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## Local Government Standards Panel

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Complaint Number	SP 2021-022
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Rachael Pemberton</b>
<b>Respondent</b>	<b>Councillor Marija Vujcic</b>
Local Government	<b>City of Fremantle</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mrs Emma Power (Presiding Member) Cr Peter Rogers (Member) Mr Gordon MacMile (Member)
Heard	25 March 2021 Determined on the documents
Finding	1 x Breach of Regulation 7(1)(b)

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### FINDING AND REASONS FOR FINDING

Delivered 30 April 2021

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#### 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 25 March 2021, the Panel found that Councillor Marija Vujcic, a councillor of the City of Fremantle (**"the City"**) did 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 publicly named the Complainant as one of the parties who gave permission for an event for homeless persons that led to the formation of "Tent City" in Pioneer Park 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.<sup>1</sup>
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.<sup>2</sup>
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
  - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate<sup>3</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>4</sup>.
7. The Panel does not possess investigative or supervisory powers.<sup>5</sup> The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia<sup>6</sup>.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

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

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

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

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

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

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



### Jurisdiction and Procedural Fairness

11. On 3 February 2021 the Panel received a complaint from Mr Charlie Clarke acting as complaints officer of the City (**"the Complaints Officer"**). The same enclosed a Complaint of Minor Breach Form dated 3 February 2021.
12. In the complaint form, the Complainant alleges that Cr Vujcich has breached regulation 7 of the Regulations, when on 27 January 2021, she posted a Facebook Post which named the Complainant as one of the people who gave permission for an event for homeless persons that led to the formation of "Tent City" in Pioneer Park as set out in paragraph 15 (**"the Complaint"**).
13. The Panel convened on 25 March 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, Cr Vujcich was:
    - i. elected to the Council of the City in October 2019 for a term expiring in October 2023;
    - ii. a Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 25 March 2021;
  - b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>7</sup>;
  - 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 breach<sup>8</sup>;
  - d. was satisfied the Department had provided procedural fairness to Cr Vujcich; and
  - e. found it had jurisdiction to consider the Complaint.

### The Specifics of the Complaint

15. The Complainant provided the following comments and arguments in respect to the Complaint:
  - a. On 27 January 2021, Cr Vujcich posted a post to Facebook using her "Marija South Ward" account which included the following text:

*" My motion for an immediate independent investigation to be undertaken by the city to examine the root causes of the Pioneer Park Tent City incident was sent to a committee to be convened whenever.*

*This is the Mayor's response to the systematic failures of the Council's own procedures and governance that resulted in the incident.*

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

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



*The Mayor did not want it aired in the chamber on his last Council meeting. He has often shown good will to others in the chamber on many issues. But this evening he showed me that if surnames were a currency; a Vujcic was worth less, not because of my ethnic origins but because I stood up and asked for a fair go in the representation of the ratepayers and residents of this City.*

*So this evening I humbly report to you the words that may have empowered other elected members to support you the ratepayers and residents Fremantle in calling for an investigation.*

*Reasons why it was reasonable to ask for an investigation on your behalf.*

*"I left for the Christmas and New Year break confident that the most vulnerable in our City were in good hands. St Pat's and the Red Cross together with a few smaller not-for-profit groups provided a full food, meals, and hygiene service during the break.*

*After Boxing Day, I had received calls from constituents giving feedback on a camp at Pioneer Park and asking questions around the issue of approvals.*

*On the 30th of December 2020, I sent an email to the CEO asking who approved the event at Pioneer Park. The response was that the City did not give approval.*

*I was surprised that the City gave no approvals, so I followed up with an email on the 1 January asking for an investigation.*

*I was worried that the event now known as Tent City was a much bigger issue for the City to handle.*

*The situation was serious enough to call an urgent meeting of elected members and on the 7th of January I asked for an urgent meeting of the Council.*

*In response to my request, an informal elected members meeting was convened on the 11th of January to discuss Tent City.*

*At the meeting, I asked "how did we get here?" to establish who authorised the event.*

