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## Local Government Standards Panel

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Complaint Number	SP 4 of 2018 [DLGSC 20180205]
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Dorothy (Dot) Newton</b>
<b>Respondent</b>	<b>Councillor Paul Miles</b>
Local Government	<b>City of Wanneroo</b>
Regulation	Regulation 6(2)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members	Mrs E Power (Member) Mr M Beecroft (Deputy Member) Councillor P Kelly (Member)
Heard	9 August 2018 Determined on the documents
Outcome	Public censure

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### DECISION AND REASONS FOR DECISION

Published: 30 August 2018

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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 30th April 2018, the Panel found that Councillor Paul Miles, a Councillor for the City of Wanneroo (**“the City”**) committed a breach of the Local Government (Rules of Conduct) Regulations 2007 (WA) (**“the Regulations”**) being of Regulation 6(2)(b) when he disclosed information acquired during the Closed OCM in a Facebook post on 15<sup>th</sup> November 2017 (**“the Minor Breach”**).

## Jurisdiction

2. The Panel convened on 9 August 2018 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 Miles 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;*
  - c. *ordering 2 or more of the sanctions described in paragraph (b).*

## Councillor Miles’ 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 letter dated 24 May 2018, Cr Miles 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
  - c. offered an opportunity to make submissions as to how the Minor Breaches should be dealt with under section 5.110(6) of the Act.
7. The Department did not receive any submission from Cr Miles within the 14 day timeframe provided in the letter of the 24 May 2018.

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



### 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. Councillor Miles has not acknowledged the Minor Breach, nor apologised or accepted responsibility for his misconduct.
10. In all his prior submissions Cr Miles asserted that he did not consider that his actions constituted a minor breach.
11. Maintenance of confidentiality by council members is a serious obligation. An unauthorised disclosure has the potential to undermine the trust and confidence of council members in each other and has the potential to impair the efficacy of a council's deliberation.<sup>2</sup>
12. The Panel has considered all available sanctions under section 5.110(6).
13. Given the serious nature of the minor breach, the appropriate penalty is that Cr Miles be publicly censured for the breach of regulation 6(2)(b) pursuant to section 5.110(6)(b)(i) of the Act.
14. A censure is a public statement of disapprobation of a councillor's conduct. The Panel considers this to be the appropriate penalty as it will send a message to the community and other councillors that Cr Miles's conduct was unacceptable and deserving of a serious penalty.
15. Further this measure also demonstrates support of the institution of local government and those council members who properly observe the standards of conduct expected them.

### The Panel's decision

16. The Panel orders that that under section 5.110(6)(b)(i) of the Act, in relation to the breach of regulation 6(2)(b) of the Regulations, Cr Miles be publicly censured in terms of the attached Order.

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Emma Power (Presiding Member)

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Paul Kelly (Member)

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Mark Beecroft (Deputy Member)

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<sup>2</sup> *Mazza and Local Government Standards Panel [2009] WASAT 165 at [97]*



## Attachment

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## ORDER

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**THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:**

1. Councillor Paul Miles, a Councillor for the City of Wanneroo, be censured as specified in paragraph 2 below.
2. Within the period of 29 days to 43 days from the day following the date of service of this Order on Councillor Miles, the Chief Executive Officer of the City of Wanneroo arrange for the following Notice of Public Censure to be published, in no less than 10 point print:
  - (a) as a one-column or a two-column display advertisement in the first 15 pages of “The West Australian” newspaper; and
  - (b) as a one-column or a two-column display advertisement in the first 15 pages of the “Wanneroo Times” Newspaper.



Government of **Western Australia**  
Local Government Standards Panel

**NOTICE OF PUBLIC CENSURE**

The Local Government Standards Panel has found that Councillor Paul Miles, a Councillor of the City of Wanneroo, breached regulation 6(2)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* by disclosing information acquired during a closed ordinary council meeting to members of the public by way of a Facebook post.

In engaging in this conduct, Councillor Miles made improper disclosure of information received in his capacity as a council member.

The Panel censures Councillor Miles for the breach of regulation 6(2)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)*.

**LOCAL GOVERNMENT  
STANDARDS PANEL**

Date of Order: 30 August 2018



## 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."