



Local Government Standards Panel

Complaint Number	SP 2018-088 and SP 2018-089
Legislation	<i>Local Government Act 1995</i>
Complainant	Ms Corinne MacRae
Respondent	Mayor Keri Shannon
Local Government	Town of Cambridge
Regulation	Regulations 6 and 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms Sheryl Siekierka (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Deputy Member)
Heard	22 February 2019 Determined on the documents
Outcome	One breach of regulation 7(1)(b)

FINDING AND REASONS FOR FINDING

Delivered 27 March 2019

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 the Panel's decision

1. The Local Government Standards Panel ("Panel") found that Mayor Keri Shannon ("Mayor Shannon"), a councillor for the Town of Cambridge ("the Town"), committed one breach under the *Local Government Act 1995* (WA) ("the Act") and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") when she made an announcement at the council meeting on 28 August 2018 ("Council Meeting") in relation to a confidential investigation report. The Panel found that Mayor Shannon did not commit a breach of regulation 6 with regard to the same conduct.

Jurisdiction

2. The Act provides for the circumstances in which a council member commits a minor breach.¹
3. On 19 September 2018 the Department of Local Government, Sport and Cultural Industries ("Department") received two Complaint of Minor Breach Forms, both dated 10 September 2018 ("Complaints") and both submitted by Ms Corinne MacRae ("the Complainant"). The first Complaint contained an allegation of a breach of regulation 6 and the second contained an allegation of a breach of regulation 7 against Mayor Shannon and related to the same conduct when she made an announcement ("Mayoral Announcement") at the Council Meeting in relation to a confidential investigation report.
4. On 5 October 2018 the Department advised Mayor Shannon of the Complaints and invited her to respond. The Department sent Mayor Shannon a copy of the original Complaints and 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 22 February 2019 the Panel convened to consider the Complaint.
6. The Panel:
 - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Mayor Shannon was a councillor at the time of the alleged breaches, having been elected on 17 October 2015, and was still a Councillor when the Panel met on 22 February 2019;
 - (b) was satisfied the Complaints had been made within two years after the alleged breaches are said to have occurred³;
 - (c) was satisfied the Complaints had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches⁴; and

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.

- (d) was satisfied that the Department had provided procedural fairness to Mayor Shannon.
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 Mayor Shannon was not found to have previously 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 Mayor Shannon had breached regulations 6 and 7 in connection with the allegations made against her.

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 than not 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 6(2)(a)

13. 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;

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.

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;

.....

(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)

14. 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.

15. 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 information⁸ to someone who at the time was not also a Councillor of the same local government; 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 persons⁹) 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).

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

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

Regulation 7(1)(b)

18. Regulation 7 provides:

“7. Securing personal advantage or disadvantaging others

(1) A person who is a council member must not make improper use of the person’s office as a council member –

.....

(b) to cause detriment to the local government or any other person.”

(2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.”

19. The Panel decided that the alleged conduct is not conduct that contravenes section 5.93 of the Act or section 83 of *The Criminal Code*.

Elements of regulation 7(1)(b)

20. In order to find a breach of 7(1)(b), the Panel must be satisfied to the required standard of proof that:

- (a) the person, the subject of the Complaint, engaged in the alleged conduct (first element);
- (b) the person, the subject of the Complaint, was a council member both at the time of the conduct and the time when the Panel makes its determination (second element);
- (c) by engaging in the conduct, the person, the subject of the complaint, made use of his or her office as a council member (in the sense that he or she acted in their capacity as a councillor, rather than in some other capacity (third element);
- (d) that when viewed objectively, such use was an improper use of the person's office as a council member in that it:
 - (i) involved a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, power and authority of the councillor and the circumstances of the case; and
 - (ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;(fourth element)
- (e) the person engaged in the conduct in the belief that detriment would be suffered by the local government or any other person (fifth element).

