

INTERNAL ARBITRATION PROCESS

In the matter of an Application by Councillor Mike Bodsworth concerning Councillor Paul Barker

HEARING PURSUANT TO PART 6 OF THE *LOCAL GOVERNMENT ACT 2020*

Applicant: Cr Mike Bodsworth

Respondent: Cr Paul Barker

Date of hearing: 17 July 2025

Hearing location: Surf Coast Shire Council offices

Arbiter: Diana Price

Date of decision: 17 September 2025

FINDINGS & DETERMINATIONS

By way of findings and sanctions, the Arbiter orders as follows. The Respondent:

1. engaged in misconduct; and
2. is suspended from office for one (1) month commencing the day after the meeting of Council at which this decision is tabled.

STATEMENT OF REASONS FOR DECISION

The Application

1. By application dated 28 March 2025, Councillor and Mayor Mike Bodsworth sought a finding of misconduct against Councillor Paul Barker pursuant to s 143 of the *Local Government Act 2020* (the **Act**) (the **Application**). Both the Applicant and Respondent are serving Councillors at Surf Coast Shire Council (the **Council**).

2. The Application contains two allegations:
 - a. On or about 30 January 2025 Cr Barker engaged in misconduct in relation to a Facebook post in which he disputed Council estimates of the number of people attending the Pilk Purriyn event on 26 January 2025; and
 - b. On or about 25 February 2025 Cr Barker engaged in misconduct in respect of comments made at a meeting of Council and in an email sent to the media.

Procedural history and evidence at hearing

3. The Application was accompanied by a number of attachments, including the relevant Facebook posts, concerns raised by members of the community, complaints made by other Councillors as well as other documents.
4. The matter was listed for a directions hearing on 13 May 2025. At this directions hearing a timetable was set for the filing of any further materials.
5. Cr Bodsworth did not file any further materials, relying instead on those which accompanied the Application. Cr Barker filed submissions, a statement of Cr Joel Grist as well as Cr Grist's emails with Council regarding the number of people who attended Pilk Purriyn.
6. Both parties attended in person at the final hearing on 17 July 2025. No witnesses were called at the hearing, however both parties engaged meaningfully in the hearing and made helpful oral submissions.

Allegation 1 – the Facebook post of 30 January 2025

7. Allegation 1 relates to a Facebook post made on or about 30 January 2025, and subsequent edits and comments made by Cr Barker to that original post (together, the **Facebook post**). The Facebook post related to Council's estimate of the number of people who attended Pilk Purriyn on 26 January 2025, which is a truth telling event presented by the Wadawurrung Traditional Owners Corporation
8. Pilk Purriyn was held at sunrise at 5.30am. It included a Welcome to Country ceremony, a Smoking Ceremony, various speakers and Cultural dance and song. Council provided in-kind support, such as logistical support and council staff to assist at the event, but did not provide monetary funding. On the same day, the Council issued a media release which included a photograph of the

event taken some time after the sun had risen. The media release stated, in part:

Truth-telling journey continues as thousands gather for Pilk Purriyn

Around 2,500 people gathered on Wadawurrung Country at Cosy Corner Torquay today, 26 January, as the sun rose at Warn Dja – Sea Country.

Wadawurrung Traditional Owners shared testimonies and reflections seeking to deepen understanding of the stories of the past, and knowledge of Wadawurrung People and Country.

Wadawurrung Traditional Owners Aboriginal Corporation hosted the event for a third time with the support of Surf Coast Shire Council and Great Ocean Road Coast and Parks Authority, providing opportunity for members of all communities to gather and deeply listen at this free event...

9. On 30 January 2025, Cr Barker made the Facebook post to a Surf Coast community page. This page had been set up some time prior by a member of the community. It was not an official Council Facebook page and was unmoderated. The Facebook account used by Cr Barker was created by him for Council related purposes. His name appears as 'Cr Paul Barker, Libertarian, Surf Coast Shire Council'. The post contained the above media release and stated:

What do you think the numbers are? Count for yourself and let me know. My count in the comments.

EDIT: It's clear some people don't understand the importance of the truth. The media release put out by Council sets official numbers. These numbers are then used to justify the spending of your rates on this event in the future. My concern is that if Council is not being honest with these numbers, can you trust them to be honest in other areas?

10. The post prompted many comments by other Facebook users. Some of these comments were favourable towards Cr Barker, but the majority were highly critical of him and the Facebook post. Cr Barker responded to some of these comments. For example:
 - a. A community member posted 'You want us to count how many people attended? You right mate?', to which Cr Barker replied, 'only if you care about the honesty of the communications the council puts out'.

