



Local Government Standards Panel

Complaint Number	SP 53 of 2018
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Stan Scott
Respondent	Councillor Benjamin Bell
Local Government	Shire of Toodyay
Regulation	Regulation 7(1) Regulation 9 Regulation 10 <i>of the Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs Sheryl Siekierka (Presiding Member) Mrs Emma Power (Member) Councillor Paul Kelly (Member)
Heard	7 December 2018 Determined on the documents
Finding	One breach of Regulation 7(1)(b)

FINDING AND REASONS FOR FINDING

Delivered 25 January 2019

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Summary of the Panel's decision

1. On 7 December 2018, the Panel found that Councillor Benjamin Bell, a councillor of the Shire of Toodyay ("**the Shire**"):
 - a. did commit a minor breach pursuant to the Local Government Act 1995 (WA) ("**the Act**") and regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 ("**the Regulations**");
 - b. did not commit the alleged breaches of the Act in respect to regulation 9 or regulation 10 of the Regulations,when Cr Bell made various Facebook posts and comments relating to Mr Stan Scott the Chief Executive Officer of the Shire ("**the CEO**") and the acting CEO of the Shire ("**the Acting CEO**") as further described in paragraphs 18 and 21 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.²
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia⁶.

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

⁴ Briginshaw v Briginshaw (1938) 60 CLR 336

⁵ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁶ Section 8(6) of Schedule 5.1 of the Act

10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Regulation 7

11. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

“7. Securing personal advantage or disadvantaging others

- (1) *A person who is a council member must not make improper use of the person’s office as a council member —*
- (a) *to gain directly or indirectly an advantage for the person or any other person; or*
 - (b) *to cause detriment to the local government or any other person.*
- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*
12. It is not alleged that Cr Bell or any other person sought to gain any advantage so the Panel has considered regulation 7(1)(b) in this Complaint.

Regulation 9

13. Regulation 9 prohibits councillors engaging in conduct that is intended to be undertaken by the administration of a local government and specifically provides as follows:

“9. Prohibition against involvement in administration

- (1) *A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.*
- (2) *Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.”*

Regulation 10

14. Regulation 10 regulates councillor’s interactions with local government employees.
15. The terms of the regulation are as follows:

“10. Relations with local government employees

- (1) *A person who is a council member must not —*
- (a) *direct or attempt to direct a person who is a local government employee to do or not to do anything in the person’s capacity as a local government employee; or*
 - (b) *attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government employee in the person’s capacity as a local government employee.*
- (2) *Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.*



- (3) *If a person, in his or her capacity as a council member, is attending a council meeting, committee meeting or other organised event and members of the public are present, the person must not, either orally, in writing or by any other means —*
- (a) *make a statement that a local government employee is incompetent or dishonest; or*
- (b) *use offensive or objectionable expressions in reference to a local government employee.*
- (4) *Subregulation (3)(a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV.”*
16. The Complainant has not specified which sub-regulation of Regulation 10 has been breached by Cr Bell.

Jurisdiction and Procedural Fairness

17. On the 6 July 2018 the Panel received an email from Mr Stan Scott, acting as complaints officer of the Shire (**“the Complaints Officer”**). The same enclosed a Complaint of Minor Breach Form (with attachments) dated 6 July 2018 provided by Mr Stan Scott.
18. In his letter of complaint the Mr Scott alleges that Cr Bell has breached regulation 7, regulation 9 and regulation 10 by:
- a. making a Facebook Post on 2 June 2018 regarding the CEO and Acting CEO as set out in paragraph 21.a (**“the Post”**); and
- b. making a response to a comment (made by another Councillor of the Shire) regarding the Post on 2 June 2018 as set out in paragraph 21.b (**“the Response”**),
- (together **“the Complaint”**).
19. The Panel convened on 7 December 2018 to consider the Complaint.
20. The Panel:
- a. accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission’s website, the Cr Bell was:
- i. last elected to the Council of the Shire in October 2017 for a term expiring in October 2019;
- ii. a Councillor at the time of the alleged breach; and
- iii. a Councillor when the Panel met on 7 December 2018;
- b. was satisfied the Complaint was made within two years after the alleged breach occurred⁷;
- c. was satisfied that the Shire’s Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;
- d. was satisfied the Department had provided procedural fairness to Cr Bell; and
- e. found it had jurisdiction to consider the Complaint.

⁷ Section 5.107(4) and 5.109(2) of the Act

⁸ Section 5.107 and 5.109 of the Act



The Specifics of the Complaint

21. The relevant Facebook post and comment the subject of the Complaint are as follows:

a. **The Post:**

“ If I spoke to (and treated) my Board of Directors the same way the CEO (and acting CEO) treated Councillors, I would have been sacked a long time ago”

b. **The Response:**

“ No problems [REDACTED]

I am not sure what half truth you are referring to.

