



Local Government Standards Panel

Complaint Number	SP 2020-147
Legislation	<i>Local Government Act 1995</i>
Complainant	Cr David McMullen
Respondent	Mayor Penny Taylor
Local Government	City of Subiaco
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Cr Deb Hopper (Member) Mrs Emma Power (Member)
Heard	8 April 2021 (Special Meeting) Determined on the documents
Finding	Breach x 3 of Regulation 7(1)(b)

FINDING AND REASONS FOR FINDING

Delivered 30 April 2021

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, 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.



Summary of the Panel's decision

1. On 8 April 2021, the Panel found that Mayor Penny Taylor, the Mayor of the City of Subiaco (**"the City"**):
 - a. did not commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and Regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* (**"the Regulations"**) when she issued a press statement on the City's Website;
 - b. did commit 3 minor breaches pursuant to the Act and Regulation 7 of the Regulations when she made certain comments that were published in an article on the West Australian website by Michael Traill dated 21 November 2020 entitled *"Subiaco Mayor 'facing coup' as ex-councillor Malcolm Mummery fights to take mayoral vote from electors"*; and
 - c. did not commit a minor breach pursuant to the Act and Regulation 7 of the Regulations when she made a Facebook Post on 21 November 2020;
 - d. did not commit a minor breach pursuant to the Act and Regulation 7 of the Regulations when she made a Facebook Post on Post 2 December 2021;
 - e. did not commit a minor breach pursuant to the Act and Regulation 7 when comments by Mayor Taylor were published in the Post Newspaper in an article by Lloyd Gorman entitled *"Taylor scores own goal in minutes hat-trick"*,
as set out in paragraph 15 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.²
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate³; and

¹ Section 5.105 of the Act

² Section 5.106 of the Act

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



- b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Jurisdiction and Procedural Fairness

11. On 11 December 2020 the Panel received a complaint from Mr Cliff Frewing acting as complaints officer of the City (**"the Complaints Officer"**). The same enclosed a Complaint of Minor Breach Form dated 3 December 2020.
12. In the complaint form, the Complainant alleges that Mayor Taylor has breached regulation 7 of the Regulations, when:
 - a. on 20 November 2020 she issued a press release on the City's website linking the Complainant with a petition (**"the Petition"**) presented at the Ordinary Council Meeting of 17 November 2020 (**"the OCM"**) regarding the manner of voting for the Mayor of the City (**"Allegation 1"**);
 - b. she made negative statements that were published in an article on the West Australian website by Michael Traill dated 21 November 2020 entitled *"Subiaco Mayor 'facing coup' as ex-councillor Malcolm Mummery fights to take mayoral vote from electors"* as follows:
 - i. *"Subiaco Mayor Penny Taylor claims she is facing a coup"* (**"Allegation 2"**);
 - ii. *"Mayor Penny Taylor - whose term expires next year - said the petition had been coordinated by the council's 'old guard' voting bloc ..."* (**"Allegation 3"**);
 - iii. *"It's a Trump-like attempt to circumvent democracy by the old guard and Save Subi"* (**"Allegation 4"**); and
 - iv. *"This is another attempt to undermine the position of Mayor and bring it back under the control of the old guard and Save Subi"* (**"Allegation 5"**);

⁴ Briginshaw v Briginshaw (1938) 60 CLR 336

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

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



- v. *“This isn’t about me. This is about controlling the position of Mayor - whomever that may be!” (“Allegation 6”)*;
 - c. on 21 November 2020 she made a Facebook Post linking the Complainant with the Petition (**“Allegation 7”**);
 - d. on 2 December 2021 she made a Facebook Post linking and referring to the Petition (**“Allegation 8”**);
 - e. on 5 December 2020 a comment by Mayor Taylor was published in the Post Newspaper in an article by Lloyd Gorman entitled *“Taylor scores own goal in minutes hat-trick”* (**“Allegation 9”**),
each of which allegedly:
 - f. wrongly overemphasise the Complainant’s involvement with the Petition causing him a detriment;
 - g. cause detriment to the Local Government; and
 - h. attempted to gain an advantage for Mayor Penny,
as set out in paragraph 15 (**“the Complaint”**).
13. The Panel convened on 8 April 2021 to consider the Complaint.
14. The Panel:
- a. accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that, based on information published on the Western Australian Electoral Commission’s website, Mayor Taylor was:
 - i. elected to the Council of the City 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 8 April 2021;
 - b. was satisfied the Complaint was made within six months after the alleged breach occurred⁷;
 - c. was satisfied that the City’s Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;
 - d. was satisfied the Department had provided procedural fairness to Mayor Taylor; and
 - e. found it had jurisdiction to consider the Complaint.

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

⁸ Section 5.107 and 5.109 of the Act



15. The Complaint arises from several published items as follows:

- a. Media Release entitled “Petition to change how Subiaco Mayor is elected presented to Council” as follows:

Petition to change how Subiaco Mayor is elected presented to Council

Friday 20 November 2020

A petition was presented to Council this week requesting the consideration of a change to the way the mayor is elected in the City of Subiaco.

The mayor is currently popularly elected by the community casting votes for the position of mayor. The alternative approach is to not have a mayor elected by ratepayers but for Councillors to select a mayor from amongst themselves.

This petitioned request now activates a legislative process which the City will follow, commencing with a report to the December Council meeting.

The City will confirm the process, which is estimated to cost ratepayers between \$30,000 and \$40,000.

Mayor Penny Taylor said the petition submitted by Cr McMullen is asking to take away the long held right of the community to vote for the mayor.

“In observing the US elections Australians were aghast at the suggestion that all votes should not be counted. This petition, at first glance, looks like it is calling for the community to not even have a vote at all.

“The petitioners have requested this, and due process will be followed.”

Acting Chief Executive Officer Cliff Frewing said it is most unusual to ask Electors whether they want the right to vote for a mayor to be taken away from them.

“Normally the opposite occurs, where a Council seeks to change the method of election to have the mayor elected directly by the community rather than chosen from the elected Councillors.”

The community will be kept updated as the process is clarified and progressed.

(“the Media Release”)

- b. An article that was published on the West Australian website by Michael Traill dated 21 November 2020 entitled “*Subiaco Mayor 'facing coup' as ex-councillor Malcolm Mummery fights to take mayoral vote from electors*” (“the Article”) relevant extracts from which are as follows:

Subiaco Mayor Penny Taylor claims she is facing a coup after a former councillor gathered the 250 signatures required for a petition demanding an overhaul of the council’s election process.

.....

Mayor Penny Taylor – whose term expires next year – said the petition had been coordinated by the council’s “old guard” voting bloc, which is backed by influential local advocacy group Save Subi.

The group opposes a local planning scheme that would allow higher density development in parts of Subiaco. The LPS was developed by the City and signed-off by Planning Minister Rita Saffioti late last year.

“It’s a Trump-like attempt to circumvent democracy by the old guard and Save Subi,” Ms Taylor said.

“This is another attempt to undermine the position of Mayor and bring it back under the control of the old guard and Save Subi.

“This isn’t about me. This is about controlling the position of Mayor – whomever that may be.”

c. A Facebook Post by Mayor Taylor dated 21 November 2020 as follows:



(“the First Facebook Post”)

d. A Facebook Post by Mayor Taylor dated 2 December 2020 as follows:



Penny Taylor - Subiaco Mayor

7h · 🌐

...

I've had many people ask me about the petition presented by Cr McMullen at the last council meeting.

The facts so far:

- this petition triggers a process that will cost ratepayers \$30-40k
- this petition seeks to remove the long held right of the community to vote for the mayor.
- the City is confirming the timeline for the process

For those who would like more detail, please see the youtube clip below where Cr McMullen reads out the petition.



1

2 comments

<https://youtu.be/piFUzPGCrYI> At the 49 minute mark

("the Second Facebook Post")

16. The Complainant provided the following comments and arguments in respect to the Complaint:
- The Mayor identifies herself as the Mayor of Subiaco in the Media Release, the Article and Facebook Posts.
 - 20 November 2020, the Mayor issued the Media Release which contained the following statement:
" Mayor Penny Taylor said the petition submitted by Cr McMullen is asking to take away the long held right of the community to vote for the mayor".
 - This statement causes detriment to the Complaint as it wrongly and inaccurately creates a perception that the Complainant was "asking to take away" voting rights.
 - This was acknowledged in an email from Mr Cliff Frewing (**"the CEO"**) dated 24 November 2020 in which it was stated:
" ... I have reviewed the sentence that your name appears in the media release and believe there may be a perception that it was you making the statement in the later part of the sentence. I have therefore split the sentence in two parts ... '.
 - The statement is also inherently detrimental by design as it is not a fact but is a personal opinion held by the Mayor.



