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## Local Government Standards Panel

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Complaint Number	SP 2020-087
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Robert Coales</b>
<b>Respondent</b>	<b>Councillor Robert Coales</b>
<b>Local Government</b>	<b>Shire of Serpentine-Jarrahdale</b>
Regulation	Regulation 6(2)(a) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Deborah Hopper (Deputy Member)
Heard	21 August 2020 Determined on the documents
Outcome	One breach of Regulation 6(2)(a)

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### FINDING AND REASONS FOR FINDING

Published 17 October 2020

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#### DEFAMATION CAUTION

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## Summary of the Panel's decision

1. The Local Government Standards Panel ("the Panel") found that Councillor Robert Coales, a councillor for the Shire of Serpentine-Jarrahdale ("the Shire") committed one breach under the *Local Government Act 1995* (WA) ("the Act") and Regulation 6(2)(a) of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") when he disclosed information from a confidential document regarding the appointment of community members to an advisory group at a Council meeting held on 20 July 2020.

## Jurisdiction and procedural fairness

2. The Act makes provision for the circumstances in which a council member commits a minor breach.<sup>1</sup>
3. On 4 August 2020 the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form dated 27 July 2020 ("Complaint") signed by Cr Coales himself. Cr Coales self-reported his own conduct as being a breach of Regulation 6(2)(a), when he disclosed information from a confidential document regarding the appointment of community members to an advisory group at a Council meeting held on 20 July 2020.
4. Under the Act, the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.<sup>2</sup> On 21 August 2020 the Panel convened to consider the Complaint.
5. The Panel:
  - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Cr Coales was a councillor at the time of the alleged breach, having been elected on 21 October 2017, and was still a Councillor when the Panel met on 21 August 2020;
  - (b) was satisfied the Complaint had been made within six months after the alleged breach is said to have occurred<sup>3</sup>;
  - (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches<sup>4</sup>; and
  - (d) was satisfied that the Department had provided procedural fairness to Cr Coales.
6. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting the relevant Minister at the time instead of considering the Complaint itself.<sup>5</sup> Cr Coales had not previously been found to have had committed any minor

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

<sup>2</sup> Section 5.110(2)(a) of the Act.

<sup>3</sup> Section 5.107(4) of the Act

<sup>4</sup> Sections 5.107, 5.108, 5.109 of the Act.

<sup>5</sup> Sections 5.110(2)(b), 5.111(1) of the Act.



breaches. Therefore, the Panel decided not to send the Complaint to the Chief Executive Officer of the Department.

7. Based on the information referred to in paragraphs 2 to 6 above, the Panel found it had jurisdiction to determine whether Cr Coales had breached Regulation 6(2)(a) in connection with the Complaint.

### **Panel's role**

8. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
9. Any finding, that a councillor has committed a minor breach, must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).<sup>6</sup>
10. In order to find the allegation, proposition or conduct has been established, and where direct proof is not available, the Panel must be satisfied from the evidence that it is more probable than not that it has occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.<sup>7</sup>
11. For a finding that a councillor has breached a particular regulation, the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

### **Regulation 6(2)(a)**

12. Regulation 6(2)(a) provides:

#### ***"6. Use of information***

- (1) *In this regulation –*

***closed meeting*** means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under s5.23(2) of the Act;

***confidential document*** means a document marked by the CEO to clearly show that the information in the document is not to be disclosed;

***non-confidential document*** means a document that is not a confidential document.

- (2) *A person who is a council member must not disclose –*

*(a) information that the council member derived from a confidential document;*

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<sup>6</sup> Section 5.106 of the Act.

<sup>7</sup> *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.



- (3) *Subregulation (2) does not prevent a person who is a council member from disclosing information –*
- (a) *at a closed meeting; or*
  - (b) *to the extent specified by council and subject to such other conditions as the council determines; or*
  - (c) *that is already in the public domain; or*
  - (d) *to an officer of the Department; or*
  - (e) *to the Minister; or*
  - (f) *to a legal practitioner for the purpose of obtaining legal advice; or*
  - (g) *if the disclosure is required or permitted by law.”*

#### Elements of regulation 6(2)(a)

13. Regulation 6(2)(a) provides that a person who is a council member must not disclose information that the council member derived from a confidential document.
14. In light of regulation 6(3), the essential issues or elements which need to be satisfied in order for a contravention of regulation 6(2)(a) to have occurred are that it is more likely than it is not that:
- a) a Councillor disclosed information<sup>8</sup>; and
  - b) the disclosed information was information the disclosing Councillor derived from a document that was marked by his or her local government’s CEO, or at the CEO’s direction, to clearly show that the information in the document was not to be disclosed; and
  - c) the disclosed information was not already in the public domain (ie it was not generally available to all persons<sup>9</sup>) at the time of the disclosure by the disclosing Councillor, and the disclosure did not occur in any of the ways identified in regulation 6(3).

18. “*Disclose*” is defined as “*make (secret or new information) known*”<sup>10</sup>.