Fourth element - meaning of “to make improper use of....office”

21. The Macquarie dictionary definition of “improper” is “not in accordance with propriety of behaviour, manners, etc; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.”¹⁰ The Shorter Oxford dictionary definition is “irregular, wrong; unsuitable, inappropriate; unbecoming, unseemly.”¹¹
22. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a councillor, and all the circumstances of the particular case, form the view that the councillor had breached the standards of conduct expected of a councillor?¹² “For behaviour to be improper it must be such that a right-thinking person would regard the conduct as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.”¹³
23. Under the Act Panel members must have regard to the general interests of local government in Western Australia.¹⁴ It is in the interests of local government that councillors are, and are seen to be, professional and respectful in their dealings with fellow councillors, local government employees and members of the public.
24. Regulation 3 of the Regulations sets out general principles to guide councillors’ behaviour, although contravention of any of any of these does not amount to a minor breach.¹⁵ Regulation 3 provides, among other things, that councillors should act with reasonable care, diligence and integrity and treat others with respect and fairness.
25. The meaning of “improper” must be considered in the context of relevant legislation, such as the Act and the Regulations, and other rules and standards that apply to a councillor’s role and conduct, such as the local government’s Code of Conduct, and the circumstances and context of the case.¹⁶ All these provisions form part of the backdrop to the Regulations and give context to a complaint but the alleged conduct must also be judged in the particular circumstances.
26. Conduct can be improper even though the councillor’s judgment is that it isn’t improper. A councillor’s use of his or her office can be improper even though the councillor is intending to benefit the local government, the council or the ratepayers and residents.¹⁷

Fifth element - meaning of “to cause detriment to the local government or any other person”

Detriment

¹⁰ Macquarie Dictionary, Revised Third Edition.

¹¹ Shorter Oxford English Dictionary, Sixth Edition.

¹² *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.

¹³ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

¹⁴ Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

¹⁵ Regulation 3.

¹⁶ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10.

¹⁷ *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby* 2010.

27. “Detriment” means loss, damage or injury.¹⁸ It includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage. A person can suffer detriment through others thinking less favourably of them.¹⁹
28. For regulation 7(1)(b) to be satisfied it is not necessary to show that the local government or the person concerned actually suffered detriment.²⁰ However it is not enough to show that the local government or the person concerned suffered detriment, or could have suffered detriment. The Panel must find that it is more likely than not that the councillor believed that his or her actions would cause detriment and intended to cause detriment.²¹
29. “To cause detriment” has been interpreted as meaning “in order to” or “for the purpose of” causing detriment, or “with the will to” cause detriment.²² There can be a finding of intent if, after considering all the evidence, the only reasonable inference is that the councillor intended to cause detriment.²³

Substance of the Complaints

First Complaint – Regulation 6

30. At the Council Meeting Mayor Shannon, at agenda item 8 which was “*Announcements by the Mayor without discussion*” (“Item 8”) launched a verbal attack on former employees of the Town, Mr Jason Lyon (“Mr Lyon”) and Mr Brett Jackson (“Mr Jackson”) (together “the Former Employees”) in her Mayoral Announcement. Mayor Shannon divulged the contents of a confidential investigation (“Confidential Investigation Report”) conducted by Hall & Wilcox lawyers (“Hall & Wilcox”) and a confidential auditors report (“Confidential Auditors Report”):

- The final investigation report by Hall & Wilcox was considered at a Special Council meeting held on 14 June 2018 and at this meeting, Council resolved that it would not release the Confidential Investigation Report until all employee matters arising from the investigation were resolved.
- The Confidential Investigation Report was subsequently leaked to The Post newspapers (“The Post”) and was referred to in the 15 July 2018 edition, but not all of its contents had been publicised by The Post in that edition or subsequent ones.
- At the council meeting on 24 July 2018, the Confidential Investigation Report was also discussed under confidential cover.

31. At the time of the leaking of the Confidential Investigation Report to The Post on 15 July 2018, a press release on the Town’s website stated:

¹⁸ Macquarie Dictionary Revised Third Edition, 2001.

¹⁹ *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.

²⁰ *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

²¹ *Re and Local Government Standards Panel* [2014] WASAT 111, paragraph 51, referring to *Australian Securities and Investments Commission v Australian Property Custodian Holdings Ltd* [2013] FCA 1342.

²² *Chew* 2010.

²³ *Treby* 2010.

“the Town is disappointed that a copy of the Investigation Report, which is confidential and legally privileged, has been provided without authorisation to the media before the Council had the opportunity to consider the report and before the Town has been able to put the report to relevant parties for response”.

