

## **LOCAL GOVERNMENT STANDARDS PANEL**

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

Complaint Number	SP 27 of 2016 [DLG 20160137]
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Deputy Lord Mayor James Limnos</b>
<b>Subject of complaint</b>	<b>The Right Honourable the Lord Mayor Lisa Scaffidi</b>
Local Government	<b>City of Perth</b>
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Sanction Decision	Public censure (Determined on the documents)
Date of Sanction Decision	20 March 2017

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### **DECISION AND REASONS FOR DECISION**

Published 05 April 2017

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#### **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**

## Finding of Minor Breach – regulation 7(1)(b)

1. At its meeting on 31 October 2016 the Local Government Standards Panel (the Panel) found the The Right Honourable the Lord Mayor Lisa Scaffidi of the City of Perth (the Lord Mayor) committed a minor breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) at an ordinary council meeting on 17 May 2016 (the Meeting) by allowing Councillor Janet Davidson to move a motion without notice that Council declare a vote of no confidence in the Deputy Lord Mayor, Councillor James Limnios (the Motion).
2. On 31 October 2016 the Panel found that:
  - Standing Order 4.14 of the City's *Standing Orders Local Law 2009* (the SO) allows a councillor to move a motion involving business that is not included in the agenda for that meeting if the Presiding Member (who in this case was the Lord Mayor) has first consented to the business being raised. The SO allows the Presiding Member to give consent if:
    - (a) the nature of the business means that it cannot be included in the agenda for the next meeting; or
    - (b) the delay in referring the business to the next meeting could have adverse legal or financial implications for the City.
  - The Motion was not on the agenda for the Meeting and the Deputy Lord Mayor had no notice that the Motion would be brought to Council.
  - The Meeting was open to the public when the Motion was put and considered by Council. The Motion was carried resulting in a declaration that Council had no confidence in the Deputy Lord Mayor.
  - The Lord Mayor allowed Cr Davidson to speak to the Motion. Cr Davidson alleged the Deputy Lord Mayor had not been attending enough events as a representative of the City, the shortfall being picked up by other councillors. She described the Deputy Lord Mayor's conduct as "totally unacceptable".
  - If the Lord Mayor's motives were to improve transparency and the distribution of work (as she said they were) she could have done this through a motion on notice or through a meeting with the Deputy Lord Mayor. Instead, she allowed the Motion to be moved without notice and debated, intending to harm the Deputy Lord Mayor.
  - The vote of no confidence was a "public rebuke", capable of damaging the Deputy Lord Mayor's reputation or causing others to think less favourably of him.

- On 13 May 2016, five days before the Meeting, the City’s Chief Executive Officer (CEO) had sent a memorandum to all councillors referring to “a lot of media speculation of motions of no confidence being submitted”; reminding them that a motion of no confidence has “no binding effect or obligations placed upon the Elected Member”; and encouraging them to submit a notice of motion through the General Business process which “allows for greater collaboration amongst Elected Members and Officers, whilst allowing the opportunity to provide input on matters prior to Council’s determination of a matter.”

### **Possible sanctions**

3. Under section 5.110(6) of the *Local Government Act 1995* (WA) (the Act) the Panel may:
  - (a) dismiss the complaint;
  - (b) order that the councillor —
    - (i) be publicly censured as specified in the order;
    - (ii) apologise publicly as specified in the order; or
    - (iii) undertake training as specified in the order;

or

  - (c) order 2 or more of the sanctions described in paragraph (b).

### **Councillor’s submission**

4. If the Panel finds that a councillor has committed a minor breach, the Panel must give the councillor an opportunity to make submissions to the Panel about how the breach should be dealt with.<sup>1</sup>
5. By letter dated 12 January 2017, the Department notified the Lord Mayor of the Panel’s findings, sent her a copy of its Reasons for Findings and invited her to make a written submission about how the Panel should deal with the breach.
6. The Department received an email response from the Lord Mayor dated 25 January 2017, which reads:

“I wish to further query aspects of findings on this matter as was heard on 31 October 2016 for the following reasons:-

1. On 31/8/2016 I drew to (a Departmental officer’s) attention that due to the publicly disparaging comments about me by Cr Paul Kelly during 2015/2016 that he could likely demonstrate bias to me, yet I see he was in fact on the Panel (ref email enclosed).
2. I do not accept as suggested that I provided the spreadsheet in 6.3 (i) (ii). In fact it was referred to (and it is information accessible by any Cr) when several Crs were querying why there were so many delegations coming through. It should be noted I am not privy to onward delegations but I started being asked by 5 – 6 Crs and then observing that the Crs not the Deputy Lord Mayor were attending many events via my vision of the

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<sup>1</sup> Section 5.110(5) of the Act.

