



Department of
**Local Government, Sport
and Cultural Industries**

The Minor Breach System

A guide for council members, complaints officers and members of the community

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The Minor Breach System

Background

The minor breach system is part of the disciplinary framework for council members in Western Australia under the *Local Government Act 1995* (the Act). The minor breach provisions were added to the Act in 2007 to address conduct by individual council members, with the aim of responding to disruptive or otherwise inappropriate conduct by individuals in a timely manner. The system responds to and deters conduct by council members that disrupts the effective functioning of their local government.

This Guide has been produced by the Department of Local Government, Sport and Cultural Industries (the Department) to assist council members, Complaints Officers and members of the community to understand the system and how it works. The Department has produced this guide as part of its role in administering the Act. However it is important to note that the Act grants the responsibility for dealing with minor breaches to the Local Government Standards Panel (the Panel), and not the Department.

What is a minor breach?

A council member commits a minor breach if he or she contravenes the Local Government (Rules of Conduct) Regulations 2007 (the Regulations; Act section 5.105[1]). The Regulations contain a set of rules for the conduct of council members. Only conduct that is prohibited under the Regulations can be found to be a minor breach. Under the Regulations, breaches of some parts of a Local Government's Standing Orders Local Law are considered a minor breach.

Elements of the minor breach system

There are four main elements to the minor breach system:

1. A council member engages in **conduct** that is believed to contravene the Regulations.
2. A **complaint** of minor breach is lodged about the conduct.
3. The Panel makes a **finding** about whether the conduct did or did not constitute a minor breach.
4. If a finding of minor breach is made, the Panel may order a **sanction**.

The Local Government Standards Panel can **only** make a finding where conduct has occurred **and** a complaint has been lodged.

Conduct that cannot be dealt with in the minor breach system

The minor breach system only deals with certain types of conduct by council members. There are some types of conduct that cannot be dealt with:

- If a council member contravenes a local government's **Code of Conduct**, this is a matter for the local government to deal with. Such conduct can only be considered a minor breach if it is *also* in breach of the Regulations. If the conduct is not in breach of the Regulations, it should be reported to the local government or Mayor/President under their local policy on complaints.
- If a council member commits an offence under the Act or any other written law where it is an element that they are a council member (other than a local law), this is considered to be a '**serious breach**' and must be dealt with by the Department under sections 5.114–117 of the Act. There is a separate complaints process for serious breaches.
- If a council member has been found to have committed two minor breaches, a third complaint of minor breach becomes a '**recurrent breach**' and may be dealt with by the Department under sections 5.111–113 of the Act.
- If the conduct of a council member appears to be **corrupt conduct**, it may be more appropriate for it to be reported to the Corruption and Crime Commission.
- The Act does not allow for findings of minor breach in relation to conduct by **former council members** or by local government staff. If a council member ceases to be a member of the council at some point in the minor breach process, the process cannot continue.

Complaints that are inappropriate for the minor breach system

The minor breach system exists to respond to individual council member conduct that is disruptive to the functioning of a local government. All complaints should be made with this objective in mind. As a result, complaints such as the following are inappropriate:

- Complaints made with the intent of addressing personal grievances or disagreements;
- Complaints made to express dissatisfaction with a council member's lawfully-made decisions or performance of their role; or
- Complaints made as a political tool or in an attempt to limit freedom of political expression.

Process of a Minor Breach Complaint

Steps in the process

Complaint initiated

1. A **complaint** is drafted using the [Complaint of Minor Breach Form](#) (Act s.5.107[2]), with appropriate and relevant supporting evidence attached (see 'How the Panel considers complaints' section below).
2. The complainant lodges the Complaint of Minor Breach Form and supporting evidence with the Complaints Officer of the local government concerned (Act s.5.107[1]). Complaints Officers may also initiate complaints under the Act (s.5.109).
3. The Complaints Officer, within 14 days:
 - a. contacts the complainant acknowledging that the complaint has been received;
 - b. provides the council member who is the subject of the complaint with a copy of the complaint; and
 - c. sends the complaint to the Local Government Standards Panel (Act s.5.107[3]).

If a Complaints Officer believes that a complaint discloses a serious breach (rather than a minor breach), they are required to refer it to the Department (Act s.5.115).

