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## LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 26 and 27 of 2012 [DLG 20120161 and 20120162]
Legislation	<i>Local Government Act 1995</i> (WA)
Complainants	<b>Mr Simon Saint &amp; Mrs Heather Saint</b>
Subject of complaint	<b>Councillor Anthony Stephen Boyle</b> and <b>Councillor Roy Scott</b>
Local Government	Shire of York
Regulation	Clause 8.4(2) of the Shire of York Standing Orders Local Law; and Regulations 7(1)(b), 8 and 9(1) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> .
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Deputy Member)
Heard	20 March 2013 (Determined on the documents)

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### FINDINGS AND REASONS FOR FINDING

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#### DEFAMATION CAUTION

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## **1. Summary of the Panel's Finding**

1.1 The Panel found that Councillor Boyle has:

- (a) not committed a breach of regulation 8 of the *Regulations*;
- (b) committed a breach of each of regulations (4) (clause 8.4(2) of the Standing Orders), 7(1)(b) and 9 of the *Regulations*.

## **2. Introduction**

2.1 In these Reasons unless otherwise indicated:

- (a) a reference to a regulation is a reference to the corresponding regulation of the *Local Government (Rules of Conduct) Regulations 2007 (Regulations)*, and a reference to a section is a reference to the corresponding section of the *Local Government Act 1995 (Act)*; and
- (b) the term "viewed objectively" means "as viewed by a reasonable person" (the reference to a reasonable person being a reference to a hypothetical person with an ordinary degree of reason, prudence, care, self-control, foresight and intelligence, who knows the relevant facts).

## **3. Jurisdiction**

3.1 On 25 September 2012 Mr Simon Saint and Mrs Heather Saint (**Complainants**) lodged two separate, but identical complaints (being SP 26 of 2012 and SP 27 of 2012 respectively) with the Chief Executive Officer (**CEO**) of the Shire of York (**Shire**) against Councillor Anthony Stephen Boyle, the Shire President, and Councillor Roy Scott, the Deputy Shire President, regarding alleged conduct by Councillor Boyle on 17 September 2012 (**Complaints**).

3.2 The Complainants alleges that at the Ordinary Council Meeting of the Shire held on 17 September 2012 (**OCM**) Councillor Boyle made certain announcements and in so doing committed:

- (a) one breach of clause 8.4(2) of the Shire of York Standing Orders Local Law (**Standing Orders**); and
- (b) a breach of each of regulations 7(1)(b), 8 and 9(1) of the *Regulations*.

3.3 The Complainants also alleged that Councillor Scott breached these regulations "as a party included in the announcement by Presiding Member without discussion".

3.4 The Standing Orders are a local law as to conduct under regulation 4(1) of the *Regulations* and a breach of clause 8.4(2) of the Standing Orders is a "minor breach" as defined in section 5.105(1)(b) of the *Act*: regulation 4(2) of the *Regulations*.

3.5 The *Regulations* are rules of conduct for the purposes of section 5.104(1) of the *Act*. A breach of the *Regulations* is a 'minor breach' as defined in section 5.105(1)(a) of the *Act*.

3.6 The CEO is the "complaints officer" for the Shire under section 5.120 of the *Act*.

3.7 By letter dated 28 September 2012, the CEO sent the Complaints to the Local Government Standards Panel (**Panel**) in accordance with the requirements of section 5.107 of the *Act*.

- 3.8 Pursuant to section 5.110(2) of the *Act*, the Panel is required to make a finding as to whether the breaches alleged in the Complaints occurred or to send the Complaints to the Chief Executive Officer of the Department of Local Government (**Department**) under section 5.111 of the *Act*.
- 3.9 The Panel had been informed by the Department, and so finds that each of Councillor Boyle and Councillor Scott:
- (a) were at the relevant time (i.e. 17 September 2012) and remain currently, elected as a member of the Council of the Shire (**Council**); and
  - (b) satisfies the requirements of being an elected member of the Council as:
    - (i) he is qualified to be an elector of the district under section 2.19(1)(b) of the *Act*;
    - (ii) there is no evidence to indicate that he is disqualified for Council membership under sections 2.21, 2.22, 2.23 or 2.24 of the *Act*; and
    - (iii) he is not disqualified from continuing his membership of the Council under section 2.25 of the *Act*.
- 3.10 The Panel also finds that:
- (a) the Complaints:
    - (i) insofar as they relate to Councillor Boyle, are made in writing in the form approved by the Minister pursuant to section 5.107(2) of the *Act*;
    - (ii) insofar as they relate to Councillor Scott, are not made in writing in the form approved by the Minister pursuant to section 5.107(2) of the *Act* because, save for an allegation that he was "a party included in the announcement by Presiding Member without discussion", no evidence has been produced of any conduct by Councillor Scott at the OCM;
  - (b) the Complaints were sent to the CEO as the Complaints Officer of the Shire within two years after the breaches alleged in the Complaints occurred, as required by section 5.107(4) of the *Act*;
  - (c) the Complaints are not ones that ought to be sent to the Chief Executive Officer of the Department under section 5.111 of the *Act*;
  - (d) it has jurisdiction to determine, insofar as Councillor Boyle is concerned, whether the breaches alleged in the Complaints occurred; and
  - (e) it does not have jurisdiction to determine, insofar as Councillor Scott is concerned, whether the breaches alleged in the Complaint occurred.
- 3.11 Accordingly, the Panel will only consider the Complaints insofar as they relate to Councillor Boyle.

#### **4. Legislative background**

4.1 Clause 8.4(2) of the Standing Orders provides:

“No member of the Council or a committee is to use offensive or objectionable expressions in reference to any member, employee of the Council, or any other person.”

4.2 The *Regulations* include the following regulations:

7(1)(b) “A person who is a council member must not make improper use of the person’s office as a council member ... to cause detriment to the local government or any other person.

8. “A person who is a council member must not either directly or indirectly use the resources of a local government —

(a) ... ; or

(b) for any other purpose,

unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.”

9(1) “A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.”

