



Local Government Standards Panel

Complaint Number	SPs 11, 12, 14, 15 of 2017 [DLGSC 20170013]
Legislation	<i>Local Government Act 1995</i>
Complainants	Ms Belinda Rowland Mr Roger Seeney Ms Barbara Marshall Mr John Sampson
Respondent	Councillor Yasmin Bartlett
Local Government	Shire of Denmark
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Heard	26 September 2017 Determined on the documents
Outcome	Public apology

SANCTION DECISION AND REASONS FOR DECISION

Published 03 October 2017

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.



Introduction

1. On 27 July 2017 the Panel found that Councillor Yasmin Bartlett (Cr Bartlett), a councillor for the Shire of Denmark (the Shire), committed one minor breach under the *Local Government Act 1995* (WA) (the Act) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) on 20 January 2017 when making statements in a Facebook post about the previous Shire Chief Executive Officer's performance in relation to business planning and managing the Shire's assets.
2. On 29 August 2017 the Panel published its Finding and Reasons for Finding that Cr Bartlett had breached regulation 7(1)(b). The Panel quoted a number of statements that Cr Bartlett improperly made in her Facebook post¹ and said:

"56. ... Cr Bartlett did not act professionally or with respect towards a former Shire employee by making these accusations in public. It is not relevant whether her claims about the previous CEO are true.

57. Even if Cr Bartlett intended the comments for a limited audience, and the Post was only on Facebook for a matter of minutes, Cr Bartlett is not excused. Her actions would have been improper even if her post was accessible by a smaller audience, or by only the person to whom she responded. If Cr Bartlett had grievances about the previous CEO's performance she should have raised them in a confidential setting with other current Councillors and/or the current CEO.

...

62. Cr Bartlett took time to write such a long post. A prudent councillor would have read over the words and considered the implications of what she was about to post. Cr Bartlett referred to the previous CEO by name four times. It would have been easy for her to use her post to promote the current Shire's and Council's plans and projects without denigrating the previous CEO."

Jurisdiction

3. The Panel convened on 26 September 2017 to consider how it should deal with the breach. The Panel accepted the Department's advice that on this date there was no available information to indicate that Cr Bartlett had ceased to be or was disqualified from being a councillor.

Possible sanctions

4. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by —

"(a) dismissing the complaint; 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

¹ Paragraphs 54 and 55 of the Panel's Finding and Reasons for Finding.



(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 Bartlett'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. On 29 August 2017, the Department sent a letter to Cr Bartlett notifying her of the Panel's findings, providing her with a copy of its Finding and Reasons for Finding published that day and inviting her to make submissions on how the Panel should deal with the breach under section 5.110(6).
8. Cr Bartlett sent her submissions to the Department by email on 7 September 2017, in which she submitted:
 - The Panel should not penalise her.
 - She only wanted to explain how the Council "ended up in this current situation" and did not mean to damage the former CEO's reputation.
 - Councillors should receive proper training as soon as they are elected to ensure they understand their role.
 - She did not receive any training as a new councillor until she received a basic induction on the day of her third council meeting. The interim chief executive officer organised training on decision-making in 2017 and she travelled to Perth (she does not say when) to do some training on legal requirements and the Integrated Planning Framework, but this was not sufficient.
 - Due to lack of training she did not fully understand her role as a councillor, particularly in relation to social media, and was not aware there was a formal policy relating to social media. She would have benefited from early training, not only because she was a new councillor but because she had not previously sat on a board or committee.
 - She had been "baited" to reply to questions on Facebook and was still being constantly attacked by former councillors on Facebook, in the local media and at council meetings because of her efforts to be an effective councillor.

² Section 5.110(5) of the Act.



Panel's consideration

9. Cr Bartlett has not previously been found to have committed any minor breaches.
10. It is not appropriate to dismiss the breach as this would indicate that the breach is so minor that no penalty is warranted. The Panel's penalty must send a message to the offending councillor, ratepayers, residents, Council employees and other Councillors that this type of conduct is unacceptable. Councillors should carefully consider what they intend to say in public to ensure they abide by their duty to act and be seen to act professionally towards others.
11. Cr Bartlett has not apologised for her breach. She uses her opportunity to comment on her own conduct towards the former CEO to challenge the behaviour of others towards her generally.
12. Cr Bartlett refers to her lack of training but does not offer to undertake training.
13. A public censure is not appropriate in this case.
14. A public apology is suitable when a councillor's conduct adversely affects a particular individual. An apology in public to a councillor's colleagues is appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold.
15. The Panel has considered the option of training but in this case a public apology to the person who has suffered the damage, the former Shire CEO, Mr Dale Stewart, and Cr Bartlett's fellow Councillors is the appropriate penalty.

Panel's decision

16. The Panel orders that Cr Bartlett make a public apology to the former CEO Mr Dale Stewart and Cr Bartlett's fellow Councillors, in the terms of the attached Order.

Sheryl Siekierka (Presiding Member)

Paul Kelly (Member)

Merranie Strauss (Member)

Date of Reasons - 03 October 2017



ATTACHMENT

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ORDER FOR PUBLIC APOLOGY

Published 03 October 2017

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Yasmin Bartlett, a Councillor for the Shire of Denmark (the Shire), publicly apologise to Mr Dale Stewart, the former Shire Chief Executive Officer, and her fellow Councillors as specified in paragraph 2 below.
2. At the Shire's first ordinary council meeting Cr Bartlett attends after the expiration of 28 days from the date of service of this Order on her Cr Bartlett shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to Mr Stewart and all other Shire Councillors;
 - (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 a provision of the *Local Government (Rules of Conduct) Regulations 2007* on 20 January 2017 when I posted adverse comments on my Facebook page about Mr Dale Stewart relating to his role as the former Chief Executive Officer of the Shire of Denmark.
- (ii) The Panel found that by publishing these adverse comments about Mr Stewart on Facebook I made improper use of my office as a Councillor with the intention of damaging Mr Stewart, thereby committing a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*.
- (iii) I accept that I should not have published the adverse comments about Mr Stewart and I apologise to Mr Stewart and all my fellow Councillors for having done so."

Date of Order - 03 October 2017



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."