

Decision-maker's Title: **LOCAL GOVERNMENT STANDARDS PANEL**
Jurisdiction: Complaints of minor breach by local government council members
Act: *Local Government Act 1995*
File No/s: SP 5 of 2008; Part SP 8 of 2008; Part SP 9 of 2008; Part 11 of 2008; Part 12 of 2008; Part 13 of 2008
Heard: Determined on the documents
Considered: 23 April 2008
Coram: Mr Q. Harrington (Presiding Member)
Councillor C. Robartson (Member)
Mr J. Lyon (Member)

SP 5 of 2008

Complainant: **KELVIN MATTHEWS**

Council member complained about: **Councillor TIMOTHY WYNN HARGREAVES**

CONSOLIDATED WITH

Part SP 8 of 2008

Complainant: **Councillor ROBERT BLENNERHASSETT**

Council member complained about: **Councillor TIMOTHY WYNN HARGREAVES**

Part SP 9 of 2008

Complainant: **Councillor ROBERT EDDINGTON**

Council member complained about: **Councillor TIMOTHY WYNN HARGREAVES**

Part SP 11 of 2008

Complainant: **Councillor HAROLD CRAWFORD**

Council member complained about: **Councillor TIMOTHY WYNN HARGREAVES**

Part SP 12 of 2008

Complainant: **Councillor DENNIS HOULT**

Council member complained about: **Councillor TIMOTHY WYNN HARGREAVES**

Part SP 13 of 2008

Complainant: **Councillor BRYAN CANE**

Council member complained about: **Councillor TIMOTHY WYNN HARGREAVES**

Finding:

The Panel finds that, for the following reasons, Councillor Hargreaves has committed a breach of regulation 10(3)(b).

REASONS FOR FINDING (ON A BREACH OF REGULATION 10)

1. At its meeting on 23 April 2008 the Panel considered Complaint SP5 of 2008 and a part of each of Complaints SP8 of 2008, SP9 of 2008, SP 11 of 2008, SP 12 of 2008 and SP 13 of 2008 all relating to Council Member Timothy Wynn Hargreaves of the Shire of Shark Bay together.

2. It made findings in relation to the allegation in Complaint SP5, and one of two allegations in each of Complaints SP8, SP9, SP11, SP12 and SP13, as follows. The allegation in respect to which it made findings was identical. That in Complaint SP5 was made by Mr Kelvin Matthews, that in Complaint SP8 was made by Councillor Robert Blennerhassett, that in Complaint SP9 was made by Shire President Robert Eddington, that in Complaint SP11 was made by Councillor Harold Crawford, that in Complaint SP12 was made by Councillor Dennis Hoult, and that in Complaint SP13 was made by Councillor Bryan Cane. All of the Complaints mentioned allege, inter alia, the same breach of regulation 10(3) of the *Local Government (Rules of Conduct) Regulations 2007*.

3. As mentioned, the allegation in respect to which the Panel has made findings was identical. The allegation considered by the Panel ("the allegation") is that:

- (a) at the Council Ordinary Meeting on 19 December 2007, in the presence of members of the public, Councillor Hargreaves allegedly made the statement: *"The Health Inspector has been derelict in his duties"*;
- (b) the reference to "the Health Inspector" was a reference to Mr Jim McKechnie, the Shire's Manager of Regulatory Services ("the Manager"); and
- (c) the statement complained about was:
 - (i) that the Manager was incompetent; and
 - (ii) the use of an offensive or objectionable expression used in reference to the Manager.

4. Councillor Hargreaves has been sent a Panel *Notice of Complaint* which, inter alia, stated the allegation and invited his response to it. In an email of 15 April 2008 to Mr Brendan Peyton, Councillor Hargreaves provided his response to the allegation by stating: "My words were *"Mr Egan claims that the Health Inspector has been derelict in his duties..."*

5. Regulation 10(3) relevantly reads as follows:

- "(3) If a ... a council member is attending a council meeting ... and members of the public are present, the [council member] must not, either orally, in writing or by any other means —
- (a) make a statement that a local government employee is incompetent or dishonest; or
 - (b) use offensive or objectionable expressions in reference to a local government employee."

6. The Panel has received a copy of the records of the Department of Local Government and Regional Development that shows that Councillor Hargreaves was elected as a member of the Shire's Council on 20 October 2007 for a term that expires on 15 October 2011. Accordingly, the Panel finds that at 19 December 2007 Councillor Hargreaves was a member of the Shire's Council.

7. On the basis of the confirmed minutes of the Shire's Council Ordinary Meeting on 19 December 2007, and Councillor Hargreaves' response, the Panel finds that Councillor Hargreaves attended at the meeting and in the presence of members of the public said *"The Health Inspector is derelict in his duties"* or *"Mr Egan claims that the Health Inspector is derelict in his duties"*.

8. The provisions of regulation 10(3)(a) are straightforward. Those of regulation 10(3)(b) require some short comment. Amongst the meanings of the word “expression” in the Macquarie Dictionary is “a particular word, phrase, or form of words”. The meanings of the word “offensive” in that dictionary include “insulting”. The meanings of the word “objectionable” in that dictionary include “that may be objected to; unpleasant; offensive [as in] *offensive remarks*”.

9. It is necessary to consider the words “derelict in his duties”. Amongst the meanings of the word “derelict” in the Macquarie Dictionary is “neglected”. The word “dereliction” is defined in that dictionary to mean, inter alia, “culpable neglect, as of duty; delinquency; fault”. The Shorter Oxford English Dictionary defines “dereliction” as including “In mod use implying a reprehensible abandonment or neglect; chiefly in phrase *dereliction of duty*”.

