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## Local Government Standards Panel

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Complaint Number	SP 54 of 2017 [DLGSC 20170176]
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Ms Rhonda Hardy</b>
<b>Respondent</b>	<b>Councillor Tracy Destree</b>
Local Government	<b>City of Kalamunda</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 15 February 2018, the Panel found that Councillor Tracy Destree, a Councillor for the City of Kalamunda (**City**) committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Regulations**) by making adverse comments about the Chief Executive Officer, the City's Manager Governance and the administration of the City relating to a disclosure of interest issue that arose at an ordinary council meeting on 27 June 2016. Cr Destree's comments were published in the Reporter local newspaper on 26 September 2017.
2. On 27 February 2018 the Panel published its Finding and Reasons for Finding that Cr Destree 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 Destree 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).*

## Councillor Destree's Submissions

5. 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>
6. By letter dated 27 February 2018, the Panel notified Hammond Legal, acting for Cr Destree, of the Panel's finding of the Minor Breach, provided a copy of the Panel's Finding and Reasons for Finding and invited Cr Destree to make submissions on how the Panel should deal with the breach under section

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



- 5.110(6). As such Cr Destree has been offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *LG Act*.
7. On 13 March 2018, the Department received a submission from Hammond Legal in relation to how the Minor Breach should be dealt with by the Panel.
8. In the submissions from Hammond Legal, Cr Destree submits:
- That the complaint should be dismissed on the basis that: it is trivial; very little harm, if any, was caused to the City; and prior to the finding of Minor Breach, *'Cr Destree had already taken steps to resolve the matter and directly apologised to'* the City's Chief Executive Officer.
  - If the Panel is not minded to dismiss the complaint, the most appropriate way of dealing with the Minor Breach is by ordering that Cr Destree undertake training. In particular, she would welcome the opportunity to participate in training on dealing with the media as a Council member.
  - That there are a number of circumstances in mitigation relating to the personal circumstances of Cr Destree, including that: she has served in local government since 18 October 2015 and has never had any complaints against her during that term; she holds a number of roles within the City and Council and continues to take a leading role in Council's affairs; and she is an active and contributing member of the community.
  - That there are a number of circumstances in mitigation relating to the Minor Breach, being that:
    - prior to speaking to the Post newspaper, Cr Destree spoke to the then Mayor and believed that it was within her authority and role as a councillor to speak publicly about the disclosure of interests issue and she *'considered it to be a matter of public interest to the community'*;
    - she initiated efforts to resolve the issue of the Minor Breach with the City's Chief Executive Officer in the presence of the Mayor and Deputy Mayor;
    - Cr Destree apologised to the City's Chief Executive Officer for the comments Cr Destree made and they were *'close to resolving the matter of the minor breach, however during the course of negotiations as to the wording of a public apology they were not able to reach a resolution'*;
    - Cr Destree *'has made genuine efforts to work with the administration and fellow Councillors'*.

### 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. 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.
10. The Panel notes that Cr Destree has been a councillor since 18 October 2015 and she has not previously been found to have committed a minor breach. However, it is not appropriate to dismiss the Minor Breach. This would condone Cr Destree's conduct and trivialise the breach.



11. Cr Destree's conduct that was the subject of the Minor Breach occurred in the public arena and had the potential to undermine public confidence in the institution of local government. Her submissions on penalty acknowledge that she spoke to the Post newspaper after giving thought to whether the public should hear her comments. The sanction imposed on Cr Destree must send a message to councillors, local government employees and the public that councillors must maintain appropriate standards of conduct.
12. A public censure and a public apology are both significant sanctions. The public nature and seriousness of Cr Destree's misconduct is commensurate with these sanctions. A councillor using their office to publicly criticize the local government's administration is simply unacceptable.<sup>2</sup>
13. However, the Panel notes that Cr Destree:
  - Has offered to undergo training if the complaint is not dismissed.
  - Was in her first term as an elected council member at the time the Minor Breach occurred and continues to be so.
  - Took the initiative, prior to the Panel making its Minor Breach finding, to apologise to the City's Chief Executive Officer for the comments that Cr Destree made.
  - Seeks to continue her role in local government in the future and has expressed a commitment to improve the standard of her conduct in this role.
14. 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>
15. 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 Destree undertake training in relation to the role of councillors, the regulatory scheme in which they carry out that role and the standard of conduct expected of them.

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<sup>2</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 (20 January 2012), [94].

<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].



### Panel's decision

16. The Panel orders under section 5.110(6)(b)(iii) of the *LG Act* that Cr Destree 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



## ATTACHMENT

Complaint Number	SP 54 of 2017 [DLGSC 20170176]
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## ORDER

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

1. Councillor Tracy Destree, a member of the Council of the City of Kalamunda, undertake training as specified in paragraph 2 below.
2. Within 3 calendar months from the date of this Order, Councillor Tracy Destree 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 the standard of conduct expected of them;
  - (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."