- f. The Petition does not seek to take away any voting rights per se. It is a proposal *“that the method of electing the mayor of the City of SUBIACO be changed to election by the council from amongst the councillors”* as specified in the Petition.
- g. The First Facebook Post causes detriment for the same reason as the Media Release. It contains a similarly detrimental statement, that *“a petition was presented by Cr McMullen to take away the long held right of the community to vote for the Mayor”*.
- h. The First Facebook Post provides no context (except via separate link) and read out of context, it leads the reader to conclude that the Complainant wishes to *“take away”* voting rights.
- i. The first Facebook Post is also detrimental in that it links to the West Article. This compounds the detrimental effect of the First Facebook Post due to the negative nature of the Article.
- j. The Article states the following comments all attributed to Mayor Taylor:
 - i. *“Subiaco Mayor Penny Taylor claims she is facing a coup”*;
 - ii. *“Mayor Penny Taylor - whose term expires next year - said the petition had been coordinated by the council's 'old guard' voting bloc ... “;*
 - iii. *“It's a Trump-like attempt to circumvent democracy by the old guard and Save Subi”*; and
 - iv. *“This is another attempt to undermine the position of Mayor...”*
- k. These negative comments, when read with the first Facebook Post, exacerbate the detriment caused to the Complainant.
- l. The Mayor names the Complainant four times in the Media Release and two Facebook Posts. By doing so, she has caused him detriment.
- m. The Media Release and Facebook Posts are inherently and deliberately negative, because the Mayor opposes the Petition. She emphasises cost, the 'removal' or 'taking away' of voting rights and states in the Media Release:

“ In observing the US elections, Australians were aghast at the suggestion that all votes should not be counted. This petition, at first glance, looks like it is calling for the community to not even have a vote at all”.
- n. Mayor Taylor emphasises no reasons why the Petition might be favoured by community, Council or the City. The inclusion of the Complainant's name in the Media Release and Facebook Posts is therefore inherently and unmistakably detrimental.
- o. By repeatedly naming the Complainant, the Mayor wrongly over-represents his involvement in the Petition.
- p. The Petition is a proposal from several hundred signatories, not from the Complainant. It is irrelevant which elected member submitted the Petition on behalf of the community.



- q. The irresistible (and incorrect) inference when the reader sees the Complainant's name mentioned four times, however, is that he orchestrated the Petition, it is his work, and he wishes to "take away" voting rights.
- r. There is clear intent to cause detriment, because:
 - i. The Mayor names the Complainant four times.
 - ii. The Mayor is aware that he received the Petition only 10 minutes before the start of the OCM at which it was submitted; and
 - iii. The Mayor is aware that he has not expressed any view about the method that should be used to elect the Mayor.
- s. The Complainant informed the Mayor of the above, by email of 19 November 2020.
- t. By emails of 22 November 2020 and 2 December 2020, the Complainant asked the Mayor to remove his name from the Media Release and the Facebook Posts. She failed to do so.
- u. Whilst the Complainant did in fact submit the Petition on behalf of its signatories, that fact alone is no defence to the Complaint.
- v. If the Mayor had been minded not to cause the Complainant detriment, she might have acted in any number of different ways.
- w. In addition to causing personal detriment, the Media Release, Article and Facebook Posts cause detriment to the local government of the City of Subiaco insofar as they are divisive, biased, opinion pieces about a matter that will be coming to Council.
- x. The subject matter of the Petition is covered in a report which will be considered by Council at the Ordinary Council Meeting of 15 December 2020.
- y. The Mayor has harmed the prospects of an objective, analytical and emotion-free debate, by inciting ill feeling within the community and amongst Councillors through the Media Release, the Article and Facebook Posts. As such, she has caused detriment to the local government.
- z. The West Article is in itself also detrimental because in it, the Mayor refers to "*the council's 'old guard' voting bloc*". This is divisive and damaging to Council's reputation.
- aa. The Mayor has gained a direct or indirect advantage for herself, through the Media Release, Article and Facebook Posts.
- bb. Evidently, Mayor Taylor opposes the Petition. She gains an advantage insofar as:
 - i. she has had her personal views broadcasted to the public at large, on the City's website using City resources, in the West Australian/Sunday Times, and on social media; and

- ii. she has harmed the prospects of an objective, analytical and emotion-free debate about the proposal contained in the Petition - which she personally opposes and does not wish to see succeed.
- 17. On 22 December 2020 the Complainant sent a further email to the Department requesting that a further article by Lloyd Gorman entitled *"Taylor scores own goal in minutes hat-trick"*, published in the Post Newspaper on 5 December 2020 (**"the Further Article"**) and requested that the Panel consider the same as well as the Complainant's further comments as follows:
 - a. The Further Article reports a comment made by Mayor Taylor about the Complainant at the November OCM as follows:

"... can we have the minutes show that Cr McMullen has submitted a petition calling for ratepayers and electors to lose their right to vote for the mayor, thank you".
 - b. This comment is a further instance of Mayor Taylor making improper use of her office to cause detriment for the same reasons as outlined in relation to her Media Release and First Facebook Post.
- 18. The Complainant also provided copies of the following documentation:
 - a. the Media Release;
 - b. the revised Media Release;
 - c. the Article;
 - d. the First Facebook Post;
 - e. the Second Facebook Post; and
 - f. the first page of the Petition.

The Respondent's Response

- 19. By an email dated 11 November 2020, Mayor Taylor provided a response to the Complaint.
- 20. Mayor Taylor denies that she has committed any minor breach.
- 21. Mayor Taylor provided substantial comments and arguments regarding the Complaint which are summarised by the Panel as follows:
 - a. The assertion by Cr McMullen that the comment in the Media Release causes a detriment:
 - i. as it inaccurately creates a perception that he was asking to take away voting rights; and
 - ii. by design as it is a personal opinion held by Mayor Taylor and not reflective of the Petition itself,is clearly incorrect.



- b. There is no dispute the Petition was submitted by Cr McMullen.
- c. The semantics around the use of the word “submitted” are void given Cr McMullen used the word “submitted” himself, to describe his actions, in an email to Mayor Taylor on 19 November 2020.
- d. Cr McMullen asserts that the Petition does not “seek to take away any voting rights”. However, it is inherent in the fact that only the councillors would get to vote for the Mayor is that the electors of Subiaco would not. This is a binary argument and a statement of fact.
- e. Although Mayor Taylor at no time believed there was anything incorrect in what she said, she agreed with the Acting CEO's decision to appease Cr McMullen by splitting the sentence in two, subsequent to his complaint.
- f. Cr McMullen, as a sitting councillor, and Mr Mummery, as a former councillor, are both highly informed and well aware of the requirements for a Petition to be presented to Council but that there is no requirement for a Petition to be presented at a Council meeting and may be simply be left at reception at the council offices.
- g. An elected member might choose to present the Petition themselves for a number of reasons, including, but not limited to
 - i. to give the Petition prominence;
 - ii. to give oneself prominence;
 - iii. to link oneself to the Petitioners;
 - iv. to link oneself to the Petition;
 - v. to prosecute through preamble or other means the intent of the Petition.
- h. In the recorded audio of the OCM the Complainant can be heard to say he is “presenting” this Petition to council. He then read the title of the Petition, and reasons for it, in the knowledge that the OCM was being broadcast.
- i. Through so doing, Cr McMullen provided weight to the words, especially the reasons, and through his own actions, inextricably linked himself not just to the presentation of the Petition, but to the content of the Petition including the reasons behind it.
- j. It is not a usual state of affairs for an Elected Member to present/submit, then read in in full, including reasons, a Petition, the premise of which they neither agree with nor support.
- k. The Media Release and the quote from Mayor Taylor accurately reflect the events as happened on the night and the intent of the Petition that Cr McMullen chose to present and read on to the record in full.
- l. Cr McMullen’s assertions as to the First Facebook Post are also disproved by the above.
- m. Contrary to the claims made by Cr McMullen that Mayor Taylor's comments caused detriment to both him and the Local Government; his actions in publicly



tabling the Petition were designed to cause Mayor Taylor embarrassment and through this cause detriment to her.

- n. Cr McMullen further asserts that he suffered detriment due to the Facebook post linking to an Article published by Seven Media Group.
- o. In respect to the allegations:
 - i. the reference to a “coup” was the journalist's summation of the situation that he chose to put in his article. This was not a direct quote from Mayor Taylor;
 - ii. the reference to the Petition being coordinated by the council's “old guard” voting bloc was also a journalist's summation. Mayor Taylor confirmed that the Petition had been coordinated by former councillor Mummery. This is neither a reflection nor a statement of fact in any way to do with Cr McMullen, unless he chooses to identify as part of the “old guard” voting bloc.
 - iii. The reference to a *“Trump-like attempt to circumvent democracy by the old guard and SaveSubi”* is a direct quote from Mayor Taylor. This is a statement based on the fact that former Councillor Mummery had coordinated the Petition. Mayor Taylor understands that Cr McMullen is not a SaveSubi councillor.
 - iv. The reference as to *“another attempt to undermine the position of the Mayor”* is also a direct quote from Mayor Taylor. This is not a reflection on Cr McMullen but on the multiple motions of no confidence orchestrated by SaveSubi. This could not have in any way caused detriment to Cr McMullen.
- p. Cr McMullen does not specify any issues or assertions related to a second, or other subsequent Facebook posts. Therefore, Mayor Taylor cannot address any specific concerns with any other individual social media posts.
- q. Cr McMullen asserts that the combination of the media release and the social media posts are inherently and unmistakably detrimental.
- r. Mayor Taylor does not agree that her comments with respect to the Petition are deliberately or necessarily negative.
- s. The comments attributed to Mayor Taylor are with respect to the Petition and the content of the Petition and are not directed at Cr McMullen, other than to state that he presented/submitted/tabled the Petition which is factual.
- t. Through outlining the cost of the Petition to ratepayers, Mayor Taylor was fulfilling her role under Sections 2.8 (1) (b) & (d) of The Act.
- u. The Petitioners had omitted to outline the substantial cost to ratepayers. Mayor Taylor was both informing and guiding the community as is her role.
- v. The Petition only has three points. Point 2 specifically states that the Petitioners want to change the method through which the Mayor is elected to *“election by the council from among the councillors.”*
- w. Presently, the Mayor is elected by all the electors in the City of Subiaco. Point 2 is seeking to remove the voting rights of the electors of the City of Subiaco.



