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## Local Government Standards Panel

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Complaint Number	SP 2021-060
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Mayor Patrick Hall</b>
<b>Respondent</b>	<b>Councillor Jesse Jacobs</b>
Local Government	<b>City of Canning</b>
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Deb Hopper (Deputy Member)
Heard	19 August 2021 Determined on the documents
Finding	Breach x 2 Regulation 18(1)(b)

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### FINDING AND REASONS FOR FINDING

Delivered 26 October 2021

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#### DEFAMATION CAUTION

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## Summary of the Panel's decision

1. On 19 August 2021, the Panel found that Councillor Jesse Jacobs a councillor of the City of Canning (**"the City"**):
  - a. did commit two minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* (**"the Regulations"**);
  - b. did not commit two minor breach pursuant to the Act and Division 4 and Regulation 18 of the Regulations,when he made certain comments to a journalist that were published in the West Australian Newspaper on 17 May 2021 as further set out in paragraph 17 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 and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
6. 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>1</sup>
7. 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.
8. 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>2</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>3</sup>.

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<sup>1</sup> Section 5.106 of the Act

<sup>2</sup> *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

<sup>3</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336



9. The Panel does not possess investigative or supervisory powers.<sup>4</sup> The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.
10. 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.
11. The Panel also must have regard to the general interests of local government in Western Australia<sup>5</sup>.
12. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

### Jurisdiction and Procedural Fairness

13. On 2 June 2021 the Panel received a complaint from Mr Athanasios (Arthur) Kyron acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 2 June 2021.
14. In the complaint form, the Complainant alleges that Cr Jacobs has breached regulation 18 of the Regulations when he made the certain comments to a journalist that were published in the West Australian Newspaper on 17 May 2021 as follows:
  - a. accusing Mayor Patrick Hall of *"using the CCC as a political weapon 5-months before local government elections"* ("**Allegation 1**");
  - b. accusing Mayor Patrick Hall of *"turning Canning's council chamber into a kangaroo court"* ("**Allegation 2**");
  - c. *"I think there's a well-established process the local government and relevant State bodies deal with local government compliance.... I think the Mayor may have contaminated that process' procedural fairness."* ("**Allegation 3**"); and
  - d. *"I don't think (council) have to put up with extremely bad behaviour and unfounded, baseless accusations from someone - that in my opinion, is not really good at his job at the moment."* ("**Allegation 4**"),as referred to in paragraph 16 below ("**the Complaint**").
15. The Panel convened on 19 August 2021 to consider the Complaint.
16. The Panel:
  - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Cr Jacobs was:
    - i. 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

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<sup>4</sup> Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

<sup>5</sup> Section 8(6) of Schedule 5.1 of the Act



- iii. a Councillor when the Panel met on 19 August 2021;
- b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>6</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>7</sup>;
- d. was satisfied the Department had provided procedural fairness to Cr Jacobs; and
- e. found it had jurisdiction to consider the Complaint.

### The Specifics of the Complaint

17. The Complainant provided the following comments and arguments in respect to the Complaint:
- a. The conduct by Cr Jacobs constitutes a breach of Regulation 18(1)(b) of the Regulations.
  - b. It would also be open to the Panel to find that Cr Jacobs breached Section 2.8 of the Act by 'speaking on behalf of the Local Government' – a statutory requirement of a Mayor under Section 2.8(1)(d) of the Act.
  - c. Following information provided to the Complainant, he and the Chief Executive Officer ("**the CEO**") referred a matter regarding an alleged "leak" of confidential information to the Corruption and Crime Commission ("**the CCC**").
  - d. Council was advised of this course of action at a Special Council Meeting held at the City of Canning on 10 May 2021.
  - e. Following the Special Council Meeting, the West Australian newspaper published various articles including:
    - i. 12 May 2021 the West Australian newspaper published an online article titled '*City of Canning Mayor asks CCC to investigate his own Council over \$350,000 job leak*' co-written by Dave Friedlos – which also appeared in the local community newspaper the Canning Gazette ("**the First Article**");
    - ii. 17 May 2021 the article was published online by the West Australian entitled "*Attack launched on Canning Mayor Patrick Hall by his deputy Jesse Jacobs over calls to CCC*" by Michael Traill ("**the Second Article**").
  - f. The articles received significant statewide online media coverage on the West Australian's website and Facebook, and also appeared in hardcopy printed form.
  - g. On Monday 17th May 2021 the Complainant became aware that the Second Article was about to be published when the reporter phoned him to ask if he would like to respond to the Cr Jacob's remarks. When Michael Traill read the

