



Local Government Standards Panel

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| Complaint Number | SP 2020-032 |
| Legislation | <i>Local Government Act 1995</i> |
| Complainant | Ms Sue Doherty |
| Respondent | Mayor Greg Milner |
| Local Government | City of South Perth |
| Regulation | Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i> |
| Panel Members | Mr Gordon MacMile (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Deborah Hopper (Deputy Member) |
| Heard | 29 July 2020 Determined on the documents |
| Outcome | One breach of Regulation 7(1)(b) |

FINDING AND REASONS FOR FINDING

Published 16 September 2020

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Summary of the Panel's decision

1. The Local Government Standards Panel ("the Panel") found that Mayor Greg Milner ("Mayor Milner"), a councillor for the City of South Perth ("the City") committed one breach under the *Local Government Act 1995* (WA) ("the Act") and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") when he posted an article from The West Australian newspaper regarding the City's finances, on his Facebook page and three South Perth community Facebook pages.
2. The Panel found that Mayor Milner did not breach Regulation 7 when it was alleged that he:
 - a. endorsed an advertisement in the Southern Gazette Newspaper ("Gazette") which contained misleading information about the financial health of the City;
 - b. prominently displayed and gave out copies of the article from The West Australian newspaper ("The West") regarding the City's finances at a Farmers Market during the Mayoral campaign;
 - c. removed the post that contained The West's article regarding the City's finances from his Facebook page and three South Perth community Facebook pages, only after he was sworn in as Mayor; and
 - d. responded to a query, sent on behalf of a South Perth community Facebook page, asking why he was publicly discrediting others.

Jurisdiction and procedural fairness

3. The Act makes provision for the circumstances in which a council member commits a minor breach.¹
4. On 22 April 2020 the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form dated 26 March 2020 ("Complaint"). The Complaint was signed by the former Mayor of the City, Ms Sue Doherty ("the Complainant") and contained five allegations of breaches of the Regulations by Mayor Milner as follows:
 - a. It is alleged that Mayor Milner breached Regulations 7(1)(a) and (b) when he endorsed an advertisement in the Gazette that contained misleading information about the financial health of the City. The advert was run for the purpose of gaining an advantage for Mayor Milner during the electoral campaign and also caused significant damage to the reputations of the City, the Council, all sitting Councillors and the Complainant.
 - b. It is alleged that Mayor Milner breached Regulation 7(1)(b) when he posted an article from The West that conveyed an inaccurate impression of the finances of the City, on his Facebook page and three other South Perth community Facebook pages. The article reflected poorly on the City, the Council, all sitting Councillors and the Complainant who was Mayor at the time and therefore disadvantaged them;

¹ Section 5.105 of the Act.



- c. It is alleged that Mayor Milner breached Regulation 7(1)(b) when he prominently displayed and gave out copies of the article from The West regarding the City's finances at a Farmers Market during the Mayoral campaign disadvantaging the sitting Mayor and Councillors;
 - d. It is alleged that Mayor Milner breached Regulations 7(1)(a) and (b) when he removed the post containing the article from The West regarding the City's finances from his Facebook page and three community Facebook pages only after he was sworn in as Mayor. He thereby continued to take advantage of the "*false and misleading*" article and to cause damage to the reputation of the City, its Councillors and the Complainant who was Mayor at the time;
 - e. It is alleged that Mayor Milner breached Regulation 7(1)(b) when he responded to a query sent on behalf of a South Perth community Facebook page asking why he was publicly discrediting others. In his reply, Mayor Milner referenced three independent sources and endorsed the article in The West as being correct, which damaged the reputation of the City, Council and elected members.
5. On 30 April 2020, the Department advised Mayor Milner of the Complaint and invited him to respond. The Department sent Mayor Milner a copy of the original Complaint and all the supporting documents provided by the Complainant.
6. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breaches occurred.² On 29 July 2020 the Panel convened to consider the Complaint.
7. The Panel:
 - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Mayor Milner was a councillor at the time of the alleged breaches, having been elected on 19 October 2019, and was still a Councillor when the Panel met on 29 July 2020;
 - (b) was satisfied the Complaint had been made within six months after the alleged breaches are said to have occurred³;
 - (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches⁴; and
 - (d) was satisfied that the Department had provided procedural fairness to Mayor Milner.
8. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting the relevant Minister at the time instead of considering the Complaint itself.⁵ Mayor

² Section 5.110(2)(a) of the Act.

³ Section 5.107(4) of the Act

⁴ Sections 5.107, 5.108, 5.109 of the Act.

⁵ Sections 5.110(2)(b), 5.111(1) of the Act.



Milner has not previously been found to have committed any minor breaches and therefore, the Panel decided not to send the Complaint to the Chief Executive Officer of the Department.

9. Based on the information referred to in paragraphs 2 to 8 above, the Panel found it had jurisdiction to determine whether Mayor Milner had breached Regulation 7 in connection with the five allegations set out in the Complaint.

Panel's role

10. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
11. Any finding, that a councillor has committed a minor breach, must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).⁶
12. In order to find the allegation, proposition or conduct has been established, and where direct proof is not available, the Panel must be satisfied from the evidence that it is more probable than not that it has occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.⁷
13. For a finding that a councillor has breached a particular regulation, the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

Regulation 7

14. Regulation 7 provides:

"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."

15. The Panel decided that the alleged conduct is not conduct that contravenes section 5.93 of the Act or section 83 of *The Criminal Code*.

Elements of Regulation 7

⁶ Section 5.106 of the Act.

⁷ *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.

16. In order to find a breach of Regulation 7, the Panel must be satisfied to the required standard of proof that:

- (a) the person, the subject of the Complaint, engaged in the alleged conduct (first element);
- (b) 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 (second element);
- (c) 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) (third element);
- (d) when viewed objectively, such use was an improper use of the person's office as a 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, power and authority of the councillor and the circumstances of the case; and
 - (ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;(fourth element);
- (e) the person engaged in the conduct in the belief that:
 - (i) [in the case of regulation 7(1)(a)] an advantage would be gained either directly or indirectly for the person or any other person; or
 - (ii) [in the case of regulation 7(1)(b)] detriment would be suffered by the local government or any other person(fifth element).

