

LOCAL GOVERNMENT STANDARDS PANEL

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

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|---------------------------|---|
| Complaint Number | SP 60 of 2015 [DLG 20150292] |
| Legislation | <i>Local Government Act 1995</i> |
| Complainant | Councillor James Kelly |
| Subject of complaint | Councillor Brennan |
| Local Government | Shire of Victoria Plains |
| Regulation | Regulation 4 of the <i>Local Government (Rules of Conduct) Regulations 2007</i> |
| Panel Members | Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member) |
| Sanction Decision | Public apology Determined on the documents |
| Date of Sanction Decision | 22 November 2016 |

SANCTION DECISION AND REASONS FOR DECISION

Published 07 December 2016

DEFAMATION CAUTION

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Finding of minor breach – regulation 4

1. On 2 August 2016 the Panel found that Councillor John Brennan (Cr Brennan), a councillor for the Shire of Victoria Plains (the Shire), committed a minor breach of regulation 4 of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) at an ordinary council meeting on 15 July 2015 when he directed offensive, objectionable and disrespectful comments to Councillor James Kelly (Cr Kelly).
2. On 27 October 2016 the Panel published its Reasons for finding that Cr Brennan breached regulation 4 (the Reasons).

Possible sanctions

3. Under section 5.110(6) of the *Local Government Act 1995* (WA) (the Act) the Panel may:
 - (a) *dismiss the complaint;*
 - (b) *order that the councillor —*
 - (i) *be publicly censured as specified in the order;*
 - (ii) *apologise publicly as specified in the order; or*
 - (iii) *undertake training as specified in the order;*
 - or*
 - (c) *order 2 or more of the sanctions described in paragraph (b).*

Councillor's submission

4. If the Panel finds that a councillor has committed a minor breach, the Panel must give the councillor an opportunity to make submissions to the Panel about how the breach should be dealt with.¹
5. By letter dated 27 August 2016, the Department notified Cr Brennan of the Panel's finding, sent him a copy of the Reasons and invited him to make a written submission about how the Panel should deal with the breach.
6. On 11 November 2016, the Department received an email submission from Cr Brennan as to how the breach should be dealt with, in which he said:

"I am writing this letter to ask that the complaints panel dismiss the minor breach made by me against Cr Kelly in July '15.

I am sorry for this happening and I am also rather embarrassed by the event. I had some personal issues affecting me at this time. Being an elected member for nearly 12 years and with a spotless record, I was upset with myself that I let these personal issues affect my judgment.

¹ Section 5.110(5) of the Act.

I will not be seeking re-election next year, we are selling the farm and will be probably leaving the area in March. I will have to resign my position. I believe I have learnt my lesson and have not let personal issues affect my behaviour at meetings since and I have no animosity towards Cr Kelly.

Yours Sincerely
John Brennan."

Panel's consideration

7. On 2 August 2016 the Panel found that Cr Brennan directed the following statement to Cr Kelly at the council meeting:

"If you don't shut your mouth, I'll knock your fucking head off."

8. In its Reasons the Panel said:

"46. For there to be a breach under regulation 4 it is only necessary for the Panel to find that the words matched one of the characteristics listed in paragraph 27 above, however the Panel finds that the words were offensive as well as objectionable, and disrespectful to Cr Kelly, for the following reasons.

Offensive

47. The meaning of "offensive" includes causing offence or displeasure; irritating; highly annoying ... repugnant to the moral sense, good taste or the like ... insulting.² The meaning of "offence" includes the feeling of resentful displeasure caused.³ The meaning of "resentment" includes the feeling of displeasure ... or indignation as something regarded as an injury or insult.⁴
48. The dictionary meaning of "offensive" indicates that words can be offensive to a person to whom they are directed or offensive to another person who hears the words.
49. In his Complaint Cr Kelly perceived a look of outrage and a threatening manner and felt upset and threatened to the extent that he did not mix with councillors after the meeting. The Panel has no reason to doubt Cr Kelly's feelings about the words and accepts he found the words to be offensive.
50. Council meetings are to be conducted with formality and structure. Councillors are expected to be orderly, professional and respectful of the meeting environment and each other. Cr Brennan's communication to Cr Kelly was completely at odds with the expected characteristics and atmosphere of council meetings. The Panel's view is that any reasonable person hearing this statement directed by one councillor to another in a council meeting would find it distasteful and offensive.

