



Local Government Standards Panel

Complaint Number	SP 2018-083
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 Training

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 various Facebook posts on 26 August 2018 relating to the actions of Mr Stan Scott, the Chief Executive Officer of the Shire ("CEO"), in relation to answering Cr Bell's questions and the Shire's budget.
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:

"45. If a Councillor believes that a question on notice has been incorrectly ruled out of order by the CEO, then Facebook is not the appropriate forum to publicly:

- a. disagree with that ruling/decision; or
- b. restate those questions.

46. Post 1 is also misleading in content. Part 6 of the Shire of Toodyay Standing Orders Local Law 2008 reads as follows:

"6.1 Questions on notice

(1) *A Member who wishes to ask a question at a meeting of the Council is to give to the CEO written notice of the text of the question at least 6 clear working days before the meeting.*

(2) *If the CEO considers that the question breaches or may breach these Standing Orders or any other law—*

(a) the CEO is to refer the question to the President;

(b) the President is to exclude the question if he or she concurs with the view of the CEO; and

(c) if the question is excluded, the CEO is to give all Members, as soon as practicable but not later than the next ordinary meeting, the reasons for the exclusion."

47. This provision clearly allows the CEO to refer questions on notice to the President for exclusion. The CEO provides notice to the councillor as to the exclusion, however, the Shire President actually makes such decision. Despite this, the CEO clearly has a meaningful role in deciding the questions on notice that are to be included in the agenda.
48. As such, the Panel finds that it is more likely than not that Post 1 is misleading and was purposefully drafted to make it appear that the CEO had acted wrongfully.
49. In addition, the accusations contained in Post 2 are very serious and appear to have been raised with reckless disregard as to any accuracy and without a proper basis.



50. It is especially noted by the Panel that the Shire President has made a comment in response to Post 2 expressly noting that some of Cr Bell's comments were incorrect, provided without evidence and, further, that Cr Bell is a member of the Audit Committee to which he could have forwarded any discrepancies to instigate a full investigation.
51. This comment provoked a substantial number of responses and justifications from Cr Bell as to his questions and actions. This includes the following comments:
- "That's why I asked Stan to review my spreadsheet. Am I missing a cost code (unlikely as that is). Or was money spent on other things but incorrectly included in budget under staff costs.*
- But rather than the CEO helping me try to understand the where the funds may have been spent, he simply stated that he wasn't going to answer my question*
- It is the role of a councillor to oversee how the Shire spends rate payers money yes? Well that is all I am trying to do. I even provided all councillors with a copy of my spreadsheet so that they could review it too. "*
52. The Shire President further responded by noting the correct manner to raise such queries or concerns.
53. The comments referred to in paragraph 51 above indicate that Cr Bell did not have a solid basis for making the accusations as to missing moneys apart from:
- his own calculations, which he admitted may not be correct and was seeking input on; and
 - his personal suspicions due to the fact the CEO did not include all his questions.
54. Further, the fact that Cr Bell did not attend several of the relevant budget forums is highly relevant to the context as it indicates that:
- Cr Bell was not necessarily in possession of all the relevant information before making such comments; and
 - it was more likely than not that such questions were correctly ruled out of order.
55. The Panel finds that Post 2 was made in such a manner that a reasonable person would assume that money was missing from the Shire, that the CEO was substantially involved in the same, that the CEO was not operating within the Local Government Regulations and, further, that the CEO was misleading the Council and was operating without oversight.
56. The Panel again reiterates to Cr Bell that Facebook is not the forum for raising criticisms and accusations against the CEO or the Shire. Neither is it the place to vent frustrations as to internal administrative matters (such as the process for accepting questions on notice).
57. The Panel finds it is more likely than not that Post 2 casts aspersions on the CEO's honesty, competence and credibility in breach of clause 3.1 of the Code. Further the comments are highly likely to embarrass or offend in breach of clause 3.6 of the Code.



58. The Panel considers that Post 2 is misleading, accuses the CEO and Shire of wrongdoing without sufficient evidence and does not confirm to the standards of communication or behaviour expected of an Elected Member.
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63. Cr Bell asserts that he at all times had regard to the interests of Shire ratepayers. However, the Panel finds that it is more likely than not that the purpose of the Posts was not to share accurate information but to vent frustrations which Cr Bell considered to be caused by the CEO.
64. Further, Cr Bell's argument that his posts were part of robust public debate is unconvincing. The Post constitutes public and serious accusations against the CEO which cannot be justified and invite condemnation, not discussion.
65. The Panel finds to the required standard that the only reasonable interpretation of Post 1 and Post 2 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).
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 posts were written several months ago and have now been deleted. An apology, censure or other sanction imposed now would be counterproductive, by drawing fresh attention to the Facebook posts when they are 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 posts.
 - 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 Cr Bell's conduct when he published various Facebook posts on 26 August 2018 relating to the actions of Mr Stan Scott, CEO, in relation to answering Cr Bell's questions and the Shire's budget.
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 seriousness of the allegation against him as "*letting off steam*" and suggesting Facebook is an informal and temporary medium for communication therefore his comments will not cause any significant or lasting detriment to the Complainant. Cr Bell also submits that any sanction other than a dismissal will be