- x. Point 3 of the Petition lists three reasons for the 'need' for this change. All three reasons make a case for election of the Mayor by the councillors.
- y. Given this it is not unreasonable that Mayor Taylor would mention or even emphasise this.
- z. As the remainder of the Petition seeks to promote the idea of removing the rights of the electors of Subiaco to directly elect their Mayor, it is not unreasonable to suggest that this Petition looks like it is calling for the community to not even have a vote at all, given that that is the stated intent of the Petitioners.
- aa. There is no obligation on the Mayor to outline why the Petition may be favoured by the community.
- bb. There is no basis for suggesting that through the Mayor not supporting the intent of the Petition any detriment was or could be caused to Cr McMullen.
- cc. In respect to naming Cr McMullen, given it is a statement of fact that he presented/submitted/tabled the Petition, naming him would seem appropriate and for each individual publication, the facts of the matter were presented accurately.
- dd. No party has ever claimed the Petition was a Petition 'from' Cr McMullen or that it was the personal view of Cr McMullen that electors should lose their right to vote for their Mayor. Mayor Taylor and the City of Subiaco have only ever stated that Cr McMullen presented/ submitted/ tabled the Petition.
- ee. Cr McMullen's claim that it is irrelevant which elected member presented the Petition is deliberately misleading and designed to obfuscate.
- ff. Through this statement Cr McMullen seeks to create an impression that the Petition is required to be submitted by an elected member, and as such he was fulfilling a duty required of him, which could and would have been fulfilled by any elected member had they been asked. This premise is simply false.
- gg. Despite Cr McMullen's umbrage as to Mayor Taylor's social media posts he did not refer to a Facebook Post dated 17 November 2020 by Mr Mummery, which included:
 - i. a note of thanks to Cr McMullen for tabling the Petition;
 - ii. a large portrait of Cr McMullen;
 - iii. an incorrect quote from Mayor Taylor; and
 - iv. a number of vitriolic comments directed at Mayor Taylor.
- hh. This post was the subject of an email conversation between himself and Mayor Taylor.
- ii. Mr Mummery's Post visually linked Cr McMullen to the Petition more strongly than either the Media Release or the subsequent social media posts which merely named him as the submitter/presenter/tabler.
- jj. Cr McMullen's response stated that "*I don't concern myself with social media too much*" indicates that his attack on Mayor Taylor with assertions of her



deliberately trying to cause him detriment are at best vexatious, and at worst malicious.

kk. Cr McMullen asserts that not only was the detriment to him real, but that it was intentional on behalf of Mayor Taylor.

ll. To address Cr McMullen's assertions:

- i. The naming of Cr McMullen four times was across four separate publications;
- ii. The Mayor is unaware that Cr McMullen was only handed the physical copy of the Petition in the minutes prior to the OCM. However, in correspondence from 24 hours before Cr McMullen confirmed he was intending to present a Petition. Cr McMullen also outlined the nature of the Petition in the email.
- iii. Mayor Taylor has every confidence that Cr McMullen is more than capable of reading a five line Petition in less than 10 minutes.
- iv. Mayor Taylor is also confident that Cr McMullen would be aware that even after receiving the Petition there was still no obligation to present/submit/table it if he was uncomfortable doing so.

mm. It is not a usual state of affairs for an Elected Member to present/submit, then read in full, including reasons, a Petition, the premise of which they neither agree with nor support.

nn. On 22 November 2020 Cr McMullen emailed Mayor Taylor asking for his name to be taken out of four of the five publications.

oo. Mayor Taylor replied within 24 hours asking him to particularise how he had been misrepresented.

pp. Cr McMullen replied as follows:

" Penny

No.

Any reasonable and intelligent person would understand my grievance."

qq. Given the personal insult contained in Cr McMullen's words, and his unwillingness to explain his position, Mayor Taylor quite reasonably chose not to respond.

rr. The Mayor was not the author of the City of Subiaco Media Release.

ss. The Mayor was not the author of the Article.

tt. With specific reference to the term "old guard" voting bloc; this was a term provided to the author by another unnamed elected member, as stated quite clearly in the Article.

uu. 'Bloc' has been a term used to denigrate both Mayor Taylor and other members of Subiaco Council in the past and is used by the local newspaper on a weekly basis, often, but not exclusively, when quoting councillors or former councillors.



- vv. The term 'bloc' appearing in a SMG publication would not come as a surprise to any readers from Subiaco and as such would not cause detriment to the City of Subiaco.
- ww. Cr McMullen contests that the publicity generated around the Petition has harmed the prospects of an objective debate, and as such has caused detriment to the City of Subiaco.
- xx. Cr McMullen fails to recognise that it was his deliberate action to not only submit/present/table the Petition; something by his own admission he had at least 24 hours to consider, that was the catalyst for this to become public.
- yy. Further, on choosing to submit/present/table this Petition, there was no obligation on Cr McMullen to read it in full, including reasons. A reasonable person may conclude that this was done purely for effect.
- zz. Cr McMullen's assertion that this will harm objective debate is flawed as:
 - i. The subject matter of the Petition will be decided by Council at the Council Meeting of 15 December 2020. How can these Councillors elect a Mayor if they will be adversely affected by media debate to the point where they cannot cogently debate the Petition in the first place.
 - ii. If Cr McMullen is referring to debate in the community and is asserting that there would be no media coverage of such a unique occurrence then his understanding of local government appears to be extremely limited.
- aaa. Either way, there is no evidence than the media coverage of this issue will adversely affect the outcome.
- bbb. In respect to gaining any advantage:
 - i. The Media Release on the City of Subiaco website is a City of Subiaco publication; not a personal publication of the Mayor.
 - ii. Mayor Taylor was not the author of the Article.
 - iii. Mayor Taylor is a conscientious user of social media. Her views were only broadcast on three of the four social media posts she is aware off.
 - iv. Mayor Taylor's and the City of Subiaco's use of social media did not cause Cr McMullen any detriment can be used to show why they have to the same end, not caused Mayor Taylor any advantage.
- ccc. Cr McMullen submitted a further complaint; or addendum to his existing complaint via email on Tuesday 22 December 2020.
- ddd. The further article referred to contained the same reference as discussed previously; specifically that Mayor Taylor stated in the November OCM, that:

“To ensure transparency and accuracy can we have the minutes show that Cr McMullen has submitted a Petition calling for ratepayers to lose their right to vote for the mayor.”
- eee. The City was not asked for comment on the story;



- fff. Mayor Taylor was not asked for comment on the story;
 - ggg. Details in the story relating to the process and timings were only known to elected members and had not been made public.
 - hhh. In submitting this further complaint, Cr McMullen asserts that this is a further example of the Mayor making improper use of her office to cause detriment which is baseless.
 - iii. The statement by Mayor Taylor was made directly after Cr McMullen read the Petition and accompanying reasons to a live YouTube feed and was recorded along with his presentation/submission/tabling of the Petition.
 - jjj. Accordingly, it is not new information and forms the basis of Cr McMullen's assertions in his original complaint.
22. Mayor Taylor also provided the following additional documentation with her response:
- a. Email chain including the following:
 - i. email dated 19 November 2020 to all councillors from the Complainant;
 - ii. email dated 19 November 2020 to Mayor Taylor from the Complainant;
 - b. Email chain including the following:
 - i. Email dated 20 November from the Complainant to Cliff Frewing;
 - ii. Email dated 20 November from Cliff Frewing to the Complainant and all councillors;
 - iii. Email dated 20 November from the Complainant to Cliff Frewing and all councillors;
 - iv. Email dated 22 November 2020 from the Complainant to Mayor Taylor and all councillors;
 - v. Email dated 23 November 2020 from Mayor Taylor to the Complainant and all councillors;
 - vi. Email dated 23 November 2020 from the Complainant to Mayor Taylor and all councillors;
 - vii. Email dated 23 November 2020 from Mayor Taylor to Cliff Frewing; and
 - viii. Email dated 23 November 2020 from Cliff Frewing to Mayor Taylor;
 - c. Image of "Save Subi" election flyer;
 - d. Email chain including:
 - e. Copy of unsigned Petition;
 - f. Facebook Post dated 17 November 2020 by Mr Mummery, as convener of the Subiaco Residents & Ratepayers Facebook group posted about the Petition.
 - g. Email dated 24 November 2020 from Cliff Frewing to the Complainant and all elected members; and



- h. Extract of Minutes of the OCM.

Panel's Consideration

Regulation 7

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

"7. Securing personal advantage or disadvantaging others

- (1) A person who is a council member must not make improper use of the person's office as a council member —*
 - (a) to gain directly or indirectly an advantage for the person or any other person; or*
 - (b) to cause detriment to the local government or any other person.*
 - (2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*
24. To make a finding of a minor breach of regulation 7 of the Regulations the Panel must be satisfied that it is more likely than not that:
- a. Mayor Taylor was an elected member at the time of the alleged breach and the time of the determination;
 - b. Mayor Taylor made use of her office as Council member of the City;
 - c. when viewed objectively, such use was an improper use of Mayor Taylor's office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
 - d. Either:
 - i. for Regulation 7(1)(a) - Mayor Taylor engaged in the conduct with the intention to gain directly or indirectly an advantage for any person; OR
 - ii. for Regulation 7(1)(b) - Mayor Taylor engaged in the conduct in the belief that detriment would be suffered by another person.

Regulation 7(1)(a) - General

25. The definitions of the noun 'advantage' in the Shorter Oxford English Dictionary (6th ed) include: a favouring circumstance; something which gives one a better position, benefit; increased well-being or convenience or pecuniary profit.

