

INTERNAL ARBITRATION PROCESS – DAREBIN CITY COUNCIL

In the matter of an application by Councillor Susanne Newton concerning
Councillor Tim Laurence

**HEARING PURSUANT TO DIVISION 5 OF PART 6 OF THE
*LOCAL GOVERNMENT ACT 2020***

Application number: IAP 2022-22
Applicant: Councillor Susanne Newton
Respondent: Councillor Tim Laurence
Date of Hearing: 7 November 2022
Arbiter: Noel Harvey OAM

DETERMINATION

- 1) The Arbiter has determined that the respondent, Cr. Tim Laurence, has breached the prescribed standards of conduct set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020 (the Standards of Conduct) in relation to allegations 5 and 10 and has made a finding of misconduct in respect of these breaches.
- 2) The Arbiter has determined that there has been no breach of the Standards of Conduct by the Respondent (Cr Laurence) in relation to allegations 4, 6, and 9. As there has been no breach of the prescribed Standards of Conduct, the application in relation to these allegations is dismissed.

STATEMENT OF REASONS FOR THE DECISION

The Application

1. On 6 July 2022, the applicant applied under section 143 of the *Local Government Act 2020* (the Act) for the Arbiter to make a finding of misconduct against the respondent.
2. The Principal Councillor Conduct Registrar examined the application and considered there was sufficient evidence to support an allegation of a breach of the Council's Councillor Code of Conduct and appointed the Arbiter under section 144 and 149 of the Act.

The jurisdiction of the Arbiter in relation to this Application.

3. Section 143 of the Act provides that an Arbiter may hear an Application that alleges misconduct by a Councillor.
4. Pursuant to section 147 of the Act an Arbiter may determine whether or not a Councillor has engaged in misconduct.
5. At the time of the alleged breaches "Misconduct" was defined in section 3 of the Act as "...any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct."
6. The prescribed standards of conduct are set out in Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020. (See Attachment 1).
7. These standards are included in the Darebin City Council Councillor Code of Conduct. The Code was adopted and signed by all councillors.

The Hearings.

8. The parties were advised that an online directions hearing would be held 20 October 2022.
9. Following the directions hearing, notice to provide any additional documents and intended witnesses was given and a hearing date was set down for 7 December 2022.
10. No additional documents were submitted, and no witnesses were provided.
11. After hearing submissions from both parties, the Arbiter requested several council documents referred to by the parties from the Council Conduct Officer, the Arbiter then reserved his decision.

Evidence provided.

12. Application IAP 2022-22 contains ten (10) separate allegations of misconduct.
13. Evidence provided in the application included copies of emails, screenshots of social media posts, links to various other media materials etc. submitted by the applicant. No additional evidenced was provided by either party.

14. At the hearing dated 7 December 2022, the Applicant explained that she had spoken with the respondent recently and given the recent changes that had occurred in council and recent discussions with the newly elected mayor all parties within council are keen to see a “reset” of relationships, consequently allegations one, two, three, seven and eight were withdrawn by the applicant.
15. The applicant and the respondent made verbal submissions regarding allegations four, five, six, nine and ten which remained to be heard.
16. During the hearing several council reports and documents were referred to. The Arbiter requested copies of these documents.

Findings of the Arbiter and Reasons

17. **Allegation 4.** The applicant alleged that Cr. Laurence had breached the prescribed standards of conduct included in the Council’s Councillor Code of Conduct (the Standards of Conduct) by posting comments on his Facebook page describing the process of planning for the Reservoir aquatic centre renewal as having grossly manipulated data and reflected institutional racism.
18. The applicant alleged that the publication on social media by Cr. Laurence breached the Standards of Conduct and brought discredit upon the council and reflected unfairly on council staff.
19. In her submission the applicant acknowledged that several reports had been prepared for council in relation to the aquatic centre renewal project and the proposed redevelopment was a contentious issue, particularly in relation to the size of the pool. Council relied on these reports in forming its position in relation to the pools.
20. No additional supporting material was presented to the hearing by the applicant.
21. The respondent argued that his Facebook comments claiming the data used in the council reports was misleading and contained irrelevant statistics to strengthen the argument were justified. He proceeded to use city maps and population data and location of council facilities to support his claim.
22. The respondent believed that drowning figures used in the studies were misleading and of little relevance to the matter being considered by council at the time.
23. Acknowledging that councillors rely heavily on reports provided by consultants and council specialist staff it is reasonable for councillors to disagree and passionately argue their case inside and outside the council chamber.
24. I consider the comments by the respondent to be part of robust public debate and do not reflect badly on any parties involved. No breach of the Standards of Conduct has occurred in the matter.

