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## Local Government Standards Panel

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Complaint Number	SP 2020-042
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Mr Don Green</b>
<b>Respondent</b>	<b>Councillor Michael Separovich</b>
Local Government	<b>City of Cockburn</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Cr Peter Rogers (Member) Mrs Emma Power (Member)
Heard	8 July 2020 Determined on the documents
Finding	1 x Breach Regulation 7(1)(b)

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### FINDING AND REASONS FOR FINDING

Delivered 1 September 2020

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#### DEFAMATION CAUTION

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## Summary of the Panel's decision

1. On 8 July 2020, the Panel found that Councillor Michael Separovich, a councillor of the City of Cockburn ("**the City**"):
    - a. did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* ("**the Act**") and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* ("**the Regulations**") when on 26 March 2020 he wrote an email to elected members which implied that staff of the City had not distributed an agenda in a timely manner; and
    - b. did not commit a minor breach:
      - i. pursuant to the Act and regulation 7(1)(b) of the Regulations when he had a Facebook Messenger conversation with another councillor which allegedly implied that City staff contrived to delay a scheduled Council Meeting to enable an employee to be terminated;
      - ii. pursuant to the Act and regulation 7(1)(b) of the Regulations when on 24 April 2020 he sent an email to all elected members stating that he did not have trust in the administration of the City;
      - iii. pursuant to the Act and regulation 11 of the Regulations when he failed to declare an alleged impartiality interest in respect to a vote made at the Special Council Meeting of the 16 April 2020;
- as set out further in paragraph 15.

## The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.<sup>1</sup>
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.<sup>2</sup>
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
  - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate<sup>3</sup>; and

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<sup>1</sup> Section 5.105 of the Act

<sup>2</sup> Section 5.106 of the Act

<sup>3</sup> *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1



- b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>4</sup>.
7. The Panel does not possess investigative or supervisory powers.<sup>5</sup> The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia<sup>6</sup>.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

### **Jurisdiction and Procedural Fairness**

11. On 10 June 2020 the Panel received a complaint from Mr Don Green acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 10 June 2020.
12. In the complaint form, the Complainant alleges that Cr Separovich has breached:
  - a. regulation 7 of the Regulations when on 26 March 2020 he wrote an email to the elected members which implied that staff of the City had not distributed an agenda in a timely manner ("**Allegation 1**"); and
  - b. regulation 7 of the Regulations when he had a Facebook Messenger conversation with another councillor which allegedly implied that City staff contrived to delay a scheduled Council Meeting to enable an employee to be terminated ("**Allegation 2**");
  - c. regulation 7 of the Regulations when on 24 April 2020 he sent an email to all elected members stating that he did not have trust in the administration of the City ("**Allegation 3**"); and
  - d. regulation 11 of the Regulations when he failed to declare an alleged impartiality interest in respect to a vote made at the Special Council Meeting of the 16 April 2020 ("**Allegation 4**"),as set out in paragraph 15 below ("**the Complaint**").
13. The Panel convened on 8 July 2020 to consider the Complaint.
14. The Panel:
  - a. accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission's website, Cr Separovich was:

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<sup>4</sup> Briginshaw v Briginshaw (1938) 60 CLR 336

<sup>5</sup> Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

<sup>6</sup> Section 8(6) of Schedule 5.1 of the Act



- iv. at the time the Panel met, the elected to the Council of the City in October 2017 for a term expiring in October 2021;
- v. a Councillor at the time of the alleged breach; and
- vi. a Councillor when the Panel met on 8 July 2020;
- b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>7</sup>;
- c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>8</sup>;
- d. was satisfied the Department had provided procedural fairness to Cr Separovich; and
- e. found it had jurisdiction to consider the Complaint.

### **The Specifics of the Complaint**

15. The Complainant makes the following particular comments and arguments in respect to the Complaint:

a. Allegation 1

- i. On 26 March 2020 the Mayor advised councillors and executive staff members of his decision to defer a Special Meeting of Council ("**the March SCM**"), of that evening, based on the developing COVID-19 situation.
- ii. The subject matter of the March SCM was a sensitive employee issue.
- iii. The Agenda paper for the March SCM was still being finalised due to the complex legal points.
- iv. Later the same day, Cr Separovich responded to the Mayor (and copied in all elected members) suggesting that the reports were already completed (or should have been) and were meant to have been distributed for the March SCM.
- v. The last line of the email then accuses the officers (of the City) of a failure to distribute agendas in a timely fashion:
- vi. The relevant email from Cr Separovich is as follows:

*"Surely the reports are already completed.*

*they were meant to be completed to be distributed for a SCM to night.*

*if the last minute postponement of the meeting hadn't have occurred, when were the officers planning on giving us the agenda we were meant to have read before tonights meeting?*

*this postponement seems to have covered another failure by the officers to distribute agendas in a timely fashion."*

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<sup>7</sup> Section 5.107(4) and 5.109(2) of the Act