#### **5. The Panel’s Role**

5.1 The Panel observes that:

(a) clause 8(6) of Schedule 5.1 of the Act requires the Panel’s members to have regard to the general interests of local government in Western Australia;

(b) a finding of a minor breach is a serious matter as it may affect an individual both personally and professionally;

(c) by section 5.106 of the Act, in order for the Panel to make a finding that a minor breach has been committed by a council member, the finding is to be “based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur”;

(d) when making this determination:

(i) the seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the [determining body]<sup>1</sup>, such as the Panel: *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J in at 362; and

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<sup>1</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J in at 362

- (ii) where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture. But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise: *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1 at 5

## 6. The Complaint

6.1 The Complaints alleges that at the OCM, Councillor Boyle, the Presiding Member, stated that prior to Public Question Time he wanted to move to item 8 "Announcements by Presiding Member without Discussion", and then made a statement to the following effect:

"Both the Shire President [Cr Tony Boyle] and Deputy Shire President [Cr Roy Scott] have received a disturbing email, deemed offensive, dated 30 August and timed at 4.30pm containing a quote:

"But as for the cowardly, the faithless, the detestable, as for murderers, the sexually immoral, sorcerers, idolaters, and all liars, their portion will be in the lake that burns with fire and sulphur, which is the second death."

The quote will be recorded in the minutes in its entirety. The quote is an insult to me, Roy Scott and Roy Scott's wife who opened the email and read it. The quote is a malicious, false and defamatory statement. Cr Scott and his wife see the quote as a threat, and have reported it, but they haven't taken it further.

I have studied the Bible for 40 years and the quote is from it. I have had enough. The most appropriate response to a man who uses this quotation would be a simpleton or a scoffer. For those who don't know 'scoffer' the definition is to mock at or treat with derision.

Cr Scott and I take extreme umbrage to the quote and totally refute it in its entirety.

From now on there will be no further questions from either Mr or Mrs Saint at this forum forthwith, however questions in writing will be received, recorded, be duly noted and recorded in the Minutes.

For six years this man has continued to dish out piffle and drivel – which means, futile or nonsensical, stupid or senseless talk or behaviour, to make ludicrously false statements.

All Freedom of Information requests by the Saints will be fully timed and costed then these horrendous costs to the community incurred by them will be published so that the people of York will then know how much of their rate money is wasted on this."

**(Announcement)**

- 6.2 It is alleged that by making the Announcement Cr Boyle contravened clause 8.4(2) of the Standing Orders and regulations 7(1)(b), 8 and 9(1) of the *Regulations*.
- 6.3 Although the Complaints are not drafted with precision, the Panel understands the essence of the Complaints to be as follows
- (a) various aspects of the Announcement contained "offensive or objectionable expressions" in breach of clause 8(2) of the Standing Orders and contravened each of clauses 1.1(a), 3.1(a)(i), 3.1(a)(ii), 3.1(a)(iii), 3.1(a)(iv), 3.1(a)(v), 3.1(b) and 3.2(i) of the Shire's Code of Conduct applicable at the time (**Code of Conduct**);
  - (b) in circumstances where their attempts to have Mr Saint prosecuted by the police for "threatening behaviour" had failed, Councillors Boyle and Scott made improper use of their office as councillor in breach of regulation 7(1)(b) of the *Regulations*:
    - (i) by making the Announcement;
    - (ii) by bringing private emails into the public domain, for their own personal interests;
    - (iii) by engaging in conduct (i.e. making the Announcement) that was intended to embarrass, humiliate and defame the Complainants and to discredit them in public; and
    - (iv) to blatantly refuse their democratic rights to speak at Council meetings and to pursue Freedom of Information applications against the Shire;
  - (c) by making the Announcements Councillor Boyle directly or indirectly used the Shire's resources for a purpose – namely, his own advantage – without that use and purpose being authorised under the Act or by its Council or its Chief Executive Officer, in contravention of regulation 8 of the *Regulations*. Upon inquiry by the Department, the Complainants identified the relevant Shire resources to be:
    - (i) Council facilities and meeting room; and
    - (ii) Municipal funds for the provision of staff time and resources relating to enquiry matters brought about following the meeting; the provision of further staff time and resources to provide letters and responses to requests for information relating to the announcement at the meeting; and allocation of further staff time and resources time for a Freedom of Information application which was brought about due to the announcement at that meeting;

- (d) by making the Announcement Councillor Boyle undertook a task that contributes to the Shire's administration, without being authorised by its Council or its Chief Executive Officer to undertake the task, in contravention of regulation 9(1) of the *Regulations*.

## 7. **The Response**

- 7.1 The Complaints Officer sent a copy of the Complaints to each of Councillor Boyle and Councillor Scott.
- 7.2 Councillor Scott responded to the allegations by letter dated 2 October 2012.
- 7.3 Councillor Boyle responded to the allegations by a letter to the Panel dated 2 October 2012 (**Response**). In the Response, Councillor Boyle stated:
- (a) on 30 August 2012 Mr Saint sent an email to the Shire at its "Records" email address which stated:
- "Could you please forward the following quote to the Shire President and Deputy Shire President and ensure the correspondence is recorded as prescribed in the State Records Act 2000.
- "But as for the cowardly, the faithless, the detestable, as for murderers, the sexually immoral, sorcerers, idolaters, and all liars, their portion will be in the lake that burns with fire and sulphur, which is the second death."
- (b) he was the Presiding Member at the OCM and did make *an* announcement at that OCM in reference to Mr Saint, and in so doing, acted at his "own discretion in the interests of good governance for the community as a whole" and had not previously discussed the same with the Council or the CEO;
- (c) he totally refutes the claims made in the Complaints;
- (d) he has never spoken with the police about any action against Mr Saint, nor has he initiated any prosecution for threatening behaviour; and
- (e) there has been a long running dispute over developments undertaken by the [Complainants] and in his opinion this [the Complaints] "is another vindictive action following on from media, signage, emails, public question time, Ombudsman, Department of Local Government enquiries etc by the [Complainants] and there is no substance to the complaints lodged".
- 7.4 It follows that Councillor Boyle accepts that neither the Council nor the CEO authorised him to make *an* announcement at the OCM, nor did they approve of its contents.
- 7.5 Further aspects of the Response are set out below when dealing with the individual alleged breaches.

