



Local Government Standards Panel

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| Complaint Number | SP 59 of 2017 [DLGSC 20170145] |
| Legislation | <i>Local Government Act 1995 (WA)</i> |
| Complainant | Councillor Michael Bennett |
| Respondent | Councillor L Daniel Harris |
| Local Government | Shire of Dardanup |
| Regulation | Regulations 7(1)(a) and 11(2) of the <i>Local Government (Rules of Conduct)</i> <i>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 | Public censure Training |

DECISION AND REASONS FOR DECISION

Published 5 June 2018

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 Laurance Daniel Harris (known as Councillor Danny Harris), a Councillor for the Shire of Dardanup (**Shire**) committed a breach of regulation 7(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Regulations**) by improperly sending an email to the President of the Shire (**President**) on each of 20 and 21 November 2017 (**Emails**) in the lead up to an ordinary council meeting on 22 November 2017 (**Meeting**) to gain an advantage for the Eaton Boomers Football Club (**Club**).
2. At its meeting on 25 January 2018, the Panel also found that Cr Harris breached regulation 11(2) of the *Regulations* by failing to disclose at or before the Meeting an impartiality interest, being an interest in the Club.
3. On 21 February 2018 the Panel published its Finding and Reasons for Finding that Cr Harris had breached each of regulation 7(1)(a) and 11(2) of the *Regulations* (**Minor Breaches**).

Jurisdiction

4. The Panel convened on 16 April 2018 to consider how it should deal with the Minor Breaches. 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 Harris had ceased to be or was disqualified from being a councillor.

Possible Sanctions

5. 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 Harris's 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).¹
7. By letter dated 21 February 2018, Cr Harris was notified of the Panel's finding of the Minor Breaches, provided with a copy of the Panel's Finding and Reasons for Finding and offered an opportunity to make submissions as to how the Minor Breaches should be dealt with under section 5.110(6) of the *LG Act*.
8. By email dated 26 February 2018, the Department received a response from Cr Harris.
9. When Cr Harris was notified that the Panel had made findings in relation to the Minor Breaches, and prior to being invited to make submissions about how the Panel should deal with the Minor Breaches, Cr Harris sent the Department an email dated 30 January 2018 and two emails dated 31 January 2018. His response to the Department dated 26 February 2018 requested that the Panel read these as well.
10. By email dated 6 March 2018, the Department received a further email from Cr Harris in relation to the Minor Breaches.
11. The Panel considered the emails from Cr Harris dated 30 January, 31 January, 26 February and 6 March 2018 as being his submissions as to how the Minor Breaches should be dealt with under section 5.110(6) of the *LG Act*.
12. In Cr Harris' submissions, he:
 - States that he did not respond to the Panel's invitation to provide a response prior to the Panel making its finding of the Minor Breaches because he '*had so much rubbish and accusation laid against me by [the President and another councillor] since returning to Council*' that he '*saw it as more of the same*'.
 - Says that for a large part of his life he has worked in the best interests of his community, having served on Council from 1988 until 2005 (with a period of time serving as president and deputy president of the Shire) and returning to Council in October 2011.
 - States that when he returned as a Council member, he asked the then Minister of Local Government and the head of the relevant department if his holding of a life membership of the Club would cause him '*to have a pecuniary interest*' and '*they both said no*'.
 - Says that he made Council aware of his life membership of the Club when he returned as a Council member and the President has not previously raised an issue in relation to this.
 - Says that his emails to the President were courteous and alleges that the President made the complaint against him for ulterior motives.
 - Alternatively states that he or the Club will likely request an inquiry into the Shire's dealing in relation to the Club.

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

Panel's consideration

13. 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.
14. The Panel notes in relation to Cr Harris' submissions:
 - Cr Harris has not made any submissions that address directly how the Panel should deal with the issue of penalty. The submissions from Cr Harris are directed toward its findings in relation to each Minor Breach. Cr Harris was afforded procedural fairness prior to the Panel making its findings on each Minor Breach, but he chose not to provide a meaningful response when given the opportunity to do so.
 - Cr Harris contends that he was provided with advice from the former Minister for Local Government and the head of the relevant department that being a life member of the Club did not cause him to have a pecuniary interest. This demonstrates that Cr Harris has a fundamental misunderstanding as to the nature of the interests that must be disclosed pursuant to regulation 11(2) of the *Regulations*. Whether or not he received such advice does not alter the Panel's finding that he breached regulation 11(2) of the *Regulations*.
 - The allegations made by Cr Harris against the President and the Shire are not relevant to the Panel's decision on penalty.
15. The Panel notes that Cr Harris commenced his second period of service on council in October 2011 and that he says that he was previously a councillor from 1988 to 2005. He has not previously been found to have committed a minor breach.
16. Cr Harris has neither acknowledged the Minor Breaches nor apologised for his misconduct. Instead he seeks to justify his misconduct by making allegations against the President and the Shire.
17. Cr Harris has been found to have committed two minor breaches. It is appropriate for the Panel to consider the sanction for each breach separately, as the two regulations breached have distinctively different elements, the breaches occurred on different dates and the evidence necessary to establish the two breaches was not identical.²

Breach of regulation 7(1)(a)

18. The Panel found that the Emails were offensive and demeaning, written in a threatening tone and challenged the integrity of the President without any apparent or reasonable basis. The sanction imposed by the Panel must send a message to councillors, local government employees, ratepayers, residents and the wider public that councillors must maintain appropriate standards of conduct. Accordingly, it is not appropriate for the Panel to order that the minor breach be dismissed.
19. Training is not appropriate for the breach of regulation 7(1)(a) of the *Regulations*. Cr Harris was a long-serving at the time this minor breach occurred. There is no reason for the Panel to think that Cr Harris did not understand the standard of

² See *Treby and Local Government Standards Panel* [2010] WASAT 81 (11 June 2010) [124]-[126] (Pritchard J).

conduct expected of a councillor when communicating with fellow council members.

