



Local Government Standards Panel

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| Complaint Number | 20240381 |
| Legislation | <i>Local Government Act 1995</i> |
| Complainant | Mr Stephen Russell |
| Respondent | Lord Mayor Basil Zempilas |
| Local Government | City of Perth |
| Regulation | Regulation 17 Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> |
| Panel Members | Ms Emma Power (Presiding Member) Ms Suleila Felton (Member) Cr Peter Rogers (Member) |
| Heard | 10 June 2024 Determined on the documents |
| Finding | No Breach Regulation 17 1 x Breach Regulation 18 |

FINDING AND REASONS FOR FINDING

Delivered 8 August 2024

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.



Summary of the Panel's decision

1. On 10 June 2024, the Panel found that Lord Mayor Basil Zempilas, the Mayor of the City of Perth ("**the City**"):
 - a. did not commit a minor breach pursuant to the *Local Government Act 1995 (WA)* ("**the Act**") and Division 4 and Regulation 17 of the *Local Government (Model Code of Conduct) Regulations 2021* ("**the Regulations**"); and
 - b. did commit a minor breach pursuant to the Act and division 4 and regulation 18 of the Regulations,when he made certain Facebook posts relating to his candidacy as a Liberal member for Churchlands while also referring to his role as Mayor of the City as set out in paragraph 17 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
6. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.¹
7. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
8. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate²; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding³.

¹ Section 5.106 of the Act

² *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

³ *Briginshaw v Briginshaw* (1938) 60 CLR 336



9. The Panel does not possess investigative or supervisory powers.⁴ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.
10. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
11. The Panel also must have regard to the general interests of local government in Western Australia⁵.
12. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Jurisdiction and Procedural Fairness

13. On 4 April 2024 the Panel received a complaint from Michelle Reynolds acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 28 March 2024.
14. In the complaint form, the Complainant alleges that Mayor Zempilas has breached:
 - a. regulation 17 of the Regulations; and
 - b. regulation 18 of the Regulations,when he made certain Facebook posts relating to his candidacy as a liberal member for Churchlands while also referring to his role as Mayor of the City as referred to in paragraph 17 below ("**the Complaint**").
15. The Panel convened on 10 June 2023 to consider the Complaint.
16. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Mayor Zempilas was:
 - i. last elected to the Council of the City in October 2023 for a term expiring in October 2027;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 10 June 2024;
 - b. was satisfied the Complaint was made within six months after the alleged breach occurred⁶;
 - c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁷;

⁴ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁵ Section 8(6) of Schedule 5.1 of the Act

⁶ Section 5.107(4) and 5.109(2) of the Act

⁷ Section 5.107 and 5.109 of the Act



- d. was satisfied the Department had provided procedural fairness to Mayor Zempilas; and
- e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

17. The Complainant provided the following comments and arguments in respect to the Complaint as summarised by the Panel:

- a. The title “Lord Mayor” is owned by the City of Perth and therefore defined as a City resource under Div 4 Clause 17 of the Code-of-Conduct. This is a conclusion also reached by Western Australia Local Government Association (“WALGA”) in their guidance note “*Council Member Candidacy for State and Federal Parliament*” (“WALGA Guidelines”) which states “Local Government resources include....use of titles” – extract given in Attachment A.
- b. The title “Lord Mayor” comes with or is associated with the Office of Lord Mayor where “Office” is used per Div 4 Clause 18 of the Code-of-Conduct.
- c. The City has provided to Lord Mayor Basil Zempilas the title “Lord Mayor” to enable him to perform his official duties per the Act as Lord Mayor and therefore as an Elected Member of the City of Perth.
- d. The City of Perth Code-of-Conduct document, notes the following:

Behavioural requirements

The following are enforceable provisions under this Code and failure to act accordingly may constitute a **breach** and be dealt with by the City of Perth.

3.1. As a Council Member for the City of Perth, I must –

- a. only use my Lord Mayor or Councillor title when fulfilling the official functions of my elected office.