*However, there was no appetite in the meeting to unpack the question of approval.*

*There followed what I understood verbal approvals given by the Mayor and Councillor Pemberton for a Boxing Day event.*

*At an informal elected member meeting held on the 18th January, there was assurance given that the CEO was working with all major stakeholders to resolve the accommodation issues and that this would take another 2 weeks to resolve. The word "compassion" was the key guideline in finding solutions.*

*On the 22 January 2021 the WA Government stepped in and took control of the park when Lands Minister Ben Wyatt signed a revocation order under the Land Administration Act to remove the City of Fremantle as the management body for the park.*

*The WA Government in a statement said, "In light of the City of Fremantle's failure to withdraw their consent to the occupancy of Pioneer Park in a reasonable timeframe, the State Government has taken the necessary*

*action to protect the community,” The state government had the view that consent was given by the City.*

*For the state government to publicly say that we failed and that they had to step in to protect the community it a poor outcome for this Council.*

*How did we get here?*

*Our Events Application Pack 2019/2020 goes to great lengths to explain the compliance requirements of holding an event.*

*There is no record, to my knowledge, that any paperwork was filled in by Freo Street Kitchen.*

*Why was this mandatory compliance not actioned? Our Risk Management Policy states:*

*“ The City has low to no tolerance for exposing the City to: financial risk, but may extend this tolerance for specific projects; risks associated with economic development; risks inhibiting the promotion and fostering of the City’s cultural vibrancy.*

*The City has no tolerance for risks to community and staff safety and for deliberate breaches of laws, regulations, and professional standards”.*

*Why was this policy not actioned?*

*The City’s Code of Conduct, Section 5 states:*

*An elected member or committee member must not –*

- (a) in his or her position, confer improperly on or secure improperly for himself or herself, or any other person or body, an advantage or disadvantage*
- (b) in his or her position, seek to improperly influence other elected members, committee members or employees in the performance of their duties or function for the purpose of gaining advantage or disadvantage for himself or herself or for any other person or body*
- (c) when using or authorising the use of others of the resources of the local government, misuse or permit their misuse by any other person or body nor*
- (d) improperly use resources of the local government for electioneering purposes”.*

*Why was this Code of Conduct not actioned?*

*The systematic failures of governance in this incident are catastrophic and in any other company a full investigation would have resulted immediately to determine the root cause, not to punish in the first instance, but to ensure that this does not happen again.*

*Blaming the state government for a lack of social housing in this instance is not helpful nor a mature approach to continuous improvement.*

*There are individual crimes connected to Tent City which highlights why activist organisers, supportive elected members and volunteers should not be setting up camps for vulnerable people especially during an election.*

*The Homeless issue is a complex one that requires trained and experienced service providers. The ratepayers and residents and our business*



*community are hugely generous and tolerant, and this was evident even during periods of violence and anti-social behaviour that split into the City.*

*For the record.*

*There is no blame apportioned to Jesse Noakes nor the Freo Street Kitchen organisers. Jesse is an activist who believes in his cause and is prepared to lobby on behalf of the vulnerable in our society. Our democracy is all the better for the challenge.*

*However, I do not support breaking the law because the ends do not justify the means.*

*In respect to Tent City, had our senior leadership and gatekeepers exercised good governance through compliance, Jesse may well have chosen a different strategy which may have produced better results”.*

*My dear ratepayers and residents, thank you for listening and your feedback, as always, is welcome.”*

**(“the Post”)**

- b. The Fremantle Herald also published a story “Who knew what” on page 5 of the edition published on 29 January 2021 (dated 30 January 2021) (**“the Article”**) the final paragraph of which reads:

*“ Cr Vujcic claims at an informal elected members meeting she recalls an acknowledgement Dr Pettitt and Cr Pemberton approved for the soup kitchen.”*

**(“the Article Comment”)**

- c. After reading the Article, the Complainant wrote an email to all Elected Members and senior staff (who may have been at said meeting) asking if anyone else at the meeting could recollect such an acknowledgement being made.
- d. Five councillors responded stating they did not believe such a comment had been made.
- e. The Complainant did not receive a response from Cr Vujcic, so on 1 February 2021 she sent the following email:

*“ Hello Marija*

*I hope you are coping with these challenging times and managed to have a good weekend prior to the lockdown.*

*I would like to once again request that you send a correction to Steve Grant at the Herald regarding the statement about Brad and I approving the boxing day kitchen.*

*This news story has had unintended consequences, and the record needs to be set straight. Given no-one else at the meeting heard such an acknowledgement, it was obviously an error or misunderstanding.*

*I have cc'd the Acting Mayor and CEO for transparency and a record of my request.*

*Kind regards,*

*Rachel Pemberton”*



- f. Cr Vujcic's response was as follows:

*"Thank you Rachel. It is my understanding that a verbal approval was given from your response to the question "how did we get here".*

*Thanks*

*Marija Vujcic"*
  - g. The Complainant then replied as follows:

*"You are incorrect - I have no power, ability or inclination to give such an approval.*

*this is a misunderstanding on your part*

*Rachel Pemberton"*
  - h. On Sunday 31 January 2021, the Complainant had her employment terminated in relation to the Tent City matter.
  - i. Widespread damage has been done to the Complainant's professional reputation and the Complainant has also suffered loss of income due to the persistent rumours and lies being spread about the supposed approval of Tent City.
  - j. Cr Vujcic is perpetuating these lies in her official role as a councillor. She has made a false statement about what was discussed in a closed meeting, and no other person at that meeting will corroborate her statement.
  - k. Since then, there have been numerous posts, comments and accusations about the Complainant on social media.
  - l. On Wednesday 3 February, Cr Vujcic sent the Complainant an email that read:

*"Hi Rachel*

*I consider your post on the South Fremantle Precinct Facebook page to be defamatory and actionable. If it is not removed by 12.00noon today I will proceed with legal advice to take the matter further.*

*Thanks Marija*
  - m. The Complainant said she would take her comments down, if Cr Vujcic removed hers, but she refused, and again threatened the Complainant with legal action.
  - n. The Complainant now feels persecuted and harassed by Cr Vujcic, she has lost her job and is being bullied and harassed members of the public due to her Cr Vujcic's incorrect assertion.
  - o. The Complainant would simply like the record set straight and for Cr Vujcic to understand that this conduct is not acceptable.
16. The Complainant provided the following additional documentation:
- a. screen shot of portion of the Post; and
  - b. screen shots of comments by the public in respect to the Complaint.





## The Respondent's Response

17. Despite being asked by the Department, Cr Vujcic did not provide any response to the Complaint.

## Panel's Consideration

### Regulation 7

18. 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.*
19. It is not alleged that Cr Vujcic sought any advantage for any party, so the Panel has only considered regulation 7(1)(b) in this Complaint.
20. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied that it is more likely than not that:
- a. Cr Vujcic was an elected member at the time of the alleged breach and the time of the determination;
  - b. Cr Vujcic made use of her office as Council member of the City;
  - c. when viewed objectively, such use was an improper use of Cr Vujcic'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. Cr Vujcic engaged in the conduct in the belief that detriment would be suffered by another person.

### Regulation 7

#### Cr Vujcic was an Elected Member at the relevant times

21. Cr Vujcic was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.





22. This element is met.

Cr Vujcic made use of her office as Council Member of the City

23. Due to the facts that the Post:

- a. was posted using Cr Vujcic's Facebook account entitled "Marija South Ward";
- b. referred to "My dear ratepayers and residents"; and
- c. discussed matters relating to a meeting and the City that were within Cr Vujcic's knowledge due to her position as a councillor,

the Panel finds that it is more likely than not that Cr Vujcic was acting in her capacity as an elected member made use of her office as a council member when making the Post.