My comment was that if I treated to my company’s board the way same way councillors are treated by the Toodyay CEO that I would have been sacked a long time ago.

This is not a half - truth. I can assure you that this is 100% true.

I answer to my board.

I am accountable to my board (and shareholders)

I am required to promptly inform them of any dealing I have with government organisations (such as the \$200,000 grant I successfully was awarded last week from the State Government for my company)

I am required to be transparent, answer their questions concisely, and do what I can to ensure that they are always in the loop on things.

If I do not do such things, then I am risking my job. Because although I Run the day to day operations of the company, it is the board’s role to ensure that company is always in compliance with the relevant legislation.

Just like the Toodyay CEO runs the day to day operations of the Shire, and the Council oversees compliance.

That is not a half truth at all. That is fact.

And I can absolutely hand-on-heart say that if I treated by board the same way the CEO treats Council, then I would be shown the door.

That is an undisputed fact.

Actually I think if any employee treated their manager in the manner in which I am referring, I will think you would find they too would be down at CentreLink next week ”

22. The Post also contained the following image:



23. In the Complaint, Mr Scott also provided a copy of each of the Post and the Response as well as the various comments following the Post.
24. Mr Scott also makes the following assertions regarding the Complaint:
 - a. irrespective of any merit in Cr Bell's observations (and there is none) this discussion has no place on Facebook or in the public arena;
 - b. Cr Bell sought to denigrate the CEO and Acting CEO;
 - c. Cr Bell failed to acknowledge the appointment of the Acting CEO was in line with the delegation approved by Council in 2017;
 - d. Cr Bell meets the requirements for a breach of regulation 7 as:
 - i. he was a Council member at the time;
 - ii. he made the posts as a Council member;
 - iii. the office of a Council member was used improperly; and
 - iv. he used his office improperly to disadvantage the Local Government and the CEO; and
 - e. the Post and Response have caused considerable actual damage to the reputation of the Council and the CEO.
25. Mr Scott also makes the following more general comments regarding Cr Bell's conduct:
 - a. Cr Bell is a new councillor elected in October 2017. Since this time he has established his "Ben Bell - Councillor for the Shire of Toodyay" Facebook profile which has had a number of inappropriate posts made with the intent to:
 - i. increase his own profile as a councillor;
 - ii. bring the council and the Shire into disrepute; and
 - iii. put pressure on the CEO and other councillors;
 - b. these posts have dishonestly misrepresented the Shire and fellow Councillors on a range of issues and created significant community angst and backlash;
 - c. Cr Bell has been requested on several occasions to modify his behaviour by the Shire President and other Councillors;
 - d. during WA Local Government Association (WALGA) training he was advised that his Facebook activity may be in breach of the Regulations;
 - e. the Shire participated in the Governance review program provided by the Australian Institute of Company Directors (AICD). As part of this process a special session was held involving AICD, the Shire President and Cr Bell seeking Cr Bell's agreement to modify his behaviour;



- f. Cr Bell is also the Managing Director of a publicly listed mining company so is well aware of the importance of honesty and clarity in public statements; and
- g. there is no reasonable argument that Cr Bell's actions are the result of inexperience or lack of understanding. This leads to the conclusion his actions are deliberate and calculated.

Respondent's Response

- 26. By an email dated 21 September 2018, Squire Patton Boggs as legal representative of Cr Bell provided a response to the Complaint as well as to several other current complaints against Cr Bell for similar conduct.
- 27. It is denied that Cr Bell has committed any minor breach.
- 28. In respect to Regulation 7 it is specifically asserted that:
 - a. the allegations of minor breach are not made out and the Panel should dismiss the Complaint;
 - b. there is no evidence provided in the Complaint that any advantage was obtained or that any detriment occurred;
 - c. Cr Bell considered his statements to be part of a robust public debate;
 - d. Cr Bell at all times had regard to the interests of the Shire's rate payers;
 - e. specifically, Cr Bell addressed what he regarded as deficiencies in the existing level of communication between the Council and the ratepayer by providing this information and discussion on an open and accessible social media platform;
 - f. Cr Bell is of the view that this Complaint and other complaints made is a targeted approach by the CEO who is attempting to prevent him from raising legitimate queries and concerns about Shire operations;
- 29. In respect to Regulation 9 it is argued that the Post and Response do not fall within the prohibitions in regulation 9 and cannot be reasonably considered to be "*a task that contributes to the administration of the local government*". The same are simply statements made on an individual's social media site on current matters involving the Council. It is not the intention of regulation 9 to prevent such statements.
- 30. In respect to Regulation 10 it is asserted that there is no evidence of any "*direction*" in the Complaint and the Respondent confirms no "*direction*" took place.
- 31. In addition, it is asserted that the Compliant contains the following errors:
 - a. Cr Bell's Facebook page was not established after his election as a councillor, but prior to this time and was used throughout his election campaign;
 - b. Cr Bell denies that he been requested on several occasion to modify his behaviour by the Shire President and other Councillors; and
 - c. Cr Bell asserts that in WALGA training he was not advised that his Facebook activity may be in breach of the Regulations.
- 32. The Panel notes that the response does not otherwise address any specific comments made by Cr Bell in the Post and Response.



