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## Local Government Standards Panel

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Complaint Number	SP 31 of 2018 [DLGSC20180327]
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Mayor Camilo Blanco</b>
<b>Respondent</b>	<b>Councillor George Daccache</b>
Local Government	<b>Town of Port Hedland</b>
Regulation	Regulation 4 Regulation 7(1)(b) Regulation 8(b) <i>of the Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms Rebecca Aubrey (Member) Mrs E Power (Member)
Heard	12 October 2018 Determined on the documents
Finding	1 breach of Regulation 4 1 breach of Regulation 7(1)(b)

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### FINDING AND REASONS FOR FINDING

Delivered 9 November 2018

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#### DEFAMATION CAUTION

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### Summary of the Panel's decision

1. On 12 October 2018, the Panel found that Councillor George Daccache, a councillor of the Town of Port Hedland ("**the Town**") did not commit the alleged minor breach under:
  - a. the Local Government Act 1995 (WA) ("**the Act**"); and
  - b. regulation 4 of the Local Government (Rules of Conduct) Regulations 2007 ("**the Regulations**");
  - c. regulation 7(1)(b) of the Regulations;
  - d. regulation 8(b) of the Regulations; and
  - e. regulation 10(3)(a) of the Regulations,when, at the Town's Ordinary Council Meeting of 23 May 2018, he spoke in relation to a comment previously made by the Mayor ("**the OCM**") as further described in paragraph 17 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.<sup>1</sup>
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.<sup>2</sup>
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 accurate<sup>3</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>4</sup>.
7. The Panel does not possess investigative or supervisory powers.<sup>5</sup> 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.

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<sup>1</sup> Section 5.105 of the Act

<sup>2</sup> Section 5.106 of the Act

<sup>3</sup> Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

<sup>4</sup> Briginshaw v Briginshaw (1938) 60 CLR 336

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



9. The Panel also must have regard to the general interests of local government in Western Australia<sup>6</sup>.
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 4**

11. Regulation 4 reads:

*“(1) In this regulation —*

*“**local law as to conduct**” means a local law relating to conduct of people at council or committee meetings.*

*“(2) The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.”*

12. Section 5.105(1)(b) of the Act states as follows:

*“A council member commits a minor breach if he or she contravenes -*

*...*

*(b) a local law under this Act, contravention of which the regulations specify to be a minor breach.”*

13. In this case it is alleged that Cr Daccache caused an adverse reflection on the Mayor of the Town and thereby breached 9.14(2) of the Town of Port Hedland Standing Orders Local Law 2014 (**“the Standing Orders”**):

**“9.14 No adverse reflection**

*(1) A member is not to reflect adversely on a decision of the council except on a motion that the decision be revoked or changed (see Part 17).*

*(2) A member is not—*

*(a) to reflect adversely on the character or actions of another member or employee; or*

*(b) to impute any motive to a member or employee,*

*unless the meeting resolves, without debate, that the question then before the meeting cannot otherwise be adequately considered. ”*

#### **Regulation 7(1)(b)**

14. 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.*

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<sup>6</sup> Section 8(6) of Schedule 5.1 of the Act



- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*

## Regulation 8

15. Regulation 8 prohibits the use of government resources in certain circumstances and provides:

### ***“8. Misuse of local government resources***

*A person who is a council member must not either directly or indirectly use the resources of a local government —*

- (a) *for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918; or*
- (b) *for any other purpose,*
- unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.”*