Fourth element - meaning of "to make improper use of....office"

17. The Macquarie dictionary definition of "*improper*" is "*not in accordance with propriety of behaviour, manners, etc; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.*"⁸ The Shorter Oxford dictionary definition is "*irregular, wrong; unsuitable, inappropriate; unbecoming, unseemly.*"⁹

18. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a councillor, and all the circumstances of the particular case, form the view that the councillor had breached the standards of conduct expected of a councillor?¹⁰ "*For behaviour to*

⁸ Macquarie Dictionary, Revised Third Edition.

⁹ Shorter Oxford English Dictionary, Sixth Edition.

¹⁰ *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.

be improper it must be such that a right-thinking person would regard the conduct as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.”¹¹

19. Under the Act Panel members must have regard to the general interests of local government in Western Australia.¹² It is in the interests of local government that councillors are, and are seen to be, professional and respectful in their dealings with fellow councillors, local government employees and members of the public.
20. Regulation 3 sets out general principles to guide councillors’ behaviour, although contravention of any of these does not amount to a minor breach.¹³ Regulation 3 provides, among other things, that councillors should act with reasonable care, diligence and integrity and treat others with respect and fairness.
21. The meaning of “*improper*” must be considered in the context of relevant legislation, such as the Act and the Regulations, and other rules and standards that apply to a councillor’s role and conduct, such as the local government’s Code of Conduct, and the circumstances and context of the case.¹⁴ All these provisions form part of the backdrop to the Regulations and give context to a complaint but the alleged conduct must also be judged in the particular circumstances.
22. Conduct can be improper even though the councillor’s judgment is that it isn’t improper. A councillor’s use of his or her office can be improper even though the councillor is intending to benefit the local government, the council or the ratepayers and residents.¹⁵

Fifth element - meaning of “to gain directly or indirectly an advantage for the person or any other person” and “to cause detriment to the local government or any other person”

Advantage

23. “*Advantage*” is defined as “*favouring a circumstance; something which gives one a better position ... benefit; increased well-being or convenience ... pecuniary profit ...*”¹⁶
24. “*To*” in “*to gain directly or indirectly an advantage*” indicates that for this element to be established, a councillor must have intended to gain an advantage for themselves or another person.
25. For this element to be established, it is not necessary to find that the councillor’s actions did, or reasonably could have, delivered the result sought.¹⁷

Detriment

¹¹ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

¹² Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

¹³ Regulation 3.

¹⁴ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10.

¹⁵ *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby* 2010.

¹⁶ Shorter Oxford English Dictionary, Sixth Edition

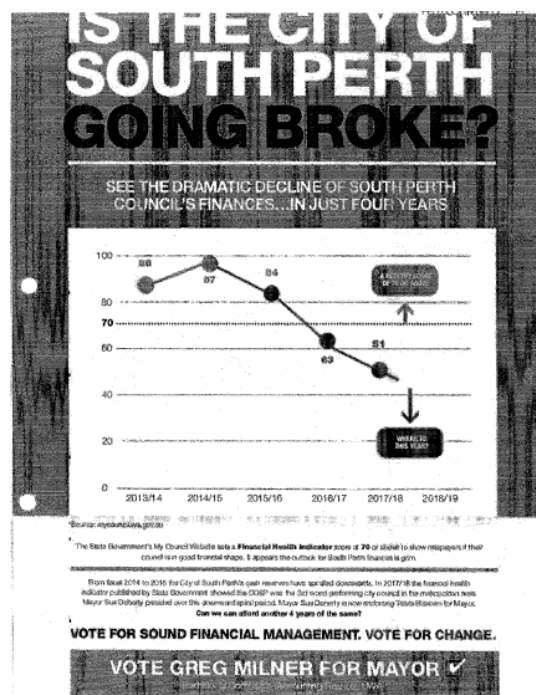
¹⁷ *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraphs 71,72

26. “*Detriment*” means loss, damage or injury.¹⁸ It includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage. A person can suffer detriment through others thinking less favourably of them.¹⁹
27. For regulation 7(1)(b) to be satisfied it is not necessary to show that the local government or the person concerned actually suffered detriment.²⁰ However it is not enough to show that the local government or the person concerned suffered detriment, or could have suffered detriment. The Panel must find that it is more likely than not that the councillor believed that his or her actions would cause detriment and intended to cause detriment.²¹
28. “*To cause detriment*” has been interpreted as meaning “*in order to*” or “*for the purpose of*” causing detriment, or “*with the will to*” cause detriment.²² There can be a finding of intent if, after considering all the evidence, the only reasonable inference is that the councillor intended to cause detriment.

Substance of the Complaint

First Allegation – alleged breach of Regulation 7(1)(a) and 7(1)(b)

29. A full-page advertisement (“Advert”) was run in the Gazette on 26 September 2019 that promoted Mayor Milner during his electoral campaign for Mayor (“Electoral Campaign”). A copy of the Advert is below:



¹⁸ Macquarie Dictionary Revised Third Edition, 2001.

¹⁹ *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.

²⁰ *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

²¹ *Re and Local Government Standards Panel* [2014] WASAT 111, paragraph 51, referring to *Australian Securities and Investments Commission v Australian Property Custodian Holdings Ltd* [2013] FCA 1342.

²² *Chew* 2010.

