

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number	SP 22, 25 of 2016 [DLGC 20160110, 20160116]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Geoffrey Beaton
Subject of complaint	Councillor Toni Collins
Local Government	Shire of Boddington
Regulation	Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Heard	3 May 2017 Determined on the documents
Sanction decision	Order to undertake training

SANCTION DECISION AND REASONS FOR DECISION

Published 06 June 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.

Finding of two minor breaches

1. On 21 December 2016 the Local Government Standards Panel (the Panel) found that Councillor Toni Collins, a councillor for the Shire of Boddington (Cr Collins), committed two minor breaches under the *Local Government Act 1995* (WA) (the Act) and regulation 11(2) of the *Local Government (Rules of Conduct) Regulations 2007* when failing to disclose impartiality interests at ordinary council meetings on 20 October 2015 and 19 April 2016.
2. On 16 March 2017 the Panel published its Finding and Reasons for Finding that Cr Collins had breached regulation 11(2).
3. On 3 May 2017 the Panel met to consider how it should deal with the minor breaches. At that time the Department of Local Government and Communities (the Department) did not have any information to indicate that Cr Collins had ceased to be a Councillor.
4. Cr Collins had not previously been found by the Panel to have committed a minor breach.

Possible sanctions

5. 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).”*

Councillor’s submission

6. If the Panel finds that a councillor has committed a minor breach, the Panel must give the councillor an opportunity to make submissions to the Panel about how the breach should be dealt with.¹
7. On 16 March 2017 the Department sent a letter to Cr Collins notifying her of the Panel's finding of two breaches and providing her with a copy of the Finding and Reasons for Finding published on that date. The Department invited Cr Collins to make a submission on how the Panel should deal with the minor breaches.
8. On 4 April 2017 the Department received the following email submission from Cr Collins:

¹ Section 5.110(5) of the Act.

Thank you for your letter informing me that The Local Government Standards Panel has made two finding of minor breaches made against me in relation to my failure to declare a proximity interest.

I apologise for this oversight. At the time of the minor breaches, I was only newly appointed to the role of a member of the Boddington CRC Management Committee. As a consequence, I had a lapse of concentration at this agenda item and failed to declare my impartiality interest.

I would appreciate the panel ordering my participation in a training course to ensure that I don't make this mistake again would provide the best outcome for everybody. I notice that WALGA provide a variety of course which would be beneficial.

I would like to reiterate my vote had no bearing on the outcome and my interest is only for the betterment of the Boddington Community

9. In an email to Cr Collins on 5 April 2017 the Department confirmed the Panel found she had failed to disclose impartiality interests, not proximity interests as she mentioned in her email on 4 April 2017. Cr Collins replied that day by email, confirming she understood the Finding related to impartiality interests. Cr Collins did not make any further submissions on penalty.

Panel's consideration

10. In its Finding and Reasons for Finding the Panel said, in relation to each of the two minor breaches:

“34. As a councillor, Cr Collins is expected to read meeting papers before council meetings and consider, for each agenda item, whether she has any actual or potential conflicts or any interests to disclose.

35. Even if Cr Collins had not formed the view before the OCM that she had an impartiality interest, she had a duty to be diligent about conflicts of interest and should have realised she had an impartiality interest when the other councillor declared an interest before item 9.2.2 was debated and left the chamber. This should have prompted Cr Collins to consider her position, as she, like the other councillor, was part of the BCRC, albeit as a Committee member rather than an employee.

36. The Panel is satisfied that Cr Collins knew, or should have known, that she had an interest in the matter ...”

11. When considering the appropriate penalty, the Panel noted that:

- no person or organisation appears to have gained an advantage or to have been disadvantaged or damaged by Cr Collins' failure to disclose her impartiality interests; and
- in her email submission dated 4 April 2017 Cr Collins acknowledges her breaches and seeks training to ensure she does not make the same “mistake” again.

12. Although Cr Collins has been found to have committed two breaches it is appropriate for the Panel to impose one sanction because both breaches relate to the same regulation, the conduct giving rise to the breaches is similar and Cr Collins committed the breaches in similar circumstances.²

² Treby and Local Government Standards Panel [2010] WASAT 81.

13. In all the circumstances the breaches are at the lower end of the continuum of seriousness. However, the disclosure rules are fundamental to the proper workings of local government. In *Chief Executive Officer, Department of Local Government and Communities and Scaffidi* [2017] WASAT 67, Justice Curthoys said (paragraphs 75, 76):

“75. ... what lies at the heart of the disclosure regime mandated by the (Act) is the prevention of ... improper influence by a councillor.

76. The disclosure regime provided by the (Act) in relation to relevant persons minimises the risk of ... improper influence by requiring disclosure and thus accountability by relevant persons. It also promotes public confidence in the regime by providing for transparency.”

14. The sanction imposed on Cr Collins must send a message to councillors, local government employees, ratepayers, residents and the wider public that the disclosure regime is important and is to be strictly followed. Accordingly, it is not appropriate to order that the breach be dismissed.

15. However, Cr Collins has shown remorse, a willingness to improve her approach and a commitment not to repeat the misconduct. In these circumstances the Panel finds that the public apology and public censure penalties would be too severe.

16. The Panel decides that the appropriate order is that Cr Collins undertake training to enhance her knowledge of her disclosure obligations and how to apply them when performing her role as a Councillor.

Panel’s decision

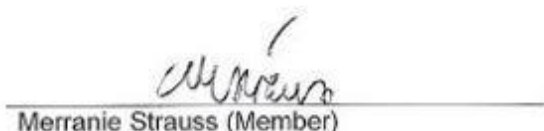
17. The Panel orders that Cr Collins undergo training in the terms of the attached Order.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Reasons for Decision 2 June 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 Decision and Reasons for Decision*, 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."

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Regulation	Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Sanction Decision	Undertake training Determined on the documents
Date of Sanction Decision	3 May 2017

ORDER TO UNDERTAKE TRAINING

Published 06 June 2017

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

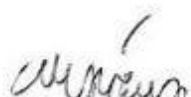
1. Ms Toni Collins, a member of the Council of the Shire of Boddington, undertake training as specified in paragraph 2 below.
2. Within 3 calendar months from the date of signing of this Order, Councillor Toni Collins undertake training -
 - (a) to be determined by the Department of Local Government and Communities,
 - (b) on the subject of "interests"³,
 - (c) for a period of no less than 2 hours, and
 - (d) at a location to be advised by the Department.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Order 02 June 2017

³ The term "interest" is defined in regulation 11(1) of the *Local Government (Rules of Conduct) Regulations 2007*.