## Jurisdiction and Procedural Fairness

16. On the 30 May 2018 the Panel received a letter dated 28 May 2018 from Ms Louise O’Donnell, the governance officer of the Town (**“the Governance Officer”**). The same enclosed a Complaint of Minor Breach Form (with attached letter) dated 28 May 2018 provided by Mayor Camillo Blanco.
17. In his letter of complaint Mayor Blanco makes the following allegations:
- a. **Allegation 1** - Cr Daccache breached regulation 4 of the Regulations when at the OCM, in contravention of the Standing Orders, he made an adverse reflection relating to the Mayor by:
- suggesting the Mayor was a hypocrite; and
  - attempting to humiliate the Mayor by using an out of context past comment, in a public forum as set out in paragraph 22 below.
- b. **Allegation 2** – Cr Daccache breached Regulation 7(1)(b) and caused detriment to the Mayor by making the comments set to in paragraph 22 in an attempt to humiliate the Mayor; and
- c. **Allegation 3** – Cr Daccache breached Regulation 8(b) by improperly using the live streaming resources of the Town at the OCM to broadcast the comments set out in paragraph 22 to gain a large local audience,
- (together **“the Complaint”**).
18. The Governance Officer confirmed that a copy of the Complaint had been sent to Cr Daccache setting out the specifics of the alleged conduct and minor breaches.
19. The Panel convened on 12 October 2018 to consider the Complaint.
20. The Panel:
- accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission’s website, the Cr Daccache was:
    - last elected to the Council of the Town in October 2017 for a term expiring in October 2021;



- ii. a Councillor at the time of the alleged breach; and
- iii. a Councillor when the Panel met on 12 October 2018;
- b. was satisfied the Complaint was made within two years after the alleged breach occurred<sup>7</sup>;
- c. was satisfied that the Town's Governance Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>8</sup>;
- d. was satisfied the Department had provided procedural fairness to Cr Daccache; and
- e. found it had jurisdiction to consider the Complaint.

### **The Specifics of the Complaint**

21. In the Complaint to the Department, Mayor Camillo Blanco provided:
  - a. a letter dated the 28 May 2018 setting out the specifics of the Complaint;
  - b. video footage of the portion of the OCM relating to the Complaint.
22. The relevant comments made by Cr Daccache which the subject of the Complaint are as follows:

*“ **Cr Daccache:** Mayor on one of your Facebook rants you insinuated that we councillors in some way did not care of indigenous affairs or respect the wellbeing of these peoples. Let me read a statement that you made not so long ago, when you were questioned no standing and respecting Karinyarra people.*

***Mayor Blanco:** Cr Daccache, when was that?*

***Cr Daccache:** 25<sup>th</sup> of January 2012.*

***Mayor Blanco:** Just so we are clear, 6 years ago.*

***Cr Daccache:** Well you keep coming back to me saying I was a councillor 12 years ago.*

***Mayor Blanco:** Cr Daccache. Lets lets....*

***Cr Daccache:** This is what you said when you didn't stand to respect the Kariyarra people. "The things I will not stand for is racism. Acknowledging the people that own the land and don't care for it, is not to be stood for". Now that you have opened the meeting first and acknowledged the traditional owners you need to acknowledge all people who built this country as well. I can assure you since I have been a councillor I have not heard you once, not once, acknowledge all people that built this country as well. So is this a bit hypocritical?*

***Mayor Blanco:** Is there a question somewhere in there Cr Daccache?*

***Cr Daccache:** Isn't that a bit hypocritical on your behalf? That you say one thing and then do the other?*

***Mayor Blanco:** No Cr Daccache I'm not hypocritical at all.*

***Cr Daccache:** It's on record anyway."*

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<sup>7</sup> Section 5.107(4) and 5.109(2) of the Act

<sup>8</sup> Section 5.107 and 5.109 of the Act



23. Mayor Blanco also makes the following assertions:
- a. the statement causes a detriment to the local government and Mayor Blanco;
  - b. Cr Daccache suggested that the comment was recent and he did not try to correct this perception until questioned about the date;
  - c. public question time and public statement time at the OCM is for members of the public to raise concerns and was not an appropriate time for Cr Daccache to make the comments;
  - d. at the time the statement was made Mayor Blanco was a member of the public and he was entitled to make his view known as a member of the public;
  - e. the statement by Mayor Blanco was made 6 years ago and had nothing to do with items on the agenda of the OCM;
  - f. Mayor Blanco does not deny the statement was made, but that the context was incorrectly portrayed by Cr Daccache;
  - g. Cr Daccache's actions have the effect of deterring members of the public to attend local government meetings or to speak up as they may feel intimidated or attacked; and
  - h. the comments were made in public and intended to be witnessed by a large audience via live streaming.

