

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 39 of 2016 DLGC 20160153
Legislation	<i>Local Government Act 1995</i> (WA)
Complainant	Mr Mathew Humfrey
Subject of complaint	Councillor Sandra Boulter
Local Government	Town of Cottesloe
Regulation	Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> (WA)
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms R Yates (Deputy Member)
Heard	31 May 2017 (Determined on the documents)
Sanction decision	Order to undertake training

DECISION AND REASONS FOR DECISION

Published 15 June 2017

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

1. Summary of breach finding

- 1.1 On 25 January 2017 the Local Government Standards Panel (**Panel**) made a finding that Councillor Sandra Boulter, a councillor for the Town of Cottesloe (**Town**), committed a breach of regulation 11(2) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Regulations**) by failing to disclose an interest in a matter to be discussed at the ordinary council meeting of the Town on 28 June 2016 (**Minor Breach**).

2. Summary of Decision

- 2.1 The Panel considered how the Minor Breach is to be dealt with under section 5.110(6) of the *Local Government Act 1995* (WA) (**LG Act**) and concluded, for the following reasons, that Cr Boulter should be ordered to undertake training in terms of Attachment "A".

3. Notice of the Minor Breach

- 3.1 By letter dated 6 April 2017, the Panel gave to Cr Boulter:
- (a) notice of the Minor Breach;
 - (b) a copy of its Findings and Reasons for Findings dated 6 April 2017 (**Findings**); and
 - (c) an opportunity for her to make submissions about how the Minor Breach should be dealt with under section 5.110(6) of the *LG Act*.

4. Cr Boulter's response and submissions

- 4.1 Cr Boulter responded to the Panel by email dated 26 April 2017 in which she:
- (a) urged the Panel to dismiss the complaint;
 - (b) contended that the Panel's Findings were incorrect;
 - (c) stated that *'if indeed I have not declared an impartiality interest – in all the circumstances, far outweighed the very serious nature of my various concerns in relation to short stay businesses operating in the Town of Cottesloe'*;
 - (d) included a final note in the following terms:

'NB:

1. *I note with the utmost despair the very significant fault with the Local Government Act that requires urgent reform. That is:*

1. *The Act does not require an answer to the question that generated the complaint against me in the decision about that complaint and I remain ignorant of what information can be properly be withheld from Councillors and/or Council by a local government administration and, on what basis.*

2. *If the complaints process was required by the LG Act or Regulations to generate an answer to the questions at the fundamental core of the complaint, then there may be some additional benefits to this process for Elected Members.'*

5. Possible sanctions

- 5.1 Section 5.110(6) of the *LG Act* specifies the sanctions that may be imposed by the Panel for a minor breach. The Panel may:
- (a) dismiss the Complaint;
 - (b) order 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) order 2 or more of the sanctions described in paragraph (b).
- 5.2 Pursuant to clause 8(6) of Schedule 5.1 to the *LG Act*, each of the Panel's members is to have regard to the general interests of local government in the State.

6. Panel's Consideration

- 6.1 The Panel does not consider that the dismissal of the complaint is appropriate as this would effectively condone Cr Boulter's conduct in failing to disclose an interest in a matter to be discussed at the ordinary council meeting of the Town on 28 June 2016.
- 6.2 A breach of regulation 11(2) "is a serious matter". The community is entitled to expect that the decisions made by local governments are fair and impartial, and that the conduct of elected members is beyond reproach.¹ Generally speaking, a breach of regulation 11(2) "will in almost all occasions, deserve the sanction of a public censure".²
- 6.3 When the Panel makes an order that a notice of public censure be published, that notice is published by the local government's chief executive officer at the expense of the local government and such expense is significant where the notice is to be published in a newspaper or papers.

¹ See Department of Local Government, Western Australia, *Proposals for a new Local Government Act*, 'Administration': Proposals for Chapter Five of the Local Government Act, May 1990 cited in *Chief Executive Officer, Department of Local Government and Communities and Scaffidi* [2017] WASAT 67 (9 May 2017), [58] (Curthoys J).

² See *Corr and Local Government Standards Panel* [2014] WASAT 86 (7 July 2014), [35] (Senior Member McNab).

- 6.4 In the present case, the Panel does not consider that a public censure is warranted, given that:
- (a) Cr Boulter has not previously been found to have breached the *Regulations*;
 - (b) no person or organisation appears to have gained an advantage or to have been disadvantaged or damaged by Cr Boulter's failure to disclose her impartiality interest;
 - (c) Cr Boulter says in her response that her objective in developing and moving the motion at the ordinary council meeting of the Town on 28 June 2016, in the context of which the Minor Breach occurred, was to obtain information she believed to be '*a matter of governance*'.³
- 6.5 It is apparent from the tenor of Cr Boulter's response that she is willing to pursue a better understanding of the framework of obligations that exist under the *LG Act*. Her response also demonstrates a need for training in respect of the obligations of elected members in relation to disclosure of interests.
- 6.6 The Panel decides that the appropriate sanction is to order that, pursuant to s 5.110(6)(b)(iii) of the *LG Act*, Cr Boulter undertake training to enhance her knowledge of her obligations in relation to disclosure of interests and how to apply them when performing her role as a councillor.

7. Panel's Decision

- 7.1 The Panel orders that Cr Boulter undergo training in terms of the order set out at "Attachment A".



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Rachel Yates (Deputy Member)

Date of Reasons – 15 June 2017

³ See Cr Boulter's response by email dated 26 April 2017.

Attachment “A”

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ORDER

Published 15 June 2017

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Ms Sandra Boulter, a member of the Council of the Town of Cottesloe, undertake training as specified in paragraph 2 below.
2. Within 3 calendar months from the date of signing of this Order, Councillor Sandra Boulter undertake training -
 - (a) to be determined by the Department (as defined in section 1.4 of the *Local Government Act 1995* (WA));
 - (b) on the subject of “interests”;⁴
 - (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)



Rachel Yates (Deputy Member)

Date of Order – 15 June 2017

⁴ The term “interest” is defined in regulation 11(1) of the *Local Government (Rules of Conduct) Regulations 2007* (WA).

**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* (WA) **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* (WA), 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* (WA) (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* (WA). [see section 9.50 of the *Local Government Act*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act* 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* 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.”*