30. The Advert was “misleading” and “deceptive” as can be seen by a comparison of the graph used in the Advert compared to an accurate graph of the City’s actual financial health (which the Complainant included as an attachment).
31. The Advert was paid for by two of Mayor Milner’s friends and financial supporters (“Supporters”). Mayor Milner was clearly aware of the Advert and its contents and it was a key part of his Electoral Campaign. The Advert made false representations that the City’s cash reserves and its financial position were in a “downward spiral” and that there had been incompetent and improper financial management of its finances by the City, elected councillors and the Complainant as Mayor at the time.
32. Mayor Milner did nothing to stop or prevent the Advert from being published, or to distance himself from it – even though he knew from budget briefings that the City was in a good financial position. Any delay in an improvement of the City’s Financial Health Indicator result (“FHI”), was due to a motion that Mayor Milner had himself seconded and voted for to set the City’s rates increase at 1% (rather than the 1.4% of the Local Government Cost Index which reflected the increase in the City’s operating expenditure).
33. The Advert was run for the purpose of gaining an advantage for Mayor Milner in the Electoral Campaign and it was consistent with the Campaign message that he ran along with his Supporters. Mayor Milner’s Electoral Campaign focused on his record of reducing rates and providing sound financial management, with specific reference to how rates had been lower since he was elected on to Council in 2017. The FHI was referred to repeatedly in his promotional material.
34. The Advert also brought the City, the Council as a body, all sitting Councillors and the Complainant, as Mayor at the time, into disrepute, and the false representations contained within it caused significant reputational damage to those parties. Notwithstanding the fact he knew about the damage that would be caused by the Advert, Mayor Milner “adopted” it in how he drew attention to it, and he associated himself with it so as to cause harm to others and to benefit himself.

Second Allegation – alleged breach of Regulation 7(1)(b)

35. An article was published in The West, on 28 September 2019 (“Article”). The Article conveyed the “misleading” and “inaccurate” impression that the City was “going broke” and that its finances had not been well or properly managed. The Article contained misinformation about the City’s finances and brought the City and Council into disrepute. A copy of the Article is below:



36. Mayor Milner posted a copy of the Article to his Facebook page ("Facebook Post") on the same day it appeared in The West. He also posted the Article on three South Perth Community Facebook pages ("Community Facebook Pages").
37. The language used in the Article was inconsistent with the kind of words an elected member representing local government would and could use. It also reflected unfairly, inaccurately and adversely on the decisions of Council, in particular on the annual budgets and the competence and actions of individuals.
38. Under the City's Code of Conduct (June 2019) ("Code") it is considered that the adoption of the Code:
- "Will serve to strengthen the community's confidence in the integrity of those who are responsible for local government in the City of South Perth community."*
- Mayor Milner was aware of the Code and the obligation to not use his office to weaken community confidence in the integrity of those involved in local government. However, he continued to disseminate and publish false representations of the City's finances, financial management and the competency of the City, its staff and elected members.
39. Mayor Milner knew the impression given in the Article was false, given that he had attended the City's budget briefings which contradicted the representations made in the Article that the City was going broke and that its finances had not been well or properly managed. Nonetheless, he posted a copy of the Article on his Facebook page and three Community Facebook Pages.
40. Mayor Milner was also subsequently advised of the falsity of the Article by a public announcement made by the City's CEO on its website on 4 October 2019 ("CEO's Statement").
41. As Mayor Milner's Facebook postings occurred during the lead up to the election, the Complainant brought them to the attention of the City's Chief Executive Officer, ("CEO") as it was an administrative issue. The City's Acting CEO contacted Mayor Milner about the Facebook Post and asked him to take it down. However, Mayor Milner declined to remove the Advert even though the City's public announcement had showed that its contents were false.
42. Mayor Milner intended to, and he did, cause detriment (including reputational damage) to the Council, the sitting Councillors, the City and to the Complainant as Mayor at the time. By circulating the Article to a wider audience (than those who read The West) Mayor Milner intended to further damage the local government and sitting elected members. The misleading Article contained a prominent image of the Complainant as Mayor at the time and was particularly humiliating, hurtful and malicious towards her.
43. Mayor Milner only removed the Facebook Posts on the evening of 22 October 2019 after he was sworn in officially as Mayor.

Third Allegation – alleged breach of Regulation 7(1)(b)

44. Mayor Milner prominently displayed copies of the Article at a Saturday Farmers' Market during the Electoral Campaign and he gave copies of the Article to electors he spoke to. He did so in order to "*disseminate the damaging and false representations*" contained in the Article.
45. Mayor Milner intended to (and did) damage the standing and reputation of the City, Council as a body, all sitting Councillors and the Complainant as Mayor.

Fourth Allegation – alleged breach of Regulation 7(1)(a) and (b)

46. The Facebook Post on Mayor Milner's page containing the Article was removed only when he was sworn in as Mayor of the City, as were the same posts that were published on the three South Perth Community Facebook Pages. Notwithstanding, a copy of the Article remains on Mayor Milner's page (as at the time of the Complaint). It is located under the heading of "*Recommendations and Reviews*" and was posted by a third party on 2 September 2019.
47. Mayor Milner continued to take advantage of the Article's misleading and deceptive content to serve his own personal interests even though he knew that the impression given by the Article was false and misleading. His maintenance of the Post on his Facebook page and the three Community Pages was designed to cause ongoing harm to the reputations of the Council, Councillors and the City (which he now leads as Mayor). It continues to be embarrassing for the Complainant to see a copy of the Article containing an image of her on Mayor Milner's Facebook page.

Fifth Allegation - alleged breach of Regulation 7(1)(b)

48. Members of one of the three Community Facebook Pages on which Mayor Milner posted the Article, contacted him regarding why he was publicly discrediting others. Mayor Milner responded on 2 October 2019 stating that there were three independent and easily verified sources of information to support his post:
 1. The State Government MyCouncil website
<https://www.mycouncil.wa.gov.au/Council/ViewCouncil116>
 2. The City of South Perth Council minutes (particularly the last few months) -
<https://southperth.wa.gov.au/about-us/council/council-meetings#tab2>
 3. The *West Australian* newspaper.
49. By making this statement, Mayor Milner endorsed the Article and adopted it as his own. He advised that the sources were "*verified*" for those seeking financial information about the City, despite being fully aware of the actual situation and the City's public statement as to the real facts relating to the City's financial position and management.