## **8. The Documents**

- 8.1 Save for the information provided to the Panel by the Department (as set out under the heading "Jurisdiction" above), the Panel determined the Complaint after considering:
- (a) the Complaint, and the attachments to the same (a copy of which is attachment "1" to these Reasons) and which includes a letter dated 24 September 2012 from Ms Tricia Walters to the Panel (**Mrs Walters' Letter**);
  - (b) the Response a copy of which is attachment "2" to these Reasons;
  - (c) Councillor Scott's response dated 2 October 2012, a copy of which is attachment "3" to these Reasons;
  - (d) a letter dated 28 September 2012 from the Shire to the Panel, a copy of which is attachment "4" to these Reasons;
  - (e) a letter dated 4 December 2012 from the Department to the Shire, a copy of which is attachment "5" to these Reasons; and
  - (f) a letter dated 14 December 2012 from the Shire to the Department a copy of which is attachment "6" to these Reasons;
  - (g) an email dated 8 January 2012 from the Department to the Shire, a copy of which is attachment "7" to these Reasons; and
  - (h) a letter dated 28 February 2013 from the Shire to Mr Saint, attaching a copy of the handwritten notes to which Councillor Boyle referred at the OCM when making the Announcement (**Notes**), a copy of which is attachment "8" to these Reasons.

- 8.2 Having reviewed:

- (a) the Minutes of the OCM (a copy of which forms part of the Complaints);
- (b) the Notes; and
- (c) Mrs Walters' Letter;

the Panel finds that it is more likely that the Announcement was made by Councillor Boyle at the OCM than it was not.

## **9. Elements of the offence and determination**

- 9.1 In the following paragraphs, the Panel deals with the four breaches alleged in the Complaints.

### **Clause 8.4(2) of the Standing Orders**

- 9.2 Clause 8.4(2) of the Standing Orders provides that "[n]o member of the Council or a committee is to use offensive or objectionable expressions in reference to any member, employee of the Council, or any other person."

*Had the Standing Orders been Rescinded prior to the OCM?*

- 9.3 In Councillor Boyle's Response, he submitted that the "Standing Orders have not been used by the [Shire] since December 2004 and the Local Law is in the process of being rescinded".

9.4 He also submitted that:

"The statements made by me in my role as the Presiding Member at the Ordinary Council Meeting held on Monday, 17<sup>th</sup> September, 2012 were firstly a response to the scripture quote submitted to myself and Cr Scott through the Shire office at the direct request of Simon Saint and secondly as an expression of the community concern and frustration at the antics of the Saints over an extended period which utilise a high level of staff time and resources to the detriment of the community."

9.5 In the CEO's letter to the Department dated 28 September 2012 he also states that the "Standing Orders were in effect suspended by the appointment of a Commissioner in December 2004", that a "resolution has been passed to "repeal the standing orders and this is currently being processed" and that "[o]fficial standing orders have not been used since the election of the new Council in may [sic May] 2006 to date".

9.6 In the Shire's letter of 14 December 2012 to the Department the Shire conceded that:

- (a) at "17 November 2012 the Shire had not made a local law which repealed or amended the [Standing Orders] and which had not (sic) been published in the Government Gazette"; and
- (b) at all times since 7 March 2000, and in particular at 17 September 2012 clause 8.4(2) of the Standing Orders has applied to "conduct of people at council or committee meetings";

but contended that "[w]hen the Commissioner was in place the Standing Orders were rescinded."

9.7 The Panel accepts as correct, the contentions in subparagraphs (a) and (b), as evidenced by:

- (a) the Model Local Law (Standing Orders) 1988 (**MLL**), published in the Government Gazette of 3 April 1988;
- (b) the Shire's Standing Orders Local Law, published in the Government Gazette of 22 February 2000 which adopted the MLL, with modifications (as corrected by notification in the Government Gazette of 10 March 2000); and
- (c) the absence of any subsequent publication in the Government Gazette recording the repeal or rescission of the Standing Orders, as required by section 3.12 of the Act.

9.8 However Panel does not accept as correct, the contention that when the Commissioner was "in place" the Standing Orders were rescinded because:

- (a) a Commissioner was appointed to the Shire by the *Shire of York (Declaration of Vacancies and Appointment of Commissioner) Order 2004* which was published in the Government Gazette of 17 December 2004;
- (b) that Order was amended by the *Shire of York (Declaration of Vacancies and Appointment of Commissioner) Amendment Order 2005* which was published in the Government Gazette of 5 August 2005;

- (c) the appointment of the Commissioner did not affect the operation of the Standing Orders;
  - (d) no evidence has been provided to the Panel that the Commissioner rescinded or purported to rescind the Standing Orders; and
  - (e) there is no evidence of any subsequent publication in the Government Gazette recording the repeal or rescission of the Standing Orders, as required by section 3.12 of the Act.
- 9.9 Further, by email dated 8 January 2013 the Department advised the Shire that it did not consider that the appointment of the Commissioner affected the operation of the Standing Orders and asked for advice within 7 days relating to the gazettal of the repeal of the Standing Orders. The Panel has been advised that no response has been received to that email.
- 9.10 The Panel accordingly finds that the Standing Orders applied during the OCM on 17 September 2012.
- Elements*
- 9.11 In light of Clause 8.4(2) of the Standing Orders, the essential elements or issues of a breach of Clause 8.4(2) of the Standing Orders are that it is more likely than not that:
- (a) a member of the Council;
  - (b) used offensive or objectionable expressions;
  - (c) in reference to any other person.
- 9.12 The Panel has already found that as at 17 September 2012 Councillor Boyle was a member of the Council and that he made the Announcement.
- In reference to another person*
- 9.13 The Panel finds that:
- (a) the Announcement contained a number of expressions that were made "in reference to another person" being either Mr Saint or Mrs Saint or both of them;
  - (b) the following expressions within the Announcement were made solely in reference to Mr Saint:

"I have studied the Bible for 40 years and the quote is from it. I have had enough. The most appropriate response to a man who uses this quotation would be a simpleton or a scoffer. For those who don't know 'scoffer' the definition is to mock at or treat with derision.

