LOCAL GOVERNMENT STANDARDS PANEL

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

Complaint Number	SP 17 of 2015 DLG 20150100
Legislation	*Local Government Act 1995* (WA)
Complainant	**Shire President, Councillor Roger LeMaitre**
Subject of complaint	**Councillor Peter Tegg**
Local Government	Shire of Cue
Regulation	Regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*
Panel Members	Dr C Berry (Deputy Presiding Member) Mr P Kelly (Member) Mr P Doherty (Member)
Heard	9 July 2015 (Determined on the documents)
Outcome	Breach occurred.

FINDINGS AND REASONS FOR FINDING

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1. Summary of the Panel's Decision

1.1 The Panel found that Cr Tegg committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* ***(Regulations)*** by making the Statement set out in paragraph 5.1 below, thereby questioning the truthfulness of the Shire's Chief Executive Office when the Council was considering whether to extend his employment contract.

1.2 That regulation 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) ...; or
>
> (b) to cause detriment to the local government or any other person."

2. Jurisdiction

2.1 On 17 April 2015 the Panel received a Complaint submitted by the Shire's President (**Complaint**) alleging that on 17 March 2015 Cr Peter Tegg made improper use of his office as a Council member to cause a detriment to the Shire's Chief Executive Officer (**CEO**) and thereby breached regulation 7(1)(b) of the *Regulations* (**Breach**).

2.2 A breach of regulation 7(1)(b) is a "minor breach"[1] 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 (WA)* ***(LG Act)***.

2.3 The Panel finds that the Complaint 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 Breach occurred.

3. The Panel's Role

3.1 The Panel observes that its members are required to have regard to the general interests of local government in Western Australia[2]; 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"[3] (**Required Standard**).

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[1] *LG Act*, s 5.101A and s 5.105(1).
[2] Clause 8(6) of Schedule 5.1 of the *LG Act*
[3] *LG Act*, s 5.106.

3.2 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.

4. Documents

4.1 The Documents considered by the Panel (**Documents**) are set out in attachment "A".

5. The Complaint

5.1 In the Complaint it is alleged that an Ordinary Council Meeting of the Shire held on 17 March 2015 (**OCM**), when considering a confidential item relating to whether the employment contract of the Shire's CEO should be extended, Cr Tegg said that the CEO "told [Mr V] that this Shire is broke, got no money. Now you explain to me what we want to do keeping on a CEO who cannot tell the truth down the line" (**Statement**).

5.2 It was also alleged that the Statement was made to damage the CEO's reputation and to harm his prospects of having his employment contract renewed.

6. The Response

6.1 By letter dated 7 April 2015, the Department sent a copy of the Complaint (together with a Complaint Summary) to Cr Tegg.

6.2 Cr Tegg's Response is document 3 of the Documents. In brief Cr Tegg maintains that the Statement is accurate and was made to enable him to assess the true state of the Shire's finances, given that during an earlier stage of the OCM, in response to a question from ["Mr C"] the CEO said that "our finances are good, we've got, I don't know if you heard him say that we have 2 point something million cash available to us...".

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

7.1 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, it must be established that the person the subject of the Complaint engaged in the alleged conduct (**Conduct**);

(b) secondly, it must be established 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, it must be established 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 objectively[4], such use was an improper use of the person's office as council member in that it:

(i) 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 do[5]); and

(ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty[6]; and

(e) fifthly, that the person engaged in the Conduct in the belief that detriment would be suffered by the local government or another person.

8. Findings

8.1 Having reviewed the Documents (and in particular the Audio Recording and the Transcript of the OCM) the Panel is satisfied to the Required Standard that:

(a) an OCM of the Council was held on 17 March 2015 which was attended by, amongst others, the Complainant and Crs Tegg, Blackmore, King, Pigdon, Spindler and Dennis;

(b) Cr Tegg attended the OCM in his capacity as a councillor of the Shire;

(c) during question time, in response to a question from Mr C, the CEO responded "You said we're going broke? No. The Shire finances are in excellent condition .... The Shire finances are in good shape";

(d) later on, Cr Tegg made the Statement when the OCM was closed to the public, when the CEO was not in attendance and when the Council was considering whether to extend the CEO's employment contract.

8.2 Having reviewed the Documents and, in particular, a letter dated 10 April 2015 from Mr V to the Shire, in which Mr V said:

> "It has come to my attention that comments attributed to myself were tabled at the Shire of Cue Council meeting on 17/03/15 indicating that the Shire CEO had revealed to me that the Shire of Cue was "broke". I can confirm that at no time has the CEO indicated this."

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[4] 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).

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

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

the Panel is satisfied, to the Required Standard that the CEO did not say to Mr V, as alleged in the Complaint, that "this Shire is broke, got no money".

8.3 Having made these findings, the Panel is satisfied to the Required Standard that:

(a) Cr Tegg made the Statement to cause detriment to the CEO (being to harm his reputation and his prospects of having his employment contract renewed) and that Cr Tegg thereby made improper use of his office as councillor of the Shire;

(b) each essential element of regulation 7(1)(b) of the *Regulations* has been established; and

(c) Cr Tegg thereby breached regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* by making the Statement at the OCM thereby questioning the truthfulness of the Shire's Chief Executive Office when the Council was considering whether to extend his employment contract.

Christopher Berry (Deputy Presiding Member)

Paul Kelly (Member)

Peter Doherty (Member)

Attachment "A"

Doc ID	Description	Page #
01.doc	Copy of (2-page) document Complaint of Minor Breach Form dated 15 April 2015	12
02.doc	Copy of (1-page) Complaint Summary.	14
03.doc	Copy of (1-page) document, being Cr Tegg's response to the allegations, undated, but received by the Department on 28 May 2015 by email.	15
04.doc	Copy of (4-page) document extract of Shire of Cue Ordinary Council Meeting Minutes dated 17 March 2015 – page 7 listing attendees, pages 37-38 Item 13.1 CEO's Contract Extension, and OCM 21 April page 8, Item 5 Confirmation of Minutes of 17 March 2015.	16
05.doc	Copy of (1-page) document – letter from Mr David Vemer, Registered Manager BNM Australia group Pty Ltd to Shire President Roger LeMaitre	20
06.doc	Copy of (4-page) transcript of audio recording of OCM 17 March 2015 – extract of Item 13.1 CEO Contract Extension, made true and correct by Department.	21
07.doc	Copy of MP3 audio recording of OCM held on 17 March 2015 - Item 13.1 starts at time 1:27:56	25
08.doc	Copy of (4-page) document – email trail from Cr Tegg further comments received on 25 June 2015	26