Mayor Milner' Response

50. Mayor Milner did not accept the information detailed in the Complaint or that he committed the alleged conduct.
51. The Complainant has presumed that the content of both the Advert and the Article were inaccurate, and proceeds on the basis that any association by Mayor Milner with either necessarily involved an improper use of his office as a councillor.

However, the Complainant failed to demonstrate any improper use of the office of a council member. Improper use has a meaning that is sympathetic to the role of a councillor and does not prohibit a council member from discussing council business.

First Allegation – alleged breach of Regulation 7(1)(a) and 7(1)(b)

52. Mayor Milner stated that he would not respond in detail to the allegation that the Advert was “*misleading*” and “*deceptive*” or whether it falsely represented the City’s financial position. However, he did note that the primary content of the Advert was a graph, the source of which was “*MyCouncilWA.com*” (“the My Council Website”). The information shown in the graph is an exact reproduction of the information that was provided by that website at the time, and that still currently appears on it.

53. Ultimately, however, there is no basis for a finding that Mayor Milner acted improperly; the allegation against him does not include any involvement by him in the creation of the Advert. Mayor Milner stated:

- a. he did not ask either of the Supporters to run the Advert;
- b. he did not approve or authorise the Advert; and
- c. he had nothing to do with the content or publication of the Advert.

54. Furthermore, the only aspect of the allegation referring to any actual conduct by Mayor Milner is that he “*drew attention*” to the Advert, but no detail is provided as to what it was that he actually allegedly did, to “*draw attention*” to it. It should also be borne in mind that the Advert had, in any event, already been published in a local newspaper.

Second Allegation – alleged breach of Regulation 7(1)(b)

55. The remaining allegations stem from the characterisation of the Article’s accuracy and Mayor Milner’s reference to it and / or purported association with it. No evidence is provided as part of the Complaint that the Article is “*entirely false*” and the Complainant has an obligation to show that it was (as opposed to just presenting a contrary viewpoint). The Article’s analysis of the City’s finances (as opinion journalism) involved matters that lent themselves to contrary subjective analysis, that do not fall foul of an objective test of impropriety.

56. The Article discussed a range of matters, and Mayor Milner was not of the view that its contents was entirely false. He referenced it in social media:

- a. because it was relevant to Election Campaign matters at the time; and
- b. not with the intention that it would cause any detriment.

57. No evidence is provided as part of the Complaint that the Acting CEO asked Mayor Milner to remove the Facebook Post. Mayor Milner has “*no recollection of any such request*” but stated that he did recall receiving an email from the Acting CEO that generally referred to social media activity falling within the scope of Regulation 7.

58. The Complaint does not demonstrate any damage attributable to the posting of the Article. Mayor Milner only had 279 Facebook followers, whereas in May 2019, The West had an average readership of approximately 440,000 people.
59. The Complainant pointed to the CEO's Statement on the matter of the City's finances following the publication of the Advert and the Article. The CEO did not share the view that the Article was "*entirely false*" and "*deceptive*". The CEO took exception to the merits of the analysis of the City's finances in the Article (as well as the Advert) and published responsive information. However, the CEO did not express any characterisation specific to the Article.
60. It is also notable that the Article included subject matter other than the City's finances, notably a proposed "*council caretaker policy*". However, the Complaint did not deal with those matters.
61. The Complainant failed to demonstrate any impropriety with respect to the Article to an objective standard, and a finding of any improper use within the terms of Regulation 7 cannot be substantiated:
- the Article refers to matters involving subjective analysis and upon which reasonable minds may differ;
 - the Article is opinion journalism that deals with a broad range of matters relevant to the City's affairs, including policy proposals that extend beyond finance matters;
 - there is no demonstrated impropriety arising in connection with the Article; and
 - the single example of Mayor Milner's reference to the Article in social media activity amounts to no more than Mayor Milner discussing council business; councillors are permitted to criticise the actions of others which impact on matters relevant to the affairs of a local government and the community it serves.

Third Allegation – alleged breach of Regulation 7(1)(b)

62. The Complainant did not provide any evidence that demonstrated the alleged conduct by Mayor Milner, and notably no date was specified as to when the conduct is alleged to have taken place.
63. Mayor Milner did not give out any copies of the Article at any Farmer's Market. However, he confirmed that on 28 September 2019:
- a. he and his wife attended a Farmer's Market;
 - b. Mayor Milner's wife purchased a copy of The West;
 - c. they would likely have had a copy of The West with them during that morning; but
 - d. neither he nor his wife took any action to "*disseminate*" the newspaper or the Article.

Fourth Allegation – alleged breach of Regulation 7(1)(a) and (b)

64. The allegation in this instance does not pertain to anything done by Mayor Milner. The allegation does not demonstrate any advantage or detriment attributable to the Facebook Post particularly having regard to the fact that Mayor Milner only had 279 Facebook followers as at the date of the Article.
65. Mayor Milner does not have the ability to prevent or remove social media posts by other users. However, the post by the third party was subsequently removed by the private individual himself and is no longer visible on Mayor Milner's page.

Fifth Allegation - alleged breach of Regulation 7(1)(b)

66. No evidence is provided to substantiate the communications that the allegation refers to. Furthermore, the reference to "*Attachments s 14 – 14b*" by the Complainant did not correspond to any attachments included in the Complaint.
67. In any event:
- a. no evidence is provided as part of the Complaint that the Article is "*entirely false*"; only that it involved subjective analysis that could give rise to differing conclusions; and
 - b. there is no allegation that the sources of information that Mayor Milner is said to have referred to give rise to any impropriety.
68. The failure of the Complaint to substantiate the facts means that the allegation should be dismissed.

Panel's Consideration

First Allegation – alleged breach of Regulation 7(1)(a) and (b)

First, second and third elements

69. For a finding that a councillor has breached a particular regulation, the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.
70. The First Allegation relates to the Advert published in the Gazette Newspaper that Mayor Milner allegedly adopted in his Electoral Campaign for Mayor. According to the Complainant, "*Mayor Milner did nothing to stop or prevent the misleading and deceptive advertisement or to distance himself from it.*" Furthermore, it is alleged that the Advert "*was adopted by Mayor Milner by drawing attention to it.*"
71. However, there is no evidence that Mayor Milner had anything whatsoever to do with the Advert or acted in connection with it in any way (including contributing to its contents or its publication). Likewise, there is no evidence that he "*promoted*" it or drew attention to it, in any way.