...

For six years this man has continued to dish out piffle and drivel - which means, futile or nonsensical, stupid or senseless talk or behaviour, to make ludicrously false statements."
- (c) the following expressions within the Announcement were made in reference to both Mr Saint and Mrs Saint:

"From now on there will be no further questions from either Mr or Mrs Saint at this forum forthwith, however questions in writing will be received, recorded, be duly noted and recorded in the Minutes.

...

All Freedom of Information requests by the Saints will be fully timed and costed then these horrendous costs to the community incurred by them will be published so that the people of York will then know how much of their rate money is wasted on this."

- 9.14 The question of whether clause 8(2) of the Standing Orders has been breached depends on whether these expressions (or any of them) (**Expressions**) were "offensive or objectionable expressions".

*Offensive or objectionable expressions*

- 9.15 The Panel considers that the use of the word "or" in the phrase "offensive or objectionable expressions" is used in the disjunctive sense so that separate meanings may be determined for each of the terms "offensive expression" and "objectionable expression".

- 9.16 The Shorter Oxford English Dictionary (6th ed) defines the noun "expression" as, relevantly, "manner or means of expressing in language; wording, diction" and "a word, a phrase, a form of speech". Among the meanings of the word "expression" in the Macquarie Dictionary is "a particular word, phrase, or form of words".

- 9.17 The Panel is satisfied that the Announcement (as a whole) and each of the Expressions were "expressions" for the purposes of clause 8.4(2) of the Standing Orders.

- 9.18 An "offensive expression" has been interpreted as one "giving, or liable to give, offence; displeasing; annoying; insulting": *Hargreaves and Local Government Standards Panel* [2008] WASAT 300 at [18].

- 9.19 The word 'objectionable' is defined in the Shorter Oxford English Dictionary (6<sup>th</sup> ed) as "open to objection; undesirable, unpleasant, offensive, disapproved of". It is defined in the Macquarie Dictionary as "that may be objected to; unpleasant; offensive".

- 9.20 In the Panel's opinion, each of these Expressions made in reference to Mr Saint individually and Mr and Mrs Saint collectively, was an "offensive or objectionable expression" in that they were liable to give offence or to be displeasing, annoying or insulting to the relevant Complainants.

- 9.21 The Panel therefore finds that by making the Announcement, Councillor Boyle breached clause 8.4(2) of the Standing Orders in relation to both Mrs and Mrs Saint.

**Regulation 7(1)(b) of the Regulations**

- 9.22 Regulation 7(1)(b) of the *Regulations* provides that "[a] person who is a council member must not make improper use of the person's office as a council member ... to cause detriment to the local government or any other person.

9.23 In the Response Councillor Boyle stated:

“The statement made at the meeting was to depict the waste of Shire resources by Simon Saint directing scripture quotes to Councillors, the continual consumption of community resources in dealing with the Saints over a number of years and to put into the public arena that events of this nature were occurring.”

9.24 He also stated that he made the announcements in the interests of good governance for the community as a whole.

9.25 As noted above, the Panel understands the Complainants to contend that Councillor Boyle made improper use of his office as councillor in breach of regulation 7(1)(b) of the *Regulations*:

- (a) by making the Announcement;
- (b) by bringing private emails into the public domain, for their own personal interests;
- (c) by engaging in conduct (i.e. making the Announcement) that was intended to embarrass, humiliate and defame the Complainants and to discredit them in public; and
- (d) to blatantly refuse their democratic rights to speak at Council meetings and to pursue Freedom of Information applications against the Shire.

#### *Elements*

9.26 Where, as in the present case, there is no indication from the evidence that the conduct complained about is conduct that contravened section 5.93 of the *Act* or section 83 of *The Criminal Code* the essential elements or issues of a breach of regulation 7(1)(b) of the *Regulations* are, that it is more likely than not that:

- (a) a person who is currently a council member committed conduct;
- (b) the person's conduct was a use of his or her office of council member;
- (c) viewed objectively, that use was an improper use of the person's office of council member; and
- (d) the person committed his or her conduct with the belief that the intended result would be (i.e. his or her intent, purpose and aim was) to cause detriment to the local government or any other person.

9.27 The Panel has already found that Councillor Boyle was a Councillor of the Shire on 17 September 2012.

#### *Use of Office*

9.28 In the Shorter Oxford Dictionary (6th ed), the meaning of the noun “use” in the context of the matter considered by the Panel is the “Act of using, fact of being used; The action of using something; the fact or state of being used; application or conversion to some purpose.”. In the same dictionary, amongst the meanings of the verb ‘use’ is “employ”. There must exist some indication that the council member employed or somehow availed himself or herself of his or her position as council member.

- 9.29 In the Panel's opinion, by making the Announcement, at the commencement of the OCM, where he was the presiding Council Member, Councillor Boyle made use of his office as a Council member.

