



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

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Local Government Standards Panel Annual Report 2016-2017



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August 2017

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 2016 to 30 June 2017.

The Standards Panel composition changed from the previous 2015-16 financial year. Mr Brad Jolly was reappointed as the Departmental Member by the then Minister for Local Government, Hon Tony Simpson MLA, Cr Paul Kelly was reappointed the Local Government Member and Ms Merranie Strauss was appointed 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 new Standards Panel has maintained a focus on reducing the time taken for complaints to be finalised and has met on a more frequent basis which has seen an increase in the number of complaints considered.

The *Local Government Amendment Act 2016* was proclaimed in November 2016. A new clause (5.110A) was inserted into Part 5 Division 9 of the *Local Government Act 1995* to provide that a person who makes a complaint to the Standards Panel can withdraw the complaint at any time prior to the Standards Panel doing either of the things it is required to do under section 5.110 of the Act.

An additional amendment was made to section 5.110(3A) to allow the Standards Panel to refuse to deal with a complaint if the Standards Panel determines that the complaint is frivolous, trivial, vexatious, misconceived or without substance.

The amendments provide the Standards Panel with the ability to refuse to deal with complaints that may have been used by people as a grievance mechanism or political tool rather than for its intended purpose. This had previously placed pressure on the Standards Panel's ability to respond to appropriate complaints in a timely manner.

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 are 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](#).

It is appropriate that I acknowledge the contributions of Cr Paul Kelly, Ms Merranie Strauss and Ms Rachel Yates during the past year, 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.

Mr Brad Jolly ceased to be a member on 1 July 2017 with the restructure of the Department of Local Government and Communities. I wish to thank Mr Jolly for his leadership of the Standards Panel over the past years. As evident from this report, during this time he has overseen a more than doubling in the number of complaints with a reduction in average time to determine complaints of approximately 40%.

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.

It is my view that the Standards Panel will continue to build on its achievements of 2016-17 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.

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.



Sheryl Siekierka
Presiding Member
Local Government Standards Panel

August 2017

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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 were:

- (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 of 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 Part 5 Division 9 of the *Local Government Act 1995* (the Act), and Schedule 5.1 to the Act. It provides for a complaints system whereby certain alleged conduct by council members 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 council members 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

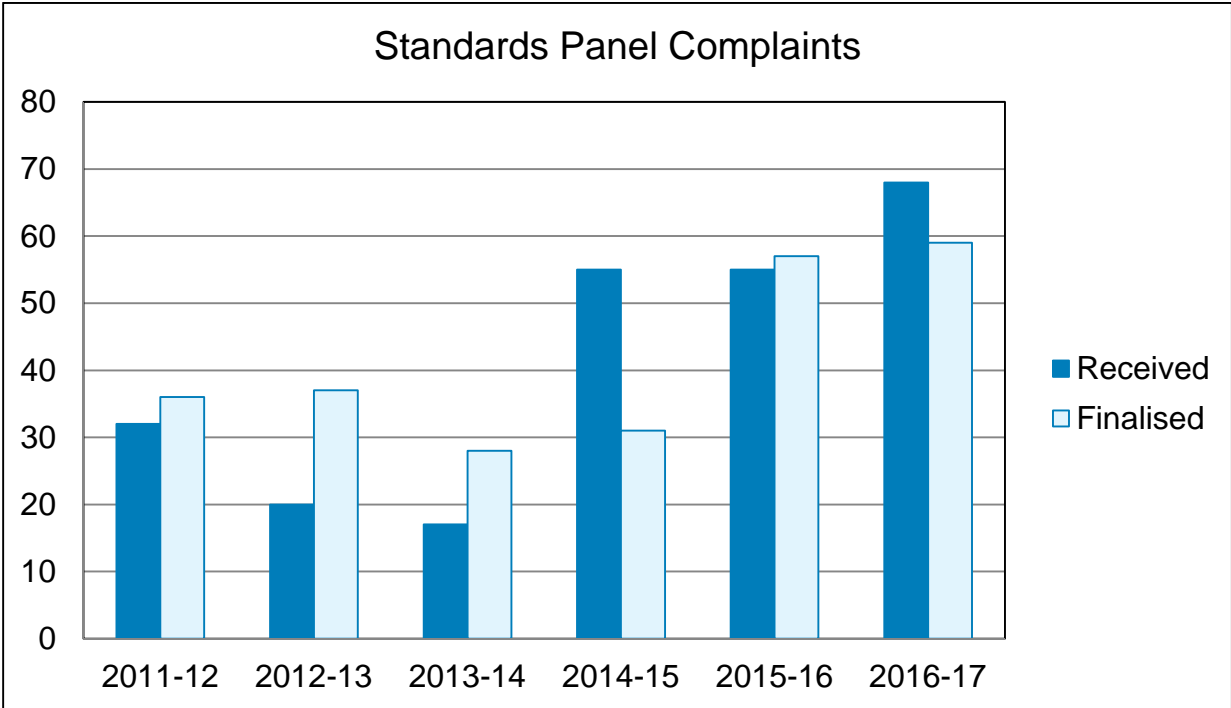
During 2016-17 the Standards Panel's administration and support services were provided by the department.

