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## Local Government Standards Panel

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Complaint Number	SP 30 of 2018
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Mayor Camilo Blanco</b>
<b>Respondent</b>	<b>Councillor George Daccache</b>
Local Government	<b>Town of Port Hedland</b>
Regulation	Regulation 4(1) and Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mrs Sheryl Siekierka (Presiding Member) Cr Paul Kelly (Member) Mrs Emma Power (Member)
Heard	12 October 2018 Determined on the documents
Penalty Considered	25 January 2019
Outcome	Public Apology

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### SANCTION DECISION AND REASONS FOR DECISION

Delivered 10 February 2019

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#### DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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



## Introduction

1. At its meeting on 12 October 2018, the Panel found that Councillor George Daccache, a Councillor for the Town of Port Hedland (**“the Town”**), committed:
  - a. one minor breach of Regulation 4(1) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**“the Regulations”**); and
  - b. one minor breach of Regulation 7(1)(b) of the Regulations,when he made comments at the Town’s Ordinary Council Meeting of 23 May 2018 in relation to an interview given by him and the subsequent newspaper article published in the North West Telegraph (**“the Minor Breaches”**).

## Jurisdiction

2. The Panel convened on 25 January 2019 to consider how it should deal with the Minor Breaches.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that on this date there was no available information to indicate that Cr Daccache had ceased to be, or was disqualified from being, a councillor.

## Possible Sanctions

4. Section 5.110(6) of the *Local Government Act 1995* (WA) (**“the Act”**) provides that the Panel is to deal with a minor breach by:
  - (a) *dismissing the complaint;*
  - (b) *ordering 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) *ordering 2 or more of the sanctions described in paragraph (b).*

## Councillor Daccache’s Submissions

5. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).<sup>1</sup>
6. By a letter dated 9 November 2018, Cr Daccache was:
  - a. notified of the Panel’s finding of the Minor Breaches;
  - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and

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<sup>1</sup> *Local Government Act 1995* (WA), s 5.110(5).



- c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.
7. By email dated 22 November 2018, the Department received a response from Cr Daccache stating that:
  - a. he accepts with sincerity the Panel's findings; and
  - b. he respectfully requests that further training be provided to himself and the Council of the Town.

### Panel's Consideration

8. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel's finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor's name.
9. The Panel notes that Cr Daccache accepts that he has breached the Regulations by his conduct.
10. The Panel has considered all available sanctions under section 5.110(6) and also took into account the fact that the Panel, on the same date, considered sanctions against Cr Daccache for two further minor breaches for similar conduct.
11. In these circumstances, given the relevant conduct occurred at a public Ordinary Council Meeting, the Panel considers that the appropriate penalty is that Cr Daccache make a public apology.
12. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when a councillor's conduct:
  - a. adversely affects particular individuals<sup>2</sup>; or
  - b. does not meet the standards other councillors seek to uphold.

### Panel's decision

13. The Panel orders pursuant to section 5.110(6)(b)(ii) and section 5.110(c) of the Act that, in relation to the minor breaches of regulation 4(1) and regulation 7(1)(b) of the Regulations, Cr Daccache make a public apology in terms of the attached Order.

Shery Siekierka (Presiding Member)

Emma Power (Member)

Paul Kelly (Member)

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<sup>2</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).



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## ORDER

Delivered 10 February 2019

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor George Daccache, a Councillor for the Town of Port Hedland publicly apologise to Mayor Camilo Blanco, the public and his fellow Town Councillors, as specified in paragraph 2 below.
2. On the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Councillor Daccache shall:
  - a. attend the relevant ordinary council meeting;
  - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
  - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
  - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) on 23 May 2018 when I made comments regarding an interview I gave to the North West Telegraph newspaper and, in particular, those comments that concerned Mayor Camilo Blanco.
- ii. The Panel found that by making the relevant adverse comments I contravened the Town of Port Hedland's Standing Orders Local Law 2014 and thereby breached regulation (4)(1) of the Local Government (Rules of Conduct) Regulations 2007 (WA).
- iii. The Panel further found that I breached regulation 7(1)(b) of the said Regulations as I made improper use of my office as a Councillor with the intention of causing detriment to Mayor Blanco.



- iv. I accept that I should not have made the adverse comments regarding Mayor Blanco that such comments were inappropriate in content.
- v. I now apologise to Mayor Blanco, the public and my fellow Councillors.”

3. If Cr Daccache fails or is unable to comply with the requirements of paragraph 2 above he shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the North West Telegraph newspaper and the Pilbara Echo newspaper:

**PUBLIC APOLOGY BY COUNCILLOR GEORGE DACCACHE**

A formal complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) on 23 May 2018 when I made comments regarding an interview I gave to the North West Telegraph newspaper and, in particular, those comments that concerned Mayor Camilo Blanco.

The Panel found that by making the relevant adverse comments:

- i. I contravened the Town of Port Hedland’s Standing Orders Local Law 2014 and thereby breached regulation (4)(1) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)*.
- ii. I breached regulation 7(1)(b) of the said Regulations as I made improper use of my office as a Councillor with the intention of causing detriment to Mayor Blanco.

I accept that I should not have made the adverse comments regarding Mayor Blanco that such comments were inappropriate in content.

I now apologise to Mayor Blanco, the public and my fellow Councillors.



## NOTICE TO THE PARTIES TO THE COMPLAINT

### RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (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."