

Western Australia

Local Government (Official Conduct) Amendment Act 2007

(No. 1 of 2007)

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Western Australia

Local Government (Official Conduct) Amendment Act 2007

No. 1 of 2007

An Act to amend the *Local Government Act 1995*.

[Assented to 28 March 2007]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Local Government (Official Conduct) Amendment Act 2007*.

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. The Act amended

The amendments in this Act are to the *Local Government Act 1995**.

[* *Reprint 3 as at 5 August 2005.*]

4. Section 2.19 amended

Section 2.19(1) is amended as follows:

- (a) by deleting “and” after paragraph (c);
- (b) by deleting the full stop at the end of paragraph (d) and inserting instead —

“

; and

- (e) is not disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council.

”.

5. Section 2.32 amended

Section 2.32 is amended by inserting after paragraph (d) the following paragraph —

“

- (da) is disqualified by an order under section 5.113, 5.117 or 5.119 from holding office as a member of a council;

”.

6. Section 5.53 amended

Section 5.53(2) is amended by deleting “and” after paragraph (ha) and inserting instead —

“

- (hb) details of entries made under section 5.121 during the financial year in the register of complaints, including —
 - (i) the number of complaints recorded in the register of complaints;
 - (ii) how the recorded complaints were dealt with; and
 - (iii) any other details that the regulations may require;

and

”.

7. Section 5.94 amended

Section 5.94 is amended as follows:

- (a) by deleting all of the section before paragraph (a) and inserting instead —

“

A person can attend the office of a local government during office hours and, unless it would be contrary to section 5.95, inspect, free of charge, in the form or medium in which it is held by the local government and whether or not it is current at the time of inspection —

”;

- (b) in each of paragraphs (a) to (k) and (m) to (t), by inserting at the beginning of the paragraph —

“ any ”;

- (c) by deleting all of the section after “prescribed” in paragraph (u)(ii) and inserting instead a full stop;

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(d) by inserting after paragraph (a) the following paragraphs —

“

- (aa) any regulations prescribing rules of conduct of council members referred to in section 5.104;
- (ab) any register of complaints referred to in section 5.121;

”.

8. Heading to Part 5 Division 9 replaced

The heading to Part 5 Division 9 is deleted and the following heading is inserted instead —

“

Division 9 — Conduct of certain officials

”.

9. Section 5.102A inserted

Before section 5.103 the following section is inserted in Part 5 Division 9 —

“

5.102A. Terms used in this Division

In this Division —

“**breach**” means a minor breach or a serious breach;

“**complaints officer**” means the person who is the complaints officer under section 5.120 for the local government concerned;

“**minor breach**” has the meaning given in section 5.105(1), and it includes a recurrent breach;

“**party**”, when used in connection with a complaint, means —

- (a) the person who made the complaint; or
- (b) the person against whom the complaint was made;

“**recurrent breach**” has the meaning given in section 5.105(2);

“**rules of conduct**” means rules of conduct for council members referred to in section 5.104(1);

“**serious breach**” has the meaning given in section 5.105(3);

“**standards panel**” means a standards panel established under section 5.122(1) or (2);

“**primary standards panel**” means the standards panel established under section 5.122(1).

”.

10. Section 5.103 amended

Section 5.103(2) is repealed.

11. Sections 5.104 to 5.126 inserted

At the end of Part 5 Division 9 the following sections are inserted —

“

5.104. Other regulations about conduct of council members

- (1) Regulations may prescribe rules, to be known as the rules of conduct for council members, that council members are required to observe.
- (2) The rules of conduct for council members apply, to the extent stated in the regulations, to a council member when acting as a committee member.
- (3) The rules of conduct may contain provisions dealing with any aspect of the conduct of council members whether or not it is otherwise dealt with in this Act.

