



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

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Local Government Standards Panel Annual Report 2015-2016



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August 2016

Prepared by:

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Message from the Presiding Member

To: The Minister for Local Government

The following report is the annual report of the Local Government Standards Panel (the Standards Panel) for the period from 1 July 2015 to 30 June 2016.

The Standards Panel composition changed from the previous financial year.

In September 2015, Mr Richard Hooker ceased to be the Standards Panel's deputy legal member and in October 2015, The Right Honourable The Lord Mayor, Ms Lisa Michelle Scaffidi ceased to be the Standards Panel's deputy local government member. The term of appointment for the remaining Standards Panel Members expired on 9 April 2016.

The timeframe taken for complaints to be finalised by the Standards Panel continued to reduce, however there were factors that influenced the trend. This included the cessation of the deputy members together with the appointment process for the new members, which inhibited the ability of the Standards Panel to hold additional meetings for the financial year. Nevertheless, I am confident that the new Standards Panel will maintain a focus on reducing the time taken for complaints to be finalised.

It is appropriate that I acknowledge the significant contributions of Cr Paul Kelly and Mr Peter Doherty and past Standards Panel members over the last four years, not only in terms of their time devoted to the Standards Panel but in building and refining the body of knowledge and precedent relied upon during the deliberation process. This continues to be an invaluable resource continually relied on by the local government sector as a whole.

In June 2016, I was reappointed as the Departmental Member by the Minister for Local Government (the Minister), Cr Paul Kelly was appointed the Local Government Member and Ms Merranie Strauss as the Legal Member, replacing Mr Peter Doherty, who did not seek reappointment.

The Minister also appointed three deputies. Mrs Sheryl Siekierka was appointed as Deputy for the Departmental Member, Cr Rebecca Aubrey was appointed as Deputy for the Local Government Member, and Ms Rachel Yates was appointed as Deputy for the Legal Member.

The Standards Panel is cognisant of the need for continual improvement, not only in the administrative and determinative processes, but in the manner in which the primary legislation, the *Local Government (Rules of Conduct) Regulations 2007* (Regulations) reflects the needs and aspirations of the industry in regard to behavioural matters. The Department of Local Government and Communities (the department) has undertaken a review of the Regulations and associated complaints processes. Building on a previous review conducted in 2011 has resulted in process improvements and amendments to the Act, which are currently under consideration by Parliament.

The purpose of this review was to examine the local government sector's concerns with the minor breach system, identify the likely causes of the concerns and consider whether the Regulations and current complaints processes can be reformed to improve operational efficiency and effectiveness.

The proposed directions encompass four key elements:

1. Amending the regulations to improve clarity and alignment with policy intent;
2. Improving guidance material and complaint documentation;
3. Encouraging mediation and conciliation as an alternative to complaints about interpersonal disputes; and
4. Codifying Standards Panel procedures and practices and simplifying reporting.

The report and recommendations are being finalised for submission to the Minister for approval.

Regulatory amendments that are supported by the Minister will be drafted for the State Government's consideration. Improvements to processes will be implemented by the department in collaboration with the Standards Panel, and public guidance documents will be progressed by the department within the constraints of existing resources.

The Standards Panel remains committed to its objectives of making decisions that promote and enforce high behavioural standards by elected members in local governments across Western Australia.

I take this opportunity to thank the staff at the department for their continued hard work and professionalism in providing administration services to the Standards Panel. Without them, the accomplishments of the Standards Panel would not have been possible.

It is my view that the Standards Panel and its support services will continue to build on its achievements in 2015-16 and strive to maintain increased efficiency in relation to its operations and the important service it provides to the community and the local government sector.

The Standards Panel's decisions (relating to matters that result in a finding that a breach has occurred) are published on the department's website. Decisions that were the subject of a successful review by the State Administrative Tribunal are not published on the website. The decisions can be found on the [Standards Panel web page](#).

A handwritten signature in black ink, appearing to read 'Brad Jolly', with a stylized, cursive style.