#### **Substance of the Complaint**

19. At the Council meeting held on 20 July 2020 (“Council Meeting”), “*Item 10.4.2 – Equine Advisory Group – Appointment of Community Members*” (“Item 10.4.2”) was discussed. During debate on a confidential document that related to Item 10.4.2, Cr Coales disclosed:

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<sup>8</sup> The word ‘information’ is given its ordinary meaning, which is knowledge or facts communicated about a particular subject, event etc; Shorter Oxford English Dictionary (6<sup>th</sup> edition). It is not limited to ‘advice’, legal, strategic or otherwise; *Corr and Local Government Standards Panel* [2012] WASAT 14 at para [50].

<sup>9</sup> Mazza and Local Government Standards Panel [2009] WASAT 165 at paragraphs [82] – [85]

<sup>10</sup> Oxford English Dictionary online edition



- a. the name of an applicant who had applied to be part of the advisory group; and
- b. the date that the application was received.

20. In his Response, Cr Coales stated that he had self-reported the breach to show his honesty and integrity. He had immediately acknowledged his mistake after another councillor raised his/her concerns at the Council Meeting. Furthermore, he stated, that he had only made a minor mistake. There were only approximately four members of the gallery present and no media, therefore he believes that no detriment or loss would have been caused.

### **Panel's Consideration**

21. The Panel finds that it is more likely than not that all three elements of Regulation 6(2)(a) are satisfied, based on Cr Coales' own submissions, and that none of the elements are in dispute. In his submissions, Cr Coales confirmed the following:

- a. that he disclosed information at the Council Meeting (the name of an applicant to the advisory group and the date of the application);
- b. that the disclosed information was from a confidential attachment that related to Item 10.4.2; and
- c. that the information relating to the applicant was not already in the public domain at the time of the disclosure and the disclosure did not occur in any of the ways identified in regulation 6(3).

22. The Panel finds that the essential elements of Regulation 6(2)(a) have been satisfied.

### **Findings**

23. Accordingly, for the above reasons, the Panel finds that Cr Coales did breach Regulation 6(2)(a) in relation to the Complaint.

  
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Mick Connolly (Presiding Member)

  
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Elanor Rowe (Deputy Member)

  
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Deborah Hopper (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	SP 2020-087
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Robert Coales</b>
<b>Respondent</b>	<b>Councillor Robert Coales</b>
Local Government	<b>Shire of Serpentine-Jarrahdale</b>
Regulation	Regulation 6 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Councillor Peter Rogers (Member) Mrs Emma Power (Member)
Heard	12 August 2020 Determined on the documents
Penalty Considered	10 November 2020
Outcome	No Sanction

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### DECISION AND REASONS FOR DECISION

Delivered 14 January 2021

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#### DEFAMATION CAUTION

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## Introduction

1. At its meeting on 12 August 2020, the Panel found that Councillor Robert Coales, councillor for the City of Swan (“**the City**”), committed one minor breach under the *Local Government Act 1995 (WA)* (“**the Act**”) and regulation 6 of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* (“**the Regulations**”) when he disclosed information from a confidential document regarding the appointment of community members to an advisory group at a Council meeting held on 20 July 2020 (“**the Minor Breach**”).

## Jurisdiction and Law

2. The Panel convened on 10 November 2020 to consider how it should deal with the Minor Breach.
3. 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 Coales had ceased to be, or was disqualified from being, a councillor.
4. 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>
5. By a letter dated 20 October 2020, Cr Coales was:
  - a. notified of the Panel’s finding of the Minor Breaches;
  - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
  - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

## Possible Sanctions

6. Section 5.110(6) of the *Local Government Act 1995 (WA)* (“**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*

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



*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).*

### **Councillor Coales's Submissions**

7. By an email dated 22 October 2020, the Department received a response from Cr Coales.
8. Cr Coales requests that as the matter caused no detriment and was self-reported, no further action be taken.

### **Panel's Consideration**

9. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
10. The Panel may order under section 5.110(6)(a), that no sanction be imposed with respect to the Complaint, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
11. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
  - 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. likelihood or not of the councillor committing further breaches of the Act;
  - g. personal circumstances at the time of conduct, and of imposing the sanction;
  - h. 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<sup>2</sup>.
12. As this matter was self-reported as soon as Cr Coales became aware of the same, the Panel considers that Cr Coales is fully aware of his obligations under the Act and Regulations and that there is a negligible risk of him reoffending.

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<sup>2</sup> Chief Executive Officer, Department of Local Government and Communities and Scaffidi [2017] WASAT 67 (S)



13. As such, the Panel considers it appropriate that no further sanction is imposed.

**Panel's decision**

14. The Panel orders pursuant to section 5.110(6)(a) of the Act that, in relation to the Minor Breach of regulation 6 of the Regulations that no sanction be imposed upon Cr Coales as set out in the attached Order.

A handwritten signature in blue ink, appearing to read 'Mick Connolly', written over a horizontal line.

Mick Connolly (Presiding Member)

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

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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**ORDER**

Delivered 14 January 2021

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**THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:**

No further sanction be imposed on Councillor Coales.

Mick Connolly (Presiding Member)

Emma Power (Member)

Peter Rogers (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) 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."*