Decision-maker's Title:	**LOCAL GOVERNMENT STANDARDS PANEL**
Jurisdiction:	Complaints of minor breach by local government council members
Act:	*Local Government Act 1995*
File No/s:	SP 19 of 2011 (DLG 20110150)
Heard:	Determined on the documents
Determined:	20 February 2013
Coram:	Mr B. Jolly (Presiding Member) Councillor P. Kelly (Member) Mr P.C. Doherty (Deputy-Member)

COPY

Complaint:	**SP 19 of 2011**
Complainant:	**Mr Jonathan Throssell**
Council member complained about:	**Councillor Pauline Clark**
Local Government:	**Shire of Mundaring**
Regulation alleged breached:	**Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007***

FINDING AND REASONS FOR FINDING

DEFAMATION CAUTION

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

SUMMARY OF FINDING

The Panel found that Councillor Clark has committed two breach of regulation 12(2) of the *Local Government (Rules of Conduct) Regulations 2007*, although for the purposes of the Regulations, each breach is a first breach.

CONTENTS

FINDING AND WRITTEN REASONS FOR FINDING

Preliminary

1. In the body of these Reasons unless otherwise indicated:

   (a) a reference to a regulation is a reference to the corresponding regulation of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations"), and a reference to a section is a reference to the corresponding section of the *Local Government Act 1995* ("the Act"); and

(b) the term 'viewed objectively' means "as viewed by a reasonable person" (the reference to a reasonable person being a reference to a hypothetical person with an ordinary degree of reason, prudence, care, self-control, foresight and intelligence, who knows the relevant facts).

Complaint and Background

2. On 30 September 2011 Mr Jonathan Throssell ("Mr Throssell"), Chief Executive Officer of the Shire of Mundaring ("the Shire") prepared a complaint of minor breaches against Councillor Pauline Clark, also of the Shire ("the Complaints").

3. On 30 September 2011 Mr Throssell sent the Complaints to the Local Government Standards Panel ("the Panel") in accordance with the requirements of section 5.107 of the *Local Government Act 1995* ("the Act").

4. The Complaints allege that Councillor Clark committed a minor breach of Regulation 12 of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations"), on two separate occasions, by accepting gifts in excess of the allowable limit from the same donor within a 6 month period.

The First Complaint – January and February 2010

5. It is alleged that:

(a) from December to April each year, the Mundaring Weir Hotel ("the Hotel") holds a "Summer Concert Series" ("the Concert Series") at the Hotel;

(b) in or around December 2009 the proprietor of the Hotel provided the Shire with a number of free tickets to the Concert Series ("the Tickets");

(c) the Tickets did not have a face value, but each of the Tickets provided access for one person to any concert within the Concert Series;

(d) the price of tickets to the Concert Series varied from concert to concert, but ranged from a minimum price of $40 per ticket to a maximum price of $65 per ticket;

(e) on or about 27 January 2010 the Shire provided Councillor Clark, at her request, with 6 of the Tickets for a concert to be held at the Hotel on 30 January 2010 ("the 6 Tickets");

(f) on 27 January 2010 Councillor Clark lodged with the Shire a Notification of Gift/Hospitality in which she notified receipt of the 6 Tickets from the Hotel, but failed to specify a value for those tickets;

(g) the price of a ticket for the event held at the Hotel on 30 January 2010 was $49;

(h) the 6 Tickets were worth a total of $294;

(i) on or about 11 February 2010 the Shire provided Councillor Clark, at her request, with 4 of the Tickets ("the 4 Tickets") for a concert to be held during February 2010;

(j) on 11 February 2010 Councillor Clark lodged with the Shire a Notification of Gift/Hospitality in which she notified receipt of the 4 Tickets from the Hotel, but did not specify a value for those tickets;

(k) the price of a ticket for the event held at the Hotel during February 2011 was $47;

(l) the 4 Tickets were worth a total of $188;

(m) the total value of the 10 tickets provided to Councillor Clark during January 2010 and February 2010, was $482.

6. It is alleged that by accepting the Tickets provided to Councillor Clark during January 2010 and February 2010, Councillor Clark thereby breached regulation 12(1) of the Regulations in that:

(a) those tickets were worth at $482;

(b) were given to Councillor Clark by the same person, namely the Hotel;

(c) that person (the Hotel) was undertaking or seeking to undertake, or it was reasonable to believe that person was intending to undertake, an activity involving a local government discretion (as defined in regulation 12(1) of the Regulations);

(d) she thereby accepted a "prohibited gift" as defined in regulation 12(1) of the Regulations; and

(e) acceptance of a prohibited gift was prohibited by regulation 12(2) of the Regulations.

The Second Complaint –September 2010

7. It is also alleged that:

(a) on or about March 2011 the Shire provided Councillor Clark, at her request, with 6 of the Tickets for a concert to be held on 22 March 2011 ("the March 2011 Tickets");

(b) on 23 March 2011 Councillor Clark lodged with the Shire a Notification of Gift/Hospitality in which she notified receipt of the March 2011 Tickets from the Hotel, but did not specify a value for those tickets;

(c) the price of a ticket for the event held at the Hotel during March 2011 was $55;

(d) the March 2011 Tickets were worth a total of $330.