- e. Mayor Zempilas should be fully conversant with the City’s Code of Conduct of document.
- f. Mayor Zempilas posted onto his Facebook page under the title “Lord Mayor of Perth” his Liberal Party preselection candidacy for the State seat of Churchlands for the upcoming 2025 State elections.
- g. The use of the title “*Lord Mayor of Perth*” in this manner is more than making reference to his Mayoral experience, as per a CV contents which may be reasonable, but rather the CV has been titled “*Lord Mayor of Perth*” and therefore utilising the title in an improper manner.
- h. Under the title “*Lord Mayor of Perth*”, Zempilas also has hyperlinked a webpage where a financial contribution can be made to his campaign.
- i. Mayor Zempilas candidacy for Liberal party preselection has absolutely nothing to do with his official duties as Lord Mayor of the City of Perth and therefore his official duties under the Act. To this effect Zempilas has improperly used the title “Lord Mayor” as a City owned resource and by its association with the “Office of Lord Mayor” to:

- i. Improperly raise his public profile within the public as a preselection candidate and importantly to the Churchland's Liberal Party preselectors, thereby advantaging himself i.e. a breach of Clause 18(1)(a); and
 - ii. Improperly hyperlink to a website which has the objective to raise funding for his personal needs, thereby advantaging himself i.e. a breach of regulation 18(1)(a).
 - iii. Improperly associate the City of Perth, which as a public institution must be apolitical in the public layperson's eyes, with his candidacy for preselection of a political party, thereby causing detriment to the City of Perth. i.e. a breach of regulation 18(1)(b).
 - j. Unless authorised otherwise by the City of Perth CEO / City of Perth, then Mayor Zempilas has improperly used a City resource i.e. title Lord Mayor, for "other purposes" by strengthening his candidacy for preselection and seeking electoral funding i.e. a breach of regulation 17.
 - k. The Lord Mayor should be setting an example to all Elected Members within Western Australia. If this Complaint is upheld, then I believe as a minimum the Mayor should be made to publicly apologise.
18. The Complainant also provide the following additional information to the Panel
- a. Extract from WALGA guidelines as follows:

"Requirement: Council Members must not use Local Government resources for electoral purposes (cl. 17 of the Model Code of Conduct).

Consider:

 - *Local Government resources include Council Member email addresses and use of title.*
 - *Manage communication carefully and direct any community service requests to CEO.*
 - *Maintain strict division between Council business and activities as a candidate so that only the appropriate resources are used.*
 - *Must not use any equipment provided by the Local Government for personal political purposes i.e. laptop, mobile phone.*

Requirement: Council Members must not make improper use of their office to gain an advantage for themselves or another person, or to cause a detriment to another person or the Local Government (cl. 18 of the Model Code of Conduct).

Consider:

 - *Avoid use of Council Member title if making public statements when politically campaigning.*
 - *Maintain clear division between role as Council Member and role as candidate or party spokesperson.*
 - *Avoid conflicts between personal interest in electoral success and duties as a Council Member. May include managing potential impartiality interest or perception of bias arising from overlap between matter before Council and*



electorally significant issues, announced policy positions or manifesto of your party or any other party.”

- b. Various Screenshots of Mayor Zempilas’ Facebook account showing posts announcing candidacy and “Intro” information.
- c. Screenshot of hyperlinked campaign webpage.

The Respondent’s Response

- 19. By an email dated 23 April 2024, Mayor Zempilas provided a response to the Complaint.
- 20. Mayor Zempilas provided the following comments and arguments regarding the Complaint as summarised by the Panel:
 - a. Through the complaint Mayor Zempilas became aware that he had failed to remove a City of Perth web address from his personal FB page.
 - b. The FB page is not owned, controlled, posted to or in any way the City’s property.
 - c. At one time the page was titled “Basil Zempilas – Mayor of Perth”, the Mayor of Perth has been deleted.
 - d. It never at any stage said Lord Mayor.
 - e. In the page information section it clearly says:
“18th Lord Mayor City of Perth and Liberals WA candidate for Churchlands”.
 - f. Both are statements of fact and there is no attempt to portray Mayor Zempilas is not either of those things.
 - g. Again, this is a personal FB page, not one controlled by the City.

PANEL’S CONSIDERATION

Regulation 17

- 21. Regulation 17 prohibits the use of government resources in certain circumstances and provides as follows:

“ 17. Misuse of local government resources

(1) In this clause —

***electoral purpose** means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918;*

resources of a local government includes —

(a) local government property; and

(b) services provided, or paid for, by a local government.

