



Local Government Standards Panel

Complaint Number	20240403
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Naijiao Bo
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. Mayor Zempilas through the use of his social media (Facebook) with the title of Lord Mayor, engaged in improper use of office, redirecting internet traffic towards his personal political fundraiser website and using his reach from the Lord Mayor's social media page to influence the upcoming state election.
 - b. Through Mayor Zempilas' social media page which had the Lord Mayor of Perth in its title, Mayor Zempilas had engaged in political campaigning for himself as the Candidate of an electorate unrelated to the City of Perth for the Liberal Part of WA on multiple occasions, which is not an official function of his elected office.
 - c. The improper use of social media also egregiously violates clause regulation 18(1)(a) of the Regulations, which dictates that a council member's official social media must comply with said code.
 - d. As seen in Figure 1 below Mayor Zempilas is seen suggesting the current state government is due for a change, thereby representing the City of Perth as the Lord Mayor in political opinion.
 - e. This action violates regulation 17(2) of the Regulations which explicitly states that a council member must not, directly or indirectly, use the resources of a local government for an electoral purpose.

Figure 1



- f. As seen in Figure 2 below, Mayor Zempilas is seen directing traffic towards his personal political fundraising website, violating regulation 18(1)(a) of the Regulations using the Lord Mayors office for personal advantage.



The Respondent's Response

18. By an email dated 23 April 2024, Mayor Zempilas provided a response to the Complaint.
19. Mayor Zempilas provided the following comments and arguments regarding the Complaint as summarised by the Panel:
- Through a minor breach Mayor Zempilas became aware that he had failed to remove a City of Perth web address from his personal Facebook page.
 - The Facebook page is not owned, controlled, posted to or in any way the City's property.
 - At one time the page was titled "Basil Zempilas – Mayor of Perth". Now the reference to the Mayor of Perth has been deleted.
 - In the page information section it clearly says:
"18th Lord Mayor City of Perth and Liberals WA candidate for Churchlands".
 - Both are statements of fact and there is no attempt to portray Mayor Zempilas is not either of those things. Again, this is a personal Facebook page, not one controlled by the City.
 - Also note, where it redirects to [zempilas.com.au](http://www.zempilas.com.au), this is not a "fundraising page" as stated, but a simple survey site which asks people to indicate how they might like to be involved.



PANEL'S CONSIDERATION

Regulation 17

20. 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.”

21. 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”

22. 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*”.
23. 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”.
24. The noun “asset” is defined in The Macquarie Dictionary as “a useful thing or quality” and “an item of property; an economic resource”.⁸

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



25. The term 'use' is relevantly defined in the Macquarie Dictionary Online (as at 14 December 2021) as:
 - a. to employ for some purpose; put into service; turn to account: *use a knife to cut; use a new method*; and
 - b. to avail oneself of; apply to one's own purposes: *use the front room for a conference*.
26. The Complainant is alleging that the title of "Lord Mayor of Perth" is a City resource that was used on Mayor Zempilas' Facebook account.
27. The complainant does not appear to be arguing that the Facebook account itself belongs to the City, but rather the use of his Mayor title made it appear he was "representing the City of Perth".
28. The Panel confirms that the Facebook accounts of local members are *not* resources of the City, but rather privately maintained sites which are generally used by councillors in order to communicate with their constituents.
29. The words "City of Perth" or the City of Perth Crest *are* the intellectual property of the City. In addition, 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.
30. However, the use of a current job title is slightly different in nature and 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 an elected member title may not be inappropriate in some circumstances, for instance in everyday use 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(1)(a) 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. Mayor Zempilas engaged in the conduct with the intention of gaining an advantage for herself or another party.
39. The Complainant has not alleged any detriment was caused and the Panel has only considered regulation 18(1)(a) in this case.

Code of Conduct

40. 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.
41. A breach of the Code of Conduct may indicate that an elected member has acted improperly in breach of Regulation 18.
42. 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

43. Mayor Zempilas was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

44. This element is met.

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

45. 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.