<sup>8</sup> Section 5.107 and 5.109 of the Act

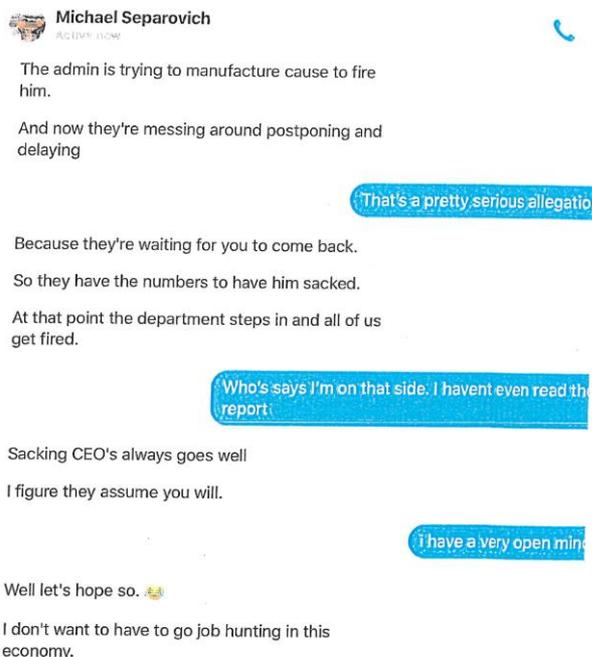


**(“the Allegation 1 Email”).**

- vii. This represents an unwarranted and baseless statement against the integrity of the staff.
- viii. There was no intent to deliberately delay the distribution of information to the elected members, it was imperative to ensure the content of the legal advice was complete.
- ix. These callous and ignorant remarks made by Cr Separovich were humiliating and disrespectful to the staff involved and no evidence was supplied in support of his comments.

**b. Allegation 2**

- i. The relevant Facebook Messenger exchange was between Cr Separovich and Cr Lee-Anne Smith is as follows:



**(“the Allegation 2 Conversation”).**

- ii. The intent of Cr Separovich's comments are at the extreme end of implying that the City's staff are involved in deceptive and dishonest behaviour in order to have the former CEO, Mr Cain, terminated.
- iii. This accusation was apparently based on the fact that Cr Smith, who was under suspension at the time, was soon to resume office and an assumption that she would not be supporting the reinstatement of Mr Cain.
- iv. The comments made by Cr Separovich assume that it is within the power of staff to postpone or defer Meetings which is not the case.
- v. It is totally inappropriate for such derogatory and insulting statements to be made against staff who were doing no more than trying to carry out their tasks in extraordinary circumstances.



- vi. It is particularly offensive that Cr Separovich provides no evidence in support of his outrageous claims and prefers to rely on unsustained innuendo to launch an attack against the City's staff.
- x. This was taken very seriously by the staff involved in this issue and is having a destabilising impact on employee relations with some councillors.

c. Allegation 3

- i. On 24 April 2020 Cr Separovich sent an email to Cr Lee-Anne Smith in response to an exchange between Cr Smith and Cr Chontelle Stone, relating to a matter contained on the Agenda for a forthcoming CEO Performance Review Committee Meeting. The trail of emails was copied to all elected members.

- ii. The relevant Email is as follows:

I'm sorry lee-anne, not only do I have no trust in the current executive, their actions have resulted in me now having NEGATIVE trust in them.

if only you were capable of working with and supporting the CEO like I'm almost positive you told the fair work commission you were, in order to get the case dismissed, we might not be in the situation of having to find a new one.

it seems strange that back in December we were told that if "serious allegations" like the unfounded ones levelled at Stephen Cain were levelled at any other member of the administration that they too would be suspended while an investigation occurred.

how many investigations are we at currently?  
was it 3 or 4?

the department has one, I'm fairly sure the CCC does, I believe the public sector commission does, and now due to the Worksafe case that our beloved lawyers declined to tell us about, we are set for a case of constructive dismissal as well.

if anyone wants any degree of my trust in this process, I don't want the administration anywhere within 100m of the ceo appointment process.

I don't trust our lawyers, I don't trust the administration, I don't trust our HR director, and my faith in the administration is so low that I'm not even going to trust anyone APPOINTED by them. I read the kusack report. It was a farcical joke. I will do just fine without a repeat of that.

if you want to proceed, I'm ok with that, but unless it's with the help of an outside agency, ie walga. not appointed by, or answerable to, ANYONE in the administration, I'm not on board.

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**("the Allegation 3 Email").**

- iii. The tone of Cr Separovich's comments can only be described as negatively toxic and highly derogatory towards the City's staff, its legal advisors and Cr Smith, to a lesser extent.
- iv. The comments lack any balance and are obviously made to specifically denigrate and humiliate nominated staff of the City and its qualified legal representatives.
- v. In one case he refers to a position (HR director) which does not exist. Cr Separovich has not even met staff from the City's HR Unit, so to make such an outrageous statement against one of them, is inexplicable.
- vi. This unwarranted criticism of the administration is unsupported by any evidentiary information to back up the statements made. It confirms that Cr Separovich has no capacity to discuss matters in a civilized manner and he appears intent on attacking the character of professionals with whom he has a difference of opinion.



- vii. This behaviour, is grossly inappropriate and in need of correction.
  - viii. The savagery of these comments, which are strenuously rebuked, are resentful and offensive to those at whom they are directed.
  - ix. This represents a pattern of behaviour from Cr Separovich, which is becoming intolerable and is having a seriously negative impact on relevant staff.
  - x. In addition, the misguided nature of the statements made indicates a severe lack of understanding by Cr Separovich on the process which is required to be followed under the Act in the recruitment of a CEO.
  - xi. Cr Separovich's commentary represents a breach of clause 7(1)(b) of the Regulations by improperly using his office as a councillor to cause detriment to the professional integrity and reputation of others.
- d. Allegation 4
- i. There are three instances of correspondence from Cr Separovich that show it is more likely than not that Cr Separovich had an impartiality interest in the matter of the employment of Mr Cain (the prior CEO of the City) and should have declared this at the Special Council Meeting held on 16 April 2020 (**“the April SCM”**) and that Cr Separovich breached Regulation 11 of the Regulations.
  - ii. First Item
    - A. On 17 March 2020 Cr Separovich sent an email to the Acting CEO, Mr Stuart Downing, commenting on the content of a letter communicated to all elected members earlier that day from a legal firm representing the suspended City of Cockburn CEO in a dispute with the Council as follows:

Read page 4/5.

specifically the part about the DLGSCI and Duncan Ord finding no misconduct.

personally im rather happy we didn't fire him... as I suspect we all would have been sacked.