Complaints Received and Finalised

In the period 2016-17, the Standards Panel received 68 minor breach complaints, and 59 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 2016-17 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 an increase in the number of complaints lodged compared to 2015-16 with this being spread evenly across the 2016-17 financial year. As an example, 37 minor breach complaints were submitted in the first six months and a further 31 in the second six months.

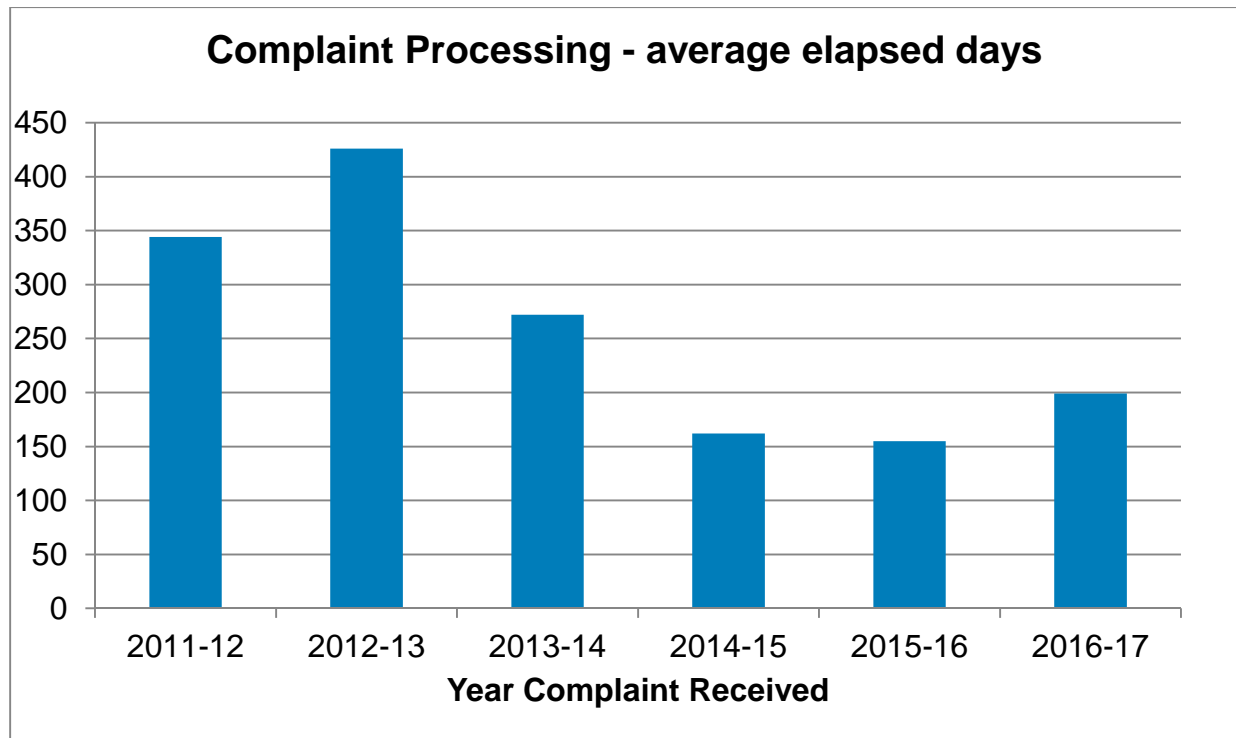
There were 103 allegations contained within the 59 minor breach complaints that were finalised.