- (4) Regulations cannot prescribe a rule of conduct if contravention of the rule would, in addition to being a minor breach under section 5.105(1)(a), also be a serious breach under section 5.105(3).
- (5) Regulations cannot specify that contravention of a local law under this Act is a minor breach if contravention of the local law would, in addition to being a minor breach under section 5.105(1)(b), also be a serious breach under section 5.105(3).
- (6) The rules of conduct do not limit what a code of conduct under section 5.103 may contain.
- (7) The regulations may, in addition to rules of conduct, prescribe general principles to guide the behaviour of council members.

5.105. Breaches by council members

- (1) A council member commits a minor breach if he or she contravenes —
 - (a) a rule of conduct under section 5.104(1); or
 - (b) a local law under this Act, contravention of which the regulations specify to be a minor breach.
- (2) A minor breach is a recurrent breach if it occurs after the council member has been found under this Division to have committed 2 or more other minor breaches.
- (3) A council member who commits any offence under a written law, other than a local law made under this Act, of which it is an element that the offender is a council member or is a person of a description that specifically includes a council member commits a serious breach.

5.106. Deciding whether breach occurred

A finding that a breach has occurred 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.

5.107. Complaining to complaints officer of minor breach

- (1) A person who has reason to believe that a council member has committed a minor breach may complain of the breach by sending to the complaints officer a complaint in accordance with subsection (2).
- (2) The complaint has to be made in writing, in a form approved by the Minister, giving details of —
 - (a) who is making the complaint;
 - (b) who is alleged to have committed the breach;
 - (c) the contravention that is alleged to have resulted in the breach; and
 - (d) any other information that the regulations may require.
- (3) Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —
 - (a) give to the person making the complaint an acknowledgment in writing that the complaint has been received;
 - (b) give to the council member about whom the complaint is made a copy of the complaint; and
 - (c) send —
 - (i) the complaint; and

- (ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,

to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).

- (4) A person can make a complaint under this section within 2 years after the breach alleged in the complaint occurred, but not later.

5.108. Executive Director may send complaint of minor breach to complaints officer

- (1) If it appears to the Executive Director that a complaint a person seeks to make under section 5.114 discloses a minor breach, the Executive Director may send the complaint to the complaints officer of the local government concerned.
- (2) Within 14 days after the day on which the complaints officer receives the complaint, the complaints officer is required to —
 - (a) give to the person who sent the complaint to the Executive Director written notice that the complaint is to be dealt with as a complaint of a minor breach;
 - (b) give to the council member about whom the complaint is made a copy of the complaint; and
 - (c) send —
 - (i) the complaint; and
 - (ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more

minor breaches that the council member has previously been found to have committed,

to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).

- (3) The Executive Director can send a complaint to a complaints officer under this section within 2 years after the breach alleged in the complaint occurred, but not later.

5.109. Complaint initiated by complaints officer

- (1) A person who is a complaints officer may make a complaint of a minor breach by —
- (a) preparing the complaint in the form required under section 5.107(2);
 - (b) giving the council member about whom the complaint is made a copy of the complaint; and
 - (c) sending —
 - (i) the complaint; and
 - (ii) anything the complaints officer has that is relevant to the complaint including, where relevant, details of any 2 or more minor breaches that the council member has previously been found to have committed,to the member of the primary standards panel who is appointed under Schedule 5.1 clause 2(a).
- (2) A complaints officer can make a complaint under this section within 2 years after the breach alleged in the complaint occurred, but not later.

5.110. Dealing with complaint of minor breach

- (1) The member of the primary standards panel who receives a complaint from a complaints officer under section 5.107(3)(c), 5.108(2)(c) or 5.109(1)(c) is to —
 - (a) allocate that complaint to a standards panel; and
 - (b) send the complaint and anything received from the complaints officer to the member of that standards panel who is appointed under Schedule 5.1 clause 2(a).
- (2) After receiving a complaint allocated to it under subsection (1), a standards panel is required to —
 - (a) make a finding as to whether the breach alleged in the complaint occurred; or
 - (b) send the complaint to the Executive Director under section 5.111.
- (3) For the purpose of helping it to deal with a complaint, a standards panel may request the complaints officer to provide anything further that the standards panel requires, and the complaints officer is required to comply with the request so far as it is practicable to do so.
- (4) A standards panel is required to give each party written notice of the reasons for any finding it makes under subsection (2).
- (5) If a standards panel finds that a council member has committed a minor breach, the standards panel is required to give the council member an opportunity to make submissions about how the breach should be dealt with under subsection (6).
- (6) The breach is to be dealt with by —
 - (a) dismissing the complaint;