72. Therefore, the Panel finds that the first element has not been established by the Complainant and that there is insufficient evidence to make a finding that Mayor Milner engaged in the alleged conduct that is the subject of the First Allegation.

Findings

73. Accordingly, for the above reasons, the Panel finds that Mayor Milner did not breach Regulations 7(1)(a) or (b) in relation to the First Allegation.

Second Allegation – alleged breach of Regulation 7(1)(b)

First, second and third elements

74. The Panel finds that Mayor Milner engaged in the conduct that is the subject of the Second Allegation, that he was a councillor at all relevant times and that he was acting as a councillor at all times. The first, second and third elements are established.

Whether Mayor Milner acted improperly (fourth element)

75. Based on the evidence before it, the Panel is satisfied that the fourth element has been established in relation to the Second Allegation and finds that Mayor Milner did act improperly. The Panel makes this finding because it is satisfied to the required standard of proof that a reasonable person would consider that Mayor Milner did not meet the standards of conduct expected of a councillor when he posted a copy of the Article on his Facebook Page and three Community Facebook Pages in the run up to the local government elections, and did not remove the Posts until after he had been elected as Mayor of the City:

- a. The Article, which had the headline “*Council finances head south*”, referred to the State Government’s My Council Website that contained information showing that the City’s FHI had fallen steadily over the preceding years, and that its score was below that which indicated sound financial health. The Article also generally referenced the Complainant in a negative light and called into question a statement made by her (in her capacity of Mayor at the time) that the City was “*financially sustainable*” and that it was on track to gain a better FHI score the following year.
- b. The Article was published in The West on 28 September 2019 and was shared by Mayor Milner on his own Facebook page and the three South Perth Community Facebook Pages on the same day.
- c. The Article discussed serious financial matters and raised some controversial issues directly relating to the City’s FHI about which there was clear disagreement stemming from the reliability of the data contained on the My Council Website that the Article quoted from. The Article was published at a particularly important time (in the run up to the local government elections) and was likely to stir up strong feelings and tension within the South Perth community.
- d. On 4 October 2019, the City’s Chief Executive Officer, Mr Geoff Glass (“CEO”), published a lengthy statement on the City’s website referring directly to the Article (and the Advert). The CEO’s Statement submitted:

- the City was not “*going broke*”;
 - there had not been a “*dramatic*” decline in Council finances, in fact the opposite was “*emphatically*” true;
 - the FHI was considered by many to be flawed and subject to timing distortions thereby rendering it unreliable;
 - nothing could be “*further from the truth*” that the City’s cash reserves were “*out of control*”;
 - Council had resolved to reduce the 2019/20 rate increase to 1% based on CPI, rather than LGCI which had adversely impacted the ability to deliver an operating profit. However, the City had undertaken many initiatives to continue to improve its financial health; and
 - while the City may have had an operating loss, it was still financially viable.
- e. The role of a councillor includes representing the interests of electors, ratepayers and residents and providing leadership and guidance to the community. Councillors should have regard to the community’s long-term objectives and the local government’s capacity to deliver on them. As stated above, the Article and its contents would have been a topic of interest and of relevance to members of the South Perth community in particular. Therefore, it was not wrong for Mayor Milner to wish to highlight and discuss the issues raised in it. He may well have taken a different view of the City’s financial position to that of the CEO and other councillors, instead agreeing with the position put forth in the Article.
- f. However, in order to serve the community properly, it is important that elected members communicate effectively with the people they represent and to raise and discuss issues in an appropriate and responsible manner. In this case, it appears that Mayor Milner simply posted a stand-alone copy of the Article, on not only his own Facebook page, but directly to potential electors via several community social media pages. He did so without any accompanying commentary, discussion or explanation. The Panel notes that Mayor Milner was contacted directly by one of the Community pages that had taken issue with his posting of the Article on their site.
- g. A further consequence of holding the position of elected member (and the obligation of fidelity to the council), is that when council members take it upon themselves to make public statements, about both or either of the affairs of their local government and/or any acts or omissions of another council member, they have an obligation to ensure that any statement of fact they mention or rely on is substantially true and that their comments or remarks are not made or delivered with an improper motive.
- h. While Mayor Milner did not write the Article, and, as he submits, simply posted copies on social media, as a sitting councillor at the time, he would have been aware that the state of the City’s financial health was a complex

issue that involved taking a number of factors into consideration (as can be seen from the CEO's Statement). However, despite the City's administration putting out a detailed and lengthy Statement directly contradicting the information referred to in the Article, Mayor Milner left the Facebook Posts up on the sites as they were, and only removed them on the day he was elected as Mayor (on 22 October 2019).

- i. Finally, as with all local government business, finance is a matter for discussion and resolution by the full council. At the time when the Facebook Posts were published, Mayor Milner had already been a part of the Council for some time and a key participant in the decision making process. One of the most fundamental tasks of local government is to try to achieve a strong sense of shared purpose and commitment to further the interests of their local government as a whole and its operations. Mayor Milner was entitled to share information pertaining to the City's financial position with the community. However, on this occasion, the Panel finds he failed to do so in a conscientious and thorough manner.

76. The Panel finds that Mayor Milner's acted in a manner that was prejudicial to his council member obligations, and that his actions were wrongful and inappropriate.

Whether Mayor Milner intended to cause detriment to the local government or any other person.