4. The Executive Officer of the Panel collates the complaint information for the Panel to consider. Further information may be sought from the Complaints Officer or the complainant, and the council member is provided with the opportunity to respond to the allegations in the complaint and to provide their own evidence for consideration.
5. The Panel considers the complaint information and decides if the complaint will be considered. The Panel may refuse to consider a complaint where:
 - a. It considers the complaint to be frivolous, trivial, vexatious, misconceived or without substance (Act s.5.110[3A]). Where this is the case, the complainant, council member and Complaints Officer are all notified of the Panel's decision not to consider the complaint and their reasons for doing so. Or;
 - b. The complaint is considered to constitute a 'recurrent breach' (a third minor breach; Act s.5.111). Where this is the case, the Panel refers the complaint to the Department for consideration and the complainant, council member and Complaints Officer are all notified of the referral.

Panel finding (only if Panel has decided to consider the complaint)

6. If the Panel decides to consider the complaint, they deliberate and make a **finding** about whether the conduct did or did not constitute a minor breach. The Panel makes this finding by considering if it is more likely that the breach occurred than that it did not occur (Act s.5.106).
7. The Executive Officer of the Panel informs the complainant, council member and Complaints Officer of the Panel's finding. The Panel provides the reasons for their finding (Act s.5.110[4]) in a 'Finding and Reasons for Finding' report which is made available to the relevant parties.

Sanction decision (only if Panel has made a finding of minor breach)

8. If the Panel has made a finding of minor breach, the council member is provided with the opportunity to make a submission about the sanction to be imposed.
9. The Panel deliberates and makes a finding about whether the minor breach will be dismissed or a **sanction** imposed. Sanctions may be one or more of a public censure, public apology, or participation in training (Act s.5.110[6]).
10. The Executive Officer of the Panel informs the complainant, council member and Complaints Officer of the Panel's sanction decision (Act s.5.110[7]). The Complaints Officer adds details to the local government's complaints register.

How the Panel considers complaints

It is important to understand that the Panel is an adjudicative body only. It does not have any powers to investigate complaints.

The Panel can only make decisions based on the evidence presented to it in complaints and in responses from council members who are the subject of complaints. The Panel's decisions are based on its evaluation of whether it is more likely that the alleged breach occurred than that it did not occur (Act s.5.106), based on the evidence available.

This means that individuals need to include as much relevant and verifiable information and evidence as possible in Complaint of Minor Breach Forms and responses and submissions to the Panel. The Panel may refuse to deal with complaints, or make a finding of no breach, where there is not adequate evidence to support claims made.

Evidence may include copies of meeting agendas and minutes, audio/video recordings or transcripts from meetings, copies of correspondence such as letters or emails, extracts from council records such as gift registers, and other information. Personal opinions, suspicions about motives and other non-factual information cannot be considered by the Panel and should not be submitted.

Each Regulation contains certain elements that must be demonstrated in order for a breach to be found. These are explained in more detail in the sections below.

In making its decisions, the Panel gives regard to the general interests of local government in Western Australia (Act Schedule 5.1 cl.8). However despite this, it only has the authority to find that a breach did or did not occur. A finding of no breach does not necessarily imply that the council member's conduct was above reproach, but it is a conclusion that the conduct probably did not contravene the Regulation as alleged.

Withdrawal of complaints

Complainants are able to withdraw their complaints at any time prior to the Panel either making a finding or referring the matter to another body (Act s.5.110A). Withdrawal requests must be made in writing to the Presiding Member of the Panel. The Panel will provide a written acknowledgement on receipt of a complaint withdrawal request.

Please note however that the Panel may still choose to deal with a complaint following a withdrawal request, if the Presiding Member considers that it is appropriate to do so (Act s.5.110A[6]). In these cases the complainant, Complaints Officer and council member are all informed in writing of the decision to proceed with the complaint.

False or misleading information

It is an offence under the Act for a person to provide information to the Panel or in a Complaint of Minor Breach Form that they know to be false or misleading (s.5.124). The maximum penalty is \$5,000.

This may include information that is provided:

- carelessly, or without adequate consideration of its truthfulness;
- out of context, such as by selective quoting or by not including information about circumstances leading up to or after an incident (for example, a provocation before an incident or an apology made soon after an incident); or
- without adequate consideration of whether other important information may exist about the incident.

Confidentiality of complaints

It is an offence under the Act for a person to disclose the existence of a complaint, or any details of a complaint, during a local government campaign period except in certain circumstances (Act s.5.123). The campaign period is considered to begin on the 44th day

before election day (the day nominations are opened) and end on election day. The maximum penalty is \$5,000.

Outside of a local government campaign period, these confidentiality restrictions do not apply. However, parties are discouraged from discussing complaints publicly while a complaint is being dealt with, as this supports:

- natural justice for council members who are the subjects of complaints, which is considered very important in the minor breach system and justice system more generally; and
- the maintenance of healthy working relationships once complaints have been dealt with and concluded.

