



Local Government Standards Panel

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| Complaint Number | SP 2019-028 |
| Legislation | <i>Local Government Act 1995</i> |
| Complainant | Ms Rosemary Bezu |
| Respondent | Mayor David Lucas |
| Local Government | City of Swan |
| Regulation | Regulation 7 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i> |
| Panel Members | Mr Michael Connolly (Presiding Member) Cr Paul Kelly (Member) Mrs Emma Power (Member) |
| Heard | 5 June 2019 Determined on the documents |
| Finding | One Breach of Regulation 7(1)(b) |

FINDING AND REASONS FOR FINDING

Delivered 26 June 2019

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.



Summary of the Panel's decision

1. On 5 June 2019, the Panel found that Mayor David Lucas the Mayor of the City of Swan (**"the City"**) did commit one minor breach pursuant to:
 - a. the Local Government Act 1995 (WA) (**"the Act"**); and
 - b. regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (**"the Regulations"**);

when he sent a e-bulletin in March 2019 to Swan Valley and Regional Networks addressed to Altone Ward residents in relation to candidates for the next occurring Local Government By-Election for the ward of Altone in the City as set out in paragraph 15 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.²
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

⁴ Briginshaw v Briginshaw (1938) 60 CLR 336

⁵ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁶ Section 8(6) of Schedule 5.1 of the Act

Jurisdiction and Procedural Fairness

11. On 8 April 2019 the Panel received an email sent on behalf of Mr Michael Foley, the complaints officer of the City (**“the Complaints Officer”**). The same enclosed a Complaint of Minor Breach Form and attachments dated 2 April 2019.
12. In the complaint form Ms Bezu alleges that when Mayor Lucas sent the letter set out paragraph 15 he breached regulation 7 of the Regulation as follows:
 - a. **Allegation 1** - regulation 7(1)(a) of the Regulations by providing an advantage by supporting Mick Wainwright as a preferred candidate for the upcoming Local Government By-Election for the ward of Altone in the City;
 - b. **Allegation 2** – regulation 7(1)(b) for denigrating Ms Catalano as a candidate for the upcoming Local Government By-Election for the ward of Altone and by undermining Cr Andrew Kiely as sitting councillor and intending to cause a detriment to them and the Local Government,

(together **“the Complaint”**).
13. The Panel convened on 5 June 2019 to consider the Complaint.
14. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that, based on information published on the Western Australian Electoral Commission’s website, Mayor Lucas was:
 - i. last elected to the Council of the City in October 2015 for a term expiring in October 2019;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 5 June 2019;
 - b. was satisfied the Complaint was made within two years after the alleged breach occurred⁷;
 - c. was satisfied that the City’s Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;
 - d. was satisfied the Department had provided procedural fairness to Mayor Lucas; and
 - e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

15. The Complaint relates to the contents of an e-bulletin that was sent to Swan Valley & Regional networks, addressed to Altone Ward residents and voters as follows:

“ Swan Valley & Regional Networks

From Mayor David Lucas, City of Swan and Cr of Altone Ward

Dear ALTONE WARD RESIDENTS AND VOTERS,

As you are no doubt aware there is a Local Government bi-election just for the Altone Ward due to the sudden resignation of former Councillor Peter Lyndon-James who was 14 months into a 4 year term.,

⁷ Section 5.107(4) and 5.109(2) of the Act

⁸ Section 5.107 and 5.109 of the Act



As the Mayor of the City of Swan I had fully intended to remain completely neutral and wish the 4 candidates the very best for the election.

However, yesterday I have seen that Altone Ward Councillor Andrew Kiely (who lives Guildford) is now actively and openly supporting candidate Jennifer Catalano who resides in Midland.

Therefore I need to advise you that I would strongly support and encourage you to vote for Mick Wainwright, the ONLY candidate that actually lives in the Altone Ward.

Why is this important you ask?