- b. Another community member asked, 'What exactly is the point of this post?', to which Cr Barker replied 'truth. Do you not care about the truth?'.
 - c. A person posted 'When you are working with an organisation it is good practice to air your concerns privately with that organisation', to which Cr Barker replied 'that's been done. There has been no revision of official numbers'.
11. In addition to the above comments, Cr Barker also posted in the comment section a seven minute video of himself counting the number of people he could see in the photograph accompanying the media release. At some point he added in the 'EDIT' portion of the post.
 12. There is no dispute between the parties that Cr Barker made the Facebook post referred to above. Nor is it in dispute that the attendance estimate contained in the media release was based upon information provided by a private event management company and from Council staff who assisted at the event. What is in dispute is whether the making of these posts constituted misconduct, being a breach of the Model Councillor Code of Conduct (the **Code**).

The Applicant's submissions

13. Cr Bodsworth's primary submission was that the Facebook post contravened Standard 4 of the Code, which provides a 'Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government'. The standard also includes some examples, such as that Councillors must ensure their behaviour does not bring discredit upon the Council.
14. Cr Bodsworth submitted that the Facebook post suggested that the Council was deliberately dishonest in estimating how many people attended Pilk Purriyn or was mistaken or incompetent in reaching that estimate. He said that the Facebook post was accusatory in tone, would inevitably undermine the public's trust and confidence in the integrity of local government, and brought discredit upon the Council. He submitted that while it is important for all Councillors to question the operation of Council, Cr Barker sought to spread unwarranted distrust.
15. Cr Bodsworth also submitted that the Facebook post contravened Standard 2, which requires Councillors to treat others, including Council staff members, with dignity, fairness, objectivity, courtesy and respect. He submitted that the attendance estimates were provided in good faith by people who actually

attended the event for its entire duration, and to challenge their estimation based on the number of people Cr Barker could see in a photograph taken later in the day was disrespectful and unfair to the Council staff who made the estimate. He said that the conduct also reflected on all Councillors and the Council as a whole and was disrespectful of those members of the public who attended or supported the event.

16. Cr Bodsworth also referred to one of the included examples in Standard 2, which requires Councillors to support the Council when applying the Council's community engagement policy to develop respectful relationships and partnerships with Traditional Owners, Aboriginal community controlled organisations, and the Aboriginal community. He submitted that Cr Barker's Facebook post was disrespectful to local traditional owners by implying that Pilk Purriyn was not worthy of support. Cr Bodsworth said that the event is highly regarded and has a significant positive impact.

The Respondent's submissions

17. In submissions Cr Barker sought to provide context to the Facebook post. Cr Barker provided a statement of Cr Grist. Cr Grist had queried the estimated number of people attending Pilk Purriyn with Council staff by email. For example, on 30 January 2025 Cr Grist received an email from a member of staff indicating that the media release had provided the best estimate of the number of people in attendance. On the same day Cr Grist discussed his dissatisfaction with Cr Barker. It was the conversation between Cr Grist and Cr Barker which prompted him to make the Facebook post and provided a reason as to why Cr Barker did not approach the Council himself to discuss the issue.
18. Cr Barker made extensive submissions maintaining his view that the Council's estimate of the number of people attending Pilk Purriyn was incorrect and stated that airing his opinion on Facebook is a protected political communication. As to whether the Facebook post contravened Standard 4, he submitted that the comments made by the public about his post do not evidence any loss in faith in the Council, and that his efforts to achieve transparency in fact increase public confidence in the Council as an institution.
19. In respect of Standard 2, Cr Barker stated that he treats all people equally, and does not treat anyone differently due to their gender, racial background or political leanings. Cr Barker submitted that he supports improved relationships between all peoples but does not see current approaches to reconciliation as effective. Further, he submitted that he did not seek to single out, harass or denigrate any particular individual Council employee who made the relevant attendance estimation. In any event, he said that any person employed by

Council needs to be robust enough to accept criticism. Cr Barker further submitted that if a representation is made on behalf of the Council that is not 100% true, that causes the loss of public trust and reduced confidence in the organisation.

