

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 25 of 2010 (DLG: 20100170)
Heard: Determined on the documents
Considered: 26 November 2010
Coram: Mr B. Jolly (Presiding Member)
 Councillor C. Adams (Member)
 Mr J. Lyon (Member)

Complaint No. SP 25 of 2010**Complainant: (Mayor) Glenys GODFREY****Council member complained about:****Cr Gerard Cyril DORNFORD****Local Government:****City of Belmont****Regulations involved or alleged breached:****Regulation 4**

FINDINGS AND REASONS FOR FINDINGS

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 FINDINGS

The Panel found that, at each of the City's Ordinary Council Meetings held on 27 October 2009, 24 November 2009, 15 December 2009, 23 February 2010 and 23 March 2010, **Councillor Dornford** contravened standing order 4.5(1) of the *City of Belmont Standing Orders Local Law 2006* in that when the minutes of a previous meeting or previous meetings were submitted for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to state the item or items with which he was dissatisfied and propose a motion clearly outlining alternative wording to amend such minutes, and thus **committed 5 minor breaches** by virtue of regulation 4 of the *Local Government (Rules of Conduct) Regulations 2007*.

BACKGROUND AND PROCEDURAL MATTERS

The material in **Attachment A** is incorporated here as if set out in full.

AVAILABLE INFORMATION

The information before the Panel in relation to this matter (the available information) is the information and documents described in the table under the heading 'Available information' in **Attachment A**. These documents are referred to below, in italics within square brackets, by the relevant Doc ID in the table for the relevant document – e.g. [*Doc B2*] refers to the document that is Doc ID B2 in the table. Pages in a document described in the table are similarly referred to below by the relevant page/s number followed by the relevant Doc ID – e.g. [*pp3-4Doc B2*] refers to pages 3 - 4 of Doc ID B2.

FINDINGS AND REASONS FOR FINDINGS

Allegations of minor breach made in the complaint

1. The 5 allegations of minor breach in this matter that are made in the complaint are:

- (1) [allegation (1):] **The Mayor alleges that at the Ordinary Council Meeting held on 27 October 2009 (the October 2009 OCM) Councillor Dornford contravened standing order 4.5(1) of the *City of Belmont Standing Orders Local Law 2006* (the City's standing orders), and thus committed a minor breach by virtue of regulation 4(2), in that when the minutes of the Ordinary Council Meeting held on 22 September 2009 were submitted to the October 2009 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes.**
- (2) [allegation (2):] **The Mayor alleges that at the Ordinary Council Meeting held on 24 November 2009 (the November 2009 OCM) Councillor Dornford contravened standing order 4.5(1) of the City's standing orders, and thus committed a minor breach by virtue of regulation 4(2), in that:**
 - (a) **when the minutes of the Special Council Meeting held on 19 October 2009 were submitted to the November 2009 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes; and**
 - (b) **when the minutes of the October 2009 OCM were submitted to the November 2009 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes.**
- (3) [allegation (3):] **The Mayor alleges that at the Ordinary Council Meeting held on 15 December 2009 (the December 2009 OCM) Councillor Dornford contravened standing order 4.5(1) of the City's standing orders, and thus committed a minor breach by virtue of regulation 4(2), in that in that when the minutes of the November 2009 OCM were submitted to the December 2009 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes.**

- (4) [allegation (4):] **The Mayor alleges that at the Ordinary Council Meeting held on 23 February 2010 (the February 2010 OCM) Councillor Dornford contravened standing order 4.5(1) of the City's standing orders, and thus committed a minor breach by virtue of regulation 4(2), in that:**
- (a) **when the minutes of the December 2009 OCM were submitted to the February 2010 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes; and**
 - (b) **when the minutes of the Special Council Meeting held on 22 December 2009 were submitted to the February 2010 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes.**
- (5) [allegation (5):] **The Mayor alleges that at the Ordinary Council Meeting held on 23 March 2010 (the March 2010 OCM) Councillor Dornford contravened standing order 4.5(1) of the City's standing orders, and thus committed a minor breach by virtue of regulation 4(2), in that when the minutes of the Ordinary Council Meeting held on 23 February 2010 were submitted to the March 2010 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes.**

Facts

2. On the available information the Panel is satisfied, and finds, that the facts of this matter are more likely than not as set out in **Attachment B**.

Councillor Dornford's responses to the subject allegations

3. Councillor Dornford's responses to the subject allegations are as set out in the letter dated 25 October 2010 (Mr Hammond's letter) [Doc E] from his solicitor, Mr John Hammond (Mr Hammond) of Hammond Legal, and are referred to or reproduced below, where relevant.

The validity of standing order 4.5(1)

4. The Panel notes that:

- (1) Paragraph 20 of Mr Hammond's letter commences "In the event that [standing order 4.5] is within power, ...". [p3Doc E]
- (2) Accordingly, Councillor Dornford, through Mr Hammond, has indirectly raised a preliminary issue – whether standing order 4.5(1) is valid (i.e. not ultra vires) – although he does not appear to provide any reason why it might be invalid in his view.

- (3) The current state of the common law is such that there is persuasive, though not decisive, argument that an adjudicating body such as the Panel may, in exercising its jurisdiction to determine whether a minor breach has been committed, consider whether a relevant local law is invalid. However, the Panel should be reluctant to do so other than in the clearest case of invalidity.
- (4) In these circumstances the Panel considers that the common law requires it to treat standing order 4.5 as a valid local law in determining whether a breach of standing order 4.5(1) has been committed.

Order of dealing with the allegations of minor breach

5. The Panel deals with the allegations of minor breach mentioned in paragraph 1 above by: first considering allegation (1) and Councillor Dornford's response to it; and then considering together allegations (2) to (5) and Councillor Dornford's response to them, in the light of the Panel's views on allegation (1) and Councillor Dornford's response to it.

PANEL'S DEALING WITH ALLEGATION (1)

6. Allegation (1) is as mentioned in paragraph 1(1) above. By virtue of regulation 4, the contravention of a local law relating to conduct of people at council or committee meetings is a minor breach for the purposes of section 5.105(1)(b). In the Panel's view, the City's standing orders is a local law relating to conduct of people at council or committee meetings and, accordingly, a contravention of standing order 4.5(1) is a minor breach as defined under section 5.105(1)(b).

7. The Panel notes that:

- (1) Relevantly, in the *Notice of Complaint [Doc C]* the Presiding Member advised Councillor Dornford:

"Attachment B consists of material about the required contents of minutes of meetings, particularly local government council and committee meetings.

...

It would assist the Panel in considering the 5 allegations of minor breach identified above (the 5 allegations) if you were to respond to this letter with:

- (a) your response to the 5 allegations;
- (b) your comments on the material in Attachment B; and
- (c) your comments on the view that the *Local Government Act 1995* (the Act) and the common law require that:
 - (i) the minutes of a council or committee meeting must be accepted (or, confirmed) by each of the council or committee members as correct or accurate where the contents of the minutes comply with the prescribed requirements in regulation 11 of the *Local Government (Administration) Regulations 1996* (the Administration Regulations); and
 - (ii) the only lawful reason that a City Councillor may have in order to be "dissatisfied with the accuracy of the minutes" is that the minutes do not comply with a particular prescribed requirement in regulation 11 of the Administration Regulations." [p3Doc C]

- (2) **Attachment C** is identical to Attachment B to the said Notice of Complaint.

Councillor Dornford's response to allegation (1)

8. The Panel notes that Councillor Dornford's response to allegation (1) is as set out in Mr Hammond's letter, at [pp1-4Doc E]. In the Panel's view Councillor Dornford's said response is, relevantly, that when the minutes of the OCM held on 22 September 2009 were submitted to the October 2009 OCM for confirmation, he was dissatisfied with the accuracy of such minutes but did not commit a breach of standing order 4.5(1), on the basis that:

- (1) Councillor Dornford's belief was either or both that:
 - (a) as the minutes were not recorded verbatim, they (i.e. the minutes in question) were not accurate; and/or
 - (b) as discussions of elected members were not recorded electronically and reflected in the minutes, that they (i.e. the minutes in question) were not a true and accurate record.
- (2) The complaint is misconceived in asserting that Councillor Dornford has refused and or failed to state the nature of his complaint [about the alleged inaccuracy of the minutes concerned].
- (3) Councillor Dornford's complaint [about the alleged inaccuracy of the minutes concerned] was not directed to any specific item of the minutes of the OCM held on 22 September 2009, but rather to his complaint that the minutes would be more accurate if recorded verbatim.
- (4) In the context of the issue raised by Councillor Dornford it is not incumbent on him to state the specific items of the minutes with which he disagrees, nor propose a motion outlining alternative wording.
- (5) Practically speaking, Councillor Dornford is correct in asserting that the minutes of ordinary Council meetings would be more accurate if recorded verbatim.
- (6) The decision in the Western Australian Industrial Relations Commission case of *Kim Luby v The Australian Nursing Federation, Industrial Union of Workers Perth* (2002) WAIRC 6010 ('Luby') does not provide support for the proposition that Councillor Dornford's actions constitute a breach of the common law position on meeting procedure.
- (7) The *Luby* decision states, at [60] that "*a Council which adopts a course of action of failing to properly record what a member or members of the Council reasonably require to be recorded may well be held to be acting without bona fides.*"
- (8) The *Luby* decision is directed at the obligation of a Council, not a Councillor, in terms of what a Council shall record in the minutes.
- (9) While Councillor Dornford accepts that the minutes of a council or committee meeting must be accepted (or confirmed), he does not accept that he has taken part in breaching any obligation by Council to accept or confirm the minutes of [a Council] meeting.

