

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number SP 13 of 2016
[DLGC 20160039]

Legislation *Local Government Act 1995*

Complainant Mr Anthony Nottle

Subject of complaint Councillor Kaye McGlew

Local Government **Shire of Dandaragan**

Regulation Regulation 10(3)(a) of the *Local Government (Rules of Conduct) Regulations 2007*

Panel Members Mr B Jolly (Presiding Member)
Councillor P Kelly (Member)
Ms M Strauss (Member)

Heard 22 November 2016
Determined on the documents

Outcome Public apology

DECISION AND REASONS FOR DECISION

Published 16 March 2017

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 22 November 2016 The Panel found that Councillor Kaye McGlew (Cr McGlew), a councillor for the Shire of Dandaragan (the Shire), committed a minor breach under the *Local Government Act 1995* (WA) (the Act) and regulation 10(3)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) when she made a statement at an ordinary council meeting on 24 March 2016 (the OCM) that one or more local government officers were incompetent or dishonest when putting an item about corporate rebranding before Council.
2. On 22 November 2016 the Panel published its Finding and Reasons for Finding that Cr McGlew breached regulation 10(3)(a) (the Panel's Reasons).
3. On 24 February 2017 the Panel met to consider how it should deal with the minor breach.

Possible sanctions

4. Under section 5.110(6) of the Act a breach is to be dealt with by —
 - (a) dismissing the complaint; 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
 - (c) ordering 2 or more of the sanctions described in paragraph (b).

Councillor's submission

5. If the Panel finds that if a councillor has committed a minor breach, the Panel must give the councillor an opportunity to make submissions to the Panel about how the breach should be dealt with.¹
6. On 7 February 2017, the Department received the following email submission from Cr McGlew:

¹ Section 5.110(5) of the Act.

To the Presiding Member of the Local Government Standards Panel

I totally accept the Panel's considerations and findings and appreciate the time they have taken. Following the Standards Panel making its findings, please accept this email as my submission.

I have not before been in a situation such as occurred with this alleged Minor Breach and it does not fit with my normal Councillor behaviour. I am consistently praising staff in the public arena and would not make a negative comment or imply such. I work very hard across the shire for our communities to build the capacity of our shire and ensure a positive shire image.

As a Councillor I erred when reviewing the Strategic Community Plan (SCP) and Corporate Business Plan (CBP) – during the 2 year legislated internal review of the SCP and CBP as part of the Integrated Planning and Reporting Process (IPR). We engaged a Consultant to lead us through the internal review and re-format both documents so that the Corporate Business Plan contained staff actions – this was the very first time for reviewing these two key documents that previously contained some overlap between community aspirations and staff actions. Keeping in mind this was the first 4 year cycle for the IPR process, and first 2 year review, it was a steep learning curve for everyone. The context of my comments were that I neglected to identify that the CBP *"action had no SCP matter to be actioning"*, as was in print when the documents were endorsed by Council. The consultant who led us through this process must have missed the action *being left in the CBP* as well; then staff brought it to Council for endorsing. In the context of this OCM discussion I was indicating we all had a part to play and the action should not have remained in the document.

I deeply regret not requesting the Presiding member to repeat her question to me, as I really believe I did not correctly hear her words that I was responding to - upon reflection and after receiving the Complaint of Minor Breach, it felt as though the presiding member had asked a leading question, and I am disappointed the presiding member did not understand that I was not indicating staff were dishonest – I would never say or indicate this, I have too much respect with the professionalism of our staff. This was a good governance process matter, one that I also did not identify when the initial 2 year IPR internal review was endorsed by Council.

I believe and would hope the minor breach should be dealt with by (a) dismissing the complaint. However if it requires further action perhaps a meeting with the CEO, and myself in the presence of a panel member or person of similar calibre.

I thank you and the panel for your time and deliberations in this matter.

7. The complainant, Mr Nottle, had alleged that at the OCM:

"Cr. McGlew stated that she had spoken to (a Department officer) to seek advice on the processes of the Strategic Community Plan. Cr. McGlew continued to repeat her interpretation of the discussion with (the Department officer) suggesting that a removal of the corporate branding from the Strategic Community Plan and the fact that it still remained in the Corporate Business Plan was done intentionally or by mismanagement.

The President, Cr Holmes, advised Cr. McGlew that she had had the floor for '17 minutes' and that, 'Are you suggesting that the staff have been dishonest or incompetent?' Cr. McGlew's response was, 'I believe so, yes.' ... The response Cr. McGlew gave was clearly audible to the other Councillors, the public gallery and Shire staff."

8. In her response to the Complaint Cr McGlew said she should have asked the President to repeat the question because she misunderstood her question; that she didn't say or intentionally indicate that staff were dishonest or incompetent; and that she would not have used and did not use the word "mismanagement".