32. However, according to the Complainant, at the Council Meeting Mayor Shannon proceeded to divulge unpublicised confidential findings related to the Former Employees from the Confidential Investigation Report and / or further findings in the final report as well as from the Confidential Auditors Report, that were detrimental to their reputations.
33. The Post reporter was present at the Council Meeting and the Complainant attaches an article (“Article”) that appeared in the 31 August 2018 edition of the newspaper. The Complainant also attaches the public record of the Mayoral Announcement to the Complaint and states that the audio transcript is also available on the Town’s website.

Second Complaint – Regulation 7

34. The Complainant states that Item 8 on the Agenda is the only agenda item where no discussion on any matter the Mayor raises is allowed. Mayor Shannon used her position as Mayor speaking at this item, to use information from the Confidential Investigation Report and Confidential Auditors Report, to cast aspersions on the professional conduct of the Former Employees. Mayor Shannon was in receipt of the confidential reports because of her position as Mayor which she inappropriately used to disadvantage them.
35. The unfair criticism of the Former Employees is outlined in an article in the Article.
36. The Former Employees now hold senior Director positions at other local governments and the article in The Post has no doubt caused them and their families, great distress. They have been seriously disadvantaged by this attack on their professional conduct.

Mayor Shannon’s Response

37. In her response, Mayor Shannon denies the allegations in both Complaints.

First Allegation: breach of Regulation 6

38. The Complainant alleges that Mayor Shannon breached Regulation 6 by divulging the contents of the Confidential Investigation Report and the Confidential Auditors Report.
39. In February 2018 council initiated an investigation into planning compliance matters and engaged Hall & Wilcox to undertake the investigation. The investigation was broadened in April 2018 to include the delegation of authority from council to the CEO.
40. At the Special Council meeting on 14 June 2018 which occurred behind closed doors, the Town amongst other matters resolved to receive the final investigation

report from Hall & Wilcox (which was subject to Legal Professional Privilege) and resolved that:

RESOLVES that:

- (a) the confidential Investigation Report (which is subject to Legal Professional Privilege) shall not be released to the public until all employee matters arising from the Report are resolved, and subject to the confidential conditions determined by Council;**
- (b) the Mayor be authorised to issue a comprehensive media statement detailing the salient facts contained within the confidential Investigation Report by Hall and Wilcox Lawyers, and the actions to be implemented to address areas of non-compliance as a matter of priority;**

Carried Unanimously (7/0)

(Crs McAllister and Powell were apologies for the meeting.)

41. On 23 July 2018 the Town considered item 13.4 on the Ordinary Council Meeting agenda which included advice from the Acting CEO that his audit of Annual Performance Reviews revealed the annual review of all employees had not been carried out as required by s5.38 of the Act for a number of years. The Town resolved (with markings added by Mayor Shannon):

4. Subject to item 3. above, and in accordance with the Council decision clause 4 (a) and (b) of the Special Council meeting held on 14 June 2018, the Mayor be **AUTHORISED** to make public the salient facts contained within this Confidential Report.

42. Mayor Shannon confirms that she made the Mayoral Announcement (without notice) at the Council Meeting that is appended to the Complaint and included as evidence by the Complainant.

43. Mayor Shannon further notes:

- a. She was authorised by the Town decision on 14 June 2018 to make a comprehensive media statement detailing the salient facts contained in the Confidential Investigation Report and the actions to be implemented to address areas of non-compliance. Mayor Shannon was also authorised on 23 July 2018 to make a statement about the salient facts contained in the Confidential Investigation Report – which primarily discussed actions taken by the Town to remedy the failures identified by Hall & Wilcox and the recent audit of annual performance reviews of staff by the Acting CEO.
- b. On 28 August 2018 the Town had not received the Confidential Auditor's Report dated 27 August 2018 which Mayor Shannon states was received on 29 August 2018. The Confidential Auditors Report made findings which were rated as significant in relation to issues of compliance regarding financial delegations and journals.
- c. Mayor Shannon had been aware since April 2018 that the Town had significant issues with the validity of statutory delegations including the lack of certain financial delegations. As these matters related to existing employees, she did not refer to these matters in the Mayoral Announcement.