Panel's Consideration

Regulation 7(1)(b)

33. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied to the required standard:
- a. Cr Bell was a councillor at the time of the alleged breach and the time of the determination; and
 - b. Cr Bell made use of his office as Council member of the Shire;
 - c. when viewed objectively, such use was an improper use of Cr Bell's office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
 - d. Cr Bell engaged in the conduct in the belief that detriment would be suffered by another person.

Cr Bell a Councillor at the relevant times

34. Cr Bell was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.

Cr Bell made use of his office as Council member of the Shire

35. The Post and Response have posted and made on Cr Bell's Councillor Facebook profile.
36. Cr Bell is clearly identified as "*Benjamin Bell – Councillor for Toodyay Shire*" and is making comments regarding Shire employees.
37. Given the above, the Panel finds, to the required standard, that any reasonable person would conclude that Cr Bell was acting in his role as councillor and therefore making use of his office as a council member.
38. This element is met.

Cr Bell's use was improper

39. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom⁹. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.
40. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent¹⁰.
41. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
42. The Shire has a Code of Conduct adopted 18 October 2007 ("**the Code**") which prescribes guidelines for dealing with others including the following specific provisions:
- a. "**1.3 Exercise Fairness and Impartiality**

⁹ Complaint of Minor Breach No. SP 3 of 2013

¹⁰ *Chew v R* [1992] HCA 18



We will perform all our duties impartially and in the best interests of the Shire, uninfluenced by fear or favour. We will conduct our business respectfully, courteously and fairly. We will refrain from any form of conduct which may cause any reasonable person unwarranted offence or embarrassment....”

b. **“3.1 Our Shire Relationships**

We will all work together courteously and effectively as part of the Shire team. Our teamwork will be based on our mutual respect for each other and our committed co-operation to achieve the Shire’s goals and implement its strategies. In all our official dealings with each other we will be frank and honest and always endeavour to resolve any serious conflict through discussion. If necessary, this can be facilitated by either the Shire President, Deputy Shire President and/or the Chief Executive Officer. To achieve this teamwork, all elected members will:

.....

c) *refrain from publicly criticising staff in a way that casts aspersions on their professional competence and credibility;*

.....

At the same time, staff will recognise that elected members’ views and opinions often reflect valid community viewpoints that should be considered in conjunction with professional opinion. Staff will therefore make every effort to assist elected members in the performance of their role, and to achieve the satisfactory resolution of issues that may arise in the performance of their official role. ”

c. **“3.6 Avoid Derogatory Statements**

We will not make any allegations that are derogatory or improper. We will always act in the best interests of the Shire and refrain from any type of communication, in our public or professional duties, which may cause any reasonable person unwarranted offence or embarrassment. When we are uncertain about the probable impact of our communications we should seek access to legal advice.”

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”¹¹.
44. The argument that Cr Bell had regard to the interests of Shire ratepayers at all times is not persuasive. The Post clearly asserts Cr Bell’s personal feelings as to the CEO and Acting CEO. There is nothing that can be properly described as providing relevant information to the community.
45. The Post is unambiguous in its implication that the CEO and Acting CEO should be “sacked” for their behaviour.
46. There is no clarification included as to the context of the comments or as to exactly what behaviour is in question.
47. In addition, the image used in the Post also reinforces the impression that the CEO and Acting CEO are guilty of wrongful or shameful actions.