- (10) Councillor Dornford does not accept the proposition that *“the only lawful reason”* a Councillor may have to be dissatisfied with the accuracy of the minutes of a Council meeting is that the minutes do not comply with a particular prescribed requirement in regulation 11 of the *Local Government (Administration) Regulations 1996* (the Administration Regulations), and says further that this proposition is misconceived (but gives no reason as to why that proposition is allegedly misconceived).
- (11) The Administration Regulations are not intended to cover the field in terms of what minutes of a meeting of council or committee must include, in that:
- (a) there is a list of items that are to be included in the minutes of meetings;
 - (b) however, the formula is not prescriptive in terms of excluding other matters that may be included in the minutes e.g. the note that appeared in the minutes of meeting on 27 October 2010 stating the reason why Councillor Dornford had refused to affirm the minutes.
- (12) Significantly, the Administration Regulations do not address the issue of what occurs in relation to the confirmation or rejection by a Councillor of the previous minutes of meeting.
- (13) If standing order 4.5 is within power [as to which, refer to paragraph 4 above], standing order 4.5(1) will only apply where a Councillor has an objection to a specific section or portion of the minutes;
- (14) Standing order 4.5(1) does not apply due to the fact that Councillor Dornford was refusing to affirm the minutes of meeting on the basis of his general view (not directed to any specific section of the minutes) that the minutes of meeting would be more accurate if audio taped.
- (15) It is not possible to move a motion submitting alternative wording in accordance with standing order 4.5(1)(b) where the Councillor concerned has no specific section of the minutes to which he wishes to complain, but rather the Councillor raises the more generic issue as to how Council meetings should be recorded.

Interpretation of standing order 4.5(1)

9. The Panel notes that

- (1) At all relevant times in this matter standing order 4.5 of the City’s standing orders read, relevantly:

“4.5 Confirmation of Minutes

(1) When minutes of a meeting are submitted to an ordinary meeting of the Council ... for confirmation, if a Member is dissatisfied with the accuracy of the minutes, then he or she shall:

- (a) state the item or items with which he or she is dissatisfied; and*
- (b) propose a motion clearly outlining the alternative wording to amend the minutes.*

(2) Discussion of any minutes, other than discussion as to their accuracy as a record of the proceedings, shall not be permitted.” [Doc B9]

- (2) In determining the Panel's view of the proper interpretation of standing order 4.5(1):
 - (a) the City's standings orders, as a local law, falls within the definition of the term 'subsidiary legislation' in section 5 of the *Interpretation Act 1984* (W.A.) (the Interpretation Act), and thus also falls within the definition of the term 'written law' in that section;
 - (b) by virtue of that section 5, in the Interpretation Act and in the City's standings orders the term 'function' includes powers, duties, responsibilities, authorities, and jurisdictions; and
 - (c) by virtue of section 56(2) of the Interpretation Act, where the word 'shall' is used in the City's standings orders in conferring a function, power, duty, responsibility, authority or jurisdiction, such word is to be interpreted to mean that the function, power, duty, responsibility, authority or jurisdiction so conferred must be performed.
- (3) The Shorter Oxford English Dictionary (6th ed) defines the word 'outline' relevantly as "a usually brief verbal description giving a general idea of a whole; a summary; a rough draft" and "describe the main features of; sketch in general terms, summarize".

10. In the Panel's view:

- (1) On its face, relevantly, standing order 4.5(1) appears to confer a function, duty and responsibility on each Council member.
- (2) Accordingly, and in the light of the contents of paragraph 9(2) above and the phrase 'accuracy as a record of the proceedings' in standing order 4.5(2), it appears that standing order 4.5(1) may be construed on its face so that it reads:

"When minutes of a meeting are submitted to an ordinary meeting of the Council ... for confirmation, if a Member is dissatisfied with the accuracy of the minutes [as a record of the proceedings of the meeting concerned], then he or she [must]:

 - (a) state the item or items with which he or she is dissatisfied; and*
 - (b) propose a motion clearly outlining the alternative wording to amend the minutes.*
- (3) Accordingly, in this matter the pre-requisites for the application of standing order 4.5(1) to the conduct of a Council member appear to be: that minutes of a meeting were submitted to an OCM for confirmation; and that a Council member present at the OCM was dissatisfied with the accuracy of the minutes as a record of the proceedings of the meeting concerned.
- (4) The core issue in determining the proper interpretation of standing order 4.5(1) appears to be the meaning of the phrase "accuracy of the minutes as a record of the proceedings of the meeting concerned", and in particular the meaning of the term 'accuracy' as used in that phrase.

The meaning of the phrase “accuracy of the minutes as a record of the proceedings of the meeting concerned”

11. In the light of the material and views set out in Attachment C, and after considering Councillor Dornford’s response to allegation (1) as mentioned in paragraph 8 above, it is the Panel’s view that:

- (1) It appears that the minutes of a council meeting or a meeting of any of council’s committees will be a correct or accurate record of the proceedings of the meeting if those minutes:
 - (a) record the proceedings of the meeting, in compliance with the prescribed requirements in regulation 11 of the Administration Regulations; and
 - (b) record any matter that, at the meeting concerned, the presiding member of the meeting reasonably require/s to be recorded;
 - (c) record any matter that, at the meeting concerned, a member or members of the council or the committee - who was or were present at the meeting - reasonably require/s to be recorded; and
 - (d) do not record any inaccuracies.
- (2) It appears that it is not a reasonable requirement that the minutes of a local government’s council meeting and/or such council’s committees’ meetings:
 - (a) consist of a transcript of an electronic audio recording, or a verbatim record, of all that is said at the meeting concerned; or
 - (b) consist of a transcript of an electronic audio recording of all non-confidential things that are said at the meeting concerned; or
 - (c) include a transcript of an electronic audio recording of all discussions of elected members on all non-confidential things that are said at the meeting concerned.
- (3) When minutes of a meeting are submitted to a local government’s ordinary council meeting for confirmation, it appears that unless a council member identifies an error, inaccuracy or omission in regard to the proceedings and other matters identified in paragraph 11(1) above, the member has an obligation to vote in favour of a motion that the minutes are an accurate record of the proceedings of the meeting concerned.

Required standards of conduct of council members

12. In the Panel's view:

- (1) The required standards of conduct of council members are in essence those flowing from the fiduciary obligations owed by a council member to his or her council (or local government) as varied or complemented by the Act (which includes all regulations, including the Regulations, made under it), the common law, any relevant code of conduct, and his or her council's decisions and policies.
- (2) The essential features of the fiduciary relationship, and the fiduciary obligations or duties, owed under common law by a council member to his or her council as the governing body of the local government may be summarised as:
 - (a) a duty to act in good faith – i.e. the council member must in his dealings act bona fide in what he considers to be the best interests of the council;
 - (b) an obligation to exercise powers conferred on the council member only for the purposes for which they were conferred – i.e. for “proper purposes”;
 - (c) the no conflict rule – i.e. a council member cannot have a personal interest (i.e. a pecuniary interest) or an inconsistent engagement with a third party where there is a real and sensible possibility of conflict; and
 - (d) the no profit rule – i.e. a council member cannot obtain an advantage for himself or others from the property, powers, confidential information or opportunities afforded to the member by virtue of his position.
- (3) The fiduciary duties summarised in paragraph 12(2) above are the paramount duties of a councillor by virtue of the fact that councillors are representatives of their community and elected by and from that community
- (4) The council of a local government is an organised body of people performing certain common functions and sharing special privileges. Accordingly, the council of a local government is a collegiate decision-maker, with its members voluntarily elected by willing eligible electors from the community for whom they make decisions.
- (5) As a member of council, the member's '*obligation of fidelity*' to council includes a duty or obligation of loyalty (i.e. to be loyal): to council's decisions made lawfully at a regularly held council meeting; and to a relevant committee's decisions made lawfully at a regularly held committee meeting.
- (6) A council member's duty of loyalty to his or her local government's decisions (particularly those made by its council) exists irrespective whether: the member was present when the decision was made; the member voted for or against the decision; the member agreed or not with the decision or the reason or any of the reasons for the decision. However, there are situations when this duty of loyalty does not apply – for example, without limiting other examples:

- (a) when a matter before a council meeting or a relevant committee meeting is in relation to a motion or a notice of motion to revoke or change a decision of the council or the committee; and
- (b) when a council member has doubt about the facts or lawfulness of a proposed or actual process or decision by council, a relevant committee or otherwise by or on behalf of the local government – in which case, it is appropriate that the member:
 - (i) bring the matter to the attention of council by lodging an appropriate notice of motion (to be dealt with at a council meeting when it is closed to members of the public, where appropriate); and
 - (ii) if council fails to deal with the notice of motion in a lawful manner or in a way that is not satisfactory to the member, to report the matter to the appropriate agency as the case requires.

