



Local Government Standards Panel

Complaint Number	20250717
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Ms Christiane Smith
Respondent	Councillor Gemma Johnston
Local Government	Shire of Esperance
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for	Ms Erin Gauntlett (Presiding Member)
Penalty Consideration	Ms Emma Power (Member) Mr. Peter Rogers (Member)
Heard	2 April 2026 Determined on the documents
Penalty Considered	22 May 2026
Outcome	Public Censure and Public Apology

DECISION AND REASONS FOR DECISION

3 June 2026

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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. At its meeting on 2 April 2026, the Panel found that Councillor Gemma Johnston, a councillor for the Shire of Esperance (**"the Shire"**), committed a breach under the *Local Government Act 1995 (WA)* (**"the Act"**) and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* (**"the Regulations"**) when approached a Shire contractor without authorisation of the Shire administration (**"the Minor Breach"**).

Jurisdiction and Law

2. The Panel convened on 22 May 2026 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of Department of Local Government, Industry Regulation and Safety (**"the Department"**) that on this date there was no available information to indicate that Cr Johnston had ceased to be, or was disqualified from being, a councillor.
4. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
5. By a letter dated 5 May 2026, Cr Johnston was:
 - a. notified of the Panel's finding of the Minor Breach;
 - b. provided with a copy of the Panel's Finding and Reasons for Finding; and
 - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.

Possible Sanctions

6. Section 5.110(6) of the *Local Government Act 1995 (WA)* (**"the Act"**) provides that the Panel is to deal with a minor breach by:
 - (a) *ordering that no sanction be imposed; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
or
 - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*
or
 - (iii) *the person against whom the complaint was made undertake training as specified in the order;*
or

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

- (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;*
- or
- (c) *ordering 2 or more of the sanctions described in paragraph (b)."*

Cr Johnston's Submissions

7. By an email dated 16 May 2026 the Department received a response from Cr Johnston.
8. Cr Johnston following comments as summarised by the Panel:
 - a. Although Cr Johnston is disappointed with the outcome decision and findings from the Panel, she appreciates what the Panel has conveyed and acknowledge that by contacting Mr Franzone personally whilst he was a contractor of the Shire, that her actions have unintentionally caused a detriment to the Shire administrative operations and a staff member.
 - b. As Cr Johnston's communication was a direct private message sent only to Mr Franzone and not conveyed to the wider public, Cr Johnston believe further training and development would be the most appropriate sanction for her to gain an opportunity to strengthen her understanding of her Councillor responsibilities and to ensure that Cr Johnston's conduct will consistently respect the standards expected of an elected member.
 - c. Going forward Cr Johnston would apply the lessons arising from this matter and her additional training to better support respectful outcomes for all matters involving Shire administrative functions.

Panel's Consideration

9. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
10. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
11. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
 - a. the nature and seriousness of the breaches;
 - b. the councillor's motivation for the contravention;
 - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor's disciplinary history;
 - f. likelihood or not of the councillor committing further breaches of the Act;



- g. personal circumstances at the time of conduct, and of imposing the sanction;
 - h. need to protect the public through general deterrence and maintain public confidence in local government; and
 - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness².
12. The Panel notes that Cr Johnston accepts that her conduct was improper.
13. However, it is noted that the conduct was a clear overstep where Cr Johnston had felt the administration had not dealt with her concerns to her satisfaction.
14. Further, her correspondence with the Shire contractor contained a disparaging comment regarding an employee of the Shire implying that such employee had acted in an unprofessional manner.
15. Although this communication was not made in general to the public, it was made to a contractor who had repeated interactions with the Shire and Shire staff and would likely be engaged by the Shire in the future.
16. In these circumstances, the Panel considers that the appropriate sanctions are that Cr Johnston:
- a. is publicly censured; and
 - b. provides a public apology.
17. A censure is a public statement of disapprobation of a councillor's conduct. This is an appropriate penalty in this case to send a message to the community and other councillors, that Cr Johnston's conduct was improper and that the conduct was deserving of a serious penalty.
18. The Panel further considers that it is appropriate that Cr Johnston make a public apology. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing³. It is a suitable and appropriate penalty when a councillor's conduct:
- a. adversely affects particular individuals⁴; and/or
 - b. does not meet the standards other councillors seek to uphold.
19. It is important that both other councillors and the public are informed that the separation of administrative and council activities should be strictly adhered to and it is in the interests of the local government in general that such conduct is public noted as being inappropriate.
20. Further, it is suitable that the criticism of a Shire employee be apologised for to that particular employee, when that criticism was unnecessary and made to a third party who that Shire employee would have to have continued contact with.
21. In this case, the Panel considers it is not necessary for Cr Johnston to be further sanctioned to bear to cost of the Shire's costs in respect to the minor breach complaint.