Of the complaints finalised in the period of 2016-17, 25 complaints were finalised in 2016 and 34 were finalised in 2017.

Determination of complaints finalised in 2016-17

The chart below indicates the time that the Standards Panel has taken to determine complaints for the period 2016-17 compared to previous financial years.

Chart 2: Elapsed Days – Standards Panel complaints process



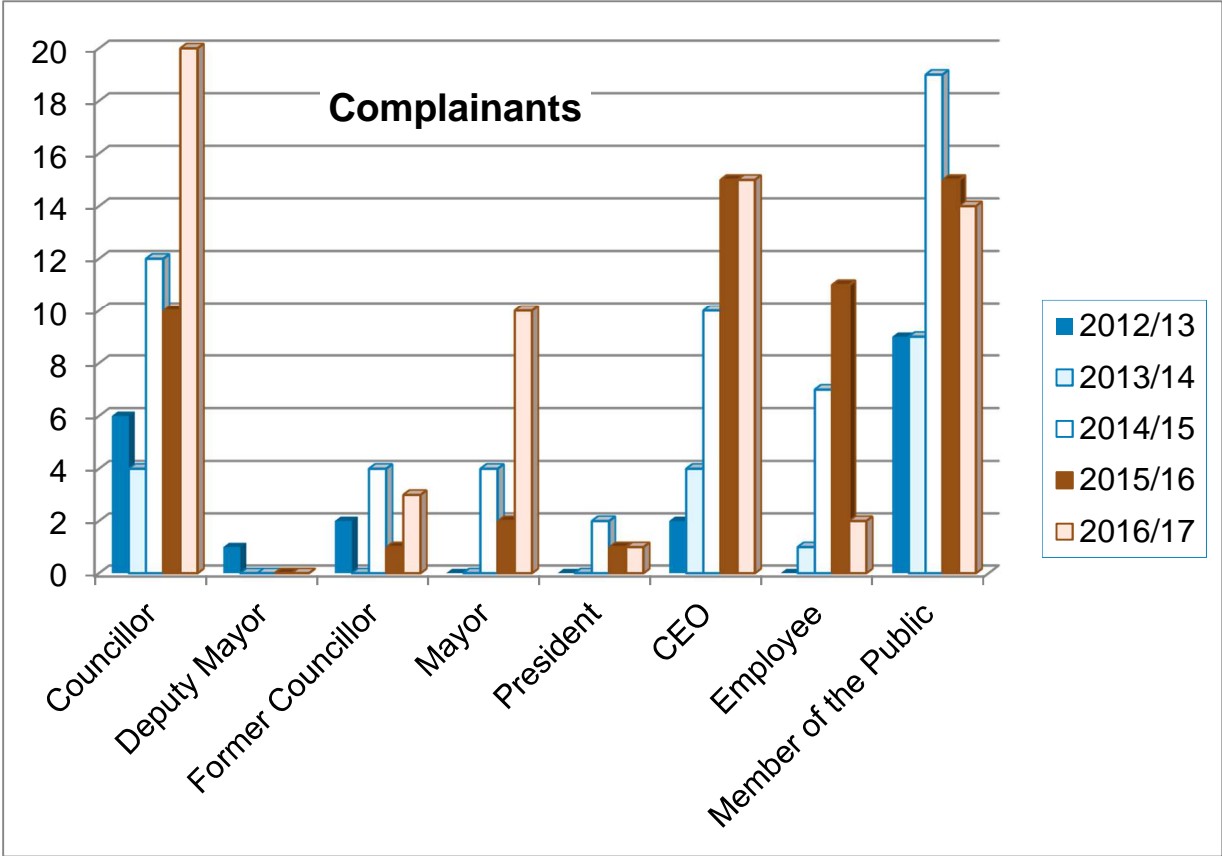
There has been an ongoing improvement in the overall time taken from the Standards Panel receiving a complaint to the finalisation of the findings and decisions, however the chart shows that this time increased slightly in 2016-17.