Stuart can you corroborate that information from Mr Ord?  
has it been communicated to the city yet?  
and when can we call the SCM to reinstate Mr Cain to his position?

**“Allegation 4 Email 1”**
    - B. Cr Separovich poses a number of questions to Mr Downing, one of which was:

*“When can we call the SCM to reinstate Mr Cain to his position?”*
    - C. Cr Separovich has interpreted the content of the lawyer's letter as exonerating Mr Cain in relation to his dispute and, in the Complainant's opinion, concluded that Mr Cain should be reinstated as CEO on that basis.
    - D. On the day of the April SCM, the Complainant sent an email to Cr Separovich suggesting that he declare an “impartiality interest” in the matter, given his written commentary (in Allegation 4 Email 1 above) he



- appeared to be committed in his support for Mr Cain returning to his role as CEO for the City of Cockburn.
- E. Cr Separovich responded to the effect that he did not believe he had any greater level of "impartiality" than any other elected member who had previously voted on the issue, which had been the subject of four prior Special Council Meetings.
  - F. Decisions made at Council meetings are not predetermined by the prior opinions of individual members. While the voting on this issue by elected members has followed a consistent pattern when considered at Meetings of Council, those members who had previously committed to written commentary of their views at the time have since declared their impartiality interest.
  - G. In acknowledging that the decision to declare such interests is for an elected member alone to determine, the Complainant believes that Cr Separovich's comment on this occasion represents sufficient evidence to assume that he had already formed an opinion on the subject and this should have been declared as such at the relevant Meeting.
  - H. It is not appropriate for him to flippantly dismiss this suggestion on the basis of how others had previously exercised their vote.
- iii. Second Item
- A. On 30 April 2020, Cr Lee-Anne Smith emailed the Complainant and the Acting CEO, with a copy to the Mayor and Deputy Mayor, expressing concern that the decision made at the Special Council Meeting of 16 April 2020 (to terminate the CEO's employment Contract) was being frustrated by a group of councillors who seemed determined to defend the (now former) CEO's position that he should be able to return to his (former) role as follows:
    - Dear Don,
    - In relations to appointing a new CEO it would seem we have a group of Elected Members determined to:
      - 1. Show continual disregard toward officer recommendations,
      - 2. Show disregard for legal advice provided to the city,
      - 3. Show disregard for the decision of council,
    - I can only put this down to loyalty and relationship with the city's former CEO Mr Cain evidenced by:
      - 1. Continued contact, showing disregard for the motion of council via
      - 2. Phone calls, meetings, text messages, u-tube clips
      - 3. Family contact (particularly relating to CLR Stone) through Mr Cain's Mother and Son as evidenced by Mr Cain himself.
    - Would it be reasonable to suggest that some Elected Members consider declaring an impartiality interest for the attached reasons?
- ("Allegation 4 Email 2").**
- B. Cr Smith asked the Complainant to respond to her enquiry that at least some of these councillors had displayed such a level of support for Mr Cain, that it warranted those councillors declaring their impartiality.



- C. The Complainant's response to her was that, in his opinion, where there was sufficient written evidence to that effect, then it would seem to identify that there was a level of impartiality beyond merely voting on the matter at a Council Meeting as follows:

Lee – Anne

From an **internal** perspective, there is an obvious opinion shown by some councillors in their deliberations which would indicate a bias in the issue. However, the Regulations require that the judgement of whether there is a biased view should not be made solely on the internal knowledge of some people, but by independent outsiders who would make their own judgement based simply on the facts presented.

Therefore, my position is that where councillors have committed something in writing that clearly declares their view on any matter which is yet to be decided by Council, then there is a presumption that they have a predetermined position and an impartiality interest should be declared.

I hope this explains the matter for you.

Thanks

**(“Allegation 4 Email 3”).**

- D. Cr Smith responded that this would appear to relate specifically to the information provided by Cr Separovich previously.

iv. Third Item

- A. While the previous information in itself might have implicated Cr Separovich as having an impartiality interest which should be declared, on 26 March 2020, a copy of an exchange of text messages between Cr Separovich and Cr Smith was sent to the Complainant (the Allegation 2 Conversation) which clarified that there was a definite predetermined view on the matter held by Cr Separovich.

- B. Cr Separovich's final comment of:

*“I don't want to have to go job hunting in this economy”,*

seems to confirm that he has a closed mind on the matter and his ability to consider the relevant issues in an impartial manner is clearly compromised.

16. The Complainant also provided the following supporting evidence:

- a. Email from the Mayor to elected members and City staff confirming postponement of the SCM;
- b. A copy of the Email exchange with contains the Allegation 1 Email;
- c. A copy of the Allegation 2 Conversation;
- d. A copy of the Allegation 3 Email;
- e. A copy of Allegation 4 Email 1 and the email chain prior to such email;
- f. A copy of Allegation 4 Email 2; and
- g. A copy of Allegation 4 Email 3.



