

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 21 of 2014 DLG 20140160
Legislation	<i>Local Government Act 1995</i> (WA)
Complainant	Councillor Norm Karafilis
Subject of complaint	Councillor Malcolm Cullen
Local Government	Shire of Coolgardie
Regulation	Regulation 6(2)(a) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Member)
Heard	30 May 2015 Determined on the documents
Outcome	Public apology ordered

DECISION AND REASONS FOR DECISION

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.

1. Definitions

1.1 In these Reasons, unless otherwise indicated:

- (a) a reference to the *Act* is a reference to the *Local Government Act 1995*;
- (b) a reference to a section is a reference to the corresponding section in the *Act*;
- (c) a reference to the *Regulations* is a reference to the *Local Government (Rules of Conduct) Regulations 2007*;
- (d) a reference to a regulation is a reference to the corresponding regulation in *Regulations*; and
- (e) words appearing in **bold** in the Panel's Finding and Reasons for Finding in this matter (**Breach Findings**) bear the same meaning in these Reasons.

2. Summary of Breach Findings

2.1 At its meeting on 3 February 2015 the Local Government Standards Panel (**Panel**) made a finding that Councillor Malcolm Cullen, a member of the Council (**Council**) of the Shire of Coolgardie (**Shire**), committed a breach of regulation 6(2)(a) by making the Statement set out in paragraph 8.1(e) of the Breach Findings to a journalist from the Kalgoorlie Miner Newspaper.

(**Minor Breach**)

3. Summary of Decision

3.1 The Panel considered how the Minor Breach is to be dealt with under section 5.110(6) and concluded, for the following reasons, that Cr Cullen should be ordered to make a public apology to the Shire's Chief Executive Officer and the Councillors of the Shire in terms of Attachment "A" hereto.

4. Notice of the Minor Breach

4.1 By letter dated posted 4 May 2015, the Panel gave to Cr Cullen:

- (a) notice of the Minor Breach (**Notice**);
- (b) a copy of the Breach Findings; and
- (c) a reasonable opportunity for him to make submissions about how the Minor Breach should be dealt with under section 5.110(6).

5. Cr Cullen's response and submissions

5.1 Cr Cullen responded to the Panel by email dated 21 May 2015 (**Submissions**) in which he said:

"I would like to reiterate that the paragraph in 8.1 (f) Meanwhile the Shire of Coolgardie; was written by the journalist, and I would also make it clear that I did not confirm the Shire would be expressing an interest in hosting a facility. At no time did I intend to preempt a decision by Council.

The remainder of the interview was to make the community aware that there was in fact a facility of this type in our Shire, a fact that since this issue has been raised, many residents were not aware of.

In regard to 9.3 (d) It was never the intent of the Council or Shire to consider expressing an interest in a facility, but to support the Federal Government push to have a nation wide process to identify suitable sites.

In the Officer comments of the September Council meeting agenda it states the Shire could tentatively be considered, as per Federal Member Rick Wilson's letter.

I would like to implore to the Panel, that I have the interests of the Shire of Coolgardie as a very high priority, as for the past six years we have come from a very poor position following the disastrous event during the Global Financial Crisis and Lehmann Bros, to one where the Shire is becoming more sustainably and gaining respect in the Region. I would never commit any actions to bring harm or disrespect to the organization at any time and I would also like to add that in the past six years in conducting numerous radio and newspaper interviews that it has always been my intention to promote the Shire in everyway possible.

In conclusion, the fact the Panel found I breached regulation 6(2)(a) I would ask that the complaint be dismissed with a warning, Or alternately I am prepared to make an Apology to the Council and Community."

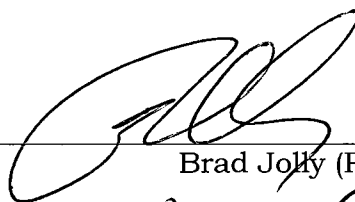
6. Panel's views

- 6.1 Pursuant to clause 8(6) of Schedule 5.1 to the *Act*, each of the Panel's members is to have regard to the general interests of local government in the State.
- 6.2 Section 5.110(6) specifies the sanctions that may be imposed by the Panel for a Minor Breach. The Panel may:
 - (a) dismiss the Complaint;
 - (b) order that —
 - (i) the person against whom the Complaint was made be publicly censured as specified in the order;
 - (ii) the person against whom the Complaint was made apologise publicly as specified in the order; or
 - (iii) the person against whom the Complaint was made undertake training as specified in the order;
 - or
 - (c) order 2 or more of the sanctions described in paragraph (b).
- 6.3 In considering an appropriate sanction or sanctions for the present breach the Panel notes that Cr Cullen:
 - (a) has not previously been found to have breached the *Regulations*; and
 - (b) appears not to accept the Panel's finding that he committed the Minor Breach; and
 - (c) has advised that he is "prepared to make an Apology to the Council and Community."