Brad Jolly
Presiding Member
Local Government Standards Panel
August 2016

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Overview

The Local Government Standards Panel is the primary standards panel established in late 2007 following the commencement of the *Local Government (Official Conduct) Amendment Act 2007* (the Official Conduct Act) and the introduction of the *Local Government (Rules of Conduct) Regulations 2007*.

The purpose of the Official Conduct Act and the Regulations was to provide a disciplinary framework to deal with certain types of individual misconduct by local government council members.

Composition of the Standards Panel

The Standards Panel is comprised of three members and three deputy members, all of whom are appointed by the Minister.

The 2016-17 members and their deputies are:

- (1) Presiding Member: Mr Brad Jolly, executive director sector regulation and support, Department of Local Government and Communities.

Deputy: Mrs Sheryl Siekierka, senior officer at the department.

- (2) Local Government Member: Councillor Paul Kelly, elected member of the Town of Claremont.

Deputy: Councillor Rebecca Aubrey, elected member at the City of Melville.

- (3) Legal Member: Ms Merranie Strauss, admitted to the legal profession by the Supreme Court of Western Australia and a member of the Mental Health Tribunal.

Deputy: Ms Rachel Yates, admitted to the legal profession by the Supreme Court of Western Australia and an Associate Lecturer at Curtin University.

Disciplinary Framework

The Official Conduct Act established what is largely now Division 9 Part 5 of the *Local Government Act 1995* (the Act), and Schedule 5.1 to the Act. It provides for a complaints system whereby certain alleged (mis)conduct of an individual council member can be reviewed.

As a consequence of the *Official Conduct Act*, the Act provides for the establishment of a Standards Panel by the Minister. The Standards Panel's function is to receive and deal with complaints, made by any person, of alleged minor breaches – that is, alleged breaches by a council member of any rule of conduct in the Regulations or a provision of a local government's local law relating to conduct of people at council or committee meetings.

Number of Standards Panels Established

Although the Act allows for the establishment of more than one standards panel, to date the Minister has established the primary standards panel only. It is this panel which is known as the Local Government Standards Panel.

Administration and Support Services

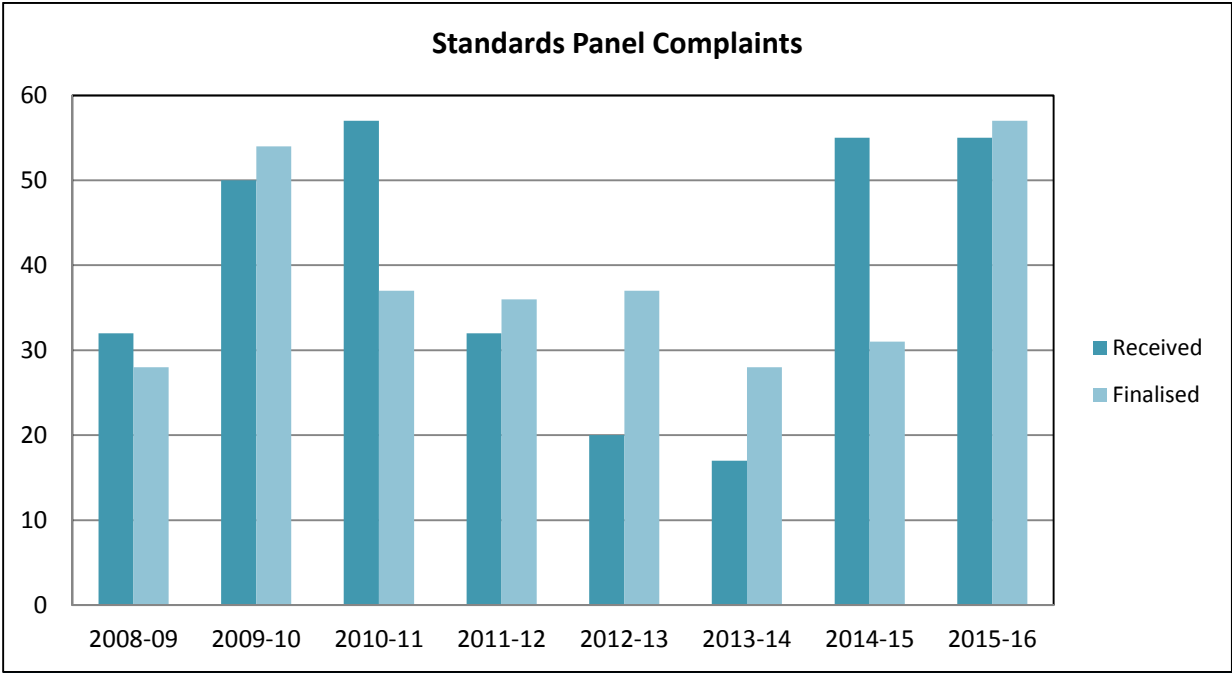
During 2015-16 the Standards Panel's administration and support services were provided by the department.