Lord Mayors diary. The spreadsheet is a document any Cr or staff can access as we need to be able to refer back to see who attended if asked and be across which events may have been delegated out beyond the LM. Conversations had been had with the Deputy Lord Mayor about poor attendance so it was incorrect to suggest this had not taken place, and therefore the Panel should not suggest otherwise.

FYI – the situation post May 19th 2016 continues as the Deputy Lord Mayor is once again (presently) on further extended leave (within the same twelve month period) being away from 13/1/17 to 11/2/17 and the updated attached spreadsheet again shows the same pattern of onward delegations completely contrary to his statements.

NB: It needs to be borne in mind as a statement of fact that on 12th May 2016 Cr Limnios – the Deputy Lord Mayor publicly asked me to stand aside as the Lord Mayor via every television network and radio / newspaper. While the Notice of Motion was not in reaction to that as previously stated it should be brought to the Panel’s attention that I have not lodged a complaint against him specifically referencing 7 (1) (b).

Accordingly, I believe a review is warranted based on these afore-mentioned points.

Yours sincerely

Lisa M. Scaffidi”

7. The Lord Mayor does not make any submissions in her email dated 25 January 2017 about what sanction the Panel should impose for breaching regulation 7(1)(b).
8. In relation to the Lord Mayor’s submission that Councillor Paul Kelly, a member of the Panel, was biased, the Panel addressed this at its meeting on 31 October 2016. Cr Kelly outlined the extent of his dealings with the Lord Mayor. He said he hadn’t spoken publicly or made any comments about her regarding the minor breach complaint that was before the Panel at that meeting. The Panel decided that Cr Kelly should continue as a member of the Panel considering the complaint because a reasonable, fair-minded person who was aware of the facts that could give rise to a perception of bias would not conclude that Cr Kelly would not be impartial when considering the allegations before the Panel.
9. After revisiting the purpose and contents of the spreadsheet (paragraph 1 of her email) and alleging the Deputy Lord Mayor was continuing a “pattern of onward delegations” (under “FYI” in the email) the Lord Mayor said a review is warranted. Although she does not say who should conduct the review, she implies the Panel should reconsider its breach finding.
10. The Panel’s role on 20 March 2017 was to consider how the Lord Mayor should be sanctioned, not to review or reconsider the Panel’s breach finding. The origin, purpose and content of the spreadsheet, and whether there is a “pattern” of behaviour is not relevant to the matter of sanction.
11. Paragraph 2 and the “NB” paragraph in the Lord Mayor’s submission are not relevant to the sanction decision.

## Panel's consideration

12. The Panel notes that the Lord Mayor has not previously been found to have committed a minor breach.
13. The Lord Mayor does not show any respect for the Panel's decision in her email dated 25 January 2017 and she neither acknowledges her breach nor apologises for it. Instead she seeks to justify the way the Deputy Lord Mayor was treated at the Meeting and makes a fresh allegation against him: there is "a pattern of onward delegations ..."
14. The transcript of proceedings in relation to Item 174/16 "Urgent Business"<sup>2</sup> shows the Lord Mayor allowed Cr Davidson to put the Motion and speak to it without inviting any discussion as to whether the Motion should be put to Council under the SO. At the Meeting the CEO told Council he had not received any notice that the Motion would be proposed as a matter of urgent business without notice. The Lord Mayor would have or should have anticipated that dealing with the matter without notice would be of concern to the Deputy Lord Mayor and other councillors. There was such concern:
  - The transcript records that after the Motion had been put to Council Cr Harley said the Motion was a matter of sentiment; was not urgent business; that Council should not be discussing it and that the issue the subject of the Motion should have been raised through the "normal process".<sup>3</sup>
  - Cr Green said she felt "completely ambushed" by the Lord Mayor's decision that the matter "should come to Council at this very moment".<sup>4</sup>
  - In his complaint the Deputy Lord Mayor submitted the Motion raised made serious allegations against him. He did not have time to prepare to address it and it did not qualify as "urgent business" under the SO. The Panel finds that the Deputy Lord Mayor would have expressed his objection to the Motion being dealt with as urgent business without notice had the Lord Mayor invited councillors to comment on whether the Motion should be put.
15. The Lord Mayor did not address the criteria in the SO before allowing Cr Davidson to say the Deputy Lord Mayor had not fulfilled his duties. She invited a seconder (Cr McEvoy). Cr Davidson proceeded to further malign the Deputy Lord Mayor.<sup>5</sup>
16. At the Meeting the CEO said whether a matter should be dealt with without notice was a matter for the presiding member but reminded councillors of the memorandum he sent to all councillors in the week before the Meeting advising them of the criteria for dealing with a matter without notice as urgent business.<sup>6</sup> The Manager Governance explained the "two tests" for dealing with a matter as urgent business, repeating what

