



Local Government Standards Panel

Complaint Number	SP 2021-061
Legislation	<i>Local Government Act 1995</i>
Complainant	Councillor Jesse Jacobs
Respondent	Mayor Patrick Hall
Local Government	City of Canning
Regulation	Regulation 34D of the <i>Local Government (Administration)</i> <i>Regulations 1996</i>
Panel Members	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Deb Hopper (Member)
Heard	19 August 2021 Determined on the documents
Finding	1 x Breach of Regulation 34D

FINDING AND REASONS FOR FINDING

Delivered 26 October 2021

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 19 August 2021, the Panel found that Mayor Patrick Hall, Mayor of the City of Canning (**"the City"**):
 - a. did commit one minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and regulation 34D of the *Local Government (Administration) Regulations 1996* (**"the Regulations"**) when at the Special Council Meeting of 10 May 2021 he stated that the Council could not be trusted; and
 - b. did not commit three minor breaches pursuant to the Act and regulation 34D of the Regulations when at the Special Council Meeting of 10 May 2021 he made reference to prior instances of breaches of confidentiality, 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. Regulation 34D of the Regulations provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
5. Section 5.105(1) of the Act also 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 *Local Government (Model Code of Conduct) Regulations 2021* sets out the rules of conduct for council members and candidates.
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.¹
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 accurate²; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding³.

¹ Section 5.106 of the Act

² *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

³ *Briginshaw v Briginshaw* (1938) 60 CLR 336



9. The Panel does not possess investigative or supervisory powers.⁴ 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 Australia⁵.
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 9 June 2021 the Panel received a complaint from Athanasios (Arthur) Kyron acting as complaints officer of the City (**"the Complaints Officer"**). The same enclosed a Complaint of Minor Breach Form dated 4 June 2021.
14. In the complaint form, the Complainant alleges that that Mayor Hall has breached regulation 34D of the Regulations at the Special Council Meeting of 10 May 2021 when he made the following comments:
 - a. "If you feel it is appropriate that the documentary evidence that might be the basis of an investigation by the Corruption and Crime Commission should be bandied around to a Council that has proven time after time that it cannot be trusted, and I will, or no no you can raise your eyebrows and shake your head ..." (**"Allegation 1"**);
 - b. *"if you're telling me that this council has not had issues with information being leaked outside of this chamber, come on I cannot understand this shock on your face here"* (**"Allegation 2"**);
 - c. *"I'm saying that this Council has been at times unable to retain confidentiality about important information ..."* (**"Allegation 3"**); and
 - d. *"... if this allegation is later proved and I think what will be most concerning is and it should be to all of us that if the allegation is at some time confirmed proved then one of us here is that person."* (**"Allegation 4"**),as set out in paragraph 17 (together **"the Complaint"**).
15. The Panel convened on 19 August 2021 to consider the Complaint.

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

⁵ Section 8(6) of Schedule 5.1 of the Act



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, Mayor Hall was:
 - i. elected to the Council of the City in October 2019 for a term expiring in October 2023;
 - ii. an Elected Member at the time of the alleged breach; and
 - iii. an Elected Member when the Panel met on 19 August 2021;
- b. was satisfied the Complaint was made within six months after the alleged breach occurred⁶;
- 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 breach⁷;
- d. was satisfied the Department had provided procedural fairness to Mayor Hall; 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 Complainant alleged that Mayor Hall has contravened the *City of Canning Standing Orders Local Law 2015* (**"Local Law"**) when chairing the Special Council Meeting of the City of Canning on Monday 10 May 2021 (**"the SCM"**).
- b. Local Law 7.17 provides that:
 - "(1) A member must not reflect adversely on a decision of the Council except on a motion that the decision be revoked or changed.*
 - (2) A Member is not to-*
 - (a) reflect adversely on the character or actions of another Member or employee; or*
 - (b) impute any motive to a Member or employee,**unless the meeting resolves, without debate, that the matter before the meeting cannot otherwise be adequately considered.*
 - (3) A Member, or a member of the public, must not use offensive or objectionable expressions in reference to any Member, employee or other person.*

