

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number SP 12 of 2014
DLGC 20140091

Legislation *Local Government Act 1995* (WA)

Complainant Mr Jonathan Throssell

Subject of complaint Councillor Tony Cuccaro

Local Government Shire of Mundaring

Regulation found breached Regulation 11(2) of the *Local Government (Rules of Conduct) Regulations 2007*

Panel Members Dr C Berry (Deputy Presiding Member)
Cr P Kelly (Member)
Mr P Doherty (Member)

Heard 19 March 2015
(Determined on the documents)

Decision Public apology ordered

DECISION AND REASONS FOR DECISION

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 a section is a reference to the corresponding section in the *Local Government Act 1995* (WA), and a reference to a regulation is a reference to the corresponding regulation in the *Local Government (Rules of Conduct) Regulations 2007* (**Regulations**); and
- (b) a reference to the Act is a reference to the *Local Government Act 1995* (WA).

2. Summary of Breach Findings

2.1 At its meeting on 19 September 2014 the Local Government Standards Panel (**Panel**) made a finding that Councillor Tony Cuccaro, a member of the Council (**Council**) of the Shire of Mundaring (**Shire**), committed a breach of regulation 11(2) by failing to disclose an impartiality interest at the Council's Ordinary Council Meeting held on 8 July 2014 (**July 2014 OCM**).

(**Minor Breach**)

3. Summary of Decision

3.1 The Panel considered how the Minor Breach is to be dealt with under section 5.110(6) and concluded, for the following reasons, that it is appropriate to the gravity of the Minor Breach that the Panel order Cr Cuccaro to publicly apologise as set out in the Order which is Attachment 1 to these Decision and Reasons for Decision (**Decision**).

4. Procedural fairness

4.1 By letter dated 28 November 2014, the Panel gave to Cr Cuccaro:

- (a) notice of the Minor Breach (**Notice**);
- (b) a copy of its Findings and Reasons for Finding in relation thereto; 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 Cuccaro's response and submissions

5.1 Cr Cuccaro responded to the Panel by letter dated 9 December 2014 (**Submissions**) in which he says as follows:

"I again sincerely apologise (sic apologise) for inadvertently failing to disclose my 'Interest Affecting Impartiality' on Item number 11.1 'Consideration of Projects listed as Strategic Priorities' at the Ordinary Council meeting of 8 July 2014.

At the Ordinary Council meeting of 25 February 2014, I expressed my 'Interest Affecting Impartiality' on Item number 11.1 'Library & Community Centre at Boya Oval' as I was a member of a user group at that location.

At the 8 July 2014 Ordinary Council meeting when considering the projects at Boya Oval, I totally forgot about disclosing any interest in that item. To me the Item was very controversial and emotional and leading into the Council meeting I totally forgot about this matter of disclosing an 'Interest Affecting Impartiality'

My belief is that the Local Government Standards Panel (Standards Panel) reconsider the earlier ruling and dismiss the complaint as it is of a minor nature.

In requesting the Standards Panel dismissing this case, I wish to inform that my input was not major by any means and was unable to sway any other Councillor to support my debate and the Officers Recommendation was passed with one vote against, which was me.

I sincerely believe that my input in debate was to no avail with no support from other Councillor. In saying this, there was no harm and the complaint unwarranted.

I have been a long serving Councillor at the Shire of Mundaring for over 14 years and this is my first breach of any kind.

Now that the matter has been brought to my attention, I will endeavor to fulfill my obligation under Regulation 11 of the [Regulations] at any future meetings."

Once again please accepted (sic) my sincere apologies and request that this complaint be dismissed."

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 In considering an appropriate sanction or sanctions for the present breach the Panel notes that:

- (a) Cr Cuccaro has not previously been found to have breached the *Regulations*; and