- d. On 28 August 2018 Mayor Shannon emailed Mills Oakley law firm copies of the motions she intended to move at the meeting and enclosed the proposed Mayoral Announcement for the meeting and sought legal advice noting that the content did not attribute the governance failings to any current employees so as to not prejudice the ongoing show cause process..
- e. Mayor Shannon also provided the draft Mayoral Announcement to the Town's local government lawyer at Squires, and the Acting CEO, to ensure that her comments were appropriate. The Acting CEO provided some comments and Mayor Shannon incorporated them into the final draft of the Mayoral Announcement.
- f. At the time, in her opinion, the Town was in an "*invidious*" position. It was being criticised in the press for reducing the number of roles as well as staff leaving due to resignations and contracts not being renewed. The community needed information as to why a clear delineation of roles was recommended by Hall & Wilcox and why there was a delay in the finalisation of the investigation. The reference to the failure to undertake annual reviews was a good example of failures in governance.
- g. Mayor Shannon believes that as at 28 August 2018 she had received two council decisions which allowed her to make the statement contained in the Mayoral Announcement.

Second Allegation: breach of Regulation 7

- 44. The Town by virtue of two resolutions had required Mayor Shannon to issue a comprehensive media statement on both the findings of the investigation and make public the salient facts in the Confidential Investigation Report. These resolutions compelled Mayor Shannon to use her position as Mayor to make a public statement on behalf of the Town regarding these matters.
- 45. The Complainant outlines the "*salient facts*" from the Hall & Wilcox Investigation Report which showed there had been a number of failings and errors and also what action had been taken by Council to correct these.
- 46. The Mayoral Announcement described examples of the failings and errors however Mayor Shannon does not believe the Mayoral Announcement cast aspersions on the character of the Former Employees or denigrated their reputations.
- 47. Mayor Shannon stated that council will have to be transparent and accountable with ratepayers and residents when it realises the losses and when it has to incur expenses to remediate these matters. Ratepayers should understand that mistakes have been made which need to be corrected, and that such work will have an additional budgetary implication. It is therefore in the best interest of ratepayers to understand why such additional expenditure is necessary and to provide some explanation of why the investigation was delayed.

48. The notion of disadvantage suggests putting someone in an unfavourable position in relation to something or being harsh or unfair in your treatment of them ie to do another a disservice.
49. The Mayoral Announcement stated the facts and described the actions of the Former Employees however this does not amount to a disadvantage and she did not provide any commentary about her opinion of their competency.
50. It is an inherent part of being accountable for your actions that they can be objectively scrutinised. Ratepayers are entitled to expect that senior employees working in a local government will faithfully and diligently perform their duties. The Council has to be accountable to the community for the operations.
51. It was the view of the Town, that ratepayers were entitled to some contemporaneous explanation of the findings and the actions taken. The Town had spent a significant amount of council funds on the investigation and it was appropriate that the ratepayers were given information as to why the investigation was necessary and the fact that the reorganisation of the structure would deliver improved accountability and effectiveness in the operations of the Town.
52. The draft Mayoral Announcement was provided to two lawyers for advice and the Acting CEO. There does not appear to be any provision in the Act or the Regulations that provides the mere statement of facts regarding actions of former employees should not occur or was a breach of the legislation. It is Mayor Shannon's belief that it was in the public interest, specifically the ratepayers and residents of the Town, to understand that the Town was striving to ensure good governance and transparency in all of its operations going forward.

Panel's consideration

First Complaint – Regulation 6(2)(a)

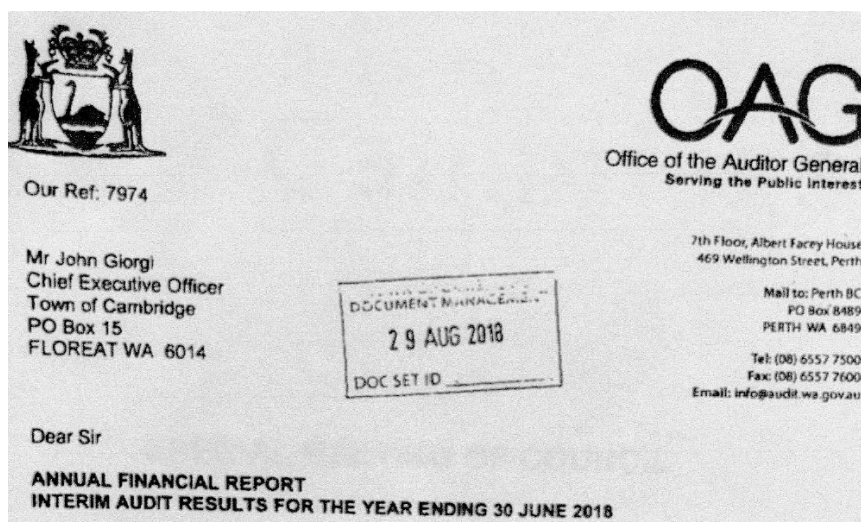
53. The Panel is not satisfied to the required standard of proof that Mayor Shannon breached regulation 6(2)(a) when she made the Mayoral Announcement:
- a. The Mayoral Announcement was made at the Council Meeting and a full transcript of the announcement is attached as evidence by the Complainant and accepted as accurate by Mayor Shannon.
 - b. Mayor Shannon was authorised at the Council meeting on 14 June 2018 to issue a comprehensive statement detailing the *salient facts* contained in the Confidential Investigation Report.
 - c. Mayor Shannon was again authorised on 23 July to make a statement detailing the salient facts contained in the Confidential Investigation Report.
 - d. Regulation 6(2)(a) prohibits a council member from disclosing information that a council member derived from a confidential document, but is subject to the exceptions under Regulation 6(3) and the Panel refers in particular to 6(3)(b) that states:

“(3) Subregulation (2) does not prevent a person who is a council member from disclosing information –

.....

(b) to the extent specified by the council and subject to such other conditions as the council determines.”

- e. The Panel finds that Mayor Shannon was authorised to disclose the information from the Confidential Investigation Report in the Mayoral Announcement as was ordered and specified by Council at both the meeting on 14 June 2018 and again on 23 July 2018.
- f. With regard to the allegation that Mayor Shannon disclosed information from the Confidential Auditors Report, the Panel has not been provided with a copy of the said report and the Complainant does not particularise what information from this report it is alleged Mayor Shannon disclosed in the Mayoral Announcement. Furthermore, Mayor Shannon submits that the Confidential Auditors Report was not received by Council until 29 August 2018 (after the Council Meeting at which the Mayoral Announcement was made) as shown by the below copy of the date stamped letter from OAG enclosing the report:



- g. The Panel finds there is insufficient evidence that Mayor Shannon referred to any information from the Confidential Auditors Report in the Mayoral Announcement.

54. The Panel finds that the Mayoral Announcement was made in accordance with the Council decisions on 14 June 2018 and 23 July 2018 and falls under the exception under Regulation 6(3)(b) that allowed Mayor Shannon to disclose information from a confidential document.

Panel's finding

55. The Panel finds that Mayor Shannon did not commit a breach of regulation 6(2)(a) in relation to the First Complaint.

Second Complaint – Regulation 7

First, second and third elements satisfied

56. The Panel finds that Mayor Shannon engaged in the conduct which is the subject of the Second Allegation and that she was a councillor and was acting as a councillor at all relevant times.

57. The first, second and third elements of regulation 7(1)(b) are established.

Whether Mayor Shannon acted improperly (fourth element)

62. The Panel has considered all the evidence before it and it is satisfied that the fourth element has been established in relation to the Second Complaint and finds that Mayor Shannon did act improperly. The Panel makes this finding because it is satisfied to the required standard of proof that a reasonable person would consider that Mayor Shannon did not meet the standards of conduct expected of a councillor when she made the Mayoral Announcement:

- a. Mayor Shannon was authorised to make a comprehensive statement detailing the most noteworthy and important facts from the Confidential Investigation Report. However, the Panel finds that the deficiencies that the Confidential Investigation Report had identified could have been discussed without apportioning personal blame to the Former Employees; Mayor Shannon could have fulfilled her duty to give the statement and Council's objective of providing the facts and stating what action was to be taken could still have been achieved, without naming the Former Employees.
- b. Prior to making the Mayoral Announcement, Mayor Shannon had contemplated which parties to name and decided it would be unwise to refer specifically to current Town employees. However, with regard to the Former Employees, Mayor Shannon made the decision to name them, and be very specific as to their alleged conduct.
- c. The Mayoral Announcement is reasonable in length and contains a number of very serious allegations against the Former Employees. While Mayor Shannon states in her Response that her statements are "*true and factual*" and supporting information can be supplied to "*show that these actions objectively occurred*", at the time of the Mayoral Announcement the Confidential Investigation Report had not been released to the public therefore any statements about the Former Employees lacked clear context and reference to substantial evidence / findings.