77. The Panel is satisfied that the fifth element has been established, and that Mayor Milner intended to cause detriment to the City, the Council and the Complainant when he posted the Article on his Facebook page and the three Community Facebook Pages:

- a. An essential feature of the fiduciary obligations owed by a council member to their local government, is an absence of intent to cause detriment to any party or advance their personal interests.
- b. The Panel has considered the particular circumstances and events surrounding the relevant conduct that form the backdrop to Mayor Milner's use of his office as a Council member when he posted the Article:
 - The posting of the Article occurred during the run up to the local government elections, in which Mayor Milner was standing as a Mayoral candidate.
 - The Article was particularly critical of the Complainant who was Mayor at the time, and it also presented a one-sided view of the state of the City's finances. Both the publication of the Article and the Advert had led to the CEO issuing a Statement in which he directly rebutted the proposition that the City's finances were in decline.
 - Mayor Milner posted the Article not only to his own Facebook Page, but also three Community Facebook Pages, which had a combined following in the thousands.

- The timing of when Mayor Milner removed the Posts coincided with when he had been elected as Mayor of the City.
- c. In the circumstances, the Panel finds it more likely than not that when Mayor Milner posted the Article on the various Facebook pages, he did so in order to target a particular audience (the South Perth community) and cause detriment to the City, the Council and the Complainant by discrediting the management of the City's finances.

Findings

78. Accordingly, for the above reasons, the Panel finds that Mayor Milner did breach Regulation 7(1)(b) in relation to the Second Allegation.

Third Allegation – alleged breach of Regulation 7(1)(b)

First, second and third elements

79. For a finding that a councillor has breached a particular regulation, the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.
80. The Third Allegation is that Mayor Milner prominently displayed copies of the Article at a Farmers Market and gave them to electors *“in order to disseminate the damaging and false representations”* contained therein. Mayor Milner denied the allegation and submitted that there was no evidence that he acted in such a way.
81. The Complainant provides no evidence that Mayor Milner engaged in the conduct that is the subject of the Third Allegation. The allegation itself is both vague and unsubstantiated. The Panel is not an investigative body and it determines complaints of minor breaches solely upon the evidence presented to it. In this case, there is insufficient evidence on which to base a finding that the first element of Regulation 7(1)(b) has been established.

Findings

82. Accordingly, for the above reasons, the Panel finds that Mayor Milner did not breach Regulation 7(1)(b) in relation to the Third Allegation.

Fourth Allegation – alleged breach of Regulation 7(1)(a) and (b)

83. The primary allegation is that Mayor Milner did not remove the Facebook Post from his page until after he was elected as Mayor. However, the Panel finds that the alleged conduct by Mayor Milner that forms the basis of the allegation has already been dealt with under the Second Allegation. Therefore, it does not form the basis of a separate allegation and no further consideration is warranted.
84. In addition, the Complainant alleged that a copy of the Article remained on Mayor Milner's Facebook page under the heading *“Recommendations and Reviews”* (as at the time of the Complaint). However, it was also acknowledged by the Complainant that it was a private individual who posted the Article, and not Mayor Milner. In his response, Mayor Milner also submitted that he was unable to remove the posting as it was published by a third-party. Based on the evidence before it,

the Panel finds that it is more likely than not, that Mayor Milner was not responsible for the said post under “*Recommendations and Reviews*”. Therefore, it is not satisfied that the first element of Regulation 7 has been established.

Findings

85. Accordingly, for the above reasons, the Panel finds that Mayor Milner did not breach Regulation 7(1)(a) and (b) in relation to the Fourth Allegation.

Fifth Allegation – alleged breach of Regulation 7(1)(b)

First, second and third elements

86. The Fifth Allegation relates to Mayor Milner allegedly responding to a query from one of the Community Facebook Pages on which he had posted a copy of the Article. Mayor Milner submitted that the Complainant did not provide any evidence that related to such communication. However, Mayor Milner also did not deny that he had in fact made a reply and the Panel finds it more likely than not that he did engage in the conduct that is the subject of the Fifth Allegation. Furthermore, it finds that Mayor Milner was a councillor at all relevant times and that he was acting as a councillor. The first, second and third elements are established.

Whether Mayor Milner acted improperly (fourth element)

87. Based on the evidence before it, the Panel is not satisfied that the fourth element has been established in relation to the Fifth Allegation and finds that Mayor Milner did not act improperly. The Panel makes this finding because it is not satisfied to the required standard of proof that a reasonable person would consider that Mayor Milner did not meet the standards of conduct expected of a councillor when he responded to the message:

- a. The allegation against Mayor Milner is vague and lacks sufficient detail to be able to substantiate the claim against him. The Complainant does not provide copies of the correspondence and while they refer to the three sources relied upon by Mayor Milner in his reply, it is difficult to put that information into any context.
- b. In addition, the Complainant refers to attachments “14-14b” in the Complaint, however, no such attachments are included in the Complainant’s documents.

88. Therefore, there is insufficient evidence for the Panel to base a finding that Mayor Milner’s actions were so wrongful or inappropriate to call for the imposition of a penalty.

Whether Mayor Milner intended to cause advantage to herself or any other person or detriment to the local government or any other person.

89. The Panel is not satisfied that the fourth element has been established, and therefore it is not necessary to consider the fifth element.

Findings



90. Accordingly, for the above reasons, the Panel finds that Mayor Milner did not breach Regulation 7(1)(b) in relation to the Fifth Allegation.

A handwritten signature in blue ink, appearing to read 'G MacMile'.

Gordon MacMile (Deputy Presiding Member)

A handwritten signature in blue ink, appearing to read 'E Rowe'.

Elanor Rowe (Deputy Member)

A handwritten signature in blue ink, appearing to read 'D Hopper'.