10. The Panel finds that whether the words said by Councillor Hargreaves was “*The Health Inspector is derelict in his duties*” or “*Mr Egan claims that the Health Inspector is derelict in his duties*”:

- (a) each of those statements is not a statement that the Health Inspector was incompetent or dishonest;
- (b) the expression “derelict in his duties” refers to a reprehensible abandonment of one’s duties; and
- (c) each of those statements is the use of an offensive or objectionable expression by Councillor Hargreaves in reference to Mr Jim McKechnie, a Shire employee.

11. In the circumstances, the Panel finds that Councillor Hargreaves committed a breach of regulation 10(3)(b) at the Council Ordinary Meeting on 19 December 2007 due to there being evidence from which it may be concluded that it is more likely than not that Councillor Hargreaves committed the breach.

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Quentin Harrington (Presiding Member)

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Clive Robartson (Member)

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John Lyon (Member)

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Decision:

The Panel has made a finding ("the finding") that Councillor Hargreaves committed a breach of regulation 10(3)(b) of the *Local Government (Rules of Conduct) Regulations 2007* ("the breach").

The Panel's decision on how the breach is dealt with under section 5.110(6) of the *Local Government Act 1995* ("the Act"), is that for the following reasons the Panel makes an order under section 5.110(6)(b)(ii) of the Act.

REASONS FOR DECISION

1. Prior to the Panel making the finding:
 - (a) a Panel *Notice of Complaint* was sent to Councillor Hargreaves;
 - (b) the Panel *Notice of Complaint*, inter alia:
 - (i) advised Cr Hargreaves that the Panel was considering an allegation that at the Shire's Council's Ordinary Meeting on 19 December 2007 he contravened regulation 10(3) of the *Local Government (Rules of Conduct) Regulations 2007*, in that, in the presence of members of the public, he allegedly made the oral statement: "*The Health Inspector has been derelict in his duties.*"; and
 - (ii) invited Cr Hargreaves' response to the allegation; and
 - (c) in an email of 15 April 2008 to the Panel, Cr Hargreaves provided his response to the allegation by stating: "My words were "*Mr Egan claims that the Health Inspector has been derelict in his duties...*"
2. The Panel has found, inter alia, that whether the words said by Councillor Hargreaves was "*The Health Inspector is derelict in his duties*" or "*Mr Egan claims that the Health Inspector is derelict in his duties*":
 - (a) the expression "derelict in his duties" refers to a reprehensible abandonment of one's duties; and
 - (b) each of those statements is the use of an offensive or objectionable expression by Councillor Hargreaves in reference to Mr Jim McKechnie, a Shire employee.
3. The Panel has given to Councillor Hargreaves:
 - (a) notice of the finding;
 - (b) a copy of the Panel's written *Reasons for Finding* in regard to the finding; and
 - (c) a reasonable opportunity for him to make submissions about how the breach should be dealt with under s 5.110(6) of the Act.
4. Councillor Hargreaves has made such a submission, in which he:
 - (a) states that: "*The words cited in this matter were that I had said that the Health Inspector was derelict in his duties. I claimed that it wasn't me but Mr Egan who had thus spoken these words. I now have to admit that these specific words were indeed mine – Mr Egan never used such an expression.*"
 - (b) excuses his earlier given different information to the Panel on the basis that he could not in Council Chambers bring himself to use Mr Egan's actual words of complaint as they were "standard four letter words mainly used by artisans to describe the reproductive organs"; and
 - (c) seeks a dismissal of the complaint.
5. Councillor Hargreaves has not previously been found under Part 5 Division 9 of the Act to have committed any minor breach.

6. Having regard to the said *Reasons for Finding*, the above matters and the general interests of local government in Western Australia, the Panel's decision in this matter is to make the order under section 5.110(6)(b)(ii) of the Act set out in the attached Minute of Order.

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Quentin Harrington

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Clive Robartson

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John Lyon

NOTICE TO THE PARTIES TO THE COMPLAINT/S

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (“the Decision-maker”) 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 (“SAT”) for a review of the Panel’s decision in this matter. *In this context “decision” means a decision to dismiss the complaint or to make an order.*
- (2) Generally, an application to SAT under its review jurisdiction must be made within 28 days of the day on which the Decision-maker gives a notice under subsection 20(1) the *State Administrative Tribunal Act 2004* (“SAT Act”).
- (3) The Decision-maker’s *Reasons for Finding* and these *Reasons for Decision* constitute the Decision-maker’s notice given under subsection 20(1) of the SAT Act.

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Councillor C. Robartson (Member)
Mr J. Lyon (Member)

MINUTE OF ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Timothy Wynn Hargreaves, a member of the Council of the Shire of Shark Bay, apologise publicly as specified below.
2. Within 28 days of the date of service of this Order on him, Timothy Wynn Hargreaves cause the following Notice of Public Apology to be published in the "Public Notices" or "Local Government Public Notices" section of a Saturday edition of "The West Australian" newspaper, in no less than 10 point print:

NOTICE OF PUBLIC APOLOGY

I, TIMOTHY WYNN HARGREAVES, am a member of the Council of the Shire of Shark Bay. The Local Government Standards Panel has made a finding that at the Ordinary Council Meeting held on 19 December 2007 I committed a breach of regulation 10(3)(b) of the *Local Government (Rules of Conduct) Regulations 2007* by using an offensive or objectionable expression in reference to Mr JIM McKECHNIE, a Shire employee.

I sincerely apologise to Mr McKechnie for using the offensive or objectionable expression and for any embarrassment or distress that it caused to him.

TIM HARGREAVES