

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 30 of 2015 DLG 20150133
Legislation	<i>Local Government Act 1995</i>
Complainant	Ms Margaret Shorter
Subject of complaint	Mayor Sue Doherty
Local Government	City of South Perth
Regulation	Regulations 9(1) and 10(1)(a) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Member)
Heard	16 October 2015 and 26 November 2015 (Determined on the documents)
Outcome	Public apology ordered

SANCTIONS 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 10 August 2015 the Panel made a finding that Mayor Sue Doherty, a member of the Council of the City of South Perth committed breaches of each of regulations 9(1) and 10(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (**Regulations**) by performance managing her Executive Assistant and requiring her to respond to a Memorandum outlining issues that Mayor Doherty had with her performance (**Minor Breaches**).

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 Mayor Doherty should be ordered to make a public apology to her Executive Assistant in terms of Attachment “A” hereto.

3. Notice of the Minor Breaches

- 3.1 By letter dated 26 August 2015, the Panel gave to Mayor Doherty:
- (a) notice of the Minor Breaches;
 - (b) a copy of its Findings and Reasons for Finding dated 10 August 2015 (**Findings**); and
 - (c) an opportunity for her to make submissions about how the Minor Breaches should be dealt with under section 5.110(6) of the *Act*.

4. Mayor Doherty’s response and submissions

- 4.1 Mayor Doherty responded to the Panel by letter dated 21 September 2015 in which:
- (a) she accepted the Findings in relation to regulation 9(1) and submitted that the Complaint (in relation to that regulation) should be dismissed because she had acknowledged that she acted inappropriately and had already apologised to the Complainant in the presence of the then Acting Chief Executive Officer (**Acting CEO**);
 - (b) she disputed the Findings in relation to regulation 10(1)(a) as she asked that the Panel “reconsider their [Findings] in relation to Regulation 10(1)(a)” adding that she was “unable to accept the [Findings] of the ... Panel on this Matter”, but did not otherwise make any submissions as to how the Panel should deal with this aspect of the Findings; and
 - (c) stated that:

“Since May, when this complaint was lodged, I am no longer in the position of being able to task my Executive Assistant to undertake any tasks to support and assist me in my role as Mayor. Should I do so, I am exposing myself to further allegations of tasking her to do anything — there is an imbalance of power and as Mayor I am "powerless." I am frequently under considerable pressure from constituents. Due to this situation, I am trying to fulfil my role without support”.

- 4.2 In relation to sub-paragraph 4.1(c) above, the Panel observes that:
- (a) Mayor Doherty may quite properly ask her Executive Assistant to undertake tasks that support and assist Mayor Doherty in her role as Mayor;
 - (b) Mayor Doherty may reasonable expect that such requests will be complied with; and
 - (c) if such requests are not complied with, or if Mayor Doherty is otherwise dissatisfied with the performance of her Executive Assistant, Mayor Doherty may report the matter to the City's human resources administration, which would be expected to take appropriate action.
- 4.3 In relation to Mayor Doherty's allegation in paragraph 4.1(a) above that she has acknowledged "that she acted inappropriately and had already apologised to the Complainant in the presence of the then Acting Chief Executive Officer" (**Purported Apology**) the Panel notes that:
- (a) the Department contacted both the Complainant and the Acting CEO in an attempt to verify Mayor Doherty's assertion;
 - (b) in response to those inquiries:
 - (i) the Complainant advised the Panel that Mayor Doherty, in the presence of the then Acting CEO, said words to the effect of "I regret that I sent you the memo in May, it was inappropriate of me to do so" (**Statement**); and
 - (ii) the then Acting CEO advised the Panel that he was present during this conversation and that his recollection of what was said by Mayor Doherty during that conversation substantially coincides with that of the Complainant and that the word "sorry" was not used; and
 - (c) it does not consider that the Statement constitutes an adequate apology to the Complainant.

