



Local Government Standards Panel

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| Complaint Number | SP 57 of 2017 [DLGSC 20170196] |
| Legislation | <i>Local Government Act 1995</i> |
| Complainant | Shire President Gordon Houston |
| Respondent | Councillor Donald Gibson |
| Local Government | Shire of Chittering |
| Regulation | Regulations 4(2), 7(1)(b) and 11(2) of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i> |
| Panel Members | Mrs S Siekierka (Presiding Member) Ms M Strauss (Member) Councillor P Kelly (Member) |
| Heard | 2 July 2018 Determined on the documents |
| Decision | Public apology |

SANCTION DECISION AND REASONS FOR DECISION

Published 13 July 2018

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.



Introduction

1. On 8 March 2018 the Panel found that Councillor Donald Gibson committed three minor breaches under the *Local Government Act 1995* (WA) (the Act) and regulations 4(2), 7(1)(b), and 11(2) of the *Local Government (Rules of Conduct) Regulations 2007* during the part of the ordinary council meeting on 15 November 2017 that was closed to members of the public when Council considered a motion concerning Cr Gibson's email account and data allowance (the Motion).
2. The Panel found that Cr Gibson breached regulation 4(2) and clause 8.14(2) of the Shire's *Local Government (Council Meetings) Local Law 2014* (the Local Law) during debate on the Motion when he made unsubstantiated adverse comments about the actions and performance of the Shire's Chief Executive Officer (the CEO) and comments that reflected adversely on the CEO's character.
3. The Panel found that Cr Gibson breached regulation 7(1)(b) during debate on the Motion when he accused the CEO of lying and made adverse comments about the CEO's performance when Council had, as recently as September 2017, formally assessed the CEO's performance and found him to have met or exceeded his Key Performance Indicators.
4. The Panel found that Cr Gibson breached regulation 11(2) because he failed to disclose an obvious impartiality interest in the agenda item under which the Motion was to be discussed.
5. On 17 April 2018 the Panel published its Finding and Reasons for Finding that Cr Gibson had committed the three minor breaches.

Possible sanctions

6. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by —
 - (a) *dismissing the complaint; 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*
 - (c) *ordering 2 or more of the sanctions described in paragraph (b)."*
7. If the Panel finds that a councillor has committed a minor breach it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹

¹ Section 5.110(5) of the Act.



Jurisdiction

8. In a letter dated 17 April 2018, emailed to Cr Gibson on the same date, the Department of Local Government, Sport and Cultural Industries (the Department) notified Cr Gibson of the Panel's finding that he had breached regulations 4(2), 7(1)(b) and 11(2), provided him with a copy of the Panel's Finding and Reasons for Finding published on 17 April 2018 and invited him to make submissions on how the Panel should deal with the breaches under section 5.110(6).

9. On 2 July 2018, when the Panel met to consider how it should deal with the breaches, the Department advised the Panel that it did not have any information to indicate that Cr Gibson had ceased to be a councillor. The Panel found it had jurisdiction to decide how to deal with the breaches under section 5.110(6) of the Act.

Cr Gibson's submissions

10. On 6 May 2018 the Department received an email from Cr Gibson to the Panel attaching a submission dated 6 May 2018 in response to the Department's letter of 17 April 2018 (the Submission).

11. In the Submission Cr Gibson says:

- He has been subject to a barrage of complaints of minor breaches, all of which have been unsubstantiated. This amounts to bullying tactics, intimidation, harassment, threatening behaviour and personal attacks on his credibility.
- The constant attack through unsubstantiated complaints has caused him a great deal of stress and significantly aggravated his pre-existing health problems.
- The administration has denied him access to information which has adversely affected his ability to do his Council work properly. His email account was cut off for a significant amount of time, including during the election period, which caused him significant detriment.
- He is pursuing the "whole matter" of the harassment, bullying and disadvantage he has suffered through the Australian Human Rights Commission and Western Australia's Occupational Safety and Health Commission (WorkSafe).
- Due to this conduct directed towards him and the duress and frustration he has suffered at Council meetings he has, at times, not made "well thought out responses and statements" and he "respectfully requests" that this complaint be dismissed under section 5.110(6)(a) of the Act.