Costs in the minor breach process

No fee is charged to lodge a complaint in the minor breach system. However, the Panel charges the local government a fee to cover some of the costs of dealing with a complaint. This fee is charged for each complaint, whether or not a breach is found by the Panel.

This fee is based on the time spent on the complaint and is usually \$1,000–\$2,000 per complaint, although it can be higher for complex complaints.

Local governments meet the administrative costs of receiving and processing complaints and implementing orders made by the Panel where a breach is found (for example, training fees or publishing newspaper notices). The State Government bears some administrative costs of the Panel. In effect, the State taxpayers and local government ratepayers pay the costs of dealing with minor breach complaints.

There is no ability for the local government to recoup costs of a minor breach complaint from the council member who is the subject of the complaint.

The numbers of complaints received from individual local governments, and the fees charged to each, are published in the Panel's annual report.

Appealing Panel decisions

The Act provides for review of Panel decisions in limited cases.

Section 5.125 of the Act allows for an application to be made to the State Administrative Tribunal for a review of a Panel **sanction** (that is, a decision to not impose a sanction, or an order for public censure, public apology or training).

It is not possible to apply to the State Administrative Tribunal for review of a Panel ***finding*** (a decision about whether a breach did or did not occur).

Because opportunities for review are limited, it is important that all relevant information and evidence is provided to the Panel in the complaint and in the council member's response, so that the Panel can make an appropriate finding. Complainants are not able to submit a new complaint about the same conduct where a finding has already been made.

If the State Administrative Tribunal accepts an application for review, it independently reviews all the evidence available. It reviews both the Panel's finding and its sanction decision. The Tribunal may either affirm or set aside the Standards Panel's finding of breach. If the Tribunal affirms the finding of breach, it may then affirm, vary or overturn the Standards Panel's decision to dismiss the complaint or order a sanction.

The Panel's sanction decisions

Once the Panel has made a finding of minor breach, it considers whether the breach should be dismissed (no sanction) or a sanction ordered. Sanctions which the Panel may order are:

- a public censure, usually published in both a local and State-wide newspaper;
- a public apology, usually to the person or people affected by the council member's conduct and to be read at a council meeting, or if the council member declines to read the apology, to be published in both a local and State-wide newspaper;
- requirement to attend specified training; or
- a combination of the three sanctions listed above.

The Panel invites council members who have been found to have committed a minor breach to make a submission about the appropriate sanction for their case. The complainant does not have an opportunity to make a submission about sanctions.

Factors the Panel considers in making sanction decisions

The Panel may consider the following factors when determining if a complaint is to be dismissed under section s.5.110(6)(a) or a sanction ordered under section s.5.110(6)(b–c):

- whether the conduct appears to have been inadvertent, ill-informed or the result of naivety, carelessness or misunderstanding;
- the significance of the consequences of the conduct (from a public and/or a local government perspective);
- whether the council member has demonstrated that they understand their transgression and are remorseful; and/or
- whether a penalty would be in the public interest, for example if the matter has already been dealt with, such as a comment made at a council meeting that was withdrawn and an apology made at the time under the relevant local law.

Understanding the Rules of Conduct Regulations

This section describes the factors considered by the Panel in making a finding of breach or no breach for each of the Rules of Conduct Regulations.

Please note that this information is provided for informational purposes only. Legal advice should be sought about how the regulations apply to specific circumstances.

Regulation 4: Breach of a local law relating to conduct at meetings

The conditions required for Regulation 4 to be breached include:

- The conduct occurred at a council or committee meeting;
- A standing orders local law or meeting procedures local law applied at the meeting; and
- The relevant local law prohibited the specific conduct displayed by the council member.

The Panel can only find that a minor breach has occurred where the above conditions have all been established.

In most cases, the following circumstances are not considered to constitute a minor breach:

- The presiding member's performance in managing the meeting was lacking;
- There were flaws or errors in the meeting procedure; or
- A council member breached the local government's Code of Conduct during the meeting.

There may be cases where conduct has occurred at a meeting and was responded to at the time in accordance with the relevant local law (such as through a point of order, direction of the presiding officer, apology or withdrawal of comments). In such cases, potential complainants should consider whether there is a public benefit to the conduct also being raised and considered by the Panel.

Case study: Regulation 4

At a council meeting a council member made a statement that “Councillor [Name] is corrupt...”. The local government’s Standing Orders Local Law applied to the meeting and contained the provision that “no member of the Council or a committee is to use offensive or objectionable expressions in reference to any member, employee of the Council, or any other person”.