26. The Panel considers the term ‘advantage’ in regulation 7(1)(a) is to be construed widely, and includes a financial or a non-financial benefit, gain or profit, or any state, circumstance, opportunity or means specially favourable.⁹
27. It is not necessary to find whether any advantage actually gained¹⁰, but an intent to gain such advantage must be established.
28. The Complainant asserts that Mayor Taylor’s actions gave her an advantage as:
 - a. she has had her personal views broadcasted to the public at large; and
 - b. she has harmed the prospects of an objective, analytical and emotion-free debate about the proposal contained in the Petition.
29. Under section 2.10 of the Act it is a fundamental role of a councillor to “*facilitate communication between the community and the Council*”.
30. This will often take the form of communications that will indicate or imply the personal view of councillors. Having a personal view known is not an improper advantage that the Regulations is intended to deal with.
31. In respect to the argument that Mayor Taylor has harmed the prospects of an objective, analytical and emotion-free debate, it is difficult to construe this as an attempt to gain a personal advantage.
32. It is a tenuous and nebulous argument that either:
 - a. commenting on the Petition (even in a negative way) would at this early stage influence the public to the degree that the eventual vote was significantly influenced; or
 - b. the retention of the method of voting in a Mayor would necessarily advantage Mayor Taylor personally when her term as Mayor will expire in October this year.
33. It is further the right of every councillor to support or not support any matter before Council. It is the nature of local government that there will be opposing views in respect to certain matters before Council. Provided that Councillors base decisions on relevant and factually correct information, communicate any agreement or disagreement in an accurate and appropriate way, it is difficult to argue that a councillor is acting to gain a personal advantage where they simply are commenting on a matter to come before Council.
34. As such, although “advantage” is to be construed widely, the Panel does not consider that the asserted “advantage” to councillor of having their views heard in a manner that may influence debate is the type of “advantage” contemplated to be controlled by regulation 7(1)(a) of the Regulations.
35. As such, the Panel has not considered section 7(1)(a) further in this decision.

⁹ Complaint SP 12 and 13 of 2011

¹⁰ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]

Regulation 7(1)(b) – General

36. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom. 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.
37. 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.
38. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
39. In the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused¹¹.
40. "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.
41. It is not necessary to find whether any detriment was actually suffered¹², but an intent to cause such detriment must be established.
42. The City has a *Policy Manual - Elected Members and Public* ("**the Policy Manual**") which sets out the various policies of the City including the use of social media and media statements by Councillors the following portions of the Policy Manual are relevant in this case:

" 2.1 Social Media

.....

When using social media, elected members should follow these principles:

1. Speaking on behalf of the city

The city has trained staff to manage its social media accounts as an official communications channel for the city, and respond to any public enquiries. If you are not authorised, you are not allowed to represent the city in social media. This includes adding posts where a person's identity is perceived to be anonymous.

Make sure you do not imply that you are authorised to speak as a representative of the city or give the impression that the views expressed are those of the city. Instead make it clear that what you say is a personal view.

2. Honesty, integrity and transparency

¹¹ Treby and Local Government Standards Panel [2010] WASAT 81 (at 31); Chew v The Queen (1992) 173 CLR 626 (at 640 - 641 [Dawson JJ]); R v Byrnes (1995) 183 CLR 501 – (at 514 - 515 [Brennan, Deane, Toohey and Gaudron JJ] and at 521 [McHugh J]).

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



In social media, it is key to act with honesty, integrity and transparency.

Take care not to place yourself in a position of conflict of interest. Personal views on your social network spaces can affect perceptions of your professional views if taken in the wrong context.

Consider that even though your social media settings may be 'private', your friends' settings may not be.

3. Protect privacy, confidentiality and copyrights

Whilst the city encourages you to be transparent, it is also important not to share or comment on unauthorised, confidential or sensitive information. Make sure you only disclose or discuss information that is publicly available. This includes council decisions and information about council projects and initiatives.

Never disclose other people's personal information on social media. This includes but is not limited to colleagues, ratepayers, clients, members and suppliers.

Do not use the city's intellectual property or copyrighted materials and make sure you do not breach anyone else's copyright either. Do not post images or other content unless you are sure it is in the public domain or that the owner has granted permission.

4. No offensive behaviour

Be yourself in social media, but do so respectfully. Respect the community, council, organisation and your audience. Do not post material that is sexually explicit or harassing, defamatory, threatening, offensive, bullying, discriminatory, hateful, racist or sexist to another person or entity, including the city, its staff members, its suppliers, its customers, the council or any other business or government institution, related individuals or organisations.

Give proper consideration before posting anything that may be considered objectionable or inflammatory. Always pause and think before posting. If you are about to publish something that makes you uncomfortable, review the principles above.

If in doubt, don't post and seek guidance from the city's Communications and Engagement team."

“ 2.2 Media Statements Policy

The city communicates with the media with honesty, integrity and transparency, and responses to requests for information are provided in a timely manner.

The Mayor and Chief Executive Officer (and in their absence the Deputy Mayor or person appointed as the Acting Chief Executive Officer) are the only people authorised to issue media statements on behalf of the city. Media statements by the Mayor and Chief Executive Officer are to reflect Council's stated and factual position, not expressions of personal opinion.

In the event that Council does not have a stated position on any particular issue that is the subject of a need for a media statement or response, the Mayor or Chief Executive Officer should seek guidance from council policies and past resolutions and reasonably state what they believe Council's position would be with respect to the matter under consideration.

All reasonable attempts should be made to ensure the accuracy of media statements, including seeking legal advice where the matters are sensitive, potentially defamatory, subject to litigation or legal proceedings. Media statements should respect privacy, confidentiality and copyrights, and personal information should never be disclosed.

The Mayor generally provides comment on Council decisions, initiatives and issues. The Chief Executive Officer or approved nominee is the spokesperson for administrative, operational or technical matters.

Where there is sufficient time to do so, media statements prepared by, or on behalf of the Mayor are to be checked by the Chief Executive Officer prior to release, and media statements prepared by the Chief Executive Officer are to be checked by the Mayor. Whilst neither party is obliged to make alterations at the request of the other, their comments are to be heeded and taken into account in compiling the media statement.

Councillors who make comments to the media must make it clear that their comment is of a personal nature and they are not speaking on behalf of Council. Comments should not adversely reflect on the city and details of confidential matters are not to be disclosed."

43. At the time of the alleged conduct the City also had a Code of Conduct (2019 revision) ("**the Code of Conduct**") with the following relevant provisions:

"4.1 Personal Behaviour

(a) Council members, committee members and employees will:

- *act, and be seen to act, properly and in accordance with the requirements of*
- *the law and the terms of this code;*
- *perform their duties impartially and in the best interests of the City of Subiaco uninfluenced by fear or favour;*
- *act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the City of Subiaco and the community;*
- *make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and*
- *always act in accordance with their obligation of fidelity to the City of Subiaco.*

- (b) *Council members will represent and promote the interests of the City of Subiaco, while recognising their special duty to their own constituents."*

" 4.3 Performance of Duties

.....

- (b) *Council members and committee members will, at all times, exercise reasonable care and diligence in the performance of their duties, being consistent in their decision making but treating all matters on individual merits. Council members and committee members will be as informed as possible about the functions of the council and treat all members of the community honestly and fairly."*

" 4.6 Corporate Obligations

....

(b) Communication and Public Relations

- (i) *All aspects of communication by employees (including verbal, written or personal), involving City of Subiaco activities should reflect the status and objectives of the City of Subiaco. Communications should be accurate, polite and professional.*
 - (ii) *As a representative of the community, council members need to be not only responsive to community views, but to adequately communicate the attitudes and decisions of the council. In doing so council members should acknowledge that:*
 - *as a member of the council there is respect for the decision making processes of the council which are based on a decision of the majority of the council;*
 - *information of a confidential nature ought not be communicated until it is no longer treated as confidential;*
 - *information relating to decisions of the council on approvals, permits and so on ought only be communicated in an official capacity by a designated officer of the council;*
 - *information concerning adopted policies, procedures and decisions of the council is conveyed accurately."*
44. The Policy Manual and the Code of Conduct provides a framework for consideration of the expected standards of behaviour of elected members and as to whether certain conduct can be viewed as "improper".



Regulation 7(1)(b) - Allegation 1

Mayor Taylor was an Elected Member at the relevant times

45. Mayor Taylor was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
46. This element is met.

Mayor Taylor made use of her office as Council Member of the City

47. The Panel notes that Mayor Taylor asserts that the Media Release is issued on behalf of the City – not the Mayor personally.
48. This issue is somewhat confused as the email of 20 November from the CEO to the Complainant (provided by Mayor Taylor) states *“the Mayor has issued a media release”*. However, the CEO clearly also took a role in amending the Media Release after request by the Complainant.
49. Despite this, clause 2.2 of the Policy Manual the Mayor is one of the parties authorised to issue Media Statements on behalf of the City. She also provided quotes to be included in the same. Therefore, she is responsible for the contents of the same in so far as:
 - a. any direct quote provided by her; and
 - b. she has either directly or indirectly authorised the publication of the same.
50. Due to the facts that:
 - a. pursuant to clause 2.2 of the Policy Manual the Mayor is one of the parties authorised to issue Media Statements on behalf of the City; and
 - b. Mayor Taylor was quoted in the media release in her capacity as Mayor,the Panel finds that it is more likely than not that Mayor Taylor was acting in her capacity as an elected member made use of her office as a council member when making the quotes set out in the Media Release.
51. This element is met.