Panel's consideration

12. There are no previous findings of a minor breach to be considered by the Panel when deciding on sanction for these minor breaches.

13. There are some differences between the elements of the three relevant regulations but all breaches arise out of conduct at one Council meeting in relation to one agenda item.



In the circumstances, the Panel decides that it should impose one penalty for the three breaches.²

14. Cr Gibson explicitly maligned the CEO in front of the other Councillors and showed disrespect for the office of President and the President personally. He had the opportunity to reflect on his damaging comments about the CEO when the President asked him to withdraw his comments and apologise. He also had time to change his mind about disclosing his obvious interest when he was prompted to do so. He has not conceded he has done anything wrong.


15. The Panel has no reason to doubt that Cr Gibson has been in poor health. It is true that a number of minor breach complaints against Cr Gibson have not been made out, including one which the Panel refused to deal with for lack of substance, although this in no way indicates that the Panel agrees that Cr Gibson has been harassed, bullied, threatened or intimidated. Even in these circumstances it is not appropriate to dismiss the breaches. These are very serious. Cr Gibson is a very experienced Councillor, having been first elected on 7 May 2005, and knew or should have known how he is required to conduct himself under the Regulations and the Local Law. Cr Gibson disregarded his obligations.

16. Training is not appropriate. As mentioned, Cr Gibson is a very experienced Councillor. He has not submitted that he was unaware of his obligations or that he would benefit from training.

17. The Panel has considered whether Cr Gibson should make a public apology or be publicly censured. In all the circumstances the Panel decides that a public apology is the appropriate penalty. The CEO, the President and all other Shire Councillors deserve an apology from Cr Gibson for his poor behaviour.

Panel's decision

18. Under section 5.110(6)(b)(ii) of the Act the Panel orders that Cr Gibson make a public apology to the CEO, the Shire President and all other Councillors in the terms of the attached Order.



Sheryl Siekierka (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Decision and Reasons 13 July 2018

² This is consistent with the approach taken in *Treby and Local Government Standards Panel* [2010] WASAT 81, paragraphs 124 to 126.



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| Panel Members | Mrs S Siekierka (Presiding Member) Ms M Strauss (Member) Councillor Paul Kelly (Member) |
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ORDER FOR PUBLIC APOLOGY

Published 13 July 2018

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Donald Gibson, a Councillor for the Shire of Chittering, publicly apologise to Mr Alan Sheridan, the Shire's Chief Executive Officer, the Shire President Mr Gordon Houston and all other Shire Councillors, as specified in paragraph 2 below.
2. At the Shire's first ordinary council meeting after the expiration of 35 days from the date of publication of this Order Councillor Gibson shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to Mr Sheridan, the Shire President and all other Councillors;
 - (b) 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;
 - (c) address the Council 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:

A formal complaint was made to the Local Government Standards Panel in which it was alleged that I contravened three provisions of the *Local Government (Rules of Conduct) Regulations 2007* during part of the Ordinary Council Meeting on 15 November 2017 that was closed to the public. The Panel found:

- (i) I breached the Shire's *Local Government (Council Meetings) Local Law 2014*, which relates to conduct at Council meetings, and regulation 4(2) of the Rules of Conduct Regulations when I made adverse and unsubstantiated comments about the character and actions of the Shire's Chief Executive Officer, Mr Alan Sheridan; and
- (ii) I failed to withdraw my comments and apologise to Mr Sheridan after the Shire President asked me to do so; and
- (iii) I breached regulation 7(1)(b) of the Rules of Conduct Regulations when I made improper use of my office as a Councillor by making the adverse comments about Mr Sheridan in the presence of all Shire Councillors, with the intention of damaging him; and
- (iv) by making the adverse comments about Mr Sheridan I failed to meet the standards of conduct expected of a councillor; and
- (v) I breached regulation 11(2) of the Rules of Conduct Regulations when I failed to disclose an impartiality interest in an agenda item relating to my Shire email account and data allowance.



I apologise to Mr Sheridan, the Shire President Councillor Houston and all other Councillors for unjustifiably criticising Mr Sheridan's performance as the Shire Chief Executive Officer and casting aspersions on Mr Sheridan's character and for doing so with the intention of causing damage to Mr Sheridan."