24. This element is met.

Cr Vujcic's use was improper

25. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom<sup>9</sup>. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.
26. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent<sup>10</sup>.
27. 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.
28. At the time of the conduct, the City had a *Council Members, Committee Members and Candidates Code of Conduct 2018 ("the Code")* which sets out certain expectations in respect to the conduct of Councillors to be read in conjunctions with the Regulations. The relevant sections of the Code are as below:

***"1. Principles of Behaviour***

*The General principles to guide the behaviour of council members are set out in Regulation 3 of the Local Government (Rules of Conduct) Regulations.*

*Elected and Committee Members are encouraged to:*

- *act with reasonable care and diligence; and*
- *act with honesty and integrity; and*
- *act lawfully; and*
- *avoid damage to the reputation of the local government; and*
- *be open and accountable to the public; and*
- *base decisions on relevant and factually correct information; and*

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<sup>9</sup> Complaint of Minor Breach No. SP 3 of 2013

<sup>10</sup> *Chew v R* [1992] HCA 18



- *treat others with respect and fairness; and*
  - *not be impaired by mind affecting substances.”*
29. The Code and regulation 3 of the Regulations provide a framework for consideration of the expected standards of behaviour of elected members and as to whether certain conduct can be viewed as “improper”.
30. The Complainant has alleged that:
- a. Cr Vujcic’s comments in the Post falsely blamed the Complaint for giving permission for an event for homeless persons that took place at Tent City in Pioneer Park and that such action resulted in significant damage to the Complainant’s reputation and employment; and
  - b. further, once Cr Vujcic was advised the same was incorrect, she refused to remove or alter the Post.
31. The Post is a discussion regarding Tent City established in late December 2020 located at Fremantle Pioneer Park. Tent City purportedly grew up around an event held by a charitable group called “Freo Street Kitchen” on Boxing Day 2020 to feed the homeless in the area (**“the Boxing Day Event”**). This then resulted in a large number of homeless persons residing in the area in a number of tents over an extended period of time.
32. Tent City was the subject of extensive and negative media attention, particularly following criminal activity allegedly occurring. Tent City was eventually closed and the temporary residents forcibly evicted by the State Government.
33. The Panel notes the following particular comments in the Post:
- a. *“There followed what I understood verbal approvals given by the Mayor and Councillor Pemberton for a Boxing Day event.” (**“the First Comment”**);*
  - b. *“Why was this mandatory compliance not actioned? Our Risk Management Policy states:*  
  
*.....*  
*Why was this policy not actioned?”*  
*(**“the Second Comment”**);*
  - c. *“The City’s Code of Conduct, Section 5 states:*  
  
*An elected member or committee member must not –*  
  
*.....*  
*(c) when using or authorising the use of others of the resources of the local government, misuse or permit their misuse by any other person or body nor*  
  
*.....*  
*Why was this Code of Conduct not actioned?”*  
*(**“the Third Comment”**);*
  - d. *“The systematic failures of governance in this incident are catastrophic and in any other company a full investigation would have resulted immediately to*

*determine the root cause, not to punish in the first instance, but to ensure that this does not happen again.” (“the Fourth Comment”);*