While the Standards Panel held four additional meetings in 2016-17 and completed more complaints than the previous financial year, the slight increase in the time taken to settle the complaints is attributed to a delay in the (re)appointments of the members of the Standards Panel whose terms had expired in the previous financial year.

Sources of complaints received in 2016-17

The chart below indicates the sources of the 68 complaints the Standards Panel received in the period 2016-17 compared to the complaints received in previous financial years.

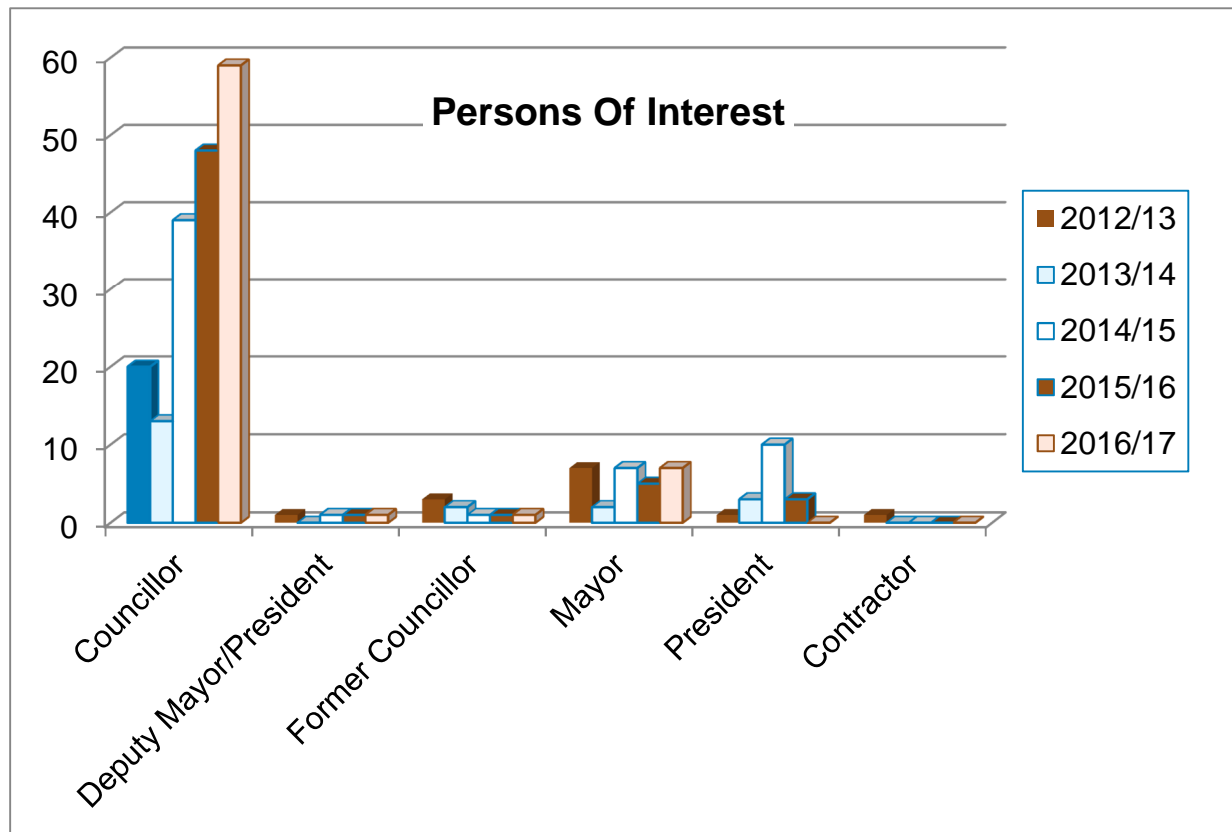
Chart 3: Source of Complaints Standards Panel