Panel views on allegation (1)

13. In relation to allegation (1) it is the Panel's views that:

- (1) The Panel does not agree with Councillor Dornford's response to allegation (1), through Mr Hammond:
 - that standing order 4.5(1) will only apply where a Councillor has an objection to a specific section or portion of the minutes; and
 - that standing order 4.5(1) does not apply in relation to allegation (1) due to the fact that Councillor Dornford was refusing to affirm the minutes of meeting on the basis of his general view (not directed to any specific section of the minutes) that the minutes of meeting would be more accurate if audio taped,

on the basis that, as mentioned in paragraph 10(3) above, the pre-requisites for the application of standing order 4.5(1) to the conduct of a Council member appear to be: that minutes of a meeting were submitted to an OCM for confirmation; and that a Council member present at the OCM was dissatisfied with the accuracy of the minutes as a record of the proceedings of the meeting concerned.

- (2) Councillor Dornford, through Mr Hammond, has acknowledged that when the minutes of the OCM held on 22 September 2009 were submitted to the October 2009 OCM for confirmation, his dissatisfaction with those minutes was not with or directed to any specific item of them. Accordingly, for the reason mentioned in paragraph 11(3) above, at the October 2009 OCM Councillor Dornford had an obligation - that he failed to observe - to vote in favour of a motion that the minutes of the OCM held on 22 September 2009 were an accurate record of the proceedings of that meeting.
- (3) However, it appears that the fundamental nature of a breach of standing order 4.5(1) is that there is a failure to propose a motion clearly *outlining* alternative wording to amend the minutes.

- (4) In relation to Councillor Dornford's response to allegation (1) generally, and in particular to those mentioned in paragraphs 8(13), 8(14) and 8(15) above, in the light of the definition of 'outline' mentioned in paragraph 9(3) above, when the minutes of the OCM held on 22 September 2009 were submitted to the October 2009 OCM for confirmation:

- (a) Councillor Dornford could and should have said:

"I am dissatisfied with the accuracy of all items of the minutes and move that the minutes be amended to set out verbatim everything said at the meeting."

- (b) if Councillor Dornford had in fact said what is in italics in paragraph 13(4)(a) above, it appears that he would have complied with standing order 4.5(1) by virtue of, inter alia, the motion mentioned clearly *outlining* alternative wording to amend the minutes.

Panel finding on allegation (1)

14. On the available information, and on the basis of the contents of or reasons mentioned in paragraphs 2, 3, 4 and 6 to 13 above, and as required by section 5.110(2), the Panel is satisfied to the degree required by the Briginshaw principles that it is more likely than not, and the Panel finds, that at the Ordinary Council Meeting held on 27 October 2009 (the October 2009 OCM), Councillor Dornford contravened standing order 4.5(1) of the *City of Belmont Standing Orders Local Law 2006* in that when the minutes of the Ordinary Council Meeting held on 22 September 2009 were submitted to the October 2009 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes, and thus committed a minor breach by virtue of regulation 4(2) of the *Local Government (Rules of Conduct) Regulations 2007*.

PANEL'S DEALING WITH ALLEGATIONS (2) TO (5)

15. Allegations (2) to (5) are as mentioned respectively in paragraphs 1(2) to 1(5) above.

Councillor Dornford's responses to allegations (2) to (5)

16. The Panel notes that:

- (1) Councillor Dornford's responses to allegations (2) to (5) are as set out in Mr Hammond's letter, at [pp4-5Doc E].
- (2) In relation to each of allegations (2) to (5), Councillor Dornford's response is as summarised in paragraph 8 above for allegation (1), "save where it is necessary to make the dates consistent with [Councillor Dornford's] response to" the allegation concerned.

Panel views on allegations (2) to (5)

17. The Panel's views on allegations (2) to (5) are the same as the contents of or reasons mentioned in paragraphs 2, 3, 4 and 6 to 13 above, with the necessary changes to make the dates consistent with the allegation concerned.

Panel findings on allegations (2) to (5)

18. On the available information, and on the basis of the Panel's views referred to in paragraph 17 above, and as required by section 5.110(2), the Panel is satisfied to the degree required by the Briginshaw principles that it is more likely than not, and the Panel finds, that:

- (1) At the Ordinary Council Meeting held on 24 November 2009 (the November 2009 OCM) Councillor Dornford contravened standing order 4.5(1) of the City's standing orders, and thus committed a minor breach by virtue of regulation 4(2), in that:
 - (a) when the minutes of the Special Council Meeting held on 19 October 2009 were submitted to the November 2009 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes; and
 - (b) when the minutes of the October 2009 OCM were submitted to the November 2009 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes.
- (2) At the Ordinary Council Meeting held on 15 December 2009 (the December 2009 OCM) Councillor Dornford contravened standing order 4.5(1) of the City's standing orders, and thus committed a minor breach by virtue of regulation 4(2), in that in that when the minutes of the November 2009 OCM were submitted to the December 2009 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes.
- (3) At the Ordinary Council Meeting held on 23 February 2010 (the February 2010 OCM) Councillor Dornford contravened standing order 4.5(1) of the City's standing orders, and thus committed a minor breach by virtue of regulation 4(2), in that:
 - (a) when the minutes of the December 2009 OCM were submitted to the February 2010 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes; and

- (b) when the minutes of the Special Council Meeting held on 22 December 2009 were submitted to the February 2010 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes.
- (4) At the Ordinary Council Meeting held on 23 March 2010 (the March 2010 OCM) Councillor Dornford contravened standing order 4.5(1) of the City's standing orders, and thus committed a minor breach by virtue of regulation 4(2), in that when the minutes of the Ordinary Council Meeting held on 23 February 2010 were submitted to the March 2010 OCM for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to: state the item or items with which he was dissatisfied; and propose a motion clearly outlining alternative wording to amend such minutes.

.....
Brad Jolly (Presiding Member)

.....
Carol Adams (Member)

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John Lyon (Member)

Attachment A

BACKGROUND AND PROCEDURAL MATTERS

References to regulations, sections, etc

1. In these Reasons, unless otherwise indicated, a reference to a regulation is a reference to the corresponding regulation of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations); a reference to a section is a reference to the corresponding section of the *Local Government Act 1995* (the Act); and a reference to the Department is a reference to the Department of Local Government.

Details of the complaint

2. Mr Stuart Cole, the Chief Executive Officer (the City's CEO) and the Complaints Officer (the Complaints Officer) of the City of Belmont (City), has sent to the Local Government Standards Panel (the Panel) a complaint (the complaint) being a 3-page *Complaint of Minor Breach* dated 15 April 2010 [Doc A] made by the City's Mayor, Councillor Glenys Godfrey (the Mayor) about alleged conduct of Councillor Gerard Cyril Dornford (Councillor Dornford), a current member of the City's Council (the Council).

Preliminary matters

3. The complaint is in the form approved by the Minister for Local Government and was made within time. There is at least one allegation made in the complaint that Councillor Dornford, a member of the Council at the time of each of the alleged incidents, has committed a minor breach as defined under section 5.105(1)(a).

Councillor Dornford's response sought and received

4. On 30 July 2010 a *Notice of Complaint* [Doc C] was sent to Councillor Dornford advising him, among other things, of the 5 allegations of minor breach that the Panel will consider in this matter and inviting him to respond to those allegations. Councillor Dornford responded by his solicitor's letter of 25 October 2010 [Doc E].

Available information

5. The information before the Panel in relation to this matter (the available information) is described in the following table:

Doc ID	Description
A	Copy of (3-page) <i>Complaint of Minor Breach</i> dated 15 April 2010 (Complaint 25/2010).
B1	Copy of (2-page) letter from the City's Complaints Officer, Mr Stuart Cole (the Complaints Officer), dated 13 May 2010.
B2	Copy of (2-page) letter from the City's Chief Executive Officer, Mr Stuart Cole (the CEO) to Cr Dornford, dated 12 January 2010.
B3	Copy of (1-page) letter from the CEO to Cr Dornford, dated 8 March 2010.
B4	Copy of (3-pages) pages 1, 2 and 8 of the minutes of the City's Ordinary Council Meeting (OCM) held on 27 October 2009.
B5	Copy of (2-pages) pages 1 and 12 of the minutes of the City's OCM held on 24 November 2009.

