

Councillor Maher - QoN - Behavioural Standards Panel Report 25BSP-0005

Tuesday, 8 September 2026
Council

Council Member
Councillor Patrick Maher

Public

Contact Officer:
Anthony Spartalis, Chief Operating Officer

QUESTION ON NOTICE

Councillor Patrick Maher will ask the following Question on Notice:

'In light of the recent resignation of former Councillor Davis and findings of the Behavioural Standards Panel, does Council have any ability under the Local Government Act 1999 or any other relevant legislation to refer the matter to the South Australian Civil and Administrative Tribunal (SACAT), notwithstanding that the individual is no longer a serving member of Council?'

REPLY

1. The relevant authority concerning the jurisdiction of the South Australian Civil and Administrative Tribunal (**SACAT**) in respect of former council members is *McMahon v Knight* [2024] SACAT 45 (**Knight**). The decision is directly relevant to the present circumstances, as it considered whether SACAT has jurisdiction to hear and determine a complaint against a person who is no longer a member of a council.
2. The case was presided over by SACAT President Hughes, a Justice of the Supreme Court of South Australia.
3. President Hughes' findings in *Knight* significantly constrain Council's ability to refer a matter to SACAT where the subject of the complaint has ceased to hold office as a council member.
4. In *Knight*, SACAT considered proceedings involving a former elected member and ultimately determined that its jurisdiction does not extend to complaints against former council members. President Hughes held:
"It is consistent with the context of the provision as an incident of a disciplinary regime that the council's role and powers are extinguished when the member ceases to be a member, absent an express conferral of statutory power signalled by the inclusion of 'former member' or other similar term in the grant of power."
5. President Hughes further observed that the statutory scheme is directed toward the regulation of persons in their capacity as current members of a council and noted the absence of any express legislative provision extending those powers to former members.
6. The relevance of *Knight* to the circumstances involving former Councillor Davis is clear. The Behavioural Standards Panel (the **Panel**) findings relate to conduct that occurred while Mr Davis was a serving member of Council, however his subsequent resignation means he is no longer a "member" for the purposes of the

¹ *Knight* at [44]
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relevant provisions of the *Local Government Act 1999* (SA) (the **Act**). Consistent with the reasoning in Knight, SACAT does not presently have jurisdiction to hear a complaint against a former member.

7. The Panel observed at paragraph 188 of its decision that:

"Should Cr Davis not comply with the Panel's orders the Council is required to lodge this matter with the South Australian Civil and Administrative Tribunal."

8. Council does not consider this statement to constitute an order or direction requiring Council to commence proceedings in SACAT. Rather, it is properly characterised as an observation reflecting the operation of section 262W(4) of the Act, which provides that, where a member fails to comply with an order of the Panel, a council is to ensure that a complaint is lodged with SACAT. As recognised in Knight, these provisions are framed by reference to a "member" of a council and do not expressly extend to former members.
9. Accordingly, Council's position is that the operation of the statutory scheme has been frustrated by Mr Davis' resignation. The outcome identified by the City of Tea Tree Gully in Knight, namely that a councillor may avoid the consequences of the disciplinary regime by resigning before a matter reaches SACAT, is now reflected in these circumstances. SACAT itself rejected an interpretation that would allow it to retain jurisdiction over a former member in the absence of an express legislative provision to that effect.
10. The circumstances highlight a gap in the current legislative framework. There is a strong case for legislative reform to enable complaints concerning former members to be referred and determined after resignation, particularly where findings have already been made by a regulatory body. Consideration should also be given to expanding SACAT's jurisdiction so that sanctions and disciplinary outcomes remain capable of enforcement notwithstanding a person's resignation from office. Such reforms would address situations where the legitimate determinations of bodies such as the Behavioural Standards Panel or Ombudsman are rendered ineffective because the individual concerned is no longer a serving member of council.
11. For these reasons, it is considered that Council does not presently have the ability to pursue a referral to SACAT in relation to former Councillor Davis under the current legislative framework, and any change to that position would require amendment of the relevant legislation.

Staff time in receiving and preparing this reply	To prepare this reply in response to the question on notice took approximately 5.5 hours.
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