Analysis

20. I have considered all arguments raised by the parties, both orally and in writing, including those not summarised in this decision.
21. Although Cr Barker did not himself attend Pilk Purriyn, he is entitled to disagree with the attendance estimate provide by Council. It was a free event, occurring in a public park with multiple access points. It started in the dark at 5.30am and continued until after sunrise. How many people attended could never be ascertained with certainty and estimates made in good faith may differ. Cr Barker was therefore entitled to share his views about whether the Council estimate was accurate or not. However, that is not a complete answer to the issues raised in the Application.
22. Standard 4 provides that Councillors have a duty to exercise reasonable care to avoid actions which may diminish the public's trust and confidence in the integrity of local government. This includes ensuring that their behaviour does not bring discredit upon the Council. Cr Barker took a discrete issue, being whether a crowd attendance estimate was accurate or not, and used it as a springboard to make very broad and serious allegations about the Council. He stated that the Council did not understand the importance of the truth and pointedly asked whether it could be trusted to be honest in other areas.
23. This was an attempt to sow distrust in the Council. It was unwarranted and inappropriate. His conduct falls wells short of what is reasonably expected of a Councillor. Cr Barker failed to exercise reasonable care not to diminish public trust and confidence in the Council and brought discredit upon the Council.
24. As indicated above, it was Cr Bodsworth's primary submission that the conduct breached Standard 4. Having made that finding it is unnecessary for me to decide whether the Facebook post contravened Standard 2, which requires Councillors to treat council staff with dignity, fairness, courtesy and respect. I do however note there is no evidence before me that the estimation provided by the Council staff who attended Pilk Purriyn was anything other than made in good faith. It is also unnecessary for me to decide whether Cr Barker failed to support the Council to develop respectful relationships and partnerships with Traditional Owners. While the Facebook post contains an implication that Pilk Purriyn should not be supported by the Council in the future, the express

purpose of the Facebook post was to criticise the Council rather than Pilk Purriyn or Traditional Owners.

Allegation Two – the Council meeting and email of 25 February 2025

25. The second allegation relates to statements made by Cr Barker at a Council meeting, and an email sent by him shortly thereafter to the media. On 25 February 2025 a Council meeting took place. The agenda included discussion of a petition for Council to resume funding of Australia Day activities and to conduct citizenship ceremonies on 26 January each year. A second petition was also tabled, albeit late, to maintain the status quo that Council does not fund Australia Day activities nor conduct citizenship ceremonies on 26 January.
26. During the meeting Cr Barker objected to consideration of the second petition because it was submitted after the usual date prescribed by the governance rules. He said:

If you want to know why the community trust in the organisation is deteriorating, it's because of this and many other actions that show me that the organisation treats the community with contempt. By having inconsistent application of rules, it sets this foundation. It seldom learns from its mistakes, rarely can be questioned, and I see more and more examples of conflicts of interest and political bias of people within the organisation.

27. Ultimately the Council resolved to consider both petitions as the governance rules permitted the receipt of petitions filed after the usual submission deadline. The meeting was attended by members of the public and was described as being highly charged.
28. Later that evening at 10.27pm Cr Barker wrote an email to his fellow Councillors, a journalist at news.com.au and a journalist from the Geelong Independent newspaper as follows:

The behaviour of attendees and the lack of control of poor behaviour was unacceptable tonight.

I'd like to know what sort of review will occur to ensure it doesn't happen again.

The respective submissions

29. Cr Bodsworth submitted that Cr Barker ought to have raised any concerns about the conduct of the meeting at the Council level, instead of immediately

contacting the media. He stated that the email was critical of him as Mayor and chair of the meeting, as the chair is responsible for the conduct of the meeting. He submitted that the email contravened Standard 1 of the Code, which states a 'Councillor must do everything reasonably necessary to ensure that they perform the role and responsibilities of a Councillor effectively and responsibly'. This duty includes acknowledging and supporting the Mayor in the performance of the role of Mayor. He also submitted the statement at the Council meeting and the email contravened Standard 4, in that he did not take reasonable care to avoid action which would diminish the public's trust and confidence in the integrity of local government.

30. Cr Barker submitted his comments at the Council meeting reflected his honestly held beliefs. Further, he said that Cr Bodsworth, as chair of the meeting, ought to have better controlled the members of the public in attendance who in Cr Barker's view were 'opponents of Australia Day'. He suggested that Cr Bodsworth ought to have considered expelling certain community members from the meeting. He did not see this as contradicting his otherwise support of absolute free speech. He said that he wrote immediately to the media as the matter was of 'public interest'. When asked why he did not take a staged approach, approaching his colleagues internally to seek a resolution before contacting the media, he said external scrutiny was required in order to achieve any progress.

Analysis

31. I find that the email sent to the media just hours after the Council meeting on 25 February 2025 contravened Standards 1 and 4 of the Code. All Councillors are required to be collaborative and work constructively together. If Cr Barker was concerned about the behaviour of some community members, then the recourse was to raise this issue internally with his fellow Councillors and other staff. Cr Barker ought not to have taken the precipitous step of emailing two journalists to complain when he had not first provided the Mayor or the Council with an opportunity to respond to his concerns. He therefore contravened Standard 1 of the Code by not acting responsibly, including by failing to support the Mayor in the performance of his duties, which includes chairing Council meetings.
32. The email further breached Standard 4, in that he did not take reasonable care to avoid action which would diminish the public's trust and confidence in the integrity of local government. Similarly, his statements during the meeting itself contravened Standard 4. The purported issue upon which Cr Barker was commenting was the receipt of a petition filed slightly out of time, that petition articulating a political position contrary to that held by Cr Barker. Cr Barker's

disproportionate response was to claim the Council was contemptuous, impervious to criticism and beset with conflicts of interest and political bias.