8. It is alleged that by accepting the March 2011 Tickets, Councillor Clark thereby breached regulation 12(1) of the Regulations in that:

   (a) those tickets were worth a $330;

   (b) were given to Councillor Clark by the same person, namely the Hotel;

   (c) that person (the Hotel) was undertaking or seeking to undertake, or it was reasonable to believe that person was intending to undertake, an activity involving a local government discretion (as defined in regulation 12(1) of the Regulations);

   (d) she thereby accepted a "prohibited gift" as defined in regulation 12(1) of the Regulations; and

   (e) acceptance of a prohibited gift was prohibited by regulation 12(2) of the Regulations.

9. The Complaint is appended at **Attachment 1**.

Jurisdiction

10. The Complaints are made in writing in the form currently approved by the Minister and was sent to the Complaints Officer within two years after the breach alleged in the complaint occurred.

11. The allegations made against Councillor Clark concerns a contravention of Regulation 12(2) of the *Rules of Conduct* which is an allegation of a minor breach.

12. On the available information the Panel is satisfied that Councillor Clark was at all relevant times (ie February and March 2010 and March 2011) and remains currently, elected as a member of the Council of the Shire. Councillor Clark satisfies the requirements of being an elected member of the Council as:

   (a) she is qualified to be an elector of the district under section 2.19(1)(b) of the Act; and

   (b) there is no evidence to indicate that Councillor Clark is disqualified for Council membership under sections 2.21, 2.22, 2.23 or 2.24; and

   (c) Councillor Clark is not disqualified from continuing her membership of the Council under section 2.25 of the Act.

13. The Panel has jurisdiction to consider the complaint and to deal with the minor breach allegations made in it.

14. The matter was dealt with on the papers.

Applicable Legislation

15. The applicable legislation relates to regulation 12 of the Regulations which provides:

> *"(1) In this regulation —*
>
> *"activity involving a local government discretion" means an activity —*
>
> *(a) that cannot be undertaken without an authorisation from the local government; or*
>
> *(b) by way of a commercial dealing with the local government;*
>
> *"gift" has the meaning given to that term in section 5.82(4) of the Act except that it does not include —*
>
> *(a) a gift from a relative as defined in section 5.74(1) of the Act; or*
>
> *(b) a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997; or*
>
> *(c) a gift from a statutory authority, government instrumentality or non-profit association for professional training;*
>
> *"prohibited gift", in relation to a person who is a council member, means —*
>
> *(a) a gift worth $300 or more; or*
>
> *(b) a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth $300 or more.*
>
> *(2) A person who is a council member must not accept a prohibited gift from a person —*
>
> *(a) who is undertaking or seeking to undertake; or*
>
> *(b) who it is reasonable to believe is intending to undertake,*
>
> *an activity involving a local government discretion."*

Procedural fairness and Response by Councillor Clark

16. The Panel is required to afford procedural fairness to the council member complained about in a complaint before it, according to the circumstances of the matter. The importance of procedural fairness has been explained as follows:

"It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. 'When something is obvious', they may say, 'why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.' Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change."[1]

17. Procedural fairness was afforded to Councillor Clark by the Department by a letter dated 26 April 2012, which was sent by an email on that date and by a further email from the Department on 10 September 2012.

18. The Department received a response by way of email from Councillor Clark on 10 September 2012 ("the Response").

19. Councillor Clark's response is relevantly set out below.

"Tickets to concerts at Mundaring Weir hotel are offered to Councillors with I believe an objective for us to assist to promote the concerts, tourism, highlight Mundaring and local business.

I endeavour to promote as much as practicable and accept tickets with the goal of giving them to people who will promote and value add to these objectives.

Sometimes I do not encounter such people or they are unable to attend on the (sic the) evening.

I and my partner attended concerts using 2 tickets for James Raynor and 2 tickets for Petula Clark any other tickets sent to me were not used,

The $300 annual limit was not breeched as eveb (sic even) though I do not know the cost of each ticket I am sure the value of the 4 tickets did not sum over $300.00

My apologies for not sending the tickets I did not use back to the shire which would prevent the mistake... I will do this next time as if have not have the tickets to give I miss the opportunity to promote ..."

20. A copy of the Response is appended at **Attachment 2**.

Available information

21. The information before the Panel in relation to this matter ("the available information") which was taken into account by the Panel was:

    (a) the Complaint;

[1] *John v Rees* [1970] Ch 345 per Megarry J at 402

(b) an email dated 30 May 2012 from Mr Throssell (a copy of which is appended at **Attachment 3**); and

(c) Councillor Clark's Response.

22. In addition to this, the Department was advised by Mr Throssell that:

(a) The Shire understands that each of Councillor Clark's "Notifications of Gift/Hospitality" in relation to the Tickets, when received, did not specify a commercial value for those tickets;

(b) In relation to some or all of the Notifications of Gift/Hospitality an officer or officers of the Shire had inserted a commercial value for those tickets after they had been signed by Councillor Clark;

(c) He was reviewing the acceptance of such gifts in the future in an endeavour to ensure that an elected member would not inadvertently breach the Regulations;

(d) The Shire would establish rules relating to the acceptance of gifts and that elected members now had electronic access to the Shire's Gifts Register so that they can review the gifts they have already received before accepting any further gifts;

(e) He considers that the Complaints arise out of Councillor Clark not fully understanding her obligations under the Regulations and her lack of access to the Shire's Gifts Register at the relevant times;

(f) The Hotel lodged a planning application for additions and alterations to its toilet blocks in August 2009. After Heritage issues were resolved, planning approval was given on 7 January 2010; and

(g) On 22 January 2010 the Hotel applied for a one-off liquor licence for a concert on 14 March 2010.

