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## Local Government Standards Panel

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Complaint Number	SP 2020-028
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Sonet Coetzee</b>
<b>Respondent</b>	<b>Councillor Dot Newton</b>
Local Government	<b>City of Wanneroo</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Cr Peter Rogers (Member) Mrs Emma Power (Member)
Heard	10 June 2020 Determined on the documents
Finding	1 x Breach of Regulation 7(1)(b)

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### FINDING AND REASONS FOR FINDING

Delivered 7 July 2020

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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 10 June 2020, the Panel found that Councillor Dot Newton, a councillor of the City of Wanneroo ("**the City**") did commit one 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 made various comment on Facebook in respect to the Complainant in the lead up to the 2019 Mayoral Elections as set out in paragraph 16 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



## Regulation 7

11. 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.*

## Jurisdiction and Procedural Fairness

12. On 31 March 2020 the Panel received a letter dated 26<sup>th</sup> March 2020 from Ms Noelene Jennings acting as complaints officer of the City (**“the Complaints Officer”**). The same enclosed a Complaint of Minor Breach Form dated 25<sup>th</sup> March 2020.
13. In the complaint form, the Complainant makes ten (10) allegations that Cr Newton has breached regulation 7 of the Regulations and allegedly acted improperly when she posted various comments on various dates (being Post 1 through to Post 10) relating to the Complainant on Facebook as set out in paragraph 16 which called into question the Complainant’s ability and integrity in a manner that caused her a disadvantage (**“the Complaint”**).
14. The Panel convened on 10 June 2020 to consider the Complaint.
15. The Panel:
- a. accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission’s website, Cr Newton was:
    - i. at the time the Panel met, the elected to the Council of the City in October 2017 for a term expiring in October 2021;
    - ii. a Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 10 June 2020;
  - 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>;

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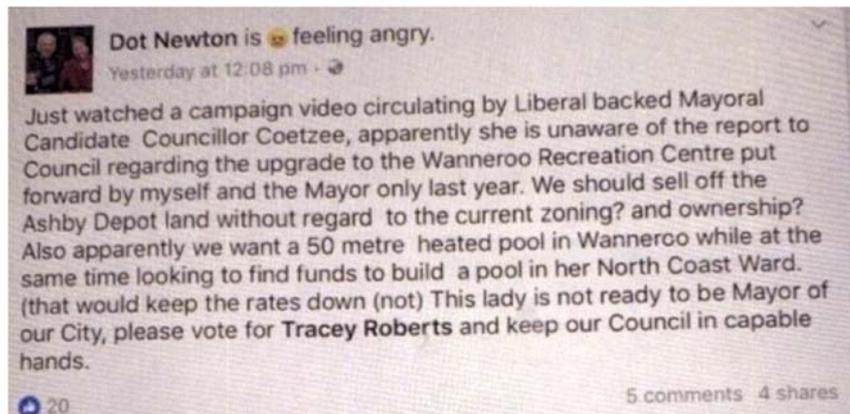
<sup>7</sup> Section 5.107(4) and 5.109(2) of the Act

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

- d. was satisfied the Department had provided procedural fairness to Cr Newton; and
- e. found it had jurisdiction to consider the Complaint.

### The Specifics of the Complaint

16. The Complainant provided the following arguments and comments in respect to the Complaint:
- a. Cr Dot Newton and the Complainant were Councillors of the City of Wanneroo when the Complainant was a candidate for the office of Mayor up to and during the 19 October 2019 Council Elections.
  - b. On or around the time frame from 25 September 2019 until 16 October 2019 Cr Newton posted on her Facebook page, several posts concerning the City of Wanneroo Elections.
  - c. Cr Newton was and is a well-known councillor and JP.
  - d. The Complainant believes that Cr Newton's conduct constitutes breaches of the standards required of an elected member and can be in breach of code of conduct for councillors and the *City of Wanneroo Code of Conduct 26 June 2018 – CE02-06/18 (“the Code of Conduct”)* including but not limited to paragraphs 2.1, 2.3(a),(c), and (d), 2.4(a), and 2.5( b).
  - e. There are ten (10) such posts as listed below.
  - f. **Post 1** (on or around 28/09/2019) – Regulation 7(1)(a) and 7(1)(b)

