

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 21 of 2015 DLG 20150119
Legislation	<i>Local Government Act 1995</i> (WA)
Complainant	Michael James Foley
Subject of complaint	Councillor Darryl Trease
Local Government	City of Swan
Regulation	Regulations 7(1)(a) and 8 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Dr C Berry (Deputy Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Member)
Heard	3 September 2015 (Determined on the documents)
Outcome	Public Apology Ordered

SANCTION 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. Summary of Breach Findings

- 1.1 At its meeting on 9 July 2015 the Panel made a finding that Cr Darryl Trease, a member of the Council of the City of Swan committed breaches of each of regulations 7(1)(a) and 8 of the *Local Government (Rules of Conduct) Regulations 2007* (**Regulations**) by using paper bearing the City's letterhead for personal purposes when he was not permitted to do so (**Minor Breaches**).
- 1.2 The Minor Breaches related to two letters, being:
- (a) a letter dated 8 March 2014 sent by Cr Trease to the Hon. Dr Michael Nahan MLA, inquiring whether certain properties vested in the Commissioner for Police were part of "your consideration for sale in divesting State assets" and said that he would "welcome the opportunity to discuss the purchase of these properties with you"; and
 - (b) a letter dated 1 June 2014, sent by Cr Trease to the Hon. MJ Davies MLA MMB, attaching a proposal to lease certain properties vested in the Commissioner for Police noting that he would "be grateful if you would consider the proposal" and noting that he believed "it will have positive outcomes for the Government and the Region".

2. Summary of Decision

- 2.1 The Panel considered how the Minor Breaches are to be dealt with under section 5.110(6) of the *Local Government Act 1995* (**Act**) and concluded, for the following reasons, that Cr Trease should be ordered to make a public apology to the Councillors of the City in terms of Attachment "A" hereto.

3. Notice of the Minor Breaches

- 3.1 By letter dated posted 10 August 2015, the Panel gave to Cr Trease:
- (a) notice of the Minor Breaches;
 - (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 Breaches should be dealt with under section 5.110(6) of the *Act*.

4. Cr Trease's response and submissions

- 4.1 Cr Trease responded to the Panel by letter dated 25 August 2015 in which he accepted the Panel's Findings, submitted that he sent the two letters without intent to gain an advantage and that:
- (a) the Panel should deal with the Minor Breaches under section 5.110(6)(a) of the *Act* by dismissing the complaint; or
 - (b) if the Panel considered that it was not appropriate to so deal the Minor Breaches, the Panel should deal with them under section 5.110(6)(b)(iii) of the *Act* by ordering him to undertake training.

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 Trease:
- (a) has not previously been found to have breached the *Regulations*; and
 - (b) has accepted the Findings.
- 5.4 The Panel does not consider that dismissal of the Complaint is appropriate as this would effectively condone Cr Trease's conduct in sending the two letters in circumstances where he stood to gain an advantage for himself had the recipients of those letters entertained the proposals contained therein.
- 5.5 Nor does the Panel consider that ordering Cr Trease to undergo further training is appropriate, because his responses to the Panel in relation to the Complaint evidence that Cr Trease now has a sound understanding of the obligations imposed on him by regulations 7(1)(a) and 8 of the *Regulations*.
- 5.6 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 Trease to make a Public Apology (or both).
- 5.7 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.
- 5.8 In the present case, on the evidence available to the Panel and the matters set out in paragraphs 5.3 above, the Panel does not consider that it should order a public censure.
- 5.9 In the circumstances of the matter, the Panel considers that Cr Trease should be ordered to make a public apology to the Councillors of the City in terms of Attachment "A" hereto.

- 5.10 This is a significant sanction, as it serves as a reprimand aimed at the reformation of Cr Trease 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 Breaches are to be dealt with under section 5.110(6) of the *Act*, is that pursuant to subsection (b)(ii) of that section, Cr Trease should be ordered to publicly apologise to the Councillors of the City 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”

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Panel Members	Dr C Berry (Deputy Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Member)
Heard	3 September 2015 (Determined on the documents)

ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Darryl Trease, a member of the Council of the City of Swan, 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 City of Swan Ordinary Council Meeting immediately following the date of service of this Order on Darryl Trease:
 - (a) Darryl Trease 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 Darryl Trease making a public apology to Complainant; and

- b) Darryl Trease 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 regulations 7(1)(a) and 8 of the Local Government (Rules of Conduct) Regulations 2007 when I wrote two personal letters on the City's Letterhead when I was not permitted to do so.*
 - (2) On the first occasion during, March 2014 I sent a letter to the Hon. Dr Michael Nahan MLA, inquiring whether certain properties vested in the Commissioner for Police were part of his "consideration for sale in divesting State assets" and said that I would "welcome the opportunity to discuss the purchase of these properties with you".*
 - (3) On the second occasion, during June 2014, I sent a letter to the Hon. MJ Davies MLA MMB, attaching a proposal to lease certain properties vested in the Commissioner for Police noting that I would "be grateful if you would consider the proposal" and noted that I believed "it will have positive outcomes for the Government and the Region".*
 - (4) The Local Government Standards Panel has considered the Complaint, and has made findings of minor breaches of regulations 7(1)(a) and 8 of the Local Government (Rules of Conduct) Regulations 2007 against me by me sending these letters on the City's letterhead.*
 - (3) I accept that I should not have sent these personal letters on Council letterhead and apologise to my fellow Councillors for so doing."*
3. If Darryl Trease fails or is unable to comply with the requirements of paragraph 2 above within 14 days after the next City of Swan Ordinary Council Meeting immediately following the date of service of this Order on him, Darryl Trease 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 Advocate* newspaper.

PUBLIC APOLOGY

- (1) *A Complaint has been made to the Local Government Standards Panel, in which it was alleged that I contravened regulations 7(1)(a) and 8 of the Local Government (Rules of Conduct) Regulations 2007 when I wrote two personal letters on the City's Letterhead when I was not permitted to do so.*
- (2) *On the first occasion during, March 2014 I sent a letter to the Hon. Dr Michael Nahan MLA, inquiring whether certain properties vested in the Commissioner for Police were part of his "consideration for sale in divesting State assets" and said that I would "welcome the opportunity to discuss the purchase of these properties with you".*
- (3) *On the second occasion, during June 2014, I sent a letter to the Hon. MJ Davies MLA MMB, attaching a proposal to lease certain properties vested in the Commissioner for Police noting that I would "be grateful if you would consider the proposal" and noted that I believed "it will have positive outcomes for the Government and the Region".*
- (4) *The Local Government Standards Panel has considered the Complaint, and has made findings of minor breaches of regulations 7(1)(a) and 8 of the Local Government (Rules of Conduct) Regulations 2007 against me by me sending these letters on the City's letterhead.*
- (5) *I accept that I should not have sent these personal letters on Council letterhead and apologise to my fellow Councillors for so doing."*

Darryl Trease