

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number	SP 50 of 2015 [DLG 20150258]
Legislation	<i>Local Government Act 1995</i>
Complainant	Roger Le-maître
Subject of complaint	Peter Tegg Fred Spindler Councillor Petronella Pigdon
Local Government	Shire of Cue
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Mr P Doherty (Member)
Heard	21 December 2015 (Determined on the documents)
Outcome	Breach by Cr Pigdon established

FINDINGS AND REASONS FOR FINDING

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

1. Summary of the Panel's Decision

1.1 The Panel found that:

- (a) Cr Pigdon committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (**Regulations**) by making the Statements set out in paragraph 3.2(d) (below);
- (b) It did not have jurisdiction to consider the Complaint insofar as it related to Peter Tegg and Fred Spindler (as they were no longer councillors) until such time (if any) as they are re-elected as a councilor of a local government.

2. Jurisdiction

- 2.1 On 16 October 2015 the Panel received a complaint of a minor breach (**Complaint**) alleging that Cr Peter Tegg, Cr Fred Spindler and Cr Petronella Pigdon¹ each contravened regulation 7(1)(b) of the *Regulations* by making statements which were later reported on the front page of the Midwest Times newspaper (**Article**)
- 2.2 When the Complaint was considered by the Panel Crs Tegg and Spindler were no longer councillors of the Shire and the Panel determined that it did not have jurisdiction to consider the Complaint insofar as it related to them until such time (if any) as they are elected as a councilor of a local government.
- 2.3 Accordingly, the Panel did not consider the Complaint insofar as it concerns Messrs Tegg and Spindler.
- 2.4 A breach of regulation 7(1)(b) is a “minor breach”² and the Panel is required to make a finding as to whether the breach occurred or to send the Complaint to the Chief Executive Officer of the Department of Local Government and Communities under section 5.111 of the *Local Government Act 1995* (**LG Act**).
- 2.5 The Panel finds that the Complaint, insofar as it relates to Cr Pigdon, was made and has been dealt with in accordance with the requirements of Division 9 of the *LG Act*, that the Complaint is not one that should be dealt with under section 5.111 and that the Panel has jurisdiction to determine whether the breaches alleged in the Complaints occurred.

3. The Complaint

- 3.1 The Complaint relates to the Article which concerned the acquisition by the Shire of a spa (**Spa**) and gazebo for the house provided to the Shire's Chief Executive Officer (**CEO**) as part of his compensation package.
- 3.2 The Article recites that:
 - (a) at the Shire's Ordinary Council Meeting of 17 February 2015, (**OCM**) council voted unanimously³ “to consider and adopt a review of the budget, which included an allowance for a “Water Feature”” (**Budget Review**);
 - (b) the “water feature” was in fact, a spa;

¹ Who is known as “Pixie Pigdon”

² *LG Act*, s 5.101A and s 5.105(1).

³ Two councillors were absent from that meeting.

- (c) the Midwest Times contacted the Shire’s councillors; and
 - (d) “[o]f those contacted, three councillors, Fred Spindler, Peter Tegg and Pixie Pigdon – who voted in favour of the water feature ... said they were irate about the decision, and suggested they were deceived by the wording ...” and Cr Pigdon said “[w]e only voted for a water feature, we never voted for a spa” **(Statements)**.
- 3.3 The Complaint alleges that Cr Pigdon made the Statements to cause detriment to the Council (by implying dysfunction) and the CEO as the author of the Budget Review (by implying that the Spa was for his benefit rather than an enhancement to the Shire’s Property in which the CEO then resided **(Detriments)**).

4. The Panel’s Role

- 4.1 The Panel observes that its members are required to have regard to the general interests of local government in Western Australia⁴; it is not an investigative body and determines complaints solely upon the evidence presented to it; a finding of a minor breach may affect an individual both personally and professionally and that in order for the Panel to make a finding that a minor breach has been committed by a Councillor, the finding 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 **(Required Standard)**.
- 4.2 When assessing whether it is satisfied to the required standard:
- (a) the Panel considers, amongst other things, the seriousness of the allegations made in the Complaint, the likelihood of an occurrence of the given description and the gravity of the consequences flowing from a particular finding; and
 - (b) where direct proof is not available, the Panel considers that it must be satisfied that the circumstances appearing in evidence give rise to a reasonable and definite inference of a breach, not just to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture.

5. Documents

- 5.1 The Panel considered the Minutes of the OCM and the Documents set out in Attachment “A” **(Documents)**.

6. The Response

- 6.1 The Department provided Cr Pigdon with a copy of the Complaint and a Complaint Summary and a reasonable opportunity to respond to the allegations made therein.
- 6.2 In her response to the Panel (documents 8, 9 and 10 of Attachment “A”) Cr Pigdon accepted that she made comments published in the Midwest Times to the effect that she was “irate about the decision” and that she had been “deceived by the wording of the appendix” [being part of the Budget Review].

⁴ Clause 8(6) of Schedule 5.1 of the *LG Act*

⁵ *LG Act*, s 5.1 save for a minor change⁵, Council resolved in favour of the officer recommendation;

6.3 Cr Pigdon also said:

“In the February 2015 budget review a water feature was passed for the CEO's house, but at our forum in March we were informed that the water feature was a spa. I felt that we didn't approve a spa and certainly couldn't approve one at a forum.