Complaints Received and Finalised

In the period 2015-16, the Standards Panel received 55 minor breach complaints, and 57 complaints (which include complaints received in the previous financial year) were finalised.

The following table compares the respective number of minor breach complaints received and finalised in the period 2015-16 compared to the number of such complaints received and finalised in previous financial years.

Chart 1: Standards Panel Complaints



The graph shows there has been a similar number of complaints lodged as in 2014-15 and this has spread evenly across the 2015-16 financial year. As an example, 28 minor breach complaints were submitted in the first six months and a further 27 in the second six months.

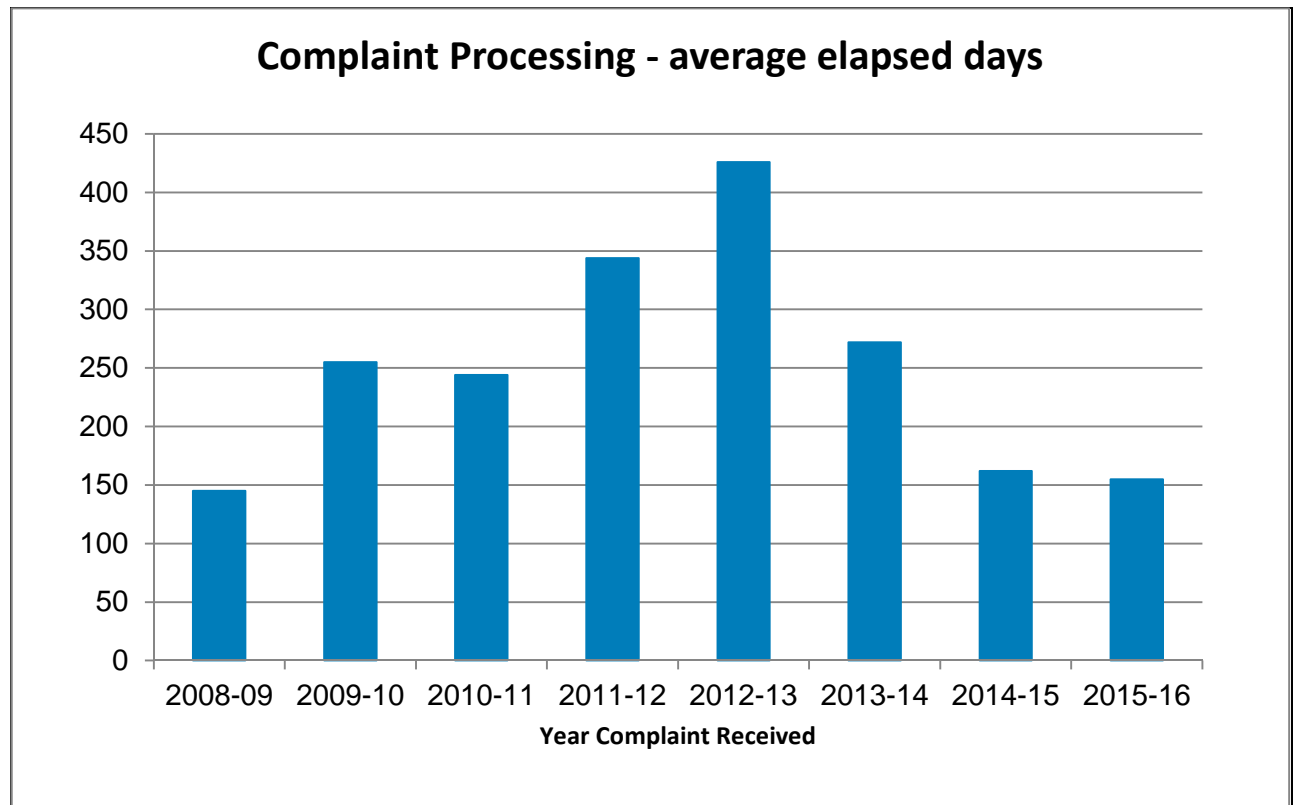
There were 126 allegations contained within the 57 minor breach complaints that were finalised.