## Respondent's Response

17. Despite requests from the Department, Cr Separovich did not provide a response to the Complaint.

## Panel's Consideration

### Regulation 7

18. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

***"7. Securing personal advantage or disadvantaging others***

- (1) *A person who is a council member must not make improper use of the person's office as a council member —*
- (a) *to gain directly or indirectly an advantage for the person or any other person; or*
- (b) *to cause detriment to the local government or any other person.*
- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*
19. The Complainant has not made any allegation that there was any intention to provide an advantage to any particular party, so the Panel has only considered regulation 7(1)(b) of the Regulations in this decision.
20. To make a finding of a minor breach of regulation 7 of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Separovich was an elected member at the time of the alleged breach and the time of the determination;
  - b. Cr Separovich made use of his office as Council member of the City;
  - c. when viewed objectively, such use was an improper use of Cr Separovich's office in that it:
    - xi. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
    - xii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
  - d. Cr Separovich engaged in the conduct in the belief that detriment would be suffered by another person.
21. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom<sup>9</sup>. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.

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<sup>9</sup> Complaint of Minor Breach No. SP 3 of 2013



22. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent<sup>10</sup>.
23. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
24. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
25. It is not necessary to find whether any advantage was actually gained, or detriment was actually suffered<sup>11</sup>, but an intent to gain such advantage or to cause such detriment must be established.

### **Allegation 1 – Regulation 7(1)(b)**

#### Cr Separovich was an Elected Member at the relevant times

26. Cr Separovich was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
27. This element is met.

#### Cr Separovich made use of his office as Council Member of the City

28. In this instance:
  - a. Cr Separovich sent the Allegation 1 Email from his councillor email account; and
  - b. the subject matter of the Allegation 1 Email directly related to the council meetings the actions of City employees.
29. As such the Panel finds to the required standard that Cr Separovich was acting in his capacity as an elected member when he sent the Allegation 1 Email.
30. This element is met.

#### Cr Separovich's use was improper

31. The Complainant asserts that Cr Separovich's Allegation 1 Email was improper as it contained an unwarranted and baseless statement against the integrity of the staff.
32. The Panel considers the relevant portion of the Allegation 1 Email to be:

*"this postponement seems to have covered another failure by the officers to distribute agendas in a timely fashion."*
33. The City has an Elected Members Code of Conduct adopted by the Council in 2018 ("**the Code of Conduct**") which prescribes guidelines for dealing with including the following relevant provisions:

#### **"3. CONDUCT**

##### *3.1 Elected Members shall act and be seen to act;*

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<sup>10</sup> *Chew v R* [1992] HCA 18

<sup>11</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



.....

- *to make no allegations which are improper or derogatory and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment.*

34. In this case the Panel considers the above comment to be in breach of the Code as it makes an allegation that officers of the City had “failed” in their work and that the postponement was to cover such failure.
35. In this case, the Panel does not consider the assertion in the comment to be a harmless opinion or expression of frustration. Cr Separovich refers to an easily identifiable set of staff (i.e. the officers responsible for preparation of the agenda) and makes a derogatory allegation against their performance.
36. Given the above, the Panel finds that it is more likely than not the Allegation 1 Email by Cr Separovich was improper as:
  - a. it was in breach of the Code of Conduct;
  - b. the alleged conduct was of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor; and
  - c. the conduct is deserving of a penalty.
37. This element is met.

#### Cr Separovich intended to cause a detriment

38. The Complainant argues that Cr Separovich’s Allegation 1 Email was humiliating and disrespectful to the staff involved.
39. The Panel does not agree that the comment goes so far as to be considered “humiliating”, however, considers that it is more likely than not that Cr Separovich intended to reflect poorly on, and to denigrate the staff responsible for the preparation of the agenda.
40. This finding is based upon the context and, in particular, the tone and language used in the Allegation 1 Email.
41. As such, the Panel finds that it is more likely than not that Cr Separovich did have an intent to cause a detriment to the staff of the City referred to in the Allegation 1 Email.
42. This element is met

#### Conclusion

43. Given the above, the elements required to find a breach of regulation 7 of the Regulations have been met.

#### **Allegation 2 – Regulation 7(1)(b)**

##### Cr Separovich was an Elected Member at the relevant times

44. Cr Separovich was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
45. This element is met.

Cr Separovich made use of his office as Council Member of the City

46. The fact that an elected member may use a “private” Facebook account rather than a “councillor” Facebook account is not conclusive evidence that a party is acting in their personal capacity.
47. In this case the Allegation 2 Conversation as:
- It took place between Cr Separovich and another elected member; and
  - the topic of the Facebook message directly related to the City and employees and councillors of the City;
- the Panel finds to the required standard that Cr Separovich was acting in his capacity as an elected member when he made the comments in the Allegation 2 Conversation.
48. This element is met.

