



Local Government Standards Panel

Complaint Number	SP2020-135
Legislation	<i>Local Government Act 1995</i>
Complainant	Ms Andrea Selvey
Respondent	Councillor Anthony Lacy
Local Government	Shire of Cocos and Keeling Islands
Regulation	Regulation 9 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Ms Elanor Rowe (Deputy Member) Councillor Peter Rogers (Member)
Heard	14 December 2020 Determined on the documents
Outcome	One breach of Regulation 9

FINDING AND REASONS FOR FINDING

Published 2 February 2020

DEFAMATION CAUTION

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Summary of the Panel's decision

1. The Local Government Standards Panel ("the Panel") found that Councillor Anthony Lacy ("Cr Lacy"), a councillor for the Shire of Cocos and Keeling Islands ("the Shire"), committed one breach under the *Local Government Act 1995* (WA) ("the Act") and regulation 9 of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") when he ignored an email that was sent to councillors the previous day, and physically moved and repositioned warning signs that had been put up by a works crew, and placed them in a different position.

Jurisdiction

2. The Act provides for the circumstances in which a council member commits a minor breach.¹
3. On 22 October 2020, the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form dated 13 October 2020 ("Complaint"). The Complaint was signed by the Shire's Chief Executive Officer, Ms Andrea Selvey ("the Complainant") and contained one allegation of a breach of Regulation 9 by Cr Lacy. It was alleged that he ignored an email that was sent to councillors the previous day, and physically moved and repositioned warning signs that had been put up by a works crew, and placed them in a different position.
4. On 23 October 2020, the Department advised Cr Lacy of the Complaint and invited him to respond. The Department sent Cr Lacy copies of all the supporting documents provided by the Complainant.
5. 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.² On 14 December 2020, the Panel convened to consider the Complaint.
6. The Panel:
 - (i) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Cr Lacy 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 14 December 2020;
 - (ii) was satisfied the Complaint had been made within six months after the alleged breach is said to have occurred³;
 - (iii) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches⁴; and
 - (iv) was satisfied that the Department had provided procedural fairness to Cr Lacy.

¹ Section 5.105 of the Act.

² Section 5.110(2)(a) of the Act.

³ Section 5.107(4) of the Act

⁴ Sections 5.107, 5.108, 5.109 of the Act.



7. 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.⁵ Cr Lacy had not previously been found to have had committed any minor breaches, Therefore, the Panel did not consider sending the Complaint to the Chief Executive Officer of the Department.
8. Based on the information referred to in paragraphs 2 to 7 above the Panel found it had jurisdiction to determine whether Cr Lacy had breached Regulation 9 in connection with the Complaint.

Panel's role

9. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
10. 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 that the breach occurred than that it did not occur (the required standard of proof).⁶
11. Where direct proof of an alleged fact, proposition or conduct is not available, in order to find the allegation, proposition or conduct has been established, the Panel must be satisfied on the evidence that it is more probable than not that the alleged fact, proposition or conduct 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.⁷
12. 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 9

13. Regulation 9 provides:

"9. Prohibition against involvement in administration

- (1) A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake a task.*
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.*

⁵ Sections 5.110(2)(b), 5.111(1) of the Act.

⁶ Section 5.106 of the Act.

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



Elements of Regulation 9

14. The essential elements which need to be satisfied for a contravention of Regulation 9 to have occurred are that it is more likely than it is not that:
- a. a Councillor took on or was involved or participated in the performance, attempted performance, or part-performance, of a function or responsibility which under the Act or by delegation it is for the local government CEO to perform or direct; and
 - b. such taking on, involvement or participation:
 - (i) contributed (ie played a part in achieving) something in or by such performance, attempted performance, or part-performance; and
 - (ii) did not occur as anything the member did as part of the deliberations at a council or committee meeting; and
 - c. the local government's council and the CEO did not authorise such taking on, involvement or participation.