⁶ Section 5.107(4) and 5.109(2) of the Act

⁷ Section 5.107 and 5.109 of the Act



- (4) *A Member must at all times be factual when dealing with matters before Council and not knowingly make a false or misleading statement.*
- c. During the SCM Mayor Hall in response to a question from Councillor Barry stated:
- “If you feel it is appropriate that the documentary evidence that might be the basis of an investigation by the Corruption and Crime Commission should be bandied around to a Council that has proven time after time that it cannot be trusted, and I will, or no no you can raise your eyebrows and shake your head ...” (“Comment 1”).*
- d. This comment reflects adversely on the Council and Council Members. It has no basis in fact.
- e. Mayor Hall also stated:
- “if you're telling me that this council has not had issues with information being leaked outside of this chamber, come on I cannot understand this shock on your face here”. (“Comment 2”)*
- f. This comment reflects adversely on the Council and Council Members. It has no basis in fact. It also imputes Councillors have engaged in unlawful conduct.
- g. The following exchange then occurred:
- Councillor Barry: *“And you're saying that you're attributing it to here?”*
- Mayor Hall: *“I'm saying that this Council has been at times unable to retain confidentiality about important information ...” (“Comment 3”)*
- h. This comment reflects adversely on the Council and Council Members. It has no basis in fact. It also imputes that Councillors have acted unlawfully.
- i. Mayor Hall also stated:
- “... if this allegation is later proved and I think what will be most concerning is and it should be to all of us that if the allegation is at some time confirmed proved then one of us here is that person.” (“Comment 4”)*
- j. This comment directly reflects upon one or more Council Members. It imputes that one or more Council Members have acted unlawfully.
- k. Each of the statements breach Local Law 7.17 (2) & (4).
18. The Complainant also provided:
- a. Minutes of the SCM; and
- b. a recording of the SCM.

The Respondent's Response

19. By an email dated 9 July 2021, Mayor Hall provided a response to the Complaint.



20. Mayor Hall provided the following comments and arguments regarding the Complaint as summarised by the Panel:
- a. Mayor Hall strongly refutes the allegations made by Cr Jacobs .
 - b. Mayor Hall provided a background in respect to the matter being discussed at the SCM which related to the CEO recruitment process being undertaken by the City and an allegation that a member of the CEO Recruitment Panel (which comprised all 11 Members of Council) gave personal feedback to one of the candidates and leaked certain other information related to the recruitment process.
 - c. Mayor Hall asserts the matter has caused the Council considerable reputational damage, and it has cast suspicion over the entire Council. The conduct has been reported to both the Corruption and Crime Commission (CCC) – as ‘serious misconduct’, and the Department, and it has attracted extensive state-wide media coverage.
 - d. In response to the comments made by Mayor Hall at the SCM – Councillor Tim Porter called a Point of Order in accordance with Section 8.2 of the City’s Local Law on the basis that the comments had “adversely reflected”.
 - e. The audio recording of the meeting will show that – as the presiding officer, Mayor Hall dealt with the matter by immediately ruling on the point of order called by Councillor Porter.
 - f. It is open to any Elected Member to then move a motion of dissent and to disagree with the ruling of the presiding member (on the point of order). No Elected Member exercised the right to do so.
 - g. Mayor Hall submits that the fact that the ruling was not disagreed with is evidence that in the minds of the Council the matter raised by Councillor Porter, that Mayor Hall had adversely reflected, had been dealt with.
 - h. Irrespective of whether the ruling was correct, the fact that the matter was raised on the night and “*dealt with by the person presiding at the meeting*” satisfies the requirement of Regulation 13(1)(b) of the Regulations, and therefore the Complaint should be dismissed.
 - i. Mayor Hall also submit that he believes that the intention of 7.17 of the Local Law is to prevent adverse reflection by individual Elected Members toward other individual Elected Members, and that it was introduced to mitigate ‘personal attacks’.
 - j. The comments made referred to “a Council” collectively (as a governing body) – which includes Mayor Hall.
 - k. The comment did not adversely reflect on a decision of Council, nor did it single out, name, or adversely reflect on any individual Elected Member.
 - l. Further, 7.17 of the Local Law provides a specific exemption which would allow adverse reflection to occur “if the matter before the meeting could not otherwise be adequately considered”. Whilst this exemption would normally require a resolution of Council, considering the actual subject matter of the Special