Of the complaints finalised in the period of 2015-16, 36 minor breach complaints were finalised in 2015 and a further 21 were finalised in 2016.

Determination of complaints received in 2015-16

The chart below indicates the time that the Standards Panel has taken to determine complaints for the period 2015-16 compared to previous financial years.

Chart 2: Elapsed Days – Standards Panel complaints process

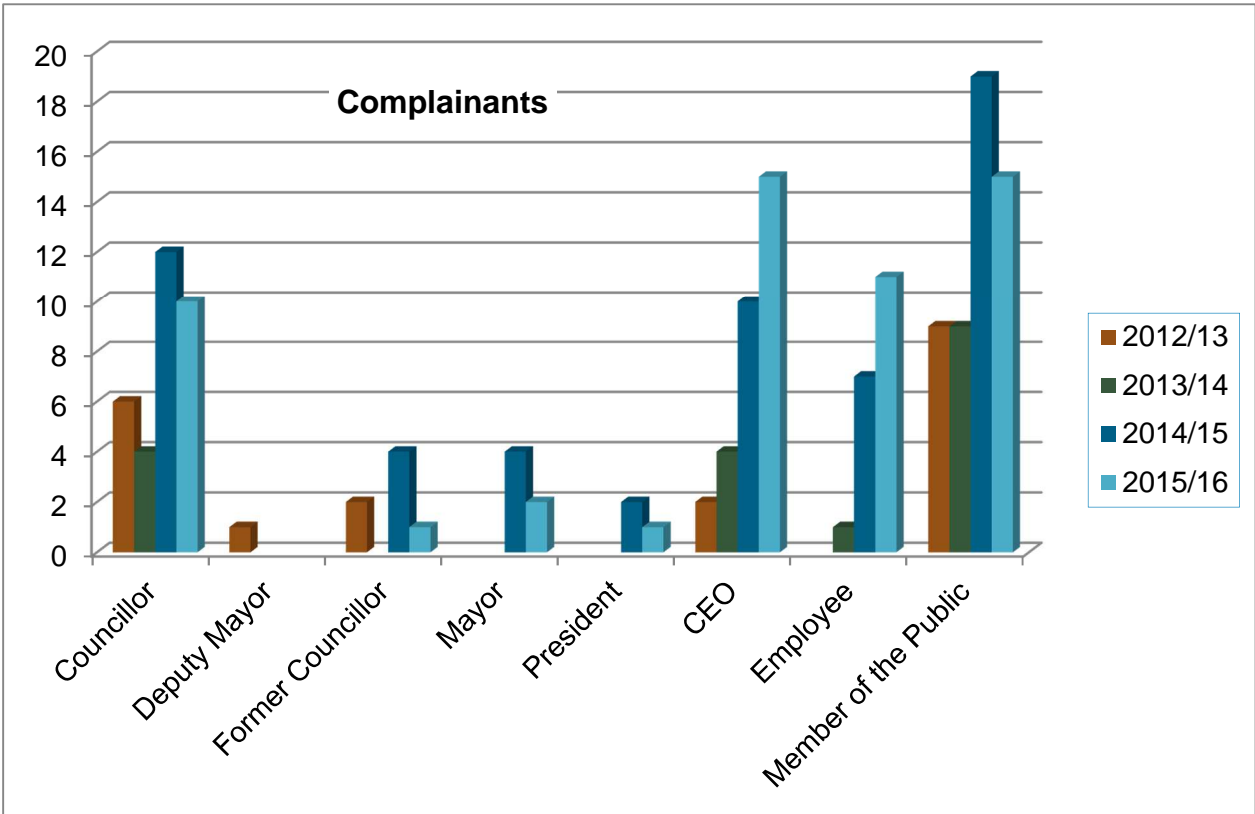


There has been an ongoing improvement in the time taken from the Standards Panel receiving a complaint to the finalisation of the findings and decisions since the processes for handling complaints were reviewed and amended in 2011.