B6	Copy of (2-pages) pages 1 and 11 of the minutes of the City's OCM held on 15 December 2009.
B7	Copy of (2-pages) pages 1 and 16 of the minutes of the City's OCM held on 23 February 2010.
B8	Copy of (2-pages) pages 1 and 10 of the minutes of the City's OCM held on 23 March 2010.
B9	Copy of (1-page) page 4553 of the WA Government Gazette, dated 25 October 2006, No. 181 Special. [This sets out standing order 4.5 of the <i>City of Belmont Standing Orders Local Law 2006</i> .]
C	Copy of (9-page) Presiding Member's <i>Notice of Complaint</i> to Cr Dornford, dated 30 July 2010.
D	Copy of (1-page) article, by Brendan Holben, headed ' <i>Council coughs up</i> ', published in the Southern Gazette newspaper on 5 October 2010.
E	Copy of (6-page) letter from Mr John Hammond of Hammond Legal, solicitor for Cr Dornford, dated 25 October 2010.
F1	Copy of (7-pages) pages 4, 11 and 129 to 133 of the minutes of the City's OCM held on 24 February 2009, as accessed from the City's website http://www.belmont.wa.gov.au on 9 November 2010.
F2	Copy of (1-page) page 5 of the minutes of the City's OCM held on 24 March 2009, as accessed from the City's said website on 9 November 2010.
F3	Copy of (2-pages) pages 1 and 12 of the minutes of the City's OCM held on 28 April 2009, as accessed from the City's said website on 9 November 2010.
F4	Copy of (2-pages) pages 1 and 13 of the minutes of the City's OCM held on 26 May 2009, as accessed from the City's said website on 9 November 2010.
F5	Copy of (2-pages) pages 1 and 13 of the minutes of the City's OCM held on 23 June 2009, as accessed from the City's said website on 9 November 2010.
F6	Copy of (2-pages) pages 1 and 6 of the minutes of the City's OCM held on 28 July 2009, as accessed from the City's said website on 9 November 2010.
F7	Copy of (2-pages) pages 1 and 7 of the minutes of the City's OCM held on 25 August 2009, as accessed from the City's said website on 9 November 2010.
F8	Copy of (2-pages) pages 1 and 7 of the minutes of the City's OCM held on 22 September 2009, as accessed from the City's said website on 9 November 2010.

Panel's role - duty to make finding - required standard of proof - the Briginshaw principles

6. The Panel notes that:

- (1) Broadly, the Panel is a statutory decision-maker that is required to adjudicate on complaints made in writing, in a form approved by the Minister, that give certain details including the details of the contravention that is alleged to have resulted in the breach.
- (2) Under the Act and the common law the Panel:
 - (a) has no power or duty to carry out any investigation in relation to any complaint before it;
 - (b) has no power to compel any information to be provided to it; and
 - (c) has no power, on the application of a party or on its own initiative, to make an order that a complaint or an allegation be dismissed or struck out if the Panel forms the view that the complaint or the allegation concerned:
 - (i) is frivolous, vexatious, misconceived or lacking in substance; or
 - (ii) is being used for an improper purpose; or
 - (iii) is otherwise an abuse of process.

- (3) Clause 8 of Schedule 5.1 of the Act requires the Panel's members to have regard to the general interests of local government in Western Australia.
- (4) The Panel is required to make a finding as to whether the breach alleged in the complaint occurred [section 5.110(2)]. In order for it to make any finding that any minor breach has been committed by a council member, the finding is to be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur [section 5.106].
- (5) This level or standard of proof is the same as in ordinary civil legal proceedings where it is referred to as being a preponderance of probabilities (or, the balance of probabilities).
- (6) The Panel is aware that when it makes a finding of a minor breach, the finding is a serious matter as it may affect individuals personally and professionally.
- (7) The approach to a court's findings described in the High Court of Australia case of *Briginshaw v Briginshaw*¹ (*Briginshaw*) is based on the principle that a court in a civil action should not lightly find that a party has engaged in criminal conduct. As accusations of wrongdoing usually involve serious consequences for the defendant, justice demands that the accuser, whether in civil or criminal matters, carries the burden of proof to the requisite standard.
- (8) *Briginshaw* is the leading authority, frequently applied, that where the allegation in a civil proceeding is a serious one:
 - (a) the importance and gravity of the allegation makes it impossible to be reasonably satisfied of the truth of the allegation without the exercise of caution and unless the evidence survives a careful scrutiny; and
 - (b) circumstantial evidence cannot satisfy a sound judgment of a state of facts if that evidence is susceptible of some other not improbable explanation; and
 - (c) if the evidence adduced, when subjected to these tests, satisfies the tribunal of fact that the conduct alleged was committed, it should so find.

[Note: The contents of paragraphs (8)(a) and (8)(b) immediately above, taken together, are referred to in these *Reasons* as the *Briginshaw* principles.

- (9) Her Honour Branson J, in her separate reasons for judgment in the Full Federal Court case of *Qantas Airways Limited v Gama*² (*Gama*), has considered and expressed her views on the *Briginshaw* approach - which views were generally agreed with by French J, as he then was, and Jacobson J in their joint reasons for judgment in *Gama*.³ In the Panel's view, the *Briginshaw* principles and Branson J's said views have relevance when the Panel is dealing with a minor breach complaint.

¹ [1938] HCA 34; (1938) 60 CLR 336

² [2008] FCAFC 69

³ *Supra*, at [110]

Attachment B

Facts

Background

1. Gerard Cyril Dornford (Councillor Dornford) was an elected member of the Council (Council) of the City of Belmont (the City) from 5 May 2001 to his resignation on 4 August 2003, and from 7 May 2005 to 16 October 2009. On 17 October 2009 he was elected to be a member of Council for a 4 year term. [p1Doc B1]
2. Councillor Dornford was at all relevant times in this matter, and is currently: an elected member of the Council; qualified under section 2.19(1)(b) of the *Local Government Act 1995* (the Act) to be elected as a member of the Council; not disqualified for membership of the Council under section 2.21, 2.22, 2.23 or 2.24 of the Act; and not disqualified from continuing his membership of the Council under section 2.25 of the Act.
3. At all relevant times, standing order 4.5 of the *City of Belmont Standing Orders Local Law 2006* (the City's standing orders) read:

 "4.5 Confirmation of Minutes
 (1) When minutes of a meeting are submitted to an ordinary meeting of the Council or Committee for confirmation, if a Member is dissatisfied with the accuracy of the minutes, then he or she shall:
 (a) state the item or items with which he or she is dissatisfied; and
 (b) propose a motion clearly outlining the alternative wording to amend the minutes.
 (2) Discussion of any minutes, other than discussion as to their accuracy as a record of the proceedings, shall not be permitted." [Doc B9]
4. At the Ordinary Council Meeting (OCM) held on 24 February 2009:
 - (1) Councillor Dornford voted **for** the motion (that was carried 10/0): *"That the minutes of the Ordinary Council Meeting held on 16 December 2008 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [p2Doc F1]
 - (2) The following resolution (that was lost 3/8) occurred in relation to a notice of motion lodged by Councillor Dornford, which was item 13.2 at that meeting: *"DORNFORD MOVED, HITT SECONDED, That the Council shall in each and every Ordinary & Special Meetings of Council, provide for electronic recordings of all the debates, discussions and deliberations of a non-confidential nature, that take place, and that such electronic recordings shall be kept and archived in a safe custody in the City of Belmont Council's premises, by the Chief Executive Officer of the Council, and shall be made available for reference by any Councillor or any member of the public if and when so required at any time."* [p7Doc F1]

(3) The notice of motion lodged by Councillor Dornford read:

"Acknowledging that full record keeping of minutes of Council committees meetings and full Council meetings are good governance to be encouraged, and could be of critical importance where or when ambiguity becomes an issue,

Acknowledging that the failure to keep proper records of minutes of Council committees meetings and full Council meetings has been a source of embarrassment in some cases, in particular the widely reported embarrassment that we are currently witnessing in the Gosford City Council's coroner investigation on the collapsed culvert on the Old Pacific Highway at Somersby, with which we councillors are surely aware of (see newspapers attachment),

And further acknowledging that proper record keeping of the minutes of Council committees meetings and full Council meetings will also provide greater transparency to our rate-payers, and will also in particular avoid subsequent arguments and disagreements on the accuracy of what exactly transpired in such meetings,

I, Councillor Gerard Dornford do hereby move that with immediate effect once the Motion is carried, that the Council shall in each and every meeting of the Council Committees and Full Council, provide for electronic recording of all the debates, discussions and deliberations, whether they be of confidential or non- confidential nature, that take place, and that such electronic recordings shall be kept and archived in a safe custody in the City of Belmont Council's premises, by the Chief Executive Officer of the Council, and shall be made available for reference by any Councillor if and when so required at any time." [pp4-5Doc F1]