- d. While Mayor Shannon was authorised to give details of *facts* from the Confidential Investigation Report, some of her statements about the Former Employees appear to be based on assumptions and opinion and when discussing the Former Employees actions she uses the phrases “*in my opinion*” and “*this is probably because*”.
 - e. The Mayoral Announcement was made without notice and the Former Employees had no right of reply and no other party was allowed to speak on their behalf as Item 8 does not allow for any discussion or response by other parties. Evidence is included in the response that at least one councillor found the Mayoral Announcement to be improper and tried to intervene.
 - f. Although Mayor Shannon submits her statements were factual, the general principles that guide the behaviour of council members include that they should act with reasonable care and treat others with respect and fairness.
63. The question is whether in all the circumstances, a reasonable person would consider Mayor Shannon acted improperly. The Panel finds that this element is satisfied

Whether Mayor Shannon intended to cause detriment to the local government or any other person (fifth element)

64. The Panel is satisfied to the required standard of proof that Mayor Shannon intended to cause detriment to the Former Employees by making the Mayoral Announcement. Based on the evidence before it, the Panel finds:
- a. Mayor Shannon had been given permission by Council to disclose salient facts from the Confidential Investigation Report which was a serious responsibility and required much consideration.
 - b. The Mayoral Announcement was not a spur of the moment announcement. It was well thought out and written in advance. Mayor Shannon had considered who it was proper to name and had discussed the announcement with other parties and received legal advice on it.
 - c. The announcement was made at Item 8 which did not allow for any discussion on it. The Panel finds it reasonable that anyone listening to the Mayoral Announcement would be likely to think less favourably of the Former Employees and they would feel embarrassment as a result and the evidence before the Panel shows there was clear intent on the part of Mayor Shannon in this respect.
65. Based on the evidence before it, the Panel is satisfied to the required standard that Mayor Shannon believed that by making the Mayoral Announcement detriment would be suffered by the Former Employees.



66. The Panel is satisfied that a reasonable person with the knowledge of the duties, powers and authority of a councillor would form the view that Mayor Shannon had breached the standards of conduct expected of a councillor.

Panel's finding

58. The Panel finds that Mayor Shannon did commit a breach of regulation 7(1)(b) in relation to the Second Complaint.

Sheryl Siekierka (Presiding Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)



Local Government Standards Panel

Complaint Number	SP 2018-088 and 2018-089
Legislation	<i>Local Government Act 1995</i>
Complainant	Ms Corrine Macrae
Respondent	Mayor Keri Shannon
Local Government	Town of Cambridge
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms Sarah Rizk (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Deputy Member)
Heard	23 May 2019 Determined on the documents
Outcome	Public apology

SANCTION DECISION AND REASONS FOR DECISION

Delivered 23 May 2019

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 22 February 2019 the Panel found that Mayor Keri Shannon ("Mayor Shannon"), a member of the Town of Cambridge ("Town"), committed one breach under the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) and regulation 7(1)(b) when she made an announcement ("Mayoral Announcement") at the council meeting on 28 August 2018 ("Council Meeting") in relation to a confidential investigation report.
2. On 27 March 2019 the Panel published its Finding and Reasons for Finding ("Findings") that Mayor Shannon had breached regulation 7(1)(b). The Panel reviewed all the evidence presented to it and said (extracts shown below):

"62.

- a. Mayor Shannon was authorised to make a comprehensive statement detailing the most noteworthy and important facts from the Confidential Investigation Report. However, the Panel finds that the deficiencies that the Confidential Investigation Report had identified could have been discussed without apportioning personal blame to the Former Employees; Mayor Shannon could have fulfilled her duty to give the statement and Council's objective of providing the facts and stating what action was to be taken could still have been achieved, without naming the Former Employees.
- b. Prior to making the Mayoral Announcement, Mayor Shannon had contemplated which parties to name and decided it would be unwise to refer specifically to current Town employees. However, with regard to the Former Employees, Mayor Shannon made the decision to name them, and be very specific as to their alleged conduct.
- c. The Mayoral Announcement is reasonable in length and contains a number of very serious allegations against the Former Employees. While Mayor Shannon states in her Response that her statements are "*true and factual*" and supporting information can be supplied to "*show that these actions objectively occurred*", at the time of the Mayoral Announcement the Confidential Investigation Report had not been released to the public therefore any statements about the Former Employees lacked clear context and reference to substantial evidence / findings.
- d. While Mayor Shannon was authorised to give details of *facts* from the Confidential Investigation Report, some of her statements about the Former Employees appear to be based on assumptions and opinion and when discussing the Former Employees actions she uses the phrases "*in my opinion*" and "*this is probably because*".
- e. The Mayoral Announcement was made without notice and the Former Employees had no right of reply and no other party was allowed to speak on their behalf as Item 8 does not allow for any discussion or response by other parties. Evidence is included in the response that at least one councillor found the Mayoral Announcement to be improper and tried to intervene.
- f. Although Mayor Shannon submits her statements were factual, the general principles that guide the behaviour of council members include that they should act with reasonable care and treat others with respect and fairness.