Council Meeting (the alleged leaking of confidential information by an Elected Member) it would be reasonable to find that it was practically impossible to discuss and debate the matter before the Council on the night without inadvertently reflecting adversely at some point.

- m. Mayor Hall submits that the Local Law intentionally created a provision which allows 'adverse reflection' to occur in certain situations, given that at times unique (albeit rare) circumstances might require a topic to be discussed candidly and therefore lead to inadvertent criticism (adverse reflection) of individual Members.
- n. This notion of candid debate is supported by an earlier motion on the night of the SCM to suspend Local to allow Elected Members to speak more than once on the item, and is evidence that it was the clear intent of Council on the night to allow full and frank discussion on this difficult subject matter.
- o. Mayor Hall believes this Complaint is a tit-for-tat response to another minor breach complaint.
- p. The comments made by Mayor Hall are factual and there is ample relevant evidence that the City of Canning Council (again, as a body) has been unable to retain confidential information and that sensitive information has been frequently leaked to the media, to agitators within the community, and even to its own stakeholders.
- q. Mayor Hall provided various examples of these occurrences and set out the specific measures and controls that have been introduced mitigate the inherent and continuing risk of leaks.
- r. The SCM was open to the public for the purposes of transparency, but more particularly from the point of view of accountability.
- s. It is Mayor Hall's view is that the particular item (the alleged leaking of information by a Councillor) could not be reasonably discussed – whether publicly or as a confidential item, without the City of Canning and its Council inadvertently being adversely reflected upon at some point either directly or indirectly.
- t. The SCM was a long and significantly difficult meeting held in particularly difficult circumstances.
- u. An allegation of serious misconduct by an unidentified City of Canning Elected Member had been reported to the Department and to the Corruption and Crime Commission, and Council was placed in a position where it needed to confront the allegation and openly discuss options in relation to the CEO Recruitment process – which had been hopelessly compromised.
- v. The conversation between Mayor Hall and Cr Barry was somewhat challenging for Mayor Hall personally due to various reasons including the fact the administration (and Mayor Hall) had refused his requests to have the evidence released.



- w. The transcript of the conversation demonstrates that Mayor Hall was genuinely surprised by his unwillingness to accept the position and by his continued badgering on the subject.
 - x. In the absence of any alternative, Mayor Hall felt it necessary and appropriate to state the obvious, namely that this Council had regrettably shown itself to at times be unable to retain confidential information.
 - y. In hindsight, Mayor Hall accepts that his words could have been more carefully chosen, however as a Presiding Member it is not always possible to immediately and spontaneously find the most appropriate turn of phrase (in a 'live' meeting) to convey the sentiment that one might wish to convey.
 - z. It should be clear to any person that the words spoken were not intended to cause offence, nor were they intended to deliberately besmirch the Council.
 - aa. Mayor Hall's role as the Presiding Officer includes the requirement to maintain order, and he felt at the time – and still feel, that his response to Cr Barry was both factual and warranted (in the circumstances). I am genuinely embarrassed to admit that this Council (as a body) has shown that it cannot be trusted to maintain the confidentiality of information provided to it. This is a view that is already in the public domain and has already been widely reported on in the media.
 - bb. Mayor Hall would respectfully ask the Panel to dismiss this complaint of a Minor Breach as the Act provides the authority for the Panel to refuse to deal with a complaint if the standards panel is satisfied that the complaint is frivolous, trivial, vexatious, misconceived or without substance.
 - cc. With respect, the complaint by Cr Jacobs is trivial and may also – in the circumstances outlined above, be misconceived.
21. Mayor Hall also provided the following additional information:
- a. Minutes from the SCM;
 - b. transcript from the SCM;
 - c. various emails regarding issues of confidentiality and the City.