Cr Separovich's use was improper

49. The Complainant asserts that the Allegation 2 Conversation was improper as it implied that the City's staff were involved in deceptive and dishonest behaviour in order to have the employment of a staff member terminated.
50. The particular comments that appear to give rise to this allegation are:
- “The admin is trying to manufacture cause to fire him.*
- And now they're messing around postponing and delaying”*
51. In respect to the contents of the Allegation 2 Conversation, the Panel considers that the phrase “*manufacturing cause to fire him*” can be seen to have negative connotations towards the actions of staff.
52. In particular, the word “*manufacture*” is commonly used to indicate something has been artificially fabricated.
53. Cr Separovich had not provided the Panel with any alternative view regarding the use of this word.
54. Despite this, the Panel notes that Cr Separovich does not refer specifically to any City employee or staff member or councillor, but the “admin” in general.
55. In this case the Panel finds to the required standard that the Allegation 2 Conversation, and in particular the words “*the admin is trying to manufacture cause to fire him*” crossed the line of being imprudent to being improper as it implied possible wrongdoing by administrative staff in a derogatory manner.
56. However, in respect to the statement that the “admin” was “*messing around and delaying*” the Panel finds to the required standard that this phrase is not enough to be considered improper by a reasonable person, or amounts to an allegation of misleading or deceptive conduct.
57. Given the above, the Panel finds that it is more likely than not that the phrase “*the admin is trying to manufacture cause to fire him*” was improper as:
- it was in breach of the Code of Conduct;



- b. the alleged conduct was of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor; and
- c. the conduct is deserving of a penalty.

58. This element is met.

Cr Separovich intended to cause a detriment

- 59. In the circumstances the Panel notes that the Allegation 2 Conversation is a private messenger conversation between two parties.
- 60. The Panel finds that it is more likely than not that Cr Separovich did not intend for the relevant conversation to be shared (despite the fact he had it with another City councillor) but considered the same to be a private outpouring of his frustration as to what Cr Separovich considered to be difficult situation that could put the City at risk of adverse findings in a Department Inquiry.
- 61. The Panel finds to the required standard that Cr Separovich did not intend to cause any detriment to the City staff or administration.
- 62. This element is not met

Conclusion

- 63. Given the above, the elements required to find a breach of regulation 7 of the Regulations have not been met.

**Allegation 3 – Regulation 7(1)(b)**

Cr Separovich was an Elected Member at the relevant times

- 64. Cr Separovich was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
- 65. This element is met.

Cr Separovich made use of his office as Council Member of the City

- 66. In this instance:
  - a. Cr Separovich sent the Allegation 3 Email from his councillor email account;
  - b. the Allegation 3 Email was sent to two other councillors; and
  - c. the subject matter of the Email directly related to the administration of the City.
- 67. As such the Panel finds to the required standard that Cr Separovich was acting in his capacity as an elected member when he sent the Allegation 3 Email.
- 68. This element is met.

Cr Separovich's use was improper

- 69. The Complainant asserts that the Allegation 3 Email is improper as:
  - a. it is negatively toxic and highly derogatory towards the City's staff, its legal advisors and Cr Smith;



- b. it contains unwarranted criticism of the administration that is unsupported by any evidentiary information; and
  - c. it is grossly inappropriate.
70. The Panel has reviewed the Allegation 3 Email and considers the two paragraphs that refer negatively to the administration are as follows:
- “I’m sorry lee-anne, not only do I have no trust in the current executive, their actions have resulted in me now having NEGATIVE trust in them.”*
- “ if anyone wants any degree of my trust in this process, I don’t want the administration anywhere within 100m of the ceo appointment process. I don’t trust our lawyers, I don’t trust the administration, I don’t trust our HR director, and my faith in the administration is so low that I’m not even going to trust anyone APPOINTED by them .”*
71. In this case, Cr Separovich was clearly expressing his mistrust of “the administration” in respect to their involvement in the appointment process of a new Chief Executive Officer of the City.
72. It is clear from this Complaint, and other complaints received by the Panel, that Cr Separovich and certain members of the City staff have a difficult relationship.
73. To clarify, Cr Separovich is entitled to his judgment as to the amount of trust he places in the administration (irrespective of whether his opinion is justified or not). It is the manner in which such judgement is expressed that may lead to such a finding of improper conduct.
74. In respect to the Complainant’s comments that Cr Separovich’s assertions are not supported by evidence, the Allegation 3 Email does specify several reasons why Cr Separovich does not hold trust in the administration (i.e. the various investigations or inquiries being conducted as to the City). this supports the argument that Cr Separovich had a rational basis for his belief.
75. It is further relevant to note the context that the prior CEO’s employment had been terminated and such termination resulting in a legal dispute. As such, the Allegation 3 Email was sent in a context where there was a rational basis to be concerned that any further appointment was done in a manner seen to be above board.
76. It is noted that Cr Separovich does not accuse any particular party as having undertaken any wrongful action, but generally refers to “the administration”, “our lawyers” and a HR director (that the Complainant notes is non-existent). The Panel considers that these references are generalised and the Allegation 3 Email is predominantly commenting on the proposed process for appointing a new Chief Executive Officer, and Cr Separovich’s attitude towards these parties, rather than any particular past or future action by these parties.
77. Further, in this case, Cr Separovich is voicing his concerns to other councillors of the City, not City staff or members of the public. As such, the impact of these comments are limited essentially to persons already familiar with Cr Separovich views.
78. The Panel observes, however, it would be highly inappropriate to voice such an opinion in a public forum.



79. The Panel considers the Allegation 3 Email to be emotive and overly dramatic, but not enough to reach the bar of being improper.
80. Given the above, the Panel finds that it is more likely than not that the Allegation 3 Email was not improper as:
  - a. the alleged conduct was not of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor; and
  - b. the conduct is not deserving of a penalty.
81. This element is not met.