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<sup>6</sup> Section 5.107(4) and 5.109(2) of the Act

<sup>7</sup> Section 5.107 and 5.109 of the Act



Cr Jacob's comments to the Complainant over the phone he felt shocked, betrayed, and humiliated.

- h. The headline of the Second Article reflects the aggressive nature of the comments and provides an insight of the journalist's own assessment of the comments provided to him by Cr Jacobs.
- i. The entire Second Article centred on a scathing personal attack on the Complainant by Cr Jacobs. The piece featured highly critical comments by Cr Jacobs regarding the reporting of the alleged serious misconduct to the CCC - and of the Complainant's performance as the Mayor of the City of Canning.
- j. COMMENTS 1 and 2
  - i. In the Second Article Cr Jacobs publicly accused the Complainant of:
    - A. *"using the CCC as a political weapon 5-months before local government elections"* ("**Comment 1**"); and
    - B. *"turning Canning's council chamber into a kangaroo court"* ("**Comment 2**").
  - ii. These comments are highly offensive to the Complainant. They call into question his character and his honesty, they diminish the seriousness of the matters referred to the Commission, and the clear assertion is that the actions taken by the Complainant were unethical, disingenuous, dishonest, and that his actions had a hidden motive.
  - iii. The comments infer that the Complainant will somehow benefit from his role in the reporting of the allegation to the CCC and that he will be afforded an electoral benefit because he has *"used the CCC as a political weapon 5-months out from an election"*.
  - iv. The facts are that the Complainant's tenure as Mayor does not expire until October 2023.
  - v. By this the Cr Jacobs has falsely called into question the Complainant's credibility and honesty. The allegation by him is patently untrue, and Cr Jacobs knows this.
  - vi. To any normal and reasonable person, the comments by Cr Jacobs may also be understood to mean that reporting of the allegation to the CCC was done with the intention of influencing the outcome of the October 2021 local government elections. Again, this diminishes the seriousness of the matters referred to the CCC and makes a clear assertion that the actions taken by the Complainant and the CEO were unethical, disingenuous, dishonest, and that his actions had a hidden political motive.
  - vii. The comment relating to *"turning Canning's council chamber into a kangaroo court"* is particularly offensive to the Complainant.
  - viii. The inference by Cr Jacobs is that the decisions made by Council at its 10 May Special Council Meeting were akin to the deliberations of a 'kangaroo court' and that matters were not properly considered.



- ix. The quote directly impugns the integrity of the Council and adversely reflects on the decision made by it and the manner in which its deliberations are made.

k. COMMENT 3

- i. Cr Jacobs stated:

*“I think there’s a well-established process the local government and relevant State bodies deal with local government compliance.... I think the Mayor may have contaminated that process’ procedural fairness.”*  
**(“Comment 3”)**

- ii. These comments publicly challenge and deride the decision taken by the Complainant and CEO Kyron to report the alleged serious misconduct to the Corruption and Crime Commission.
- iii. Cr Jacobs makes the assertion that the decision to report the matter to the Commission was wrong, that there were “established processes” to deal with the issue, and that the Complainant actions had “contaminated the process’ procedural fairness”.
- iv. The comments are at best factually incorrect and at worst they have been intentionally made by Cr Jacobs with the clear intent to undermine the Complainant’s standing in the community, discredit him, damage his reputation, and to disadvantage him.
- v. The Corruption, Crime and Misconduct Act 2003 is unequivocal in the requirement to notify the Commission in writing of any matter which that person suspects on reasonable grounds concerns serious misconduct in respect to their official position.

l. COMMENT 4

- i. Cr Jacobs also said:

*“I don’t think (council) have to put up with extremely bad behaviour and unfounded, baseless accusations from someone - that in my opinion, is not really good at his job at the moment.”* **(“Comment 4”)**

- ii. This comment alleges that the Complainant’s behaviour in reporting the matter to the Commission - and advising Council that he intended to do so, was “extremely bad behaviour”. The assertion being that what the Complainant had done was not only wrong, but in the words of the Cr Jacobs it was “extremely” wrong.
- iii. The second comment by Cr Jacobs publicly chides the Complainant as someone who is “not really good at his job”, yet Cr Jacobs offers no evidence to support his claim.
- iv. These damning comments by a Deputy Mayor against the sitting Mayor have:
  - A. undermined the Complainant’s standing in the community, caused detriment to his professional standing, discredited him, called into question his decision-making ability;



- B. caused irreparable detriment to the Complainant's reputation – particularly among his peers in the local government sector, and has adversely reflected on his performance as Mayor. It has held him out to public ridicule.
  - C. caused a detriment to the City of Canning by insinuating that the actions of CEO Kyron and the Complainant were “extremely wrong” and that we should have chosen a different “well established process” to deal with the allegation.
  - D. adversely reflected on the CEO, on the Complainant, and it adversely reflects on the decision made by Council at a Special Council Meeting held on 10 May 2021 to dissolve its CEO Recruitment Panel and cease the recruitment process until the allegation has been investigated.
- m. The detriment is heightened by the statewide coverage of the article - which carried the Complainant's full name in the bold banner headline.
  - n. These Articles and their defamatory content will now remain on the internet for all time.
  - o. The comments by Cr Jacobs were volunteered by him to the journalist Michael Traill who stated he contacted each councillor.
  - p. It is therefore compelling that despite the reporter “individually contacting each Councillor” the only comments published were those made by Cr Jacobs.
  - q. The following conclusions could therefore be drawn:
    - i. that it is highly likely that all other Councillors used their judgement and - acting in good faith and in the best interests of the City, they decided not to comment on the matter; and
    - ii. that the comments made by Cr Jacobs carried more weight due to his position as Deputy Mayor.
  - r. Cr Jacobs had not - and has not, raised with the Complainant any of the issues raised publicly by him.
  - s. The conduct by Cr Jacobs strikes at the heart of an Elected Member's fiduciary duty to act in the best interests of the community and the local government which he or she has been elected to represent.
  - t. Cr Jacobs is a highly-experienced Councillor and is fully aware of his responsibilities and fiduciary duties.
  - u. Considering the seriousness of the matter referred to the CCC (an allegation of serious misconduct), the Complainant submits that the community's expectation would be that the Mayor would speak on behalf of the local government.
  - v. The comments made by the Deputy Mayor – in the absence of any commentary from any other Elected Member, give the distinct and unmistakable impression to the community that he is speaking on behalf of the local government. This would therefore be in breach of Section 2.8 of the Act.





18. The Panel was also provided with the following material:
- a. Minutes of Special Council Meeting 10 May 2021;
  - b. Copy Article 1 from online and hard copy publication;
  - c. Copy article from Canning Gazette dated 13 May 2021 entitled “*Shock CCC Probe*” no author noted;
  - d. Copy Article 2;
  - e. Copy article from West Australian dated 187 May 2021 entitled “Canning Council could be sacked...again” by Michael Traill;
  - f. Email dated 19 May 2021 from Michael Traill to the Complainant