### **Respondent's Response**

24. By an email dated 3 July 2018 Cr Daccache provided a response to the Complaint.
25. Cr Daccache does not believe he has committed a minor breach.
26. Cr Daccache specifically asserts that:
- a. the Mayor insinuated that "we councillors" did not care about indigenous affairs which is not the truth;
  - b. at no time did he cause an adverse effect on any employee; and
  - c. he stated the written truth.
27. The Panel notes that the response by Cr Daccache does not adequately address the alleged breaches and offers little by way of explanation or defence.

### **Panel's Consideration**

#### **Allegation 1 - Regulation 4**

28. To make a finding of a minor breach of regulation 4 of the Regulations the Panel must be satisfied, to the required standard, that:
- a. Cr Daccache was a councillor at the time of the alleged breach and the time of the determination;
  - b. the conduct occurred during a council or committee meeting; and
  - c. Cr Daccache breached a valid provision of the Town of Port Hedland Standing Orders Local Law 2014.

#### **Was Cr Daccache a Councillor at the relevant times**



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

The conduct occurred at a council or committee meeting

30. This element is met as the conduct occurred during a Town of Port Hedland Ordinary Council Meeting of 23 May 2018.

Cr Daccache breached a valid provision of the Town of Port Hedland's Standing Orders Local Law 2014

31. A standing orders local law is a local law relating to conduct of people at council or committee meetings<sup>9</sup>.
32. SAT has previously established that a local government's standing orders that refer to the prohibition on a Member's conduct in terms substantially similar to Order 9.14 of the Standing Orders (in relation to adverse reflection on the character or actions of another Member or employee) is a validly constituted local law which relates to the conduct of elected members for the purposes of Regulation 4.
33. As such, the Panel finds that Standing Order 9.14 is a local law as to conduct within the meaning of regulation 4(1), and that a contravention of Order 9.14(2) would constitute a minor breach under the Act and regulation 4(2).
34. An adverse reflection is an assertion relating to the moral or mental characteristics of another member, or anything done by the other member, that would be perceived, by a reasonable person, as tending to lower a person in the estimation of his or her fellow persons by making them think less of him or her.
35. Cr Daccache's comment appears to be made in retaliation to comments made by Mayor Blanco on Facebook, although no evidence has been presented in this regard.
36. In this case, Cr Daccache has specially raised a statement by Mayor Blanco that occurred:
- a. 6 years in the past; and
  - b. when Mayo Blanco was a member of the public and not acting in the role of Mayor.
37. Even if the Mayor's prior statement was accurate, the same:
- a. was brought up out of context; and
  - b. can be reasonably be interpreted as negatively commenting on the Mayor's morals and attempting to denigrate or humiliate the Mayor for his past statements.
38. Cr Daccache is not asking a legitimate question or attempting to ascertain an answer, he is essentially requesting Mayor Blanco to agree to being a hypocrite. This directly relevant to the character of the Mayor and implies that the Mayor is not a suitable person to hold the office of Mayor.
39. The Panel finds that a reasonable person would perceive that Cr Daccache's comments:
- a. clearly infer that Mayor Blanco is hypocritical; and

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<sup>9</sup> See *Ryan and Local Government Standards Panel* [2009] WASAT 154 and *Steck and Local Government Standards Panel* [2011] WASAT 117.



- b. would cause a reasonable person to adversely reflection upon the actions and character of the Mayor and lower him in the public's estimation.

40. This element is met.

#### Conclusion

41. The elements required to find a breach of regulation 4 of the Regulations have been met.

#### **Allegation 2 – Regulation 7(1)(b)**

42. 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 Daccache was a councillor at the time of the alleged breach and the time of the determination; and
- b. Cr Daccache made use of his office as Council member of the Town;
- c. when viewed objectively, such use was an improper use of Cr Daccache'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;
- d. Cr Daccache engaged in the conduct in the belief that detriment would be suffered by another person.