#### Cr Separovich intended to cause a detriment

82. The Complainant alleges that the Allegation 3 Email was drafted to specifically denigrate and humiliate nominated staff of the City and its qualified legal representatives.
83. The Panel notes that Cr Separovich does not accuse any party of wrongdoing, but is generally asserting his lack of trust in the proposed process for appointment of a new Chief Executive Officer.
84. As specified in section 5.37 of the Act, Council plays an integral role in the appointment of the Chief Executive Officer of a local authority. It is therefore, reasonable to expect that the elected members should have significant control over such appointment.
85. In the circumstances the Panel finds it is more likely than not that Cr Separovich's motivation for writing the Allegation 3 Email was to voice his frustrations and assert his view that the appointment process should not substantially be in the control of the administration, rather than to denigrate, or cause a detriment to, the administration of the City or any particular party.
86. The Panel finds to the required standard that Cr Separovich did not intend to cause any detriment to the City staff or administration.
87. This element is not met.

#### Conclusion

88. Given the above, the elements required to find a breach of regulation 7 of the Regulations have not been met.

#### **Regulation 11**

89. Regulation 11 requires a councillor to disclose what is commonly referred to as an "impartiality interest". The relevant parts of regulation 11 provide:

##### **"11. Disclosure of interest**

##### *(1) In this regulation —*

***interest** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.*



- (2) *A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —*
- (a) *in a written notice given to the CEO before the meeting; or*
  - (b) *at the meeting immediately before the matter is discussed.*
- (3) *Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.*
- (4) *Subregulation (2) does not apply if —*
- (a) *a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or*
  - (b) *a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.*
- (5) *If, under subregulation (2)(a), a person who is a council member discloses an interest in a written notice given to the CEO before a meeting then —*
- (a) *before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and*
  - (b) *at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.*
- (6) *If —*
- (a) *under subregulation (2)(b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or*
  - (b) *under subregulation (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting,*
- the nature of the interest is to be recorded in the minutes of the meeting.”*

#### **Allegation 4 – Regulation 11**

90. To make a finding of a minor breach of regulation 11 of the Regulations the Panel must be satisfied that it is more likely than not that:
- a. Cr Separovich was an elected member at the time of the alleged breach and the time of the determination;
  - b. Cr Separovich attended the council or committee meeting and was present when the relevant matter came before the meeting and was discussed;



- c. subject to regulation 11(3), Cr Separovich had a private or personal interest in a matter in which an apparent or real conflict of interest or a bias arises that does or might adversely affect the member's impartiality in considering such matter;
- d. Cr Separovich did not disclose the nature of the relevant interest in the matter in either of the ways required by regulation 11(2)(a) or regulation 11(2)(b); and
- e. regulation 11(4) does not apply.

Cr Separovich was an elected member at the time of the alleged breach and the time of the determination

91. Cr Separovich was a councillor at the time of the alleged breach and at the time the Panel considered the Complaint.
92. This element is met.

Cr Separovich attended at the council or committee meeting and was present during discussion of the matter

93. The relevant matter the subject of the Complaint April SCM held on the 16<sup>th</sup> April 2020.
94. The Minutes indicate that Cr Separovich was present at the April SCM and of the relevant consideration of the matter.
95. This element is met.

Cr Separovich has an interest in the matter

96. In regulation 11(1) an "interest" is defined as:  
*"**interest** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association."*
97. This is commonly referred to as an "impartiality interest"
98. In this case, it is asserted that Cr Separovich has a perceived impartiality interest on the basis of:
  - a. the fact Cr Separovich indicated in Allegation 4 Email 1 that he considered legal advice in the City to support the fact the former CEO should be reinstated;
  - b. Cr Smith indicated in Allegation 4 Email 2 she had qualms regarding the impartiality of various councillors regarding this issue based upon their prior actions; and
  - c. the Allegation 2 Conversion indicated Cr Separovich did not want to search for a job.
99. The Complainant argues that this demonstrates that Cr Separovich had already formed an opinion on the subject and this should have been declared as such at the relevant Meeting
100. In order for there to be a declarable impartiality interest either:
  - a. it must be more likely than not that, when viewed objectively, the relevant interest is one that a fair-minded informed observer might reasonably apprehend or perceive might be a conflict of interest or a bias; or