Persons of interest in complaints received in 2016-17

The chart below indicates who the complaints were made against in the period 2016-17 compared to the number of such complaints received in previous financial years.

Chart 4: Persons of Interest in complaints received



Metro - Non Metro Split

Of the 68 complaints received during 2016-17 by the Standards Panel 32 were from metropolitan councils. The other 36 were from councils located outside the metropolitan area.

Complaints by Local Government

Table 1: Complaints received relative to local governments

The 68 complaints received during 2016-17 by the Standards Panel concerned 26 local governments as indicated in the table below.

Local Government	Complaints
City of Albany	4
Shire of Augusta Margaret River	1
Shire of Boddington	4
Town of Cambridge	3
Town of Cottesloe	7
Shire of Cue	1
Shire of Dardanup	1
Shire of Denmark	7
Shire of Donnybrook Balingup	1
Shire of Irwin	1
City of Joondalup	1
City of Melville	2
Town of Mosman Park	2
Shire of Mundaring	1
Shire of Northam	1
City of Perth	6
Town of Port Hedland	6
Shire of Ravensthorpe	1
City of Rockingham	1
Shire of Serpentine Jarrahdale	1
City of Stirling	1
City of Subiaco	2
City of Swan	2

Local Government	Complaints
City of Albany	4
Shire of Victoria Plains	1
City of Wanneroo	4
Shire of Wyndham East Kimberley	6

Standards Panel Meeting Attendance 2016-17

Table 2: Standards Panel Attendance

Panel member	Meeting attendance
Presiding Member – Mr Brad Jolly	13
Deputy – Ms Sheryl Siekierka	1
Local Government Member – Councillor Paul Kelly	13
Deputy – Councillor Rebecca Aubrey	1
Legal Member – Ms Merranie Strauss	8
Deputy – Ms Rachel Yates	6

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 2016-17, 59 complaints of minor breach were finalised. In relation to these matters:

- (a) The Standards Panel made findings that:
 - 14 minor breaches had occurred
 - no minor breach had occurred in relation to 22 complaints.
- (b) There were five 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 10 complaints which were finalised by becoming suspended as a consequence of the councillor, the subject of the complaint, ceasing to be an elected member.
- (d) The Standards Panel refused to deal with eight complaints because it was satisfied that the complaints were either frivolous, trivial, vexatious, misconceived or without substance.

The Standards Panel had also considered a further nine complaints that had not been finalised prior to the end of the financial year. In relation to these complaints, the Standards Panel has made six findings of a breach, one finding of no breach and refused to deal with two.

Types of Allegations

Table 3: Allegations closed for the period 2016-17 (contained within 59 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	1					1	1	3
Breach - Public Censure	1		1				6	8
Breach - Training				3				3
Breach - Complaint Dismissed							1	1
No Breach	3	4	5	1	9	8	26	56
No Longer An Elected Member - Matter Suspended	1	2		1		3	6	13
Refuse to Deal - S 5.110(3A) - Without Substance	1					1	3	5

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
Refuse to Deal - S 5.110(3A) - Misconceived				1			1	2
Refuse to Deal - S 5.110(3A) - Trivial							1	1
Non-Complying Complaint		2	1	3			3	9
No Jurisdiction				1				1
Complaint referred to the Departmental CEO - Recurrent Breach (5.111)							1	1
Total	7	8	7	10	9	13	49	103

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

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

- dismissing the complaint under section 5.110(6)(a) because no sanction was warranted.
- ordering a sanction under section 5.110(6)(b).
- ordering a combination of sanctions under section 5.110(6)(c).