Living locally, Mick walks, rides and drives on local roads and footpaths on a daily basis. He shops locally, goes to local cafes and uses the local parks and recreational facilities where you can engage directly with him at any time. He doesn't have to drive here to meet you from Midland or elsewhere, HE LIVES HERE.

As a LOCAL resident Mick has been supporting our community in many roles for many years. This is because he cares and he is committed to his community for the long term.

Here are some examples:

-After serving 20 years in the army Mick is in the RSL and assists with ANZAC Day Ceremonies

-Current and long time member of Lions and the Lions Cancer Institute Board

-Current Board member of Kiara College and previously the Lockridge SHS Board (10 years)

-Current President of the Altone Youth Service

-Advocated with me for a new Brockman House, helping to secure a \$5 million State grant.

-Former Councillor with 12 years experience of representing this community well. Mick is fully aware of Council meeting procedures & complexities.

He is an experienced debater and so he will hit the Chamber running and represent you with integrity and authenticity.

He will not take a year or two to understand the role of a Councillor with his past experience.

Mick has no hidden agendas, unlike others who live in Midland or Guildford.

Remember it was Cr Kiely who had a motion to increase OUR RATES by 20%. (See below)

I. MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

C1.1 Cr KIELEY

That the Council resolve to:

1) That the City of Swan staff make plans for an up-front Rate increase of 20% for the 2019/20 financial year for all residents in the City of Swan, to cover Stage One of the MORM costs. It will go towards funding all sub-ground services, road surfacing (as per the approved Structure Plan) and tree planting.

Mick has not misrepresented outrageous rate increases like some others.

Keeping rates to a minimum whilst providing good service levels and facilities is paramount. Don't fall for the high rates scare tactics.

Please don't forget, Councillors also pay rates.

As an experienced councillor Mick knows he cannot make outlandish statements of fixing speeding, hooning, crime, graffiti, etc as these are all WA Police issues, but he will certainly lobby WA Police on your behalf as he has done so in the past.



As an experienced councillor Mick knows he must gain the support of a majority of Councillors, which is a minimum of 8 out of 15 Councillors to implement any decision.

Mick is already well respected by the majority of his fellow councillors and senior staff and his extensive list of past achievements speak for themselves.

I totally trust and respect Mick, unlike candidate Catalano who moved a motion of No Confidence against me as Mayor and the Council at the Annual General Meeting of Electors in December 2018.

I strongly believe LOCAL GOVERNMENT MUST BE ABOUT LOCAL REPRESENTATION.

As your ONLY Altone resident on Council at present, the ALTONE Ward will be severely under represented by LOCALS and Midland/Guildford could have 5 residents on Council if Mick is not elected.

VOTE LOCAL

VOTE MICK WAINWRIGHT

Sincerely,

David Lucas Mayor

City of Swan ”

(“the Letter”)

16. In particular, the Complainant asserts the following:
- a. Mayor Lucas breached Regulation 7 as:
 - i. he made use of his position as Mayor; and
 - ii. his conduct was engaged in with the primary intent of:
 1. gaining an advantage for Mick Wainwright serving councillor and candidate in the Altone by-election;
 2. causing detriment to Ms Jennifer Catalano, candidate in the Altone by election; and
 3. causing detriment to the Local Government by displaying political partisanship and interfering in a local government election, possibly having an impact in the election results.
 - b. in March 2019 Mayor David Lucas sent the Letter stating that he strongly supported Cr Mick Wainwright, promoting him as the best candidate for Altone and inciting residents to vote for him;
 - c. in the Letter, Mayor Lucas targets one of the four candidates in the Altone by election, Ms Jennifer Catalano who is a solicitor and a well known, respected community member;
 - d. the Mayor insinuates that Ms Jennifer Catalano has a hidden agenda and states that he does not trust and respect her;
 - e. the example of the motion of no confidence is provided out of context;
 - f. Mayor Lucas has misused his position of Mayor to provide Cr Mick Wainwright a political gain in the Altone by-election. He has clearly urged residents to vote for Mick Wainwright instead of Ms Catalano;
 - g. the derogatory comments, made from a position of authority, are likely to cost Ms Catalano many votes and disadvantage her in the Altone by-election;