The Panel received two complaints alleging the council member had breached the Standing Orders Local Law and therefore committed a breach of Regulation 4.

The Panel’s finding

The Panel found that the council member had committed a breach of Regulation 4 by making the statement about his fellow council member.

In considering its finding, the Panel was satisfied that the Standing Orders Local Law was a ‘law relating to conduct of people at council or committee meetings’, for the purpose of the Regulation and that the statement that another council member was corrupt was an ‘offensive or objectionable’ statement made in reference to a member of the council. In its deliberations, the Panel also noted a distinction in the parts of a standing orders local law, between the provisions that apply to the conduct of persons (covered by the Regulation) and the provisions that apply to the procedure of meetings (not covered by the Regulation).

The Panel resolved to order the publication of a censure notice and a public apology by the council member. However, the individual ceased to be a council member shortly after the panel’s decision and so the order did not proceed.

Regulation 6: Improper disclosure of information

The conditions required for Regulation 6 to be breached include:

- The disclosed information was either;
 - taken from a document marked by the local government Chief Executive Officer as confidential; or
 - obtained by the council member at a meeting closed to the public under section 5.23 of the Act (note that this does not include information taken from a document made available at a closed meeting but not marked as confidential by the Chief Executive Officer);
- The disclosed information was not already publicly available at the time of disclosure;
- The disclosure of information did not occur at a meeting closed to the public under section 5.23 of the Act; and
- The disclosure of information was not made to the Minister, the Department, a lawyer in obtaining legal advice or otherwise as required by law.

Information marked as confidential by anyone other than the Chief Executive Officer of the relevant local government does not fall into the scope of this Regulation. Similarly, only meetings closed under section 5.23 of the Act are considered to be confidential, regardless of how confidential they were intended to be.

Case study: Regulation 6

Part of a council meeting was closed to members of the public under section 5.23(2) of the Act to consider a commercial proposal. After the meeting, a council member disclosed to a journalist the primary reason voiced by council members who voted against the proposal.

The Panel received a complaint alleging that the disclosure breached Regulation 6.

The council member denied the alleged breach and claimed the political reasons asserted by council members when voting for or against a proposal are not confidential, as their vote on a matter is recorded in the publicly available meeting minutes.

The Panel's finding

The Panel found that the council member had committed a breach of Regulation 6 by disclosing the views shared by other council members to the journalist. Upon consideration of the matter, the Panel was satisfied that the council member became privy to the information (the other council members' reasons for their vote) during part of a council meeting closed to members of the public under section 5.23(2) of the Act.

The Panel expressed a view that anything said during the closed part of a meeting is not permitted to be disclosed publicly (including to any elector or ratepayer), unless it is public knowledge or the council has resolved to make the information public knowledge, at the time that it is disclosed.

The sanction imposed on the council member was for the publication of a censure notice.

Regulation 7: Securing personal advantage or disadvantaging others

The conditions required for Regulation 7 to be breached include:

- The council member was making use of their position as a council member at the time the conduct occurred (that is, they were clearly not acting as a private citizen or an election candidate, and/or they were doing something that they could do only because they were a council member); and
- The conduct was engaged in with the primary intent of:
 - gaining an advantage for themselves or someone else; or
 - causing detriment to the local government or another person.

The Panel must be satisfied that both of these conditions have been met in order to make a finding of minor breach.

Regulation 7 does not apply to conduct that contravenes section 5.93 of the Act or section 83 of the *Criminal Code Act Compilation Act 1913*. This means that even if the above conditions are met, it is not considered a minor breach where a council member:

- uses information improperly to gain an advantage or cause a detriment (such conduct constitutes a serious breach and should be reported to the Department); or
- acts corruptly, including by gaining a benefit for or causing a detriment to any person through acting upon knowledge obtained in their role, or participating in matters to which they have a pecuniary interest (such conduct should be reported to the Corruption and Crime Commission).

Case study 1: Regulation 7

A council resolved to increase rates in its annual budget. In response, a resident organised a public meeting to form an action group. The resident contacted each council member who voted against the rate rise seeking their assistance to promote the meeting. Three council members agreed to provide aid, and used their personalised council stationery to write a “Dear Resident” letter urging the recipient to attend the meeting and providing copies of it for distribution to the ratepayers.

The Panel received a complaint alleging that by providing aid, each of these council members had breached Regulation 7.

The council members denied the alleged breach claiming the local government’s policy on stationery issued to council members did not specify any purpose or restriction for its use; and a council member has ‘freedom of speech’ and ‘the right to inform the local government’s ratepayers on matters of public record’.