*Improper Use*

- 9.30 In *Yates and Local Government Standards Panel [2012]* WASAT 59 Deputy President Judge Sharp said, at [64]:

"In *Treby and Local Government Standards Panel [2010]* WASAT 81 (*Treby*), Judge Pritchard, as she was then, examined in detail the meaning of the word 'improper' used in reg 7(1)(b) of the Regulations. Her Honour's observations and findings continue to reflect the view of the Tribunal on this issue and we respectfully summarise them, so far as they are relevant to these reasons, as follows:

1. The word 'improper' is used in reg 7(1)(b) as an adjective to describe the use of a councillor's office. The term 'improper' is not defined in the LG Act or the Rules of Conduct Regulations.
2. According to the *Shorter Oxford English Dictionary* (6th ed, 2007), the meaning of 'improper' includes 'unsuitable' and 'inappropriate'. Her Honour said that the meaning of the word 'improper' could not be considered in isolation, but rather should take its flavour from the surrounding context, which includes an assessment of what is involved in role of a councillor, according to the LG Act and the Rules of Conduct Regulations and other instruments made under the LG Act.
3. ...
4. In view of these authorities, her Honour drew the following conclusions in relation to the meaning and application of the term 'improper use of the person's office' within the context of reg 7(1)(b) of the Rules of Conduct Regulations.
  - (a) Impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of that person's position as a councillor and the circumstances of the case.
  - (b) Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent.
  - (c) Impropriety may arise in a number of ways. It may consist of an abuse of power, that is, if a councillor uses his or her position in a way that is inconsistent with the discharge of the duties arising from that office. Alternatively, impropriety will arise from the doing of an act which a councillor knows or ought to know that he or she has no authority to do.

- (d) In the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his or her purpose or intention in exercising the power will be important factors in determining whether the power has been abused.
  - (e) A councillor's use of his or her office can be improper even though it is for the purpose or with the intention of benefiting Council.
5. The standards of conduct that would be expected of a member of a local government can be discerned from the fiduciary obligations which council members owe to their councils and from a range of statutory and non-statutory instruments, including the LG Act itself, and any code of conduct, local laws as to conduct and regulations which the LG Act contemplates may be made to regulate the conduct of members of local government. Such instruments might include the Rules of Conduct Regulations (which at reg 3 contains general principles to guide the behaviour of council members).
6. A failure to comply with any of these provisions would constitute a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of that person's position as a councillor and the circumstances of the case, and that would therefore suggest an improper use of that office."

*Belief that the intended result would be to cause detriment to any other person*

- 9.31 The word "to" in the phrase "to cause detriment" has been interpreted as meaning "in order to", "for the purposes of" or "with the intent, purpose and aim": see *Chew v R* [1992] HCA 18; (1992) 173 CLR 626 at [2] - [3]; *Ryan and Local Government Standards Panel* [2009] WASAT 154 at [31] - [32].
- 9.32 The word "detiment" is to be constructed widely, and includes a financial or a non-financial loss, damage, or injury, of any state, circumstance, opportunity or means specially unfavourable. Accordingly, "detiment" may include a tendency for others to think less favourably of a person, humiliation, denigration, intimidation, harassment, discrimination, disadvantage, adverse treatment, and dismissal from, or prejudice in, employment: *Ryan and Local Government Standards Panel* [2009] WASAT 154 at [31] - [32]

*Evaluation of the Evidence*

- 9.33 The Shire's *Code of Conduct*, under the heading "Objective" specifies that it provides Councillors and staff "with consistent guidelines for an acceptable standard of professional conduct".
- 9.34 The Complainants contend that Councillor Boyle breached the following provisions of the Code of Conduct:

#### **"1.1 Conflict of Interest**

- a) Members and staff will ensure that there is no actual (or perceived) conflict between their personal interests and the impartial fulfilment of their professional duties.

#### **3.1 Personal Behaviour**

- a) Members and staff will:

- i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
- ii) perform their duties impartially and in the best interests of the Shire of York uninfluenced by fear or favour;
- iii) act in good faith (ie honestly, for the proper purpose and without exceeding their powers) in the interests of the Shire of York and the community;
- iv) make no allegations which are improper or derogatory (unless true and in public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and
- v) always act in accordance with their obligations of fidelity to the Shire of York.

- b) Members will represent and promote the interests of the Shire of York, while recognising their special duty to their own constituents.

#### **3.2 Honesty and Integrity**

- a) Members and staff will:

- i) observe the highest standards of honesty and integrity and avoid conduct which might suggest any departure from these standards;

9.35 Of these provisions, the Panel considers that Councillor Boyle, by making the Announcement only acted contrary to clause 3.1 a) iv) in that he did not refrain, in the performance of his official or professional duties, from any form of conduct (being the making of the Announcement), which may cause any reasonable person unwarranted offence or embarrassment.

9.36 In the Panel's opinion, when viewed objectively, and in the light of the matter set out in the previous paragraph, and the context in which the Announcement was made, each of the Expressions involved an improper use by Councillor Boyle of his office as Council member because:

- (a) the Announcement was made at the commencement of the OCM at which Councillor Boyle was the Presiding Member, thereby adding to the perceived importance of the issue;
- (b) neither the Expressions nor the Announcement related to a matter that was included as an agenda item for the OCM;

- (c) Councillor Boyle's concerns with Mr and Mrs Saint ought not to have been ventilated at the public forum afforded by the OCM, when attendees may have understood the Announcement to have the imprimatur of the Council; and
  - (d) the Expressions, having been made at the OCM, could be expected to cause unreasonable offence and embarrassment to Mr and Mrs Saint.
- 9.37 While the Panel accepts Councillor Boyle's advice to the Panel that "[t]he statement made at the meeting was to depict the waste of Shire resources by Simon Saint directing scripture quotes to Councillors, the continual consumption of community resources in dealing with the Saints over a number of years and to put into the public arena that events of this nature were occurring" the Panel concludes that the Expressions were also made with the intent, purpose and aim of causing detriment to Mr and Mrs Saint, in that they would reasonable lead to a tendency for others to think less favourably them and to cause to them humiliation and denigration.
- 9.38 That this is so is evident from the following facts:
- (a) there has been a long running dispute over developments undertaken by the Complainants;
  - (b) the Expressions were personal in nature, being directed at Mr and Mrs Saint, rather than to the underlying issues; and
  - (c) Councillor Boyle made the Announcement at the public forum afforded by the OCM, when in the Panel's opinion, the matters covered by the Announcement ought to have been dealt with in private.
- 9.39 The Panel therefore finds that by making the Announcement, Councillor Boyle breached regulation 7.1(b) of the Regulations in relation to both Mrs and Mrs Saint.
- Regulation 8 of the Regulations
- 9.40 Regulation 8 provides that "[a] person who is a council member must not either directly or indirectly use the resources of a local government for any other purpose, unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose."
- 9.41 The Complainants allege that by making the Announcements Councillor Boyle directly or indirectly used the Shire's resources for a purpose – namely, his own advantage – without that use and purpose being authorised under the Act or by its Council or its Chief Executive Officer, in contravention of regulation 8 of the *Regulations*.
- 9.42 In Cr Boyle's submission, he states relevantly in regard to this allegation: "[a]t no time have I used the resources, equipment or plant of the Shire of York for my own advantage."
- 9.43 Upon inquiry by the Department, the Complainants identified the relevant Shire resources to be:
- (a) Council facilities and meeting room; and
  - (b) Municipal funds for the provision of staff time and resources relating to enquiry matters brought about following the meeting; the provision of further staff time and resources to provide