Sources of complaints received in 2015-2016

The chart below indicates the sources of the 55 complaints the Standards Panel received in the period 2015-16 compared to the number of such complaints received in previous financial years.

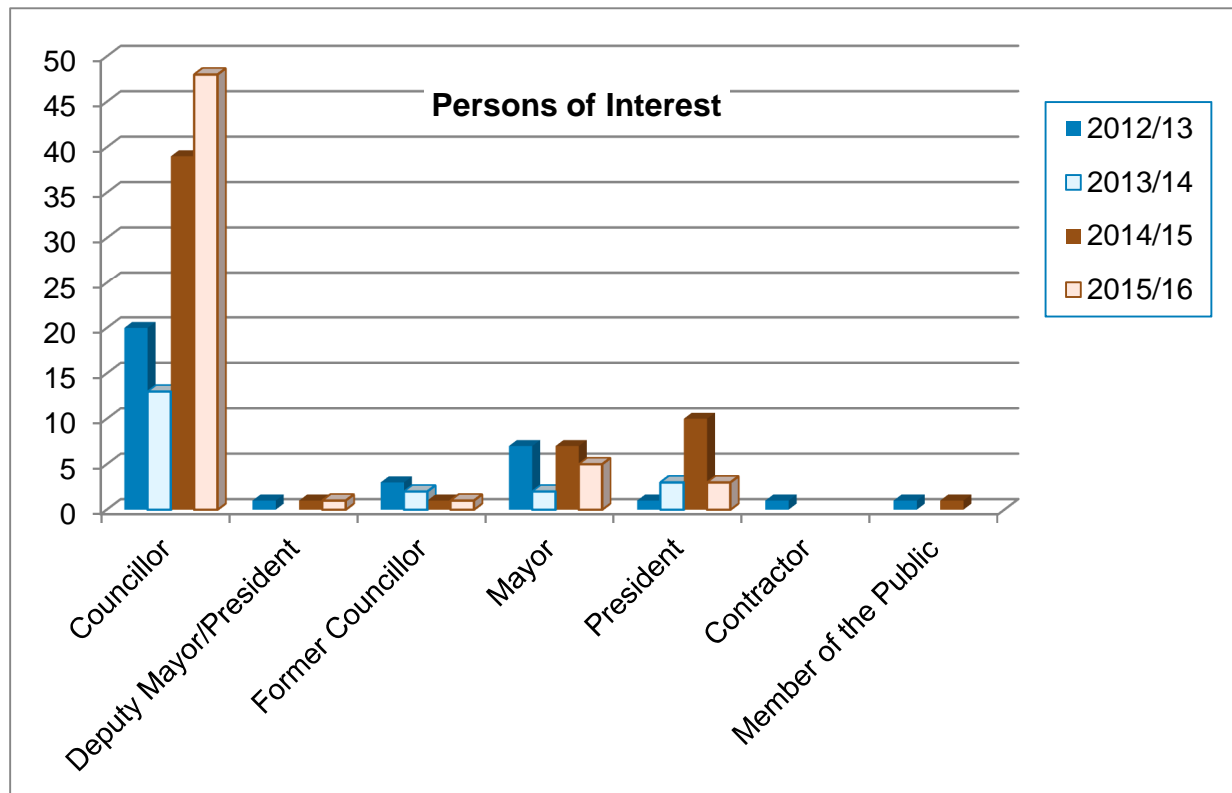
Chart 3: Source of Complaints Standards Panel



Persons of interest in complaints received in 2015-16

The chart below indicates who the complaints were made against in the period 2015-16 compared to the number of such complaints received in previous financial years.