5. Councillor Dornford had a leave of absence from and did not attend the next OCM, i.e. the OCM held on 24 March 2009. [Doc F2]
6. At the next OCM, i.e. the OCM held on 28 April 2009, Councillor Dornford voted **for** the motion (that was carried 9/0): *"That the minutes of the Ordinary Council Meeting held on 24 March 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc F3]
7. At the next OCM, i.e. the OCM held on 26 May 2009, Councillor Dornford voted **for** the motion (that was carried 9/0): *"That the minutes of the Ordinary Council Meeting held on 28 April 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc F4]
8. At the next OCM, i.e. the OCM held on 23 June 2009, Councillor Dornford voted **for** the motion (that was carried 10/0): *"That the minutes of the Ordinary Council Meeting held on 26 May 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc F5]

9. At the next OCM, i.e. the OCM held on 28 July 2009:
 - (1) Councillor Dornford voted **against** the motion (that was carried 9/1): *"That the minutes of the Ordinary Council Meeting held on 26 May 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc F6]
 - (2) Councillor Dornford voted **for** the motion (that was carried 10/0): *"That the minutes of the Special Council Meeting held on 21 July 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc F6]
10. At the next OCM, i.e. the OCM held on 25 August 2009, Councillor Dornford voted **for** the motion (that was carried 9/0): *"That the minutes of the Ordinary Council Meeting held on 28 July 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc F7]
11. At the next OCM, i.e. the OCM held on 22 September 2009, Councillor Dornford voted **for** the motion (that was carried 11/0): *"That the minutes of the Ordinary Council Meeting held on 25 August 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc F8]

Subsequent events - including the conduct complained about

12. At the next OCM, i.e. the OCM held on 27 October 2009 (the October 2009 OCM):
 - (1) Councillor Dornford voted **against** the motion (that was carried 8/1): *"That the minutes of the Ordinary Council Meeting held on 22 September 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc B4]
 - (2) Councillor Dornford said that his reason, for voting as mentioned in paragraph 12(1) above, was that as discussions of elected members were not recorded electronically and reflected in the minutes, it was his belief that they were not a true and accurate record. [p2Doc B4]
 - (3) The Presiding Member said that Council had recently received a Councillor Motion to audio record all Council meetings, and that Council resolved not to support the Councillor Motion at that time. [p2Doc B4]
13. At the next OCM, i.e. the OCM held on 24 November 2009 (the November 2009 OCM):
 - (1) Councillor Dornford voted **against** the motion (that was carried 8/1): *"That the minutes of the Ordinary Council Meeting held on 19 October 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc B5]

- (2) Councillor Dornford said that his reason, for voting as mentioned in paragraph 13(1) above, was that as discussions of elected members were not recorded electronically and reflected in the minutes, it was his belief that they were not a true and accurate record. [p2Doc B5]
 - (3) The City's Chief Executive Officer (the CEO) advised the meeting that according to the Standing Orders, there was no legal requirement to record every word said at a meeting, as long as decisions of Council were recorded. [p2Doc B5]
 - (4) Councillor Dornford voted **against** the motion (that was carried 8/1): *"That the minutes of the Ordinary Council Meeting held on 27 October 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [p2Doc B5]
 - (5) Councillor Dornford said that his reason, for voting as mentioned in paragraph 13(4) above, was that as discussions of elected members were not recorded electronically and reflected in the minutes, it was his belief that they were not a true and accurate record. [p2Doc B5]
 - (6) The CEO again advised the meeting that according to the Standing Orders, there was no legal requirement to record every word said at a meeting, as long as decisions of Council were recorded. [p2Doc B5]
14. At the next OCM, i.e. the OCM held on 15 December 2009 (the December 2009 OCM):
- (1) Councillor Dornford voted **against** the motion (that was carried 7/1): *"That the minutes of the Ordinary Council Meeting held on 24 November 2009 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc B6]
 - (2) Councillor Dornford said that his reason, for voting as mentioned in paragraph 14(1) above, was that as discussions of elected members were not recorded electronically and reflected in the minutes, it was his belief that they were not a true and accurate record. [p2Doc B6]
 - (3) The CEO advised the meeting: that according to the Standing Orders, there was no requirement to record every word said at a meeting, as long as decisions of Council were accurately recorded; and that the current practice of the City accords with the legislative requirements of the Local Government Act 1995 and Council Policy. [p2Doc B6]

15. The City's CEO sent a letter dated 12 January 2010 [Doc B2] to Councillor Dornford, the text of which read:

"Dear Cr Dornford

CONFIRMATION OF MINUTES - STANDING ORDERS LOCAL LAW 2006

For a number of months you have assumed the practice of voting against the Confirmation of minutes. At the Belmont Trust meeting of 22 December 2009 after your refusal to confirm the previous minutes the Mayor instructed officers to seek advice on the matter.

I can confirm that advice has been sought and I now take this opportunity to clarify a number of issues and provide you with some guidance on the matter.

The Standing Orders Local Law 2006 states:

"4.5 Confirmation of Minutes

(1) When minutes of a meeting are submitted to an ordinary meeting of the Council or Committee for confirmation, if a Member is dissatisfied with the accuracy of the minutes, then he or she shall—

(a) state the item or items with which he or she is dissatisfied; and

(b) propose a motion clearly outlining the alternative wording to amend the minutes.

(2) Discussion of any minutes, other than discussion as to their accuracy as a record of the proceedings, shall not be permitted."

By voting against the confirmation of the minutes as accurate without complying with the requirements of section 4.5(1) of the *Standing Orders Local Law* is a breach. Therefore you may be committing a minor breach under section 5.105 of the *Local Government Act 1995*. I understand that you believe that as the minutes are not recorded verbatim that they are not accurate. I advise that there is no legal requirement to do so and that your previous notice of motion to the Council to audio tape meetings was not successful.

Further, it is important that you understand that the person presiding at the meeting is authorised and required to enforce the Standing Orders, and therefore as a matter of law, the Mayor or other presiding person is the most appropriate person and may take action under section 5.107 of the *Local Government Act 1995*, which provides:

"5.107. Complaining to complaints officer of minor breach

(1) A person who has reason to believe that a council member has committed a minor breach may complain of the breach by sending to the complaints officer a complaint in accordance with subsection (2)."

If you are not able to identify inaccuracies in the minutes of a meeting then the only course which the City's *Standing Orders Local Law* and the *Local Government Act 1995* contemplates in those circumstances is for you to cast your vote in favour of the confirmation of the minutes. On that basis I must suggest that you give this matter serious consideration before council resumes in February 2010.

If you have any questions please feel free to ring me."
[**Bold emphasis added by the Panel**]

16. At the next OCM, i.e. the OCM held on 23 February 2010 (the February 2010 OCM):

- (1) Councillor Dornford voted against the motion (that was carried 10/1): *"That the minutes of the Ordinary Council Meeting held on 15 December 2009 as amended, printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc B7]
- (2) Councillor Dornford voted against the motion (that was carried 10/1): *"That the minutes of the Special Council Meeting held on 22 December 2009 as amended, printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc B7]

17. The City's CEO sent a letter dated 8 March 2010 [Doc B3] to Councillor Dornford, the text of which read:

"Dear Cr Dornford

Re Confirmation of Minutes Standing Orders Local Law 2006

In regard to the above and with reference to my letter dated 12 January 2010, a copy of which is attached, I now provide you with the following comments.

The letter of 12 January 2010 clearly indicated to you the requirements of the Standing Orders Local Law 2006, in particular, clause 4.5 Confirmation of Minutes. Also, as noted I provided for you an interpretation of how your actions are construed as a potential breach of the Standing Orders Local Law and subsequently dealt with under the provisions *Local Government Act 1995*.

I note that you have not responded to the previous correspondence nor have you sought further clarification on the matter prior to the commencement of the Council Meeting process in February 2010. I advise that the Minutes of the Meeting of 23 February 2010 at Item 6.1 which relates to Confirmation of Minutes of the Ordinary Council Meeting dated 15 December 2009 and Item 6.2 Confirmation of the Minutes of the Special Council Meeting held on the 22 December 2009 and that you in fact have voted against both matters.

I invite you again to provide your reasons behind this practice either in writing or in person with myself and the Mayor. Finally, I would remind you that the Person Presiding, in this case the Mayor, is authorised and required to conform with the Standing Orders, and therefore as a matter of law, the Mayor or other Presiding Person is the most appropriate person and may take action under section 5.107 of the *Local Government Act 1995*.

I look forward to your reply on this matter and or an arrangement of a meeting to discuss these issues prior to further action being taken."