### **The Respondent’s Response**

19. By an email dated 2 July 2021, Cr Jacobs provided a response to the Complaint.
20. Cr Jacobs denies that he has committed any minor breach.
21. Cr Jacobs provided the following comments and arguments regarding the Complaint as summarised by the Panel:
- a. The information provided by the Complainant is inaccurate and vexatious.
  - b. The Complainant and Cr Jacobs have not seen eye to eye in relation to the handling of the CEO recruitment process and the Complainant’s allegations of corruption against members of the Council.
  - c. Those allegations arose during the Special Council Meeting of 10 May 2021 (the Meeting) where the Mayor made a number of serious, unfounded and baseless allegations against all members of the Council, stating that he thought “*Council as a whole could not be trusted.*”.
  - d. As a result of those comments and the Mayors’ decision to refer the CEO recruitment matter to the CCC, Cr Jacobs was approached by a number of people, both inside and outside the City of Canning for comments on the matter. Cr Jacobs has made no secret of the fact that it was his preference not to go public with the Investigation. Cr Jacobs stands by that decision.
  - e. It was Mayor Hall who chose to publicly announce the referral to the CCC on 10 May 2021. As expected, once it was made public it generated significant media coverage.
  - f. On around 16 May 2021 Cr Jacobs was approached by a journalist to provide a comment for an article they were preparing. Cr Jacobs reiterate that the opinions expressed in that article were his own. Cr Jacobs further states that the issue was now a matter of public interest having been given much media attention and his opinion was based on material that was substantially true.
  - g. In respect to the Second Article the Mayor states that when advised of the above article he felt ‘betrayed’, ‘shocked’ and ‘caught off guard.’ Cr Jacobs does not



accept that. The Mayor had the opportunity, and in fact took the opportunity to provide his own responses in the Second Article.

- h. The Mayor had the option of offering no comment as a response. Instead, the Mayor chose to repeat the allegations of misconduct and referral to the CCC. Those are not the comments of a person who is “betrayed”, “shocked” and “caught off-guard.”
- i. Further, the Mayor makes specific reference to the headline of the Second Article. That headline was not chosen by Cr Jacobs. The headline is prepared by the journalist and reflects the journalists’ assessment of what has taken place.
- j. Other councillors also commented publicly on the matter.
- k. Cr Jacobs reiterates his opinion was not dishonest and not intended to be malicious.
- l. Cr Jacobs further denies that his opinion negatively impacted on the reputation of the Mayor. The Mayor holds a position of public office and therefore opens himself up to public scrutiny and criticism. There is no evidence to support the argument that Cr Jacobs’ comments in the Second Article were responsible for damaging the Mayor’s reputation. Rather it was the Mayor’s decision to go public and the combination of all the articles over the period of a week that negatively reflected on the reputation of every member of the City of Canning, including Cr Jacobs. The Mayor’s decision has placed enormous pressure on all the presiding members of Council and not just the Mayor.
- m. Cr Jacobs also does not accept that the CCC will in any way be swayed from independently investigating the Mayor’s complaint simply because there was an article about the Canning Council in the media.
- n. In any event, it is regretful that the situation between the Mayor and Cr Jacobs has become strained.
- o. Cr Jacobs takes great pride in his honesty and integrity and is proud to be the Deputy Mayor of the City of Canning. The impact that this negative publicity is having on the City as a whole affects everyone who play a role in governing this City.

## Regulation 18

22. Regulation 18 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:

**“ 18. Securing personal advantage or disadvantaging others**

*(1) A council member must not make improper use of their office —*

*(a) to gain, directly or indirectly, an advantage for the council member or any other person; or*

*(b) to cause detriment to the local government or any other person.*



*(2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.”*

23. To make a finding of a minor breach of regulation 18(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Jacobs was an elected member at the time of the alleged breach and the time of the determination;
  - b. Cr Jacobs made use of his office as Council member of the City;
  - c. when viewed objectively, such use was an improper use of Cr Jacob's 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 Jacobs engaged in the conduct in the belief that detriment would be suffered by another person.
24. As there is no allegation that Cr Jacobs intended to gain an advantage for herself or any other party the Panel has only considered regulation 18(1)(b) of the Regulations in this instance.
25. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom. 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.
26. 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 .
27. 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.
28. In the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused<sup>8</sup>.
29. “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.
30. It is not necessary to find whether any detriment was actually suffered<sup>9</sup>, but an intent to cause such detriment must be established.

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<sup>8</sup> Treby and Local Government Standards Panel [2010] WASAT 81 (at 31); Chew v The Queen (1992) 173 CLR 626 (at 640 - 641 [Dawson JJ]); R v Byrnes (1995) 183 CLR 501 – (at 514 - 515 [Brennan, Deane, Toohey and Gaudron JJ] and at 521 [McHugh J].