- (b) ordering that —
 - (i) the person against whom the complaint was made be publicly censured as specified in the order;
 - (ii) the person against whom the complaint was made apologise publicly as specified in the order; or
 - (iii) the person against whom the complaint was made undertake training as specified in the order;or
 - (c) ordering 2 or more of the sanctions described in paragraph (b).
- (7) A standards panel is required to give to each party and the complaints officer notice of how it deals with the matter under subsection (6).

5.111. Dealing with a recurrent breach

- (1) If a standards panel is allocated a complaint as described in section 5.110(1) and the breach alleged, if it were found to have been committed, would be a recurrent breach, the standards panel may send the complaint to the Executive Director or proceed under section 5.110 to make a finding and deal with the complaint.
- (2) If a standards panel sends the complaint to the Executive Director under subsection (1), the standards panel is required to notify —
 - (a) each of the parties; and
 - (b) the complaints officer.

5.112. Allegation of recurrent breach

- (1) If a standards panel sends to the Executive Director, under section 5.111, a complaint of a minor breach that, if it were found to have been committed, would be a recurrent breach, the Executive Director has to decide whether to make an allegation under subsection (2).
- (2) If the Executive Director considers it appropriate to do so, the Executive Director may make an allegation to the State Administrative Tribunal that the council member committed the breach.
- (3) The Executive Director is required to give the complaints officer and each of the parties notice in writing of the decision.
- (4) If the Executive Director decides not to make an allegation to the State Administrative Tribunal —
 - (a) the Executive Director is required to send the complaint to the standards panel that sent the complaint to the Executive Director;
 - (b) the standards panel is required to notify each of the parties and the complaints officer that the complaint will be dealt with by the standards panel; and
 - (c) the standards panel is required to deal with the complaint under section 5.110.
- (5) The fact that the person who made the complaint does not want an allegation to be made to the State Administrative Tribunal does not prevent the Executive Director from making the allegation.

5.113. Punishment for recurrent breach

If, on an allegation under section 5.112, the State Administrative Tribunal finds that a person committed

a recurrent breach, it may make any of the orders described in section 5.117.

5.114. Making complaint of serious breach

- (1) A person who has reason to believe that a council member has committed a serious breach may complain to the Executive Director as described in subsection (2).
- (2) The complaint has to be made in writing in a form approved by the Minister, giving details of —
 - (a) who is making the complaint;
 - (b) who is alleged to have committed the breach;
 - (c) the offence that is alleged to have resulted in the breach; and
 - (d) any other information that the regulations may require,and sent to the Executive Director.
- (3) If there is a limit on the time within which proceedings may be commenced for the offence to which a complaint of a serious breach relates, the complaint cannot be made after that time has elapsed.

5.115. Complaints officer to send complaint of serious breach to Executive Director

- (1) If it appears to a complaints officer that a complaint a person seeks to make under section 5.107 discloses a serious breach, the complaints officer is required to send the complaint to the Executive Director.
- (2) If the complaints officer sends the complaint to the Executive Director, the complaints officer is required to notify each of the parties.

5.116. Allegation by Executive Director of serious breach

- (1) If —
 - (a) a person sends to the Executive Director a complaint under section 5.114(1) that a council member has committed a serious breach; or
 - (b) a complaints officer sends to the Executive Director, under section 5.115(1), a complaint that appears to disclose a serious breach,

the Executive Director has to decide whether to make an allegation under subsection (2).
- (2) If the Executive Director considers it appropriate to do so, the Executive Director may, whether or not a complaint has been sent to the Executive Director, make an allegation to the State Administrative Tribunal that the council member committed a serious breach.
- (3) In deciding whether it would be appropriate to make an allegation to the State Administrative Tribunal, the Executive Director has to consider whether it would be more appropriate for the matter to be dealt with in another way.
- (4) The Executive Director cannot make an allegation under subsection (2) if the council member has already been tried by a court for the offence the commission of which is the serious breach.
- (5) Within 14 days after the day on which the Executive Director receives a complaint that is sent to the Executive Director under section 5.114 or 5.115, the Executive Director is required to give each party notice in writing —
 - (a) acknowledging that the complaint is in accordance with the Act; and