- b. the relevant association with a councillor might adversely affect the councillor's impartiality in considering the matter on the basis that the councillor's mind might not be open to persuasion in regard to the matter, or the member might not be willing to give genuine and appropriate consideration to the matter, the matters required by law to be taken into account, and any recommendation of council officers or a committee, as the case requires.
101. In respect to the contents of the Allegation 4 Email 1, the relevant context was that this was a response by Cr Separovich to a copy of legal advice provided by the City's solicitors.
102. The Complainant did not supply a copy of the relevant advice and the Panel has no way of discerning whether the view of Cr Separovich was reasonably supported by the same.
103. In any event, Cr Separovich was entitled to perceive the advice in whatever way he considered appropriate. It does not necessarily follow that having an alternative view (or even an incorrect view) amounts to a bias or declarable interest.
104. As such, the Panel finds to the required standard that the contents of Allegation 4 Email 2 do not support an argument that Cr Separovich had an interest in the relevant matter discussed at the April SCM.
105. In respect to the Allegation 2 Conversation, the Panel considers that it is a stretch to assume that the phrase "*I don't want to have to go job hunting in this economy*" indicated Cr Separovich had a closed mind on the matter voted on at the April SCM.
106. The Panel finds that it is more likely than not that this was an expression of such a generalised sentiment, and was made in the context of:
  - a. the fact the City had been the subject of a Departmental Inquiry;
  - b. the fact Cr Smith was, at that time, suspended from Council; and
  - c. the substantial amount of people losing jobs due to the COVID-19 Pandemic.
107. In addition, Cr Lee-Anne Smith raised her concerns in an email dated 30 April 2020 (Allegation 4 Email 2). This email was sent after the April SCM, refers to several councillors and does not specify when any of the alleged behaviours may have occurred.
108. The Complainant's allegations appear to be largely based upon the fact that Cr Separovich (and others) did not vote in accordance with the Complainant's and Cr Smith's preferences. The Panel does not find this evidence compelling and finds that it is more likely than not that the Allegation 4 Email 2 and Allegation 4 Email 3 are based on personal speculation and do not form a credible basis for any alleged breach.
109. It is further unclear what other relevant materials Cr Separovich was provided with, or did or did not take into account, between the time that the Allegation 4 Email 1 was sent, the Allegation 2 Conversation occurred and the relevant vote taking place. It is merely assumption that Cr Separovich did not put his mind to the matter in question or take into account any provided materials.
110. Due to the ongoing nature of the relevant matter, a party's position may be acquired over a period of time. It would be illogical to expect that Councillors would not have



existing views and preferences when the matter, or one substantially similar, had been formally considered upon several occasions. This does not amount to a “interest” as envisioned by the Regulations.

111. Further, the Complainant appears to have misunderstood the nature of close personal relationship that is required for an “interest” to be declarable. A mere preference for a candidate for any position or job simply would not amount to such a relationship.
112. It is the nature of the business of Council that different parties will have differing views on various subjects.
113. The minor breach system exists to respond to individual councillors’ conduct that is disruptive to the functioning of a local government. It is not a mechanism to make complaints where parties do not agree with the individual preferences of councillors or the manner in which a councillor has voted.
114. Given the above, the Panel finds it is more likely than not that Cr Separovich did not have a declarable interest in the matter discussed at the April SCM.
115. This element is not met.

Cr Separovich did not disclose the nature of the relevant interest in the matter

116. As the above element has not been met, the Panel has not further discussed this element.

Conclusion

117. The elements required to find a breach of regulation 11 of the Regulations have not been met.

**Panel’s Findings**

118. In respect to Allegation 1 - Cr Separovich did commit a breach of Regulation 7 of the Regulations and therefore did commit a minor breach.
119. In respect to Allegation 2 - Cr Separovich did not commit a breach of Regulation 7 of the Regulations and therefore did not commit a minor breach.
120. In respect to Allegation 3 - Cr Separovich did not commit a breach of Regulation 7 of the Regulations and therefore did not commit a minor breach.
121. In respect to Allegation 4 - Cr Separovich did not commit a breach of Regulation 11 of the Regulations and therefore did not commit a minor breach.

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Mick Connolly (Presiding Member)

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Emma Power (Member)



A handwritten signature in black ink, appearing to read 'Peter Rogers', written over a horizontal line.

Peter Rogers (Member)



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## Local Government Standards Panel

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Complaint Number	SP 2020-042
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Mr Don Green</b>
<b>Respondent</b>	<b>Councillor Michael Separovich</b>
Local Government	<b>City of Cockburn</b>
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Councillor Deborah Hopper (Deputy Member) Ms Elanor Rowe (Deputy Member)
Heard	8 July 2020 Determined on the documents
Penalty Considered	16 December 2020
Outcome	Public Apology

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### DECISION AND REASONS FOR DECISION

Delivered 1 February 2021

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#### DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents



## Introduction

1. At its meeting on 8 July 2020, the Panel found that Councillor Michael Separovich (“Cr Separovich”), a councillor for the City of Cockburn (“the City”), committed one minor breach under the Local Government Act 1995 (WA) (“the Act”) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“the Regulations”) when on 26 March 2020, he wrote an email to elected members that discredited staff members of the City and implied that they had not distributed an agenda in a timely manner (“Minor Breach”).
2. On 1 September 2020, the Panel published its Finding and Reasons for Finding (“Findings”) stating that Cr Separovich had breached Regulation 7(1)(b). The Panel reviewed all the evidence presented to it and made the following observations:
  34. *In this case the Panel considers the above comment to be in breach of the Code as it makes an allegation that officers of the City had “failed” in their work and that the postponement was to cover such failure.*
  35. *In this case, the Panel does not consider the assertion in the comment to be a harmless opinion or expression of frustration. Cr Separovich refers to an easily identifiable set of staff (i.e. the officers responsible for preparation of the agenda) and makes a derogatory allegation against their performance.*
  - .....
  39. *The Panel does not agree that the comment goes so far as to be considered “humiliating”, however, considers that it is more likely than not that Cr Separovich intended to reflect poorly on, and to denigrate the staff responsible for the preparation of the agenda.”*

## Jurisdiction and Law

3. The Panel convened on 16 December 2020, to consider how it should deal with the Minor Breach. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (“the Department”) that on this date there was no available information to indicate that Cr Separovich had ceased to be, or was disqualified from being, a councillor.