¹¹ *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]*



48. The Response is substantially concerned with Cr Bell defending his Post when questioned as to its clarity and accuracy.
 49. The relevant comments for the purpose of the Complaint are contained in the last 2 paragraphs of the Response. In the context of the Post, following comments and Response these comments clearly reinforce the idea that the CEO and Acting CEO should be “*shown the door*” and that their actions should lead them to be “*down at Centrelink next week*”.
 50. A reasonable member of the public upon seeing the Post and Response would come to the conclusion that the CEO and Acting CEO were guilty of some kind of serious misconduct.
 51. The Panel finds it is more likely than not that the Post and the Response would breach clause 3.1 and 3.5 the Code as they:
 - a. imply that the CEO and Acting CEO should be sacked;
 - b. cast aspersions on the professional competence and credibility of the CEO and Acting CEO; and
 - c. contain derogatory allegations likely to cause embarrassment or offence to a reasonable person.
 52. Irrespective of the fact the Code specifically mentions that parties should endeavour to resolve any serious conflict by discussion, it cannot reasonably be considered that public Facebook posts would be a proper forum for a councillor to address conflict between a councillor and the CEO or Acting CEO.
 53. In this case, the Panel finds it is more likely than not that the posts by Cr Bell are improper in that they:
 - a. were of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor; and
 - b. are deserving of a penalty.
 54. This element is therefore met.
- Cr Bell intended detriment to be suffered by another person
55. “Detriment” means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
 56. It is not necessary to find whether any detriment was actually suffered¹², but an intent to cause such detriment must be established.
 57. The argument that the comments were made as part of “robust public discussion” is not compelling. The Post cannot be reasonably seen as a discussion or invitation to discuss but, rather, a statement of opinion or fact.
 58. As discussed above, the contents of Post and the Response clearly imply that the CEO and Acting CEO have acted so wrongfully that their employment should be terminated.
 59. These comments were made in a very public forum with no additional contextual information provided. It is difficult to infer any other motive other than to denigrate and humiliate the parties concerned.

¹² *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



60. The Panel finds that it is more likely than not that the Post and the Response were intended by Cr Bell to cause a detriment to the CEO and the Acting CEO.

61. This element is met.

Conclusion

62. Given the above, the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met.

Regulation 9

63. To make a finding of a minor breach of regulation 9 of the Regulations the Panel must be satisfied that:

- a. Cr Bell was a councillor at the time of the alleged breach and at the time the determination was made; and
- b. it is more likely than not that:
 - i. Cr Bell took on, or was involved in, or participated in, the performance, attempted performance, or part performance of a function or responsibility under which the Act or by delegation it is for the local government's CEO to perform or direct;
 - ii. that such taking on, involvement or participation contributed something to the administration of the local government;
 - iii. that such taking on, involvement or participation was not done as part of the deliberations at a council meeting; and
 - iv. that the Shire or CEO did not authorise such taking on, involvement or participation¹³.

64. The Complainant has not specified in what manner Cr Bell may have breached this Regulation.

Was Cr Bell a Councillor at the relevant times

65. Cr Bell was a councillor at the time of the alleged breach and at the time the Panel considered the Complaint.

Did Cr Bell take on the performance of an administrative function of the Shire

66. The Act distinguishes between the roles of council and the staff employed by the local government, or the "administration". Local governments are bodies corporate¹⁴ of which the council is the governing body.¹⁵

67. The role of council includes making local laws, overseeing the allocation of the local government's finances and resources and determining its policies.¹⁶ The role of councillors is to represent the interests of electors, ratepayers and residents of the district.¹⁷ The administration advises councillors to assist in their decision-making and implements policies determined by council and council's other decisions.

¹³ Yates and Local Government Standards Panel [2012] WASAT

¹⁴ Section 2.5(2) of the Act

¹⁵ Section 2.6(1) of the Act

¹⁶ Sections 3.51 and 2.7(2) of the Act

¹⁷ Section 2.10(a) of the Act



68. The Complaint does not specify how Cr Bell's Facebook Post and Response could be considered to constitute an administrative function of the Shire.
69. The Panel finds to the required standard that nothing in the Post or Response can be properly construed as an attempt by Cr Bell to perform an administrative function of the Shire.
70. This element is not met.

Did any taking on, involvement or participation contribute to the administration of the Shire

71. In order to "contribute" the action must "play a part in the achievement of a result"¹⁸.
72. The Post and Response cannot be reasonably said to be contributing anything to the administration of the Shire or to achieving any particular result.
73. The Panel finds to the required standard that Cr Bell did not contribute to the administration of the Shire.
74. This element is not met.

Was the taking on, involvement or participation undertaken as part of the deliberations at a council meeting AND was the taking on, involvement or participation authorised by the Shire or the CEO

75. As the above elements are not met, it is unnecessary to consider the further elements of regulation 9.

Conclusion

76. Given the above, the elements required to find a breach of regulation 9(1) of the Regulations have not been met.

Regulation 10(1)(a)

77. To make a finding of a minor breach of regulation 10(1)(a) of the Regulations the Panel must be satisfied that it is more likely than not that:
 - a. Cr Bell was a councillor at the time of the alleged breach;
 - b. Cr Bell gave or tried or made an effort to give a direction, order or command to another person, who is an employee of his or her local government; and
 - c. such a direction or an order or command was:
 - i. to do or not to do something in the other person's capacity as a local government employee; and
 - ii. not part of anything that the councillor did as part of the deliberations at a council or committee meeting.