<sup>9</sup> Yates and Local Government Standards Panel [2012] WASAT 59 at [72]



## Code of Conduct

31. The City adopted their code of conduct during the Ordinary Council Meeting 23 May 2021 (“the Code of Conduct”).
32. The relevant provisions of the Code of Conduct are as follows:

### **“ 5. Relationship with others**

*(1) A council member, committee member or candidate should —*

- (a) treat others with respect, courtesy and fairness; and*
- (b) respect and value diversity in the community.*

*(2) A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.”*

### **“ 9. Relationship with others**

*A council member, committee member or candidate —*

- (a) must not bully or harass another person in any way; and*
- (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and*
- (c) must not use offensive or derogatory language when referring to another person; and*
- (d) must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and*
- (e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.”*

## **PANEL’S CONSIDERATION**

### **Allegation 1 – Comment 1**

#### **Cr Jacobs was an Elected Member at the relevant times**

33. Cr Jacobs was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
34. This element is met.

#### **Cr Jacobs made use of his office as Council Member of the City**

35. In this case Cr Jacobs:
  - a. was approached by the relevant journalist in his capacity as Deputy Mayor of the City;

- b. answered the queries in his capacity as Deputy Mayor of the City;
  - c. the matter related to a Council issue; and
  - d. was quoted in the Second Article in his capacity as Deputy Mayor of the City.
36. As such, the Panel finds that it is more likely than not that Cr Jacobs was acting in his capacity as an elected member made use of his office as a council member.
37. This element is met.

Cr Jacobs's use was improper

38. The relevant comment the subject of Allegation 1 is that the Mayor was:
- “using the CCC as a political weapon 5-months before local government elections”*
39. The Complainant alleges that Comment 1 called into question the Complainant's credibility and honesty and is an assertion that the actions taken by the Complainant were unethical, disingenuous, dishonest, and that his actions had a hidden political motive.
40. Cr Jacobs denies that his opinion negatively impacted on the reputation of the Mayor.
41. In this case the Panel does not consider that Comment 1 breaches the Code of Conduct as it is substantially in the vein of political rhetoric..
42. Comment 1 does not :
- a. amount to an intention to bully or harass the Complainant; or
  - b. contain offensive or derogatory language when referring to the Mayor.
43. The assertion by the Complainant that Comment 1 implies that the Mayor was unethical, disingenuous and dishonest is exaggerated based on the actual words used.
44. The Panel does not find that Comment 1 was disparaging as asserted, but rather substantially disagreement with the Mayor's actions. it is not improper for councillors to disagree with each other, even robustly.
45. The Panel further finds that, despite the reference to the upcoming election, Comment 1 did not go so far as to impute dishonest or unethical motives to the Complainant or the CEO.
46. Given the above, the Panel finds that it is more likely than not that Comment 1 was not improper as:
- a. the conduct was not in breach of the Model Code;
  - b. the conduct was not 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. the conduct is not deserving of a penalty.
47. This element is not met.



Cr Jacobs intended to cause a disadvantage

48. As the above element is not met the Panel has not further considered this element.

Conclusion

49. Given the above, the elements required to find a breach of regulation 18(1)(b) of the Regulations have not been met.

**Allegation 2 – Comment 2**

Cr Jacobs was an Elected Member at the relevant times

50. Cr Jacobs was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

51. This element is met.

Cr Jacobs made use of his office as Council Member of the City

52. For the same reasons set out in paragraph 35, the Panel finds that it is more likely than not that Cr Jacobs was acting in his capacity as an elected member made use of his office as a council member.

53. This element is met.

Cr Jacobs's use was improper

54. The relevant comment the subject of Allegation 2 is that the Mayor was:

*“turning Canning’s council chamber into a kangaroo court”*

55. The Complainant alleges that Comment 2 impugns the integrity of the Council and adversely reflects on the decision made by it and the manner in which its deliberations are made.