18. At the next OCM, i.e. the OCM held on 23 March 2010 (the March 2010 OCM):

- (1) Councillor Dornford voted **against** the motion (that was carried 10/1): *"That the minutes of the Ordinary Council Meeting held on 23 February 2010 as printed and circulated to all Councillors, be confirmed as a true and accurate record."* [Doc B8]

- (2) The Presiding Member made the following statement to Cr Dornford after his decision not to confirm the Ordinary Council Meeting Minutes of 23 February 2010 as a true and accurate record –

“Cr Dornford, as the Mayor and Presiding Member of Council, I am going to rule on this issue and have it recorded in the minutes.

The City has on two occasions written to you in regard to your current practice of voting against the adoption of Council Minutes. It has been made clear to you that your practice is in contravention of the City's Standing Orders Local Law.

In accordance with clause 14.4, I need to advise you that I am required to enforce these Standing Orders. As such, I will be instructing the Chief Executive Officer to undertake the appropriate action as required by the Standing Orders Local Law.” [Doc B8]

Attachment C

Material on the required contents of minutes

Background

1. The reason for the requirement that local governments keep 'minutes' of council and committee meetings is that an official record of the proceedings of the meeting is kept.
2. The contents of the minutes are required by regulation to have as a minimum the inclusion of various matters [see paragraph 7 below].

Common law

3. In *Kim Luby v The Australian Nursing Federation, Industrial Union of Workers Perth* [2002] WAIRComm 6010 (17 July 2002), the applicant complained that the ANF's Secretary had not made a correct nor an accurate record of the proceedings for the minutes of the ANF's Council in respect of several of its meetings. In that matter His Honour, the President P J Sharkey, said the following in his Reasons for Decision:

At [41]:

"What is required to be recorded in minutes?"

- (a) *The minutes should be an accurate recording of everything that is done at a meeting.*
- (b) *The minutes should be an accurate record of the proceedings at the meeting (that is the common law and what rule 16(2)(a) prescribes).*
- (c) *Whilst the minutes should be a complete record of the proceedings this does not mean that the minutes should be a word for word transcription of everything that was said at the meeting. Such minutes are usually too cumbersome to assist. (However, it is fair to observe, for my part, that Council may, for a particular reason, or on request require by resolution or as a practice that such a record might be kept).*
- (d) *It is generally sufficient that the minutes are a complete record of every decision reached by the meeting.*
- (e) *The minutes should first describe the nature of the meeting, specify whether it is ordinary, a special or adjourned meeting and the date, time and place thereof.*
- (f) *The names of those present and the Chairperson should be set out.*
- (g) *Apologies and absences otherwise required to be recorded should be so recorded.*
- (h) *There should be a record of the business of the meeting in the order in which it is done.*
- (i) *The appointment of a Chairperson, the confirmation or adoption of minutes of the previous meeting and a brief statement of the correspondence laid before the meeting and what it is decided thereon should be noted.*
- (j) *All decisions arrived at, at the meeting should be recorded in the minutes.*

- (k) *That means that the precise words of all motions and amendments which are proposed together, if desired with the names of the movers and seconders, and whether the proposals are carried or rejected should appear.*
- (l) *If any person wishes to have her/his dissent or abstention noted in the minutes, this should be done but only if the person expresses that wish.*
- (m) *It is also proper to record the numbers voting for or against any proposal before the meeting, but this is only necessary when the rules require that a stated number or percentage is necessary before a motion can be carried.*
- (n) *The minutes should refer to any reports of committees that have been presented to the meeting.*
- (o) *Standing orders or special resolutions may alter those practices but not the substantial requirement to keep an accurate record*
- (p) *The Chairperson should regard it as part of his/her duty to see that the records are correct.*
- (q) *Under the rules of this organisation, and of common law, it is the duty of the Secretary to ensure that they are correct.*
- (r) *The confirmation or adoption of minutes decides their accuracy as a record of proceedings.*
- (s) *It is upon the motion for confirmation of the minutes as to their accuracy that, as a record of the proceedings, a discussion of that point occurred*

(See, generally, "Joske's Law and Procedure at Meetings in Australia", 9th Edition, page 79-80, and see also Horsley "The Law and Administration of Associations in Australia", pages 135-136)."

At [53] – [57]:

"... The Secretary's role and his duty is to make a correct record ((ie) to prepare a correct record of the proceedings in accordance with the principles which I have expressed above).

I want to turn to the ordinary meaning of the word "correct". There is no judicial definition of that word in the right context, or at least not one which I have been able to find. "Correct" means in its most appropriate definition:-

"Conforming to fact or truth; free from error, accurate."

"Correct" must also be read in the context of the prescription of what is required in the minutes (see "Joske's Law and Procedure at Meetings in Australia" (op cit)).

A correct record is as I have expressed it to be above relying on the authority of "Joske's Law and Procedure at Meetings in Australia" (op cit) and Horsley "The Law and Administration of Associations in Australia" (op cit). A record cannot be correct unless it is accurate. The Secretary obviously is not the ultimate arbiter and cannot be the arbiter in the end of what is a correct record of the proceedings of the Council because the minutes only become a correct record of the proceedings of a meeting when they are accepted as such by the Council and then signed for as such by the President. It is however, the Secretary's duty to produce a correct record to the meetings for adoption or otherwise.

However, in this case, it is quite clear that, with very few amendments, the record of the proceedings prepared by the Secretary was accepted by the Council. (I would add in parenthesis that they are not “confirmed”. That term is entirely incorrect as Horsley “The Law and Administration of Associations in Australia” (op cit) points out)."

At [60]:

"I would add that there is a proper mechanism and a correct time to deal with errors and omissions in minutes of meetings and that is when there is a motion to adopt them. I would also add that a Council which adopts a course of conduct of failing to properly record what a member or members of the Council reasonably requires to be recorded or which does not accurately record significant matters of information, debate or statement may well be held to be acting without bona fides (see Scott and Others v Jess (NSW Nos 11 and 14 of [1984] FCA 289; 1984) 56 ALR 379). One example where it might be inferred that the Council is oppressing a member or members who are in a minority, might occur if what they have said or done is not recorded, where it is pertinent or requested with good reason, to be recorded, because of an express or implied course of conduct by the Council, or by the Secretary for that matter."

Local government law

4. Section 5.22 of the *Local Government Act 1995* (the Act) relates to the obligation to keep minutes of council or a committee meetings, and for them to be confirmed. That section reads:

"(1) The person presiding at a meeting of a council or a committee is to cause minutes to be kept of the meeting's proceedings.

(2) The minutes of a meeting of a council or a committee are to be submitted to the next ordinary meeting of the council or the committee, as the case requires, for confirmation.

(3) The person presiding at the meeting at which the minutes are confirmed is to sign the minutes and certify the confirmation."

5. It appears that the terms 'confirmation' and 'confirmed' in section 5.22 require the statement or qualification 'as a correct or accurate record of the meetings proceedings' to be read immediately after each of them.
6. Section 5.25 of the Act empowers the making of regulations about council and committee meetings and committees. Section 5.25(1)(f) reads:

"Without limiting the generality of section 9.59, regulations may make provision in relation to —

...

- (f) the content and confirmation of minutes of council or committee meetings and the keeping and preserving of the minutes and any documents relating to meetings;*

7. Regulation 11 of the *Local Government (Administration) Regulations 1996* prescribes the required content of minutes of council or committee meetings for the purpose of section 5.25(1)(f) of the Act. That regulation reads:

“The content of minutes of a meeting of a council or a committee is to include:

- (a) the names of the members present at the meeting;*
- (b) where a member enters or leaves the meeting during the course of the meeting, the time of entry or departure, as the case requires, in the chronological sequence of the business of the meeting;*
- (c) details of each motion moved at the meeting, the mover and the outcome of the motion;*
- (d) details of each decision made at the meeting;*
- (da) written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70 (but not a decision to only note the matter or to return the recommendation for further consideration);*
- (e) a summary of each question raised by members of the public at the meeting and a summary of the response to the question; and*
- (f) in relation to each disclosure made under section 5.65 or 5.70 in relation to the meeting, where the extent of the interest has also been disclosed, the extent of the interest.”*

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 25 of 2010 (DLG 20100170)
Heard: Determined on the documents
Considered: 26 November 2010 & 2 February 2011
Coram: Mr B. Jolly (Presiding Member)
 Councillor C. Adams (Member)
 Mr J. Lyon (Member)

Complaint No. SP 25 of 2010

Complainant: (Mayor) Glenys GODFREY

Council member complained about:

Cr Gerard Cyril DORNFORD

Local Government:

City of Belmont

Regulation involved found breached:

Regulation 4

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.

FINDINGS OF MINOR BREACHES

The Panel has made 5 findings of minor breach (the Findings) in relation to Complaint No. SP 25 of 2010 – namely, that at each of the City's Ordinary Council Meetings held on 27 October 2009, 24 November 2009, 15 December 2009, 23 February 2010 and 23 March 2010, Councillor Dornford contravened standing order 4.5(1)⁴ of the *City of Belmont Standing Orders Local Law 2006* (the City's Standing Orders) in that when the minutes of a previous meeting or previous meetings were submitted for confirmation, he was dissatisfied with the accuracy of such minutes, but refused or failed to state the item or items with which he was dissatisfied and propose a motion clearly outlining alternative wording to amend such minutes, and thus committed 5 minor breaches by virtue of regulation 4.

