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## Local Government Standards Panel

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Complaint Number	SP 3 of 2017 [DLGSC 20170005]
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Mr Jason Whiteaker</b>
<b>Respondent</b>	<b>Councillor Ulo Rumjantsev</b>
Local Government	<b>Shire of Northam</b>
Regulation	Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms M Strauss (Member) Councillor P Kelly (Member)
Heard	28 August 2017 Determined on the documents
Outcome	Training

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### DECISION AND REASONS FOR DECISION

Published 03 October 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.



## Introduction

1. On 23 June 2017 the Local Government Standards Panel (the Panel) found that Councillor Ulo Rumjantsev, a Councillor for the Shire of Northam, committed two minor breaches under the *Local Government Act 1995 (WA)* (the Act) and regulation 11(2) of the *Local Government (Rules of Conduct) Regulations 2007* when failing to disclose impartiality interests at a meeting of the Bushfire Advisory Committee on 31 May 2016 (the Committee meeting) and at an ordinary council meeting on 15 June 2016 (the OCM).
2. At the Committee meeting and the OCM Cr Rumjantsev voted on motions relating to his appointment as a bush fire control officer under Western Australia's *Bush Fires Act*.
3. On 14 July 2017 the Panel published its Finding and Reasons for Finding that Cr Rumjantsev had committed the two breaches.
4. In relation to the failure to disclose his interest at the Committee meeting the Panel found:

“48. ... The only reasonable inferences are that Cr Rumjantsev knew he had been nominated, accepted the nomination and was seeking to be appointed.

49. Cr Rumjantsev was due to vote on whether he and others should be recommended for appointment and whether he should be required to meet the proposed new minimum training standards before being appointed.

50. The Panel is satisfied to the required standard of proof that it would be a reasonable perception that Cr Rumjantsev may not be impartial when deciding whether to recommend himself to Council and whether to recommend that he and other prospective bush fire control officers face new pre-conditions for appointment.

...

57. Cr Rumjantsev's Response indicates that he knew he had an interest of some sort and turned his mind to whether he needed to do anything about it. Even if he thought 5.63 of the Act excused him, the Panel finds it is more likely than not that Cr Rumjantsev actually knew he had a connection with agenda item 6.8 that may be problematic for him, in terms of perceptions about his wish to be appointed as a bush fire control officer.”

5. In relation to the failure to disclose his interest at the OCM the Panel found:

“63. ... as with proceedings at the Committee meeting, Cr Rumjantsev's role was to debate the issues and decide whether to vote for his own appointment and conditions of appointment that would affect him. The Panel is satisfied to the required standard of proof that it would be a reasonable perception that Cr Rumjantsev may not be impartial when voting on whether he be appointed and whether he and other prospective bush fire control officers would face new pre-conditions for appointment.”

## Possible sanctions

6. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by —



- “(a) *dismissing the complaint; or*
- (b) *ordering that —*
- (i) *the person against whom the complaint was made be publicly censured as specified in the order; or*
  - (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) *ordering 2 or more of the sanctions described in paragraph (b).”*

7. Section 5.110(6) is about penalty. It does not give the Panel the power to review any finding of a breach. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel’s finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor’s name.

### **Councillor Rumjantsev’s submissions**

8. If the Panel finds that a councillor has committed a minor breach it must give the councillor an opportunity to make submissions to the Panel about how it should deal with breach under section 5.110(6).<sup>1</sup>
9. In a letter sent on 14 July 2017, the Panel notified Cr Rumjantsev of the Panel’s findings, provided him with a copy of its Finding and Reasons for Finding published that day and invited him to make submissions on how the Panel should deal with the breaches under section 5.110(6).
10. Cr Rumjantsev sent his submissions to the Department by email on 7 August 2017, which reads:

Thank you for your report dated 13 July 2017. Whilst I do understand why the Panel have come to the conclusion that they have, I would like to re-iterate that I didn’t think I was required to put in an Impartiality Interest as I didn’t have a Financial Interest and at that stage it didn’t dawn on me to consider any other type of interest.

It would seem appropriate to me that I undertake training on Disclosure of Interests, what constitutes a Financial Interest and Impartiality Interests and any other type of interests. I have contacted WALGA and they have e-courses which I will be enrolling in, as I never want to make the same mistake again.