- e. *“In respect to Tent City, had our senior leadership and gatekeepers exercised good governance through compliance, Jesse may well have chosen a different strategy which may have produced better results”. (“the Fifth Comment”).*
34. Although the Post is substantially concerned with calling for an investigation into the Tent City issues, the Post specifically names the Complainant as a person that approved the Boxing Day Event. This is categorically denied by the Complainant.
  35. The Panel considers that use of the words *“There followed what I understood”* indicates that Cr Vujcic was not entirely confident that Mayor and Councillor Pemberton did, in fact, confirm that they had authorised the Boxing Day Event.
  36. The Second Comment and Third Comment, when read after the First Comment, also clearly intend to imply that the Complainant (and the Mayor) had not complied with either the City’s Risk Management Policy or the City’s Code of Conduct.
  37. Further, certain comments (the Fourth Comment and the Fifth Comment) disparage the parties involved and call into question their integrity and capability to perform their position.
  38. As the Mayor and the Complainant are the only specific parties named in the Post it would be reasonable for a member of the public reading the same to conclude that those parties were particularly responsible for the “failures” referred to in the Fourth Comment.
  39. In addition to those individuals named, the Fourth Comment is more widely critical of the administration of the City (by referring to “governance” issues) and therefore, the comment had the prospect of damaging the reputation of the local government in breach of the Code and the Regulations.
  40. There are three fundamental issues with Cr Vujcic naming the Complainant and implying that her actions were in breach of Council’s Code and Policy.
  41. Firstly, if Cr Vujcic was not, in fact, certain that that information was correct then she is in breach of section 1 of the Code and regulation 3 of the Regulations to:
    - a. *“act with reasonable care and diligence”*; and
    - b. *“act with honesty and integrity”*,by failing to ensure that she only published material she was certain was factually correct.
  42. Second, the Post also strongly implies that any consent to the Boxing Day Event was to blame for the entire Tent City outcome. It is misleading and unreasonable to imply that the sole action of giving (or failing to give) consent to the Boxing Day Event (which was intended to be solely provision of food) would necessarily cause Tent City to be established and continued. To make such a misleading implication is not acting in good faith and similarly in breach of section 1 of the Code and regulation 3 of the Regulations.
  43. Thirdly, if Cr Vujcic was genuinely calling for a formal investigation, making a pre-emptive accusation of breach of the Code and Policy as well as an allegation of

governance failures could be considered to be in breach of section 1 of the Code and regulation 3 of the Regulations to:

- a. *“act with honesty and integrity”*;
  - b. *“treat others with respect and fairness”*; and
  - c. *“avoid damage to the reputation of the local government”*.
44. Give the above, the Panel finds it is more likely than not that making the comments in the Post was improper as such conduct:
- a. was in breach of the Code and regulation 3 of the Regulations;
  - b. was 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 deserving of a penalty.
45. This element is met.

Cr Vujcic intended detriment to be suffered by another person

46. “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.
47. It is not necessary to find whether any detriment was actually suffered<sup>11</sup>, but an intent to cause such detriment must be established.
48. In this case the Complainant asserts that she lost her employment due to the accusations made by Cr Vujcic. However, the Panel does not find it is reasonable for Cr Vujcic to have wanted, or anticipated, such a serious result.
49. Despite this finding, the Post is extremely accusatory and is a clear attempt to place responsibility/blame for an incident that was highly embarrassing to the City. Further, the Post is derogatory towards the integrity and ability of not only the Mayor and the Complainant, but also City staff in general.
50. The Panel finds to the required standard that the Post was an attempt to blame and embarrass the Mayor and the Complaint for the role they had (if any) in the Tent City incident and, further, made for the purpose to denigrate the integrity and capability of any other parties Cr Vujcic considered to be a fault for governance “failures”.
51. As such, the Panel finds, to the required standard that Cr Vujcic did intend to cause a detriment to the Complainant, the Mayor and the staff of the City when making the Post.
52. This element is met.

Conclusion

53. Given the above, the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met.

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<sup>11</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



### **Panel's Findings**

54. Cr Vujcic did commit a breach of Regulation 7 of the Regulations and therefore did commit a minor breach.

A handwritten signature in black ink, appearing to read 'E Power'.

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Emma Power (Member)

A handwritten signature in black ink, appearing to read 'P Rogers'.

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Peter Rogers (Member)

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

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Gordon MacMile (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	SP 2021-022
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Rachael Pemberton</b>
<b>Respondent</b>	<b>Councillor Marija Vujcic</b>
Local Government	<b>City of Fremantle</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for	Mrs Emma Power (Presiding Member)
Penalty Consideration	Cr Peter Rogers (Member) Mr Gordon MacMile (Member)
Heard	25 March 2021 Determined on the documents
Penalty Considered	10 June 2021
Outcome	Public Apology

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### DECISION AND REASONS FOR DECISION

Delivered 26 July 2021

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#### DEFAMATION CAUTION

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## Introduction

1. At its meeting on 25 March 2021, the Panel found that Councillor Marija Vujcic, Mayor for the City of Fremantle (“the City”), committed one minor breach 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 publicly named the Complainant as one of the parties who gave permission for an event for homeless persons that led to the formation of “Tent City” in Pioneer Park (“**the Minor Breach**”).