letters and responses to requests for information relating to the announcement at the meeting; and allocation of further staff time and resources time for a Freedom of Information application which was brought about due to the announcement at that meeting.

- 9.44 In Cr Boyle's submission he maintains that he acted at his own discretion and made the subject announcements in the interests of good governance for the community as a whole.
- 9.45 The Panel finds that although Councillor Boyle was a Councillor at 17 September 2012 he did not, directly or indirectly use the resources of the Shire for his own advantage because:
- (a) the OCM would have taken place had the Announcement not been made;
  - (b) Councillor Boyle attended the OCM as the Shire President;
  - (c) making the Announcement did not, save perhaps to a *de minimus* extent, involve a use of the Shire's resources beyond that which would have been occasioned by the OCM in any event; and
  - (d) there is no evidence before the Panel that the matters specified in subparagraph (b) of her penultimate paragraphs ever occurred.
- 9.46 Accordingly the Panel finds that regulation 8 of the Regulations has not been breached

#### **Regulation 9 of the Regulations**

- 9.47 Regulation 9 provides that "[a] person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task."
- 9.48 The Complainants contend that in making the Announcement Councillor Boyle "discussed matters relating to the Shire's administration with regard to questions and correspondence and made radical threats to print horrendous costs relating to the legislative function of the Freedom of Information Act".
- 9.49 The Panel assumes this to be a reference to the following extract from the Announcement:
- "All Freedom of Information requests by the Saints will be fully timed and costed then these horrendous costs to the community incurred by them will be published so that the people of York will then know how much of their rate money is wasted on this."
- 9.50 In his Response Councillor Boyle states that prior to making the Announcement he did not discuss it with Council or the CEO, and that he acted at his own discretion and made the subject announcements in the interests of good governance for the community as a whole. As recorded above, it is accepted that the Announcement was made without the approval of the Council or the CEO.

- 9.51 Given this, the fact that Councillor Boyle was a councillor at 17 September 2012 and that the Announcement was not made as part of the deliberations at a council or committee meeting, it follows that regulation 9 will have been breached if it is more likely than not that Councillor Boyle thereby undertook a task that contributed to the administration of the Shire.
- 9.52 The Panel observes that:
- (a) pursuant to section 5.41 of the Act the CEO's functions include the performance of any function imposed under the Act or "any other written law as a function to be performed by the CEO";
  - (b) the *FOI Act* is a "written law" for the purposes of section 5.41 of the *Act: Interpretation Act 1984*, section 5;
  - (c) pursuant to clause 1 of the Glossary to the *Freedom of Information Act 1992 (FOI Act)*, the CEO of the Shire is the "principal officer" of the Shire for the purposes of that Act;
  - (d) pursuant to section 100 of the *FOI Act*, decisions by the Shire under that Act are to be made by the CEO or an officer of the agency directed by the principal officer for that purpose;
  - (e) pursuant to section 4 of the *FOI Act*, the Shire is give effect to that Act in a way that allows access to documents to be obtained promptly and at the lowest reasonable cost; and
  - (f) pursuant to section 16 of the *FOI Act*, the Shire may charge an applicant a fee for access to documents, within the constraints imposed by that section and the *Freedom of Information Regulations 1993*.
- 9.53 It follows that Councillor Boyle did not have any power to determine an application under the *FOI Act* or to determine the fees that the Complainants must pay to access documents of the Shire under the *FOI Act*.
- 9.54 In *Yates and Local Government Standards Panel [2012] WASAT 59 (Yates)* Deputy President Judge Sharp said, at [48] – [49]:
- "Neither the LG Act nor the Rules of Conduct Regulations specifically define what tasks contribute to the administration of the local government, but s 2.7(1) of the LG Act provides that the role of the Council is to 'govern the local government's affairs'. It then provides for the appointment of a Chief Executive Officer for the local government to perform certain functions.
- Section 5.41 of the LG Act sets out the Chief Executive Officer's functions as follows:
- [Section 5.41 of the Act is then set out]"
- 9.55 Judge Sharp added at paragraphs [53] – [54]:
- "... What the intervener is contending is that the applicant involved himself in implementing a decision of Council without the consent of Council or the Town's CEO.

It is without doubt the role of the Council to consider the need for and desirability of the carrying out of the Works and to decide whether the Works should be carried out. On the other hand, the process for giving effect to that decision is clearly an administrative function of the Town's CEO."

9.56 His Honour also found that "the word 'contribution' when given its ordinary and general meaning, means "play a part in the achievement of a result"; Shorter Oxford English Dictionary, (6th ed, 2007)."

9.57 In the Panel's opinion:

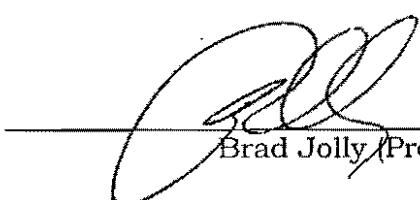
- (a) dealing with access requests under the FOI Act and the fees to be charged for access are tasks that contribute to the administration of the Shire; and
- (b) Councillor Boyle's expression in the Announcement that:

"All Freedom of Information requests by the Saints will be fully timed and costed then these horrendous costs to the community incurred by them will be published so that the people of York will then know how much of their rate money is wasted on this"

was a "contribution" to that task, in the sense that he purported to determine the manner in which the Shire would deal with access requests by the Complainants under the FOI Act.