56. The term “kangaroo court” is commonly recognised as being derogatory and is defined as follows:

- a. a mock court in which the principles of law and justice are disregarded or perverted; and
- b. a court characterized by irresponsible, unauthorized, or irregular status or procedures<sup>10</sup>

57. In this case the Panel considers that, even in the context where Cr Jacobs as concerned that the Mayor and Council was making a judgment as to the actions of Council prior to a CCC investigation taking place, the reference to the Council as a “kangaroo court” can be considered a breach of the Code of Conduct as it is a clear imputation that the Council is making, or would make, a decision irresponsibly or improperly is derogatory and disparaging of Council.

58. The comment goes further than being robust commentary on a matter of importance to the City.

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<sup>10</sup> “Kangaroo court.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/kangaroo%20court>. Accessed 9 Sep. 2021.

59. The language used went too far in strongly implying that the Council was not able to make decisions in a proper manner and considered manner and would be unduly influenced by the information provided by Mayor Hall.
60. The Panel considers that such comment was in breach of the Code of Conduct as it:
  - a. used derogatory language towards the Council ; and
  - b. disparaged the character Council in respect to their ability to make decisions; and
61. The Panel finds that it is more likely than not that Comment 2 was improper as:
  - a. the conduct was in breach of the Code of Conduct;
  - b. the conduct 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. the conduct is deserving of a penalty.
62. This element is met.

Cr Jacobs intended to cause a disadvantage

63. The Complainant appears to not distinguish whether Cr Jacobs was concerned as to:
  - a. whether the Mayor should have referred the matter to the CCC; and
  - b. the fact that the Mayor publicly announced the CCC referral in the Special Meeting and, in doing so, and accused Council of inappropriate behaviour before the matter could be properly investigated.
64. The Panel finds, in the context, that the nature of the comments and the basis of concern was the fact that the Mayor referred to the matter publicly and made a negative judgment as to the actions of the Council before the matter was duly considered by the CCC.
65. However irrespective of the above, Cr Jacobs made the relevant comment to a journalist with full knowledge it would likely to be published.
66. The Panel finds that the use of the particular term “kangaroo court” was intended to be derogatory towards both the Council’s aptitude and Mayor Hall for his actions at the relevant Council meeting.
67. The Panel finds to the required standard that Cr Jacobs had an intention to cause a detriment when referring to the Council as a “kangaroo court”.
68. This element is met.

Conclusion

69. Given the above, the elements required to find a breach of regulation 18(1)(b) of the Regulations have been met.



### **Allegation 3 – Comment 3**

#### Cr Jacobs was an Elected Member at the relevant times

70. Cr Jacobs was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
71. This element is met.

#### Cr Jacobs made use of his office as Council Member of the City

72. For the same reasons set out in paragraph 35, the Panel finds that it is more likely than not that Cr Jacobs was acting in his capacity as an elected member made use of his office as a council member.
73. This element is met.

#### Cr Jacobs's use was improper

74. The relevant comment the subject of Allegation 3 is as follows:
- "I think there's a well-established process the local government and relevant State bodies deal with local government compliance.... I think the Mayor may have contaminated that process' procedural fairness."*
75. In the relevant context there were genuine concerns in respect to the manner in which Mayor Hall introduced the matter of a breach of confidentiality and the referral to the matter to CCC.
76. Comment 3 is substantially accurate in that there are established processes for both complaints of serious and minor breaches under the Act.
77. It is further noted that the City is permitted to report suspected serious misconduct to the CCC.
78. However, it is a general principle of procedural fairness and equity that an accusation of wrongdoing should not be made in a highly public forum before any investigation has occurred by the body the complaint has been made to. This is especially the case where there has been no evidence provided to support such public accusation.
79. Therefore the Panel considers that Comment 3 is raising a reasonable concern and is not improper in its subject matter.
80. In addition, the language of Comment 3 is not derogatory or objectively offensive in nature and does not disparage Mayor Hall's character, but rather queries his method of raising the matter.
81. Further the panel does not consider that Comment 3 imputes dishonest or unethical motives, but rather questions the proper procedure that should be followed.
82. Given the above, the Panel finds that Comment 3 was not improper as:
- a. the conduct was not in breach of the Code;
  - b. the conduct was not 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. the conduct is not deserving of a penalty.