- h. Mayor David Lucas also undermines Cr Andrew Kiely, a serving councillor;
 - i. the role of Mayor is to rise above political partisanship. To denigrate publicly a serving councillor only shows that Mayor David Lucas is not impartial and that there is a preferential faction operating within the City of Swan;
 - j. a Mayor should lead by example and show ethical and professional behaviour. However, the Mayor has:
 - i. inappropriately interfered in the Altone by-election;
 - ii. used his official position to better discredit Ms Jennifer Catalano;
 - iii. made insinuations and derogatory comments which are not backed up by evidence but that are his personal perception; and
 - k. this type of intervention from a Mayor trying to influence voters and launching personal attacks does not have a place in a democratic process.
17. In the Complaint, the Complainant also provided a copy of the Letter.

Respondent's Response

18. By email dated 7 May 2019, Mayor Lucas provided a response to the Complaint.
19. Mayor Lucas denies any minor breach has occurred and makes the following particular comments and arguments in respect to the allegations of Minor Breach:
- a. Mayor Lucas would have much preferred to stay silent during the Altone Ward by election, however once Cr Andrew Kiely openly and actively supported his preferred candidate (Jennifer Catalano) he felt he needed to support the only candidate that resided in the Altone Ward;
 - b. Mayor Lucas' comments were made to support fair and equitable representation which is the basis of the City adopting a Ward system. If the City didn't have a Ward system, he strongly believes that within two election cycles ALL Councillors would reside in the current Pearce Ward as they have the largest population;
 - c. at the last Ward review in 2017 Mayor Lucas moved a motion to have 5 Wards with 3 Councillors each to try and achieve that fair and equitable representation. However this motion was defeated, which he accepts;
 - d. a minority of Councillors and residents who are vehemently opposed to the redevelopment of Midland Oval have run and will run like minded candidates in every Ward until they have a majority of Councillors to overturn the current decision concerning Midland Oval;
 - e. Mayor Lucas merely exercised his democratic right, as did Cr Kiely, to support their preferred candidates;
 - f. it should be duly noted that no candidate made any complaint to the Standards Panel;
 - g. Mayor Lucas respectfully submits that if he had supported the Complainant's preferred candidate no such complaint would have been made;
 - h. candidate Catalano was successful and was sworn in as a Councillor for the City of Swan immediately after the count had been conducted. Therefore, his public support for the only local candidate had no bearing on the outcome of the by election;



- i. just as a Prime Minister or Premier can publicly support any candidate of their choosing, Mayor Lucas submits that as Mayor he has the same right to publicly support a candidate of his choice; and
- j. everything Mayor Lucas stated is truthful and can be supported by the Council minutes' which are public record.

Regulation 7

20. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

“7. Securing personal advantage or disadvantaging others

- (1) *A person who is a council member must not make improper use of the person's office as a council member —*
 - (a) *to gain directly or indirectly an advantage for the person or any other person; or*
 - (b) *to cause detriment to the local government or any other person.*
- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*

21. To make a finding of a minor breach of regulation 7(1)(a) of the Regulations the Panel must be satisfied that:
- a. Mayor Lucas was a councillor at the time of the alleged breach and the time of the determination; and
 - b. Mayor Lucas made use of his office as Council member of the City;
 - c. when viewed objectively, such use was an improper use of Mayor Lucas' office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons ; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty ;
 - d. Mayor Lucas engaged in the conduct in the belief that an advantage would be gained directly or indirectly for himself (or any other person).
22. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied that it is more likely than not that:
- a. Mayor Lucas was an elected member at the time of the alleged breach and the time of the determination;
 - b. Mayor Lucas made use of his office as Council member of the City;
 - c. when viewed objectively, such use was an improper use of Mayor Lucas' office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
 - d. Mayor Lucas engaged in the conduct in the belief that detriment would be suffered by another person.

23. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom⁹.
24. Impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of that person's position as a councillor and the circumstances of the case¹⁰.
25. It requires unsuitable or inappropriate behaviour that a councillor knew (or ought to have known) was not authorised.
26. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent¹¹.
27. In addition, any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context. Such context will include the specifics of the relevant event as well as councillor's formal role and responsibilities including the councillor's fiduciary duties and any relevant code of conduct.

Panel's Consideration

Allegation 1 - Regulation 7(1)(a)

Mayor Lucas was a Councillor at the relevant times

28. Mayor Lucas was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

Mayor Lucas made use of his office as Council member of the City

29. In the Letter Mayor Lucas introduces himself as Mayor and also signs the letter as Mayor.
30. Further, is not denied by Mayor Lucas that he was acting in his capacity as Mayor.
31. Given the above, the Panel finds, to the required standard, Mayor Lucas was acting in his role as councillor and therefore making use of his office as a council member.
32. This element is met.

Mayor Lucas' use was improper

33. In this case it is alleged that the Mayor's support of Mick Wainwright was improper and that he inappropriately interfered with the by-election.
34. It is not unreasonable for a Mayor (or any other elected member) to support a particular candidate for a Local Government election.
35. Provided that such support is provided in an appropriate manner, the same is not improper.
36. In this case, the support provided was to publicly point out the benefits of having Mr Wainwright as an elected member due to his knowledge of the local area and prior experience.
37. Given the above, the Panel finds to the required standard that Mayor Lucas' support of Mick Wainwright was not improper as such conduct:

⁹ Complaint of Minor Breach No. SP 3 of 2013

¹⁰ *Yates and Local Government Standards Panel* [2012] WASAT 59

¹¹ *Chew v R* [1992] HCA 18



- a. did not involve a breach of the standards of conduct that would be expected of a person in the position of Mayor or councillor by reasonable persons; and
 - b. was not so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.
38. This element is not met.

Regulation 7(1)(a) - Mayor Lucas intended an advantage to be gained directly or indirectly

39. The definitions of the noun 'advantage' in the Shorter Oxford English Dictionary (6th ed) include: a favouring circumstance; something which gives one a better position, benefit; increased well-being or convenience or pecuniary profit.
40. The Panel considers the term 'advantage' in regulation 7(1)(a) is to be construed widely, and includes a financial or a non-financial benefit, gain or profit, or any state, circumstance, opportunity or means specially favourable.¹²
41. The Complainant states that Mayor Lucas was acting to gain a political advantage for Mick Wainwright.
42. The Panel finds that it is more likely than not that this motivation is accurate.
43. Further, Mayor Lucas' response supports the finding that he intended Mick Wainwright to be elected and thereby gain a political advantage.
44. Therefore, the Panel finds that it is more likely than not the Letter was sent with the intent to obtain an advantage to another person.
45. This element is met.

Conclusion

46. Given the above, the Panel finds that the elements required to find a breach of regulation 7(1)(a) of the Regulations have not been met and that Mayor Lucas did not commit a minor breach.

Allegation 2 - Regulation 7(1)(b)

Mayor Lucas was an Elected Member at the relevant times

47. Mayor Lucas was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

Mayor Lucas made use of his office as Council Member of the City

48. As noted above, the Panel has found in sending the Letter Mayor Lucas was acting in his capacity as Mayor and therefore made use of his office as an elected member.

Mayor Lucas' use was improper

49. In this case it is alleged for Mayor Lucas did not act in a professional and ethical manner when he denigrated Ms Catalano and Cr Kiely and that he therefore acted improperly.
50. The City of Swan has a Code Conduct for Councillors and Committee Members (September 2015) ("**the Code**") which contains the following relevant sections:

*" CONDUCT OF COUNCILLORS AND COMMITTEE MEMBERS
PERSONAL BEHAVIOUR*

¹² Complaint SP 12 and 13 of 2011



- (a) *Councillors and Committee Members will:*
- (i) *act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;*
 -
 - (iii) *act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the City and the community as a whole;*
 - (iv) *make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official duties, which may cause any reasonable person unwarranted offence or embarrassment; and..”*
51. The Code provides a framework for consideration of the expected standards of behaviour of elected members and as to whether certain conduct can be viewed as “improper”.
52. The relevant comments contained in the Letter are as follows:
- a. *“Mick has no hidden agendas, unlike others who live in Midland or Guildford.”;*
 - b. *“Remember it was Cr Kiely who had a motion to increase OUR RATES by 20%....*
....
Mick has not misrepresented outrageous rate increases like some others.”;
 - c. *“I totally trust and respect Mick, unlike candidate Catalano...”*
53. Earlier in the Letter, Mayor Lucas specifically identifies Cr Kiely as residing in Guildford and Ms Catalano as residing in Midland. This indicates that he was again referring to these parties in respect to his comment as to “*hidden agendas*”.
54. This comment is clearly intended to reflect negatively upon those candidates as this phrase is commonly used in a negative context to suggest an ulterior or sinister motive.
55. The reference to the motion regarding the rates is not, in itself, improper (being simply a reference to a past motion), however, the specific comment that Cr Kiely “misrepresented” the matter infers that that he acted in an improper manner.
56. The final comment noting that Mayor Lucas does not “trust” Ms Catalano can clearly be seen as derogatory, intimating that she is untrustworthy and not suitable as an election candidate.
57. Although it is acceptable for a person to support a given candidate, it is not acceptable to negatively compare candidates, nor imply that any candidates are guilty of wrongdoing.
58. Generally, the public will expect that, although sitting councillors may have preferred candidates or parties, that such sitting councillors will act in a relatively impartial manner and not use their influence to unduly discredit or disadvantage other parties.
59. Further, in his role as Mayor, Mayor Lucas should have reasonably known that any comment made by him was likely to be given considerable weight by the public.
60. The Panel finds it is more likely than not that the Letter was improper and derogatory in content in respect to certain comments made by Mayor Lucas in respect to Cr Kiely and Ms Catalano and such comment were:
- a. in breach of the Code;



- b. of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor; and
- c. deserving of a penalty.

61. This element is met.

Mayor Lucas intended detriment to be suffered by another person

- 62. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
- 63. It is not necessary to find whether any detriment was actually suffered¹³, but an intent to cause such detriment must be established.
- 64. The argument that Ms Catalano was eventually elected and therefore did not suffer a detriment is not relevant. It is the *intent* behind the actions conduct undertaken that is important.
- 65. In considering the specific comments made by Mayor Lucas as described above in paragraph 52 above, the Panel notes that:
 - a. the parties are personally identified (either by name or clear inference);
 - b. the language used is negative and infers wrongdoing by the parties; and
 - c. the Letter was intentionally widely disseminated.
- 66. Each of these factors indicate that it was intended by Mayor Lucas that both Ms Catalano and Cr Keily be seen in a negative light by the public.
- 67. The argument by Mayor Lucas that everything stated was the truth is not compelling. The relevant negative comments and language are all based upon Mayor Lucas's personal opinion in the context of the Letter.
- 68. The Complainant has also alleged that Mayor Lucas acted to the detriment of the City. However, the Panel finds that in the context it is more likely than not that Mayor Lucas did not have any intent to cause a detriment to the City.
- 69. Given the above, the Panel finds that it is more likely than not that the Email:
 - a. was of a nature that would be considered by a reasonable person as denigrating Ms Catalano and Cr Keily; and
 - b. was made with any intent to cause a detriment to:
 - i. Ms Catalano by stating she was not trustworthy and inferring she was not suitable as a candidate for the ward of Altone in upcoming Local Government By-Election; and
 - ii. Cr Kiely by denigrating his performance as a Councillor.

70. This element is met.

Conclusion

- 71. Given the above, the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met.

¹³ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



Panel's Finding

72. Mayor Lucas did not commit a breach of Regulation 7(1)(a) of the Regulations and therefore did not commit a minor breach.
73. Mayor Lucas did commit a breach of Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.