Mayor Taylor’s use was improper

52. The Complainant has alleged that Mayor Taylor’s comments:
 - a. wrongly and inaccurately creates a perception that the Complainant was “asking to take away” voting rights; and
 - b. improperly emphasise the issue of “taking away” voter rights and the cost of the process.
53. The relevant portions of the Media Release are as follows:

*“Mayor Penny Taylor said the petition submitted by Cr McMullen is asking to take away the long held right of the community to vote for the mayor”
 (“**Comment 1**”)*



*“In observing the US elections, Australians were aghast at the suggestion that all votes should not be counted. This petition, at first glance, looks like it is calling for the community to not even have a vote at all” (“**Comment 2**”)*

*“The City will confirm the process, which is estimated to cost ratepayers between \$30,000 and \$40,000” (“**Comment 3**”)*

54. The Panel notes that following request by the Complainant Comment 1 of the Media Release was amended to the following:

“Mayor Penny Taylor said the community petition was tabled by Cr McMullen at the Council meeting.

“The petition seeks to remove the long held right of the community to vote for the mayor.”

55. In respect to Comment 1, the Panel finds that this is a simple statement of fact that is easily obtainable from the public records of the OCM.
56. Cr McMullen did submit or table the Petition. The argument as to the words used here are semantics only.
57. The Panel does not find the Complainant’s arguments compelling that he is being unfairly linked to the Petition. It was the Complainant’s clear choice to do so, and the video recording of the OCM indicates that not only was the petition presented by him, but that Cr McMullen also read out the title and contents of the Petition in full.
58. By simple virtue of these actions, Cr McMullen is already “linked” with the Petition. Irrespective of whether the Complainant asserts that he has at no time indicated he supported the petition, it would be reasonable for a member of the public to assume he did based on that conduct alone.
59. Further, the Media Release does not assert that Cr McMullen supports the Petition, merely that he tabled/submitted it.
60. It is public record that there has been an attempt to create a vote of no confidence in Mayor Taylor in the past which was the subject of much media attention. In such circumstances, it would be reasonable to expect that where a Councillor was requested to present a petition dealing with the appointment of the Mayor that they would carefully consider the public impact of such presentation.
61. As such, the Panel finds, it is more likely than not that, the fact that Cr McMullen is named in reference to the Petition is not improper but factual.
62. In relation to Comment 1 and 2 the Complainant also argues that there is an improper emphasis on the fact that the Petition “takes away” or “remove” voter rights.
63. Pursuant to section 2.11 of the Act there are two valid alternative methods for appointment of a Mayor or President of a local authority being either:
- a. elected by electors of the district; or
 - b. elected by the council from amongst the councillors.



64. Council is authorised to change the method of voting by the electors to voting by Council by a poll of electors in the district (section 2.11 (4) of the Act).
65. It is a difficult argument to make that changing the method of appointing a Mayor for a public vote, to a vote only by sitting Councillors does not “take away” or “remove” the rights of the public voters. This is simply the potential result by definition.
66. Even if the wording from the Petition was used that the method was to be “changed”, the consequences remain the same.
67. There is nothing inherently negative in pointing out this fact by the use of the words “take away” or “remove”.
68. Despite this, in Comment 2 Mayor Taylor takes the issue one step further. Although each separate sentence in Comment 2 is arguably accurate, by linking the same there is an implication that the public will not get their rightful vote.
69. This implication is not entirely precise. Although the community would not be voting directly for the Mayor, they would still vote for the sitting Councillors who would then represent those voters in appointing a Mayor. Further, after significant media attention at the time the comments were made, there is definitely a negative association with voter rights and the US election.
70. However, despite this, the Panel finds that Comment 2 does not go so far as to be improper but is simply imprudent. Although it may possibly invoke negative sentiments, it is reasonable to expect that some voters would, in fact, react negatively to a suggestion that they could no longer directly vote for the Mayor of the City.
71. As such, although the comparison is not ideal, the Panel finds to the required standard that in this case the actual wording used does not go so far as to be considered objectively improper.
72. In respect to Comment 3 the Panel finds that this sentence of the Media Release is purely factual and is information that an elector of the City should reasonably be informed of by the City. Further, there is no indication that:
 - a. Comment 3 was a quote by Mayor Taylor; or
 - b. that the contents or quantum referred to are inaccurate.
73. As such, the Panel finds to the required standard that Comment 3 is not improper in nature.
74. The Panel finds it is more likely than not that the comments in the Media Release were not improper as such conduct:
 - a. was not in breach of the Code;
 - b. was not of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
 - c. is not deserving of a penalty.
75. This element is not met.



Mayor Taylor intended detriment to be suffered by another person

76. In this case the Panel finds that it is more likely than not that the predominant purpose for making the Media Release was to inform the electors of the City as to a significant petition that has been tabled at the last occurring Council meeting.
77. Despite the same containing quotes from Mayor Taylor, the vast majority if the same is factual in content and simply contains information that the community would likely wish to know.
78. Despite its negative implication, the Panel does not consider that Comment 2 goes so far as to show an intent to detriment to either the Complainant or the local government generally.
79. As such, the Panel finds, to the required standard that Mayor Taylor did not intend to cause a detriment to the Complainant when either issuing or making the comments set out in the Media Release.
80. This element is not met.

Conclusion

81. Given the above, the elements required to find a breach of regulation 7(1)(b) of the Regulations have not been met in respect to Allegation 1.
-

Regulation 7(1)(b) - Allegation 2

Mayor Taylor was an Elected Member at the relevant times

82. Mayor Taylor was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
83. This element is met.

Mayor Taylor made use of her office as Council Member of the City

84. In that case it is asserted that Mayor Taylor used the word “coup” to create a negative inference and exacerbate the detriment caused to the Complainant.
85. Mayor Taylor argues that the reference to a “coup” was the journalist's summation of the situation that he chose to put in his article and that this was not a direct quote from her.
86. The journalist does not specify that this word is a direct quote from Mayor Taylor.
87. The Panel finds that it is more likely than not that the word coup was included by the journalist in order to attract readers to the Article.
88. As such, Mayor Taylor did not use her position as a councillor to use such word.
89. This element is not met.

Remaining elements



90. As the above element is not met the Panel has not further considered the remaining elements.

Conclusion

91. The elements required to find a breach of regulation 7(1)(b) of the Regulations have not been met in respect to Allegation 2.

Regulation 7(1)(b) - Allegation 3, Allegation 4, Allegation 5, Allegation 6

Mayor Taylor was an Elected Member at the relevant times

92. Mayor Taylor was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

93. This element is met.

Mayor Taylor made use of her office as Council Member of the City

94. In that case each of Allegation 3, 4, 5 and 6 relate to comments made in the Article as follows:

- a. *"Mayor Penny Taylor - whose term expires next year - said the petition had been coordinated by the council's 'old guard' voting bloc ... (**'Allegation 3 Comment'**)*;
- b. *"It's a Trump-like attempt to circumvent democracy by the old guard and Save Subi" (**'Allegation 4 Comment'**); and*
- c. *"This is another attempt to undermine the position of Mayor and bring it back under the control of the old guard and Save Subi" (**'Allegation 5 Comment'**);*
- d. *"This isn't about me. This is about controlling the position of Mayor - whomever that may be!" (**'Allegation 6 Comment'**)*;

95. In respect to the Allegation 3 Comment, Mayor Taylor asserts that she did not use the term "old guard" voting bloc, but rather noted that the Petition was co-ordinated by Mr Mummery. The Panel is satisfied to the required standard that this is the case and that such Comment is inaccurate as reported.

96. In relation to each of the remaining Comments, Mayor Taylor has confirmed the same are her quoted comments.

97. However, as Mayor Taylor is quoted in her capacity as Mayor, and the matter is relevant to Council, the Panel is satisfied that in each case it is more likely than not that Mayor Taylor was acting in her capacity as an elected member and made use of her office as a council member when speaking to the journalist and making the quotes set out in the Article.

98. This element is met.

Mayor Taylor's use was improper

99. The Panel has examined each of the relevant comments in the Article to determine whether the same can be considered improper.

Allegation 3 Comment

100. In this case it is disputed that Mayor Taylor referred to the “old guard voting bloc”. It is clear from reading further in the Article that this term is a direct quote from another unnamed councillor.
101. Mayor Taylor does confirm that she said the Petition was co-ordinated by Mr Mummery. This is accurate information as evidenced by the Petition itself.
102. The Panel does, however, note that Mayor Taylor uses the words “old guard” in the Allegation 3 Comment.
103. Even if Mayor Taylor had referred to a “old guard voting bloc”, this is not enough by itself to be considered improper. It is common for councils to have “factions” or “voting blocs” on particular matters it is not improper to recognise the same provide that derogatory or detrimental language is not also used.
104. Neither would the Panel necessarily consider a reference to an “old guard” by itself as improper. There is no negative connotation to such reference in isolation.

Allegation 4 Comment

105. In this case the relevant phrase is a *“Trump-like attempt to circumvent democracy”*.
106. The Panel has dealt with references to Trump previously¹³. It was found in that case that the word *“Truimpish”* was not offensive or objectionable. However, it is noted that such finding can be distinguished from this decision as the use previously occurred in 2017, well prior to the recent US election issues of vote counting and allegations of fraud.
107. Given the extensive and negative media coverage regarding the then President Trump’s comments and actions as to vote counting that was occurring at the time the Article was published, this phrase has a very definite connotation, that would be understood by a reasonable objective person, that there was some kind of undemocratic wrongdoing by the “old guard” and the Save Subi community group in establishing the Petition.
108. Such implication is wholly incorrect and misleading. As noted above it is a valid and legal option for councillors to appoint the Mayor of a local government.
109. The Panel considers that Mayor Taylor simply used such comparison for its inflammatory effect that that the same was in breach of the Code of Conduct in that:
 - a. to make such comment in the context was not in good faith;
 - b. to make such an inaccurate comparison was a failure to use reasonable care and diligence.
110. Further, section 2.2 of the Policy Manual makes it clear that media statements are not to be expressions of personal opinion and the speaker is to make it clear (where appropriate) that their comment is of a personal nature and they are not speaking on behalf of Council.