Capacity of Cr Bell as Councillor

78. It is established that Cr Bell was a councillor at the time of the incident.

Cr Bell gave or tried or made an effort to give a direction or an order or command to another person, who is an employee of his or her local government

¹⁸ Yates and Local Government Standards Panel [2012] WASAT at 56



79. The Post and Response in question are public Facebook posts and the Panel finds that it is more likely than not that the same cannot be characterised as a “*direction*” but are statements of opinion.

80. This element is not met.

Any direction or an order or command was to do or not to do something in the other person’s capacity as a local government employee and was not part of anything that the councillor did as part of the deliberations at a council or committee meeting

81. As no direction took place it is unnecessary to consider the further elements of regulation 10(1)(a).

Conclusion

82. The elements required to find a breach of regulation 10(1)(a) of the Regulations have not been met.

Regulation 10(1)(b)

83. To make a finding of a minor breach of regulation 10(1)(b) of the Regulations the Panel must be satisfied that it is more likely than not that:

- a. Cr Bell was a councillor at the time of the alleged breach; and
- b. Cr Bell tried or made an effort to affect, sway or produce an effect on the conduct of another person, who is an employee of his or her local government, in the other person’s capacity as a local government employee which was carried out by means of:
 - i. a threat by the councillor (i.e. the councillor’s declaration of an intention to inflict punishment, pain or loss on, or to take any action detrimental or unpleasant to, the employee – or on someone, or to something, that the employee cares about – in retaliation for, or conditionally upon, some action or course); or
 - ii. a promise or undertaking by the councillor to give the employee something having a value, or to do or not do something where the act or omission concerned has some value or advantage for or to the employee.

Capacity of Cr Bell as Councillor

84. As previously noted, it is established that Cr Bell was a councillor at the time of the Post, response and the time the Complaint was considered.

Cr Bell tried or made an effort to affect, sway or produce an effect by making a Threat, Promise or Undertaking

85. The Complainant makes no specific allegation of any threat or promise made by Cr Bell.

86. It could be contemplated that the Post constitutes a threat to the CEO and Acting CEO that if their behaviour does not improve they will be sacked.

87. However, the Post and Response are made in an open public forum and are more in the line of expression of an opinion rather than making any threat.

88. The Panel finds that it is more likely than not that:

- a. Cr Bell was stating his personal opinion; and



- b. the Post and Response cannot be reasonably construed to be a threat against the CEO or Acting CEO in order to produce an effect.

89. This element is not met.

Conclusion

90. The elements required to find a breach of regulation 10(1)(b) of the Regulations have not been met.

Regulation 10(3)

91. To make a finding of a minor breach of regulation 10(3) of the Regulations the Panel must be satisfied that:

- a. Cr Bell was a councillor and was acting in his capacity as a councillor at the time of the alleged conduct;
- b. Cr Bell was attending a council meeting, committee meeting or other organised event at the time of the alleged conduct;
- c. members of the public were present when the alleged conduct occurred; and
- d. Cr Bell either:
 - i. made comments that state or imply that the government employee was incompetent or dishonest; or
 - ii. used offensive or objectionable expressions in reference to a local government employee.

92. The regulation is intended prevent councillor from using their position to publicly criticise local government employees¹⁹. The nature of the Regulation is that the public must hear, or be otherwise aware of, the criticism.

Capacity of Cr Bell as Councillor

93. As noted above, Cr Bell was a councillor at the time of the alleged breach and was acting in his capacity as a councillor when making the Post and Response.

Cr Bell was attending a council meeting, committee meeting or other organised event in front of the public

94. The conduct in question did not occur while attending a council meeting, committee meeting or other organised event but by Facebook post.

95. This element is not met.

The comments made state or imply that the government employee was incompetent or dishonest

96. As the above element cannot be met it is not necessary to consider this element.

Conclusion

97. Given the above, the elements required to find a breach of regulation 10(3) of the Regulations have not been met.

¹⁹ *Hargreaves and Local Government Standards Panel [2008] WASAT 300*



Panel's Finding

98. Cr Bell did commit one breach of Regulation 7(1)(b).
99. Cr Bell did not commit a breach of Regulation 9 or Regulation 10.

Sheryl Siekierka (Presiding Member)

Emma Power (Member)

Paul Kelly (Member)