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

23. The Panel notes that:

(1) The Panel is a statutory decision-maker that is required to adjudicate on complaints made in writing that give certain details including the details of the contravention that is alleged to have resulted in the breach.

(2) The Panel has no power to compel any information to be provided to it.

(3) Clause 8 of Schedule 5.1 of the Act requires the Panel's members to have regard to the general interests of local government in Western Australia.

(4) The Panel is required to make a finding as to whether the breach alleged in the complaint occurred [section 5.110(2)]. In order for the Panel to make any finding that any minor breach has been committed by a council member, the finding is to be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur [section 5.106].

This level or standard of proof is the same as in ordinary civil legal proceedings where it is referred to as being a preponderance of probabilities (or, the balance of probabilities).

(5) The Panel is aware that when it makes a finding of a minor breach, the finding is a serious matter as it may affect individuals personally and professionally.

Accordingly, in determining whether on the evidence the standard of proof - on the balance of probabilities - has been satisfied, the Panel recognises that *"the seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the* [determining body]"[2].

Each of these 'considerations' applies in complaint proceedings against a council member. These 'considerations' are referred to in these Reasons as 'the *Briginshaw* principles'.

(6) As the High Court of Australia has expressed the position, the significance of *Briginshaw*[3] is that the seriousness of the matter and of its consequences does not affect the standard of proof but goes to the strength of the evidence necessary to establish a fact required to meet that standard. So much reflects a conventional perception that (relevantly) local government council members do not ordinarily engage in improper conduct generally and in circumstances where to do so is likely to render them liable to a punitive sanction.[4]

(7) The following passage (without the authorities) from the High Court's decision in *Bradshaw v McEwans Pty Ltd*[5] is relevant in complaint proceedings against a council member:

"The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting

[2] *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J in at 362
[3] ibid
[4] *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170.
[5] (1951) 217 ALR 1 at 5

inferences of equal degrees of probability so that the choice between them is mere matter of conjecture. But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise." [Underlining added]

Matters for Determination

24. The issues (or elements of the breach) before the Panel for determination of whether or not Councillor Robinson breached regulation 4 are underlined below:

"(1) In this regulation —

"activity involving a local government discretion" means an activity —

(a) that cannot be undertaken without an authorisation from the local government; or

(b) by way of a commercial dealing with the local government;

"gift" has the meaning given to that term in section 5.82(4) of the Act except that it does not include —

(a) a gift from a relative as defined in section 5.74(1) of the Act; or

(b) a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997; or

(c) a gift from a statutory authority, government instrumentality or non-profit association for professional training;

"prohibited gift", in relation to a person who is a council member, means —

(a) a gift worth $300 or more; or

(b) a gift that is one of 2 or more gifts given to the council member by the same person within a period of 6 months that are in total worth $300 or more.

(2) A person who is a council member must not accept a prohibited gift from a person —

(a) who is undertaking or seeking to undertake; or

(b) who it is reasonable to believe is intending to undertake,

an activity involving a local government discretion."

25. Pursuant to section 5.82(4) of the Act, a "gift" is defined to mean:

"[A]ny disposition of property, or the conferral of any other financial benefit, made by one person in favour of another otherwise than by will (whether with or without an instrument in writing), without consideration in money or money's worth passing from the person in whose favour it is made to the other, or with such consideration so passing if the consideration is not fully adequate, but does not include any financial or other contribution to travel."

26. The essential elements or issues of a breach of regulation 12(2) of the Regulations are that it is more likely than not that:

(a) a person who is a current council member accepted a gift ;

(b) from a person who was undertaking or seeking to undertake, or who it was reasonable to believe was intending to undertake;

(c) an activity that could not be undertaken without an authorisation from the local government, or by way of a commercial dealing with the local government; and

(d) the gift was worth $300 or more, or was one of 2 or more gifts given to the council member by the same person within a period of 6 months that were in total worth $300 or more.

Failure to use Tickets

27. In Councillor Clark's submission she contended that she and her partner used only four tickets, and disposed of the rest, and that as a result of this the $300 "annual limit" had not been exceeded.

28. Councillor Clarke's reference to an "annual limit" is incorrect. Regulation 12(2) is engaged if gifts within a 6 month period, in total, exceed $300.

29. The Panel considers that the '"worth" of the Tickets, for the purposes of Regulation 12(2), is to be determined by reference to the price that Councillor Clarke would have to have paid for the tickets she accepted, had they not been gifted to her. This is to be determined, in relation to each concert within the Concert Series, by multiplying the number of tickets accepted for each concert by the price paying attendees were required to pay for tickets to that concert.