Section 5.41 of the Act sets out the Chief Executive Officer's functions.

Substance of the Complaint

15. There had been numerous rescues made at a popular snorkelling spot in the Shire. The Shire's Chief Executive Officer ("CEO") advised Councillors in a workshop that she had spoken with the Shire's insurance company, who had recommended that interim signage should be put up (until the insurer could visit the Shire to carry out a visual site inspection). The CEO informed councillors that signs ("Signs") would be cable-tied to picnic tables in the area.
16. However, when the works crew went to affix the Signs, they found that it was not possible to place them on tables. Therefore, they placed the Signs on posts instead.
17. Subsequently, Cr Lacy visited the site and sent an email to report that the Signs were not on tables as had been stated. The following morning, the CEO advised that she would be looking into the matter. Upon investigation, she found that there was a reasonable explanation for why the Signs had been placed on posts (not tables) and that it was the best solution found by the works crew.
18. The CEO emailed all Councillors to inform them of her findings. She was satisfied with the actions of the staff and that they had taken a reasonable approach to setting up the Signs and managing the risk.
19. On Saturday afternoon, Cr Lacy again emailed all Councillors, the CEO and several staff, to advise that he had removed the Signs from the posts and had tied them to tables with fishing line.
20. On Sunday morning the CEO visited the site and discovered that three out of the seven Signs had been torn off the posts and tied to tables.



21. The CEO then spoke with the Shire President who emailed Cr Lacy to advise that his actions were a breach of Regulation 9 as he had involved himself in an unauthorised administrative process.

Councillor Lacy' Response

22. Cr Lacy did not accept the information detailed in the Complaint, nor that he had committed the alleged misconduct.

23. The decision to put up the Signs was only made after he had raised what he believed was a serious issue on behalf of the community. The various stakeholders were all advised that the Shire, after seeking legal advice, would place the Signs on tables using cable ties. As a first step measure, all had welcomed it.

24. The allegation was that he had altered the location of three of the temporary Signs. However, in his opinion, it was done in the public interest to save lives and he had been unaware that the Shire representatives did not have cable ties. He was camping at the time with his family and had visitors arriving the following day. Therefore, he used what items he had with him at the time.

25. He was not informed at the time via email, to not touch the A4 plastic Signs; the Signs had simply been placed in the wrong position. In addition, he was not given the opportunity to explain why he helped reposition the Signs to the original agreed position. He acted as he did:

- to highlight the dangers (and in his opinion, that resulted in no-one drowning or any rescues having to be made the following day); and
- in the public interest.

Panel's consideration

26. The Panel finds that the essential elements which need to be satisfied for a contravention of Regulation 9 to have occurred, have been satisfied, and that Cr Lacy breached Regulation 9 when he physically moved and repositioned the warning Signs:

- a. Section 5.41 of the Act sets out the CEO's functions that include managing the day-to-day operations of the local government⁸.
- b. Clearly, the task of organising the interim signage was an administrative duty. By removing the Signs from the posts and repositioning them on tables, Cr Lacy took on the performance of a task that was the responsibility of the CEO to perform or direct.
- c. Cr Lacy physically moved and repositioned the Signs. Therefore, such performance of the task resulted in the location of the Signs being changed.
- d. Finally, based on the evidence before it, the Panel is satisfied to the required standard, that Cr Lacy's actions did not occur as part of the deliberations at

⁸ S5.41(d)



a council or committee meeting; and the local government's council and the CEO did not authorise such taking on, involvement or participation by him.

27. Finally, the Panel notes that the intention of Cr Lacy is not relevant to a consideration of Regulation 9. However, it finds it more likely than not that there was no malice intended by him when he acted as he did and it appeared that he may have genuinely believed he was acting in the public interest and helping.