(2) A council member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by the local government or the CEO, to use the resources for that purpose."

22. To find a breach of Regulation 17 the Panel must be satisfied that it is more likely than it is not that:
- the resource used was a "local government resource"; and
 - Mayor Zempilas directly or indirectly used such local government's resources for an identified electoral purpose or any other purpose; and
 - such purpose was not authorised under the Act or by the council or the City's CEO.

The resource used was a "local government resource"

23. The term 'resource' is not defined in the Regulations or in the Act. However, the term '*local government property*' is defined in section 1.4 of the Act to mean "*anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, the local government*".
24. The noun '*resource*' is relevantly defined in The Macquarie Dictionary (5th ed, 2009) at page 1408 as "*(Often plural) Money or any property which can be converted into money; assets*".
25. The noun "*asset*" is defined in The Macquarie Dictionary as "*a useful thing or quality*" and "*an item of property; an economic resource*".⁸
26. The term 'use' is relevantly defined in the Macquarie Dictionary Online (as at 14 December 2021) as:
- to employ for some purpose; put into service; turn to account: *use a knife to cut; use a new method*; and
 - to avail oneself of; apply to one's own purposes: *use the front room for a conference*.
27. The Complainant is alleging that the title of "Lord Mayor of Perth" is a City resource.
28. Certainly, the word "City of Perth" or the City of Perth Crest are the intellectual property of the City. Further, certain resources that are provided to elected members by the City containing their elected member title (i.e. email addresses, letterhead, business cards) can be considered to be resources of the City.
29. However, the use of a current job title is slightly different to this.

⁸ *Yates and Local Government Standards Panel [2012] WASAT 23 at [30] – [37]*

30. The Panel notes the provided WALGA Guidelines which notes elected member's titles may be considered a City resource. However, the Panel considers that a job title is distinguished from actual physical items belonging to, or provided by, the City.
31. A job title is not something that can be "used up" nor can it be converted into money and is not an "economic resource". Even where that title has been passed to another person (i.e. following an election) the use of a title of "Mayor" or "councillor" would still be able to be correctly used in a person's resume in reference to a past position.
32. This is not to say that the use of that title may not be inappropriate in some circumstances, for instance after an elected member's term has expired or when they are not acting in their capacity as a councillor.
33. However, the Panel finds, to the required standard that the title "Lord Mayor of Perth" is not a City resource in the manner contemplated by the Regulations.
34. This element is not met.

Other elements

35. As the Panel has found the title was not a government resource it has not further considered the other elements here.

Conclusion

36. The elements required to find a breach of regulation 17 of the Regulations have not been met.

Regulation 18

37. Regulation 18 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

" 18. Securing personal advantage or disadvantaging others

(1) A council member must not make improper use of their office —

(a) to gain, directly or indirectly, an advantage for the council member or any other person; or

(b) to cause detriment to the local government or any other person.

(2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83."

38. To make a finding of a minor breach of regulation 18 of the Regulations the Panel must be satisfied to the required standard that:
 - a. Mayor Zempilas was an elected member at the time of the alleged breach and the time of the determination;
 - b. Mayor Zempilas made use of his office as Council member of the City;
 - c. when viewed objectively, such use was an improper use of Mayor Zempilas' office in that it:

- i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
- d. Either:
 - i. In respect to regulation 18(1)(a) - Mayor Zempilas engaged in the conduct with the intention of gaining an advantage for herself or another party; and
 - ii. In respect to regulation 18(1)(b) - Mayor Zempilas engaged in the conduct in the belief that detriment would be suffered by another person.

Code of Conduct

- 39. The City has a *Code of Conduct for Council Members, Committee Members and Candidates* adopted 15 December 2021 (as amended) ("**the Code of Conduct**") which governs the conduct of elected members.
- 40. A breach of the Code of Conduct may indicate that an elected member has acted improperly in breach of Regulation 18.
- 41. The relevant provisions of the Code of Conduct Code are as follows:

" 4. Personal integrity

- (1) *A council member, committee member or candidate should —*
 - (a) *act with reasonable care and diligence; and*
 - (b) *act with honesty and integrity; and*
 - (c) *act lawfully; and*
 - (d) *identify and appropriately manage any conflict of interest; and*
 - (e) *avoid damage to the reputation of the local government.*
- ...