30. The Panel notes that:

(a) in her Response, Councillor Clarke did not challenge the price of the Tickets accepted by her, as recorded on her Notifications of Gift/Hospitality, which formed part of the Complaints;

(b) each of the Tickets accepted by Councillor Clarke had a minimum value of $40;

(c) if the value ascribed to the 6 Tickets and the 4 Tickets (being the subject of the First Complaint) were $40, the worth of those tickets would have been $400.

31. On the available information the Panel is satisfied that the worth of the Tickets accepted by Councillor Clarke are as set out in paragraphs 5(g) and (k) and 7(c) above.

32. The Panel finds that it is irrelevant whether Councillor Clarke used all or any of the Tickets accepted by her as those tickets had value, regardless of whether she realised that value by using or permitting others to use them.

Findings

33. The Panel has considered the available information and applied the *Briginshaw*[6] principles).

Council member

34. The Panel finds that Councillor Clark is a council member as was a council member between January 2010 and March 2011 (inclusive).

Contravention of Regulation 12(2)
The acceptance of prohibited gifts

35. The Panel finds:

(a) as a fact, each of the matters set out in paragraphs 5 and 7 above;

(b) each of the Tickets accepted by Councillor Clark were "gifts" within Regulation 4;

(c) each of those gifts was from the same person, namely the Hotel;

(d) during the period from and including January 2010 until March 2010 the Hotel was intending to undertake an activity (namely a concert on 14 March 2010 at which alcohol would be sold) that could not be undertaken without an authorisation from the Shire (in the form of a liquor licence);

(e) the 6 Tickets accepted by Councillor Clark in January 2010 were worth $294;

(f) the 4 Tickets accepted by Councillor Clark in February 2010 were worth $188;

(g) Councillor Clarke thereby accepted two or more gifts that in total were worth $482, being more than $300, within a period of 6 months;

[6] *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J in at 362

(h) Councillor Clarke thereby accepted a "prohibited gift" and breached Regulation 12(2) of the Regulations;

(i) the March 2011 Tickets accepted by Councillor Clark were worth $330;

(j) Councillor Clarke thereby accepted a gift worth more than $300; and

(k) Councillor Clarke thereby accepted a "prohibited gift" and breached Regulation 12(2) of the Regulations.

Panel finding on the subject allegation

36. On the available information, for the above reasons, the Panel finds that Councillor Clarke committed two breaches of regulation 12(2) of the Regulations, although for the purposes of the Regulation each breach is a first breach.

.....
Brad Jolly (Presiding Member)

.....
Paul Kelly (Member)

.....
Peter Doherty (Deputy-Member)

COPY

Attachment 1

Official Conduct Form 1

COMPLAINT OF MINOR BREACH FORM

(Subsections 5.107(1) and (2) of the *Local Government Act 1995* ("the LG Act"))

NOTE: A person who includes information in a complaint knowing it to be false or misleading in a material particular commits an offence (maximum penalty: $5,000). If this complaint is made during the campaign period for a local government election (that is, during the period from opening of nominations to the Election Day), the fact of making the complaint and its details must be kept confidential during that period (maximum penalty: $5,000).

The law requires a copy of this complaint to be given to the Council member complained about.

NAME OF PERSON WHO IS MAKING THE COMPLAINT:

Name:	Jonathan	Throssell
	Given Name(s)	*Family Name*

NAME OF THE LOCAL GOVERNMENT (CITY, TOWN, SHIRE) CONCERNED:

Shire of Mundaring

NAME OF COUNCIL MEMBER/S ALLEGED TO HAVE COMMITTED BREACH:

Cr Pauline Clark

WHAT IS YOUR COMPLAINT: State the type of your complaint by ticking the box of the particular breach alleged to have occurred under the *Local Government (Rules of Conduct) Regulations 2007*:

- ☐ Regulation 4 – Breach of a local law relating to conduct at meetings
- ☐ Regulation 6 – Improper disclosure of information
- ☐ Regulation 7 – Securing personal advantage or disadvantaging others
- ☐ Regulation 8 – Misuse of local government resources
- ☐ Regulation 9 – Prohibition against involvement in administration
- ☐ Regulation 10 – Relations with local government employees
- ☐ Regulation 11 – Non-disclosure of interest adverse to impartiality
- X Regulation 12 – Acceptance of gifts

(State full details of What Happened in that section on the next page)

DATE OF INCIDENT:

27 January and February 2010

WHAT HAPPENED? What are the details of the contravention that is alleged to have resulted in the breach? *Attach further information if insufficient space*

Cr Clark declared on Notification of Gift/Hospitality form that she received the following gifts.

1. 27 January 2010 Concert Tickets from Mundaring Weir Hotel $294.00
2. Not dated but received 11 February 2010
   Concert Tickets from Mundaring Weir Hotel $188.00

Cr Clark is also in breach of the limit of the value of gifts received from the same person.

SIGNED:

Complainant's Signature: .....