9.58 This Panel's opinion is not altered by the fact that Councillor Boyle did not have the authority to make such a binding determination.

9.59 The Panel accordingly finds that Councillor Boyle breached regulation 9.



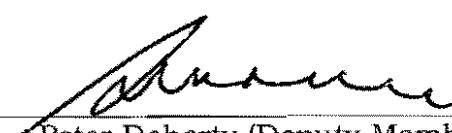
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Brad Jolly (Presiding Member)



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Paul Kelly (Member)



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Peter Doherty (Deputy Member)

## LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 26 and 27 of 2012 [DLG 20120161 and 20120162]
Legislation	<i>Local Government Act 1995</i> (WA)
Complainants	<b>Mr Simon Saint &amp; Mrs Heather Saint</b>
Subject of complaint	<b>Councillor Anthony Stephen Boyle</b> and <b>Councillor Roy Scott</b>
Local Government	Shire of York
Regulation	Clause 8.4(2) of the Shire of York Standing Orders Local Law; and Regulations 7(1)(b), 8 and 9(1) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> .
Panel Members	<b>Mr B Jolly</b> (Presiding Member) The Right Honourable the Lord Mayor <b>L Scalfidi</b> (Deputy Member) <b>Mr P Doherty</b> (Deputy Member)
Heard	5 June 2013 (Determined on the documents and after hearing Cr Boyle)

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### DECISION AND REASONS FOR DECISION

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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.

## **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**); and
- (b) 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 Findings of Minor Breaches (**Breach Findings**)**

2.1 The Panel has made three findings of minor breach in relation to complaints SP 26 and 27 of 2012 – namely that it is more likely than not that on 17 September 2012 Councillor Boyle made the Announcement at an Ordinary Council Meeting of the Shire of York, and in so doing:

- (a) breached clause 8.4(2) of the Shire's Standing Orders Local Law, by using offensive or objectionable expressions in reference to the Complainants;
- (b) breached regulation 7(1)(b) of the *Regulations* by making improper use of his office as Councillor of the Shire to cause detriment to the Complainants; and
- (c) breached regulation 9 of the *Regulations* in that he undertook a task that contributes to the administration of the Shire which had not been authorised by the Shire or the CEO of the Shire.

### **(Minor Breaches)**

## **3. Summary of Decision**

3.1 The Panel considered how the Minor Breaches are to be dealt with under section 5.110(6) of the *Local Government Act 1995* and concluded, for the following reasons, that Cr Boyle be publicly censured as specified in the attached Minute of Order, pursuant to subsection (b)(i) of that section.

## **4. Procedural fairness**

4.1 The Panel gave to Cr Boyle:

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

## **5. Councillor Boyle's response and submissions**

5.1 Councillor Boyle responded to the Notice and the Breach Findings by letter dated 29 April 2013 (**Response 2**).

- 5.2 Councillor Boyle was also permitted to address the Panel in person on 23 May 2013.
- 5.3 In the Panel's view, Response 2 can be summarised, relevantly, follows:
- (a) he had an honest belief that the Standing Orders had been repealed and were not operable on 17 September 2012;
  - (b) he accepts that by making the Announcement he made use of his office as Councillor of the Shire but that he took this action "to prevent future use of Council/Community resources in dealing with specific people";
  - (c) he does not accept that by making the Announcement he undertook a task that contributes to the administration of the Shire which had not been authorised by the Shire or the CEO of the Shire;
  - (d) as to sanctions, that:
    - (i) public censure was not appropriate as he "acted in good faith for the benefit of the community as a whole and not from a personal or vindictive basis in making the statement";
    - (ii) a public apology was not appropriate as "any public apology ordered would be made as a compliance issue without any level of sincerity and I do not consider that acting in the interest of the community as a whole on this issue warrants this level of sanction"; and
    - (iii) he would accept a requirement to undertake training in meeting procedures, conflict resolution or other specified training.
- 5.4 When Councillor Boyle attended before the Panel on 23 May 2013 he said, in effect, that:
- (a) over the last 6 or so years the Complainants had unnecessarily caused the Shire to waste inordinate amounts of time responding to vast numbers of mischievous requests and queries emanating from them;
  - (b) during 2013 alone, the Complainants (or either of them) had lodged over 30 applications pursuant to the *Freedom of Information Act 1992 (WA)*;
  - (c) the email which the Complainants sent to him and Deputy Shire President Ray Scott on 30 August 2012 (**Email**), and which led to him making the Announcement, was deeply offensive to him;
  - (d) Cr Scott's wife, who opened the Email sent to Cr Scott, was deeply disturbed by its contents and required medical attention as a result of it;
  - (e) he made the Announcement because he considered, in effect, that "enough was enough" and that the Announcement was the only way of preventing the Complainants from continuing to cause the Shire to waste inordinate amounts of time and money responding to mischievous requests and queries emanating from them;

- (f) the Announcement was made deliberately, not as a knee-jerk reaction to the Email;
  - (g) the Announcement had had the effect of reducing or eliminating requests and queries from the Complainants to the Shire;
  - (h) correspondence has passed between solicitors acting for him and the Complainants in which defamation proceedings by both parties had been threatened; and
  - (i) with the benefit of hindsight, he would do the same again, as the Announcement was the only way of preventing the Complainants from continuing to cause the Shire to waste inordinate amounts of time and money responding to mischievous requests and queries emanating from them.
- 5.5 Cr Boyle also provided the Panel with a draft letter from his solicitor to the male Complainant's solicitor dated 30 April 2013 which he said accurately summarised some of the dealings between the male Complainant and the Shire and Cr Boyle.
- 5.6 Upon reviewing the letter of 30 April 2013, Panel Member Cr Kelly learned for the first time of a potential conflict between his chairmanship of the Local Government Insurance Services and Cr Boyle.
- 5.7 Cr Kelly therefore recused himself from the Panel.
- 5.8 The Panel was thereafter reconstituted with The Right Honourable the Lord Mayor Lisa Scaffidi replacing Cr Kelly.
- 6. Panel's views**
- 6.1 In considering an appropriate sanction or sanctions for the present breaches the Panel notes that Cr Boyle has not previously been found to have breached the *Regulations*.
- Is a public censure appropriate in this matter?*
- 6.2 A public censure of the kind ordered by the Panel is a significant sanction. It involves a high degree of public admonition of the conduct of the council member concerned.<sup>1</sup> While a public censure has that character or effect it is aimed at reformation of the offending council member and prevention of further offending acts.
- 6.3 In the Panel's view, a breach of regulation 7(1) is a serious matter and will in almost all occasions deserve the sanction of a publicly 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.
- 6.4 In the present case, the Panel accepts that Cr Boyle made the Announcement out of a desire to prevent the Shire from wasting inordinate amounts of time and money responding to what he perceived to be mischievous requests and queries emanating from the Complainants (**Perceptions**).