## Jurisdiction and Law

2. The Panel convened on 10 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 Cr Vujcic 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).<sup>1</sup>
5. By a letter dated 4 May 2021, Cr Vujcic 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*

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<sup>1</sup> *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).*

### **Councillor Vujcic's Submissions**

7. By an email dated 17 May 2021, the Department received a response from Cr Vujcic.
8. Cr Vujcic asserts that she did provide a response to the initial complaint, however, the same was not received by the Department.
9. In her response Cr Vujcic has addressed various aspects of the Complaint. However, the Panel does not have the power to re-evaluate the Complaint at this stage, only to consider penalty.
10. Despite this, the Panel notes that there is nothing in Cr Vujcic's response that would lead the Panel to make a different decision as to the Complaint.
11. Cr Vujcic provided the following comments and arguments as to penalty as summarised by the Panel:
  - a. There should be no penalty to be apportioned to Cr Vujcic in relation to this breach.
  - b. It is Cr Vujcic's duty as an elected member to represent the ratepayers and residents of the City and to provide feedback on issues that are of interest to the community.
  - c. The incident of Tent City was an important issue to the community.
  - d. Regulation 7 does relate to, nor prohibit:
    - i. A councillor of informing ratepayers and residents on issues using Facebook;
    - ii. A councillor making notes of an informal meeting convened to discuss the incident known as Pioneer Park Tent City;
    - iii. An unidentified breach of an unknown provision of the Fremantle Council Code of Conduct; or
    - iv. Comments which are perceived by the Complainant as "defaming" her; or
    - v. A councillor making reference to meeting notes or to articles that are already in the public domain but disliked by the Complainant.
  - e. Cr Pemberton's Complaint is misconceived because Cr Pemberton did not provide any evidence which supports any personal advantage nor a caused detriment to the local government or any other person by the Facebook Post.
  - f. The Facebook post was not improper because Cr Vujcic was informing the ratepayers and residents of information which is in the public interest.
  - g. Cr Pemberton's involvement with the Freo Street Kitchen and the verbal approaches are well documented in Streetwise Media publication.

- h. Given that there was no paperwork provided by Freo Street Kitchen, it was Cr Vujcic's understanding that the statement made by Cr Pemberton was a verbal approval. The Mayor and CEO provided similar statements.
- i. Therefore, it was reasonable for Cr Vujcic to conclude; "*There followed what I understood verbal approvals given by the Mayor and Councillor Pemberton for a Boxing Day event*".
- j. Cr Pemberton refers to her employment situation. Apart from Cr Pemberton's statement, there is no proof that the termination of her employment contract is a direct consequence of Tent City.
- k. Although this action is regrettable, Cr Vujcic is not responsible for the actions of Cr Pemberton's employer.
- l. As to the widespread loss of professional reputation, Cr Vujcic is not responsible for this situation.
- m. Cr Vujcic has not deliberately caused Cr Pemberton any detriment which would be supported by Regulation 7.1(b). As an elected member Cr Vujcic represented the ratepayers and residents of Fremantle and provided information which was in the public interest in a fair and reasonable manner. The information was already in the public forum.
- n. Consequently, the Standards Panel is required to either:
  - i. make a finding that the breach alleged in the complaint did not occur;
  - ii. or refuse to deal with the complaint after being satisfied that the complaint is frivolous, trivial, vexatious, misconceived or without substance.