A handwritten signature in blue ink, appearing to read 'Mick Connolly'.

Mick Connolly (Presiding Member)

A handwritten signature in blue ink, appearing to read 'Paul Kelly'.

Paul Kelly (Member)

A handwritten signature in black ink, appearing to read 'Emma Power'.

Emma Power (Member)



Local Government Standards Panel

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| Complaint Number | SP2019-028 |
| Legislation | <i>Local Government Act 1995</i> |
| Complainant | Ms Rosemary Bezu |
| Respondent | Mayor David Lucas |
| Local Government | City of Swan |
| Regulation | Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> |
| Panel Members | Ms Sarah Rizk (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Deputy Member) |
| Heard | 23 August 2019 Determined on the documents |
| Outcome | Training |

SANCTION DECISION AND REASONS FOR DECISION

Published 29 October 2019

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.



Introduction

1. On 5 June 2019 the Panel found that Mayor David Lucas (“Mayor Lucas”), a member of the City of Swan (“City”), committed one breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (“the Regulations”) when he sent an e-bulletin in March 2019 to Swan Valley and Regional Networks addressed to Altone Ward residents, in relation to candidates for the next occurring Local Government By-Election in the City’s Altone ward.
2. On 26 June 2019 the Panel published its Finding and Reasons for Finding (“Findings”) that Mayor Lucas had breached Regulation 7(1)(b). The Panel reviewed all the evidence presented to it and said:

“53. *Earlier in the Letter, Mayor Lucas specifically identifies Cr Kiely as residing in Guildford and Ms Catalano as residing in Midland. This indicates that he was again referring to these parties in respect to his comment as to “hidden agendas”.*

54. *This comment is clearly intended to reflect negatively upon those candidates as this phrase is commonly used in a negative context to suggest an ulterior or sinister motive.*

55. *.....the specific comment that Cr Kiely “misrepresented” the matter infers that he acted in an improper manner.*

56. *The final comment noting that Mayor Lucas does not “trust” Ms Catalano can clearly be seen as derogatory, intimating that she is untrustworthy and not suitable as an election candidate.*

57. *Although it is acceptable for a person to support a given candidate, it is not acceptable to negatively compare candidates, nor imply that any candidates are guilty of wrongdoing.*

58. *Generally, the public will expect that, although sitting councillors may have preferred candidates or parties, that such sitting councillors will act in a relatively impartial manner and not use their influence to unduly discredit or disadvantage other parties.*

59. *Further, in his role as Mayor, Mayor Lucas should have reasonably known that any comment made by him was likely to be given considerable weight by the public.*

.....

66. *Each of these factors indicate that it was intended by Mayor Lucas that both Ms Catalano and Cr Kiely be seen in a negative light by the public.*

67. *The argument by Mayor Lucas that everything he stated was the truth is not compelling. The relevant negative comments and language are all based upon Mayor Lucas’s personal opinion in the context of the Letter.”*

Jurisdiction

3. The Panel convened on 23 August 2019 to consider how it should deal with the breach. The Panel accepted the Department’s advice that on this date there was no available information to indicate that Mayor Lucas had ceased to be or was disqualified from being a councillor.

Possible sanctions



4. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by —

“(a) *dismissing the complaint; or*

(b) *ordering that —*

(i) *the person against whom the complaint was made be publicly censured as specified in the order; or*

(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).”*

5. 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.

Mayor Lucas’s submissions

6. 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).¹

7. In a letter dated 4 July 2019, Mayor Lucas was notified and provided with a copy of the Panel’s Findings, and he was invited to make submissions as to how the Panel should deal with the breach under section 5.110(6).

