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## Local Government Standards Panel

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Complaint Number	SP 49 of 2017 [DLGSC 20170145]
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Ms Sue Arazi</b>
<b>Respondent</b>	<b>Councillor Jesse Jacobs</b>
Local Government	<b>City of Canning</b>
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms R Aubrey (Deputy Member) Ms R Yates (Deputy Member)
Heard	16 April 2018 Determined on the documents
Outcome	Training

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### DECISION AND REASONS FOR DECISION

Published 5 June 2018

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#### 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 25 January 2018, the Panel found that Councillor Jesse Jacobs, a Councillor for the City of Canning (**City**) committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Regulations**) on 7 and 8 August 2017 when he visited the Tate Street Lodge, a residential facility in the City.
2. On 21 February 2018 the Panel published its Finding and Reasons for Finding that Cr Jacobs had breached regulation 7(1)(b) of the *Regulations* (**Minor Breach**).

## Jurisdiction

3. The Panel convened on 16 April 2018 to consider how it should deal with the Minor Breach. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (**Department**) that on this date there was no available information to indicate that Cr Jacobs had ceased to be or was disqualified from being a councillor.

## Possible Sanctions

4. Section 5.110(6) of the *Local Government Act 1995* (WA) (**LG Act**) provides that the Panel is to deal with a minor breach by:
  - (a) *dismissing the complaint;*
  - (b) *ordering that —*
    - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
    - (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.

## Councillor Jacobs' 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).<sup>1</sup>

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<sup>1</sup> *Local Government Act 1995* (WA), s 5.110(5).

7. By letter dated 21 February 2018, the Panel notified Cr Jacobs of the Panel's finding of the Minor Breach, provided him with a copy of the Panel's Finding and Reasons for Finding and offered him an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *LG Act*.
8. The Department informed the Panel that on 12 March 2018, the Department contacted Cr Jacobs by email and telephone to ascertain whether it was his intention to provide a submission to the Panel.
9. Cr Jacobs sent his submissions to the Department by email dated 12 March 2018, in which he stated that:
  - His first preference would be for the Panel to dismiss the complaint '*given the complainants vexatious nature*'.
  - His second preference would be to undertake training as he has '*always found additional training of benefit*'.
  - He acknowledges the '*departments*' jurisdiction and its decision-making.
  - He made time to see the complainant at the Lodge at her request at which she raised a number of issues concerning her business.
  - He prides himself on his accessibility to the residents and ratepayers that he represents on council.
  - He disagrees with the minor breach complaint and considers '*it is a case of someone trying to influence future council decisions on Tate St Lodge by trying to attack my good standing and reputation in the community by essentially "cooking up" baseless allegations*'.

### Panel's consideration

10. Cr Jacobs has said that his first preference is to dismiss the complaint.
11. Cr Jacobs has not previously been found to have committed a minor breach. However, it is not appropriate to dismiss the breach as this would indicate that the breach is so minor that no penalty is warranted and condone Cr Jacobs' actions.
12. The Panel notes that Cr Jacobs:
  - acknowledges the decision making of the Panel;
  - says his preference is to undertake training should the Panel determine not to dismiss the complaint;
  - recognises the value of training;
  - is a first-term councillor, having been elected as a City Councillor on 17 October 2015.<sup>2</sup>
13. The sanction of an order to undertake training would promote the purpose of securing future compliance with the statutory obligations imposed on councillors for the better protection of the public. This aligns with the intent of the *LG Act* and the purpose of the civil penalties under the *LG Act*.<sup>3</sup>

<sup>2</sup> Panel's Finding and Reasons for Finding dated 21 February 2018, paragraph 7.

<sup>3</sup> See *LG Act*, s 1.3(2); *Chief Executive Officer, Department of Local Government and Communities and Scaffidi* [2017] SAT 67 (4 September 2017), [14]-[20].



14. The Panel's Findings and Reasons for Findings were that Cr Jacobs made improper use of his office as a council member following the Panel's consideration of:
- The councillors' duty to be faithful to the proper workings of the local government and their council;
  - The requirement that councillors respect, and be seen to respect, the local government's processes and the roles of its officers and lawful decisions;
  - That councillors should act with reasonable care and diligence, act lawfully, avoid damage to the local government's reputation and base decisions on relevant and factually correct information;
  - That the City and the Council would have had formal processes for dealing with any concerns about the Lodge and licensing issues.<sup>4</sup>
15. The penalties of a public censure or a public apology are not appropriate for the Minor Breach. These orders would be unlikely to educate Cr Jacobs as to the standard of conduct expected of a councillor and prevent future offending conduct.
16. The Panel has considered the available sanctions under section 5.110(6) and decides that, in all the circumstances, the appropriate penalty is that Cr Jacobs undertake training in relation to the role of councillors, the regulatory scheme in which they carry out that role and working within local government procedures and processes.

#### Panel's decision

17. The Panel orders under section 5.110(6)(b)(iii) that Cr Jacobs undertake training in terms of the attached Order.

Sheryl Siekierka (Presiding Member)

Rachel Yates (Deputy Member)

Rebecca Aubrey (Deputy Member)

Date of Decision and Reasons

5 June 2018

<sup>4</sup> Panel's Finding and Reasons for Finding dated 21 February 2018, paragraphs 30-32, 40.



## ATTACHMENT

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## ORDER

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**THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:**

1. Councillor Jesse Jacobs, a member of the Council of the City of Canning, undertake training as specified in paragraph 2 below.
2. Within 3 calendar months from the date of this Order, Councillor Jesse Jacobs undertake training -
  - (a) to be determined by the Department of Local Government, Sport and Cultural Industries;
  - (b) in relation to the role of councillors, the regulatory scheme in which they carry out that role and working within local government procedures and processes;
  - (c) for a period of no less than 4 hours; and
  - (d) at a location to be advised by the Department.

Date of Order 5 June 2018



## 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."