had jurisdiction to consider the Complaint.

### The Specifics of the Complaint

15. The Complainant provided the following comments and arguments in respect to the Complaint:
  - a. At approximately 2.33 into the City of Swan Council Meeting on the 11 March 2020 (**“the OCM”**) Cr Richardson and Cr McCullough had a disagreement regarding comments that had been overheard.
  - b. The Mayor (being Presiding Member) gave both councillors a warning and ended the matter.
  - c. The Mayor then asked Cr Scanlon to address the meeting. When Cr Scanlon turned on her microphone, you could hear Cr Richardson, who was sitting next to Cr Scanlon, call Cr McCullough a liar.
  - d. Cr Richardson then denied she had said the comment, unaware it had been captured on the recording and did not attempt at any time to apologise for her undisciplined outburst.
  - e. The angry and aggressive attitude displayed by Cr Richardson is not the first time the Complainant has seen this behaviour. To call Cr McCullough a liar in a public meeting while being live streamed and recorded shows the lack of control this councillor has.
  - f. This action is in breach of the Regulation 4 of the Regulations and the following *City of Swan Meeting Procedures Local Law 2019* (**“Meeting Procedures”**):

<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

#### **“4.11 - Adverse Reflection**

*Unless the meeting resolves, without debate, that the matter before the meeting cannot otherwise be adequately considered -*

- (1) A member must not reflect adversely on a decision of the Council or a committee except on a motion that the decision be revoked or changed.*
- (2) A member must not, in a meeting open to the public -
  - (a) reflect adversely on the character or actions of another member or employee; or*
  - (b) impute any improper motive to a member or employee.”**

#### **4.12 Withdrawal of adverse reflection or offensive, indecent, insulting language**

*Unless the meeting resolves, without debate, that the matter before the meeting cannot otherwise be adequately considered, a member who, in the opinion of the Presiding Member-*

- (a) reflects adversely on the character or actions of another member or employee;*
  - (b) imputes a motive to a member or employee; or*
  - (c) uses an expression that is offensive indecent or insulting,*  
*must, when directed by the Presiding Member, withdraw the reflection, imputation or expression and make a satisfactory apology.”*
- g. If Cr Richardson cannot apply the general principles guiding the behaviour of council members which are the expectations of the position this councillor holds, then she certainly does not deserve to maintain her position as a councillor for the City of Swan.

16. The live recording of the OCM was available to the Panel to review.

#### **Respondent's Response**

17. Despite two requests from the Department, Cr Richardson did not provide a response to the Complaint.

#### **Regulation 4**

18. Regulation 4 reads:

*“(1) In this regulation —*

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

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

19. Section 5.105(1)(b) of the Act states as follows:

*“A council member commits a minor breach if he or she contravenes*

*...*

- (b) *a local law under this Act, contravention of which the regulations specify to be a minor breach.*"

### **Panel's Consideration**

#### **Regulation 4**

20. To make a finding of a minor breach of regulation 4 of the Regulations the Panel must be satisfied, to the required standard, that:
- Cr Richardson was a councillor at the time of the alleged breach and the time of the determination;
  - the conduct occurred during a council or committee meeting; and
  - Cr Richardson breached a valid provision of the City's Local Law.

#### **Cr Richardson was a Councillor at the relevant times**

21. Cr Richardson was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.
22. This element is met.

#### **The conduct occurred at a council or committee meeting**

23. The relevant conduct took place at the Ordinary Council Meeting of the City of 11 March 2020.
24. This element is met.

#### **Cr Richardson breached a valid provision of the City of Swan Meeting Procedures Local Law 2019**

25. It is alleged that Cr Richardson breached clause 4.11 and 4.12 of the Meeting Procedures.
26. The Panel has reviewed the live streamed recording of the OCM and is satisfied that Cr Richardson did make the comment as asserted.
27. On the recording of the OCM the words "*You're a liar*" are able to be heard.
28. The accusation "*You're a liar*" is clearly a breach of section 4.11(2)(a) of the Meeting Procedures in that it reflects adversely on the character of the councillor that Cr Richardson was referring to.
29. As such, the Panel finds, to the required standard, that this remark was in breach of clause 4.11(2) of the Meeting Procedures.
30. In respect to the alleged breach of clause 4.12 of the Meeting Procedures, although the Presiding Member did warn Cr Richardson that such comments could have consequences, he did not require Cr Richardson to withdraw her remark or make an apology. As such, Cr Richardson is not in breach of clause 4.12.
31. This element is met.

#### **Conclusion**

32. Given the above, the elements required to find a breach of regulation 4 of the Regulations have been met.



### **Panel's Findings**

33. Cr Richardson did commit a breach of Regulation 4 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 2020-061
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Mr Timothy Clarke</b>
<b>Respondent</b>	<b>Cr Tanya Richardson</b>
Local Government	<b>City of Swan</b>
Regulation	Regulation 4 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Councillor Peter Rogers (Member) Mrs Emma Power (Member)
Heard	12 August 2020 Determined on the documents
Penalty Considered	10 November 2020
Outcome	Training

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## DECISION AND REASONS FOR DECISION

Delivered 13 January 2021

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### DEFAMATION CAUTION

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## Introduction

1. At its meeting on 12 August 2020, the Panel found that Councillor Tanya Richardson, councillor for the City of Swan (**“the City”**), committed one minor breach under the Local Government Act 1995 (WA) (**“the Act”**) and regulation 4 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**“the Regulations”**) when she called another council member a liar at the Ordinary Council Meeting of 11 March 2020 (**“the Minor Breach”**).

## Jurisdiction and Law

2. The Panel convened on 10 November 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 Richardson 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 28 August 2020, Cr Richardson 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).*

7. Cr Richardson did not make any submissions regarding how the Minor Breach should be dealt with.

### **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 with respect to the 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. The Panel notes that the relevant conduct has already been the subject of another Local Government Standards Panel complaint and breach finding (matter SP2020-24) and Cr Richardson received a sanction to make a public apology pursuant to section 5.110(6)(b)(ii) in that instance.
12. As such, the Panel considers it appropriate that Cr Richardson not be required to apologise again, but to undertake training to assist her to effectively deal with disputes and conflict in a manner which reflects the standards of conduct expected of local councillors.
13. This manner of training is particularly appropriate where there are apparent conflicts of personality within an elected Council group.

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



14. 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.

**Panel's decision**

15. The Panel orders pursuant to section 5.110(6)(b)(iii) of the Act that, in relation to the Minor Breach of regulation 11 of the Regulations, Cr Richardson undertake training as set out in the attached Order.

Within 4 months of the date of this Order, Councillor Tanya Richardson, a Councillor for the City of Swan, shall undertake:

1. the training course for Elected Members *"Dealing with Conflict"* 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; or
2. 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.

Mick Connolly (Presiding Member)

Emma Power (Member)

Peter Rogers (Member)



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## ORDER

Delivered 13 January 2021

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

Within 4 months of the date of this Order, Councillor Tanya Richardson, a Councillor for the City of Swan, shall undertake:

3. the training course for Elected Members "*Dealing with Conflict*" 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; or
4. 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.

Mick Connolly (Presiding Member)

Emma Power (Member)

Peter Rogers (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."