The Panel's finding

Upon consideration of the matter, the Panel was satisfied that by providing the aid, each of the council members had made improper use of their office. This was based on the view that the council members had caused detriment to the local government by using personalised local government stationery to publish criticisms of council's rating decisions, breaching their obligations of fidelity to council and loyalty to the local government's decisions. In the Panel's view, at least some of the people who read a distributed copy of any of the letters would think less favourably of the council as the governing body.

In response to the claims by the council members in response to the allegation, the Panel was also of the view that the standards of conduct a council member is expected to observe may restrict what the council member can write or say, and these restrictions may be perceived as limiting the implied freedom of political communication under the Commonwealth Constitution.

The sanction imposed on two of the council members was for the publication of a censure notice (the other person ceased to be a council member shortly after the Panel's finding).

Case study 2: Regulation 7

A council member's next-door neighbour made an application to the local government for a rezoning of their property. When the application first came before council, the council member appropriately disclosed a proximity interest and left the meeting. Council deferred its decision until further planning advice was received. Before the council meeting at which the matter was to be decided, the council member sent an email to the other council members commenting on the officer's report and providing his views on possible consequences should council not approve the application.

The Panel received a complaint alleging that in sending the email the council member had breached Regulation 7.

The council member denied a breach and asserted that the intent of the email was to provide information and not to unduly influence fellow council members.

The Panel's finding

The Panel was satisfied that the council member's sending of the email was an improper use of office as a council member and therefore a breach of Regulation 7. This was based on the view that the council member was aware they had a proximity interest in the application and were precluded from participating in any discussion or decision, and was inappropriately lobbying or attempting to influence fellow council members to gain an advantage for the Neighbour, that advantage being approval of the application.

The sanction imposed on the council member by the Panel was for the publication of a censure notice.

Regulation 8: Misuse of local government resources

The conditions required for Regulation 8 to be breached include:

- The council member made use of a local government resource;
- The council member was not authorised to use the resource by the Act (that is, the use was not associated with them fulfilling their role as a council member);
- The council member was not authorised to use the resource by the council or Chief Executive Officer (such as through a direct authorisation or a documented policy); and
- The council member's use of the resource was not made under the same conditions as any person who is not a council member is able to do so.

Case study: Regulation 8

A football oval and surrounding land was on Crown land and the subject of a management order in favour of a local government. On the day of a football match, without being authorised under the Local Government Act or authorised by the local government's council or its CEO, a council member caused four banners to be temporarily fixed to the boundary fence of the oval, two each adjacent to two entry gates.

The Panel received a complaint alleging the council member had committed a breach of Regulation 8 by using the fence to display the banners.

The council member denied the alleged breach. While he did not dispute his conduct, or that he did not have the requisite authorisation for it, he claimed that the fence was not an asset of the local government, and thus was not part of the local government's resources.

The Panel's finding

The Panel found that the council member had committed a breach of Regulation 8 by using the fence to display the banners without the requisite authorisation. The Panel was satisfied that the fence was under the local government's care, control or management, and was 'local government property' (as defined in section 1.4 of the Act) and therefore a resource of the local government.

The Panel also stated its view that the unauthorised using up or consumption or the perceptible wear of a physical thing that is a local government resource, is more serious than the unauthorised 'making use of' that thing where there is no using up or consumption or the perceptible wear of it.

In the circumstances, the Panel was satisfied that it was not appropriate to impose any sanction on the council member for his breach of Regulation 8, and for that reason dismissed the complaint.

Regulation 9: Prohibition against involvement in administration

The conditions required for Regulation 9 to be breached include:

- The task to which the conduct related is reserved for the local government's Chief Executive Officer under Part 5 of the Act;
- The conduct occurred outside of deliberations at a council or committee meeting; and
- The council member had not been authorised by the Chief Executive Officer to undertake the task.

Case study: Regulation 9

At a council meeting, a council member proposed his own motion that council direct works to correct a long-standing issue about the footpath crossover and car park entrance of a shopping centre. Council resolved to pass the motion.

Months later, council was advised by its administration of the extent of some aspects of the works, and the need for a capital budget allocation from council for the works in the next budget review. Shortly thereafter, without being authorised by the council or the local government's CEO, the council member in question sought a quote from a private sector contractor for costs of carrying out the works, sent the owner of the shopping centre copies of the quote and relevant drawings, and had discussions with a representative of the owner about the carrying out of the works.

The Panel received a complaint alleging this unauthorised conduct by the council member was a breach of Regulation 9.

The council member denied the alleged breach. He did not dispute committing the relevant conduct, however claimed it amounted to information gathering and lobbying activities on behalf of the community, not undertaking administration tasks.