Regulation 34D

22. Regulation 34D of the Regulations 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.”

23. 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.”

24. To make a finding of a minor breach of regulation 34D of the Regulations the Panel must be satisfied, to the required standard, that:
- Mayor Hall was an Elected Member at the time of the alleged breach and the time of the determination;
 - the conduct occurred during a council or committee meeting; and
 - Mayor Hall breached a valid provision of a local law as to conduct, being the *City of Canning Standing Orders Local Law 2015*.

Panel’s Consideration

Allegation 1 – Comment 1 - Regulation 34D

Mayor Hall was an Elected Member at the relevant times

25. Mayor Hall was an Elected Member at the time of the alleged breach and at the date the Panel considered the Complaint.
26. This element is met.

The conduct occurred at a council or committee meeting

27. The relevant conduct occurred during the Special Council Meeting of the City of 10 May 2021.
28. This element is met.

Mayor Hall breached a valid provision of the *City of Canning Standing Orders Local Law 2015*

29. Cr Jacobs has alleged that Mayor Hall breached provision 7.17 of the Local Law.
30. It is an essential element to find a minor breach of Regulation 34D that the breach is of a “local law relating to conduct of people at council or committee meetings”.
31. This has two requirements being that:
- the same is a “local law”, being the formal gazetted meeting procedures or standing orders local law⁸ (the Meeting Procedures is such a law); and

⁸ See *Ryan and Local Government Standards Panel* [2009] WASAT 154 and *Steck and Local Government Standards Panel* [2011] WASAT 117.



- b. the relevant Meeting Procedure clause breached must relate to “conduct” rather than being concerned as to procedure.
32. The State Administrative Tribunal has previously established that a local government’s standing orders that refer to the prohibition on a Member’s conduct in terms substantially similar to provision 7.17 relates to “conduct” for the purposes of Regulation 34D (then regulation 4 of the *Local Government (Rules of Conduct) Regulations 2007*)⁹.
33. To make a finding that this provision has been breached the comments by Mayor Hall must reflect adversely on the character or actions of another member or employee.
34. There is no definition of “*adverse reflection*” in the Meeting Procedures, Act or Regulations.
35. “Adverse” is defined as “*acting against or in a contrary direction or Hostile*”¹⁰.
36. The Panel considers that the use of the word “adverse” requires a higher level of negativity than mere disapproval or disagreement.
37. In respect to the word “reflection”, the Panel has taken this word in its common usage, and in the context of the Act, to mean “*consideration of some subject matter, idea, or purpose*”¹¹.
38. Therefore, a council member will reflect adversely upon the actions of another member if the council member makes a remark or observation that relates to any thing done by the other member, and the remark or observation would be perceived by a reasonable person as tending to lower a person in the estimation of his or her fellow persons by making them think less of him or her¹².
39. In this case the relevant comment is as follows:
- “ *If you feel it is appropriate that the documentary evidence that might be the basis of an investigation by the Corruption and Crime Commission should be bandied around to a Council that has proven time after time that it cannot be trusted, and I will, or no no you can raise your eyebrows and shake your head ...* ”
40. The Panel considers that the words “*a Council that has proven time and time again that it cannot be trusted*” amount to adverse reflection.
41. Such statement is extremely broad and would be considered by any reasonable person to be made with the intention of showing the Council in a bad light and making the public think less of the Council.

⁹ *Treby and Local Government Standards Panel* [2009] WASAT 224

¹⁰ “Adverse.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/adverse>. Accessed 5 Aug. 2020.

¹¹ “Reflection.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/reflection>. Accessed 5 Aug. 2020.