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 Mayor Doherty:
- (a) has not previously been found to have breached the *Regulations*;
 - (b) has accepted the Findings insofar as they relation to regulation 9; and
 - (c) does not accept the Findings insofar as they relate to regulation 10.
- 5.4 The Panel does not consider that dismissal of the Complaint is appropriate as this would effectively condone Mayor Doherty's conduct in performance managing her Executive Assistant and requiring her to respond to a Memorandum outlining issues that Mayor Doherty had with her performance.
- 5.5 Nor does the Panel consider that ordering Mayor Doherty to undergo further training is appropriate or an adequate sanction.
- 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 Mayor Doherty 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, the Panel does not consider that it should order a public censure.
- 5.9 In the circumstances of the matter, the Panel considers that Mayor Doherty should be ordered to make a public apology to the Executive Assistant in terms of Attachment "A" hereto. The Panel does not consider that the Purported Apology is adequate to address the Minor Breaches.
- 5.10 This is a significant sanction, as it serves as a reprimand aimed at the reformation of Mayor Doherty 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, Mayor Doherty should be ordered to publicly apologise to the Complainant and the Councillors of the City 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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ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Sue Doherty, Mayor of the City of South Perth, apologise publicly to the Complainant and the Councillors of the City, as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the next City of South Perth Ordinary Council Meeting immediately following the date of service of this Order on Sue Doherty:

- (a) Sue Doherty immediately following Public Question Time or during the Announcements part of the meeting 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 two provisions of the Local Government (Rules of Conduct) Regulations 2007 by performance managing my Executive Assistant, Margaret Shorter, during May 2015.*
 - 2. In the Complaint it was alleged that during May 2015 I sent a memorandum to Ms Shorter in which I outlined issues that I had with her performance as my Executive Assistant and requested that that she respond to that memorandum by 12 May 2015. It was also alleged that when Ms Shorter advised that she would respond by 14 May, I required her to respond by 12 May 2015.*
 - 3. It was alleged that this conduct breached two regulations, being:*
 - (i) regulation 9(1) - by undertaking a task that contributes to the administration of the City, namely the performance management of Ms Shorter, without being authorised by the council or by the Chief Executive Officer to do so; and*
 - (ii) regulation 10(1)(a) by directing or attempt to direct Ms Shorter (who is a local government employee) to respond to my memorandum in her capacity as an employee of the City.*
 - 4. The Local Government Standards Panel has considered the Complaint, and has made a finding that I breached each of these regulations by acting as I did.*
 - 5. I accept that I should not have involved myself in the performance management of Ms Shorter in this way and that I should not have directed Ms Shorter to respond to my memorandum. I also apologise to Ms Shorter and to my fellow Councillors for having done so."*
3. If Sue Doherty fails or is unable to comply with the requirements of paragraph 2 above within 14 days after the next City of South Perth Ordinary Council Meeting immediately following the date of service of this Order on her, Sue Doherty 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 Southern Gazette newspaper.

PUBLIC APOLOGY

1. *A Complaint has been made to the Local Government Standards Panel, in which it was alleged that I contravened two provisions of the Local Government (Rules of Conduct) Regulations 2007 by performance managing my Executive Assistant, Margaret Shorter, during May 2015.*
2. *In the Complaint it was alleged that during May 2015 I sent a memorandum to Ms Shorter in which I outlined issues that I had with her performance as my Executive Assistant and requested that she respond to that memorandum by 12 May 2015. It was also alleged that when Ms Shorter advised that she would respond by 14 May, I required her to respond by 12 May 2015.*
3. *It was alleged that this conduct breached two regulations, being:*
 - (a) *regulation 9(1) - by undertaking a task that contributes to the administration of the City, namely the performance management of Ms Shorter, without being authorised by the council or by the Chief Executive Officer to do so; and*
 - (b) *regulation 10(1)(a) by directing or attempt to direct Ms Shorter (who is a local government employee) to respond to my memorandum in her capacity as an employee of the City.*
4. *The Local Government Standards Panel has considered the Complaint, and has made a finding that I breached each of these regulations by acting as I did.*
5. *I accept that I should not have involved myself in the performance management of Ms Shorter in this way and that I should not have directed Ms Shorter to respond to my memorandum. I also apologise to Ms Shorter and to my fellow Councillors for having done so.*

Sue Doherty