Deborah Hopper (Deputy Member)



Local Government Standards Panel

| | |
|-----------------------|---|
| Complaint Number | SP 2020-032 |
| Legislation | <i>Local Government Act 1995 (WA)</i> |
| Complainant | Ms Susanne Doherty |
| Respondent | Mayor Greg Milner |
| Local Government | City of South Perth |
| Regulation | Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i> |
| Panel Members for | Mr Gordon MacMile (Presiding Member) |
| Penalty Consideration | Councillor Deborah Hopper (Deputy Member) Ms Elanor Rowe (Deputy Member) |
| Heard | 29 July 2020 Determined on the documents |
| Penalty Considered | 23 October 2020 |
| Outcome | Training and Public Apology |

DECISION AND REASONS FOR DECISION

28 November 2020

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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



Introduction

1. At its meeting on 29 July 2020, the Panel found that Mayor Greg Milner (“Mayor Milner”), an elected member for the City of South Perth (“the City”), committed one minor breach under the Local Government Act 1995 (WA) (“the Act”) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“the Regulations”) when he posted an article from The West Australian newspaper regarding the City’s finances, on his Facebook page and three other South Perth community Facebook pages (“Minor Breach”).
2. Four further allegations of minor breaches (relating to separate conduct) against Mayor Milner were made in the same Complaint. However, the Panel found that no breaches were committed regarding those other allegations.
3. On 16 September 2020, the Panel published its Finding and Reasons for Finding (“Findings”) that Mayor Milner had breached Regulation 7(1)(b). The Panel reviewed all the evidence presented to it and made the following observations:

“75.

.....

- f. *However, in order to serve the community properly, it is important that elected members communicate effectively with the people they represent and to raise and discuss issues in an appropriate and responsible manner. In this case, it appears that Mayor Milner simply posted a stand-alone copy of the Article, on not only his own Facebook page, but directly to potential electors via several community social media pages. He did so without any accompanying commentary, discussion or explanation. The Panel notes that Mayor Milner was contacted directly by one of the Community pages that had taken issue with his posting of the Article on their site.*
- g. *A further consequence of holding the position of elected member (and the obligation of fidelity to the council), is that when council members take it upon themselves to make public statements, about both or either of the affairs of their local government and/or any acts or omissions of another council member, they have an obligation to ensure that any statement of fact they mention or rely on is substantially true and that their comments or remarks are not made or delivered with an improper motive.*
- h. *While Mayor Milner did not write the Article, and, as he submits, simply posted copies on social media, as a sitting councillor at the time, he would have been aware that the state of the City’s financial health was a complex issue that involved taking a number of factors into consideration (as can be seen from the CEO’s Statement). However, despite the City’s administration putting out a detailed and lengthy Statement directly contradicting the information referred to in the Article, Mayor Milner left the Facebook Posts up on the sites as they were, and only removed them on the day he was elected as Mayor (on 22 October 2019).*
- i. *Finally, as with all local government business, finance is a matter for discussion and resolution by the full council. At the time when the Facebook Posts were published, Mayor Milner had already been a part of the Council for some time and a key participant in the decision making process. One of the most fundamental tasks of local government is to try to achieve a strong sense of shared purpose and commitment to further the interests of their local government as a whole and its operations. Mayor*



Milner was entitled to share information pertaining to the City's financial position with the community. However, on this occasion, the Panel finds he failed to do so in a conscientious and thorough manner.

77.

.....

b.

- *The posting of the Article occurred during the run up to the local government elections, in which Mayor Milner was standing as a Mayoral candidate.*
- *The Article was particularly critical of the Complainant who was Mayor at the time, and it also presented a one-sided view of the state of the City's finances. Both the publication of the Article and the Advert had led to the CEO issuing a Statement in which he directly rebutted the proposition that the City's finances were in decline.*
- *Mayor Milner posted the Article not only to his own Facebook Page, but also three Community Facebook Pages, which had a combined following in the thousands.*
- *The timing of when Mayor Milner removed the Posts coincided with when he had been elected as Mayor of the City."*

Jurisdiction and Law

4. The Panel convened on 23 October 2020 to consider how it should deal with the Minor Breach. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries ("the Department") that on this date there was no available information to indicate that Mayor Milner had ceased to be, or was disqualified from being, a councillor.

Possible Sanctions

5. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by:
 - (a) *ordering that no sanction be imposed; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
 - or*
 - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*
 - or*



(iii) *the person against whom the complaint was made undertake training as specified in the order;*

or

(iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;*

or

(c) *ordering 2 or more of the sanctions described in paragraph (b).*

- 6 Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. Under section 5.110(6)(a), the Panel may order that no sanction be imposed, not to reverse the finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.

Mayor Milner's Submissions

7. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
8. By a letter dated 16 September 2020, Mayor Milner was:
- i. notified of the Panel's Finding of the Minor Breach;
 - ii. provided with a copy of the Panel's Findings; and
 - iii. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.
9. On 30 September 2020, the Department received a copy of a letter from Mayor Milner's legal representative and sent on his behalf, in which it was submitted that no sanction be imposed against him for the following reasons:
- a. There had been no finding of dishonesty against him.
 - b. The context, against which his actions should be considered, required further clarification / detail (which was provided).
 - c. Mayor Milner acknowledged that he should have provided an accompanying commentary, discussion or explanation when he shared the Article on Facebook. However:
 - he had acted in good faith;
 - there were several mitigating factors; and

¹ *Local Government Act 1995 (WA)*, s 5.110(5).

- he was justified in his actions.
- d. It was important to bear in mind the mitigating factors that were set out in the response submissions, as well as the very low risk of further misconduct by him.
- e. His achievements as a councillor were significant; he also contributed to several boards and community groups (mostly on a voluntary basis). He was of high standing and impeccable character in the community. Therefore, the publication of the Finding would significantly damage his reputation.

Panel's Consideration

10. Guidance on the factors which the Panel may consider in determining the appropriate penalty to impose, include, but are not limited to:
 - a. the nature and seriousness of the breaches;
 - b. the councillor's motivation for the contravention;
 - c. whether or not the councillor has shown any insight and remorse into his / her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor's disciplinary history;
 - f. the likelihood or not of the councillor committing further breaches of the Act;
 - g. the councillor's personal circumstances at the time of the conduct, and at the time of imposing the sanction;
 - h. the need to protect the public through general deterrence and maintain public confidence in local government; and
 - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness.
11. Mayor Milner has not previously been found to have had committed any minor breaches.
12. The Panel found that Mayor Milner breached Regulation 7(1)(b) when he posted an article from The West Australian newspaper regarding the City's finances, on his Facebook page and three other South Perth community Facebook pages. Furthermore, the Panel found that in doing so, he intended to cause detriment to the City, the Council and the Complainant, by discrediting the management of the City's finances.