¹² Local Government Standards Panel SP 30 of 2008



42. Mayor Hall has provided several arguments as to why the comments were permitted as follows:
 - a. the matter had already been dealt with during the meeting by Mayor Hall ruling on the point of order called by Councillor Porter, therefore under regulation 13(1)(b) of the Regulations the Complaint should be dismissed;
 - b. the comment did not adversely reflect on any individual Elected Member but the Council as a whole; and
 - c. the Local Law intentionally created a provision which allows 'adverse reflection' to occur in where a topic is to be discussed candidly as Clause 7.17 of the Local Law provides a specific exemption which would allow adverse reflection to occur *"if the matter before the meeting could not otherwise be adequately considered"*.
43. The Panel comments on these reasons as set out below.
44. In the case where a Presiding Member is the party alleged to have engaged in adverse reflection and has summarily ruled on a point of order, it is reasonable to consider that:
 - a. the Presiding Member may not be acting impartially in reaction to the matter; and
 - b. the elected members present may not raise a motion of dissent in anticipation that such motion would be unsuccessful where a Presiding Member is ruling in respect to their own conduct.
45. Regulation 13(1)(b) of the Regulations only applies for complaints being considered by the local council, not complaints referred to the Standards Panel so does not apply in this case.
46. The Panel considers the argument that an adverse reflection can only apply to individuals, not a group or council as a whole disingenuous. An adverse reflection is not more acceptable for being directed at an identifiable group of people.
47. In respect to the argument that the Local Law created a provision which allows 'adverse reflection' to occur in certain situations this is correct.
48. However, in this case, the exception in section 7.17 did not apply. As conceded by Mayor Hall, this requires a resolution of Council.
49. It is not within the discretion of any one member of Council, even the presiding member, to decide whether the required procedure relating to a Local Law should apply or not.
50. Finally, in *Treby and Local Government Standards Panel [2009] WASAT 224* the Tribunal determined:

" a councillor is able to meaningfully participate in the good government of the persons in the district, and to duly, faithfully, honestly and with integrity fulfil the duties of the office for the people of the district according to his or her best judgment and ability, without reflecting adversely upon the character or actions of another member or an officer of the local government or importing



any motive to a member or officer. Indeed, good government requires courtesy among those elected to govern.”

51. Councillors do have the ability to comment, even negatively, on Council business or the conduct of others, however, in this is limited by the prohibition of making adverse reflection.

52. This element is met

Conclusion

53. The elements required to find a breach of regulation 34D of the Regulations have been met.

Allegation 2 – Comment 2 – Regulation 34D

Mayor Hall was an Elected Member at the relevant times

54. Mayor Hall was an Elected Member at the time of the alleged breach and at the date the Panel considered the Complaint.

55. This element is met.

The conduct occurred at a council or committee meeting

56. The relevant conduct occurred during the Special Council Meeting of the City of 10 May 2021.

57. This element is met.

Mayor Hall breached a valid provision of the *City of Canning Standing Orders Local Law 2015*

58. Cr Jacobs has alleged that Mayor Hall breached provision 7.17 of the Local Law.

59. As noted above, this section is considered a provision relating to “conduct” for the purposes of Regulation 34D.

60. In this case the relevant comment was as follows:

“ if you’re telling me that this council has not had issues with information being leaked outside of this chamber, come on I cannot understand this shock on your face here”.

61. In the context that:

- a. there had been identifiable instances that confidential information being improperly disclosed by members of Council; and
- b. there had been various controls put in place to mitigate future breaches of confidentiality,

the Panel considers that the particular wording used is essentially a factual statement of past occurrences and does not amount to being an adverse reflection.

62. This element is not met.



Conclusion

63. The elements required to find a breach of regulation 34D of the Regulations have not been met.

Allegation 3 – Comment 3 – Regulation 34D

Mayor Hall was an Elected Member at the relevant times

64. Mayor Hall was an Elected Member at the time of the alleged breach and at the date the Panel considered the Complaint.
65. This element is met.