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<sup>2</sup> Page 1 of the transcript of Item 174/16 "Urgent Business" (the Item).

<sup>3</sup> Page 4 of the transcript of the Item.

<sup>4</sup> Page 8 of the transcript of the Item.

<sup>5</sup> Page 2 of the transcript of the Item.

<sup>6</sup> Page 4 of the transcript of the Item.

the CEO said in his memorandum.<sup>7</sup> These officers' contributions reinforce the proposition that the Lord Mayor knew she was acting outside the SO.

17. The Lord Mayor's conduct meant that the Deputy Lord Mayor did not have any notice of the Motion and was therefore unable to prepare to address the Motion or deal with the subject of the Motion through another process, such as through a meeting with the Lord Mayor, or through General Business processes in the way CEO suggested in his memorandum dated 13 May 2016.
18. The Lord Mayor had been a councillor since 8 July 2000 and the Lord Mayor since 20 October 2007. She was or should have been very knowledgeable about the content and purposes of all Standing Orders and how to apply them.
19. As the Presiding Member the Lord Mayor had a duty to properly consider the basis on which a matter could be put to Council without notice. The power to allow motions to be put without notice should only be exercised when absolutely necessary and after taking the right things into account. The CEO had reminded the Lord Mayor and other councillors about the matters to be taken into account, and alternative processes, only five days before the Meeting.
20. The Lord Mayor knew or should have known the Meeting's proceedings would be of great interest to the media. She decided an assertion that the Deputy Lord Mayor was not undertaking all his duties needed to be dealt with urgently, in public and without notice when it did not need to be. This would have exaggerated the seriousness of the matter in the eyes of members of the public attending the Meeting and the media. Her decision allowed Cr Davidson to voice negative comments about the Deputy Lord Mayor in public, without the Deputy Lord Mayor having been able to prepare for any discussion amongst councillors in a public forum and in the media.
21. It is not appropriate to dismiss the breach. This would condone the Lord Mayor's conduct and trivialise the breach.
22. Neither is it appropriate to order that the Lord Mayor undergo training. She had been a councillor since 2000. There is no reason for the Panel to think that she did not have a thorough working knowledge of the SO. The Panel found that she intended to damage the Deputy Lord Mayor irrespective of what was in the SO.
23. The Lord Mayor has not acknowledged the breach or apologised to the Deputy Lord Mayor or the Panel, and in fact took the opportunity to again criticise the Deputy Lord Mayor when the Panel invited her to address the matter of sanction. The Panel considers any public apology would not be sincere.

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<sup>7</sup> Page 4 of the transcript of the Item.

24. The only appropriate sanction is that the Lord Mayor be publicly censured.

**Panel's decision**

25. The Panel's decision on how the minor breach is to be dealt with under section 5.110(6) of the Act is that the Lord Mayor be publicly censured under section 5.110(6)(b)(i), as set out in Attachment A hereto.



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Brad Jolly (Presiding Member)



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Paul Kelly (Member)



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Merranie Strauss (Member)

Date of Reasons for Decision - 05 April 2017

**Attachment A**

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Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
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**ORDER FOR PUBLIC CENSURE**

Published 05 April 2017

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## THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. The Right Honourable the Lord Mayor Lisa Scaffidi of the City of Perth (the Lord Mayor) 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 the Lord Mayor, the Chief Executive Officer of the City of Perth 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 Perth Voice Newspaper.