#### Was Cr Daccache a Councillor at the relevant times

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

#### Cr Daccache made use of his office as Council member of the Town

44. Cr Daccache made the relevant comments during the OCM of the Town and was therefore acting in his role as councillor and therefore making use of his office as a council member.

#### Cr Daccache's use was improper

45. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom<sup>10</sup>. 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.
46. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent<sup>11</sup>.
47. However, any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context. In this situation, there is clearly existing friction between community members and a history of interactions leading up to the post in question.

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<sup>10</sup> Complaint of Minor Breach No. SP 3 of 2013

<sup>11</sup> *Chew v R* [1992] HCA 18



48. 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”<sup>12</sup>.
49. Cr Daccache does not make any argument that his comments were made to raise the legitimate concerns of the community in respect to the Mayor’s position as to indigenous issues.
50. The Panel finds that the comments cannot be reasonably be construed as aiming to protect the Kariyarra peoples but were rather used to retaliate against prior comments by Mayor Blanco on Facebook.
51. In the context, the Panel considers that Cr Daccache’s comments were of such a nature that a reasonable individual would consider the same to be:
  - a. inappropriate in the context;
  - b. an improper use of his position as councillor; and
  - c. deserving of penalty.
52. This element is met.

Cr Daccache intended detriment to be suffered by another person

53. “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.
54. It is not necessary to find whether any detriment was actually suffered<sup>13</sup>, but an intent to cause such detriment must be established.
55. The comments were made during public question time during the OCM apparently in response to earlier comment by Mayor Blanco on Facebook.
56. Irrespective of whether the comment was accurate with respect to the prior statement in the Mayor, the Panel considers that it was raised in a manner calculated to be misleading and to cause embarrassment or humiliation to the Mayor.
57. The Panel finds that it is more likely than not that:
  - a. Cr Daccache intended to denigrate and humiliate Mayor Blanco and used an inappropriate and public forum to do so; and
  - b. the comments made by Cr Daccache were intended to cause a detriment to Mayor Blanco.
58. This element is met.

Conclusion

59. The elements required to find a breach of regulation 7(1)(b) of the Regulations have been met.

**Allegation 3 – Regulation 8**

60. To find a breach of Regulation 8 the Panel must be satisfied that it is more likely than it is not that:

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<sup>12</sup> *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]

<sup>13</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



- a. a Councillor directly or indirectly used;
  - b. his or her local government's resources;
  - c. for the identified electoral purpose or any other purpose; and
  - d. such purpose was not authorised under the Act or by the council or the local government's CEO.
61. Mayor Blanco's argument that the use of the Town's live videos streaming resources is an unauthorised use of the Town's resources is not compelling.
62. It is likely that the video streaming service would comprise a local government resource, as that meaning is widely construed under the Act<sup>14</sup>.
63. However, appears that Cr Daccache did not have any choice as to whether the OCM was live streamed. Further, it is unclear what the requirements or terms of use of any such video streaming service may have been and how the same may, or may not, have been authorised.
64. There has been no evidence presented that would allow the Panel to come to any determination on this allegation.
65. As such, the elements required to make a finding of a minor breach cannot be met due to lack of evidence presented.

### **Panel's Finding**

66. Cr Daccache did breach:
- a. Regulation 4; and
  - b. Regulation 7(1)(b),
- and thereby committed 2 minor breaches
67. Cr Daccache did not commit a breach of Regulation 8 and no finding of a minor breach is made in that respect.

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Sheryl Siekierka (Presiding Member)

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Emma Power (Member)

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Rebecca Aubrey (Deputy Member)

Date of Reasons – 8 November 2018

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<sup>14</sup> Section 1.4 of the Act and *Yates and Local Government Standards Panel* [2012] WASAT 23 at paragraphs [30] – [35]; and *Western Australia v Ward* [2000] FCA 191 at paragraph [517].