Chart 4: Persons of Interest in complaints received



Complaints by area

Of the 55 complaints received during 2015-16 by the Standards Panel 20 were from metropolitan councils. The other 35 were from councils outside the metropolitan area.

Complaints by Local Government

Table 1: Complaints received relative to local governments

The 55 complaints received during 2015-16 by the Standards Panel concerned 22 local governments as indicated in the table below.

Local Government	Complaints
City of Belmont	1
Shire of Cue	1
Shire of Dandaragan	1
Shire of Exmouth	1
Shire of Halls Creek	1
City of Joondalup	1
Shire of Manjimup	1
City of Rockingham	1
Shire of Trayning	1
Shire of York	1
Shire of Broome	2
Town of Cambridge	2
City of Perth	2
Town of Port Hedland	2
Shire of Ravensthorpe	2
City of Albany	3
City of Swan	3
Shire of Victoria Plains	3
City of Subiaco	4
Shire of Boddington	5
City of Stirling	6
Shire of Wyndham East Kimberley	11

Standards Panel Meeting Attendance 2015-16

Table 2: Standards Panel Attendance

Panel member	Meeting attendance
Presiding Member – Mr Brad Jolly	7
Deputy – Dr Christopher Berry	3
Local Government Member – Councillor Paul Kelly	8
(Former) Deputy – The Right Honourable The Lord Mayor, Ms Lisa-Michelle Scaffidi	0
Legal Member – Mr Peter Doherty	8
(Former) Deputy – Mr Richard Hooker	0

Requirement for Annual Report

Clause 11 of Schedule 5.1 of the Act requires that:

- “(1) By 31 August in each year, the primary standards panel is to prepare and provide to the Minister a report on the complaints dealt with by all standards panels during the previous financial year.
- “(2) The annual report must not include information that identifies or enables the identification of a council member against whom a complaint was made if the complaint was not dealt with under section 5.110(6)(b) or (c).”

Findings of Minor Breach or Otherwise

During 2015-16, 57 complaints of minor breach were finalised. In relation to these matters:

- (a) the Standards Panel made findings that:
 - no minor breach had occurred in relation to 22 complaints; and
 - 11 minor breaches had occurred.
- (b) there were 13 complaints that were finalised on the basis that the Standards Panel did not have jurisdiction to consider them or there was no allegation of minor breach made in them
- (c) there were 11 complaints which were finalised by becoming suspended as a consequence of the councillor, the subject of the complaint, or ceasing to be a council member; however, one of the 11 complaints was recommenced as a result of the councillor, the subject of the complaint, being re-elected as a local government council member.

Types of Allegations

Table 3: Allegations closed for the period 2015-16 (contained within 57 minor breach complaints)

For Minor Official Conduct Projects	Breach of meeting procedures Local Law (Standing Orders)	Improper use of information	Misuse of local government resources	Non-disclosure of interest adverse to impartiality	Prohibition against involvement in administration	Relations with local government employees	Securing personal advantage or disadvantaging others	Total
Breach - Public Apology	2		1	4	1	1	2	11
No Breach	7	4	5	5	5	8	22	56
No Jurisdiction	3	1	2	1		1	1	9
No Longer An Elected Member - Matter Suspended	7		4		1	2	10	24
Non-Complying Complaint	2		1	5			11	19
Breach - Complaint Dismissed		1				3		4
Breach - Public Censure							3	3
Total	21	6	13	15	7	15	49	126

Complaints Dealt With Under Section 5.110(6)(b) or (c)

Under s 5.110(6) of the Act, the Standards Panel can deal with a minor breach by:

- dismissing the complaint under s 5.110(6)(a)
- ordering a sanction under s 5.110(6)(b), or
- ordering a combination of sanctions under s 5.110(6)(c).

Of the 11 found minor breaches in 2015-16, the Standards Panel dealt with seven complaints by ordering sanctions. The sanctions ordered consisted of five public apologies and two public censures.

