



Local Government Standards Panel

Complaint Number	SP 8 of 2017 [DLGSC 20170010]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Mark Goodlet
Respondent	Councillor Zenda Johnson
Local Government	Town of Mosman Park
Regulation	Regulations 7(1)(b) and 9(1) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Councillor Paul Kelly (Member) Ms M Strauss (Member)
Date of sanction decision	17 November 2017 Determined on the documents
Decision	Training

SANCTION DECISION AND REASONS FOR DECISION

Published 30 November 2017

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, 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.



Summary of the Panel's breach findings

1. On 14 August 2017 the Panel found that Councillor Zenda Johnson, a Councillor for the Town of Mosman Park (Town), committed a minor breach under the *Local Government Act 1995* (WA) (the Act) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (Regulations) on 4 and 5 September 2016 when she interfered in tree removal works that had been approved by the Town Council.
2. On 14 August 2017 the Panel also found that Cr Johnson committed a minor breach under the Act and regulation 9(1) of the Regulations when contacting the tree removal contractor on or soon after 9 September 2016 to discuss his account.
3. On 9 October 2017 the Panel published its Finding and Reasons for Finding that Cr Johnson breached regulations 7(1)(b) and 9.

Possible sanctions

4. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by —
 - (a) *dismissing the complaint; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order; or*
 - (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. It does not give the Panel 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.

Jurisdiction

6. By letter dated 9 October 2017 the Department of Local Government, Sport and Cultural Industries (the Department) sent Cr Johnson a copy of the Finding and Reasons for Finding and invited her to make submissions about how the Panel should deal with the breaches.¹ Cr Johnson responded in an email dated 23 October 2017 attaching a submission dated 22 October 2017.
7. On 17 November 2017, when the Panel met to consider how it should deal with the breaches, the Department did not have any information to indicate that Cr Johnson had ceased to be a Councillor. The Panel found it had jurisdiction to decide how to deal with the breaches under section 5.110(6) of the Act.

¹ As required by section 5.110(5) of the Act.



Councillor's submissions

8. Cr Johnson submits she:

- sought to respond to her constituent's concerns quickly and diligently by contacting the CEO so he could investigate and take any necessary action;
- thought she was doing the right thing and did not intend to stop or delay the works or cause detriment to anyone;
- is "extremely sorry that things turned out the way they did";
- has apologised to the property owners, who she sees regularly in the park, they "converse comfortably and bear no ill will";
- accepts she should not have contacted the contractor about his account without the Town's authorisation and apologises for doing this;
- has apologised to the contractor; and
- takes her role as a councillor very seriously, respects the rules, works hard for her constituents and "has learnt a lot from this".

9. Cr Johnson submits that the whole matter has had a "profound effect" on her; she wants "to be the best councillor (she) can be"; and a public censure is not appropriate as this would tarnish her reputation and be likely to cause her constituents to lose faith in her. She seeks training.

Panel's consideration

10. Cr Johnson has not previously been found to have committed any serious or minor breaches under the Act.
11. In *Chief Executive Officer, Department of Local Government and Communities and Scaffidi* [2017] WASAT 67 (S) (*Scaffidi*)², a penalty hearing after a finding of several serious breaches under the Act, the State Administrative Tribunal outlined the factors relevant to a decision on penalty for the serious breaches.³ The range of penalties for a serious breach include those that apply to a minor breach under section 5.110(6)(b) and (c).
12. It is not appropriate to dismiss either breach under section 5.110(6)(a). A penalty must send a message that this type of conduct, which was in this case committed in public, observed by members of the community and involved a contractor engaged by the Town, is unacceptable because it can undermine the professionalism and effectiveness of the local government and be likely to damage the Town's reputation. It is important that councillors act in accordance with their role and not impinge on that of the administration.

² The Panel notes that SAT's decision is under appeal.

³ Under section 5.105(3) of the Act.



13. Based on the factors applied in *Scaffidi* and several previous SAT decisions⁴ the Panel finds that the appropriate penalty is that Cr Johnson undergo training. This is because:

- Cr Johnson has not previously committed any breaches under the Act;
- although attempting to explain her conduct in her submission, Cr Johnson does not challenge the Panel's findings;
- the Panel finds that Cr Johnson genuinely thought she was doing the right thing;
- Cr Johnson shows insight into the problems caused by her conduct and has expressed genuine remorse;
- the Panel accepts she has apologised to the property owners and the contractor;
- the Panel finds that Cr Johnson has learnt from this experience and is unlikely to commit further such breaches; and
- Cr Johnson is committed to learning more about her role and responsibilities.

14. Although Cr Johnson committed two breaches it is appropriate that there be one penalty for both because the breaches were committed within a few days of each other, the second one involving conduct that flowed from the consequences of the first, and the Panel must look at the offending conduct as a whole.⁵

Panel's decision

15. The Panel orders under section 5.110(6)(b)(iii) that Cr Johnson undergo training as specified in the attached Order.

Sheryl Siekierka (Presiding Member)

Paul Kelly (Member)

Merranie Strauss (Member)

Date of Reasons – 30 November 2017

⁴ Such as ⁴ *Treby and Local Government Standards Panel* [2010] WASAT 81 (paragraphs 112 to 132), Yates and Local Government Standards Panel [2012] WASAT 59 (paragraphs 90 to 96).

⁵ *Scaffidi*, paragraphs 181, 182.



Attachment

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ORDER

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Ms Zenda Johnson, an elected member of the Council of the Town of Mosman Park, undertake training as specified in paragraph 2 below.
2. Within 3 calendar months from the date of this Order, Councillor Zenda Johnson undertake training -
 - (a) to be determined by the Department of Local Government, Sport and Cultural Industries;
 - (b) to assist her to understand the respective roles, duties and powers of elected members and the administration;
 - (c) for a period of no less than 2 hours, and
 - (d) at a location to be advised by the Department.

Sheryl Siekierka (Presiding Member)

Paul Kelly (Member)

Merranie Strauss (Member)

Date of Order 30 November 2017



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (**Panel**) hereby gives notice that:

- (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."