

IN THE MATTER OF AN APPLICATION FOR AN INTERNAL ARBITRATION PROCESS

DAREBIN CITY COUNCIL

IAP 2022-18

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

Applicant: Cr Tim Laurence

Respondent: Cr Susanne Newton

Date of hearing: Thursday, 8 September 2022

Place of hearing: City of Darebin Council Offices, 284-286 Gower Street, Preston

Arbiter: Simon Heath

DETERMINATION:

Cr. Laurence withdrew two of four allegations in the Application that Cr Newton had breached the standards of conduct. In relation to the two remaining allegations, the Arbiter finds that Cr. Newton had not breached the standards and, as such, no finding of misconduct is made.

The Arbiter therefore dismisses Cr. Laurence's Application.

STATEMENT OF REASONS

The Application

The 'Application for an Internal Arbitration Process' is dated 6 June 2022 and seeks a finding of misconduct against the Respondent in relation to four specified alleged breaches of the standards of conduct (**Application**).

At the hearing however, the Applicant confirmed that the Application should have been dated 15 June 2022, being the date the Applicant specified in Section B thereof, that the following four alleged breaches remained "online":

1. A tweet by the Respondent dated 15 April 2022 (**the tweet**)
2. Several social media posts in October 2020 (**the posts**)
3. An undated extract from the 'Darebin Appropriate Development Association' website posted prior to the Council elections in October 2020 (**the extract**)
4. An online article from 'The Age' dated 9 May 2021 (**the article**)

Arbiter's jurisdiction

Section 143 of the *Local Government Act 2020 (Act)* provides that an Arbiter may hear an Application that alleges misconduct by a Councillor.

Importantly, sub-section 143(3) of the Act provides that the Application "must be made within 3 months of the alleged misconduct occurring".

The Arbiter was appointed pursuant to section 144 of the Act.

Pursuant to section 147 of the Act, an Arbiter may determine whether or not a Councillor has engaged in misconduct.

"Misconduct" is defined in Section 3 of the Act as follows:

"...any breach by a Councillor of the standards of conduct"

The "standards of conduct" are set out in Schedule I to *Local Government (Governance and Integrity) Regulations 2020 (Standards)*. A copy thereof is attached as Annexure A.

The relevant Standards which the Applicant alleges the Respondent breached are:

Clause 1 Treatment of others but only an alleged breach of sub-clause (a) thereof; and.

Clause 4 Councillor must not discredit or mislead Council or public.

Hearings

The internal arbitration process comprised a Directions hearing on Thursday, 18 August 2022 and the hearing on 8 September 2022.

Evidence

The Applicant's evidence comprised the Application (which included a copy of the tweet, the posts, the extract and the article), a copy of Minutes from the Ordinary Council Meeting on 15 December 2021 and the Special Council Meeting on 14 April 2022, as well as oral evidence at the hearing.

The Respondent's evidence comprised a letter to the Arbiter dated 19 August 2022, detailed Written Submissions dated 31 August 2022, and oral evidence at the hearing.

Applicant's evidence

The Applicant alleged that the Applicant's reference in the tweet to "petulant behaviour" was disrespectful to the four Councillors referred to.

With respect to the posts, the Applicant alleged that the Respondent had mislead the public by claiming that the Applicant had been using fake Facebook accounts.

The Applicant alleged that the extract was evidence that the Respondent had mislead the public in relation to plans for the Preston Market. The Applicant acknowledged however that the alleged misconduct occurred more than three months before the Application and appropriately withdrew the allegation.

The Applicant alleged the article was evidence that the Respondent had made misleading statements as to how the Council voted on bicycle lanes. Similarly, the Applicant acknowledged that the alleged misconduct occurred more than three months before the Application and appropriately withdrew the allegation.

Respondent's evidence

The Respondent denied that the tweet, the posts, the extract or the article breached the Standards.

The Respondent advised that although the tweet had been deleted, the contents were accurate. In support, the Respondent provided extracts from the Minutes of the Ordinary Council Meeting on 28 March 2022 and of the Special Council Meeting on 14 April 2022, which record that as a result of the four Councillors leaving and not returning to each Meeting, agenda items could not be dealt with.

The Respondent also submitted that the tweet was "robust political debate" as permitted by Clause 5 of the Standards.

In any event, the Respondent was prepared to apologise to the Applicant for the use of "petulant" in the tweet.

The Respondent submitted that the posts, the extract and the article were all more than three months before the Application and, in any event, occurred in the context of "robust political debate".

Arbiter's findings

The Arbiter notes the Applicant's withdrawal of two of the four allegations in the Application. In relation to the two remaining allegations, the Arbiter finds that the Respondent did not breach the Standards and, as such, no finding of misconduct is made.

The Arbiter therefore dismisses the Application.

Arbiter's Reasons

(a) The tweet

The Arbiter notes that the tweet was made on 15 April 2022 and therefore the alleged misconduct occurred within three months of the Application.

The Applicant alleged that the tweet remained "online" as at 15 June 2022 but provided no evidence in support.

The Arbiter accepts the Respondent's evidence that the tweet has been deleted and, in any event, the Arbiter does not find that the tweet breached the Standards.

The Minutes of Meetings provided by the Respondent confirm the accuracy of the tweet, namely that Councillors had "walked out of the last two council meetings, refusing to participate, which last night made it impossible for the meeting to continue". The Arbiter notes that the inability to maintain a quorum meant that agenda items could not be dealt with.

The Arbiter does not think that the Respondent's reference in the tweet to the Councillors' behaviour being "petulant" is a breach of the Standards. In any event, the Respondent offered a genuine personal apology to the Applicant both prior to and at the hearing for using that word and the Applicant accepted that apology.

(b) The posts

While the Applicant submitted that the posts were inappropriate, the Arbiter notes that clearly relate to the Council election, which ran between 22 September 2020 and 24 October 2020.

The Applicant confirmed being aware of the posts at the time.

The Applicant alleged that the posts remained “online” as at the date of the Application but provided no evidence in support. The Respondent’s evidence was that the posts were to a Facebook group that the Respondent was no longer a member of.

Because the posts were made nearly two years ago, a considerable period outside the three months contemplated by subsection 143(3) of the Act, the Arbiter makes no finding of misconduct in relation to them.

(c) The extract

The Arbiter notes that the extract is undated but it refers to the forthcoming Council elections so must have been made prior to 24 October 2020.

The Applicant did not provide any evidence to support the assertion that the extract remained “online” as at 15 June 2022 but, even if it was, the Arbiter notes that the Respondent had no control over the content of the extract or whether it could be deleted.

Were it not for the Applicant’s withdrawal of the allegation in relation to the extract because it occurred more than 3 months before the Application, having heard the evidence of the parties, the Arbiter would have found that there had not been a breach of the Standards by the Respondent in relation to the extract.

(d) The article

The Arbiter notes that the article is dated 9 May 2021.

While the Applicant alleged that the article remained “online” as at the date of the Application, the Respondent had no control over whether it did. In any event, the Applicant withdrew the allegation of misconduct on the basis that the article was published more than three months before the Application.

Again, were it not for the Applicant’s withdrawal of the allegation of misconduct in relation to the article, having considered the evidence of the parties, the Arbiter would have found that the article was not misleading and there had not been a breach of the Standards by the Respondent.

In summary, the Arbiter finds that the Application should be dismissed given the Applicant’s withdrawal of the allegations of misconduct in relation to the extract and the article, and given the Arbiter’s findings that the allegations in relation to the tweet and the posts were not breaches of the Standards.

Simon Heath

Arbiter

Dated: 21 September 2022

Appendix A

Schedule 1—Standards of conduct

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.