13. The Panel does not consider it appropriate to impose no sanction in relation to the Minor Breach, as this would indicate that it was so minor that no penalty is warranted.
14. However, the Panel also does not consider it is appropriate to make an order for censure for Mayor Milner's actions, as they were not so serious to justify such an order. When the Panel makes an order that a Notice of Public Censure be published, the Notice is published by the local government's Chief Executive Officer, at the expense of the local government; such expense is significant where the Notice is to be published in a newspaper or newspapers.
15. The options left for the Panel to consider are that Mayor Milner make a public apology; that he undertake training, and / or that he pay to the local government a sum of money.
16. The Panel finds that it is not necessary to order that Mayor Milner recoup to the City the costs of the Department incurred in accordance with Schedule 5.1 clause 9 with respect to the Complaint. In the circumstances, the Panel considers the appropriate sanctions are that Mayor Milner:
 - a. makes a public apology; and
 - b. undertakes training.
17. The standards of behaviour expected of elected members are of a generally higher standard than a member of the public, due to their prominent position in the community. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when an elected member's conduct:
 - a. adversely affects particular individuals; and / or
 - b. does not meet the standards other councillors seek to uphold.
18. In addition, the Panel deems that it is prudent that Mayor Milner undertake specified training. In his response to how the Panel should deal with the Minor Breach, Mayor Milner continued to justify his actions. However, he also acknowledged that he should have acted differently and showed some contrition and remorse for his conduct in committing the Minor Breach. Training will serve to refresh his understanding of leadership concepts and the behaviours required of Elected Members.
19. The sanction of an order to undertake training also aligns with the intent of the Act and the purpose of the civil penalties under it to ensure future compliance with the statutory obligations imposed on councillors for the better protection of the public.



Panel's Decision

20. Having regard to the Findings, the matters set out herein, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under s5.110(6) of the Act, is that pursuant to subsection (b)(ii) and (b)(iii) of that section, Mayor Milner is ordered to make a public apology and undertake training, in terms as set out in the attached Order.

A handwritten signature in blue ink, appearing to read 'G MacMile'.

Gordon MacMile (Deputy Presiding Member)

A handwritten signature in black ink, appearing to read 'Elanor Rowe'.

Elanor Rowe (Deputy Member)

A handwritten signature in blue ink, appearing to read 'Deborah Hopper'.

Deborah Hopper (Deputy Member)



ORDER

28 November 2020

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Mayor Greg Milner, an elected member for the City of South Perth, publicly apologise, as specified in paragraph 3, or failing compliance with paragraph 3, then paragraph 4 below.
2. Mayor Greg Milner, an elected member for the City of South Perth, undertake training as specified in paragraph 5 below.

Public Apology

3. At the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Mayor Greg Milner ("Mayor Milner") shall:
 - a. attend the relevant ordinary council meeting;
 - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:



"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I posted an article from The West Australian newspaper regarding the City's finances, on my Facebook page and three other South Perth community Facebook pages.
- ii. The Panel found that by behaving in this manner I committed one breach of Regulation 7(1)(b) of the said Regulations as my conduct was wrongful, inappropriate and deserving of a penalty and, further, my actions were likely to cause detriment to the parties involved.
- iii. I accept that I should not have acted in such a manner and I apologise to the City, the Council and Ms Susanne Doherty for having done so."

4. If Mayor Milner fails or is unable to comply with the requirements of paragraph 3 above then, within the next 28 days following the ordinary council meeting referred to in paragraph 3 above:
 - a. Mayor Milner shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the "*Southern Gazette*" newspaper; and
 - b. The Chief Executive Officer shall arrange for the below notice of public apology to be published:
 - i. on an appropriate place on the City of South Perth's website in no less than 10 point font size; and
 - ii. in the City of South Perth's public newsletter (whether in electronic or print copy) (if any) in no less than 10 point font size:

PUBLIC APOLOGY BY MAYOR GREG MILNER

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I posted an article from The West Australian newspaper regarding the City's finances, on my Facebook page and three other South Perth community Facebook pages.

The Panel found that by behaving in this manner I committed one breach of Regulation 7(1)(b) of the said Regulations as my conduct was wrongful, inappropriate and deserving of a penalty and, further, my actions were likely to cause detriment to the parties involved.



I accept that I should not have acted in such a manner and I apologise to the City, the Council and Ms Susanne Doherty for having done so."

Training

5. Within four (4) months of the Date of this Order, Mayor Greg Milner, an elected member for the City of South Perth, shall undertake:
 - a. the training course for Elected Members "*Serving on Council*" provided by WA Local Government Association (WALGA) for a period of fifteen (15) hours; or
 - b. a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a similar duration, but for a period of at least ten (10) hours.

Gordon MacMile (Deputy Presiding Member)

Elanor Rowe (Deputy Member)

Deborah Hopper (Deputy Member)



NOTICE TO THE PARTIES TO THE COMPLAINT RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a complaint **and** the person complained about each have the right to apply to the State Administrative Tribunal (the SAT) for a review of the Panel's decision in this matter. In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules an application to the SAT under its review jurisdiction **must be made within 28 days of the day on which the Panel (as the decision-maker) gives a notice** [see the Note below] under the *State Administrative Tribunal Act 2004 (SAT Act)*, section 20(1).
- (3) **The Panel's Breach Findings and these Findings and Reasons for Finding – Sanctions, constitute the Panel's notice (i.e. the decision-maker's notice) given under the SAT Act, section 20(1).**

Note:

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
 - "(1) Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.** [Bold emphases added]
 - (2) Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

 - (a) by delivering the document to him personally; or
 - (b) by post in accordance with section 75(1); or
 - (c) by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or
 - (d) in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place