## Possible Sanctions

4. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by:
  - (a) *ordering that no sanction be imposed; or*
  - (b) *ordering that —*
    - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*  
*or*
    - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*  
*or*



(iii) *the person against whom the complaint was made undertake training as specified in the order;*

*or*

(iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;*

*or*

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

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

### **Cr Separovich's Submissions**

7. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).<sup>1</sup>
8. By a letter dated 3 September 2020, Cr Separovich was:
  - i. notified of the Panel's Finding of the Minor Breach;
  - ii. provided with a copy of the Panel's Findings; and
  - iii. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.
9. The Department did not receive a response from Cr Separovich within the fourteen-day time frame provided to him.

### **Panel's Consideration**

10. The purpose of the imposition of a sanction under the Act is generally for the protection of the public and the maintenance of standards of council members. Furthermore, it reflects the disapproval of a contravention of the Regulations, dissuades councillors from other local governments from engaging in similar conduct and facilitates the maintenance of appropriate standards of behaviour by councillors. Guidance on the factors which the Panel may consider in determining the appropriate penalty to impose, include, but are not limited to:

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<sup>1</sup> *Local Government Act 1995* (WA), s 5.110(5).



- a. the nature and seriousness of the breaches;
  - b. the councillor's motivation for the contravention;
  - c. whether or not the councillor has shown any insight and remorse into his / her conduct;
  - d. whether the councillor has breached the Act knowingly or carelessly;
  - e. the councillor's disciplinary history;
  - f. the likelihood or not of the councillor committing further breaches of the Act;
  - g. the councillor's personal circumstances at the time of the conduct, and at the time of imposing the sanction;
  - h. the need to protect the public through general deterrence and maintain public confidence in local government; and
  - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness.
11. In this case, the Panel found that Cr Separovich breached Regulation 7(1)(b) when he wrote an email to elected members, that discredited staff members of the City and implied that they had not distributed an agenda in a timely manner. Furthermore, it was found that he had intended to reflect poorly on, and to denigrate the staff responsible for, the preparation of the agenda.
12. The Panel does not consider it appropriate to impose no sanction in relation to the Minor Breach, as this would indicate that it was so minor that no penalty is warranted.
13. However, the Panel also does not consider it is appropriate to make an order for censure for Cr Separovich's actions, as they were not so serious to justify such an order. When the Panel makes an order that a Notice of Public Censure be published, the Notice is published by the local government's Chief Executive Officer, at the expense of the local government; such expense is significant where the Notice is to be published in a newspaper or newspapers. Likewise, the Panel also does not find that an order that Cr Separovich pay to the City a sum of money is warranted.
14. The options left for the Panel to consider are to order Cr Separovich to undertake training or make a Public Apology.
15. Cr Separovich did not take the opportunity to respond to how the Panel should deal with the matter. In the circumstances the Panel finds it fair and reasonable that Cr Separovich makes a public apology to the parties that he had been found to have had reflected poorly on and denigrated in front of other councillors. The standards of behaviour expected of elected members are of a generally higher standard than a member of the public, due to their prominent position in the community. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when an elected member's conduct:



- a. adversely affects a particular individual; and / or
- b. does not meet the standards other councillors seek to uphold.

An apology will go some way to make amends for the potential damage caused by Cr Separovich's conduct.

### **Panel's Decision**

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

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Michael Connolly (Presiding Member)

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Deborah Hopper (Deputy Member)

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Elanor Rowe (Deputy Member)



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## ORDER

Delivered 1 February 2021

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Michael Separovich, a councillor for the City of Cockburn, publicly apologise, as specified in paragraph 2 below, or failing compliance with paragraph 2, then paragraph 3 below.

#### Public Apology

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

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I wrote an email to elected members that discredited staff members of the City and implied that they had not distributed an agenda for the Special Council Meeting planned for March 2020 in a timely manner.
- ii. The Panel found that by behaving in this manner I committed one



breach of Regulation 7(1)(b) of the said Regulations as my conduct was wrongful, inappropriate and deserving of a penalty and, further, my actions were likely to cause detriment to the parties involved.

- iii. I accept that I should not have acted in such a manner and I now apologise to the staff of the City concerned, for having done so.”

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

#### **PUBLIC APOLOGY BY COUNCILLOR MICHAEL SEPAROVICH**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I wrote an email to elected members that discredited staff members of the City and implied that they had not distributed an agenda for the Special Council Meeting planned for March 2020 in a timely manner.

The Panel found that by behaving in this manner I committed one breach of Regulation 7(1)(b) of the said Regulations as my conduct was wrongful, inappropriate and deserving of a penalty and, further, my actions were likely to cause detriment to the parties involved.

I accept that I should not have acted in such a manner and I apologise to the staff of the City concerned, for having done so.

**Date of Order: 1 February 2021**



## NOTICE TO THE PARTIES TO THE COMPLAINT

### RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a complaint **and** the person complained about each have the right to apply to the State Administrative Tribunal (the SAT) for a review of the Panel's decision in this matter. In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules an application to the SAT under its review jurisdiction **must be made within 28 days of the day on which the Panel (as the decision-maker) gives a notice** [see the Note below] under the *State Administrative Tribunal Act 2004 (SAT Act)*, section 20(1).
- (3) **The Panel's Breach Findings and these Findings and Reasons for Finding – Sanctions, constitute the Panel's notice (i.e. the decision-maker's notice) given under the SAT Act, section 20(1).**

**Note:**

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
  - (1) Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.** [Bold emphases added]
  - (2) Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

  - (a) by delivering the document to him personally; or
  - (b) by post in accordance with section 75(1); or
  - (c) by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or
  - (d) in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State."