¹³ Benedict Gervase Hodsdon v Local Government Standards Panel [2019] WASAT 49



111. The Allegation 4 Comment is clearly solely personal opinion, not the stance of the City.
112. As such, the Panel finds that it is more likely than not that in making the Allegation 4 Comment Mayor Taylor acted improperly.

Allegation 5 Comment

113. The Allegation 5 comment reads:

“ This is another attempt to undermine the position of Mayor and bring it back under the control of the old guard and Save Subi”

114. In this case the relevant comment makes two allegations that the Petition:
- a. undermines the position of Mayor; and
 - b. brings the position of Mayor under the control of the old guard and Save Subi.
115. More correctly, the Petition seeks to change the method of voting for the Mayor to another legal and valid method.
116. Changing the method of voting of Mayor does not “undermine” or allow for “control” of the Mayor. The position and duties of the Mayor under the Act remain the same irrespective of the manner of voting in a Mayor. At most, if the Petition was successful, it may allow a more powerful “faction” of councillors to vote in a Mayor they believe is sympathetic to their general policies. That is a far cry from “controlling” the Mayor.
117. In this case the Panel finds to the required standard that Allegation 5 Comment is a gross exaggeration designed to cast the Petition in a negative light and to mislead the general public as to the possible outcome of the Petition.
118. This is in breach of the Code of Conduct in that to make such inaccurate comment was not in good faith and Mayor Taylor failed to use reasonable care and diligence when making the same.
119. Further, the same was in breach of section 2.2 of the Policy Manual as it was not made clear the comment was of a personal nature and that Mayor Taylor was not speaking on behalf of Council.
120. The Panel therefore finds that the Allegation 5 Comment is improper.

Allegation 6 Comment

121. The Allegation 6 comment reads:

“ This isn't about me. This is about controlling the position of Mayor - whomever that may be!”

122. The Panel refers to its comments above. The Petition allows for control as to the method of voting for the Mayor, it does not allow control of the position or role of Mayor.
123. Further, given the prior votes of no confidence as to Mayor Taylor from the Save Subi Group it would appear that the Petition is largely concerned with the performance of Mayor Taylor as Mayor.

124. The Allegation 6 Comment appears designed to indicate (especially in the context of the other quotes given) that the putting forward of the Petition was underhanded and undemocratic and designed to circumvent the normal position of Mayor. This is inaccurate.
125. This is in breach of the Code of Conduct in that to make such misleading comment was not in good faith and Mayor Taylor failed to use reasonable care and diligence when making the same.
126. Further, the same was in breach of section 2.2 of the Policy Manual as it was not made clear the comment was of a personal nature and that Mayor Taylor was not speaking on behalf of Council.
127. As such, the Panel finds that it is more likely than not that the Allegation 6 Comment is improper as it gives a false impression to members of the public that the Petition was inappropriate in some manner.

General

128. It is clear from:
 - a. section 2.8(1)(d) of the Act;
 - b. section 2.2 of the Policy Manual regarding Media statements; and
 - c. the Code of Conduct;that it is intended that the Mayor is the official spokesman for the relevant Local Government and Council.
129. Although a Mayor does not usually need any express permission or a direction from Council to act in their role as spokesperson, once in the position of Mayor, it is incumbent on that elected member to:
 - a. be aware of his or her statutory obligation to speak on behalf of the Local Government and Council;
 - b. consider all public statements in light of this official role; and
 - c. ensure that they provide leadership and model appropriate behaviour to other elected member and employees of the City.
130. Due to the nature of the role of Mayor as spokesperson of the City, a degree of restraint and balance is required when making public statements due to the public nature of that role and the implication that statements by a Mayor are officially authorised and represent the formal position of the City.
131. As such, the Mayor has a higher level of responsibility when making public statements and must give due consideration to how the same may be viewed by the public.
132. The Panel considers that Mayor Taylor did not take due care when making the Allegation 4 Comment, the Allegation 5 Comment and the Allegation 6 Comment.
133. This element is met in respect to:
 - a. the Allegation 4 Comment;

- b. the Allegation 5 Comment; and
- c. the Allegation 6 Comment.

Mayor Taylor intended detriment to be suffered by another person

- 134. As the above element was met only with respect to the Allegation 4 Comment, the Allegation 5 Comment and the Allegation 6 Comment the Panel has only considered those comments in this element.
- 135. The relevant comments in the Article are early reference to refer to the “*old guard and Save Subi*”. The same are also all negative and inaccurately imply that the Petition is designed for undemocratic purposes.
- 136. The Panel finds that the predominate purpose in making the Allegation 4 Comment, the Allegation 5 Comment and the Allegation 6 Comment was to denigrate each of the “old guard” and Save Subi groups in a manner that made the presentation of the Petition appear wrongful or improper in some way.
- 137. The Complainant also argues that Mayor Taylor’s comments exacerbate the detriment caused to the Complainant when read with the First Facebook Post. The Panel notes that the Complainant is not mentioned at all in the Article, so does not consider that it is more likely than not that the comments made therein were intended to cause a detriment to the Complainant.
- 138. The Complainant further argues that Mayor Taylor caused a detriment to the local government by harming the prospects of an objective, analytical and emotion-free debate and inciting ill feeling within the community and amongst Councillors.
- 139. The Panel does not consider that the comments in the Article go this far or that there is any intent to cause such harm.
- 140. Although the same may be misleading to the public to a certain extent, the matter is still in very early stages and would still be able to be:
 - a. debated in Council; and
 - b. the subject of advertising or public comments by parties either supporting or opposing the petition outcome; and
 - c. the subject of a public vote by electors of the City.
- 141. This element is met in respect to an intention to cause a detriment to the “old guard” and the “Save Subi” groups only.

Conclusion

- 142. The elements required to find a breach of regulation 7(1)(b) of the Regulations have not been met in respect to Allegation 3.
- 143. The elements required to find a breach of regulation 7(1)(b) of the Regulations have been met in respect to each of:
 - a. Allegation 4;
 - b. Allegation 5; and



c. Allegation 6.

Regulation 7(1)(b) - Allegation 7

Mayor Taylor was an Elected Member at the relevant times

144. Mayor Taylor was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

145. This element is met.

Mayor Taylor made use of her office as Council Member of the City

146. As the First Facebook Post was made:

- a. from the Facebook Account named "Penny Taylor – Subiaco Mayor"; and
- b. the subject matter of the First Facebook Post directly related to the business of Council,

the Panel finds that it is more likely than not that Mayor Taylor was acting in her capacity as an elected member made use of her office as a council member when she made the First Facebook Post.

147. This element is met.

Mayor Taylor's use was improper

The Complainant has alleged that the First Facebook Post wrongly and inaccurately creates a perception that the Complainant was "*asking to take away*" voting rights.

148. The First Facebook Post include the following text:

"At Tuesday's Council meeting a petition was presented by Cr McMullen to take away the long held right of the community to vote for the Mayor.

Read more from the City of Subiaco (link to the Media Release)

And the West Australian (link to the Article)"

149. As discussed in paragraphs 56 to 68 above, the Panel notes:

- a. that the statement that Cr McMullen presented the Petition is factual and easily verifiable from the public records of the OCM;
- b. that the statement does not assert that Cr McMullen supports the Petition, merely that he presented it; and
- c. there is nothing inherently improper in pointing out the ultimate potential result of the Petition by the use of the words "take away" or "remove".

150. It is to be anticipated that some councillors (and perhaps especially the sitting Mayor) would not support the Petition and would make public comments confirming this stance.



151. It is a fundamental feature of the local government system that elected members may choose to support, or not support, any matter or motion before Council.
152. Provided that:
- a. it is accomplished in a respectful and accurate manner; and
 - b. a councillor properly bases their decisions (as part of Council) on relevant and factually correct information,
- it is not inherently improper to voice disagreement with a matter before, or proposed to come before, Council.
153. In respect to the argument that providing a link to the Article in the First Facebook Post *“compounds the detrimental effect of the post due to the negative nature of the Article”* the Panel does not find this compelling. As noted above, although the Article does have some improper comments by Mayor Taylor in respect to the Petition, Cr McMullen is not mentioned in the Article at all.
154. As such, the Panel finds to the required standard that the First Facebook Post is not improper in nature as it was:
- a. was not in breach of the Code;
 - b. was not of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
 - c. is not deserving of a penalty.
155. This element is not met.

Remaining elements

156. As the above element is not met the Panel has not further considered the remaining elements.

Conclusion

157. The elements required to find a breach of regulation 7(1)(b) of the Regulations have not been met in respect to Allegation 7.
-

Regulation 7(1)(b) - Allegation 8

Mayor Taylor was an Elected Member at the relevant times

158. Mayor Taylor was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
159. This element is met.

Mayor Taylor made use of her office as Council Member of the City

160. As the Second Facebook Post was made:



- a. from the Facebook Account named “*Penny Taylor – Subiaco Mayor*”; and
- b. the subject matter of the First Facebook Post directly related to the business of Council,

the Panel finds that it is more likely than not that Mayor Taylor was acting in her capacity as an elected member made use of her office as a council member when she made the Second Facebook Post.

