

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 4 of 2014 DLG 20140069
Legislation	<i>Local Government Act 1995</i> (WA)
Complainant	Dr Shayne Silcox
Subject of complaint	Councillor Nicholas Pazolli
Local Government	City of Melville
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Cr P Kelly (Member) Mr P Doherty (Member)
Heard	3 February 2015 (Determined on the documents)
Outcome	Public apology ordered.

DECISION AND REASONS FOR DECISION SANCTIONS

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. Definitions

1.1 In these Reasons, unless otherwise indicated:

- (a) a reference to a section is a reference to the corresponding section in the *Local Government Act 1995* (WA), and a reference to a regulation is a reference to the corresponding regulation in the *Local Government (Rules of Conduct) Regulations 2007* (**Regulations**);
- (b) a reference to the *Act* is a reference to the *Local Government Act 1995* (**Act**); and
- (c) words appearing in **bold** in the Panel's Finding and Reasons for Finding in these matters (**Breach Findings**) bear the same meaning in these Reasons.

2. Summary of Breach Findings

2.1 At its meeting on 14 August 2014 the Local Government Standards Panel (**Panel**) made a finding that Councillor Nicholas Pazolli, a member of the Council (**Council**) of the City of Melville (**City**), committed a breach of regulation 7(1)(b) by making statements (**Statements**) at a Council meeting held on 9 December 2013, thereby making an improper use of his office as a Councillor of the City to cause detriment to the City and to the other Councillors of the City.

(**Minor Breach**)

3. Summary of Decision

3.1 The Panel considered how the Minor Breach is to be dealt with under section 5.110(6) and concluded, for the following reasons, that it is appropriate to the gravity of the Minor Breach that the Panel order Cr Pazolli to apologise publicly as specified in the attached Order.

4. Procedural fairness

4.1 By letter dated 17 November 2014, the Panel gave to Cr Pazolli:

- (a) notice of the Minor Breach (**Notice**);
- (b) a copy of the Breach Findings; and
- (c) a reasonable opportunity for him to make submissions about how the Minor Breach should be dealt with under section 5.110(6).

5. Cr Pazolli's response and submissions

5.1 Cr Pazolli responded to the Panel by letter dated 5 December 2014 (**Submissions**) in which he says:

"In response to your letter of 17 November, 2014, received on 24 November, 2014, I wish to make the following submission as to how the minor breach should be dealt with under Section 5.110(6) of the Local Government Act 1995.

I am of course disappointed in the finding of the Local Government Standards Panel (LGSP) of a minor breach and reserve the right to have the decision reviewed at the State Administrative Tribunal.

However, in terms of which of the Section 5.110(6) options would be appropriate to deal with the finding I make the following points:

1. The finding states that the detriment caused by my conduct was a “loss of reputation” (Clause 36) to “the group of elected members as a whole and the local government” (Clause 38). As such any option selected by the Local Government Standards Panel that creates greater publicity than occurred by my conduct at the December 9, 2013 meeting would presumably magnify any such loss of reputation far beyond that caused by my conduct and therefore such options should be avoided.
2. The December 13, 2013 Special Council Meeting was attended by a relatively small group of residents who were largely members of the Southern Frame Group. Though there was a member of the press present, my question at the meeting (the subject of this breach finding) was not reported in the public press or the Council Meeting Minutes and thus not generally known by the public (at that time the City of Melville did not take audio recordings of Council meetings). A public censure of my conduct would probably receive orders of magnitude greater public exposure than that caused by my question and thus greatly increase the detriment to the local government and elected member group.
3. In terms of the level of detriment caused by my question, I would submit that the inherent non-specific form of my question and the lack of any publicity outside of the meeting must rank the extent of this minor breach at a lower level of the scale. As such a dismissal of the complaint would be an appropriate response.
4. I therefore submit that the most appropriate option is 5.110(6)(a) “dismissing the complaint” as this would restrict any further detriment resulting from my conduct.
5. Ranking the other breach options, undertaking training would minimize any further detriment, followed by my making an apology at a specified Council meeting. A public censure in the form of an advertisement notice in the press could result in the details of the breach being reported in the press and greatly increasing the detriment to the local government.

Thank you in anticipation of your consideration in this matter.”