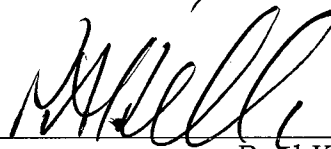
- 6.4 The Panel considers that to enable councillors to properly perform their functions at Council Meetings, it is essential that they have advance access to documentation and information (including confidential documents and information) that may be required to enable them to inform themselves of the issues to be considered at those meetings. It is equally essential that any document or information so provided be kept confidential by councilors.
- 6.5 Because of this, the Panel considers a breach of regulation 6(2)(a) of the *Regulations* to be a serious matter and that the sanction imposed should serve as a reprimand aimed at reformation of the offending council member and prevention of further offending acts and also as a measure in support of the institution of local government and those council members who properly observe the standards of conduct expected of them.
- 6.6 The Panel notes that when it makes an order that a Notice of Public Censure be published, and that the Notice is to be published by the local government's CEO at the expense of the local government, such expense is significant where such publishing is to be in a newspaper or newspapers.
- 6.7 In the present case, on the evidence available to the Panel, it finds that it is more likely than it is not that when Cr Cullen made the Statement he did not appreciate that he was disclosing information derived from a confidential document, being the CEO's Report. Because of this and the matters set out in paragraphs 6.3(a) and (c) above, the Panel does not consider that it should order a public censure.
- 6.8 The Panel also notes that a public apology of the kind ordered by the Panel is a significant sanction, as it involves a high degree of public admonition of the conduct of the council member concerned.
- 6.9 However, the Panel considers that Cr Cullen ought to have appreciated that the information imparted by his Statement disclosed information derived from the CEO's Report, which was clearly marked as a "Confidential Item" and that such information should not have been disclosed by him.
- 6.10 In these circumstances the Panel considers that:
- (a) dismissal of the Complaint would not reflect the seriousness of the Minor Breach; and
 - (b) it is appropriate that Cr Cullen be ordered to make a public apology to the Shire's Chief Executive Officer and the Councillors of the Shire in terms of Attachment "A" hereto.
- 6.11 As there is no evidence to suggest that the Minor Breach occurred through Cr Cullen's lack of knowledge or education on the issue or issues concerned, the Panel does not consider it would be appropriate to order that Cr Cullen attend training.

7. Panel decision

- 7.1 Having regard to the Breach Findings, the matters set out in paragraphs 5 and 6 above, 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 section 5.110(6), is that pursuant to subsection (b)(ii) of that section, Cr Cullen is ordered to publicly apologise to the Shire's Chief Executive Officer and to the Councillors of the Shire as set out in Attachment "A" hereto.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Peter Doherty (Member)

NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (**Panel**) hereby gives notice that:

- (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."

Attachment "A"

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 21 of 2014 DLG 20140160
Legislation	<i>Local Government Act 1995 (WA)</i>
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Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Member)
Heard	30 May 2015 Determined on the documents

ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Malcolm Cullen, a member of the Council of the Shire of Coolgardie, apologise publicly to the Shire's Chief Executive Officer and to the Councillors of the Shire, as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the next Shire of Coolgardie Ordinary Council Meeting immediately following the date of service of this Order on Malcolm Cullen:
 - (a) Malcolm Cullen, as the presiding person, shall announce that he will address the meeting immediately following Public Question Time or during the Announcements part of the meeting or at such time during the meeting when it is open to the public for the purpose of the said Malcolm Cullen making a public apology to Complainant; and

- b) Malcolm Cullen shall verbally address the Council as follows, without making any introductory words prior to the address, and without making any comment or statement after the address:

"I advise this meeting that:

- (1) A Complaint has been made to the Local Government Standards Panel, in which it was alleged that on or about 22 September 2014 I contravened regulation 6(2) of the Local Government (Rules of Conduct) Regulations 2007 when I made a statement to a journalist from the Kalgoorlie Miner newspaper.*
 - (2) The Local Government Standards Panel has considered the Complaint, and has made a finding of minor breach, namely that on or about 22 September 2014 Council I committed a breach of the said regulation when I made a statement to a journalist of the Kalgoorlie Miner newspaper which disclosed information derived from a confidential report prepared by the Shire's Chief Executive Officer in relation to an Intractable Waste Facility.*
 - (3) I accept that I should not have disclosed this information and apologise to the Shire's Chief Executive Officer and my fellow Councillors for disclosing it."*
3. If Malcolm Cullen fails or is unable to comply with the requirements of paragraph 2 above within 14 days after the next Shire of Coolgardie Ordinary Council Meeting immediately following the date of service of this Order on her, Malcolm Cullen shall cause the following Notice of Public Apology to be published, in no less than 10 point print, as a one-column or a two-column display advertisement in the first 20 pages of the *Kalgoorlie Miner* newspaper.

PUBLIC APOLOGY

- (1) *A Complaint has been made to the Local Government Standards Panel in which it was alleged that on or about 22 September 2014 I contravened regulation 6(2) of the Local Government (Rules of Conduct) Regulations 2007 when I made a statement to a journalist of the Kalgoorlie Miner newspaper.*
- (2) *The Local Government Standards Panel has considered the Complaint and has made a finding of minor breach, namely that on or about 22 September 2014 Council I committed a breach of the said regulation when I made a statement to a journalist of the Kalgoorlie Miner newspaper, which disclosed information derived from a confidential report prepared by the Shire's Chief Executive Officer in relation to an Intractable Waste Facility.*
- (3) *I accept that I should not have disclosed this information and apologise to the Shire's Chief Executive Officer and my fellow Councillors for disclosing it."*

Malcolm Cullen