25. **Allegation 5.** The applicant provided four (4) links to various posts on Cr. Laurence's Facebook page in which Cr. Laurence shares an edited video from an unknown source with slides including the words "DISCRIMINATION" and "PLEASE EXPLAIN CR NEWTON". The applicant claims the video was edited to portray her in a poor light.
26. In the post Cr. Laurence also shares a petition in opposition to discrimination within the council, which he had signed.
27. It appears that the offending posts have since been removed.
28. The applicant alleges the sharing of the edited video and petition brings discredit on the council and fails to treat her with respect.
29. The video posted by the respondent appears to be an edited component of a Darebin City Council meeting.
30. It was not made known to the arbiter who edited the video but on viewing the edited video and the official video, the post was clearly intended to portray the applicant in a negative manner to the public and misrepresented the position of the applicant.
31. The respondent reluctantly agreed that this was the case but argued that unintended racism in the community was such an important issue the posting of the edited video was justified.
32. Councillor Newton argued there were other avenues for Cr. Laurence to raise these issues without making personal, disrespectful, and damaging attacks on social media.
33. I acknowledge the respondent's passionate beliefs regarding unintended racism and sexism in local government, but the public comments on this occasion and the edited video were clearly disrespectful and had the potential to damage the applicant's reputation. The respondent was therefore in breach of the Standards of Conduct.
34. I note the offending posts appear to have been removed.
35. **Allegation 6.** The applicant alleged Cr Laurence had breached the Standards of Conduct and brought discredit on the council by circulating an email addressed to all councillors, the Acting CEO and Mr. John Watson, the Municipal Monitor.
36. A copy of the email was included in the application.
37. The email claims the mayor and other councillors failed to declare their indirect interest in a matter before the council and "possibly breached the Local Government Act, potentially sabotaging a council decision."
38. The applicant alleges the undisclosed conflict of interest claim and use of the word sabotage brings discredit on the council and the respondent had other channels to use if he believed a breach of conflict-of-interest requirements had occurred.
39. Again, no additional information was provided to support this claim, and given that the comments were made on an internal email it is difficult to see how this matter has brought disrespect on the council.

40. The respondent acknowledged the use of the word sabotage was probably unwise. I share this view. However, I am not satisfied the comments by the respondent brought discredit on the council or any parties involved.
41. **Allegation 9.** The applicant alleges that Cr. Laurence made comments in a local newspaper article that were false, hurtful, and damaging to her personal and professional reputation. A copy of the article was included in the application.
42. In making several comments relating to race and discrimination around the provision of aquatic facilities, the applicant believes the comments made by Cr. Laurence breached the Standards of Conduct by asserting improper motives or personal reflections on councillors, council staff or members of the public.
43. This allegation is similar to allegation 4, with comments being made in the local printed news rather than social media.
44. No additional materials were presented, and Cr Laurence made a similar defence of his position, there was considerable overlap between these claims.
45. Again, I consider the comments by the respondent in the printed media on this occasion, to be part of robust public debate and do not reflect badly on any parties involved. No breach of the Standards of Conduct has occurred in this matter.
46. In generally responding to allegations four, five, six and nine the respondent provided a significant amount of population analysis, data, and mapping to support his claims/statements. The respondent also referred to the experience and situation of nearby, similar municipalities.
47. Cr. Laurence is clearly passionate in support of his multi-cultural community and believes there is an element of underlying, unintended racism and sexism within the council which is also reflected in the reports and data provided to the council.
48. I am not able to form a view either way on this claim, and I am not required to do so. However, I have examined the many documents and reports referred to by both parties and did not observe any evidence of this claim.
49. On several occasions Cr. Laurence acknowledged that if he had his time again, he would probably express himself differently.
50. Some of his concerns are now being addresses by the newly appointed CEO.
51. **Allegation 10.** Relates to an email sent by Cr. Laurence to the Acting CEO on her final day at the City of Darebin. A PDF copy of the email was provided in the application, not the original. It is alleged by the applicant that the email failed to treat the Acting CEO with dignity, fairness, objectivity, and respect and was therefore in breach of the Standards of Conduct.
52. The email was copied to all councillors and the executive management team that reported to the Acting CEO

53. The email refers to institutional racism on the part of the Acting CEO, censorship, and outdated colonial tactics. The email was widely circulated on the Acting CEO's final day at the City of Darebin including to all members of her executive team.
54. A PDF copy of the email response from the Acting CEO was submitted, and it is evident the Acting CEO was clearly offended by the comments of Cr. Laurence stating they were "highly insulting and personally harmful". The Acting CEO pointed out that his comments were "inappropriate and directly contrary to the Code" signed by Cr. Laurence.
55. The respondent acknowledged his error in sending the email and agreed it would have been more appropriate to take his issues up directly with the Acting CEO.
56. In this matter I find the respondent failed to treat the Acting CEO with dignity, fairness, objectivity, and respect and was therefore in breach of the Standards of Conduct.
57. The hearing ended on a conciliatory note, both sides being committed to do things better in the future.

Sanctions.

58. In considering an appropriate penalty I have considered the clearly stated desire by both parties to make a new start and reset the relationships within council and the regret expressed by the respondent regarding the strength of language he has used at various times.
59. In encouraging that desire, I do not believe it would be helpful to impose a penalty in this case but would urge the respondent to make a formal apology to Cr. Newton and the former Acting CEO.

Attachment 1

Schedule 1—Standards of conduct

Regulation 12

1. Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor—

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the **Equal Opportunity Act 2010**; and
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- (d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

2. Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor—

- (a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- (b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- (c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

3. Compliance with good governance measures

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following—

- (a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors.
- (b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- (c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- (d) any directions of the Minister issued under section 175 of the Act.

4. Councillor must not discredit or mislead Council or public

(1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.

(2) In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

5. Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.