



Local Government Standards Panel

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| Complaint Number | SP 48 of 2017 [DLGSC 20170141] |
| Legislation | <i>Local Government Act 1995 (WA)</i> |
| Complainant | Mr Alan Sheridan |
| Respondent | Councillor Donald Gibson |
| Local Government | Shire of Chittering |
| Regulation | Regulations 7(1)(b) and 10(1)(a) of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007 (WA)</i> |
| Panel Members | Mrs S Siekierka (Presiding Member) Ms R Aubrey (Deputy Member) Ms R Yates (Deputy Member) |
| Heard | 16 April 2018 Determined on the documents |
| Outcome | Public apology |

DECISION AND REASONS FOR DECISION

Published 5 June 2018

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 15 February 2018, the Panel found that Councillor Donald Gibson, a Councillor for the Shire of Chittering (**Shire**) committed a breach of each of regulations 7(1)(b) and 10(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Regulations**) on 28 September 2017 when sending an email to Mr Alan Sheridan, the Shire's Chief Executive Officer, and other Shire Councillors concerning an invoice Cr Gibson had received from the Shire for the use of data on a Shire-issued iPad (**Email**).
2. On 26 February 2018 the Panel published its Finding and Reasons for Finding that Cr Gibson had breached each of regulations 7(1)(b) and 10(1)(a) of the *Regulations* (**Minor Breaches**).

Jurisdiction

3. The Panel convened on 16 April 2018 to consider how it should deal with the Minor Breaches. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (**Department**) that on this date there was no available information to indicate that Cr Gibson 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) (**LG Act**) provides that the Panel is to deal with a minor breach by:
 - (a) *dismissing the complaint;*
 - (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*
 - (c) *ordering 2 or more of the sanctions described in paragraph (b).*

Councillor Gibson'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 email dated 26 February 2018, the Panel notified Cr Gibson of the Panel's finding of the Minor Breaches, provided him with a copy of the Panel's Finding and Reasons for Finding and offered him an opportunity to make submissions as

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

- to how the Minor Breaches should be dealt with under section 5.110(6) of the *LG Act*.
7. Cr Gibson sent his submissions on penalty to the Department by email dated 26 February 2018.
 8. In his email, Cr Gibson submitted that:
 - the tone of the Email was prompted by two letters Mr Sheridan sent to him dated 6 June 2017 and 3 November 2017;
 - Mr Sheridan intended to provoke him to respond in the tone of the Email, as an excuse to make a complaint to the Panel;
 - he was placed at a disadvantage to other candidates during a local government election period because Mr Sheridan continued to advertise Cr Gibson's suspended email address and he was unable to answer emails from community members;
 - he has returned the iPad to the office three times for checking but he cannot leave it for a full day, as it is essential to his work as a councillor;
 - he wishes to appeal the Panel's finding, but if that is not possible, he offers to undertake a 'Course of Political correctness'.
 9. Cr Gibson sent two further emails to the Department, both dated 28 February 2018, in which he:
 - submitted that the Panel should take into account that Council motion 14.1.13 made on 19 July 2017 was rescinded by Council on 21 February 2018 '*as being unlawful*';
 - provided a copy of the agenda item relating to motion 14.1.13 of 19 July 2017 from the Council meeting held on 21 February 2018.

Panel's consideration

10. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel's finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor's name.
11. Cr Gibson's submissions concerning the rescission of Council motion 14.1.13 are not relevant to the Panel's consideration of penalty for the Minor Breaches. The Minor Breaches relate to the manner in which Cr Gibson communicated with the Shire's Chief Executive Officer at a time when motion 14.1.13 was in effect.
12. Cr Gibson was first elected to Council on 7 May 2005 and so is a long-serving councillor. He has not previously been found to have committed a minor breach. However, it is not appropriate to dismiss the Minor Breaches as this would condone Cr Gibson's conduct and trivialise the breaches.
13. Cr Gibson committed two minor breaches. However, it is appropriate that there be one penalty for the Minor Breaches because the evidence that established the commission of the Minor Breaches is the same.²

² *Treby and Local Government Standards Panel* [2010] WASAT 81 (11 June 2010) [124]-[126] (Pritchard J).



14. Training is not an appropriate sanction. Cr Gibson's submission reflect a lack of insight into the Panel's findings and do not show any acknowledgement of his personal responsibility to uphold the standards of conduct expect of a councillor. He suggests that the training he is available to undertake is in 'Political correctness' and blames his misconduct on Mr Sheridan.
15. A censure is a public statement of disapprobation of a councillor's conduct. It is a serious sanction.
16. A public apology is also a significant sanction. This is due to the personal nature of an apology, and the admission by the individual of wrongdoing which an apology entails. It is suitable when a councillor's conduct adversely affects a particular individual or individuals.³ An apology in public to a councillor's colleagues is appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold.
17. The Panel has considered the available sanctions under section 5.110(6) and decides that the appropriate penalty is a public apology to Mr Sheridan and Cr Gibson's fellow Shire Councillors. That sanction is appropriate given that Cr Gibson sent the Email to Mr Sheridan and Cr Gibson's fellow councillors.

Panel's decision

18. The Panel orders under section 5.110(6)(b)(ii) that Cr Gibson make a public apology in terms of the attached Order.

Sheryl Siekierka (Presiding Member)

Rachel Yates (Deputy Member)

Rebecca Aubrey (Deputy Member)

Date of Decision and Reasons 5 June 2018

³ See *Treby and Local Government Standards Panel* [2010] WASAT 81 (11 June 2010) [127] (Pritchard J).



ATTACHMENT

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| Panel Members | Mrs S Siekierka (Presiding Member) Ms R Aubrey (Deputy Member) Ms R Yates (Deputy Member) |
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ORDER

Published 5 June 2018

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Donald Gibson, a Councillor for the Shire of Chittering (the Shire), publicly apologise to Mr Alan Sheridan, the Shire's Chief Executive Officer, and his fellow Shire Councillors, as specified in paragraph 2 below.
2. At the Shire's first ordinary council meeting Councillor Gibson attends after the expiration of 28 days from the date of service of this Order on him, Councillor Gibson shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to Mr Sheridan and all other Shire Councillors;
 - (b) 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;
 - (c) address the Council 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 two provisions of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* on 28 September 2017 when I sent an email to Mr Alan Sheridan, the Shire's Chief Executive Officer, and other Shire Councillors concerning an invoice that I had received from the Shire for the use of data on a Shire-issued iPad.
- (ii) The Panel found that by sending the email, I made improper use of my office as a Councillor with the intention of causing detriment to Mr Sheridan,



thereby committing a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA).

- (iii) The Panel found that by sending the email, I directed or attempted to direct Mr Sheridan in his capacity as an employee of the Shire and by acting as I did, I committed a breach of regulation 10(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA).
- (iv) I accept that I should not have sent the email and I apologise to Mr Sheridan and all my fellow Councillors for having done so.”

Date of Order - 5 June 2018



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."