



Local Government Standards Panel

Complaint Number	SP 62 of 2016 [DLGC 20160196]
Legislation	<i>Local Government Act 1995</i>
Complainant	Councillor Sandra Smith
Respondent	Councillor Janelle Price
Local Government	City of Albany
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms M Strauss (Member) Councillor P Kelly (Member)
Heard	26 September 2017 Determined on the documents
Outcome	Public apology

DECISION AND REASONS FOR DECISION

Published 09 October 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.



Introduction

1. On 23 June 2017 the Panel found that Councillor Janelle Price (Cr Price), a councillor for the City of Albany (the City), committed one 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* on 3 December 2016 when she made an offensive statement, quoted in paragraph 2 below, in an email to Mr Andrew Sharpe, the City's Chief Executive Officer, and another City Councillor, Councillor Sandra Smith.

2. On 20 July 2017 the Panel published its Finding and Reasons for Finding (its Finding) that Cr Price had breached regulation 7(1)(b). The Panel said:

"49. ... Cr Price crossed the impropriety line with the sentence, 'Please kindly inform Cr Smith she can go shove and that she's clueless.' The Panel considers this to be abusive and offensive towards Cr Smith and, as it was also sent to the CEO, likely to embarrass Cr Smith and also offend the CEO who was being asked to pass on an offensive message. This language meets the tests for impropriety referred to above. It clearly is not the way a reasonable person would expect a councillor to communicate with a fellow councillor or a local government officer.

50. ... Cr Price breached her duty to treat her fellow councillor fairly and with respect and to show respect for the role of the CEO and the professional relationship between councillors and officers.

...

52. Cr Price took time to write the Email. She chose to send it to the CEO as the primary addressee after having sent the previous two emails only to Cr Smith. Although she directed this Email to the CEO she decided to include Cr Smith. This was not a spontaneous communication. She asked the CEO to take action – to pass on a crude and insulting message.

53. The Panel finds the message, 'Please kindly inform Cr Smith she can go shove and that she's clueless' ... serves no other purpose than to damage Cr Smith."

Jurisdiction

3. By letter dated 21 July 2017, and by email on the same date, the Department of Local Government, Sport and Cultural Industries, the Department assisting the Minister to administer the Act (the Department), sent Cr Price a copy of its Finding and invited her to make submissions about how the Panel should deal with breach.¹
4. On 26 September 2017 the Panel convened to consider under section 5.110(6) of the Act how Cr Price should be penalised for the minor breach. On that date the Department did not have any information to indicate that Cr Price had ceased to be or was disqualified from being a Councillor. The Panel found it had jurisdiction to decide how to deal with the breach under section 5.110(6).

Possible sanctions

5. Section 5.110(6) provides:

"(6) *The breach is to be dealt with by —*

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

(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)."*

6. 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.

Submissions on penalty

7. Cr Price has not provided any submissions on penalty. Cr Price did not respond to the Department's letter or email dated 21 July 2017. In emails on 29 August 2017 and 12 September 2017 the Department again invited Cr Price to make submissions. She responded to the Department in emails on 29 August and 12 September 2017 but in her 12 September 2017 email declined to make any submissions.

Panel's consideration

8. Cr Price has not previously been found to have committed any minor breaches.
9. It is not appropriate to dismiss the breach as this would indicate that the breach is so minor that no penalty is warranted. The Panel's penalty must send a message to the offending councillor, ratepayers, residents, Council employees and other Councillors that this type of conduct is unacceptable. Councillors should carefully consider what they intend to say in communications with local government employees and their fellow councillors to ensure they abide by their duty to act and be seen to act professionally towards others.
10. Cr Price has neither acknowledged nor apologised for her breach. Training is not appropriate. Cr Price has not accepted she has done anything wrong and shows no willingness to engage in any programme that may reinforce the standards of conduct expected of a councillor.



11. The Panel has also considered the value of the other possible sanctions: public apology and public censure. As Cr Price directed her offensive words to Cr Smith, it is appropriate that she receive an apology. Cr Price should also apologise to Mr Sharpe, who she deliberately involved. An apology in public to a councillor's colleagues is also appropriate when a councillor's conduct does not meet the standards that all councillors are expected to maintain and that other councillors seek to uphold.

Panel's decision

12. The Panel orders that Cr Price make a public apology to Cr Smith, Mr Sharpe and Cr Smith's fellow councillors in the terms of the attached Order.

Sheryl Siekierka (Presiding Member)

Paul Kelly (Member)

Merranie Strauss (Member)

Date of Decision and Reasons – 09 October 2017



Attachment

Complaint Number	SP 62 of 2017 [DLGSC 20160196]
Legislation	<i>Local Government Act 1995</i>
Complainant	Councillor Sandra Smith
Respondent	Councillor Janelle Price
Local Government	City of Albany
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms M Strauss (Member) Councillor P Kelly (Member)
Heard	26 September 2017 Determined on the documents
Outcome	Public apology

ORDER FOR PUBLIC APOLOGY

Published 09 October 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.



THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Janelle Price, a Councillor for the City of Albany (the City), publicly apologise to Councillor Sandra Smith (City Councillor), Mr Andrew Sharpe (the City's Chief Executive Officer) and all other City Councillors, as specified in paragraph 2 below.
2. At the City's first ordinary council meeting Councillor Price attends after the expiration of 28 days from the date of service of this Order on her Councillor Price shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to Councillor Smith, Mr Sharpe and all other Councillors;
 - (b) 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;
 - (c) 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 a provision of the *Local Government (Rules of Conduct) Regulations 2007* on 3 December 2016 when I sent an email to Mr Andrew Sharpe, the City's Chief Executive Officer, including the words, "Please kindly inform Cr Smith she can go shove and that she's clueless" (the Words).
- (ii) On 3 December 2016 I sent Councillor Smith a copy of that email.
- (iii) The Panel found that the Words were abusive and offensive towards Councillor Smith and, as I also sent them to Mr Sharpe, likely to embarrass Councillor Smith.
- (iv) The Panel also found that the Words were likely to offend Mr Sharpe because I asked him to pass on an offensive message.
- (v) The Panel found that by including the Words in the email I made improper use of my office as a Councillor and intended to damage Councillor Smith, thereby committing a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*.
- (vi) I accept that I should not have sent the email to Mr Sharpe and Councillor Smith and I apologise to Councillor Smith, Mr Sharpe and all my fellow Councillors for having done so."



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."