" 8. Personal integrity

- (1) *A council member, committee member or candidate —*
 - (a) *must ensure that their use of social media and other forms of communication complies with this code; and*
 - (b) *must only publish material that is factually correct."*

Panel's Consideration - Regulation 18

Mayor Zempilas was an Elected Member at the relevant times

- 42. Mayor Zempilas was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
- 43. This element is met.

Mayor Zempilas made use of his office as Council Member of the City

44. Due to the fact that:

- a. the Facebook Posts were made using Mayor Zempilas' public councillor Facebook account - then known as "*Basil Zempilas - Lord Mayor of Perth*"; and
- b. Mayor Zempilas was purporting to communicate with and guide the community in the local municipality,

the Panel finds that it is more likely than not that Mayor Zempilas was acting in his capacity as an elected member and made use of his office as a council member when undertaking the conduct.

45. This element is met.

Mayor Zempilas' use was improper

46. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.
47. 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.
48. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
49. 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 purpose or intention in exercising the power will be important factors in determining whether the power has been abused⁹.
50. The Complainant has alleged that Mayor Zempilas' use of the title "Lord Mayor of Perth" in a campaign post relating to his pre-selection for the Liberals WA party was improper and that Mayor Zempilas was in breach of the WALGA guidelines in respect to the use of a councillor title.
51. The Panel notes that the Complainant argues that the use of the name in a CV is different to using the job title as a title of that CV.
52. The Panel has considered this view and finds that Mayor Zempilas is the current holder of that job title. He is therefore entitled to use it in reference to his current (or past) position. As such, the mere use of the same to refer to himself is not improper.
53. Despite this, what Mayor Zempilas has done is slightly different, in that he has used this title in connection with expanding his profile as a candidate for pre-selection and to seek assistance and donations from the community at large.

⁹ Treby and Local Government Standards Panel [2010] WASAT 81 (at 31); *Chew v The Queen* (1992) 173 CLR 626 (at 640 - 641 [Dawson JJ]); *R v Byrnes* (1995) 183 CLR 501 – (at 514 - 515 [Brennan, Deane, Toohey and Gaudron JJ] and at 521 [McHugh JJ]).



54. It is important to note that the relevant Facebook Page is the page that Mayor Zempilas has used as his method of communication with the local community on Facebook in his role as Mayor since he was elected.
55. Although this does not make the page the property of the City in any manner, it should be anticipated that where the Facebook page that has been historically used for this purpose, and still contains the heading "*Basil Zempilas - Lord Mayor of Perth*", that the page is being used in the primary context of Mayor Zempilas' role as Mayor of the City.
56. On his Facebook Page Mayor Zempilas also used the following words as his "Intro":

" 18th Lord Mayor of the City of Perth • Candidate for Liberals WA preselection for seat of Churchlands"
57. By this use of the two roles in one explanatory statement, Mayor Zempilas is clearly emphasising his current role as Mayor and implying an express relationship between this and his role as a liberal candidate. This use of this wording was a deliberate choice.
58. The Panel notes this type of conduct is a matter that is expressly raised in the WALGA Guidelines "*Council Member Candidacy for State and Federal Parliament*".
59. The Panel finds that Mayor Zempilas did not adequately take into consideration the WALGA Guidelines in that he did not:
 - a. avoid use of Council Member title if making public statements when politically campaigning; and
 - b. did not maintain clear division between role as Council Member and role as candidate or party spokesperson.
60. Further, although it is acknowledged that Mayor Zempilas did not use his council email in the Facebook page details, he did provide the link to the relevant website www.zempilas.com.au (both in the page information and also in specific posts) which is solely related to his state candidacy and expressly asks for public assistance and donations.
61. The Panel clarifies that the existence of the actual website itself is not a breach, Mayor Zempilas is certainly permitted to create/provide such site, it is the fact that it was so closely linked to his role as Mayor on his councillor Facebook Page which is considered improper.
62. The Panel finds that when he so closely linked his role as Mayor to his role as a Liberal candidate, Mayor Zempilas was also in breach of clause 4 of the City's Code of Conduct in that he:
 - a. did not act with reasonable care and diligence to expressly separate this role as Mayor to his role as Liberal candidate to the public;
 - b. did not act with integrity in that he failed to expressly separate his role as Mayor to his role as Liberal candidate; and
 - c. did not identify and appropriately manage the relevant perceived conflict of interest between the two relevant roles.

