



Local Government Standards Panel

Complaint Number	SP 65 of 2018
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Stan Scott
Respondent	Councillor Benjamin Bell
Local Government	Shire of Toodyay
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007 (WA)</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms E Rowe (Deputy Member) Ms R Aubrey (Deputy Member)
Heard	22 March 2019 Determined on the documents
Outcome	Public censure Public apology

DECISION AND REASONS FOR DECISION

Published: 4 April 2019

DEFAMATION CAUTION

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Introduction

1. At its meeting on 7 December 2018, the Panel found that Councillor Benjamin Bell (“Cr Bell”), a council member of the Shire of Toodyay (“the Shire”) committed one breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“the Regulations”) when he published a Facebook post on 24 July 2018 relating to rate rises and Mr Stan Scott, the Chief Executive Officer of the Shire (“CEO”).
2. On 25 January 2019 the Panel published its Finding and Reasons for Finding (“Findings”) that Cr Bell had breached regulation 7(1)(b). The Panel reviewed all the evidence presented to it and said:

“44. Cr Bell asserts that he at all times had regard to the interests of Shire ratepayers. Although the issues of rates and potential rate rises is of great importance and interest to community members, it is difficult for the Panel to consider this Post as anything but intentional public criticism of the Shire and the CEO.

45. In particular, the following phrases disparage the motives of the CEO and cast aspersions on his competence:

- a. *“The CEO is about to screw you over and he appears completely unapologetic about it.”;*
- b. *“.... the CEO is misleading you in this matter too.”;*
- c. *“.....any increase in rates is not being driven by economic factors but rather by the Shire’s desire to rake in more cash.”;*
- d. *“This is a cash grab by the CEO. Pure and simple.”*
- e. *“You can see the game the Shire administration is playing here...”*

46. Further, there are several comments that suggest that the CEO is ignoring the financial implications of a rate rise in the community and the directives of the Minister in relation to rate rises.

47. The Post must also be considered in the context that, although the CEO and Shire administration may propose a certain level of increase in rates, it is the Elected Members who vote on the same.

48. The Post appears to be deliberately drafted in a manner that is misleading and is intended to create community outrage and a public backlash, in particular against the CEO.

49. The very negative and specific assertions regarding the actions of the CEO can be regarded as casting aspersions on the CEO’s competence and credibility in breach of clause 3.1 of the Code. Further, such comments are likely to cause unwarranted embarrassment or offence in breach of clause 3.6 of the Code.

50. The Panel considers that the Post is inappropriate, derogatory and does not reflect the standards of behaviour expected of an Elected Member.

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55. The Post specifically accuses the CEO of wrongdoing in a public and inflammatory manner.



56. Cr Bell's argument that his posts were part of robust public debate are not convincing. The Post constitutes a very public accusation and condemnation of the CEO and the Shire administration. It does not invite discussion or consideration.
57. The Panel finds to the required standard that the only reasonable interpretation of such comments was an intention to denigrate and cause humiliation to the CEO by suggesting he was acting in an unethical manner.

Jurisdiction

3. The Panel convened on 22 March 2019 to consider how it should deal with the Minor Breach. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries that on this date there was no available information to indicate that Cr Bell had ceased to be or was disqualified from being a councillor.

Possible Sanctions

4. Section 5.110(6) of the *Local Government Act 1995* (WA) ("the Act") provides that the Panel is to deal with a minor breach 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).*
5. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel's finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor's name.

Councillor Bell's Submissions

6. 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
7. In a letter dated 29 January 2019, the Department notified Cr Bell of the Panel's findings, providing him with a copy of its Findings published on 25 January 2019 and inviting him to make submissions on how the Panel should deal with the breach under section 5.110(6).

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



8. In a letter dated 14 February 2019 the Panel received submissions from Squire Patton Boggs law firm on behalf of Cr Bell asking that the Complaint be dismissed:
 - a. The breach of regulation 7(1)(b) is minor in substance as well as definition, in that it will not cause any significant or lasting detriment to the Complainant.
 - b. Facebook posts are by their nature, informal and subjective. Although it is acknowledged that they have some immediate impact, the majority of people would regard them as Cr Bell "*letting off steam*". They do not carry the legitimacy of, for example, a published statement or other media release.
 - c. The Facebook post was written several months ago and has now been deleted. An apology, censure or other sanction imposed now would be counterproductive, by drawing fresh attention to the Facebook post when it is already long forgotten.
 - d. Cr Bell at all times acted in what he genuinely felt were the best interests of the community he serves, although he acknowledges that his considerable frustrations with the Complainant may have influenced his judgement in respect of the Facebook post.
 - e. Cr Bell continues to hold his responsibility and role as an elected Councillor very seriously. He has learnt a significant amount from the process and is committed to refraining from any such actions that may be seen as improper in the future.

Panel's consideration

9. The Panel found that Cr Bell committed one breach of regulation 7(1)(b) that related to his conduct when he published a Facebook post on 24 July 2018 relating to rate rises and Mr Stan Scott, the CEO of the Shire.
10. The Panel has considered Cr Bell's submissions as to how the Complaint should be dealt with and he states that he has learnt a lot from this process. Cr Bell also submits that any sanction other than a dismissal will be counterproductive as the Facebook post was several months ago and the matter is long forgotten.
11. The Panel does not find Cr Bell's submissions as to how the Panel should deal with the issue of penalty persuasive. Cr Bell treats the allegation against him as unimportant and states that the breach will not cause any significant or lasting detriment to the Complainant. However, the breach is serious and warrants a penalty and it is not appropriate for the Panel to order that the minor breach be dismissed.
12. Furthermore, Cr Bell has not used his opportunity in responding to how the breach should be dealt with to acknowledge he has done anything wrong or to show a willingness to constructively engage in a programme that may reinforce the standards of conduct expected of a councillor. Instead he seeks to further justify his conduct by explaining that his judgement was influenced by his



considerable frustrations with the CEO. The Panel does not consider training is appropriate in the circumstances.