Findings & Determinations

33. Section 147 of the Act provides that if after completing the internal arbitration process the arbiter determines a Councillor has failed to comply with the Code, the arbiter may make a finding of misconduct. As detailed above, I find that:

- a. On or about 30 January 2025, Cr Barker's Facebook post contravened Standard 4 of the Code; and
- b. On 25 February 2025, Cr Barker's comments at the Council meeting and email to the media thereafter contravened Standards 1 and 4 of the Code.

34. Having made these findings of misconduct, s 147(2) provides that I may impose any one or more of a number of sanctions, which are:

- a. direct the Councillor to make an apology in a form or manner specified by the arbiter;
- b. suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding 3 months;
- c. direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
- d. direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
- e. direct a Councillor to attend or undergo training or counselling specified by the arbiter;
- f. direct that the Councillor is not to attend or participate in a Council meeting specified by the arbiter that occurs after the meeting at which the decision and statement of reasons are tabled under subsection (4); and/or
- g. direct that the Councillor is ineligible to hold the office of Mayor or Deputy Mayor for a period specified by the arbiter not exceeding 12 months.

The Applicant's submissions

35. Cr Bodsworth submitted that the conduct was serious, in that it was intended to share and spread distrust about Council. He stated that the public's trust and confidence in Council was undermined by Cr Barker's conduct, and that individual persons within Council felt their integrity and competence had been called into question. He said further that upon being elected, all Councillors including Cr Barker, must put personal interests and differences aside and focus on constructively working together.

The Respondent's submissions

36. Cr Barker said that if I found that misconduct had been proven, it was not a particularly serious example of misconduct. In the event I came to consider sanctions, Cr Barker provided some information about the issues of importance to him on Council. They are the equitable application of spending of rate money, with an emphasis on core services, that Council decisions should be driven by the majority instead of what he describes as 'minority' views and the equal application of laws to all people.

Analysis

37. I find that given the nature and seriousness of the conduct and the harm that would be suffered if Cr Barker and other Councillors were not deterred from engaging in similar conduct, a period of suspension is required. I accept the submission made by Cr Bodsworth that the Facebook post contained serious accusations couched as questions. The issue of crowd estimates was unfairly used as a basis to allege that the Council was untruthful and dishonest. It is plain that Cr Barker's conduct brought discredit upon the Council and risked the loss of public trust in that institution. His conduct prompted complaints from members of the public and other Councillors alike, which demonstrates that his conduct reverberated within the community.
38. Similarly, Cr Barker's statements at the February 2025 Council meeting and email of the same day was a wholly disproportionate reaction to the tabling of a belatedly filed petition. He therefore failed to take reasonable care to avoid the diminishment of public trust and confidence. The precipitous email to the media was further irresponsible and failed to reasonably support the Mayor when chairing meetings in which there is charged political debate.
39. Further, general and specific deterrence are important considerations. It is necessary to convey to all local Councillors that conduct of this type is not acceptable and, if engaged in, will result in similar sanction. In addition, regard

must be made to maintaining public confidence in Councillors, the system of local government and the arbitration process. This public confidence is best achieved when Councillors who breach the standards reasonably expected of them are properly held to account.

40. Specific deterrence is a relevant consideration. Cr Barker reflected there were other ways in which he could have queried the estimated attendance numbers for Pilk Purriyn. He was particularly surprised by the largely adverse reaction on Facebook to his posts. However, his insight was limited. Cr Barker continued to refer to himself as a 'free speech absolutist'. He did not demonstrate any understanding that his conduct undermined public trust in the Council and the system of local government, perhaps because Cr Barker himself is highly cynical of government. Cr Barker repeatedly stated that the public's trust in local government is deteriorating but could not see any connection between his own behaviour and the loss of public confidence.
41. Regard has been had to the maximum possible period of suspension, being 3 months. Further, that pursuant to s 37 of the Act during such period of suspension Cr Barker would cease to be a Councillor, not be entitled to receive allowances, and that if the suspension were greater than two months he would be required to return all council equipment and materials.
42. I have not directed Cr Barker to apologise. Cr Barker was not willing to apologise and said any direction to do so would be 'forced'. I have also not directed Cr Barker to undergo any training in respect of the Code. Cr Barker does not lack an understanding of the Code but instead chose to disregard it when making the ill-considered public comments referred to above.
43. Finally, I was impressed by the professional courtesy demonstrated by both Cr Bodsworth and Cr Barker during the arbitration hearing. They were both articulate and respectful when discussing their opposing views on many issues. It is hoped that Cr Barker can display these same attributes when making any future public comments about matters pertaining to Council.

Diana Price
Arbiter