- (b) stating that the Executive Director will decide whether to make an allegation under subsection (2).
- (6) The fact that a person who made a complaint does not want an allegation arising from the complaint to be made to the State Administrative Tribunal does not prevent the Executive Director from making the allegation.

5.117. Punishment for serious breach

- (1) If, on an allegation under section 5.116(2), the State Administrative Tribunal finds that a person committed a serious breach, it may —
 - (a) order that —
 - (i) the person against whom the allegation was made be publicly censured as specified in the order;
 - (ii) the person against whom the allegation was made apologise publicly as specified in the order;
 - (iii) the person against whom the allegation was made undertake training as specified in the order;
 - (iv) the person against whom the allegation was made is suspended for a period of not more than 6 months specified in the order; or
 - (v) the person against whom the allegation was made is, for a period of not more than 5 years specified in the order, disqualified from holding office as a member of a council;

or

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- (b) order 2 or more of the sanctions described in paragraph (a).
- (2) An order described in subsection (1)(a)(iv) or (v) may be expressed in such a way that the order —
 - (a) only takes effect if, on finding that the person subject to the order has not complied with a condition specified in the order, the State Administrative Tribunal directs under subsection (7) that the order take effect; and
 - (b) lapses if it has not taken effect within a period specified in the order,

and an order so expressed is called a **“suspended order”**.

- (3) The period referred to in subsection (2)(b) cannot exceed 2 years.
- (4) The Executive Director may make an allegation to the State Administrative Tribunal that a person subject to a suspended order has failed to comply with a condition specified in the order.
- (5) The Executive Director must give a person notice in writing of a decision to make an allegation about the person under subsection (4).
- (6) If the State Administrative Tribunal receives an allegation under subsection (4), it must make a finding as to whether the alleged failure occurred.
- (7) If the State Administrative Tribunal finds that a person failed to comply with a condition of a suspended order, it may if it considers it appropriate to do so direct that the suspended order take effect.
- (8) When a council member is suspended under subsection (1)(a)(iv), section 8.29 applies to the member as if the council had been suspended.

5.118. Carrying out orders

- (1) The CEO of the local government concerned is required to arrange the publication of any censure ordered under section 5.110(6) by a standards panel and is to refer to the State Administrative Tribunal any failure to comply with any other order made under that subsection.
- (2) The Executive Director is required to arrange the publication of any censure ordered under section 5.113 or 5.117 by the State Administrative Tribunal and is to refer to the State Administrative Tribunal any failure to comply with any other order made under either of those sections.

5.119. State Administrative Tribunal's enforcement powers

- (1) If, under section 5.118, the CEO of a local government or the Executive Director refers to the State Administrative Tribunal a failure of a person to comply with an order of a standards panel or the State Administrative Tribunal, the State Administrative Tribunal may, if satisfied that the person failed to comply with the order, make an order described in section 5.117(1)(a)(iv) or (v).
- (2) Section 5.117(2) extends to an order made under subsection (1).

5.120. Complaints officer

- (1) Each local government is to designate a senior employee, as defined under section 5.37, to be its complaints officer.
- (2) If a local government does not have any other person as its complaints officer, the person holding office as, or acting as, its CEO is its complaints officer.

5.121. Register of certain complaints of minor breaches

- (1) The complaints officer for each local government is required to maintain a register of complaints which records all complaints that result in action under section 5.110(6)(b) or (c).
- (2) The register of complaints is to include, for each recorded complaint —
 - (a) the name of the council member about whom the complaint is made;
 - (b) the name of the person who makes the complaint;
 - (c) a description of the minor breach that the standards panel finds has occurred; and
 - (d) details of the action taken under section 5.110(6)(b) or (c).