161. This element is met.

Mayor Taylor’s use was improper

162. The Complainant has alleged that the Second Facebook Post also wrongly and inaccurately creates a perception that the Complainant was “*asking to remove*” voting rights.

163. The Second Facebook Post includes the following text as well as a link to a clip of the OCM where Cr McMullen presents the petition.

“I’ve had many people ask me about the petition presented by Cr McMullen at the last council meeting.

The facts so far:

- *this petition triggers a process that will cost ratepayers \$30-40k*
- *this petition seeks to remove the long held right of the community to vote for the mayor.*
- *the City is confirming the timeline for the process*

For those who would like more detail, please see the youtube clip below where Cr McMullen reads out the petition.”

164. As discussed above, the Panel has confirmed that:

- a. simply mentioning Cr McMullen has presented the Petition is not improper; and
- b. using the word “remove” is not improper.

165. Although the Complainant asserts that Mayor Taylor also improperly emphasises cost, there is no assertion that the estimated amount referred to is incorrect or that the issue of proposed costs is inaccurate.

166. As noted above at paragraph 73, the possible cost to the City of undertaking a public vote is information that an elector of the City should reasonably be informed of.

167. In addition, the Panel does not contemplate that the last dot point as to timeline can be considered by a reasonable person to be improper in any manner. It is merely informative in nature.

168. In consideration of the above, the Panel finds to the required standard that the Second Facebook Post is not improper as it was:

- a. was not in breach of the Code;



- b. was not of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
- c. is not deserving of a penalty.

169. This element is not met.

Remaining elements

170. As the above element is not met the Panel has not further considered the remaining elements.

Conclusion

171. The elements required to find a breach of regulation 7(1)(b) of the Regulations have not been met in respect to Allegation 8.

Regulation 7(1)(b) - Allegation 9

Mayor Taylor was an Elected Member at the relevant times

172. Mayor Taylor was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

173. This element is met.

Mayor Taylor made use of her office as Council Member of the City

174. It is unclear from the Complainant's further email whether Allegation 9 is with regard to:

- a. the comment the Mayor made at the relevant OCM; or
- b. the fact that the relevant comment was published in the Further Article in the Post Newspaper.

175. If in regard to the making of the comment at the relevant OCM then the Panel finds that it is more likely than not that Mayor Taylor was acting in her capacity as an elected member made use of her office as a council member when making that comment *at that time*.

176. If the allegation is that it is improper that the same was quoted in the Post Newspaper, the Panel notes that such comment was a direct quote from the OCM that was included in the Further Article by the author of that news story. Therefore, the same was not included in the Further Article due to Mayor Taylor's own actions and she cannot be seen to be making use of her office as a council member by virtue of the quote being repeated by a third party.

177. This element is met only with respect to the comment made at the OCM and the Panel has only considered this circumstance in the elements following.



Mayor Taylor's use was improper

178. Allegation 9 refers the underlined comment ("**the OCM Comment**") contained in the following text of the Further Article:

"Mayor Penny Taylor spoke a short time later. "To ensure transparency and accuracy can we have the minutes show that Cr McMullen has submitted a petition calling for ratepayers and electors to lose their right to vote for the mayor, thank you" she said.

Mr McMullen made a point of order: "I don't think that's what I just did". At that point Mr Frewing appeared to say something brief to Ms Taylor who then moved onto the next item on the without further comment."

179. The recording of the OCM shows that the exchange occurred as reported.
180. The Minutes of the OCM do not reflect that any insertion was in fact made in the Minutes.
181. Under section 4.16(4) of the *City of Subiaco Meeting Procedures Local Law 2013* it is possible for a member to request that particular words used by a member be recorded in the minutes provided that the Council resolves to do so.
182. In this case, following the Point of Order by Cr McMullen, the matter was dropped, no vote was called for and nothing was recorded in the Minutes.
183. As discussed above, simply mentioning Cr McMullen has presented the Petition is not improper. In this case Cr McMullen had only just presented the same.
184. In respect to the use of the word "lose", similarly to using the words "remove" or "take away" this refers to the ultimate outcome of the Petition. The word "lose" perhaps has a slightly more negative connotation, however, the Panel does not consider the same enough to be improper.
185. The Complainant also raised a Point of Order disagreeing with such categorisation, thereby publicly stating his disagreement with such wording.
186. As such, it is difficult to see anything improper occurred or any detriment was intended to be suffered.
187. In consideration of the above, the Panel finds to the required standard that the OCM Comment was not improper in nature as it was:
- was not in breach of the Code;
 - was not of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
 - is not deserving of a penalty.

188. This element is not met.

Remaining elements

189. As the above element is not met the Panel has not further considered the remaining elements.



Conclusion

190. The elements required to find a breach of regulation 7(1)(b) of the Regulations have not been met in respect to Allegation 9.

Panel's Findings

191. In respect to Allegation 1 Mayor Taylor did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
192. In respect to Allegation 2 Mayor Taylor did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
193. In respect to Allegation 3 Mayor Taylor did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
194. In respect to Allegation 4 Mayor Taylor did commit a breach of Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.
195. In respect to Allegation 5 Mayor Taylor did commit a breach of Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.
196. In respect to Allegation 6 Mayor Taylor did commit a breach of Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.
197. In respect to Allegation 7 Mayor Taylor did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
198. In respect to Allegation 8 Mayor Taylor did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
199. In respect to Allegation 9 Mayor Taylor did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.



Local Government Standards Panel

Complaint Number	SP 2020-147
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Cr David McMullen
Respondent	Mayor Penny Taylor
Local Government	City of Subiaco
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member)
Heard	8 April 2021 Determined on the documents
Penalty Considered	24 June 2021
Outcome	Public Apology

DECISION AND REASONS FOR DECISION

Delivered 13 August 2021

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 24 June 2021, the Panel found that Mayor Penny Taylor, a councillor for the City of Subiaco (**“the City”**), committed three minor breaches under the *Local Government Act 1995 (WA)* (**“the Act”**) and regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* (**“the Regulations”**) when she made certain comments that were published in an article on the West Australian website by Michael Traill dated 21 November 2020 entitled *“Subiaco Mayor ‘facing coup’ as ex-councillor Malcolm Mummery fights to take mayoral vote from electors”* (**“the Minor Breaches”**).

Jurisdiction and Law

2. The Panel convened on 24 June 2021 to consider how it should deal with the Minor Breach.
3. 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 Taylor had ceased to be, or was disqualified from being, a councillor.
4. 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
5. By a letter dated 30 April 2021, Mayor Taylor was:
 - a. notified of the Panel’s finding of the Minor Breaches;
 - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
 - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

Possible Sanctions

6. Section 5.110(6) of the *Local Government Act 1995 (WA)* (**“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

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

- (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).*

Mayor Taylor's Submissions

- 7. By an email dated 12 May 2021, the Department received a response from Mayor Taylor's legal counsel.
- 8. Mayor Taylor's legal counsel provided the following comments and arguments as to penalty, as summarised by the Panel:
 - a. The Complaint was brought by Councillor David McMullen. However the Panel did not make a finding that Mayor Taylor caused or intended to cause detriment to be suffered by the Complainant or the City.
 - b. On this basis alone, no sanction is appropriate because the Panel found, in effect, that the breach alleged in the complaint did not occur.

Nature and seriousness of the breach

- c. The Panel found that the predominate purpose in making various comments was to denigrate each of the "old guard" and Save Subi groups in a manner that made the presentation of the Petition appear wrongful or improper in some way.
- d. One of the relevant statements by Mayor Taylor does not reference, name or otherwise include the words the "old guard" or "Save Subi".
- e. By its ordinary meaning, another of the statements by Mayor Taylor conveys that the intent of the Petition was to undermine the position of Mayor Taylor and bring it back under the control of the old guard and Save Subi.
- f. Importantly, the statement alleges that this was the intention of the Petition, not of the "old guard" or "Save Subi". The mentions of "old guard" and "Save Subi" were referential in nature, and neither of those groups was the subject matter of the that particular statement.
- g. Further, neither the objective nor subjective meaning of the phrase "old guard" is clear on the face of the Article or the Report of Findings. Mayor Taylor gave evidence that the term "old guard" used in the Article was provided to Mr Traill by another unnamed elected member.
- h. This term does not identify any individuals or groups of individuals. It is difficult to conceive how a reader could identify any particular person or entity upon reading the term.
- i. Similarly, Mayor Taylor does not identify or name in any of the Statement any individuals associated with the community group "Save Subi".

No impact on the Petition

- j. As found by the Panel it was unlikely that Mayor Taylor's conduct had harmed the prospects of an objective, analytical and emotion-free debate about the proposal contained in the Petition.

- k. The Panel noted that the Petition was still in very early stages and would still be able to be debated in Council and the subject of advertising or public comments by parties either supporting or opposing the petition outcome and the subject of a public vote by electors of the City.

The Article

- l. Mayor Taylor submits that the repeated use of the word “coup” goes further than to attract readers to the Article and:
 - i. is the dominant aspect of the headline of the Article; and
 - ii. gives the impression that those words are a direct quotation.
- m. The body of the Article falsely attributes that quote to Mayor Taylor, when in fact the term “coup” was the journalist’s summation of the situation.
- n. It is submitted that the tone of this Article is largely set by the emphatic use of the words ‘facing a coup’ in the headline as this determines how readers will read and remember the article and sets the tone and impact of the same.
- o. Therefore the degree to which any detriment was suffered is a result of the publication.
- p. Mayor Taylor submits that an addition to seeking to attract readers, the word was chosen by Mr Traill to excite and incite readers: by its ordinary meaning, the word “coup” connotes a sudden, unlawful and violent military overthrow of government or establishment.
- q. Mayor Taylor had no control over, or ability to influence, the statements isolated by Mr Traill for publication, the statements made by Mayor Taylor in interview which were not included for publication, the headline adopted for the Article, or the general tone or manner in which the Article was written.
- r. Accordingly, Mayor Taylor submits that any detriment suffered as a result of the Statements was contributorily caused by, and exacerbated by, the tone and nature in which the Article was written.
- s. In determining whether any sanction is appropriate in relation to the Statements, regard should be had to the above.