Of the 14 minor breaches found in 2016-17, the Standards Panel dealt with 13 complaints by ordering sanctions. The sanctions ordered consisted of seven public censures, three public apologies and three undertake training. The Standards Panel dealt with one minor breach by dismissing the complaint.

The department publishes the Standards Panel's minor breach findings and reasons 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).
- the State Administrative Tribunal (the Tribunal) has not upheld an application for review of the Standards Panel's decision.

The Tribunal publishes most of its decisions on application for review of the Standards Panel's decisions 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 of the remuneration 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 (and Deputy) current sitting fees are \$480 per part day meeting or \$900 per full day meeting. In addition, the Legal Member (and Deputy) are entitled to \$240 per hour up to a maximum of \$900 per matter for writing the Standards Panel's 'reasons for findings or decision'.

Table 4: Fees paid to Members during the period 2016-17

Panel member	Fees 2016-17
Presiding Member – Mr Brad Jolly	Nil
Deputy – Ms Sheryl Siekierka	Nil
Local Government Member – Councillor Paul Kelly	Nil
Local Government Deputy Member – Councillor Rebecca Aubrey	Nil
Legal Member – Ms Merranie Strauss	\$38,445
Deputy Legal Member – Ms Rachel Yates	\$24,480

Under Schedule 5.1, clauses 2(a) and 3(2) of the Act, each of the Presiding Member and his/her deputy are to be officers of the department. Cr Paul Kelly and Cr Rebecca Aubrey were also officers of the public service for the relevant period.

As officers of the public service, pursuant to Schedule 5.1, clause 9(2) of the Act, they were not entitled to any remuneration or allowances in their roles on the Standards Panel.

Members' remuneration is proportionately costed to the local government of the council member who is the subject of the particular complaint. Liability for the cost of multiple complaints dealt with by the Standards Panel at the same meeting, is apportioned between the relevant local governments.

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 the legal members of the Standards Panel have claimed fees.

Table 5: Standard Panel fees invoiced to local governments in August 2017

Recovery of Local Government Standards Panel non-public service members' sitting fees and writing fees paid or otherwise recoverable by the department for the period 1 July 2016 to 30 June 2017, excluding GST.

Local Government	Number of Complaints	Amount invoiced* (excluding GST)
Town of Albany	1	\$1,020.00
Shire of Broome	1	\$1,060.00
Shire of Boddington	6	\$6,376.00
Town of Cambridge	4	\$4,980.00
Town of Cottesloe	6	\$7,068.00
Shire of Cue	1	\$1,960.00
Shire of Dandaragan	1	\$1,796.00
Shire of Dardanup	1	\$900.00
Shire of Denmark	2	\$1,020.00
Shire of Exmouth	1	\$860.00
Shire of Halls Creek	1	\$2,016.00
Shire of Irwin	1	\$1,000.00
Shire of Manjimup	1	\$980.00
City of Melville	2	\$2,080.00
Shire of Mundaring	1	\$1,020.00
Shire of Northam	1	\$1,020.00
City of Perth	6	\$8,793.00
Town of Port Hedland	3	\$3,060.00
Shire of Ravensthorpe	1	\$2,020.00
City of Rockingham	2	\$1,960.00
City of Stirling	3	\$3,060.00
City of Subiaco	1	\$980.00

Local Government	Number of Complaints	Amount invoiced* (excluding GST)
City of Swan	2	\$2,976.00
Shire of Victoria Plains	1	\$1,900
City of Wanneroo	2	\$2,040.00
Shire of Wyndham East Kimberley	1	\$980.00
Totals:	53	\$62,925.00
Average Fee per complaint	-	\$1187.27

*The figures relate to fees payable to the legal members for 2016-17 for complaints dealt with under 5.110 of the Act.

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