9. In its Reasons the Panel said:

"65. The Panel is satisfied that is more likely than not that:

- the President listened to Cr McGlew for 17 minutes and formulated her question based on what Cr McGlew said in opposition to the motion;
- the President asked "Are you suggesting that the staff have been dishonest or incompetent?" or "Are you suggesting the staff have been incompetent for dishonest?";
- Cr McGlew responded "I believe so, yes" or "yes, I believe so" which, combined with the question, amounted to a "statement"; and
- Cr McGlew's statement implied that the author of the report in the Agenda, and/or other officers, were incompetent or dishonest because they sought to deal with the rebranding item without following the proper process.

66. In *Hargreaves and Local Government Standards Panel* [2008] WASAT 300 at [17]; Deputy President of SAT, Judge Chaney (as his Honour then was) said:

"I accept that reg 10(3) is designed to ensure that councillors do not use their position to publicly criticise employees within their local government. It is predicated on the proposition that concerns about the performance of employees should be dealt with within the local government organisation and through proper channels, rather than aired publicly in a council or committee meeting."

67. It is not relevant that Cr McGlew didn't actually believe the staff were incompetent or dishonest. The question is, what did her words at the time imply – how would a reasonable person hearing the words perceive what she saying in their context and in all the circumstances? The Panel accepts Mr Strugnell's evidence that he found Cr McGlew's comments to be inappropriate and disrespectful of the staff involved, and reflected poorly on the local government.

68. Notwithstanding Cr McGlew's good intentions to ensure proper process, including community consultation, Cr McGlew must meet the standards of conduct expected, and legislated for, in council meetings."

Panel's consideration

10. Cr McGlew's submission in relation to sanction is consistent with her response to the Complaint in that she says she didn't intend to indicate that Shire officers were dishonest or incompetent. In her submission she says she respects and accepts the Panel's decision.

11. The Panel acknowledges Cr McGlew's statement that her conduct was not in keeping with her usual style of operating and that she consistently praises staff in public and did not intend to criticise them, either directly or by implication. She said she herself erred in reviewing the documents and she intended to indicate "we all had a part to play" in the way the item was presented to Council at the OCM.

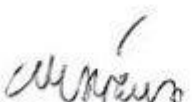
12. It is not appropriate to dismiss the breach as the Panel accepts that officers were likely to have been offended, and it is important that councillors show respect for officers in public fora and project a positive message about how officers and councillors are working together.
13. The conduct does not warrant a public censure because Cr McGlew has shown remorse, taken some responsibility herself and confirmed her appreciation for the work of Shire officers.
14. The Panel does not consider that training would be an appropriate penalty in this case because Cr McGlew seems to be well aware that councillors should not criticise officers in public.
15. The appropriate penalty is for Cr McGlew to make a public apology in the terms of the attached Order.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Reasons – 15 March 2017

Attachment

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Complainant	Mr Anthony Nottle
Subject of complaint	Councillor Kaye McGlew
Local Government	Shire of Dandaragan
Regulation	Regulations 10(3)(a) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
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ORDER FOR PUBLIC APOLOGY

Published 16 March 2017

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Ms Kaye McGlew, a Councillor of the Shire of Dandaragan (the Shire), publicly apologise to all Shire officers as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the first Shire Ordinary Council Meeting Cr McGLew attends after the expiration of 28 days from the date of service of this Order on her Cr McGLew shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to all Shire officers;
 - (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 a provision of the *Local Government (Rules of Conduct) Regulations 2007* at an Ordinary Council Meeting on 24 March 2016.
 - (ii) The Local Government Standards Panel found that I breached regulation 10(3)(a) of the *Local Government (Rules of Conduct) Regulations 2007* at that Ordinary Council Meeting during debate about the Shire’s corporate branding.
 - (iii) The Panel found that when answering a question from the Shire President I made a statement that one or more Shire officers were incompetent or dishonest.
 - (iv) I accept that I should not have made the statement and I apologise to all Shire officers for making the statement.”
3. If Cr McGLew fails or is unable to comply with the requirements of paragraph 2 above she shall cause the following notice of public apology to be published, in no less than 10 point print, as a one-column or two-column display advertisement in the first 15 pages of the Midwest Times newspaper.



PUBLIC APOLOGY

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* at an Ordinary Council Meeting on 24 March 2016 during debate about the Shire's corporate branding.

The Panel found that I breached regulation 10(3)(a) at that meeting because when answering a question from the Shire President I made a statement that one or more Shire officers were incompetent or dishonest.

I accept that I should not have made the statement and I apologise to all Shire officers for making the statement.

Councillor Kaye McGlew