SUMMARY OF DECISION

⁴ Standing order 4.5(1) reads, relevantly: "When minutes of a meeting are submitted to an ordinary meeting of the Council ... for confirmation, if a Member is dissatisfied with the accuracy of the minutes, then he or she shall: (a) state the item or items with which he or she is dissatisfied; and (b) propose a motion clearly outlining the alternative wording to amend the minutes."

The Panel dealt with the said 5 minor breaches (the subject Minor Breaches) pursuant to subsection (b)(iii) of section 5.110(6) by ordering that Councillor Dornford undertake training as specified in the attached Minute of Order.

DECISION & REASONS FOR DECISION

References to sections and regulations

1. In these Reasons, unless otherwise indicated a reference to a section is a reference to the corresponding section in the Act, and a reference to a regulation is a reference to the corresponding regulation in the Regulations.

Procedural fairness matters

2. The Panel notes that through its Presiding Member it has given to Councillor Dornford and to his solicitors, Hammond Legal: notice of the Findings (the notice of the findings); a copy of the Panel's *Findings and Reasons for Findings* in this matter (the Reasons for Findings); and a reasonable opportunity for Councillor Dornford to make submissions about how the subject Minor Breaches should be dealt with under section 5.110(6)⁵.

Councillor Dornford's response

3. Councillor Dornford has responded to the notice of findings and the Reasons for Findings by a letter (Hamond Legal's letter) of 7 January 2011 from Hammond Legal, the text of which reads:

"I refer to the Notice of Findings from the [Panel] dated 30 November 2010.

As to the matters raised in your letter dated 30 November 2010 I respond on behalf of Councillor Dornford as follows:

DISMISSAL OF COMPLAINT

1. *Councillor Dornford submits that pursuant to s 5.110(6)(a) of the Local Government Act 1995 ('the Act') the breach should be dealt with by dismissing the complaint.*
2. *This matter is trivial in the extreme particularly given that no member of the Belmont community has been misled or experienced any loss, or likely to experience any loss of faith in the democratic processes of local government by reason of Councillor Dornford's stance.*

⁵ Section 5.110(6) reads:

"The breach is to be dealt with by —

(a) dismissing the complaint;

(b) ordering 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) ordering 2 or more of the sanctions described in paragraph (b)."

3. *This matter is such that if Councillor Dornford is censured or ordered to publicly apologise it will cause the local community to have contempt for the process of local government.*
4. *Complaints such as the complaint no. SP 25 of 2010 lodged by Mayor Godfrey should not be encouraged - both as a matter of public policy and practicality.*
5. *This process has involved unnecessary:*
 - a. *Deliberations of Council;*
 - b. *Expenditure of Belmont ratepayer funds both for legal fees and administrative time;*
 - c. *Utilisation of the office of the Chief Executive Officer of the Council. Many letters have been written by the Chief Executive Officer to Councillor Dornford regarding this matter.*
 - d. *Utilisation of the office of Mayor;*
 - e. *Use of Council resources generally.*
6. *Councillor Dornford expresses concern and complains as to the fact that Mayor Godfrey voted against the resolution supporting Councillor Dornford having access to legal funding under Council's policy on Legal Representation, particularly when Mayor Godfrey was the complainant.*
7. *Councillor Dornford asserts that this process has been used to embarrass Councillor Dornford due to the fact that Mayor Godfrey dislikes Councillor Dornford.*
8. *Councillor Dornford regrets the unnecessary waste of the City's funds and resources that has occurred by reason of this complaint.*
9. *The Standing Orders should not be construed in a manner that deprives a Councillor of his right to express an objection to the way in which Council goes about its business.*
10. *Councillor Dornford has received complaints from residents as to the accuracy of the minutes of Council meetings. Details of such complaints can be made available to the Panel if required.*
11. *In the event that the Council does not accept our submissions set out at paragraphs 1-10, we would request the opportunity to be heard further on the matter."*

Panel's views on Councillor Dornford's response

4. In relation to the contents of the paragraph numbered 2 in Hammond Legal's letter:
 - (1) The Panel notes Hammond Legal's description of this matter is that it "*is trivial in the extreme*". In the Panel's view this description may be construed in at least two ways:
 - (a) that standing order 4.5(1) of the City's Standing Orders is of little importance, and is petty, frivolous and trifling; or
 - (b) that the subject Minor Breaches are of little importance, and are petty, frivolous and trifling.
 - (2) A submission that the Panel should view standing order 4.5(1) of the City's Standing Orders as of little importance, petty, frivolous and trifling:
 - (a) may be seen merely as an attempt to agitate the political issue of what conduct of a council member should be the subject of regulations such as the Regulations; and
 - (b) is of no relevance or assistance to the Panel in determining how the subject Minor Breaches should be dealt with under section 5.110(6).

- (3) A submission that the Panel should view the subject Minor Breaches as of little importance, petty, frivolous and trifling overlooks the common law as to what constitutes a 'trivial offence'.
- (4) The Panel notes that, in general, an offence is not to be regarded as trivial if it is a typical example of the behaviour prescribed for such an offence. There must be something that distinguishes the circumstances of the offence under consideration from what is to be regarded as a typical breach of the particular provision⁶.
- (5) The Panel also notes that in *Curby v Richards-Scully*⁷ White AUJ cites Parker J in *Riley v Gill*⁸ as saying, relevantly: "...what is intended is a trivial example of the forbidden act..... Trivial, in this context, means of little importance, petty, frivolous, trifling. While it is true that inadvertence or lack of intention may render an act trifling, those qualities are not necessary prerequisites before an offence may be considered trivial."
- (6) Accordingly, a submission that the Panel should view the subject Minor Breaches as of little importance, petty, frivolous and trifling is of no relevance or assistance to the Panel in determining how the subject Minor Breaches should be dealt with under section 5.110(6).
- (7) The Panel does not agree with Hammond Legal's submission, that the complaint should be dismissed on the basis that no member of the Belmont community "*is likely to experience any loss of faith in the democratic processes of local government*" by reason of Councillor Dornford's conduct in this matter, because, in the Panel's view, it is probable that a law-abiding and right-thinking member of that community would likely:
 - (a) not view Councillor Dornford's conduct in this matter – i.e. deliberately committing the same minor breach at 5 consecutive monthly meetings - as acceptable conduct for a Council member;
 - (b) view Councillor Dornford's conduct in this matter as at least the undermining of the importance of members observing a local law relating to conduct at Council and committee meetings; and
 - (b) view the dismissal of the complaint in the present circumstances as some form of vindication or endorsement of Councillor Dornford's conduct in this matter.

5. In relation to the paragraph numbered 3 in Hammond Legal's letter, the Panel notes that while Hammond Legal claims that should the Panel deal with the subject Minor Breaches under section 5.110(6) by ordering that Councillor Dornford be publicly censured or to apologise publicly, either of those orders will "*cause the local community to have contempt for the process of local government*", it fails to provide any information or any argument to support that claim.

6. In the Panel's view, the following observations are appropriate in relation to the contents of the paragraph numbered 4 in Hammond Legal's letter:

⁶ Harper v Page [2004] WASCA 267 per Le Miere J at [41]

⁷ [2002] WASCA 166 at [16]

⁸ Unreported; SCt of WA; Library No 970731; 8 December 1997 at p5.

- (1) The WA Parliament has thought fit to pass legislation that requires council members in WA to observe certain standards of conduct, and confers a statutory right pursuant to section 5.107(1) for any person who has reason to believe that a council member has committed a minor breach to complain of the breach.
- (2) The Panel has an obligation to make a finding as to whether the breach alleged in the complaint occurred. [section 5.110(2)]
- (3) The Panel has no power to dismiss a complaint if it is the Panel's view that a complaint is 'vexatious' in the legal sense – i.e., that the complaint:
 - (a) was instituted with the intention of annoying or embarrassing the council member complained about; or
 - (b) was brought for collateral purposes, and not for the purpose of having the Panel, or another standards panel, adjudicate on the issues arising from the allegation or allegations of breach made in the complaint; or
 - (c) irrespective of the motive of the complainant, is so obviously untenable or manifestly groundless as to be utterly hopeless.⁹
- (4) It is doubtful that the current state of the common law is such that an adjudicating body such as the Panel has inherent power to refuse to deal with, or to dismiss, a complaint on the basis that it is an abuse of process.
- (5) In the context of the contents of paragraphs 6(3) and 6(4) above, the Panel considers that the obligation mentioned in paragraph 6(2) above must be observed, irrespective of the complainant's motives or intention in making the complaint.