### Panel's Consideration

- 12. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
- 13. The Panel may order under section 5.110(6)(a), that no sanction be imposed complaint 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.
- 14. 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 seriousness<sup>2</sup>.
15. The Panel had read Cr Vujcic's response and notes that she holds a fundamental misunderstanding as to the interrelation of a councillor's obligation to represent her community under the Act and regulation 7 of the Regulations.
16. Regulation 7 is not intended to prevent a councillor from informing ratepayers and residents on issues, however, it does regulate the manner in which a councillor may pass on such information.
17. In this case, Cr Vujcic claims she based her assertion on the basis of a media article and her notes of an informal meeting. The Panel found in its determination that to do so was not acting with reasonable care and due diligence as such information was not accurate.
18. Cr Vujcic was expressly told her understanding of the statement was incorrect and Cr Vujcic refused to remove the relevant parts of the incorrect Post.
19. As a sitting Councillor, Cr Vujcic should have been aware that it is not possible for Council to give "permission" to hold an event by the verbal say-so of one or two council members. Further, a mere statement that a person "*didn't see why an event should not go ahead*" cannot be reasonably characterised as a formal consent. It is an expression of an opinion or stance.
20. Cr Vujcic also confirms she was aware that Cr Pemberton had arranged meetings with the City and the organiser of the event. This indicates that Cr Pemberton did not give approval but forwarded the matter to the City Administration as was appropriate.
21. In addition to the above, it is not required for a party to show that a detriment has occurred, only that the actions of the party were *intended to cause a detriment*. The Panel does not assert that Cr Vujcic is responsible for the termination of Cr Pemberton's employment.
22. The Panel found that the Facebook Post was extremely accusatory and was a clear attempt to place responsibility/blame for an incident that was highly embarrassing to the City. Further, the Post was derogatory in respect to the integrity and ability of not only the Mayor and the Complainant, but also City staff in general.
23. In these circumstances, the Panel considers that the appropriate sanction is that Cr Vujcic make a public apology.
24. The public nature of any apology given by a councillor under the Act is appropriate as a councillor's office is public in nature.
25. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing<sup>3</sup>. It is a suitable and appropriate penalty when a councillor's conduct:
  - a. adversely affects particular individuals<sup>4</sup>; and/or
  - b. does not meet the standards other councillors seek to uphold.
26. 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

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

<sup>3</sup> Treby and Local Government Standards Panel [2010] WASAT 81 (Pritchard J).

<sup>4</sup> Treby and Local Government Standards Panel [2010] WASAT 81 [127] (Pritchard J).



with Schedule 5.1 clause 9 of the Act that Cr Vujcic recoup to the City the costs of the Department incurred with respect to the Complaint.

### **Panel's decision**

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

### **Signing**

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Emma Power (Presiding Member)

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Peter Rogers (Member)

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Gordon MacMile (Deputy Member)



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## ORDER

Delivered 26 July 2021

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### 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. Councillor Marija Vujcic, a councillor for the City of Fremantle **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 Fremantle first occurring after the expiration of **28 days** from the date of service of this Order on her, Councillor Vujcic 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 publicly named then Mayor Pettit and Councillor Pemberton as the parties who gave permission for an event for homeless persons that led to the formation of "Tent City" in Pioneer Park.
- ii. The Panel found that I breached regulation 7(1)(b) of the said Regulations as I did not have a reasonable basis for such assertion and the comment was made to detriment Dr Pettit and Cr Pemberton.
- iii. I accept that I should not have made such accusation in public prior to an investigation being undertaken.



iv. I now apologise to Dr Pettit, Councillor Pemberton, my fellow Councillors, the City and the public.”

3. If Councillor Vujcic 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 Fremantle shall arrange for the notice of public apology to be published:
- on the Facebook Page of the City of Fremantle in no less than 10 point font size; and
  - in an appropriate place on the website of the City of Fremantle in no less than 10 point font size; and
  - in the next occurring issue of any City of Fremantle public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

**PUBLIC APOLOGY BY COUNCILLOR MARIJA VUJCIC**

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 publicly named the then Mayor, Dr Pettit, and Councillor Pemberton as the parties who gave permission for an event for homeless persons that led to the formation of “Tent City” in Pioneer Park.

The Panel found that I breached regulation 7(1)(b) of the said Regulations as I did not have a reasonable basis for such assertion and the comment was made to detriment Dr Pettit and Cr Pemberton.

I accept that I should not have made such accusation in public prior to an investigation being undertaken.

I apologise to Dr Pettit, Councillor Pemberton, my fellow Councillors, the City 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."