



Local Government Standards Panel

Complaint Number	SP 54 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) Councillor R Aubrey (Deputy Member)
Heard	22 March 2019 Determined on the documents
Outcome	Public censure

DECISION AND REASONS FOR DECISION

Published: 4 April 2019

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



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 18 May 2018 relating to the inclusion of questions in an Ordinary Council Meeting 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:

- "43. The role of a councillor includes "representing the interests of electors, ratepayers and residents of the district, providing leadership and guidance to the community in the district"¹.
44. Cr Bell asserts that he at all times had regard to the interests of Shire ratepayers and that the Post was part of "robust public discussion". This is not a persuasive argument.
45. Although rate payers are mentioned in passing, the contents and tone of the Post indicate that Cr Bell was unhappy with the CEO's actions and wished to "vent" on Facebook.
46. There are several phrases used that are unnecessarily accusatory and inflammatory and include derogatory comments regarding the CEO, another Councillor ("Cr T") as well as the Council in general.
47. In particular, the phrases "appalling abuse of power", "extreme level of censorship", "no valid reason", "I would suggest that it's an ego thing", "the more they seek to avoid answers (sic), the more they are hiding." are provocative in nature and appear to be seeking an outraged response.
48. It is possible to provide information to community members in a manner which does not outright criticise the Shire or Shire employees, is not inflammatory and not in breach of the Code.
49. The very negative and specific assertions regarding the actions of the CEO can be seen to cast aspersions on the CEO's competence and credibility in breach of clause 3.1 of the Code.
50. The comments regarding the CEO and Cr T can also be seen as being derogatory and improper in breach of clause 3.6 of the Code.
51. Further, Cr Bell's comment of "yes, yes, yes – I can hear the threats of adverse reflection" clearly indicate that he is aware that such language and comments were not appropriate and demonstrate his unwillingness to comply with the Code and the Regulations.
52. There is no acknowledgement by Cr Bell that there may have been a reasonable explanation for not including several of his questions in the Agenda, the implication being that Cr Bell is being personally persecuted and censored.

¹ *Treby and Local Government Standards Panel* [2010] WASAT 81 at [27] and *Hipkins and Local Government Standards Panel* [2014] WASAT 48 at [8] to [11]



53. The overall tone of the Post is negative, critical and derogatory and does not reflect the standards of behaviour expected of an Elected Member in a public forum. Public Facebook posts are not an appropriate forum to criticise the CEO, other Councillors or the Shire in such specific and derogatory terms. The Post goes beyond simple disagreement or public discussion.
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58. The Post specifically mentions the CEO in a negative manner several times and takes an aggressive stance which accuses the CEO of:
- (a) operating outside his delegated authority;
 - (b) having a propensity to misinterpret the Act and policies; and
 - (c) having a natural inclination to incorrectly apply rules and policies.
59. 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.
60. Further, when discussing Cr T Cr Bell states that:
- (a) such councillor's actions indicate that the Shire is "out of control" and does not "give a damn at all about rate payers"; and
 - (b) such councillor was being negative and was commencing a "witch hunt"; and
 - (c) such councillor was not representing the community by his actions.
61. A reasonable person would infer that the intention of such comments was to denigrate or embarrass Cr T by suggesting he was not acting properly in his capacity as an elected member.

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 ("the Department") 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).²
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).
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.

² *Local Government Act 1995 (WA)*, s 5.110(5).



Panel's consideration

9. The Panel found that Cr Bell committed one breach of regulation 7(1)(b) that related to Cr Bell's conduct when he published a Facebook post on 18 May 2018 relating to the inclusion of questions in an Ordinary Council Meeting, and Mr Stan Scott the Chief Executive Officer of the Shire as well as one of Cr Bell's fellow Councillors.
10. The Panel has considered Cr Bell's submissions as to how the Complaint should be dealt with and while he states that he has learnt a lot from this process, Cr Bell trivialises the allegation against him and the serious impact of his conduct on the parties concerned. Cr Bell's public post was lengthy and wholly derogatory and negative towards the CEO and his fellow Councillor, as well as Council in general. The language used by Cr Bell was accusatory, inflammatory and provocative.
11. The Panel does not consider that dismissal of the Complaint is appropriate as this would indicate that the breach is so minor that no penalty is warranted.
12. Nor does the Panel consider that ordering Cr Bell to undergo further training is an appropriate or adequate sanction. Cr Bell was aware at the time of publishing the Post that his language and comments were not appropriate and showed clear disregard for the Shire's Code of Conduct and the Regulations. Even after a period of reflection, since the Panel published its Findings, Cr Bell does not acknowledge that he was at fault and instead further justifies his conduct. He does not show any remorse for the lack of respect he showed the CEO and his fellow Councillor.
13. The Panel is also not convinced that an apology to the parties concerned would be sincere.
14. 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.
15. However, in the circumstances, the only appropriate penalty is that Cr Bell be publicly censured for the breach of regulation 7(1)(b) pursuant to section 5.110(6)(b)(i) of the Act.
16. A censure is a public statement of disapprobation of a councillor's conduct. 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.

Panel's decision

17. The Panel orders that in relation to the breach of regulation 7(1)(b), that under section 5.110(6)(b)(i) of the *Act*, Cr Bell be publicly censured in terms of the attached Order.



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:

1. Councillor Benjamin Bell, a Councillor for the Shire of Toodyay, be censured as specified in paragraph 2 below.
2. Within the period of 29 days to 43 days from the day following the date of service of this Order on 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 SP65 of 2018, SP2018-083 and SP 2018-092 are published.



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 18 May 2018 relating to the inclusion of questions in an Ordinary Council Meeting and Mr Stan Scott the Chief Executive Officer of the Shire and one of Cr Bell’s fellow Councillors.

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**



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."