.....

64.



- a. Mayor Shannon had been given permission by Council to disclose salient facts from the Confidential Investigation Report which was a serious responsibility and required much consideration.
- b. The Mayoral Announcement was not a spur of the moment announcement. It was well thought out and written in advance. Mayor Shannon had considered who it was proper to name and had discussed the announcement with other parties and received legal advice on it.
- c. The announcement was made at Item 8 which did not allow for any discussion on it. The Panel finds it reasonable that anyone listening to the Mayoral Announcement would be likely to think less favourably of the Former Employees and they would feel embarrassment as a result and the evidence before the Panel shows there was clear intent on the part of Mayor Shannon in this respect.

Jurisdiction

3. The Panel convened on 23 May 2019 to consider how it should deal with the breach. The Panel accepted the Department's advice that on this date there was no available information to indicate that Mayor Shannon had ceased to be or was disqualified from being a councillor.

Possible sanctions

4. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by —
 - “(a) 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).”*
5. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel's finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor's name.

Mayor Shannon's submissions

6. 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.



7. In a letter dated 28 March 2019, the Department notified Mayor Shannon of the Panel's findings, providing her with a copy of its Findings published on 27 March 2019 and inviting her to make submissions on how the Panel should deal with the breach under section 5.110(6).
8. In an email dated 15 April 2019 the Panel received submissions from Mayor Shannon requesting the Complaint be dismissed as the breach was minor in nature and stating that the Complaint itself was vexatious. Furthermore, Mayor Shannon submits:
 - a. She made the statement during the Mayoral Announcement because the Town had concerns regarding the former employees that needed to be addressed. She merely described the actions of the former employees and sought to explain that their departure was a positive for the City.
 - b. Mayor Shannon sought advice from other parties prior to making the Mayoral Announcement including from lawyers who did not raise concerns regarding the detriment to the former employees as the statements were true.
 - c. Mayor Shannon believes she acted in accordance with the Town's Code of Conduct and had regard to the Regulations however she believes the meaning of "*any other person*" in regulation 7(1)(b) is very wide in nature.
 - d. The Complaint was not lodged by the parties towards whom the Panel found Mayor Shannon acted improperly, but rather a former councillor.
 - e. Any detriment the former employees suffered was because of their own inappropriate and wrongful actions.
 - f. The former employees were afforded an opportunity to respond to the Mayoral Announcement as in the days following her statement they were contacted by the Post newspaper. Both parties declined to respond and therefore there can be no detriment as the statement was factually correct and they chose not to comment.
 - g. Mayor Shannon was acting in her capacity as spokesperson for the Town and was being asked to explain Council's decision. She had a duty to ratepayers to be accountable and transparent; this took precedence over the former employees' desires not to have their actions described or scrutinised.
 - h. Mayor Shannon believes she acted in the public interest.

Panel's consideration

9. The Panel found that Mayor Shannon committed one breach of regulation 7(1)(b) which related to her conduct when she made an announcement at the Council Meeting. The Panel found that by doing so, Mayor Shannon intended to cause detriment to the two former employees of the Town referred to in her statement.