It is important as Councillors to take the lead not only in the chambers but also in demonstrating the value of training, so I am asking that the Panel accept that I will undertake training as specified in the order and I am happy to provide evidence on completion of my training.

Again I offer my sincere apology in this matter and from this wish to be a better councillor.

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



## Panel's consideration

11. Cr Rumjantsev has not previously been found to have committed any minor breaches.
12. When considering the appropriate penalty, the Panel notes that at the Committee meeting and OCM Cr Rumjantsev was putting himself forward to perform a vital, time consuming and at times dangerous service to the community. The Panel also notes that in his email submission on penalty Cr Rumjantsev:
  - acknowledges the Panel's findings;
  - offers a sincere apology for his breaches;
  - recognises that councillors should set a good example in the Council chamber and demonstrate the value of training; and
  - advises he has already ascertained from the Western Australian Local Government Association that suitable training about disclosure of interests is available, in which he will be participating.
13. Although Cr Rumjantsev has been found to have committed two breaches it is appropriate for the Panel to impose one sanction because both breaches relate to the same regulation, the conduct giving rise to the breaches is similar and Cr Rumjantsev committed the breaches in similar circumstances.<sup>2</sup>
14. In all the circumstances the breaches are at the lower end of the continuum of seriousness. However, the disclosure rules are fundamental to the proper workings of local government. In *Chief Executive Officer, Department of Local Government and Communities and Scaffidi* [2017] WASAT 67, Justice Curthoys said:

"75. ... what lies at the heart of the disclosure regime mandated by the (Act) is the prevention of ... improper influence by a councillor.

76. The disclosure regime provided by the (Act) in relation to relevant persons minimises the risk of ... improper influence by requiring disclosure and thus accountability by relevant persons. It also promotes public confidence in the regime by providing for transparency."
15. The sanction imposed on Cr Rumjantsev must send a message to councillors, local government employees, ratepayers, residents and the wider public that the disclosure regime is important and is to be strictly followed. Accordingly, it is not appropriate to order that the breach be dismissed.
16. However, Cr Rumjantsev has shown remorse, a willingness to improve his knowledge and a commitment not to repeat the misconduct. In these circumstances the Panel finds that a public apology is not a suitable penalty and the public censure penalty is too severe.

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<sup>2</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81.



17. The Panel decides that the appropriate penalty is that Cr Rumjantsev undertake training to enhance his knowledge of his disclosure obligations.

**Panel's decision**

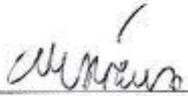
18. The Panel orders under section 5.110(6)(b)(iii) of the Act that Cr Rumjantsev undergo training in the terms of the attached Order.



Sheryl Siekierka (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Decision and Reasons 03 October 2017



## ATTACHMENT

Complaint Number	SP 3 of 2017 [DLG 20170005]
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Mr Jason Whiteaker</b>
<b>Respondent</b>	<b>Councillor Ulo Rumjantsev</b>
Local Government	<b>Shire of Northam</b>
Regulation	Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms M Strauss (Member) Councillor P Kelly (Member)
Decision	Training (Determined on the documents)
Date of Decision	28 August 2017

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## ORDER FOR TRAINING

Published 03 October 2017

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**THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:**

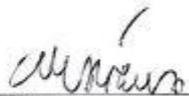
1. Mr Ulo Rumjantsev, a member of the Council of the Shire of Northam, undertake training as specified in paragraph 2 below.
2. Within 3 calendar months from the date of this Order, Councillor Ulo Rumjantsev undertake training -
  - (a) to be determined by the Department of Local Government, Sport and Cultural Industries,
  - (b) in relation to the subject of “disclosure of interests”,
  - (c) for a period of no less than 2 hours, and
  - (d) at a location to be advised by the Department.



Sheryl Siekierka (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Order – 03 October 2017



## NOTICE TO THE PARTIES TO THE COMPLAINT

### RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

- (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 gives its notice [see the Note below] under the *State Administrative Tribunal Act 2004* (SAT Act), section 20(1).
- (3) The Panel's *Reasons for Finding and Reasons for Decision* and Order, 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."