Date of signing: 30 / 9 / 2011

ORDINARY 18

Shire of Mundaring

NOTIFICATION OF GIFT/HOSPITALITY

SCANNED
12 FEB 2010

Employee/Councillor Name: Pauline Clark **Division:** West Ward Councillor

Description of Gift/Hospitality being offered:	Tickets
Estimated Commercial Value of Gift/Hospitality:	$49 Ea x 6 = $294
Date, Locn and Timespan of Gift/Hospitality:	Evening concerts/ and dinner 30 Jan 2010

Name of Person/Body offering Gift/Hospitality:	Mundaring Weir Hotel.
Relationship to you personally:	Nil
Relationship to Shire of Mundaring:	Nil
What current or proposed activities of the Shire is the person/body dealing with or proposing to deal with:	Nil

If the offer of Hospitality is to participate in a business breakfast, lunch or dinner etc., has an agenda been provided? (if so attach a copy)	YES/NO (circle choice)
In the case of Hospitality, will there be opportunity for beneficial work-related discussions or beneficial networking to occur?	YES/NO (circle choice)
Did you seek the Gift/Hospitality, or was it offered in an unsolicited manner?	Seek/Unsolicited (circle choice)
If the Hospitality is to be taken up during normal office hours, will you be claiming the time as working hours?	YES/NO (circle choice)
Was the gift retained by the officer or used by the Shire of Mundaring	Personal/Shire of Mundaring (circle choice)

I declare the above to be an accurate assessment [signature] (signature) 27/01/2010 (date)	I believe the above notification to be accurate and that acceptance of the Gift/Hospitality does not compromise the current/future operations of the Shire of Mundaring (Executive Manager and/or Chief Executive Officer) 28/1/10 (date)

The definition of "Gift/Hospitality" is a gift, reward or other benefit for you personally or any other person or body, relating to your status with the Shire of Mundaring, or your performance of any duty or work which touches or concerns the Shire of Mundaring.

S:\GIFTS

ORCM A18

SCANNED
12 FEB 2018

Shire of Mundaring

NOTIFICATION OF GIFT/HOSPITALITY

Employee/Councillor Name: PAULINE P CLARK **Division:** W/W

Description of Gift/Hospitality being offered:	Tickets
Estimated Commercial Value of Gift/Hospitality:	$188 (4 x $47)
Date, Locn and Timespan of Gift/Hospitality:	

Name of Person/Body offering Gift/Hospitality:	Mundaring Weir Hotel
Relationship to you personally:	nil
Relationship to Shire of Mundaring:	nil
What current or proposed activities of the Shire is the person/body dealing with or proposing to deal with:	

If the offer of Hospitality is to participate in a business breakfast, lunch or dinner etc., has an agenda been provided? (if so attach a copy)	YES/NO (circle choice)
In the case of Hospitality, will there be opportunity for beneficial work-related discussions or beneficial networking to occur?	YES/NO (circle choice)
Did you seek the Gift/Hospitality, or was it offered in an unsolicited manner?	**Seek/Unsolicited** (circle choice)
If the Hospitality is to be taken up during normal office hours, will you be claiming the time as working hours?	YES/NO (circle choice)
Was the gift retained by the officer or used by the Shire of Mundaring	**Personal/Shire of Mundaring** (circle choice)

I declare the above to be an accurate assessment _____ (signature) _____ (date)	I believe the above notification to be accurate and that acceptance of the Gift/Hospitality does not compromise the current/future operations of the Shire of Mundaring _____ (Executive Manager and/or Chief Executive Officer) 11/2/10 (date)

The definition of "Gift/Hospitality" is a gift, reward or other benefit for you personally or any other person or body, relating to your status with the Shire of Mundaring, or your performance of any duty or work which touches or concerns the Shire of Mundaring.

S:\GIFTS

COMPLAINT OF MINOR BREACH FORM

(Subsections 5.107(1) and (2) of the *Local Government Act 1995* ("the LG Act"))

NOTE: A person who includes information in a complaint knowing it to be false or misleading in a material particular commits an offence (maximum penalty: $5,000). If this complaint is made during the campaign period for a local government election (that is, during the period from opening of nominations to the Election Day), the fact of making the complaint and its details must be kept confidential during that period (maximum penalty: $5,000).

The law requires a copy of this complaint to be given to the Council member complained about.

NAME OF PERSON WHO IS MAKING THE COMPLAINT:

Name: Jonathan (*Given Name(s)*) Throssell (*Family Name*)

NAME OF THE LOCAL GOVERNMENT (CITY, TOWN, SHIRE) CONCERNED:

Shire of Mundaring

NAME OF COUNCIL MEMBER/S ALLEGED TO HAVE COMMITTED BREACH:

Cr Pauline Clark

WHAT IS YOUR COMPLAINT: State the type of your complaint by ticking the box of the particular breach alleged to have occurred under the *Local Government (Rules of Conduct) Regulations 2007*.

- ☐ Regulation 4 – Breach of a local law relating to conduct at meetings
- ☐ Regulation 6 – Improper disclosure of information
- ☐ Regulation 7 – Securing personal advantage or disadvantaging others
- ☐ Regulation 8 – Misuse of local government resources
- ☐ Regulation 9 – Prohibition against involvement in administration
- ☐ Regulation 10 – Relations with local government employees
- ☐ Regulation 11 – Non-disclosure of interest adverse to impartiality
- X Regulation 12 – Acceptance of gifts

(State full details of What Happened in that section on the next page)

DATE OF INCIDENT:

22 / March / 2011

WHAT HAPPENED? What are the details of the contravention that is alleged to have resulted in the breach? *[Attach further information if insufficient space]*

Cr Clark declared on a Notification of Gift/Hospitality form that she received a single gift to a value in excess of $300. Details as follows:

22 March 2011	Concert Tickets from Mundaring Weir Hotel	$330.00

SIGNED:

Complainant's Signature: .....