The conduct occurred at a council or committee meeting

66. The relevant conduct occurred during the Special Council Meeting of the City of 10 May 2021.
67. This element is met.

Mayor Hall breached a valid provision of the *City of Canning Standing Orders Local Law 2015*

68. Cr Jacobs has alleged that Mayor Hall breached provision 7.17 of the Local Law.
69. As noted above, this is considers a provision relating to “conduct” for the purposes of Regulation 34D.
70. In this case the relevant comments is as follows:
- “ I’m saying that this Council has been at times unable to retain confidentiality about important information ...”*
71. Similarly to Comment 2, in the context that there had been identifiable instances that confidential information being improperly disclosed by members of Council the Panel considers that the particular wording used is essentially a factual statement and does not amount to being an adverse reflection.
72. However, the Panel would encourage Mayor Hall to not make generalised statements that imply the the entire Council had engaged in such conduct, rather than a few individuals.
73. This element is not met

Conclusion

74. The elements required to find a breach of regulation 34D of the Regulations have not been met.



Allegation 4 – Comment 4 – Regulation 34D

Mayor Hall was an Elected Member at the relevant times

75. Mayor Hall was an Elected Member at the time of the alleged breach and at the date the Panel considered the Complaint.
76. This element is met.

The conduct occurred at a council or committee meeting

77. The relevant conduct occurred during the Special Council Meeting of the City of 10 May 2021.
78. This element is met.

Mayor Hall breached a valid provision of the *City of Canning Standing Orders Local Law 2015*

79. Cr Jacobs has alleged that Mayor Hall breached provision 7.17 of the Local Law.
80. As noted above, this provision is considered a provision relating to “conduct” for the purposes of Regulation 34D.
81. In this case the relevant comments is as follows:
- “... if this allegation is later proved and I think what will be most concerning is and it should be to all of us that if the allegation is at some time confirmed proved then one of us here is that person.”*
82. The matter being discussed was specifically in relation to alleged provision of confidential information by an elected member in respect to CEO recruitment.
83. In the event that such allegation was in fact accurate, then this would be a genuine cause for concern.
84. Further, Comment 4 does not accuse any party of wrongdoing.
85. As such, Comment 4 does not amount to being an adverse reflection.
86. This element is not met

Conclusion

87. The elements required to find a breach of regulation 34D of the Regulations have not been met.



Panel's Findings

88. In respect to Allegation 1 - Mayor Hall did commit a breach of Regulation 34D of the Regulations and therefore did commit a minor breach.
89. In respect to Allegation 2 - Mayor Hall did not commit a breach of Regulation 34D of the Regulations and therefore did not commit a minor breach.
90. In respect to Allegation 3 - Mayor Hall did not commit a breach of Regulation 34D of the Regulations and therefore did not commit a minor breach.
91. In respect to Allegation 4 - Mayor Hall did not commit a breach of Regulation 34D of the Regulations and therefore did not commit a minor breach.

Signing

Tim Fraser (Presiding Member)

Emma Power (Member)

Deborah Hopper (Deputy Member)



Local Government Standards Panel

Complaint Number	SP 2021-061
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Councillor Jesse Jacobs
Respondent	Mayor Patrick Hall
Local Government	City of Canning
Regulation	Regulation 34D of the <i>Local Government (Administration) Regulations 1996</i>
Panel Members for Penalty Consideration	Mr Tim Fraser (Presiding Member) Councillor Peter Rogers (Member) Ms Elanor Rowe (Deputy Member)
Heard	19 August 2021 Determined on the documents
Penalty Considered	9 December 2021
Outcome	Public Apology

DECISION AND REASONS FOR DECISION

Delivered 16 January 2022

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 Mayor Patrick Hall (“Mayor Hall”), an elected member for the City of Canning (“the City”), committed one minor breach under the Local Government Act 1995 (WA) (“the Act”) and regulation 34D of the *Local Government (Administration) Regulations 1996* (“the Regulations”) when he said that the Council could not be trusted at the Special Council Meeting that was held on 10 May 2021 (“Minor Breach”).
2. On 26 October 2021, the Panel published its Finding and Reasons for Finding (“Finding”) stating that Mayor Hall had breached Regulation 34D. The Panel reviewed all the evidence presented to it and made the following observations:

“46. The Panel considers the argument that an adverse reflection can only apply to individuals, not a group or council as a whole disingenuous. An adverse reflection is not more acceptable for being directed at an identifiable group of people.

