

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number SP 7 and 15 of 2014
DLG 20140080 and 20140103

Legislation *Local Government Act 1995* (WA)

Complainant **John Leslie McCleary**

Subject of complaint **Councillor Peter John Tegg**

Local Government Shire of Cue

Regulations Regulations 10(1)(a) and 10(1)(b)
of the *Local Government (Rules of
Conduct) Regulations 2007*

Panel Members Mr B Jolly (Presiding Member)
Mr P Kelly (Member)
Mr P Doherty (Member)

Heard 30 April 2015
(Determined on the documents)

Outcome Public apology ordered

DECISIONS AND REASONS FOR DECISIONS

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.

1. Definitions

1.1 In these Reasons, unless otherwise indicated:

- (a) a reference to the *Act* is a reference to the *Local Government Act 1995*;
- (b) a reference to a section is a reference to the corresponding section in the *Act*;
- (c) a reference to the *Regulations* is a reference to the *Local Government (Rules of Conduct) Regulations 2007*;
- (d) a reference to a regulation is a reference to the corresponding regulation in *Regulations*; and
- (e) words appearing in **bold** in the Panel's Finding and Reasons for Finding in this matter (**Breach Findings**) bear the same meaning in these Reasons.

2. Summary of Breach Findings

2.1 At its meeting on 19 November 2014 the Local Government Standards Panel (**Panel**) made a finding that Councillor Peter John Tegg, a member of the Council (**Council**) of the Shire of Cue (**Shire**), committed;

- (a) a breach of regulation 10(1)(b) by sending the 13 April 2014 Letter to the Complainant; and
- (b) committed a breach of regulation 10(1)(a) by sending the 28 April 2014 Letter to the Complainant.

(**Minor Breaches**)

3. Summary of Decision

3.1 The Panel considered how the Minor Breaches are to be dealt with under section 5.110(6) and concluded, for the following reasons that Cr Tegg should be ordered to make a public apology to the Complainant in terms of Attachment "A" hereto.

4. Notice of the Minor Breach

4.1 By letter dated 20 March 2015, the Panel gave to Cr Tegg:

- (a) notice of the Minor Breach (**Notice**);
- (b) a copy of the Breach Findings; and
- (c) a reasonable opportunity for him to make submissions about how the Minor Breach should be dealt with under section 5.110(6).

5. Cr Tegg's response and submissions

5.1 Cr Tegg responded to the Panel by letter dated 20 April 2015 (**Submissions**) in which he said:

"I was a Cr for only 5 months with no training. Regarding the wording in the letter to the CEO I was frustrated as I had verbally asked for this information numerous times to no avail as this was requested by rate payers to me and I was looking for answers[.] [A]s I now understand my demands on the CEO was unreasonable I am very keen on more training."

6. Panel's views

- 6.1 Pursuant to clause 8(6) of Schedule 5.1 to the *Act*, each of the Panel's members is to have regard to the general interests of local government in the State.
- 6.2 Section 5.110(6) 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).
- 6.3 While two Minor Breaches have been established, the Panel considers that it is inappropriate to impose a separate sanction in relation to each as the evidence necessary to establish each Minor Breach is substantially the same: *Sentencing Act 1995*, s 11(1) and *Treby and Local Government Standards Panel* [2008] [124] – [126].
- 6.4 In considering an appropriate sanction or sanctions for the (present) Minor Breaches the Panel notes that:
- (a) Cr Tegg has not previously been found to have committed any minor breach; and
 - (b) in his Submissions, Cr Tegg:
 - (i) implicitly acknowledges that he committed the Minor Breaches;
 - (iii) states that the Minor Breaches occurred through his lack of knowledge or education on the role and responsibilities of a local government councillor, in particular the interaction between a councillor's functions under section 2.10 and a councillor's entitlement under section 5.92(1) to have access to any information held by their local government that is relevant to the performance by them of any of their functions under the Act or under any other written law; and
 - (iii) indicates his willingness to undertake training; and
 - (c) it has been advised by the Department that subsequent to Cr Tegg sending the Letters, the Department, in conjunction with the Western Australian Local Government Association, conducted training to which Cr Tegg was invited to attend, but that Cr Tegg did not attend that training.