Date of signing: 30 / 9 / 2011

RECEIVED
17 AUG 2011
SHIRE OF MUNDARING

File Code : OR.CMA 18
SCANNED
17 AUG 2011
ID No. 132922
SERVICE CODE | SIGNATURE
TRANSFER TO

Shire of Mundaring

NOTIFICATION OF GIFT/HOSPITALITY

Employee/Councillor Name: Pauline Clark Service/Team:

Description of Gift/Hospitality being offered:	TICKETS TO MUNDARING NEAR CONCERT Darryl.
Estimated Commercial Value of Gift/Hospitality:	$330 (6 x $55)
Date, Locn and Timespan of Gift/Hospitality:	

Name of Person/Body offering Gift/Hospitality:	MUNDARING WEIR HOTEL
Relationship to you personally:	Nil
Relationship to Shire of Mundaring:	Ratepayer
What current or proposed activities of the Shire is the person/body dealing with or proposing to deal with:	Nil known

If the offer of Hospitality is to participate in a business breakfast, lunch or dinner etc., has an agenda been provided? (if so attach a copy)	YES/NO (circle choice)
In the case of Hospitality, will there be opportunity for beneficial work-related discussions or beneficial networking to occur?	YES/NO (circle choice)
Did you seek the Gift/Hospitality, or was it offered in an unsolicited manner?	Seek/Unsolicited (circle choice)
If the Hospitality is to be taken up during normal office hours, will you be claiming the time as working hours?	YES/NO (circle choice)
Was the gift retained by the officer or used by the Shire of Mundaring	Personal/Shire of Mundaring (circle choice)

I declare the above to be an accurate assessment Pauline Clark (signature) 22-03-2011 (date)	I believe the above notification to be accurate and that acceptance of the Gift/Hospitality does not compromise the current/future operations of the Shire of Mundaring (Director and/or Chief Executive Officer) 23/3/11 (date)

The definition of "Gift/Hospitality" is a gift, reward or other benefit for you personally or any other person or body, relating to your status with the Shire of Mundaring, or your performance of any duty or work which touches or concerns the Shire of Mundaring.

S:\GIFTS

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20110150
SP19 of 2011

E-mail Message Attachment 2

From:	PAULINE CLARK [SMTP:paulinehall2@bigpond.com]
To:	Ainsley Rodgers [SMTP:Ainsley.Rodgers@dlg.wa.gov.au]
Cc:	
Sent:	10/9/2012 at 8:38 PM
Received:	10/9/2012 at 8:38 PM
Subject:	Re: Complaint No SP 19 of 2011
Attachments:	image001.gif

Hello Ainsley

Thank you for informing me of this mistake I was in Canada on leave and did not get your previous email sorry,

Tickets to concerts at Mundaring Weir hotel are offered to Councillors with I believe an objective for us to assist to promote the concerts, tourism, highlight Mundaring and local buisiness,

I endeavour to promote as much as practicable and accept tickets with the goal of giving them to people who will promote and value add to these objectives. Sometimes I do not encounter such people or they are unable to attend on teh evening

I and my partner attended concerts using 2 tickets for James Raynor and 2 tickets for Petula Clark any other tickets sent to me were not used,

The $300 annual limit was not breeched as eveb though I do not know the cost of each ticket I am sure the value of the 4 tickets did not sum over $300.00

My apologies for not sending the tickets I did not use back to the shire which would prevent the mistake...I will do this next time as if have not have the tickets to give I miss the opportunity to promote ..

Please ;let me know if there is anything I can further asssist with.

Regards
Cr Pauline Clark

----- Original Message -----
From: HYPERLINK "mailto:Ainsley.Rodgers@dlg.wa.gov.au"Ainsley Rodgers
To: HYPERLINK "mailto:paulinehall2@bigpond.com"paulinehall2@bigpond.com
Sent: Monday, September 10, 2012 9:47 AM
Subject: Complaint No SP 19 of 2011

Good Morning Cr Clark,

Further to our discussion this morning, please find attached the original letter that was sent to you via email on the 30 April 2012. It would be appreciated if you could return your submission within 14 days of today's date.

Any queries please do not hesitate to contact me.

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number	SP 19 of 2011 DLG 20110150
Legislation	*Local Government Act 1995* (WA)
Complainant	**Mr Jonathan Throssell**
Subject of complaint	**Councillor Pauline Clark**
Local Government	Shire of Mundaring
Regulation	Regulations 12(2) of the *Local Government (Rules of Conduct) Regulations 2007*
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Deputy Member)
Heard	20 May 2013 Determined on the documents

FINDINGS AND REASONS FOR FINDING
SANCTIONS

DEFAMATION CAUTION

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

1. Definitions

1.1 In these Reasons, unless otherwise indicated:

(a) a reference to a section is a reference to the corresponding section in the *Local Government Act 1995* (WA), and a reference to a regulation is a reference to the corresponding regulation in the *Local Government (Rules of Conduct) Regulations 2007* (**Regulations**); and

(b) words appearing in **bold** in the Panel's Finding and Reasons for Finding in these matters (**Breach Findings**) bear the same meaning in these Reasons.