.....

51. Councillors do have the ability to comment, even negatively, on Council business or the conduct of others, however, this is limited by the prohibition of making adverse reflection.”

Jurisdiction and Law

3. The Panel convened on 9 December 2021, to consider how it should deal with the Minor Breach. 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 Mayor Hall had ceased to be, or was disqualified from being, a councillor.

Possible Sanctions

4. Section 5.110(6) of 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 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).*

5. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. Under section 5.110(6)(a), the Panel may order that no sanction be imposed; not to reverse the finding of a breach, but to however indicate that in all the circumstances the relevant councillor should not be penalised further.
6. Sub-section 5.110(6)(b)(iv) (in respect of a monetary sanction) was introduced in 2019 to allow the Panel to require a councillor to personally bear the cost of dealing with a complaint, which in other circumstances, would be paid by the local government concerned. This ensures the cost of a breach is borne by the councillor individually, and not simply passed onto the local government and therefore, ultimately, rate payers.

Mayor Hall's Submissions

7. 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
8. By a letter dated 10 November 2021, Mayor Hall was:
 - i. notified of the Panel's Finding of the Minor Breach;
 - ii. provided with a copy of the Panel's Findings; and
 - iii. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.
9. The Department received a response from Mayor Hall on 18 November 2021 in which he submitted that:
 - a. he unreservedly accepted the Panel's Finding; however, no sanction should be imposed;
 - b. he has an exemplary record as an elected member and is a person of integrity and honesty;
 - c. the Finding will attract significant local and state-wide media which will reflect poorly on him personally and will cause him humiliation and embarrassment;
 - d. at the Special Council Meeting, a highly sensitive and emotive issue was being discussed and the particular circumstances were unique. He had been under increased pressure in the lead up to it and was unable to articulate properly what he wished to say;

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

- e. he has only held the position of Mayor for 18 months, and a significant amount of that period had been spent either in Covid lockdown or dealing with meetings electronically;
- f. he regretted what happened, will learn from the experience and he will not commit any further breaches. He intended no malice nor was his motivation ever to do so; and
- g. if a sanction is imposed, there would be other “*unforeseen and far-reaching implications*” with regard to him applying for Board and Committee positions.

Panel’s Consideration

10. The purpose of the imposition of a sanction under the Act is generally for the protection of the public and the maintenance of standards of council members. Furthermore, it reflects the disapproval of a contravention of the Regulations, dissuades councillors from other local governments from engaging in similar conduct and facilitates the maintenance of appropriate standards of behaviour by councillors. Guidance on the factors which the Panel may consider in determining the appropriate penalty to impose, include, but are not limited to:
- 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 remorse and insight into his / her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor’s disciplinary history;
 - f. the likelihood or not of the councillor committing further breaches of the Act;
 - g. the councillor’s personal circumstances at the time of the conduct, and at the time of imposing the sanction;
 - h. the 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.
11. In this case, the Panel found that Mayor Hall breached Regulation 34D of the Regulations when, at the Special Council Meeting that was held on 10 May 2021, he reflected adversely on the Council by saying that it could not be trusted.
12. When Mayor Hall was given the opportunity to respond to how the Panel should deal with the Minor Breach, it appears from his Response that he did carefully consider his conduct; he did regret what had happened and he did show genuine contrition.