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<sup>1</sup> *Mazza and Local Government Standards Panel [2009] WASAT 165 per Judge J Pritchard (Deputy President) as her Honour then was, at [107].*

6.5 However, the Panel does not consider that the Announcement was an appropriate way of addressing his Perceptions, which ought to have been addressed through normal legal processes.

6.6 In the Panel's view, this, coupled with Cr Boyle's assertion that even with the benefit of hindsight he would do the same again, leads the Panel to conclude that the sanction of a public censure is required in this case.

*Apology*

6.7 In the Panel's view a public apology of the kind ordered by the Panel is also a significant sanction, as it too involves a high degree of public admonition of the conduct of the council member concerned.

6.8 In the Panel's view 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.

6.9 The Panel accepts, for the purposes of determining appropriate sanctions that Cr Boyle believed that the Complainants had effectively left him with no other option than to make the Announcement if he were to address his Perceptions.

6.10 In the light of this, and the fact that the Panel has ordered that Cr Boyle be publicly censured, is the Panel's view that it is not appropriate to also deal with the subject Minor Breach by making an order that Cr Boyle apologise to the Complainants or to either of them.

*Training*

6.11 The Panel notes that its consideration of how a breach should be dealt with under section 5.110(6) must embrace the issue of whether or not it is appropriate for the Panel to order that the council member concerned undertake such training as it may specify.

6.12 The circumstances in which it may be appropriate for the Panel to order that the council member concerned undertake training include where the type of training is reasonably available for the member to undertake, and the member communicates to the Panel:

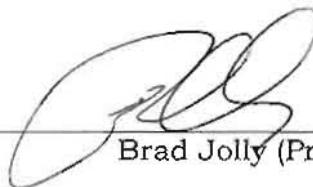
- (a) his or her acknowledgement that he or she has committed the minor breach found by the Panel to more likely than not have occurred, and his or her willingness to undertake training; or
- (b) his or her acknowledgement that he or she has committed the minor breach found by the Panel to more likely than not have occurred, but that such breach occurred through his or her lack of knowledge or education on the issue or issues concerned; or
- (c) the member communicates to the Panel his or her remorse or contrition for his or her offending conduct in committing the minor breach found by the Panel to more likely than not have occurred, and the Panel's view is that training may be of use to the member so as to not repeat his or her offending conduct.

6.13 Cr Boyle has not asserted that he made the Announcement through lack of knowledge or education on the issues concerned.

6.14 After due consideration of the information available to the Panel and Cr Boyle's assertion that even with the benefit of hindsight he would do the same again, it is the Panel's view that it is not likely that additional training would prevent Cr Boyle from repeating his conduct in committing the Minor Breaches, and as such the Panel does not order that he undertake training. Rather, Cr Boyle should accept the Panel's Breach Findings and refrain from so acting in the future.

**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 Breaches are to be dealt with under section 5.110(6) of the Act, is that pursuant to subsection (b)(i) of that section, Cr Boyle should be publicly censured as set out in the attached Minute of Order.



Brad Jolly (Presiding Member)



The Right Honourable the Lord Mayor, Lisa Scaffidi (Deputy Member)



Peter Doherty (Deputy 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."*

## **LOCAL GOVERNMENT STANDARDS PANEL**

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

Complaint Number SP 26 and 27 of 2012  
[DLG 20120161 and 20120162]

Legislation *Local Government Act 1995* (WA)

**Complainants** **Mr Simon Saint & Mrs Heather Saint**

**Subject of complaint** **Councillor Anthony Stephen Boyle**  
**and**  
**Councillor Roy Scott**

Local Government Shire of York

Regulation Clause 8.4(2) of the Shire of York Standing Orders Local Law; and  
Regulations 7(1)(b), 8 and 9(1) of the *Local Government (Rules of Conduct) Regulations 2007*.

Panel Members Mr B Jolly (Presiding Member)  
The Right Honourable the Lord Mayor L Scaffidi (Deputy Member)  
Mr P Doherty (Deputy Member)

Heard 23 May 2013 (Determined on the documents and after hearing Cr Boyle)

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### **MINUTE OF ORDER**

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

1. Anthony Stephen Boyle, a member of the Council of the Shire of York, be publicly 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 him, the Chief Executive Officer of the Shire of York arrange 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 "The Avon Valley Advocate" community newspaper

**NOTICE OF PUBLIC CENSURE**

The Local Government Standards Panel (the Panel) has made a finding to the effect that on 17 September 2012 Councillor Anthony Stephen Boyle made an Announcement at an Ordinary Council Meeting of the Shire of York, and in so doing: (a) breached clause 8.4(2) of the Shire's Standing Orders Local Law, by using offensive or objectionable expressions in reference to the Complainants; (b) breached regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) by making improper use of his office as Councillor of the Shire to cause detriment to the Complainants; and (c) breached regulation 9 of the Regulations in that he undertook a task that contributes to the administration of the Shire which had not been authorised by the Shire or the CEO of the Shire.

The Panel censures Councillor Boyle for these breaches.

**LOCAL GOVERNMENT  
STANDARDS PANEL**