83. This element is not met.

Cr Jacobs intended to cause a disadvantage

84. In this case the Panel considers that Comment 3 was intended to point out the possible procedural fairness problems where Mayor Hall publicly accused an unnamed elected member of improper conduct.

85. It is a reasonable stance for a councillor to make comment where they genuinely believe that proper process has not been followed and that such failure to follow process may adversely affect the outcome of a matter.

86. Although Comment 3 may have the effect to portraying Mayor Hall in a less positive light, the Panel considers the predominate reason for making the comment was make the public aware of Cr Jacob's concerns as to procedural fairness.

87. The Panel finds to the required standard that in answering the relevant question in the manner he did, Cr Jacobs did not have an intention to cause a detriment to Mayor Hall.

88. This element is not met.

Conclusion

89. Given the above, the elements required to find a breach of regulation 18(1)(b) of the Regulations have not been met.

**Allegation 4 – Comment 4**

Cr Jacobs was an Elected Member at the relevant times

90. Cr Jacobs was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

91. This element is met.

Cr Jacobs made use of his office as Council Member of the City

92. For the same reasons set out in paragraph 35, the Panel finds that it is more likely than not that Cr Jacobs was acting in his capacity as an elected member made use of his office as a council member.

93. This element is met.

Cr Jacobs's use was improper

94. The relevant comment the subject of Allegation 2 is that the Mayor was:

*"I don't think (council) have to put up with extremely bad behaviour and unfounded, baseless accusations from someone - that in my opinion, is not really good at his job at the moment."*

95. In this case Comment 4 clearly specifically refers to Mayor Hall and expressly accuses him of "extremely bad behaviour" and being "not really good at his job".

96. The Panel considers that such comment was in breach of the Code of Conduct as it:

- used derogatory and language towards Mayor Hall; and



- b. disparaged the character of Mayor Hall in relation to his job as Mayor;
  - c. strongly implied that Mayor Hall's conduct had been, if not unethical, then at least improper.
- 97. In addition, Comment 3 can be seen to not deal with the media in a "positive and appropriate manner" as it goes further than criticising a policy or procedural breach, but personally comments on the character of Mayor Hall and his ability to do his job as Mayor.
  - a. in the circumstances it would appear clear to a reasonable person that Cr Jacobs was stating a personal opinion, not speaking on behalf of the City.
- 98. The Panel finds that it is more likely than not that Comment 4 was improper as:
  - a. the conduct was in breach of the Code of Conduct;
  - b. the conduct 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. the conduct is deserving of a penalty.
- 99. This element is met.
- 100. Despite the above, the Panel comments that in respect to the allegation Cr Jacobs breach section 2.8 of the Act by 'speaking on behalf of the Local Government':
  - a. the Panel is not empowered to make any decision in that in that respect;
  - b. that section is stated as a positive obligation on a mayor, not a prohibition on other parties speaking publicly; and

Cr Jacobs intended to cause a disadvantage

- 101. Cr Jacobs made the relevant comment to a journalist with full knowledge it would likely to be published.
- 102. Further, Comment 4 is highly specific to Mayor Hall and questions his motives and performance as mayor.
- 103. The Panel finds to the required standard that the only reasonable interpretation of Comment 4 is that Cr Jacobs had an intention to cause a detriment to Mayor Hall.
- 104. This element is met.

Conclusion

- 105. Given the above, the elements required to find a breach of regulation 18(1)(b) of the Regulations have been met.



### **Panel's Findings**

106. With respect to Allegation 1, Cr Jacobs did not commit a breach of Regulation 18(1)(b) of the Regulations and therefore did not commit a minor breach.
107. With respect to Allegation 2, Cr Jacobs did commit a breach of Regulation 18(1)(b) of the Regulations and therefore did commit a minor breach.
108. With respect to Allegation 3, Cr Jacobs did not commit a breach of Regulation 18(1)(b) of the Regulations and therefore did not commit a minor breach.
109. With respect to Allegation 4, Cr Jacobs did commit a breach of Regulation 18(1)(b) of the Regulations and therefore did commit a minor breach

