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## Local Government Standards Panel

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Complaint Number	SP 6,7 and 9 of 2018 [DLGSC 20180223, 20180224 and 20180230]
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	<b>Mr Kevin Hall</b> <b>Councillor Victoria Brown</b> <b>Councillor Natalie Bowman</b>
Respondent	<b>Councillor Dale Piercey</b>
Local Government	<b>Shire of Esperance</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) Mrs Emma Power (Member) Councillor P Kelly (Member)
Heard	25 <sup>th</sup> May 2018 Determined on the documents
Penalty Considered	4 <sup>th</sup> September 2018
Outcome	Public Apology

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## DECISION AND REASONS FOR DECISION

Published 8 October 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 May 2018, the Panel found that Councillor Dale Piercey, a Councillor for the Shire of Esperance (**“the Shire”**) breached Regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**“the Regulations”**) when she published false information on the Esperance Community Facebook Page about Royalties for Regions funding for the Jetty Project and by subsequently failing to publish the correct information and apologise for her actions (**“the Minor Breach”**).

## Jurisdiction

2. The Panel convened on 4 September 2018 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that on this date there was no available information to indicate that Cr Piercey 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) (**“the 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 Piercey’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 a letter dated 20 July 2018, Cr Piercey 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

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



- 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*.
- 7. By email dated 9 August 2018, the Department received a response from Cr Piercey requesting the Minor Breach be dismissed because:
  - a. as a new councillor she did not comprehend that the statement would be classified as denigrating councillors, staff or former councillors;
  - b. she had no intention to denigrate any person and or cause harm to the council or the Shire's staff;
  - c. she has been undertaking a Diploma of Local Government and now understands her responsibilities more fully due to such training; and
  - d. it is unlikely she will transgress again and she has no wish or desire to do so.

### **Panel's consideration**

- 8. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
- 9. 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 this is the first minor breach by Cr Piercey.
- 11. However, it is not appropriate to dismiss the Minor Breach as this would condone Cr Piercey's conduct and trivialise the breach.
- 12. The Panel has considered all available sanctions under section 5.110(6) and notes that Cr Peircey is currently undergoing education in the form of a Diploma of Local Government.
- 13. The Panel took into consideration that the then acting Shire President and the Shire President on her return from leave had raised the publishing of the incorrect information with Cr Piercey asking her to remove or correct the misinformation and Cr Piercey had not done so.
- 14. In these circumstances, the Panel deems the appropriate penalty is that Cr Piercey make a public apology.
- 15. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when a councillor's conduct:
  - a. adversely affects particular individuals<sup>2</sup>; or
  - b. does not meet the standards other councillors seek to uphold.

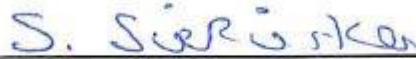
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<sup>2</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).



### Panel's Decision

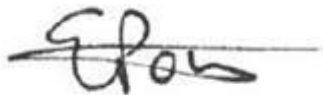
16. The Panel orders under section 5.110(6)(b)(ii) of the Act that Cr Piercey make a public apology in terms of the attached Order.



Sheryl Siekierka (Presiding Member)



Paul Kelly (Member)



Date of Decision and Reasons



## Attachment

Complaint Number	SP 6,7 and 9 of 2018 [DLGSC 20180223, 20180224 and 20180230]
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## ORDER

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



1. Councillor Dale Piercey, a Councillor for the Shire of Esperance (**“the Shire”**), publicly apologise to her fellow Shire Councillors, as specified in paragraph 2 below.
2. On the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on her, Councillor Piercey shall:
  - a. attend the relevant ordinary council meeting;
  - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the Shire Councillors;
  - c. 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
  - d. address the Council 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:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) between 10 January 2018 and 29 January 2018:
  - A. firstly when I posted a false statement on a community Facebook page asserting that the Royalties for Regions funding relating to the Esperance Jetty Program had been refused;
  - B. secondly when I failed to correct this false statement following provision of the correct information and upon request by Councillor Bowman in her capacity as acting Shire President and Councillor Brown as Shire President; and
  - C. thirdly when I failed to apologise for posting the false information.
- ii. The Panel found that by posting the relevant false information I made improper use of my office as a Councillor with the intention of causing detriment to the Shire employees and councillors thereby committing a breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (WA).
- iii. I accept that I should not have posted the false information in respect to the Esperance Jetty funding and I further accept that I should have corrected the false information upon receipt of the correct information and then apologised for my actions.
- iv. I now apologise to all my fellow Councillors for these actions.”

**Date of Order: 8 October 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."