13. Nonetheless, Mayor Hall's behaviour, the subject of the Minor Breach Finding, was considered a serious matter. The Mayor is the leader of the Council and is supposed to provide leadership and facilitate communication between the community and Council. Mayor Hall's conduct could have seriously damaged the reputation of the Council.
14. When deciding what sanction to impose, the Panel must consider how the penalty will help to guide other councillors and dissuade them from engaging in similar conduct.
15. The Panel does not consider it appropriate to impose no sanction in relation to the Minor Breach, as this would indicate that it was so minor that no penalty is warranted.
16. However, given Mayor Hall's honest and sincere response to how the Minor Breach should be dealt with, the Panel does not consider training to be a suitable penalty. Based on his submissions, it appears that Mayor Hall will think carefully about his actions and decisions in future and that will help him to not engage in similar conduct.
17. The Panel also considered, that in this case, a monetary sanction or an order for censure was not appropriate and would be overly punitive. When the Panel makes an order that a Notice of Public Censure be published, the Notice is published by the local government's Chief Executive Officer, at the expense of the local government; such expense is significant where the Notice is to be published in a newspaper or newspapers.
18. The Panel finds it fair and reasonable that Mayor Hall makes a public apology to the Council. The standards of behaviour expected of elected members are of a generally higher standard than a member of the public, due to their prominent positions in the community. The conduct occurred at a Special Council Meeting and was clearly highly offensive and potentially damaging. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when an elected member's conduct:
 - a. adversely affects a particular individual or party; and / or
 - b. does not meet the standards other councillors seek to uphold.

An apology will go some way to make amends for Mayor Hall's conduct and to help repair the damage caused.



Panel's Decision

19. Having regard to the Findings, the matters set out herein, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under s5.110(6) of the Act, is to order Mayor Hall to make a public apology, pursuant to subsection (b)(ii) of that section, in terms as set out in the attached Order.

A handwritten signature in black ink, appearing to be 'Tim Fraser'.

Tim Fraser (Presiding Member)

A handwritten signature in black ink, appearing to be 'Peter Rogers'.

Peter Rogers (Member)

A handwritten signature in black ink, appearing to be 'Elanor Rowe'.

Elanor Rowe (Deputy Member)



ORDER

Delivered 16 January 2022

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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Mayor Patrick Hall, an elected member for the City of Canning, publicly apologise, as specified in paragraph 2 below, or failing compliance with paragraph 2, then paragraph 3 below.

Public Apology

2. At the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Mayor Patrick Hall ("Mayor Hall") shall:
 - a. attend the relevant ordinary council meeting;
 - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Administration) Regulations 1996 when I said that the Council could not be trusted at the Special Council Meeting that was held on 10 May 2021.
- ii. The Panel found that by behaving in this manner I committed one breach of Regulation 34D of the said Regulations.
- iii. I accept that I should not have acted in such a manner, and I now apologise to the Council for having done so."



3. If Mayor Hall fails to, or is unable to, comply with the requirements of paragraph 2 above in the required timeframe then, within the next 28 days following the ordinary council meeting referred to in paragraph 2 above:
 - a. Mayor Hall shall cause the following notice of public apology to be published in no less than 10-point print, as a one-column or two-column display advertisement in the first 10 pages of the “*Canning News*” newspaper; and
 - b. the Chief Executive Officer of the City of Canning shall arrange for the following notice of public apology to be published in no less than 10-point print or font:
 - i. on the Facebook page of the City of Canning; and
 - ii. in an appropriate place on the website of the City of Canning; and
 - iii. in the next occurring issues of all City of Canning community and public newsletters (if any) (whether in electronic or print copy):

PUBLIC APOLOGY BY MAYOR PATRICK HALL

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the *Local Government (Administration) Regulations 1996* when I said that the Council could not be trusted at the Special Council Meeting that was held on 10 May 2021.

The Panel found that by behaving in this manner I committed one breach of Regulation 34D of the said Regulations.

I accept that I should not have acted in such a manner, and I now apologise to the Council for having done so.

Date of Order: 16 January 2022



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."