63. In addition, this constitutes a breach of clause 8 of the Code of Conduct as Mayor Zempilas' use of social media did not comply with the Code of Conduct.
64. Given the above, the Panel finds to the required standard that:
- a. the express use of the titles "*18th Lord Mayor of the City of Perth*" and "*Basil Zempilas - Lord Mayor of Perth*" in close connection to promoting and advertising his role as a candidate for the Liberal Party in the state election on the same Facebook page; and
 - b. the posting of the website www.zempilas.com.au that was solely used for candidate purposes on his Facebook page which had historically be used, and was still being used, by Mayor Zempilas in connection with his local councillor role,
- was improper.
65. Mayor Zempilas has argued that both references to his roles are "*statements of fact and there is no attempt to portray Mayor Zempilas is not either of those things*".
66. With respect, this argument does not address the relevant issues as to why the conduct may be considered improper.
67. Despite the above findings, the Panel does not consider that there is any implication that the conduct had the effect of implying that the City had any formal association with, or in any manner supported, Mayor Zempilas' candidacy.
68. Given the above, the Panel finds that it is more likely than not that the relevant conduct was not improper as:
- a. the conduct was in breach of the Code of Conduct and the relevant WALGA guidelines;
 - b. the conduct was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
 - c. the conduct is deserving of a penalty.
69. This element is met.

Regulation 18(1)(a) - Mayor Zempilas intended to gain an advantage

70. The definitions of the noun 'advantage' in the Shorter Oxford English Dictionary (6th ed) include: a favouring circumstance; something which gives one a better position, benefit; increased well-being or convenience or pecuniary profit.
71. The Panel considers the term 'advantage' in regulation 18(1)(a) is to be construed widely, and includes a financial or a non-financial benefit, gain or profit, or any state, circumstance, opportunity or means specially favourable.¹⁰
72. It is not necessary to find whether any advantage actually gained¹¹ but an intent to gain such advantage must be established.

¹⁰ Complaint SP 12 and 13 of 2011

¹¹ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]

73. The Complaint has alleged that Mayor Zempilas has attempted to gain an advantage for himself by:
- a. using his Mayor title to raise his profile as a preselection candidate with the public and the Churchland's Liberal Party preselectors; and
 - b. using the website hyperlink to raise funding for his personal needs.
74. In this case the Panel finds that is more likely than not that the:
- a. use of the titles "*18th Lord Mayor of the City of Perth*" and "*Basil Zempilas - Lord Mayor of Perth*" in close connection to:
 - i. the statement of his role as "*Candidate for Liberals WA preselection for seat of Churchlands*"; and
 - ii. promoting and advertising his role as a Liberal candidate by various posts; and
 - b. the use of a Facebook page which had historically been used, and was still being used, by Mayor Zempilas in connection with his local councillor role to:
 - i. promote a website solely related to his Liberal candidacy and requesting assistance and donations; and
 - ii. promoting and advertising his role as a Liberal candidate by various posts,
- were undertaken to gain an advantage to Mayor Zempilas in his capacity as a pre-selection candidate for the Liberal seat of Churchlands.
75. The Panel therefore finds that it is more likely than not that it was the intent of Mayor Zempilas to attempt to gain an advantage by the relevant conduct.
76. This element is met.

Regulation 18(1)(b) - Mayor Zempilas intended to cause a detriment

77. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
78. It is not necessary to find whether any detriment was actually suffered¹² but an intent to cause such detriment must be established.
79. In this case the Complainant has alleged that Mayor Zempilas has associated his candidacy with the City of Perth, which causes detriment to the City of Perth
80. As noted above, the Panel does not find that the conduct had the effect of implying that the City had any association with, or in any manner supported, Mayor Zempilas' candidacy.
81. Further, although it is clearly preferable that the City of Perth is not in any way associated with his announcement, the Panel finds that there was no intended detriment to the City when Mayor Zempilas referenced his existing position as Mayor in the Facebook posts.