7. In the Panel's view, the paragraph numbered 4 in Hammond Legal's letter:

- (a) may be seen merely as an attempt to agitate the political issue of what conduct of a council member should be the subject of regulations such as the Regulations; and
- (b) is of little (if any) relevance or assistance to the Panel in determining how the subject Minor Breaches should be dealt with under section 5.110(6).

8. In the Panel's view, the contents of the paragraph numbered 5 in Hammond Legal's letter merely mentions some of the possible consequences of a complaint having been made pursuant to section 5.107(1). Accordingly, in the Panel's view, the paragraph numbered 5 in Hammond Legal's letter:

- (a) may be seen merely as an attempt to agitate the political issues of:
 - (i) whether or not any conduct of a council member should be the subject of regulations such as the Regulations; and
 - (ii) if so, what conduct of a council member should be the subject of regulations such as the Regulations; and

⁹ *Attorney-General v Wentworth* (1988) 14 NSWLR 481 per Roden J at p.481; See also the Western Australian Industrial Appeal Court judgment of Buss J at [33] in *The Commissioner of Police of Western Australia -v- AM* [2010] WASCA 163 (S).

- (b) is of little (if any) relevance or assistance to the Panel in determining how the subject Minor Breaches should be dealt with under section 5.110(6).

9. In relation to the contents of the paragraph numbered 6 in Hammond Legal's letter, the Panel notes that even if *Mayor Godfrey voted against the resolution supporting Councillor Dornford having access to legal funding under Council's policy on Legal Representation*, that circumstance is of no relevance or assistance to the Panel in determining how the subject Minor Breaches should be dealt with under section 5.110(6).

10. In relation to the contents of the paragraph numbered 7 in Hammond Legal's letter, the Panel notes that even if *"this process has been used to embarrass Councillor Dornford due to the fact that Mayor Godfrey dislikes Councillor Dornford"*, that circumstance is of no relevance or assistance to the Panel in determining how the subject Minor Breaches should be dealt with under section 5.110(6).

11. The Panel notes that, in relation to the contents of the paragraph numbered 8 in Hammond Legal's letter, while Hammond Legal asserts that *"Councillor Dornford regrets the unnecessary waste of the City's funds and resources that has occurred by reason of this complaint"*, there is no indication that Councillor Dornford has acknowledged any of his wrongdoing in this matter or that he has any regret, remorse or contrition for any of his conduct in this matter.

12. In the Panel's view:

- (1) The contents of the paragraph numbered 9 in Hammond Legal's letter is an attempt to re-agitate an issue – namely, the construction of standing order 4.5(1) of the City's Standing Orders – which has, as a matter of substance, already been determined or commented on by the Panel in the Reasons for Findings.
- (2) The Panel's construction of and views in regard to standing order 4.5(1) in the Reasons for Findings do not deprive a Council member of his or her right to express an objection to the way in which Council goes about its business.
- (3) The contents of the paragraph numbered 9 in Hammond Legal's letter are of no relevance or assistance to the Panel in determining how the subject Minor Breaches should be dealt with under section 5.110(6).

13. The Panel notes the contents of the paragraph numbered 10 in Hammond Legal's letter.

14. The Panel declines Hammond Legal's request in the paragraph numbered 11 in Hammond Legal's letter to be heard further on this matter if the Panel's decision is to not dismiss the complaint, on the basis that it does not see any useful purpose being achieved in allowing that request.

Panel's views on how the subject Minor Breaches should be dealt with under section 5.110(6)

15. The Panel notes that:

- (1) Councillor Dornford's response indicates that, notwithstanding the Panel's reasons in the Reasons for Findings, he does not express any remorse or contrition for his conduct that the Panel has found was his offending conduct in this matter.
- (2) It can *not* be said that any of Councillor Dornford's conduct that the Panel has found was his offending conduct in this matter, was committed by him in the heat of the moment or without premeditation.
- (3) To paraphrase the Panel's views mentioned in paragraphs 13(3) and 13(4) of the Reasons for Findings:
 - (a) it appears that the fundamental nature of each of Councillor Dornford's subject breaches of standing order 4.5(1) was that he failed to propose a motion clearly *outlining* alternative wording to amend the minutes concerned; and
 - (b) Councillor Dornford could and should have said: "*I am dissatisfied with the accuracy of all items of the minutes and move that the minutes be amended to set out verbatim everything said at the meeting*", and, if he had said so, it appears that he would have complied with standing order 4.5(1) by virtue of, inter alia, the motion mentioned clearly *outlining* alternative wording to amend the minutes.

No antecedents

16. The Panel notes that Councillor Dornford has not previously been found under Part 5 Division 9 of the Act to have committed any minor breach.

Is a public censure appropriate?

17. In the Panel's view:

- (1) A public censure of the kind ordered by the Panel is a significant sanction. It involves a high degree of public admonition of the conduct of the council member concerned.¹⁰
- (2) A publicly censure acts not only as a reprimand aimed at reformation of the offending council member and prevention of further offending acts, but 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.
- (3) The subject Minor Breaches are minor breaches by virtue of regulation 4, which provides that the contravention of a local law relating to conduct of people at council or committee meetings is a minor breach for the purposes of section 5.105(1)(b).

¹⁰ *Mazza and Local Government Standards Panel* [2009] WASAT 165 per Judge J Pritchard (Deputy President) at [107].

- (4) While standing order 4.5(1) is in the Panel's view a local law that relates to conduct of people' at a Council or a Committee meeting, it appears in Part 4 of the City's Standing Orders, which is headed '*Business of the Meeting*' – whereas Parts 5, 6 and 7 of the City's Standing Orders are respectively headed '*Conduct of Persons at Council and Committee Meetings*', '*Conduct of Members Generally*' and '*Conduct of Members During Meetings*'.
- (5) It is not appropriate that the Panel make an order that Councillor Dornford be publicly censured for his offending conduct in this matter, on the basis that such conduct, while unlawful, was not so serious as to deserve the sanction of a public censure.

Is a public apology appropriate?

18. In the Panel's view:

- (1) A public apology of the kind ordered by the Panel is a significant sanction. It also involves a high degree of public admonition of the conduct of the council member concerned.
- (2) The circumstances that will in almost all occasions deserve the sanction of a public apology to another person include those where a council member's offending conduct is or conveys a slight or a personal attack on the other person.
- (3) It is not appropriate that the Panel make an order that Councillor Dornford apologise publicly either generally or to any person for his offending conduct in this matter, on the basis that, while his offending conduct in this matter may have upset others there is no information before the Panel that would suggest that such conduct was or involved a slight or a personal attack on another person.

Is an order for training appropriate?

19. In the Panel's view, it is appropriate and proportionate to the number and gravity of the subject Minor Breaches that Councillor Dornford should undertake training that involves meeting procedures.

Panel decision

20. Having regard to the Reasons for Findings, the matters mentioned in paragraphs 4 to 19 above (both inclusive), and the general interests of local government in Western Australia, the Panel's decision on how the subject Minor Breaches are dealt with under section 5.110(6) is that, pursuant to subsection (b)(iii) of that section, it hereby orders that Councillor Dornford undertake training as specified in the attached Minute of Order.

.....
Brad Jolly (Presiding Member)

.....
Carol Adams (Member)

.....
John Lyon (Member)

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) 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 under the *State Administrative Tribunal Act 2004* (SAT Act) section 20(1).
- (3) The Panel's *Reasons for Finding* and these *Reasons for Decision* 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

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 25 of 2010 (DLG 20100170)
Heard: Determined on the documents
Considered: 26 November 2010 & 2 February 2011
Coram: Mr B. Jolly (Presiding Member)
Councillor C. Adams (Member)
Mr J. Lyon (Member)

Complaint No. SP 25 of 2010

Complainant: (Mayor) Glenys GODFREY

Council member complained about:

Cr Gerard Cyril DORNFORD

Local Government:

City of Belmont

Regulation involved found breached:

Regulation 4

MINUTE OF ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Gerard Cyril Dornford, a member of the Council of the City of Belmont, undertake training as specified in paragraphs 2 and 3 below.
2. Within 30 days from the date of service of this Order on the said Gerard Cyril Dornford, he shall:
 - (a) enrol in and pay the required fee for the then immediately next available one day training course in the Unit of Competency, in the Diploma in Local Government (Elected Member), described as "Councillor Roles & Responsibilities", offered by the Western Australian Local Government Association (WALGA) at its premises at 15 Altona Street, West Perth; and
 - (b) demonstrate his compliance with the terms of paragraph 2(a) above by providing the City of Belmont's Chief Executive Officer with written evidence from WALGA that the said Gerard Cyril Dornford has enrolled in and paid the required fee for the said training course.
3. The said Gerard Cyril Dornford shall:
 - (a) attend at the said training course during the hours nominated by WALGA; and

- (b) on the completion of the said training course, request WALGA to provide its written confirmation to the City of Belmont's Chief Executive Officer that the said Gerard Cyril Dornford attended at the said training course during the hours nominated by WALGA.