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

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

⁴ *Treby and Local Government Standards Panel [2010] WASAT 81 [127] (Pritchard J).*



Panel's decision

22. The Panel orders pursuant to section 5.110(6)(b)(i), section 5.110(6)(b)(ii) and section 5.110(6)(c) of the Act that, in relation to the Minor Breach of regulation 18 of the Regulations, Cr Johnston:
- a. be publicly censured in terms of the attached Orders; and
 - b. publicly apologise as specified in the attached Orders.

Signing

Erin Gauntlett (Presiding Member)

Emma Power (Member)

Peter Rogers (Member)



ORDER

3 June 2026

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Gemma Johnston, a councillor for the Shire of Esperance:
 - a. be **publicly censured** as specified in paragraph 2 below; and
 - b. **publicly apologise** as specified in paragraph 3 OR failing compliance with paragraph 3 within the specified timeframe, then paragraph 4 shall apply.

Public Censure

2. Within the period falling between 29 days to 43 days from the day following the date of service of this Order on Cr Johnston the Chief Executive Officer of the Shire of Esperance shall arrange for the following Notice of Public Censure to be published, in no less than 10 point print or font:
 - a. on the Facebook Page, and any other social media page or account, of the Shire of Esperance (if any);
 - b. on an appropriate page of the website of the Shire of Esperance; and
 - c. in every Shire of Esperance public or community newsletter (whether in electronic or print copy) (if any).



Government of Western Australia
Local Government Standards Panel

NOTICE OF PUBLIC CENSURE

The Local Government Standards Panel has found that Councillor Gemma Johnston, a Councillor of the Shire of Esperance breached regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021 (WA)* when she involved herself in an administrative task without authorisation and spoke to a contractor of the Shire in a disparaging manner in respect to a Shire staff member.

The Panel censures Councillor Gemma Johnston for the breach of regulation 18



of the *Local Government (Model Code of Conduct) Regulations 2021 (WA)*.

**LOCAL GOVERNMENT
STANDARDS PANEL**

Public Apology

3. On the ordinary council meeting of the Shire of Esperance first occurring after the expiration of **28 days** from the date of service of this Order on her, Councillor Gemma Johnston shall:
- attend the relevant ordinary council meeting;
 - ask the presiding person, or acting presiding person, for his or her permission to address the meeting to make a public apology to the public;
 - make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when, I involved myself in an administrative task without authorisation and spoke in a disparaging manner in respect to a Shire staff member to a Shire contractor.
- I acknowledge that I should not have involved myself in the administrative tasks of the Shire and that it was improper to refer to a Shire staff member in a disparaging manner and that, in doing so, I failed to uphold the standard of conduct which is expected of elected members.
- I now apologise to Ms Christiane Smith, the Shire administration, my fellow councillors and the community."

4. If Councillor Gemma Johnston fails to, or is unable to, comply with the requirements of paragraph 3 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 3 above the Chief Executive Officer of the Shire of Esperance shall arrange for the notice of public apology to be published:
- on the Facebook Page and any other social media pages of the Shire of Esperance in no less than 10 point font size; and
 - in an appropriate place on the website of the Shire of Esperance in no less than 10 point font size; and



- c. in the next occurring issue of any Shire of Esperance public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

PUBLIC APOLOGY BY COUNCILLOR GEMMA JOHNSTON

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when, I involved myself in an administrative task without authorisation and spoke in a disparaging manner in respect to a Shire staff member to a Shire contractor.

I acknowledge that I should not have involved myself in the administrative tasks of the Shire and that it was improper to refer to a Shire staff member in a disparaging manner and that, in doing so, I failed to uphold the standard of conduct which is expected of elected members.

I now apologise to Ms Christiane Smith, the Shire administration, my fellow councillors and the community

Appeal

5. In the event that, prior to the date for compliance with the above Orders, Councillor Gemma Johnston
 - a. commences an appeal the decision of the Standards Panel to the State Administrative Tribunal in accordance with section 5.125 of the *Local Government Act 1995*; and
 - b. notifies the Complaints Officer of the Shire of Esperance of such appeal in writing,
THEN:
 - c. compliance with such Orders may be delayed until the State Administrative Tribunal has made a finding in respect to the decision; and
 - d. such Orders may be amended by an order of the State Administrative Tribunal.



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.”*