2. Summary of Findings of Minor Breaches (Breach Findings)

2.1 The Panel has made two findings of minor breach in relation to complaints SP 19 of 2011 – namely that it is more likely than not that:

(a) during January and February 2010 Cr Clark breached regulation 12(2) of the *Regulations* by accepting free tickets to events at the Mundaring Weir Hotel, which tickets were worth $482, when gifts that in total were worth more than $300 within a period of 6 months, constituted a "prohibited gift" for the purposes of that regulation; and

(b) during March 2011 Cr Clark breached regulation 12(2) of the *Regulations* by accepting free tickets to events at the Mundaring Weir Hotel, which tickets were worth $330, when a gift worth more than $300 constituted a "prohibited gift" for the purposes of that regulation.

(**Minor Breaches**)

3. Summary of Decision

3.1 The Panel considered how the Minor Breaches are to be dealt with under section 5.110(6) of the *Local Government Act 1995* and concluded, for the following reasons, that Cr Clark be publicly censured as specified in the attached Minute of Order, pursuant to subsection (b)(i) of that section.

4. Procedural fairness

4.1 By letter dated 21 March 2013 from the Department to Cr Clark, Cr Clark was given notice of the Minor Breaches (**Notice**) and a copy of the Breach Findings, and provided with an opportunity to make a written submission within 14 days on how the Panel should deal with the breaches under section 5.110(6) of the *Local Government Act 1995* (the Act).

4.2 By email dated 19 April 2013 the Department again provided Cr Clark with the documents referred to in the previous paragraph, following advice from her that she had misplaced the original documents.

5. Councillor Clark's response and submissions

5.1 Councillor Clark responded to the Notice and the Breach Findings as follows:

(a) by email dated 21 April 2013 Cr Clark advised:

"Please accept my apology for accepting over the limit of tickets to the events at the Mundaring Weir hotel and accept my honest mistake of assuming that only if my tickets were 'used' they were accepted as 'gifts'
I do understand and accept the panels rationale that I signed and accepted the gifts and the laws and regulations that support the decision

I am happy to undergo any further education or training deemed necessary by the panel to prevent repeat of the spent resources and time necessary to address all or any breech (sic. breach)."

(b) by a letter dated 24 April 2013 Cr Clarke requested that the Panel consider dismissing the Minor Breaches because:

"In 2010 I mistakenly considered:

- actually attending the concert would be accepting " a gift",□
- the tickets offered by the CEOs office to all Councilors with no marked value were not the gift
- The gift registration form would be rescinded on informing the CEOs office I had not redeemed the tickets

In February 2010 and again in March 2011, my partner and I attended 2 of the concerts, (4 general admission tickets in total): any other tickets I accepted and signed the gift register for were discarded with the aforementioned considerations.

The CEO and I spoke of this dilemma when he brought it to my attention: we discussed ways to prevent a reoccurrence which have since been implemented.

The CEO's assistant (who offers Councilors the tickets) will keep a gift register for Councilors to be informed of gifts received and the dates and values recorded.

I accept the Panel's rationale and findings that in their opinion the unused tickets have a value and will be very more diligent to the cost and acceptance of gifts in the future.

I apologise for being responsible for the necessary process that has absorbed resources because of my mistake and will make better effort to prevent it happening again.

I am prepared to undertake any further training or education the Panel deems relevant though I feel I ... am abreast of how the situation occurred and how to prevent it in future. I attend the WALGA workshops at regular intervals and stay abreast to the best of my ability of the changes and challenges of the sector. I have recently

attended the WALGA finance workshop (19th March) and the policy and procedure workshop (23rd April).

..."

6. Panel's views

6.1 In considering an appropriate sanction or sanctions for the present breaches the Panel notes that:

(a) Cr Clark has not previously been found to have beached the *Regulations*; and

(b) Cr Clark maintains that the Shire has now implemented a gift register to prevent a recurrence of the matters leading to the Minor Breaches.

Is a public censure appropriate in this matter?

6.2 A public censure of the kind ordered by the Panel is a significant sanction. It involves a high degree of public admonition of the conduct of the council member concerned.[1] While a public censure has that character or effect it is aimed at reformation of the offending council member and prevention of further offending acts.

6.3 In the Panel's view, a breach of regulation 12(2) is a serious matter and will in almost all occasions deserve the sanction of a publicly censure – not only as a reprimand aimed at reformation of the offending council member and prevention of further offending acts, but also as a measure in support of the institution of local government and those council members who properly observe the standards of conduct expected of them.

6.4 In the Panel's view, the acceptance of prohibited gifts has the potential to undermine public confidence in the institution of local government. The public is entitled to expect that council members will not only be impartial, but be seen to be impartial.

6.5 The acceptance of prohibited gifts has the potential to raise a perception that a member may not be impartial when considering matters relating to the donor of the gifts, even if the member in face is completely impartial.