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



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.
12. Cr Bell has not apologised for his misconduct and instead seeks to further justify it by explaining that his judgement was influenced by his considerable frustrations with the Complainant. It is not appropriate for the Panel to order that the minor breach be dismissed as this would indicate that Cr Bell's conduct was so minor that no penalty is warranted.
13. The Panel has weighed up the options of ordering training, a public apology and / or making an order for censure and finds that in the circumstances an order for all three sanctions is appropriate.
14. The Panel found that Cr Bell's Facebook posts were misleading and contained incorrect information and that he did not follow the proper processes of council. Cr Bell also did not attend several of the relevant budget forums that were highly relevant to the topic he was posting about.
15. The sanction of an order to undertake training would promote the purpose of securing future compliance with the statutory obligations imposed on councillors for the better protection of the public. Training would hopefully educate Cr Bell as to the proper processes to follow in raising queries or concerns and his obligations as an elected member to remain informed about issues occurring in the Shire as well as on a broader level.
16. Given the nature of the Facebook posts, a public apology is also appropriate as it reflects the impact on the CEO who was subjected to Cr Bell's very public comments. The Panel found that Cr Bell purposefully drafted the Facebook posts to make it appear the CEO had acted wrongfully, was misleading Council and was operating without oversight. The Posts cast aspersions on the CEO's honesty, competence and credibility and were intended to denigrate and cause humiliation to the CEO by suggesting he was acting in an unethical manner.
17. The posts were made publicly on Facebook that is a popular social media platform where posts can be saved and shared multiple times and were published on a page likely to be followed by members of the local community.
18. Cr Bell should also apologise to the Council 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.
19. Furthermore, 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.



20. 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).
21. Cr Bell's Facebook posts were misleading, and contained serious accusations that appear to have been made with reckless disregard as to any accuracy and without a proper basis other than the personal suspicions of Cr Bell. Cr Bell's conduct cannot be justified and the Posts only invited condemnation and not discussion.
22. 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.
23. The penalties of a public censure, a public apology and training are commensurate with the seriousness of the breach.

Panel's decision

24. The Panel orders that in relation to the breach of regulation 7(1)(b), pursuant to section 5.110(6)(c) of the Act, and in terms of the attached Order:
 - i. that under section 5.110(6)(b)(i) of the Act, Cr Bell be publicly censured (PART A);
 - ii. that under section 5.110(6)(b)(ii) of the Act, Cr Bell publicly apologise to the Shire's CEO and Council (PART B); and
 - iii. that under section 5.110(6)(b)(iii) of the Act, Cr Bell undergo training (PART C).

Sheryl Siekierka (Presiding Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)



Attachment

Complaint Number	SP 2018-083
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Panel Members	Mrs S Siekierka (Presiding Member) Ms E Rowe (Deputy Member) Ms R Aubrey (Deputy Member)
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ORDER

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

A. ORDER FOR PUBIC 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, SP65 of 2018 and SP 2018-092.



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 various Facebook posts on 26 August 2018 relating to the actions of Mr Stan Scott, the Chief Executive Officer of the Shire, in relation to answering Cr Bell's questions and the Shire's budget.

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**



B. ORDER FOR PUBLIC APOLOGY

4. Councillor Benjamin Bell, a Councillor for the Shire of Toodyay (Shire), publicly apologise to Mr Stan Scott, the Chief Executive Officer of the Shire ("CEO") and Council.
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 and Council;
 - (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 series of Facebook posts on 26 August 2018 relating to the actions of Mr Stan Scott, the Chief Executive Officer of the Shire, in relation to answering my questions and the Shire's budget.
- 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 and Council 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 and Council 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 various Facebook posts on 26 August 2018 relating to the actions of Mr Stan Scott, the Chief Executive Officer of the Shire, in relation to answering my questions and the Shire's budget.

The Panel found:

(1) I committed one breach of regulation of 7(1)(b) of the Rules of Conduct Regulations when I made various Facebook posts on 26 August 2018 relating to the actions of the CEO in relation to answering my questions and the Shire's budget.

(2) By behaving in this way to the CEO and Council, I failed to meet the standards of conduct expected of a councillor

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

C. ORDER FOR TRAINING

7. By 30 September 2019 Cr Bell, a council member for the Shire of Toodyay, shall undertake:
- the two day training course for Elected Members "Serving on Council" provided by WA Local Government Association (WALGA); or
 - a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a similar duration.

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."