- 6.5 In the Panel's opinion, Cr Tegg's letters of 13 April 2014 and 28 April 2014 (**Letters**) to the Complainant constituted a concerted effort by Cr Tegg to force the Complainant to provide the specified information to him (when the *Regulations* prohibited Cr Tegg from making those demands of the Complainant) and that dismissal of the Complaint would not reflect the seriousness of the Minor Breaches.
- 6.6 As noted in paragraph 6.4(c) above, the Panel notes that Tegg has been offered (but did not attend) training but indicated a willingness to undertake training.
- 6.7 The Panel does not consider that training, by itself, would reflect the seriousness of the Minor Breaches.
- 6.8 The Panel notes that:
- (a) a public censure of the kind ordered by the Panel is a significant sanction. It involves a high degree of public admonition of the conduct of the council member concerned¹;
 - (b) while such a censure has that character or effect it is aimed at reformation of the offending council member and prevention of further offending acts;
 - (c) when the Panel makes an order that a Notice of Public Censure be published, the Notice is to be published by the local government's CEO at the expense of the local government, which is a significant expense where such publishing is to be in a newspaper or newspapers;
 - (d) a public apology of the kind ordered by the Panel is also a significant sanction, as it too involves a high degree of public admonition of the conduct of the council member concerned;
 - (e) the circumstances that will in almost all occasions deserve the sanction of a public apology to another person include those where a council member's offending conduct is or conveys a slight or a personal attack on the other person, particularly where the other person is an employee of the council member's local government.
- 6.9 In the present case the Letters were directed towards the Complainant, and Panel considers that the appropriate sanction is to order Cr Tegg to make a public apology to the Complainant in terms of Attachment "A" hereto, rather than to order a public censure.
- 6.10 While the Panel does not order Cr Tegg to undergo further training, it nevertheless encourages him to do so.

¹ *Mazza and Local Government Standards Panel* [2009] WASAT 165 per Judge Pritchard (Deputy President) as her Honour then was, at [107].

7. Panel decision

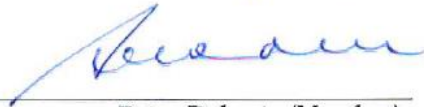
- 7.1 **Having regard to the Breach Findings, the matters mentioned in paragraphs 5 and 6 above, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under section 5.110(6) is that pursuant to subsection (b)(ii) of that section, Cr Tegg be ordered to publicly apologise to the Complainant as set out in Attachment 'A' hereto.**



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Peter Doherty (Member)

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."

Attachment “A”

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Local Government Shire of Cue

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Conduct) Regulations 2007*

Panel Members Mr B Jolly (Presiding Member)
Paul Kelly (Member)
Mr P Doherty (Member)

Heard 30 April 2015
(Determined on the documents)

ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Peter John Tegg, a member of the Council of the Shire of Cue, apologise publicly to the Complainant, as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the next Shire of Cue Ordinary Council Meeting immediately following the date of service of this Order on Peter John Tegg:

- (a) Peter John Tegg shall request the presiding person for his/her permission to address the meeting immediately following Public Question Time or during the Announcements part of the meeting or at such time during the meeting when it is open to the public as the presiding member thinks fit, for the purpose of the said Peter John Tegg making a public apology to Complainant; and
- b) Peter John Tegg shall verbally address the Council as follows, without making any introductory words prior to the address, and without making any comment or statement after the address:

"I advise this meeting that:

- (1) A complaint has been made to the Local Government Standards Panel about certain conduct by me in sending letters of 13 and 28 April 2014 to John Leslie McCleary, the Shire CEO, in breach of regulations 10(1)(a) and 10(1)(b) of the Local Government (Rules of Conduct) Regulations 2007.*
 - (2) In those letters I required the Shire CEO to provide me with specified information.*
 - (3) The Local Government Standards Panel has considered the Complaint, and has made findings of minor breaches, namely I breached regulation 10(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 by sending the 13 April 2014 letter to the Shire CEO and that I breached regulation 10(1)(a) of the Regulations by sending the 28 April 2014 letter to the Shire CEO.*
 - (4) I apologise to John Leslie McCleary, the Shire CEO, for sending the said letters to him, and acknowledge that I had no right to require him to provide the specified information to me, and that the Shire CEO, quite properly, refused to provide that information to me."*
3. If Peter John Tegg fails or is unable to comply with the requirements of paragraph 2 above within 14 days after the next Shire of Cue Ordinary Council Meeting immediately following the date of service of this Order on her, Peter John Tegg shall cause the following Notice of Public Apology to be published, in no less than 10 point print, as a one-column or a two-column display advertisement in the first 20 pages of the Geraldton Guardian newspaper.

PUBLIC APOLOGY

- (1) A complaint has been made to the Local Government Standards Panel about certain conduct by me in sending letters of 13 and 28 April 2014 to John Leslie McCleary, the Shire of Cue's CEO, in breach of regulations 10(1)(a) and 10(1)(b) of the Local Government (Rules of Conduct) Regulations 2007.*
- (2) In those letters I required the Shire CEO to provide me with specified information.*
- (3) The Local Government Standards Panel has considered the Complaint, and has made findings of minor breaches, namely I breached regulation 10(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 by sending the 13 April 2014 letter to the Shire CEO and that I breached regulation 10(1)(a) of the Regulations by sending the 28 April 2014 letter to the Shire CEO.*
- (4) I apologise to John Leslie McCleary, the Shire CEO, for sending the said letters to him, and acknowledge that I had no right to require him to provide the specified information to me, and that he, quite properly, refused to provide that information to me.*

Peter John Tegg