6.6 For these reasons, the Panel concludes that the sanction of a public censure is required in this case.

Apology

6.7 In the Panel's view a public apology of the kind ordered by the Panel is also a significant sanction, as it too involves a high degree of public admonition of the conduct of the council member concerned.

6.8 In the Panel's view the circumstances that will in almost all occasions deserve the sanction of a public apology to another person include those where a council member's offending conduct is or conveys a slight or a personal attack on the other person.

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[1] *Mazza and Local Government Standards Panel* [2009] WASAT 165 per Judge J Pritchard (Deputy President) as her Honour then was, at [107].

6.9 There was no such attack or slight in the present matters and the Panel considers that it is not appropriate to order that Cr Clarke make a public apology.

Training

6.10 The Panel notes that its consideration of how a breach should be dealt with under section 5.110(6) must embrace the issue of whether or not it is appropriate for the Panel to order that the council member concerned undertake such training as it may specify.

6.11 The circumstances in which it may be appropriate for the Panel to order that the council member concerned undertake training include where the type of training is reasonably available for the member to undertake, and the member communicates to the Panel:

(a) his or her acknowledgement that he or she has committed the minor breach found by the Panel to more likely than not have occurred, and his or her willingness to undertake training; or

(b) his or her acknowledgement that he or she has committed the minor breach found by the Panel to more likely than not have occurred, but that such breach occurred through his or her lack of knowledge or education on the issue or issues concerned; or

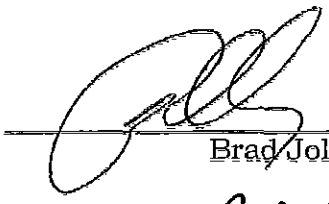
(c) the member communicates to the Panel his or her remorse or contrition for his or her offending conduct in committing the minor breach found by the Panel to more likely than not have occurred, and the Panel's view is that training may be of use to the member so as to not repeat his or her offending conduct.

6.12 Cr Clark contends that she committed the Minor Breaches as a result of her mistaken belief as to the obligations imposed by regulation 12(2) and has said that "I feel I ... am abreast of how the situation occurred and how to prevent it in future".

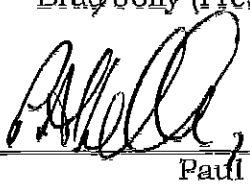
6.13 After due consideration of the information available to the Panel, the Panel does not consider that it is appropriate to order Cr Clark to undergo further training.

7. Panel decision

7.1 Having regard to the Breach Findings, the matters mentioned in paragraphs 5 and 6 above, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breaches are to be dealt with under section 5.110(6) of the Act, is that pursuant to subsection (b)(i) of that section, Cr Clark should be publicly censured as set out in the attached Minute of Order.



Brad Jolly (Presiding Member)



Paul Kelly (Member)

Peter Doherty (Deputy Member)

NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (**Panel**) hereby gives notice that:

(1) Under section 5.125 of the *Local Government Act 1995* **the person making a complaint and the person complained about each have the right to apply to the State Administrative Tribunal (the SAT) for a review of the Panel's decision in this matter.** *In this context, the term "decision" means a decision to dismiss the complaint or to make an order.*

(2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules **an application to the SAT under its review jurisdiction must be made within 28 days of the day on which the Panel (as the decision-maker) gives a notice** [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."

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number	SP 19 of 2011 DLG 20110150
Legislation	*Local Government Act 1995* (WA)
Complainant	**Mr Jonathan Throssell**
Subject of complaint	**Councillor Pauline Clark**
Local Government	Shire of Mundaring
Regulation	Regulations 12(2) of the *Local Government (Rules of Conduct) Regulations 2007*
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Deputy Member)
Heard	20 May 2013 Determined on the documents

MINUTE OF ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Pauline Clark, a member of the Council of the Shire of Mundaring, be publicly censured as specified in paragraph 2 below.

2. Within the period of 29 days to 43 days from the day following the date of service of this Order on him, the Chief Executive Officer of the Shire of Mundaring arrange the following Notice of Public Censure to be published, in no less than 10 point print:

   (a) as a one-column or a two-column display advertisement in the first 15 pages of "The West Australian" newspaper; and

(b) as a one-column or a two-column display advertisement in the first 15 pages of the "local community" newspaper

NOTICE OF PUBLIC CENSURE

The Local Government Standards Panel (the Panel) has made findings to the effect that (a) during January and February 2010 Cr Pauline Clark of the Shire of Mundaring breached regulation 12(2) of the *Local Government (Rules of Conduct) Regulations 2007 (the Regulations)* by accepting free tickets to events at the Mundaring Weir Hotel, which tickets were worth $482, when gifts that in total were worth more than $300 within a period of 6 months, constituted a "prohibited gift" for the purposes of that regulation; and (b) during March 2011 Cr Clark breached regulation 12(2) of the *Regulations* by accepting free tickets to events at the Mundaring Weir Hotel, which tickets were worth $330, when a gift worth more than $300 constituted a "prohibited gift" for the purposes of that regulation.

The Panel censures Councillor Clark for these breaches.

LOCAL GOVERNMENT

STANDARDS PANEL