20. Cr Harris has not expressed remorse for his conduct. When the Panel invited Cr Harris to address the matter of penalty, he took the opportunity to justify his conduct that resulted in the minor breach. The Panel considers that any public apology would not be sincere and so it would not be appropriate to order an apology.
21. In these circumstances, the only appropriate penalty is that Cr Harris be publicly censured for the breach of regulation 7(1)(a). A censure is a public statement of disapprobation of a councillor's conduct. The Panel considers this to be the appropriate penalty as it will send a message to the community and other councillors that Cr Harris' conduct in sending the Emails was unacceptable and deserving of a serious penalty.
22. The Panel has considered the available sanctions under section 5.110(6) and decides that the appropriate penalty for the breach of regulation 7(1)(a) of the *Regulations* is that Cr Harris be publicly censured under section 5.110(6)(b)(i) of the *LG Act*.

Breach of regulation 11(2)

23. The disclosure rules in the *LG Act* and *Regulations* are fundamental to the proper workings of local government and promote public confidence. The disclosure regime is directed to the objects specified in s 1.3(2) of the *LG Act* of resulting in 'better decision-making by local governments' and 'greater accountability of local governments to their communities'.³
24. The sanction imposed on Cr Harris for the breach of regulation 11(2) of the *Regulations* must reflect that the disclosure regime is important and is to be strictly followed. This minor breach did not result from an oversight as to the existence of his impartiality interest. Another Councillor asserted at the Meeting that Cr Harris had an impartiality interest and he refuted this. It is not appropriate to order that the breach be dismissed.
25. Cr Harris is a long-serving councillor. However, regulation 11(2) was not in operation during his first period of service as a council member. His submissions reveal a fundamental misunderstanding that his disclosure obligations are limited to the disclosure of pecuniary interests. He does not acknowledge his responsibility to disclose non-pecuniary interests and, in particular, the requirement to disclose an impartiality interest under regulation 11(2) of the *Regulations*.
26. 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*.⁴
27. The penalties of a public censure or a public apology are commensurate with the seriousness of the breach of regulation 11(2). However, these sanctions would be unlikely to educate Cr Harris as to his disclosure of interests obligations and prevent future offending conduct.

³ See *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222 (1 December 2017), [46] (referring to the disclosure provisions in the *LG Act*).

⁴ 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].



28. The Panel has considered all available sanctions under section 5.110(6) and decides that, in the circumstances, the most appropriate penalty is that Cr Harris undertake training to enhance his knowledge of his disclosure of interests obligations.

Panel's decision

29. The Panel orders:
- (a) in relation to the breach of regulation 7(1)(a) of the *Regulations*, that under section 5.110(6)(b)(i) of the *LG Act*, Cr Harris be publicly censured in terms of the attached Order; and
 - (b) in relation to the breach of regulation 11(2) of the *Regulations*, that under section 5.110(6)(b)(iii) of the *LG Act*, Cr Harris undergo 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

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| Complaint Number | SP 59 of 2017 [DLGC 20170145] |
| Legislation | <i>Local Government Act 1995</i> (WA) |
| Complainant | Councillor Michael Bennett |
| Respondent | Councillor L Daniel Harris |
| Local Government | Shire of Dardanup |
| Regulation | Regulations 7(1)(a) and 11 (2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> (WA) |
| 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 |
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ORDER

Published 5 June 2018


DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Laurance Daniel Harris, a Councillor for the Shire of Dardanup, be censured as specified in paragraph 2 below and undertake training as specified in paragraph 3 below.
2. Within the period of 29 days to 43 days from the day following the date of service of this Order on Councillor Harris, the Chief Executive Officer of the Shire of Dardanup arrange for the following Notice of Public Censure to be published, in no less than 10 point print:
 - (a) as a one-column or a two-column display advertisement in the first 15 pages of "The West Australian" newspaper; and
 - (b) as a one-column or a two-column display advertisement in the first 15 pages of the "South Western Times" Newspaper.



Government of Western Australia
Local Government Standards Panel

NOTICE OF PUBLIC CENSURE

The Local Government Standards Panel has found that Councillor Laurance Daniel (Danny) Harris, a Councillor of the Shire of Dardanup, breached regulation 7(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) by improperly sending an email to the President of the Shire on each of 20 and 21 November 2017 in the lead up to an ordinary council meeting of the Shire on 22 November 2017.

In engaging in this conduct, Councillor Harris made improper use of his office as a council member to gain directly or indirectly an advantage for the Eaton Boomers Football Club.

The Panel censures Councillor Harris for this breach of regulation 7(1)(a).

**LOCAL GOVERNMENT
STANDARDS PANEL**

3. Within 3 calendar months from the date of this Order, Councillor Harris undertake training -
 - (a) to be determined by the Department of Local Government, Sport and Cultural Industries;
 - (b) in relation to the subject of disclosure of interests;
 - (c) for a period of no less than 2 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."