The Panel's finding

On consideration of the complaint, the Panel was satisfied that the council member had committed a breach of Regulation 9. The Panel considered the roles and responsibilities of both council members and the administration of a local government under the Act, and came to the view that the council member's conduct was part of the everyday, hands-on running of the local government and was not in line with the view that elected members are there to govern at the higher strategic level.

The sanction imposed by the Panel on the council member was for the publication of a censure notice.

Regulation 10: Relations with local government employees

Regulation 10(1): Directing or inducing action by an employee

The conditions required for Regulation 10(1) to be breached include:

- The council member intended for a local government employee to do or not do a specific act;
- The specified act is not something that the council member is entitled or authorised to request or receive from local government employees by the Act, a documented policy, or a direct authorisation;
- The council member, either in attempt or successfully, directed the employee or influenced the employee by threatening or promising a reward;
- The influence or direction was made in the employee's capacity as an employee; and
- The conduct occurred outside of deliberations at a council or committee meeting.

The context in which an influence or direction was made (or attempted to be made) is considered to be significant in determining whether a minor breach has occurred under Regulation 10(1). For example, the Panel has found that generic threats (for example, 'you'd better not get in my way') must be connected to a specific desired act to be considered a minor breach.

Case study: Regulation 10(1)

A council member sought information about a particular project from the CEO of a local government through a series of emails and letters. In one of these letters, the council member stated "it is requested you furnish me a detailed printout from the general/job ledger of this line item... or I will have no choice but to advise the Minister's office of your failure to provide such a fundamentally simple report upon request". In a subsequent letter, the council member stated "is expected that you will prepare a suitable report... and if further funding is required... where the funds are coming from... please ensure this is presented to the next council meeting".

The Panel received a complaint alleging the letters from the council member constituted a breach of Regulation 10(1).

The council member did not deny the conduct and acknowledged that his letters had been sent in frustration.

The Panel's finding

The Panel considered the matter and found that the relevant statements in the council member's letters were in breach of Regulation 10(1). The Panel was satisfied that the

statement about making a report to the Minister constituted a threat (as such a report could be detrimental to the CEO's reputation) and that the council member made it with the intent of causing the CEO to provide the requested information. The Panel was also satisfied that the statement requesting a report for the next council meeting went beyond making a mere request for the specified report, and gave a direction to the CEO to prepare that report.

The sanction imposed by the Panel on the council member was for a public apology to the CEO in specified terms.

Regulation 10(3): Inappropriate comments about employees

The conditions required for Regulation 10(3) to be breached include:

- The conduct occurred at a council or committee meeting or other organised event;
- Members of the public were present when the conduct occurred and in a position to witness that conduct;
- The council member was in attendance at the meeting or event in their capacity as a council member (that is, not as a private citizen or invited guest); and
- The council member:
 - explicitly stated or strongly implied that an employee was incompetent or dishonest, or
 - referred to an employee using a discrete expression (a word or phrase that has a distinct and unmistakable meaning) that is offensive or objectionable.

It is not the intent of Regulation 10(3) to deter or prevent the giving of appropriately phrased negative feedback.

Regulation 10(3) does not apply to conduct that contravenes Chapter XXXV of the *Criminal Code Act Compilation Act 1913* (Criminal Defamation). This means that even if the above conditions are met, it is not considered a minor breach where a council member, without lawful excuse:

- makes a statement that they know to be false, or without having regard to whether it is true or false; and
- in making that statement intends to cause serious harm to a person, or does not have regard to whether such harm is caused.

Such conduct should be reported to the Western Australian Police.

Case study 1: Regulation 10(3)

At a council meeting with members of the public present, a council member while addressing council, stated “[a named ratepayer] claims that the Health Inspector has been derelict in his duties”.

The Panel received six complaints alleging this statement breached Regulation 10(3).

The council member denied the alleged breach but did not dispute making the statement.

The Panel’s finding

Upon consideration of the matter, the Panel found that the council member had committed a breach of Regulation 10(3) by making the relevant statement at the meeting. The Panel was satisfied that the phrase ‘derelict in his duties’ was insulting to the health inspector, and therefore offensive or objectionable and a breach of the Regulation.

The sanction imposed by the Panel was for a public apology to the health inspector.

Case study 2: Regulation 10(3)

A council passed a motion proposed by a council member to receive a report on modifications he thought should be made to a recently-modified intersection. Council considered the officer’s report at a later meeting with members of the public present, which recommended against further modification and provided a preliminary cost estimate of carrying out the suggested works. During debate the council member said the report was “at a pricing to stop the budget” and that its costings were “exaggerated”.