¹² *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



82. This element is not met.

Conclusion

83. Given the above:

- a. the elements required to find a breach of regulation 18(1)(a) of the Regulations have been met; and
- a. the elements required to find a breach of regulation 18(1)(b) of the Regulations have not been met.

Panel's Findings

- 84. Mayor Zempilas did not commit a breach of Regulation 17 of the Regulations and therefore did not commit a minor breach.
- 85. Mayor Zempilas did commit a breach of Regulation 18(1)(a) of the Regulations and therefore did commit a minor breach.
- 86. Mayor Zempilas did not commit a breach of Regulation 18(1)(b) of the Regulations and therefore did not commit a minor breach.

Signing

Emma Power (Presiding Member)

Peter Rogers (Member)

Suleila Felton (Deputy Member)



Local Government Standards Panel

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| Complaint Number | 20240381 |
| Legislation | <i>Local Government Act 1995 (WA)</i> |
| Complainant | Mr Stephen Russell |
| Respondent | Lord Mayor Basil Zempilas |
| Local Government | City of Perth |
| Regulation | Regulation 18 <i>of the Local Government (Model Code of Conduct) Regulations 2021</i> |
| Panel Members for | Ms Emma Power (Presiding Member) |
| Penalty Consideration | Mr. Ethan Redshaw (Member) Mr. Peter Rogers (Member) |
| Heard | 10 June 2024 Determined on the documents |
| Penalty Considered | 19 December 2024 |
| Outcome | Public Apology |

DECISION AND REASONS FOR DECISION

Delivered 04 February 2025

DEFAMATION CAUTION

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Introduction

1. At its meeting on 10 June 2024, the Panel found that Lord Mayor Basil Zempilas, the Lord Mayor of the City of Perth (**"the City"**), committed a minor breach under the *Local Government Act 1995 (WA)* (**"the Act"**) and regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* (**"the Regulations"**) when he referred to his status as Lord Mayor of the City of Perth while campaigning for pre-selection as the Liberal member for Churchlands (**"the Minor Breach"**).

Jurisdiction and Law

2. The Panel convened on 19 December 2024 to consider how it should deal with the Minor Breaches.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (**"the Department"**) that on this date there was no available information to indicate that Lord Mayor Zempilas had ceased to be, or was disqualified from being, a councillor.
4. 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 the breach under section 5.110(6).¹
5. By a letter dated 8 August 2024, Lord Mayor Zempilas was:
 - a. notified of the Panel's finding of the Minor Breaches;
 - b. provided with a copy of the Panel's Finding and Reasons for Finding; and
 - c. offered an opportunity to make submissions as to how the Minor Breaches should be dealt with under section 5.110(6) of the Act.

Lord Mayor Zempilas' Submissions

6. By an email dated 20 August 2024, the Department received a response from Lord Mayor Zempilas.
7. Lord Mayor Zempilas provided the following comments:
 - a. Lord Mayor Zempilas acknowledges the findings.
 - b. It was a genuine misunderstanding on his behalf and no offence was intended.
 - c. At the earliest opportunity, Lord Mayor Zempilas corrected the title to the Facebook page as he was advised to do.
 - d. There are no consequences that Lord Mayor Zempilas is aware of for the title having appeared as it did.
 - e. There have been no previous complaints about Lord Mayor Zempilas' conduct to the Standard's Panel.
 - f. Lord Mayor Zempilas takes the responsibilities of his position as Lord Mayor seriously and prides himself on the leadership role of the City and the local government sector.

¹ *Local Government Act 1995 (WA)*, s 5.110(5).

Possible Sanctions

8. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by:
- (a) *ordering that no sanction be imposed; 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
 - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9; or*
 - (c) *ordering 2 or more of the sanctions described in paragraph (b).*

Panel's Consideration

9. Section 5.110(6) is solely about penalty. The Panel does not have the power to review any finding of a breach.
10. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
11. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
- a. the nature and seriousness of the breaches;
 - b. the councillor's motivation for the contravention;
 - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor's disciplinary history;
 - f. likelihood or not of the councillor committing further breaches of the Act;
 - g. personal circumstances at the time of conduct, and of imposing the sanction;
 - h. need to protect the public through general deterrence and maintain public confidence in local government; and



