

## **LOCAL GOVERNMENT STANDARDS PANEL**

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

Complaint Number	SP 29 of 2016 [DLGC 20160139]
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Deputy Lord Mayor James Limnos</b>
<b>Subject of complaint</b>	<b>Councillor Judy McEvoy</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 that the Councillor Judy McEvoy, a City of Perth councillor (Cr McEvoy) 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 seconding 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 Right Honourable the Lord Mayor Lisa Scaffidi) 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.
  - Cr McEvoy admitted that before the Meeting she decided to “put forward an urgent vote of No Confidence in the (Deputy Lord Mayor) for non-performance of (representative duties).”
  - If Cr McEvoy had not seconded the Motion it would not have been open to debate.<sup>1</sup> She improperly used her office as a councillor by seconding the Motion and allowing debate to proceed with the intention of damaging 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

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<sup>1</sup> Clause 9.4 of the *Standing Orders Local Law 2009*.

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>2</sup>
5. By letter dated 12 January 2017, the Department notified Cr McEvoy 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 Cr McEvoy dated 25 January 2017, which reads:

"...

Cr McEvoy was elected as a council member in May 1997 not 2001.

... Cr McEvoy:

- (a) Denies having committed the minor breaches alleged in the Complaint;
- (b) Admits that she made a decision to put forward an urgent motion of no confidence in the Complainant;
- (c) Says that this arose in circumstances where:
  - (i) She had spoken to the Complainant prior to his election to the role of Deputy Lord Mayor about her reservations that he would be able to fulfil the role;
  - (ii) Not long after the Complaint was elected to the role of the Deputy Lord Mayor on 22 October 2015 she noticed "a high number of LM reps coming through email system";

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<sup>2</sup> Section 5.110(5) of the Act.

(iii) She was very concerned that “many of these reps fell back to the regular Cr’s when the DLM is paid a much higher wage to attend these functions” and that “[while this did not form the basis of the decision to move the No Confidence Motion the Cr’s discussed this fact and a decision was made to put forward an urgent motion of No Confidence in the DLM for non-performance of reps.”

(d) Says further that “we queried verification of how many reps had been pass up”, a print out “verified our thinking fully and hence the Motion as you saw was passed”.

I stand by my statements in my original submission.

Conversations had been approached with the Deputy Lord Mayor to no avail prior to this period.

There was no conscious intention on my part to cause detriment. This was a verified fact (as per spreadsheet).

Currently, there is a similar situation where the Deputy Lord Mayor is currently, once again, away from his office on leave from 13 January to 11 February 2017. At which time, we as Councillors are having to step up with regards to any delegations. The Deputy Lord Mayor continues to receive full Deputy Lord Mayor remuneration.

Yours faithfully,

Cr Judy McEvoy”

7. In her email dated 25 January 2017 Cr McEvoy denies she breached regulation 7(1)(b), seeks to justify her conduct at the Meeting and makes another allegation against the Deputy Lord Mayor. She does not make any submissions about what penalty the Panel should impose for breaching regulation 7(1)(b). Cr McEvoy’s allegations against the Deputy Lord Mayor in her email are not relevant to the Panel’s decision on penalty.

#### **Panel’s consideration**

8. The Panel notes that Cr McEvoy has not previously been found to have committed a minor breach.
9. Cr McEvoy 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 repeats her allegations against him.

10. The transcript of proceedings in relation to Item 174/16 “Urgent Business”<sup>3</sup> shows the Lord Mayor invited a seconder to Cr Davidson’s Motion without any discussion as to whether the Motion should be put to Council. Cr McEvoy had been a councillor since May 1997. She would have been or should have been very knowledgeable about the content and purposes of all Standing Orders and how they should be applied. The CEO reminded all councillors about the content and use of the SO, including alternative processes, only five days before the meeting. Cr McEvoy took the opportunity to allow the Motion to be debated, knowing that Cr Davidson would make damaging allegations against the Deputy Lord Mayor without him having had the chance to prepare.
11. Cr McEvoy 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>4</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>5</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.
12. 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 the CEO said in his memorandum.<sup>7</sup> These officers’ contributions reinforce the proposition that Cr McEvoy knew she was acting outside the SO.
13. Cr McEvoy knew or should have known the Meeting’s proceedings would be of great interest to the media. She allowed the Motion to be considered without notice. Her support for the Motion as one dealing with urgent business (without any explanation from the Lord Mayor or Cr Davidson about why it should be dealt with urgently) when

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<sup>3</sup> Page 1 of the transcript of Item 174/16 “Urgent Business” (the Item).

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

<sup>5</sup> Page 8 of the transcript of the Item.

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

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

it did not need to be would have exaggerated the seriousness of the matter in the eyes of members of the public attending the Meeting and the media.

14. It is not appropriate to dismiss the breach. This would condone Cr McEvoy's conduct and trivialise the breach.
15. Neither is it appropriate to order that Cr McEvoy undergo training. She had been a councillor since 1997. There is no reason for the Panel to think that she did not have a thorough working knowledge of the SO. On 31 October 2016 the Panel found that she intended to damage the Deputy Lord Mayor irrespective of what was in the SO.
16. Cr McEvoy 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 penalty. The Panel considers any public apology would not be sincere.
17. The only appropriate penalty is that Cr McEvoy be publicly censured.

**Panel's decision**


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



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Reasons for Decision - 05 April 2017

**Attachment A**

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**ORDER FOR PUBLIC CENSURE**

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## THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Judy McEvoy, a City of Perth Councillor, 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 Cr Judy McEvoy, 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.