The Panel received two complaints alleging the council member had committed a breach of Regulation 10(3) in making those statements.

The council member denied the alleged breach. He admitted making the statements, but claimed his comments were observations about the information presented and not a statement (or implication) that the officer was incompetent or dishonest.

The Panel’s finding

The Panel found that the council member had committed a breach of Regulation 10(3) by making the comments.

The Panel was satisfied that persons present would have been reasonably capable of identifying the officer as the person referred to by the council member, and that the comments implied that the officer was dishonest by deliberately including unnecessary items and pricings to improperly inflate the total budget so that council would not approve it. The Panel was of the view that any representation of fact or opinion is a ‘statement’.

The sanction imposed by the Panel on the council member was for him to apologise publicly to the officer on specified terms.

Regulation 11: Non-disclosure of interest adverse to impartiality

The conditions required for Regulation 11 to be breached include:

- The council member was present at a council or committee meeting where the matter in question was to be discussed;
- The council member did not have a direct or indirect financial interest or a proximity interest in the matter in question (under section 5.60 of the Act);
- The council member had an interest that could, or could reasonably be perceived to, adversely affect their impartiality regarding the matter in question (including an interest arising from kinship, friendship or membership of an association);
- The council member failed to declare that interest:
 - in a written notice given to the Chief Executive Officer before the meeting;
 - at the meeting immediately before the matter was discussed; or
 - where the council member did not know the matter would be discussed at the meeting, as soon as possible after discussion began on the matter; and
- The council member was aware that they had an impartiality interest in the matter.

Regulation 11 only applies to ‘impartiality’ interests. If a council member is believed to have failed to declare a financial interest or proximity interest, this should be reported to the Department as a Complaint of Serious Breach.

Case study: Regulation 11

At a council meeting a council member participated in a vote about provision of funding to an incorporated association (Organisation 1), and whether this funding should be contingent on the organisation relocating to a new premises. The council member was a member of the executive committee of another association (Organisation 2), which was one of four members of Organisation 1 and which leased premises to Organisation 1.

The Panel received a complaint alleging the council member had committed a breach of Regulation 11 by failing to declare an impartiality interest in the matter.

The council member denied the alleged breach, asserting that the request was made by Organisation 1 (not Organisation 2) and he did not have an interest in that organisation.

The Panel’s finding

The Panel found that the council member had committed a breach of Regulation 11 by failing to disclose an impartiality interest in the matter.

In considering its finding, the Panel was satisfied that the recommendation before the council relating to Organisation 1, if approved, would create a loss of benefit for Organisation 2. The council member's membership of the executive committee of Organisation 2 could therefore, or could be reasonably perceived to, adversely impact the council member's impartiality when dealing with the matter. The Panel was also satisfied that the nature of the interest was of impartiality (and not a financial or proximity interest).

The sanction imposed by the Panel on the council member was for the publication of a censure notice.

The Council member appealed the Panel's decision. The SAT considered the case and affirmed that the council member had committed a breach of Regulation 11. The SAT was satisfied that the circumstances of the case (including that the council member had not yet attended his first meeting of the executive committee of Organisation 2 at the time of the council meeting) meant that it was appropriate for the Panel's order of a public censure to be overturned, and made an order for the council member to make a public apology in lieu of the Panel's original sanction decision.

Regulation 12: Acceptance of gifts

Regulation 12(2): Prohibited gifts

The conditions required for Regulation 12(2) to be breached include:

- The council member accepted a gift from a donor, without consideration in money or money's worth in return;
- The donor is a person who is:
 - undertaking;
 - seeking to undertake; or
 - believed to be intending to undertake;an activity that cannot be undertaken without the local government's approval, or a commercial dealing with the local government.
- The gift was not:
 - bequeathed to the council member in a will;
 - a financial or other contribution to travel;
 - from a relative of the council member (as defined in s.5.74(1) of the Act);
 - from a statutory authority, government instrumentality or non-profit association for professional training;
 - from the Western Australian Local Government Association, the Australian Local Government Association Limited, or the Local Government Professionals Australia WA Division; or
 - required to be declared under the local government (Elections) Regulation 1997 section 30B; and
- The gift was:
 - worth \$300 or more; or
 - one of two or more gifts given to the council member by the same donor within a period of six months, which are in total worth \$300 or more.

Gifts accepted by a council member on behalf of the council (for example, official gifts of the local government) are not generally considered to fall under the scope of this Regulation.