- i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness².
- 12. In this case the Panel notes that Lord Mayor Zempilas has shown insight and remorse as to the conduct. Further, the conduct was on the lower end of seriousness.
- 13. Despite this, the Lord Mayor of Perth has a special relationship with the State Government and must therefore set the standard within the sector for appropriate conduct³.
- 14. It is important that the lines between any party's local government role and their ambitions as to state politics are clearly defined and separated and, in particular, where local councillors retain their role while standing for preselection or election to State Government, they are especially careful to always act with integrity.
- 15. As the breach occurred in a public forum, the Panel considers that a public apology is the appropriate sanction in the circumstances.
- 16. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing⁴. It is a suitable and appropriate penalty when a councillor's conduct:
 - a. adversely affects particular individuals⁵; and/or
 - b. does not meet the standards other councillors seek to uphold.
- 17. In the relevant circumstances, the Panel considers that making a public apology is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Lord Mayor Zempilas recoup to the City the costs of the Department incurred with respect to the Complaint.

² *Chief Executive Officer, Department of Local Government and Communities and Scaffidi [2017] WASAT 67 (S)*

³ *s10 City of Perth Act 2016 (WA)*

⁴ *Treby and Local Government Standards Panel [2010] WASAT 81 (Pritchard J).*

⁵ *Treby and Local Government Standards Panel [2010] WASAT 81 [127] (Pritchard J).*



Panel's decision

18. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the Minor Breach of regulation 18 of the Regulations, Lord Mayor Zempilas make a public apology in terms of the attached Order.

Signing

A handwritten signature in black ink, appearing to read 'E Power'.

Emma Power (Presiding Member)

A handwritten signature in black ink, appearing to read 'E Redshaw'.

Ethan Redshaw (Deputy Member)

A handwritten signature in black ink, appearing to read 'P Rogers'.

Peter Rogers (Member)



ORDER

Delivered 04 February 2025

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Lord Mayor Zempilas, the mayor of the City of Perth **publicly apologise** as specified in paragraph 3; OR
2. Failing compliance with paragraph 3 within the specified timeframe, then paragraph 4 shall apply.

Public Apology

3. On the ordinary council meeting of the City of Perth first occurring after the expiration of 28 days from the date of service of this Order on him, Lord Mayor Zempilas shall:
 - i. attend the relevant ordinary council meeting;
 - ii. ask the presiding person, or acting presiding person, for his or her permission to address the meeting to make a public apology to the public;
 - iii. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - iv. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021*, when I did not maintain an appropriate division between my position as Lord Mayor of the City of Perth and a Liberal candidate for preselection in certain campaign material.
- ii. The Panel found that I breached Regulation 18 as my conduct was improper and undertaken for my own personal advantage.
- iii. I acknowledge that I should not have used my title of Lord Mayor in such a manner and I now apologise to the public and my fellow councillors."



4. If Lord Mayor Zempilas fails to, or is unable to, comply with the requirements of paragraph 3 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 3 above, the Chief Executive Officer of the City of Perth shall arrange for the notice of public apology to be published:
 - a. on the Facebook Page of the City of Perth in no less than 10 point font size; and
 - b. in an appropriate place on the website of the City of Perth in no less than 10 point font size; and
 - c. in the next occurring issue of any City of Perth public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

PUBLIC APOLOGY BY LORD MAYOR BASIL ZEMPILAS

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021*, when I did not maintain an appropriate division between my position as Lord Mayor of the City of Perth and a Liberal candidate for preselection in certain campaign material.

The Panel found that I breached Regulation 18 as my conduct was improper and undertaken for my own personal advantage.

I acknowledge that I should not have used my title of Lord Mayor in such a manner and I now apologise to the public and my fellow councillors.

Appeal

5. In the event that, prior to the date for compliance with the above Orders, Lord Mayor Zempilas:
 - a. commences an appeal of the decision of the Standards Panel to the State Administrative Tribunal in accordance with section 5.125 of the Local Government Act 1995; and
 - b. notifies the Complaints Officer of such appeal in writing,THEN:
 - c. compliance with the above Orders may be delayed until the State Administrative Tribunal has made a finding in respect to the decision; and
 - d. such Orders may be amended by an order of the State Administrative Tribunal.



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (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."