5.122. Standards panels

- (1) The Minister is to establish a standards panel (the “**primary standards panel**”).
- (2) The Minister may establish other standards panels.
- (3) Schedule 5.1 applies to a standards panel.

5.123. Confidentiality

- (1) A person who —
 - (a) makes a complaint during a campaign period;
 - (b) performs a function under this Act in respect of a complaint made during a campaign period; or
 - (c) as a result of anything done under this Division, becomes aware of any detail of a complaint made during a campaign period knowing it to be relevant to the complaint,

and during the campaign period discloses information that the complaint has been made, or discloses

information of any detail of the complaint, commits an offence.

- (2) It is not an offence against subsection (1) to disclose information if —
- (a) the disclosure is made for the purposes of investigating or dealing with the complaint;
 - (b) the disclosure is required under a written law;
 - (c) the complaint to which the information relates is a complaint of a minor breach and a standards panel has dealt with the breach under section 5.110(6)(b) or (c); or
 - (d) the complaint to which the information relates is a complaint of a serious breach and the State Administrative Tribunal has made an order under section 5.117(1).
- (3) In this section —
- “campaign period”** means the period beginning on the first day of the period referred to in section 4.49(a) and ending on election day as that term is defined in section 4.1.

5.124. Giving false or misleading information

- (1) A person commits an offence if the person gives information, in any of the circumstances described in subsection (2), knowing the information to be false or misleading in a material particular.
- (2) The circumstances in which subsection (1) applies are —
- (a) when the information is given in a complaint under section 5.107 or 5.114;
 - (b) when the information is given to a person for the purposes of an investigation of whether or not a breach has been committed; or

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- (c) when the information is given to a standards panel.

5.125 Review of certain decisions

- (1) A party may apply to the State Administrative Tribunal for a review of a decision of a standards panel.
- (2) In subsection (1) —
“**decision**” means a decision to dismiss a complaint or to make an order.

”.

12. Section 9.69A inserted

After section 9.69 the following section is inserted —

“

9.69A. Notification under *Corruption and Crime Commission Act 2003*

Nothing in Part 5 or Part 8 affects the duty of the Executive Director to notify as required by section 28 of the *Corruption and Crime Commission Act 2003*.

”.

13. Schedule 5.1 inserted

After Schedule 4.2 the following Schedule is inserted —

“

Schedule 5.1 — Provisions about standards panels

[Section 5.122]

1. Terms used in this Schedule

In this Schedule, unless the contrary intention appears —
“**member**” means a member of a standards panel.

2. Membership of standards panel

A standards panel consists of 3 members appointed by the Minister of whom —

- (a) one person is to be an officer of the Department;
- (b) one person is to be a person who has experience as a member of a council; and
- (c) one person is to be a person having relevant legal knowledge.

3. Deputies

- (1) The Minister may appoint a deputy for any member.
- (2) A person is not eligible to be appointed as the deputy for a member unless that person is eligible to be appointed to the office of that member.
- (3) The deputy for a member is —
 - (a) in the absence of the member from a meeting of the standards panel, entitled to attend the meeting in place of the member;
 - (b) where the member is disqualified from acting as a member on a matter arising at a meeting of a standards panel, entitled to act in the place of the member; and
 - (c) if the member vacates office before the term of office expires, entitled to attend meetings and otherwise act in place of the member,

and a deputy attending a meeting or acting in place of a member under this subclause has all the functions and protection of a member.

4. Submission of lists

- (1) Before a person is appointed as, or as the deputy for, a member under clause 2(b) the Minister is to invite WALGA to submit, within 28 days of the invitation, a list of 9 persons eligible for appointment.

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- (2) The person appointed is to be one of the persons named on the list submitted under subclause (1) but if a list is not submitted in writing in accordance with the invitation of the Minister, the Minister may appoint any person who would have been eligible for inclusion on the list.