6. Panel’s views

- 6.1 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.
- 6.2 Section 5.110(6) 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

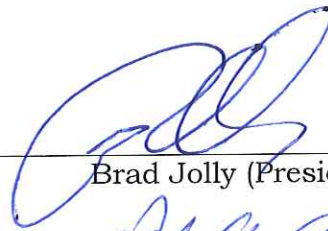
- (c) order 2 or more of the sanctions described in paragraph (b).
- 6.3 In considering an appropriate sanction or sanctions for the present breach the Panel notes that:
- (a) Cr Pazolli has not previously been found to have breached the *Regulations*; and
 - (b) in his Submissions, Cr Pazolli:
 - (i) does not express any remorse or contrition for committing the Minor Breach;
 - (ii) does not suggest that the Minor Breach occurred through his lack of knowledge or education on the issue or issues concerned; and
 - (iii) submits that dismissal of the Complaint is “the most appropriate action” because the other options available to the Panel may lead to greater publicity of the Statements with consequent detriment to the City and the Other Councillors.
- 6.4 In view of the matters set out above and in paragraphs 36 to 41 (inclusive) and 46 of the Breach Findings, the Panel does not consider that it would be appropriate to dismiss the Complaint.
- 6.5 Given that there is no evidence to suggest that the Minor Breach occurred through Cr Pazolli’s lack of knowledge or education on the issue or issues concerned, the Panel does not consider it would be appropriate to order that Cr Pazolli attend training.
- 6.6 The Panel has previously expressed the view that a breach of regulation 7(1) is a serious matter and will usually deserve the sanction of a public censure – not only as a reprimand aimed at reformation of the offending council member and prevention of further offending acts, but 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.
- 6.7 It is noted that when the Panel makes an order that a Notice of Public Censure be published, and that the Notice is to be published by the local government’s CEO at the expense of the local government, such expense is significant where such publishing is to be in a newspaper or newspapers.
- 6.8 In the present case, while the Panel gave consideration to publicly censuring Cr Pazolli, it considered that doing so would likely result in further publicity being given to the Statements which may in turn result in further detriment to the Councillors of the City which would not be in the best interests of local government in the State.
- 6.9 A public apology of the kind ordered by the Panel is also a significant sanction, as it also involves a high degree of public admonition of the conduct of the council member concerned.
- 6.10 The Panel has previously expressed the view that the circumstances that will in almost all occasions deserve the sanction of a public apology to another person include those where a council member’s offending conduct is or conveys a slight or a personal attack on the other person,

particularly where the other person is an employee of the council member's local government.

- 6.11 In the Panel's view the Statements are such that it should order that Cr Pazolli make a public apology to the Councillors of the City in terms of Attachment "A" hereto.

7. Panel decision

- 7.1 Having regard to the Breach Findings, the matters mentioned in paragraphs 5 and 6 above, 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 section 5.110(6) is that, pursuant to subsection (b)(ii) of that section, it orders Cr Pazolli is to apologise publicly to the other Councillors of the City as specified in the Order 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"

LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number SP 4 of 2014
DLG 20140069

Legislation *Local Government Act 1995* (WA)

Complainant **Dr Shayne Silcox**

Subject of complaint **Councillor Nicholas Pazolli**

Local Government City of Melville

Regulation Regulations 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*

Panel Members Mr B Jolly (Presiding Member)
Cr P Kelly (Member)
Mr P Doherty (Member)

Heard 3 February 2015
(Determined on the documents)

ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Nicholas Pazolli, a member of the Council of the City of Melville, apologise publicly to the Councillors of the City, as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the next City of Melville Ordinary Council Meeting immediately following the date of service of this Order on Nicholas Pazolli:
 - (a) Nicholas Pazolli shall request the presiding person for his/her permission to address the meeting immediately following Public Question Time or during the Announcements part of the meeting or at such time during the meeting when it is open to the public as the presiding member thinks fit, for the purpose of the said Nicholas Pazolli making a public apology to the Councillors of the City; and
 - b) Nicholas Pazolli 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 about certain conduct by me as a member of this Council, at its meeting held on 9 December 2013 when members of the public were present and immediately before I commenced my speech in relation to the then proposed "Final Adoption of the Melville City Centre Structure Plan", when I orally made allegations concerning unspecified Councillors of this City; and*
 - (2) *The Local Government Standards Panel has considered the complaint, and has made a finding that by this conduct I committed a breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 in that I made an improper use of my office as a Council member to cause detriment to Councillors of this City – such detriment being damage or loss to their reputations.*
 - (3) *I apologise to my fellow Councillors for my said conduct, and regret any hurt, inconvenience or unpleasantness I have caused to them."*
3. If the Cr Pazolli fails or is unable to comply with the requirements of paragraph 2 above then, within 14 days after the next City of Melville Ordinary Council Meeting immediately following the date of service of this Order on him, he 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 Melville Times newspaper.

NOTICE OF PUBLIC APOLOGY

(1) A complaint has been made to the Local Government Standards Panel about my conduct as a member of the City of Melville's Council at its meeting held on 9 December 2013 when members of the public were present and immediately before I commenced my speech in relation to the then proposed "Final Adoption of the Melville City Centre Structure Plan", when I orally made allegations concerning unspecified Elected Members of the Council; and

(2) The said Standards Panel has considered the complaint and made a finding that by this conduct I committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* in that I made an improper use of my office as a Council member to cause detriment to the City Councillors— such detriment being damage or loss to their reputations.

(3) I apologise to my fellow Councillors for my said conduct, and regret any hurt, inconvenience or unpleasantness I have caused to them.

Councillor Nicholas Pazolli