Case study: Regulation 12(2)

A local government was gifted with a number of free tickets to events held by a local Hotel each year, which were made available to council members on request. A council member received and used a number of these tickets.

While the local government's tickets did not have a face value, the same tickets were sold to the public at prices of between \$40 and \$65. The council member accepted 10 tickets valued at \$482 in one six month period, and six tickets valued at \$330 in another six month period. The council member declared these tickets as required by the Regulation but did not include a commercial value for those tickets in her declaration. Officers of the local government calculated the commercial value of the tickets and recorded this value in the gift register. The Hotel lodged two applications to the local government requiring their approval in the relevant time period (one planning application and one one-off liquor licence application).

The Panel received a complaint alleging the council member had committed a breach of Regulation 12(2) by accepting gifts valued at more than \$300 within a six month period.

The council member admitted the alleged breach, however noted that she was not aware that tickets received were considered a gift even where those tickets were not used (ie. where no one attended the event, as was the case for a number of the tickets accepted).

The Panel's finding

The Panel found that the council member had committed two breaches of Regulation 12(2) by accepting the tickets.

The Panel was satisfied that the council member had accepted gifts within a six month period valued at more than \$300 from a donor who intended to undertake an activity that could not be undertaken without an authorisation from the local government, on two occasions. The Panel noted that it considers that all or any of the tickets accepted by a council member have value, regardless of whether the council member realises that value by using or permitting others to use them.

The sanction imposed by the Panel on the council member was for the publication of a censure notice.

Regulation 12(3): Notifiable gifts

The conditions required for Regulation 12(3) to be breached include:

- The council member accepted a gift from a donor, without consideration in money or money's worth in return;
- The donor is a person who is:
 - undertaking;

- seeking to undertake; or
- believed to be intending to undertake;

an activity that cannot be undertaken without the local government's approval, or a commercial dealing with the local government.

- The gift was not:
 - bequeathed to the council member in a will;
 - a financial or other contribution to travel;
 - from a relative of the council member (as defined in s.5.74(1) of the Act);
 - from a statutory authority, government instrumentality or non-profit association for professional training;
 - from the Western Australian Local Government Association, the Australian Local Government Association Limited, or the Local Government Professionals Australia WA Division; or
 - required to be declared under the local government (Elections) Regulation 1997 section 30B;
- The gift was:
 - worth between \$50 and \$300; or
 - one of two or more gifts given to the council member by the same donor within a period of six months, which are in total worth between \$50 and \$300; and
- The council member failed to declare the gift in writing to the Chief Executive Officer within 10 days of accepting the gift, in the manner prescribed by Regulation 12(4).

Gifts accepted by a council member on behalf of the council (for example, official gifts of the local government) are not generally considered to fall under the scope of this Regulation.

No case study is provided for Regulation 12(3) as the Panel had not yet considered a complaint under this Regulation at the time of publishing.

Regulation 14: Disclosure of gifts in the transitional period

The conditions required for Regulation 14 to be breached include:

- The council member accepted a gift from a donor, without consideration in money or money's worth in return, between 1 July 2015 and 3 March 2016;
- The gift was not:
 - bequeathed to the council member in a will;
 - a financial or other contribution to travel;
 - from a relative of the council member (as defined in s.5.74(1) of the Act);
- The gift was:
 - worth \$200 or more; or
 - one of two or more gifts given to the council member by the same donor within a period of six months, which are in total worth \$200 or more; and
- The council member failed to declare the gift in writing to the Chief Executive Officer on or before 31 March 2016, in the manner prescribed by Regulation 14(4).

No case study is provided for Regulation 14 as the Panel had not yet considered a complaint under this Regulation at the time of publishing.

Regulation 15: Disclosure of travel contributions in the transitional period

The conditions required for Regulation 15 to be breached include:

- The council member accepted a travel contribution from a donor, between 1 July 2015 and 3 March 2016;
- The travel contribution was not made:
 - from Commonwealth, State or local government funds;
 - by a relative of the council member (as defined in s.5.74(1) of the Act);
 - in the ordinary course of an occupation of the council member, which is not related to the person's duties as a council member; or
 - by a political party of which the council member was a member and the travel was undertaken for the purpose of political activity of the party, or to enable the person to represent the party;
- The travel contribution was:
 - valued at \$200 or more; or
 - one of two or more contributions given to the council member by the same donor within a period of six months, which are in total valued at \$200 or more; and
- The council member failed to declare the contribution in writing to the Chief Executive Officer on or before 31 March 2016, in the manner prescribed by Regulation 15(4).

No case study is provided for Regulation 15 as the Panel had not yet considered a complaint under this Regulation at the time of publishing.

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