5. Term of office

- (1) The term of office of a member is the period specified in the instrument of appointment and is not to exceed 4 years.
- (2) Subclause (1) does not prevent a person who has held office as a member of a standards panel from being appointed for a subsequent term to the same or a different standards panel.

6. Vacation of office

- (1) The office of a member becomes vacant if the term for which the member is appointed expires or the member —
 - (a) dies;
 - (b) by notice in writing to the Minister, resigns; or
 - (c) is removed from office under subclause (2).
- (2) The Minister may remove a person from office as a member on the grounds of —
 - (a) incapacity to carry out satisfactorily the duties of the office;
 - (b) neglect of duty;
 - (c) misconduct;
 - (d) in the case of a person appointed under clause 2(a), the person ceasing to be an officer of the Department; or
 - (e) any other cause for which it appears to the Minister that the person should be removed from office.

7. Dissolution of standards panel

The Minister may dissolve a standards panel established under section 5.122(2) if that standards panel has finally dealt with all complaints allocated to it.

8. Meetings

- (1) The member appointed under clause 2(a) is to preside at all meetings of the standards panel at which the member is present.
- (2) If the member appointed under clause 2(a) is not present at a meeting the member appointed under clause 2(c) is to preside at the meeting.
- (3) The quorum at a meeting is 3.
- (4) Subject to subclause (7), each member present at a meeting of a standards panel is entitled to one vote.
- (5) A question arising at a meeting is to be decided by a majority of the votes.
- (6) Each member is to have regard to the general interests of local government in the State.
- (7) Subject to any order under subclause (8), a member is disqualified from acting where the matter being considered or inquired into by a standards panel is a matter relating to a local government of which the member was or is a council member, a committee member or an employee.
- (8) The Minister may, by order, declare that subclause (7) does not apply in relation to a matter or class of matters specified in the order, and that order has effect according to its terms.
- (9) An order is not to be made under subclause (8) unless the Minister considers the order to be necessary to enable a standards panel to properly function.
- (10) To the extent that it is not prescribed by regulations a standards panel may determine its own meeting procedure, and other procedure and practice.

9. Remuneration and allowances

- (1) Members are entitled to any remuneration and allowances that the Minister from time to time determines on the recommendation of the Minister for Public Sector Management.

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- (2) Subclause (1) does not apply to a member who is an officer of the Public Service.
- (3) To the extent that a member's remuneration and allowances relate to a particular complaint, they are to be paid by the local government of the council member who is the subject of that complaint.
- (4) If the remuneration and allowances for members of a standards panel relate to 2 or more complaints dealt with by that standards panel on the same occasion, liability for payment is to be apportioned between the relevant local governments as the standards panel determines.

10. Protection

No liability attaches to a member for any act or omission by the member or on the member's part by a standards panel that occurred in good faith and in the performance of the member's or the panel's functions under this Act.

11. Annual report

- (1) By 31 August in each year, the primary standards panel is to prepare and provide to the Minister a report on the complaints dealt with by all standards panels during the previous financial year.
- (2) The annual report must not include information that identifies or enables the identification of a council member against whom a complaint was made if the complaint was not dealt with under section 5.110(6)(b) or (c).
- (3) The primary standards panel may apply to the Minister before 31 August for an extension of time in which to lodge the annual report and the Minister may grant an extension on such terms as the Minister thinks fit.
- (4) As soon as practicable after receiving the annual report, the Minister is to cause a copy of it to be laid before each House of Parliament.

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The following Table contains the stages of passage of this Act through the Western Australian Parliament

Table of Legislative History

Legislative Assembly	Date
Introduced	16/11/2005
First Reading	16/11/2005
Second Reading	16/11/2005
Second Reading Speech (Hansard) p. 7380	
Second Reading Agreed	11/04/2006
Consideration in Detail	11/04/2006
Amendments	11/04/2006
Third Reading	11/04/2006
Legislative Council	
Introduced	03/05/2006
First Reading	03/05/2006
Second Reading	03/05/2006
Second Reading Speech (Hansard) p. 2018	
Second Reading Agreed	21/03/2007
Committee of the whole	21/03/2007
Third Reading	21/03/2007