The department publishes copies of the Standards Panel's minor breach findings and reasons for them online, where:

- the minor breach/es found by the Standards Panel has/have been dealt with by an order under section 5.110(6)(b) or (c), and
- the State Administrative Tribunal (the Tribunal) has not upheld a review against all of the Standards Panel's minor breach findings concerned in regard to the complaint concerned.

The Tribunal publishes most of its decisions on its reviews of the Standards Panel's decisions to deal with a minor breach by dismissing the complaint under section 5.110(6)(a) or to make an order under section 5.110(6)(b) or (c), on its website.

The State Administrative Tribunal website is found at www.sat.justice.wa.gov.au

Costs to Local Governments of Non-Public Servant Member Fees and Allowances

Subclauses 9(1) and 9(2) of Schedule 5.1 to the Act relate to the amount (if any) of the remuneration and allowances of the Standards Panel members and their deputies.

Unless the Local Government Member is an officer of the public service, his or her current sitting fees are \$470 per part day meeting or \$720 per full day meeting and he or she may be reimbursed for travel expenses as set out in Premier's Circular 2009-20 - Reimbursement of Travel Expenses for Members of Government Boards and Committees.

The Legal Member's current sitting fees are \$480 per part day meeting or \$900 per full day meeting. In addition, when the Legal Member is required to write a 'reasons for finings or decision' he or she is currently entitled to \$240 per hour up to a maximum of \$900 per matter.

Table 4: Fees paid to Members during the period 2015-16

Panel member	Fees 2015-16
Presiding Member – Mr Brad Jolly	Nil
Deputy – Dr Christopher Berry	Nil
Local Government Member – Councillor Paul Kelly	Nil
Local Government Deputy – The Right Honourable The Lord Mayor, Ms Lisa-Michelle Scaffidi	Nil
Legal Member – Mr Peter Doherty	\$48,792*
Deputy Legal Member – Mr Richard Hooker	Nil

*includes fees incurred in 2014-15 and paid in 2015-16 (excluding GST)

Under Schedule 5.1, clauses 2(a) and 3(2) of the Local Government Act 1995, each of the Presiding Member and his/her deputy are to be officers of the department. Cr Paul Kelly is also an officer of the public service. As officers of the public service, pursuant to Schedule 5.1, clause 9(2) of the Local Government Act 1995, they are not entitled to any remuneration or allowances in his/her role as such on the Standards Panel.

Member’s remuneration and allowances are proportionately costed to the local government of the council member who is the subject of the particular complaint the Standards Panel is dealing with at the time. Liability for cost of multiple complaints dealt with by the Standards Panel on the same occasion (that is, at the same meeting), is apportioned between the relevant local governments as the Standards Panel determines.

The costs billed to the local governments concerned in regard to the Standards Panel’s fees and allowances are as set out in the following table and reflect that only one member of the Standards Panel has claimed fees.

Table 5: Standard Panel fees invoiced to local governments in July 2016

Recovery of Local Government Standards Panel non-public service members' sitting fees and writing fees paid during the period 1 July 2015 to 30 June 2016, including GST.

Local Government	Number of Complaints	Amount invoiced* (including GST)
City of Melville	1	\$1095.60
Shire of Cue	2	\$4505.60
City of Swan	1	\$2161.02
Town of Port Hedland	1	\$1095.60
Town of Bassendean	6	\$6452.90
Shire of Wyndham-East Kimberley	7	\$5527.02
City of Stirling	5	\$5500.57
City of Fremantle	1	\$1095.60
City of South Perth	1	\$2217.60
Shire of Denmark	1	\$976.80
Shire of Dardanup	1	\$990.00
City of Gosnells	2	\$3102.00
City of Perth	1	\$1122.00
City of Subiaco	3	\$4479.20
Shire of Chittering	1	\$1122.00
Town of Cambridge	1	\$1166.00
City of Belmont	1	\$1095.60
Totals:	36	\$43,750.11
Average Fee per complaint		\$1215.28

* The figures relate to fees payable to the legal member for 2015-16.

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