8. Mayor Lucas sent his submissions to the Department by email on 2 August 2019, in which he submitted:

- There was a complicated history in the lead up to the Letter being sent which related to the New Junction Project (“Project”), and some of the comments he made were taken out of context;
- The statements that he made in the Letter were largely based on interactions that had occurred in relation to the Project. He did not intend to cause detriment to other parties, but simply to put forward examples of his own experiences with some of the candidates and to provide a different perspective.
- He has had to deal and respond to ongoing disruption at Council Meetings and public forums as well as disparaging remarks and allegations of dishonesty, bribery and corruption. He has also been the victim of a physical attack at a public meeting, which resulted in the need for medical attention.

¹ Section 5.110(5) of the Act.



- Some of the statements that he made in the Letter did not relate to Ms Catalano or Cr Kiely but were in reference to material circulated by other candidates.
- He accepts he may not have demonstrated the best judgement and that he could have chosen his words more carefully, but he does not consider that his actions were “*so wrongful and inappropriate in the circumstances*” that they call for the imposition of a penalty.
- He does not believe the comments were unfair when they are considered in context, however he accepts he should not have made them as Mayor.
- He submits that there should be no penalty, however if the Panel is of the view that a penalty should be imposed, he would be willing to undertake training on this matter.

Panel’s consideration

9. Mayor Lucas had not previously been found to of committed any minor breaches.
10. The Panel does not consider that dismissal of the Complaint as requested by Mayor Lucas is appropriate because this would indicate that his conduct was so minor that no penalty is warranted. The Panel found that he included certain statements in the Letter with the intent to cause a detriment to two individuals. The first was a candidate in the upcoming By-Election who he described as being untrustworthy, and whom he inferred was an unsuitable candidate for the position of a councillor. The second was a fellow elected member who he denigrated in his role as a councillor.
11. However, the Panel also does not consider it is appropriate to make an order for censure for Mayor Lucas’s actions in this matter, as they are not so serious to justify such an order. When the Panel makes an order that a Notice of Public Censure be published, that Notice is to be published by the local government’s CEO; the expense is borne by the local government and such expense is significant where the Notice is to be published in a newspaper or newspapers.
12. The Panel has therefore considered the options of ordering training or a public apology (or both).
13. In his Response, Mayor Lucas takes the opportunity to continue to explain and defend his conduct; however, importantly, it is also clear that he has reflected on his behaviour and acknowledges that he should not have made the statements in the Letter in his capacity as Mayor. He is also open and receptive to further training.
14. Mayor Lucas holds an important role for the City, and in this particular instance he showed a lack of judgement when it came to balancing his various responsibilities. In the circumstances, the Panel decides that training in the area of providing council members with an understanding of their role and responsibilities in leading and supporting their communities, while following the processes and procedures of their Local Government, is appropriate.

Panel’s decision



15. Having regard to the Findings, the matters set out herein, 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 s5.110(6) of the Act, is that pursuant to subsection (b)(iii) of that section, Mayor Lucas is ordered to undertake training.

A handwritten signature in black ink, appearing to read 'SRizk'.

Sarah Rizk (Presiding Deputy Member)

A handwritten signature in black ink, appearing to read 'ERowe'.

Elanor Rowe (Deputy Member)

A handwritten signature in black ink, appearing to read 'RAubrey'.

Rebecca Aubrey (Deputy Member)



ATTACHMENT

| | |
|-------------------------|---|
| Complaint Number | SP2019-028 |
| Legislation | <i>Local Government Act 1995</i> |
| Complainant | Ms Rosemary Bezu |
| Respondent | Mayor David Lucas |
| Local Government | City of Swan |
| Regulation | Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> |
| Panel Members | Mrs S Rizk (Presiding Member) Ms E Rowe (Deputy Member) Ms R Aubrey (Deputy Member) |
| Heard | 23 August 2019 Determined on the documents |
| Outcome | Training |

ORDER FOR TRAINING

Published 29 October 2019

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.



THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. By 6 December 2019, Mayor Lucas, a member of the City of Swan, shall undertake:
 - (a) the training course for Elected Members “Serving on Council” provided by WA Local Government Association (WALGA) for a period of 15 hours; or
 - (b) a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a similar duration, but at least 10 hours.



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."