46. This element is met.

Mayor Zempilas’ use was improper

- 47. 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.
- 48. 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.
- 49. 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.
- 50. 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.

51. 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.
52. In this case Mayor Zempilas 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.
53. 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.
54. 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.
55. On his Facebook Page Mayor Zempilas also uses the following words as his "Intro":

"18th Lord Mayor of the City of Perth • Candidate for Liberals WA preselection for seat of Churchlands"
56. 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.
57. 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*".
58. 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.
59. 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.
60. Mayor Zempilas has argued that the relevant site is not for "fundraising" but is only a simple survey site which asks people to indicate how they might like to be involved. With respect, the site is solely related to Mayor Zempilas' Liberal candidacy and

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].

specifically allows for people to register interest in volunteering and facilities donations being made.

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 is 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. 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. Even though Mayor Zempilas has now removed the title "Lord Mayor of Perth" from the page, the Panel notes that it is not only the title of a Facebook Page which is determinative of its classification, but the actual use of it. Put plainly, Mayor Zempilas should have a sperate page each for communications as to City of Perth matters and as to his Liberal candidacy.
69. Given the above, the Panel finds that it is more likely than not that the relevant conduct is 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.

70. This element is met.

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

- 71. 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.
- 72. 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
- 73. It is not necessary to find whether any advantage actually gained¹¹ but an intent to gain such advantage must be established.
- 74. The Complaint has alleged that Mayor Zempilas has attempted to gain an advantage for himself by:
 - a. had engaged in political campaigning for himself using his Mayor title; and
 - b. directing traffic towards his personal political fundraising website.
- 75. In this case the Panel finds that it 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.
- 76. 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.
- 77. This element is met.

Conclusion

¹⁰ Complaint SP 12 and 13 of 2011

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



78. The elements required to find a breach of regulation 18(1)(a) of the Regulations have been met.

Panel's Findings

79. Mayor Zempilas did not commit a breach of Regulation 17 of the Regulations and therefore did not commit a minor breach.
80. Mayor Zempilas did commit a breach of Regulation 18(1)(a) of the Regulations and therefore did commit a minor breach.

Signing

Emma Power (Presiding Member)

Peter Rogers (Member)

Suleila Felton (Deputy Member)



Local Government Standards Panel

Complaint Number	20240403
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Bo Naijiao
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 Penalty Consideration	Ms Emma Power (Presiding Member) Mr Ethan Redshaw (Member) Mr Peter Rogers (Member)
Heard	10 June 2024 Determined on the documents
Penalty Considered	19 December 2024
Outcome	No Sanction

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 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 Breach.
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 council member.
4. If the Panel finds that a council member has committed a minor breach, it must give the council member 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 Breach
 - 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 Breach 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 offense 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 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 with respect to the Complaint, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant council member 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 council member's motivation for the contravention;
 - c. whether or not the council member has shown any insight and remorse into his/her conduct;
 - d. whether the council member has breached the Act knowingly or carelessly;
 - e. the council member's disciplinary history;
 - f. likelihood or not of the council member 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. In addition, a separate complaint was made (being Minor Breach Complaint matter 20240381) in respect to the same course of conduct by Mayor Zempilas.
14. With respect to matter 20240381, the Panel has imposed a sanction (contemporaneously with this decision) on Lord Mayor Zempilas to make a public apology at the Council Meeting first occurring after the expiration of 28 days from the date of service of the order for Matter 20240381.
15. As Lord Mayor Zempilas is to make a public apology as to the same conduct, the Panel considers it appropriate that no further sanction is imposed in respect to this Minor Breach.
16. The Panel further considers 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)*



Panel's decision

17. The Panel orders pursuant to section 5.110(6)(a) of the Act that, in relation to the Minor Breach of regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* that no sanction be imposed upon Lord Mayor Zempilas as set out in 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

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

No further sanction be imposed on Lord Mayor Zempilas.



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."