

## LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number SP 17 of 2015  
DLG 20150100

Legislation *Local Government Act 1995*

**Complainant** **Roger LeMaitre<sup>1</sup>**

**Subject of complaint** **Councillor Peter John Tegg**

Local Government Shire of Cue

Regulation Regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*

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

Heard 16 October 2015  
(Determined on the documents)

Outcome Public Apology Ordered

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### SANCTIONS DECISION AND REASONS FOR DECISION

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#### 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.**

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<sup>1</sup> At all material times prior to October 2015, Roger LeMaitre was the Shire's President.

## **1. Summary of Breach Findings**

- 1.1 At its meeting on 9 July 2015 the Panel found that Cr Peter John Tegg, a member of the Council of the Shire of Cue, committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (Regulations)* by making a statement at the Shire's Ordinary Council Meeting held on 17 March 2015 which questioned the truthfulness of the Shire's Chief Executive Officer (**CEO**) when the Council was considering whether to extend his employment contract and thereby made improper use of his office as a council member of the Shire to cause detriment to the CEO (**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 (Act)* and concluded, for the following reasons, that Cr Tegg should be ordered to make a public apology to the CEO in terms of Attachment "A" hereto.

## **3. Notice of the Minor Breach**

- 3.1 By letter dated 30 July 2015 the Panel gave to Cr Tegg:
- (a) notice of the Minor Breach;
  - (b) a copy of its Findings and Reasons for Finding dated 9 July 2015 (**Findings**); and
  - (c) an opportunity for him to make submissions about how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

## **4. Cr Tegg's response and submissions**

- 4.1 Cr Tegg responded to the Panel by letter dated 12 August 2015 in which he:
- (a) accepted that he made the Statement set out in the Findings;
  - (b) claims that:
    - (i) he made the Statement out of frustration, when he had not been provided with information he had sought; and
    - (ii) there was "no deliberate attempt or endeavor to damage the CEO's reputation or harm his prospects of his contract being renewed"; and
  - (c) did not make any submission as to how he considered the Panel should deal with the Minor Breach.

## **5. Panel's views**

- 5.1 Section 5.110(6) of the *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 *Act*, each of the Panel's members is to have regard to the general interests of local government in the State.
- 5.3 In considering an appropriate sanction or sanctions for the present breach the Panel notes that Cr Tegg:
- (a) has accepted that he made the Statement;
  - (b) contends that there was "no deliberate attempt or endeavor to damage the CEO's reputation or harm his prospects of his contract being renewed"; and
  - (c) has previously been found to have committed minor breaches of the *Regulations*<sup>2</sup>.
- 5.4 In the Panel's opinion, Cr Tegg's contention in paragraph 5.3(b) is irreconcilable with the Statement itself in which Cr Tegg said that the CEO "told [Mr V] that this Shire is broke, got no money. Now you explain to me what we want to do keeping on a CEO who cannot tell the truth down the line".
- 5.5 The Panel does not consider that dismissal of the Complaint is appropriate as this would effectively condone Cr Teggs' conduct in making the Statement.
- 5.6 The Panel does not consider that ordering Cr Tegg to undergo further training is appropriate (as Cr Tegg has not contended that the Minor Breach occurred through his ignorance of the relevant provision) and in any event, the Panel does not consider that this would be an adequate sanction.
- 5.7 Because of this, the only options available to the Panel are to order the publication of a Notice of Public Censure or to order Cr Tegg to make a Public Apology (or both).
- 5.8 When the Panel makes an order that a Notice of Public Censure be published, that Notice is published by the local government's CEO at the expense of the local government and such expense is significant where the Notice is to be published in a newspaper or newspapers.
- 5.9 In the present case, on the evidence available to the Panel and the matters set out in paragraphs 5.3(a) and 5.8 above, the Panel does not consider that it should order a public censure.
- 5.10 In the circumstances of this matter, the Panel considers that Cr Tegg should be ordered to make a public apology to the CEO of the Shire in terms of Attachment "A" hereto.

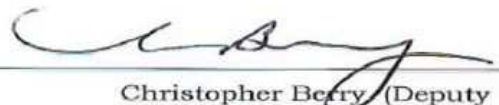
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<sup>2</sup> On 19 November 2014: SP 7 and 15 of 2014 [DLG 20140080 and 20140103].

- 5.11 This is a significant sanction, as it serves as a reprimand aimed at the reformation of Cr Tegg and the 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. Panel decision**

- 6.1 Having regard to the Findings, the matters set out in paragraphs 4 and 5 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) of the *Act*, is that pursuant to subsection (b)(ii) of that section, Cr Tegg should be ordered to publicly apologise to the CEO of the Shire as set out in Attachment "A" hereto.



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Christopher Berry (Deputy  
Presiding Member)



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Paul Kelly (Member)



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

Heard 16 October 2015  
(Determined on the documents)

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**ORDER**

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**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 CEO of the Shire, 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:

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<sup>3</sup> At all material times prior to October 2015, Roger LeMaitre was the Shire’s President.

- (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 Peter John Tegg making a public apology to the Chief Executive Officer of the Shire; 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, in which it was alleged that I contravened regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 by making a statement at the Shire's Ordinary Council Meeting held on 17 March 2015 which questioned the truthfulness of the Shire's Chief Executive Officer, John Leslie McCleary, when the Council was considering whether to extend Mr McCleary's employment contract and that I thereby made improper use of my office as a council member of the Shire to cause detriment to Mr McCleary.*
- (2) The Local Government Standards Panel has considered the Complaint, and has made a finding of a Minor Breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 against me by making the offending statement.*
- (3) I accept that I should not have made the Statement and apologise to the Chief Executive Officer, John Leslie McCleary, for so doing."*

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 him, 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 Midwest Times newspaper.

**PUBLIC APOLOGY**

- (1) *A Complaint has been made to the Local Government Standards Panel, in which it was alleged that I contravened regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 by making a statement at the Shire's Ordinary Council Meeting held on 17 March 2015 which questioned the truthfulness of the Shire's Chief Executive Officer, John Leslie McCleary, when the Council was considering whether to extend Mr McCleary's employment contract and that I thereby made improper use of my office as a council member of the Shire to cause detriment to the Mr McCleary.*
- (2) *The Local Government Standards Panel has considered the Complaint, and has made a finding of a Minor Breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 against me by making the offending statement.*
- (3) *I accept that I should not have made the Statement and apologise to the Chief Executive Officer, John Leslie McCleary, for so doing."*

**Peter John Tegg**