Relations between the council members of City of Subiaco and the Mayor

- t. It is trite to say, in broad terms, that there have been strained relations between the councillors of the City and Mayor Taylor for the last few years.
- u. There is a greater context in which the Statements were made being:
 - i. an authorised inquiry into the City by the Director General of the Department of Local Government, Sport and Cultural Industries; and
 - ii. previous attempts to undermine the position of Mayor by votes of no confidence.
- v. In a narrower context, the Statements should be read by referencing the surrounding circumstances of the Petition.
- w. During the tabling of the Petition itself, and the words spoken, were highly embarrassing to Mayor Taylor. They gave rise to the implication that the Petition is warranted and necessary because Mayor Taylor is inexperienced in council procedures, does not listen, and does not represent the councillors whilst holding her position to high account. They left the impression that the current method of voting for the Mayor by the public has led to the election of

Mayor Taylor who lacks the experience and judgment to elicit respectful cooperation and collegiality from elected members.

- x. Mayor Taylor's interview with Mr Traill took place at a time when these comments, and their effect upon Mayor Taylor, were fresh and raw.
- y. Mayor Taylor submits that this wider context amounts to aggravating conduct.

Sanction

- z. Mayor Taylor submits that public apology is an unbefitting sanction in this case given:
 - i. none of the Statements identifies any particular person to whom an apology could be directed therefore an apology would serve no utility;
 - ii. there is no reference to either "old guard" or "Save Subi" in one of the statements. Further, the mentions of "old guard" and "Save Subi" in another of the statements was referential in nature; and
 - iii. in any event, the term "old guard" is so non-descript and its alleged constituency so unclear that an apology would serve no utility.

Remuneration and allowances order

- aa. The Complaint raised 9 distinct allegations which were put to the Panel for consideration, 6 of which were not upheld. In its consideration of the allegations, the Panel remarked that certain of the Complainant's assertions were tenuous and nebulous and far-reaching.
- bb. Mayor Taylor submits that an order requiring her to pay the City's costs associated with the Complaint would be disproportionate and inconsistent with the Panel's findings, and therefore inappropriate.

Public censure order

- cc. Mayor Taylor has not previously been found to have committed any minor breach of the Act. It is submitted that having regard to the matters set out above, public censure is too harsh a penalty in the circumstances.
- dd. If however the Panel decides to impose a public censure, Mayor Taylor submits that the approach taken by the Tribunal in *Aubrey and Department of Local Government Standards (2018) WASAT 45* is apposite in this case to give scope to the mitigating circumstances.
- ee. Mayor Taylor submits any censure which lacks mention of the mitigating circumstances would give a misleading account of the context in which the Statements were made.
- ff. Further, Mayor Taylor submits that a public censure is not warranted or justified and the conduct does not possess the requisite seriousness to warrant the highest penalty under the Act.

Conclusions

- gg. For the reasons set out above, Mayor Taylor submits that the Panel should refrain from imposing any sanction at all in relation to this matter.
- hh. Alternatively to Mayor Taylor's primary submission, if any sanction is to be imposed, Mayor Taylor submits that a limited public censure, providing the context in which the article was published, is the only appropriate sanction.

- ii. Without prejudice to the above submissions, Mayor Taylor reserves her right to Appeal the findings made by the Panel.

Panel's Consideration

9. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
10. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
11. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
 - 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. likelihood or not of the councillor committing further breaches of the Act;
 - g. personal circumstances at the time of conduct, and of imposing the sanction;
 - h. 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 seriousness².
12. The Panel notes Mayor Taylor's submissions as to the aggravating and mitigating circumstances of the conduct.
13. However, it is inaccurate to come to the conclusion the "*complaint did not occur*" where some of the allegations were not made out. Clearly the Panel found certain of the conduct serious enough to result in a finding of minor breach. The fact that not all of the grounds argued by the Complainant were successful does not diminish the fact that a minor breach was found to have occurred in those instances.
14. Further, the Panel notes that it is mere semantics to argue that Mayor Taylor was blaming the "Petition" rather than the "old guard" and "Save Subi" where she is directly quoted as using those particular words several times in the Article.
15. Although quotes provided in the Article by Mayor Taylor gave rise to three separate findings of Minor Breach, as the same were related conduct, the Panel finds it appropriate to issue one sanction in this case.
16. Due to the public nature of the Petition, as well as the context of prior votes of no confidence, the identity of the parties comprising the "old guard" and "Save Subi" is largely transparent and either:

² Chief Executive Officer, Department of Local Government and Communities and Scaffidi [2017] WASAT 67 (S)

- a. already known to members of the public who had followed recent issues with the City; and
 - b. easily discoverable by people who then wished to know the identities of the major members such factions.
17. The relevant tensions and prior attempts to remove Mayor Taylor have also been the subject of significant media coverage in the local community.
18. As such, the Panel does not find that there is no identifiable party that could have been caused detriment.
19. The Panel does acknowledge that:
 - a. when giving the interview, Mayor Taylor would still have been greatly personally affected by the bringing of the Petition;
 - b. Mayor Taylor cannot control the use of other material or words used by a journalist.
20. Despite this, in her capacity as Mayor and spokesperson of the City, Mayor Taylor should be cognisant of the fact that, irrespective of her personal feelings, any words spoken in an interview would be free to be used and quoted by the relevant journalist and that most journalists would be likely to “sensationalise” the story they are writing. Therefore, due care must be taken when giving such an interview.
21. In this case, the Panel found that Mayor Taylor did not use due care when making three of the comments quoted in the Article and that the same were improper and misleading for various reasons.
22. In these circumstances, the Panel considers that the appropriate sanction is that Mayor Taylor make a public apology.
23. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing³. It is a suitable and appropriate penalty when a councillor’s conduct:
 - a. adversely affects particular individuals⁴; and/or
 - b. does not meet the standards other councillors seek to uphold.
24. The Panel has commented above that the reference to “old guard” and “Save Subi” are enough to be able to readily identify individual, or indeed groups of, affected persons.
25. In addition, the Panel considers that it was an aggravating factor in this case that it was not made clear the comments were of a personal nature and that Mayor Taylor was not speaking on behalf of Council.
26. As such, it is also appropriate that Mayor Taylor also apologise to the Council and public in general.
27. The Panel does not, in this instance, consider that the conduct was serious enough to warrant public censure. The Conduct was improper and inappropriate, however, the Panel considers that the same arose substantially from the personal frustrations of Mayor Taylor with what appears to be a sustained and hostile campaign to remove her from her position as Mayor.

³ *Treby and Local Government Standards Panel* [2010] WASAT 81 (Pritchard J).

⁴ *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).



28. In the relevant circumstances, the Panel considers that making a public apology is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Mayor Taylor recoup to the City the costs of the Department incurred with respect to the Complaint.

Panel's decision

29. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the Minor Breaches of regulation 7(1)(b) of the Regulations, Mayor Taylor make a public apology in terms of the attached Order.

Signing

Tim Fraser (Presiding Member)

Emma Power (Member)

Peter Rogers (Member)



ORDER

Delivered 13 August 2021

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 Penny Taylor, a councillor for the City of Subiaco **publicly apologise**, as specified in paragraph 2 OR failing compliance with paragraph 2 within the specified timeframe, then paragraph 3 shall apply.

Public Apology

2. On the ordinary council meeting of the City of Subiaco first occurring after the expiration of **28 days** from the date of service of this Order on her, Mayor Taylor 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 made certain negative comments that were published in an article in the West Australian regarding a Petition to change the method of voting for Mayor of the City.
- ii. The Panel found that I breached regulation 7(1)(b) of the said Regulations three times as either:
 - a. the comments were inaccurate and misleading as to the nature of the Petition;
 - b. the comments were not made in good faith; or
 - c. it was not made clear that I was speaking personally rather than as a spokesperson for the City.



- iii. I accept that I should not have made such comments regarding the nature of the Petition and the parties co-ordinating the Petition.
- iv. I now apologise all parties who may have been offended by my comments, my fellow Councillors and the public.”

3. If Mayor Taylor fails to, or is unable to, comply with the requirements of paragraph 2 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 2 above the Chief Executive Officer of the City of Subiaco shall arrange for the notice of public apology to be published:
- a. on the Facebook Page of the City of Subiaco in no less than 10 point font size; and
 - b. in an appropriate place on the website of the City of Subiaco in no less than 10 point font size; and
 - c. in the next occurring issue of any City of Subiaco public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

PUBLIC APOLOGY BY MAYOR PENNY TAYLOR

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 made certain negative comments that were published in an article in the West Australian regarding a Petition to change the method of voting for Mayor of the City.

The Panel found that I breached regulation 7(1)(b) of the said Regulations three times as either:

- i. the comments were inaccurate and misleading as to the nature of the Petition;
- ii. the comments were not made in good faith; or
- iii. it was not made clear that I was speaking personally rather than as a spokesperson for the City.

I accept that I should not have made such comments regarding the nature of the Petition and the parties co-ordinating the Petition.

I now apologise all parties who may have been offended by my comments, my fellow Councillors and the public.”



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 of business or principal office in the State."