I tried to explain to President Le maitre that a spa was different to a water feature as a spa comes under a the (sic) Swimming Pool Act and a water feature doesn't. He said that it was "Done and dusted" nothing we could about it as it has been ordered.

I realized what I have done is wrong speaking to the media, but due to the pressure of the community I felt I had to say something.

I have been advised by our new President and CEO of my responsibilities with regard to making comments to the media.”

7. Facts

7.1 On the evidence available to the Panel it is satisfied to the Required Standard as follows:

- (a) at the OCM the Council considered the Budget Review, which had been prepared by the CEO;
- (b) Council unanimously resolved to “adopt the budget review, with the variations as detailed in Appendix 8 for the period 1 July 2014 to 31 December 2014 and amend the budget accordingly”;
- (c) Appendix 8 included an item entitled “Water Feature”, which was the Spa;
- (d) Cr Pigdon made the Statements; and
- (e) Standing Order 7.4.1 of the *Shire's Standing Orders Local Law 2015 (Standing Order 7.4(1))* provides that “[a] member must not reflect adversely on a decision of the Council or Committee except on a motion that the decision be revoked or changed.”]

8. Essential elements of a contravention of regulation 7(1)(b)

8.1 Where, as here, the alleged conduct is not conduct that contravenes s 5.93 of the *LG Act* or s 83 of *The Criminal Code*, the following elements must be established, to the Required Standard, before a contravention of regulation 7(1)(b) of the *Regulations* is established:

- (a) first, that the person the subject of the Complaint engaged in the alleged Conduct;
- (b) secondly, that the person the subject of the Complaint was a council member both at the time of the Conduct and the time when the Panel makes its determination;
- (c) thirdly, that by engaging in the Conduct, the person the subject of the complaint made use of his or her office as a council member (in the sense that he or she acted in their capacity as a councillor, rather than in some other capacity);

- (d) fourthly, that when viewed objectively⁶, such use was an improper use of the person's office as council member in that it:
- (A) involved a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of the councillor and the circumstances of the case (by for example, an abuse of power or the doing of an act which the councillor knows or ought to have known that he or she had no authority to do⁷); and
 - (B) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty⁸; and
- (e) fifthly, that the person engaged in the Conduct to cause detriment (or in the belief that detriment would be suffered) by the local government or another person.

9. Findings - regulation 7(1)(b)

- 9.1 On the evidence available to the Panel, it is satisfied to the Required Standard that each of the above elements have been established and in particular notes that it is satisfied that:
- (a) Cr Pigdon made the Statements to cause the Detriments;
 - (b) by making the Statements, Cr Pigdon made improper use of her office as a council or of the Shire in that she reflected adversely on the Council's decision at the OCM, in contravention of Standing Order 7.4(1).
- 9.2 The Panel therefore finds that Cr Pigdon committed the minor breach set out in the Complaint.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Peter Doherty (Member)

⁶ That is, when viewed by a reasonable person (i.e. a hypothetical person with an ordinary degree of reason, prudence, care, self-control, foresight and intelligence, who knows the relevant facts).

⁷ *Treby and Local Government Standards Panel* [2010] WASAT 81 at [26] – [34].

⁸ *Hipkins and Local Government Standards Panel* [2014] WASAT 48 at [9].

Attachment “A”

Doc ID	Description	Page #
Attachment B	Statement of Facts (1-page)	10
	Complaints Officer originating correspondence:	
01.doc	Copy of (1-page) correspondence from Mr John McCleary, former Chief Executive Officer and Complaints Officer at the Shire of Cue, dated 14 October 2015.	11
02.doc	Copy of (3-page) completed Council Member Details form dated 14 October 2015.	12
	Complaint and accompanying information:	
03.doc	Copy of (4-page) <i>Complaint of Minor Breach No. SP 50 of 2015</i> dated 14 October 2015, and its attachments, made by Mr Le-maitre.	15
03A.doc	Copy of (1-page) extract of Mid-West Times article relevant to complaint.	18
	Correspondence with the Complainant	
04.doc	Copy of (2-page) letter to Mr Le-maitre dated 22 October 2015, requesting clarification on allegation and notifying that matter against Cr Fred Spindler was suspended.	19
05.doc	Copy of (9-page) response letter with attachments from Mr Le-maitre to the Department dated 26 October 2015.	21
06.doc	Copy of (5-page) email from Mr Le-maitre to the Department dated 27 October 2015, with further information on Complaint.	30
	Correspondence with the Councillors complained about:	
07.doc	Copy of (1-page) letter to Cr Fred Spindler dated 23 October 2015 advising of the suspension of the Complaint.	35
08.doc	Copy of (3-page) Request for Comments letter to Cr Petronella Pigdon dated 4 November 2015 with attached complaint summary and Form A.	36
09.doc	Copy of (2-page) response letter from Cr Pigdon to the Department dated 23 November 2015 with attachments.	39
09A.doc	Copy of (1-page) completed Form A by Cr Pigdon.	41