10. The Panel has considered Mayor Shannon's submissions as to how the Complaint should be dealt with. Mayor Shannon does not show any remorse for her conduct in making the Mayoral Announcement or for the lack of respect and fairness towards the former employees in naming them and referring to them in the manner she did.
11. Mayor Shannon also does not acknowledge the seriousness of the breach and dismisses it as a "*minor breach*". However, the allegation against her was serious and the Panel found that she intentionally caused detriment to the former employees.
12. The Panel does not consider that dismissal of the Complaint is appropriate as this would indicate that the breach is so minor that no penalty is warranted. Nor does the Panel consider that ordering Mayor Shannon to undergo further training is appropriate or an adequate sanction, given the serious nature of the comments which were intended to embarrass the parties concerned and the lack of accountability or willingness to re-evaluate her conduct she shows.
13. The options left for the Panel to consider are to order the publication of a Notice of Public Censure or to order Mayor Shannon to make a Public Apology (or both).
14. When the Panel makes an order that a Notice of Public Censure be published, that Notice is published by the local government's CEO, at the expense of the local government, and such expense is significant where the Notice is to be published in a newspaper or newspapers.
15. In the present case, on the evidence available to the Panel, the Panel does not consider that it should order a public censure.
16. The nature of the comments made about the former employees were offensive and disrespectful. Mayor Shannon made those comments publicly during her Mayoral Announcement at the Council Meeting at which several members of the public were present as well as members of the press. A public apology is appropriate as it reflects the impact on the former employees who were both subjected to Mayor Shannon's comments and the lasting effect of her actions.
17. An apology in public is also appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold. It serves as an acknowledgement that Mayor Shannon's conduct was unacceptable and demonstrates that councillors are accountable for their actions.
18. The Panel considers a public apology to the parties who suffered the damage is the appropriate penalty.

Panel's decision

19. Having regard to the Findings, the matters set out herein, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under s5.110(6) of the Act, is that pursuant to subsection (b)(ii) of that section, Mayor Shannon is ordered to publicly apologise to the Town's former employees.



A handwritten signature in black ink, appearing to be 'SRizk'.

Sarah Rizk (Presiding Deputy Member)

A handwritten signature in black ink, appearing to be 'ERowe'.

Elanor Rowe (Deputy Member)

A handwritten signature in black ink, appearing to be 'RAubrey'.

Rebecca Aubrey (Deputy Member)



ATTACHMENT

Complaint Number	SP 2018-088 and 2018-089
Legislation	<i>Local Government Act 1995</i>
Complainant	Ms Corrine Macrae
Respondent	Mayor Keri Shannon
Local Government	Town of Cambridge
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms Sarah Rizk (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Deputy Member)
Heard	23 May 2019 Determined on the documents
Outcome	Public apology

ORDER FOR PUBLIC APOLOGY

Delivered 23 May 2019

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.

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

SP 2018-088 and 2018-089 Reasons for Decision CE10-18#009

1. Mayor Keri Shannon, a Councillor for the Town of Cambridge (Town), publicly apologise to the Town's former employees who she referred to in her Mayoral Announcement during the Council Meeting on 28 August 2018.
2. At the Town's first ordinary council meeting Mayor Shannon attends after the expiration of 28 days from the date of service of this Order on her Mayor Shannon shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to the Town's former employees;
 - (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, as the presiding person thinks fit;
 - (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:

- (i) A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* when I made an announcement at the council meeting on 28 August 2018 in which I referred to two former Town employees.
- (ii) The Panel found that by behaving in this manner I made improper use of my office as Councillor with the intention of damaging the former employees thereby committing one breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*.
- (iii) I accept that I should not have acted in such a manner towards the former employees and I apologise to the parties concerned for having done so."

3. If Mayor Shannon fails or is unable to comply with the requirements of paragraph 2 above she shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the Western Suburbs Weekly newspaper.

PUBLIC APOLOGY BY MAYOR KERI SHANNON

A formal complaint was made to the Local Government Standards Panel alleging that I contravened a provision of the *Local Government (Rules of Conduct) Regulations 2007* when I made an announcement at the council meeting on 28 August 2018 in which I referred to two former Town employees.

The Panel found:

- (1) I committed one breach of regulation of 7(1)(b) of the Rules of Conduct Regulations when I made the announcement and referred to the former employees.



(2) By behaving in this way to the former employees I failed to meet the standards of conduct expected of a councillor

I apologise to the parties concerned for acting in such a manner.

A handwritten signature in black ink, appearing to be 'SRizk'.

Sarah Rizk (Presiding Deputy Member)

A handwritten signature in black ink, appearing to be 'ERowe'.

Elanor Rowe (Deputy Member)

A handwritten signature in black ink, appearing to be 'RAubrey'.

Rebecca Aubrey (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 (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."