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# Local Government Update

A review of Local Government Law in Western Australia

## PUBLIC CRITICISM OF AN EMPLOYEE IS 'OFFENSIVE'

One of the Rules of Conduct prohibits a councillor, at a Council meeting or other event where members of the public are present, from using offensive or objectionable expressions 'in reference to a local government employee'.

In a decision on 17 December 2008, the State Administrative Tribunal (SAT) considered the meaning of 'offensive' in this context.

### Words used

At a Shire of Shark Bay Council meeting in December 2007, a councillor publicly criticised the Shire's health inspector. There was some doubt about the precise words used. The minutes recorded that the councillor stated that the health inspector was 'derelict in his duties'. However, the councillor later asserted that the words he had used were that 'Mr Egan [a resident of the Shire] claims that the health inspector has been derelict in his duties'. The SAT accepted the councillor's version.

*"...this Rule of Conduct is designed to ensure that councillors do not use their positions to publicly criticise an employee."*

### Standards Panel

A number of other councillors lodged a complaint that the words used were a breach of the Rules of Conduct. The Standards Panel upheld the complaint and ordered the councillor to publish a public apology. The councillor sought a review of the Standard Panel's decisions.

### SAT's findings

Judge Chaney, the Deputy President of the SAT, affirmed the finding and order of the Standards Panel. Among the key propositions relied on to support these conclusions were that –

- (a) an 'offensive expression' is one that causes offence or displeasure and is insulting;
- (b) accusing an employee of 'dereliction of duty' is an offensive expression and is a breach of the Rules of Conduct; and
- (c) an order to publish a public apology is an appropriate sanction for a breach of this type.

Another significant feature of this case is based on the wording of the relevant Rule of Conduct that prohibits a councillor from using an offensive expression 'in reference to' a local government employee. The SAT concluded, in effect, that it is no excuse for a councillor to claim that he or she simply reported or repeated, in public, an offensive expression used by someone else.

This reasoning is consistent with the principles applying in the law of defamation. A defamatory statement does not cease to be defamatory simply because the person who makes the statement attributes its source to another person. In other words, repeating in public another person's offensive expression is itself an offensive expression and is a breach of the Rules of Conduct.

## Conclusions

The SAT accepted that this Rule of Conduct is designed to ensure that councillors do not use their positions to publicly criticise an employee.

Any concerns about the performance of an employee "should be dealt with within the local government organisation and through proper channels, rather than aired publicly in a council or committee meeting".

Because, under the Local Government Act 1995, the CEO is responsible for the performance and management of employees, any concerns that a councillor has about the performance of an employee should be referred to the CEO.

Please contact Neil Douglas on 9424 6210 or [neil.douglas@mcleods.com.au](mailto:neil.douglas@mcleods.com.au) if you have any queries regarding the issues raised in this article.

The information contained in this update should not be relied upon without obtaining further detailed legal advice in the circumstance of each case.