### **Signing**

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Tim Fraser (Presiding Member)

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Emma Power (Member)

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Deborah Hopper (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	SP 2021-060
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Mayor Patrick Hall</b>
<b>Respondent</b>	<b>Councillor Jesse Jacobs</b>
Local Government	<b>City of Canning</b>
Regulation	Regulation 18 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member)
Heard	19 August 2021 Determined on the documents
Penalty Considered	3 February 2022
Outcome	Public Apology

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## DECISION AND REASONS FOR DECISION

Delivered 24 March 2022

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### 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 19 August 2021, the Panel found that Councillor Jesse Jacobs, a councillor for the City of Canning (**"the City"**), committed two minor breaches under the *Local Government Act 1995 (WA)* (**"the Act"**) and regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* (**"the Regulations"**) when he made certain comments to a journalist that were published in the West Australian Newspaper on 17 May 2021 (**"the Minor Breach"**).

## Jurisdiction and Law

2. The Panel convened on 3 February 2022 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 Councillor Jacobs 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 10 November 2021, Cr Jacobs was:
  - a. notified of the Panel's finding of the Minor Breach;
  - 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)."*

### **Cr Jacobs' Submissions**

7. Despite being provided with several opportunities, Cr Jacobs did not provide a response to the Department.

### **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, 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 the circumstances, the comments made by Cr Jacobs went further than being robust commentary regarding the Council of the City of Canning and the Mayor and was derogatory in nature.
12. In these circumstances the Panel considers that the appropriate sanction is that Cr Jacobs make a public apology.
13. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing<sup>3</sup>. It is a suitable and appropriate penalty when a councillor's conduct:
  - a. adversely affects particular individuals<sup>4</sup>; and/or

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

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

<sup>4</sup> Treby and Local Government Standards Panel [2010] WASAT 81 [127] (Pritchard J).



- b. does not meet the standards other councillors seek to uphold.
14. In the relevant circumstances, the Panel considers that making a public apology is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Cr Jacobs recoup to the City the costs of the Department incurred with respect to the Complaint.

**Panel's decision**

15. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the two Minor Breaches of regulation 4 of the Regulations, Cr Jacobs make a public apology in terms of the attached Order.

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Tim Fraser (Presiding Member)

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Emma Power (Legal Member)

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Peter Rogers (Member)





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## ORDER

Delivered 24 March 2022

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### DEFAMATION CAUTION

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Jesse Jacobs, a councillor for the City of Canning **publicly apologise**:
  - a. as specified in paragraph 2; OR
  - b. failing compliance with paragraph 2 within the specified timeframe, then paragraph 3 shall apply.

#### **Public Apology**

2. On the ordinary council meeting of the City of Canning first occurring after the expiration of **28 days** from the date of service of this Order on him, Cr Jacobs 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 Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when I made certain comments to a journalist that were published in the West Australian Newspaper on 17 May 2021.
- ii. The Panel found that I breached regulation 18 of the said Regulations.
- iii. I accept that I should not have made the relevant comments, which were derogatory and intended to detriment Mayor Patrick Hall and the Council of the City of Canning.
- iv. I now apologise to Mayor Patrick Hall, my fellow Councillors and the public."



3. If Cr Jacobs fails to, or is unable to, comply with the requirements of paragraph 2 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 2 above the Chief Executive Officer of the City of Canning shall arrange for the notice of public apology to be published:
- on the Facebook Page of the City of Canning in no less than 10 point font size; and
  - in an appropriate place on the website of the City of Canning in no less than 10 point font size; and
  - in the next occurring issue of any City of Canning public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

**PUBLIC APOLOGY BY COUNCILLOR JESSE JACOBS**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Division 4 of the Local Government (Model Code of Conduct) Regulations 2021 when I made certain comments to a journalist that were published in the West Australian Newspaper on 17 May 2021.

The Panel found that I breached regulation 18 of the said Regulations.

I accept that I should not have made the relevant comments which were derogatory and intended to detriment Mayor Patrick Hall and the Council of the City of Canning.

I now apologise to Mayor Patrick Hall, my fellow Councillors and the public.



## 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."