3. If Councillor Gibson fails or is unable to attend the Shire's first ordinary council meeting after the expiration of 35 days from the date of publication of this Order Councillor Gibson shall cause the following Public Apology to be published in the first available edition of the Ellenbrook Advocate newspaper after that ordinary council meeting.

4. The Public Apology is to be displayed in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the Ellenbrook Advocate.

PUBLIC APOLOGY BY COUNCILLOR DONALD GIBSON

A formal complaint was made to the Local Government Standards Panel alleging that I breached the *Local Government (Rules of Conduct) Regulations 2007* during part of the Ordinary Council Meeting on 15 November 2017 that was closed to members of the public.

The Panel found:

(1) I breached the Shire's *Local Government (Council Meetings) Local Law 2014*, and regulation 4(2) of the Rules of Conduct Regulations when I made adverse and unsubstantiated comments about the character and actions of the Shire's Chief Executive Officer, Mr Alan Sheridan.

(2) I failed to withdraw my comments and apologise to Mr Sheridan after the Shire President asked me to do so.

(3) I breached regulation 7(1)(b) of the Rules of Conduct Regulations when I made improper use of my office as a Councillor by making the adverse comments about Mr Sheridan in the presence of all Shire Councillors, with the intention of damaging him.

(4) By making the adverse comments about Mr Sheridan I failed to meet the standards of conduct expected of a councillor

(5) I breached regulation 11(2) of the Rules of Conduct Regulations when I failed to disclose an obvious impartiality interest in an agenda item relating to my Shire email account and data allowance.

I apologise to Mr Sheridan, the Shire President Councillor Houston and all other Councillors for unjustifiably criticising Mr Sheridan's performance as the Shire Chief Executive Officer and casting aspersions on Mr Sheridan's character and for doing so with the intention of causing damage to Mr Sheridan. I also apologise for failing to disclose the impartiality interest.



Local Government Standards Panel

NOTICE TO THE COMPLAINANT AND THE RESPONDENT

BOTH PARTIES HAVE THE RIGHT TO APPLY TO THE STATE ADMINISTRATIVE TRIBUNAL FOR A REVIEW OF THE PANEL'S DECISION

Under the *Local Government Act 1995* (WA) the Panel must give you written notice of its decision about sanction for the minor breach/breaches committed by the Respondent.¹ This Notice is attached to the Panel's Sanction Decision and Reasons for Decision document (the Sanction Decision).

You may apply to the State Administrative Tribunal (SAT) for a review of the Panel's Sanction Decision.² When asking SAT to review the Sanction Decision you may also ask SAT to review the Panel's finding that the Respondent committed the minor breach/breaches.

Your application for review must be made to SAT within 28 days from the day on which the Panel gives you this Sanction Decision.³

The Panel can "give" you a copy of its Sanction Decision by pre-paid post to your last known address.⁴ The Panel has sent this Notice and its Sanction Decision by pre-paid post to your last known address.

Calculating the 28 days - the day on which the Panel "gives" you this Sanction Decision is the day on which it would be delivered to your last known address in the ordinary course of post.⁵

You can obtain further information about applying for a review of the Panel's decisions at www.sat.justice.wa.gov.au or by contacting SAT:

Level 6, State Administrative Tribunal Building, 565 Hay Street, Perth WA 6000 or
GPO Box U1991, Perth 6845;
Telephone (08) 9219 3111 or 1300 306 017 (cost of a local call); or
Fax (08) 9325 5099.

¹ Section 5.110(7) of the *Local Government Act 1995* (WA). Section 20(1) of the *State Administrative Tribunal Act 2004* (SAT Act) also requires the Panel to give you written notice of its decision.

² Under section 5.125 of the *Local Government Act*.

³ Under Rule 9 of the *State Administrative Tribunal Rules 2004* you must apply for a review within 28 days from the day on which the Panel gives you notice of its decision.

⁴ Section 9.50 of the *Local Government Act*, section 75(1) of the *Interpretation Act 1984* (WA).

⁵ Section 75(1) of the *Interpretation Act 1984* (WA).