13. The Facebook Post appeared to be deliberately misleading and intended to create outrage amongst the community and a public backlash in particular against the CEO. The Panel found that Cr Bell intentionally publicly criticised the CEO with phrases that disparaged his motives by suggesting he was acting in an unethical manner and cast aspersions on his competence. The Facebook Post was a public condemnation of the CEO and the Shire administration and the harm caused was likely serious and widespread amongst the community.
14. The Panel finds that a public apology is appropriate as it reflects the impact on the CEO who was subjected to Cr Bell's personal and public attack and the lasting effect of his actions. Cr Bell should also apologise to the council staff, his fellow Councillors and the Shire for not upholding the standards of conduct that all councillors are expected to maintain and for casting a shadow over the professionalism of the Council.
15. In addition, the sanction imposed by the Panel must send a message to councillors, local government employees, ratepayers, residents and the wider public that councillors must maintain appropriate standards of conduct. Cr Bell used his position as a council member to publicly criticise, undermine and humiliate the CEO and it was simply unacceptable.
16. While the Panel notes that when an order that a Notice of Public Censure be published, that Notice is published by the local government's CEO, at the expense of the local government, and such expense is significant where the Notice is to be published in a newspaper or newspapers, the Panel also finds that it is appropriate that Cr Bell be publicly censured for the breach of regulation 7(1)(b).
17. A censure is a public statement of disapprobation of a councillor's conduct and the Panel considers this to be the appropriate penalty as it will send a message to the community and other councillors that Cr Bell's conduct was unacceptable and deserving of a serious penalty.
18. The penalties of a public apology and a public censure are commensurate with the seriousness of the breach concerned.

Panel's decision

19. The Panel orders that in relation to the breach of regulation 7(1)(b) and in terms of the attached order, that:
 - i. under section 5.110(6)(b)(i) of the Act, Cr Bell be publicly censured (PART A); and
 - ii. under section 5.110(6)(b)(ii) of the Act, Cr Bell publicly apologise to the Shire's CEO, council staff, his fellow councillors and the Shire (PART B).



S. Siekierka

Sheryl Siekierka (Presiding Member)

Elanor

Elanor Rowe (Deputy Member)

Rebecca

Rebecca Aubrey (Deputy Member)



Attachment

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ORDER

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

PART A - ORDER FOR PUBLIC CENSURE

1. Councillor Benjamin Bell, a Councillor for the Shire of Toodyay, be censured as specified in paragraphs 2 and 3 below.
2. Within the period of 29 days to 43 days from the day following the date of service of this Order on Councillor Bell, the Chief Executive Officer of the Shire of Toodyay arrange for the following Notice of Public Censure to be published, in no less than 10 point print:
 - (a) as a one-column or a two-column display advertisement in the first 15 pages of "The West Australian" newspaper; and
 - (b) as a one-column or a two-column display advertisement in the first 15 pages of the "Toodyay Herald" newspaper.
3. The Notice of Public Censure is to be published on a date other than the Notices of Public Censure ordered in SP54 of 2018, SP2018-083 and SP2018-092.



Government of **Western Australia**
Local Government Standards Panel

NOTICE OF PUBLIC CENSURE

The Local Government Standards Panel has found that Councillor Benjamin Bell, a Councillor of the Shire of Toodyay, breached:

- (a) regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* by publishing a Facebook post on 24 July 2018 relating to rate rises and Mr Stan Scott, the Chief Executive Officer of the Shire.

In engaging in this conduct, Councillor Bell made improper use of his office as a council member.

The Panel censures Councillor Bell for a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)*.

**LOCAL GOVERNMENT
STANDARDS PANEL**



PART B - ORDER FOR PUBLIC APOLOGY

4. Councillor Benjamin Bell, a Councillor for the Shire of Toodyay (Shire), publicly apologise to the Shire's CEO, council staff, his fellow councillors and the Shire.
5. At the Shire's first ordinary council meeting Cr Bell attends after the expiration of 28 days from the date of service of this Order on him Cr Bell shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to the Shire's CEO, council staff, his fellow councillors and the Shire;
 - (b) 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;
 - (c) address the Council 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 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 when I published a Facebook post on 24 July 2018 relating to rate rises and Mr Stan Scott, the Chief Executive Officer of the Shire.
- ii. The Panel found that by behaving in this manner I made improper use of my office as Councillor with the intention of damaging the CEO, council staff, my fellow councillors and the Shire thereby committing one breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulation 2007.
- iii. I accept that I should not have acted in such a manner towards the CEO, council staff, my fellow councillors and the Shire and I apologise to the parties concerned for having done so."

6. If Cr Bell fails or is unable to comply with the requirements of paragraph 5 above he shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the Toodyay Herald newspaper.

PUBLIC APOLOGY BY CR BENJAMIN BELL

A formal complaint was made to the Local Government Standards Panel alleging that I contravened a provision of the *Local Government (Rules of Conduct) Regulations 2007* when I made a Facebook post on 24 July 2018 relating to rate rises and Mr Stan Scott, the CEO of the Shire.

The Panel found:



(1) I committed one breach of regulation of 7(1)(b) of the Rules of Conduct Regulations when I made a Facebook post on 24 July 2018 relating to rates rises and Mr Stan Scott, the Chief Executive Officer of the Shire.

(2) By behaving in this way to the CEO, council staff, my fellow councillors and the Shire, I failed to meet the standards of conduct expected of a councillor

I apologise to the parties concerned for acting in such a manner.

Sheryl Siekierka (Presiding Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (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."*