- (b) in his Submissions, Cr Cuccaro:
 - (i) apologises for committing the Minor Breach, but maintains that the Complaint was “unwarranted”;
 - (c) asks the Panel “to reconsider the earlier ruling and dismiss the complaint as it is of a minor nature”; and
 - (d) does not suggest that the Minor Breach occurred through his lack of knowledge or education on the issue or issues concerned.
- 6.4 The Panel considers a breach of regulation 11(2) to be a serious matter and that the sanction imposed should serve as a reprimand aimed at reformation of the offending council member and prevention of further offending acts and also as a measure in support of the institution of local government and those council members who properly observe the standards of conduct expected of them.
- 6.5 The Panel also notes that when it makes an order that a Notice of Public Censure be published, and that the Notice is to be published by the local government’s CEO at the expense of the local government, such expense is significant where such publishing is to be in a newspaper or newspapers.
- 6.6 In the present case, on the evidence available to the Panel, it finds that it is more likely than it is not, that Cr Cuccaro did not deliberately fail to disclose the impartiality interest at the July 2014 OCM.
- 6.7 Having said that, the Panel considers that the need for Cr Cuccaro to have disclosed that interest was obvious (as is evidenced by the fact that Cr Cuccaro had disclosed that interest at the Ordinary Council meeting of 25 February 2014) and that his failure to do so is not a “minor” matter and does not warrant dismissal of the Complaint.
- 6.8 However, given the matters set out in paragraphs 6.3(a) and 6.6 above, the Panel does not consider that a public censure is warranted.
- 6.9 Further, given that there is no evidence to suggest that the Minor Breach occurred through Cr Cuccaro’s lack of knowledge or education on the issue or issues concerned, the Panel does not consider it would be appropriate to order that Cr Cuccaro attend training.
- 6.10 In all the circumstances of this case, particularly those set out in paragraph 6.4 and 6.7 above, the Panel considers that it is appropriate that Cr Cuccaro be ordered to make a public apology to the Councillors of the City in terms of Attachment “A” hereto.

7. Panel Decision

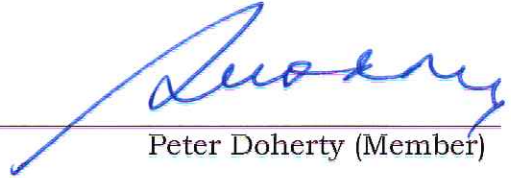
- 7.1 Having regard to the Breach Findings, the matters set out in paragraphs 5 and 6 above, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under section 5.110(6), is that pursuant to subsection (b)(ii) of that section,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



Christopher Berry (Deputy 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"

LOCAL GOVERNMENT STANDARDS PANEL

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Complainant	Mr Jonathan Throssell
Subject of complaint	Councillor Tony Cuccaro
Local Government	Shire of Mundaring
Regulation found breached	Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Dr C Berry (Deputy Presiding Member) Cr P Kelly (Member) Mr P Doherty (Deputy Member)
Heard	19 March 2015 (Determined on the documents)

ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Tony Cuccaro, a member of the Council of the Shire of Mundaring, apologise publicly to the Councillors of the City, as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the next Shire of Mundaring Ordinary Council Meeting immediately following the date of service of this Order on Tony Cuccaro:
 - (a) Tony Cuccaro 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 Tony Cuccaro making a public apology to the Councillors of the City; and

- b) Tony Cuccaro 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 as a member of this Council, at its meeting held on 8 July 2014, during the consideration of the Shire's Community Strategic Plan.*
 - (2) The Local Government Standards Panel has considered the Complaint, and has made a finding of minor breach, namely that at the 8 July 2014 Council meeting I committed a breach of regulation 11(2) of the Local Government (Rules of Conduct) Regulations 2007 by failing to disclose an impartiality interest (being my life membership of the Helena Valley Cricket Club) in the Shire's Community Strategic Plan, and the funding of several major capital projects mentioned therein, including the Boya Oval.*
 - (3) I apologise to my fellow Councillors for not disclosing this interest to them at or before the 8 July 2014 Council meeting."*
3. If the Cr Cuccaro fails or is unable to comply with the requirements of paragraph 2 above, then within 14 days after the next Shire of Mundaring Ordinary Council Meeting immediately following the date of service of this Order on him, Cr Cuccaro 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 *Hills Gazette* newspaper.

**SHIRE OF MUNDARING
PUBLIC APOLOGY**

- (1) A complaint has been made to the Local Government Standards Panel about certain conduct by me as a member of the Council of the Shire of Mundaring, at its meeting held on 8 July 2014, during the consideration of the Shire's Community Strategic Plan.*
- (2) The Local Government Standards Panel has considered the complaint, and has made a finding of minor breach, namely that at the 8 July 2014 Shire Council Meeting I committed a breach of regulation 11(2) of the Local Government (Rules of Conduct) Regulations 2007 by failing to disclose an impartiality interest (being my life membership of the Helena Valley Cricket Club) in the Shire's Community Strategic Plan, and the funding of several major capital projects mentioned therein, including the Boya Oval.*
- (3) I apologise to my fellow Councillors for not disclosing this interest to them at or before the 8 July 2014 Shire Council Meeting.*

Councillor Tony Cuccaro