Objectionable

51. Something is "objectionable" if it causes a feeling of disapproval or dislike ... if it unpleasant, offensive.⁵

² Macquarie Dictionary Revised Third Edition.

³ As above.

⁴ As above.

⁵ As above.

52. Considering the words objectively, the Panel is of the view that a reasonable person hearing one councillor speak to another in this way would find Cr Brennan's statement extremely unpleasant, and completely at odds with the language reasonably expected in a council meeting, as well as offensive. A reasonable person would strongly disapprove of the words.

Disrespectful

53. The meaning of "disrespectful" includes not honouring; to treat without regard or consideration.⁶ A reasonable person would consider the words to be demeaning, inconsiderate and disrespectful of Cr Kelly, and that Cr Kelly should not have been subjected to the words directed at him.
54. The Panel's conclusion is that Cr Brennan used an offensive and objectionable expression directed at Cr Kelly, and that in so doing he was disrespectful towards Cr Kelly."
9. In considering the appropriate sanction the Panel notes that:
- Cr Brennan had not previously been found to have committed a minor breach;
 - Cr Brennan has accepted the Panel's finding and apologised to the Panel; and
 - Cr Brennan has shown remorse.
10. Cr Brennan has not said whether he has apologised to Cr Kelly.
11. It is not appropriate to dismiss the breach. The language directed at Cr Kelly was extremely offensive. The Panel found that Cr Kelly perceived a look of outrage and a threatening manner and felt upset and threatened to the extent that he did not mix with councillors after the meeting. The Panel's view is that a dismissal would trivialise the breach.
12. Neither is it appropriate to order that Cr Brennan undergo training, as he accepts that his behaviour was inappropriate.
13. The Panel considers a public censure would be too severe, as Cr Brennan has not previously committed a minor breach, and has apologised and expressed remorse.
14. The Panel finds that the appropriate sanction is that Cr Brennan be ordered to publicly apologise to Cr Kelly and his fellow councillors. This is a significant sanction, as it serves as a reprimand for extremely offensive language directed towards Cr Kelly in a council meeting, and also as a measure in support of the institution of local government and those councillors who properly observe the standards of conduct expected of them.

⁶ Macquarie Dictionary Revised Third Edition.

Panel's decision

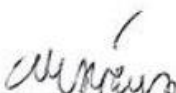
15. The Panel's decision on how the minor breach is to be dealt with under section 5.110(6) of the Act is that Cr Kelly publicly apologise under section 5.110(6)(b)(ii), as set out in Attachment A hereto.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Reasons - 7 December 2016

Attachment A

LOCAL GOVERNMENT STANDARDS PANEL

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ORDER FOR PUBLIC APOLOGY

Published 07 December 2016

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Mr John Brennan, Councillor of the Shire of Victoria Plains, apologise publicly to Councillor James Kelly, as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the first Shire of Victoria Plains Ordinary Council Meeting Cr Brennan attends after the expiration of 28 days from the date of service of this Order on him Cr Brennan shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to Cr Kelly and other councillors;
 - (b) make the apology immediately after Public Question Time or during the Announcements part of the meeting or at any other time when the meeting is open to the public, as the presiding person thinks fit;
 - (c) address the Council as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

“I advise this meeting that:

 - (i) A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened a provision of the *Local Government (Rules of Conduct) Regulations 2007* by making a statement to Cr James Kelly at an Ordinary Council Meeting on 15 July 2015.
 - (ii) The Local Government Standards Panel found that I breached regulation 4 of the *Local Government (Rules of Conduct) Regulations 2007* by directing an offensive, objectionable and disrespectful statement to Cr Kelly at the meeting.
 - (iii) I accept that I should not have made the statement and I apologise to Cr Kelly and my fellow councillors for having done so.”
3. If Cr Brennan fails or is unable to comply with the requirements of paragraph 2 above he 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 Northern Valleys News newspaper.

PUBLIC APOLOGY

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened a provision of the *Local Government (Rules of Conduct) Regulations 2007* when making a statement to Councillor James Kelly at an Ordinary Council Meeting on 15 July 2015.

The Local Government Standards Panel found that I breached regulation 4 of the *Local Government (Rules of Conduct) Regulations 2007* by directing an offensive, objectionable and disrespectful statement to Cr Kelly at the meeting on 15 July 2015.

I accept that I should not have made the statement and I apologise to Cr Kelly and my fellow councillors for having made the statement.

Councillor John Brennan