Findings

28. Accordingly, for the above reasons, the Panel finds that Cr Lacy breached Regulation 9 in relation to the Complaint.

Michael Connolly (Presiding Member)

Elanor Rowe (Deputy Member)

Peter Rogers (Member)



Local Government Standards Panel

Complaint Number	SP 2020-135
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Ms Andrea Selvey
Respondent	Councillor Antony Lacy
Local Government	Shire of Cocos-Keeling Islands
Regulation	Regulation 9 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mrs Emma Power (Presiding Member) Cr Peter Rogers (Member) Mr Gordon MacMile (Member)
Heard	14 December 2020 Determined on the documents
Penalty Considered	8 April 2021
Outcome	Public Apology

DECISION AND REASONS FOR DECISION

Delivered 16 May 2021

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Introduction

1. At its meeting on 14 December 2020, the Panel found that Councillor Antony Lacy, a councillor of the Shire of Cocos-Keeling Islands (“**the Shire**”), committed one minor breach under the Local Government Act 1995 (WA) (“**the Act**”) and regulation 9 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“**the Regulations**”) when he ignored an email that was sent to councillors the previous day, and physically moved and repositioned warning signs that had been put up by a works crew, and placed them in a different position (“**the Minor Breach**”).

Jurisdiction and Law

2. The Panel convened on 8 April 2021 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 Lacy 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).¹
5. By a letter dated 8 February 2021, Cr Lacy 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

¹ *Local Government Act 1995* (WA), s 5.110(5).



- (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).*

Respondent's Submissions

7. Cr Lacy did not make any submissions regarding how the Minor Breach should be dealt with.

Panel's Consideration

8. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
9. 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.
10. 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 seriousness².
11. In this instance Cr Lacy asserted that moving the signs was in the public interest and done for safety reasons.
12. The conduct is also at the low end of seriousness and the Panel notes there were no adverse results from the movement of the signs.
13. However, despite this, it is not appropriate that councillors carry out tasks that should be undertaken by the administrative arm of the local government.

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



14. In this instance, the Panel considers that the appropriate penalty is that Cr Lacy publicly apologise.
15. 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 a councillor's conduct:
 - a. adversely affects particular individuals³; and/or
 - b. does not meet the standards other councillors seek to uphold.

Panel's decision

16. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the Minor Breach of regulation 9 of the Regulations, Cr Lacy publicly apologise as set out in the attached Order.

Emma Power (Presiding Member)

Peter Rogers (Member)

Gordon MacMile (Member)

³ *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).



ORDER

Delivered 16 May 2021

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Antony Lacy, a councillor for the Shire of Cocos-Keeling Islands publicly **apologise**, as specified in paragraph 2, or failing compliance with paragraph 2, then paragraph 3 below shall apply.
2. At the ordinary council meeting first occurring after the expiration of **28 days** from the date of service of this Order on him, Cr Lacy 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 moved certain warning signs installed by the Shire.
- ii. The Panel found that I breached regulation 9 of the said Regulations by involving myself in the administration of the Shire without authorisation.
- iii. I accept that I should not have engaged in the relevant conduct.
- iv. I now apologise to the Shire, the public and my fellow Councillors."

3. If Cr Lacy fails to, or is unable to, comply with the requirements of paragraph 2 above THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 2 above, the Chief Executive Officer shall arrange for the following notice of public apology to be published in no less than 10 point print or font:



- a. on the Facebook Page of the Shire of Cocos-Keeling Islands;
- b. on an appropriate page of the website of the Shire of Cocos-Keeling Islands;
and
- c. be published in every Shire of Cocos-Keeling Islands public or community newsletter (whether in electronic or print copy) (if any):

PUBLIC APOLOGY BY COUNCILLOR ANTONY LACY

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 moved certain warning signs installed by the Shire.

The Panel found that I breached regulation 9 of the said Regulations by involving myself in the administration of the Shire without authorisation.

I accept that I should not have engaged in the relevant conduct.

I now apologise to the Shire, the public and my fellow Councillors.

Emma Power (Presiding Member)

Peter Rogers (Member)

Gordon MacMile (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.”*