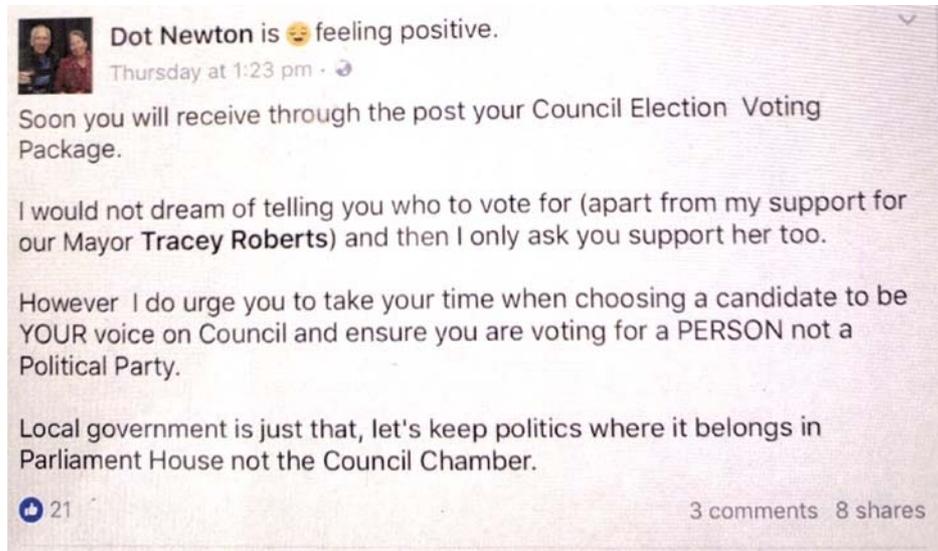


Cr Newton was seeking to gain an advantage for the incumbent Mayor Tracey Roberts and to cause detriment to the Complainant as the competing Mayoral Candidate.

It implies that the Complainant was incompetent and incapable of being a Mayor and that she was unqualified to be Mayor.

It also says that the Complainant was a “Liberal backed Mayoral Candidate” which was also false. The Complainant was not a member of the liberal party.

- g. **Post 2** (on or around 26/09/2019) - Regulation 7(1)(a) and 7(1)(b):



This is evidence of Cr Newton's support for the election of Tracey Roberts as Mayor, as opposed to the Complainant and again implies that the Complainant was a Party-Political Candidate for Mayor which was false. It also falsely states or implies that a vote for the Complainant as Mayor was a vote for a Political Party. The post included Tracy Roberts' Election poster.

- h. **Post 3** – (on or around 26/09/2019) - Regulation 7(1)(b):

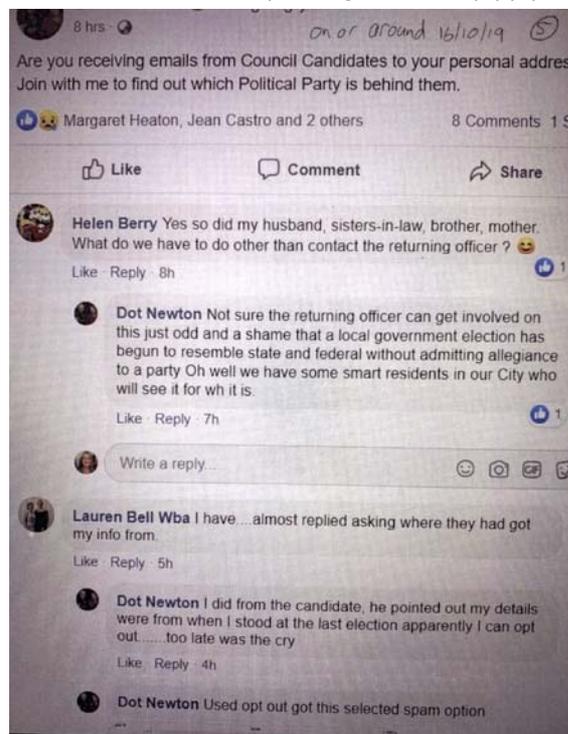


- i. This stated that the Complainant did not have enough experience to be elected as Mayor. Cr Newton made this comment, which was false, and posted it on Helen Berry's Facebook page, which Mrs Berry subsequently shared.
- j. **Post 4** - (on or around 01/10/2019) - Regulation 7(1)(a) and 7(1)(b):



This includes a photo of Mayor Tracey Roberts and Cr Newton. Also included Samantha Fenn and Frank Civitan who were Councillor candidates at that Election. The comments by Cr Newton allege that the Complainant did not “check the facts” and implies that she was incompetent and incapable of being a Mayor. Cr Newton also strongly questions why the Complainant was running against “our” Mayor, thereby making her alliance with the current Mayor known.

k. **Post 5** - (on or around 16/10/2019) - Regulation 7(1)(b):



This Post implies that the Complainant held an allegiance to a political party and not to the community. This was false.

I. **Post 6** - (06/10/2019) - Regulation 7(1)(b):

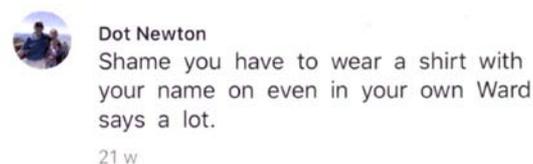


Cr Newton was acting as a spokesperson for other candidates questioning the Complainant's integrity and requesting information relating to my mileage claims.

These claims are publicly available through the warrant of payments incorporated into the standard agenda for ordinary council meeting.

Cr Newton has alleged the Complainant claimed excessive mileage allowances for the use of her vehicle, this is patently false.

m. **Post 7** (29/09/2019) - Regulation 7(1)(b)



Cr Newton posted degrading comments stating that the Complainant "*have to wear a shirt with my name on it*". This is common practice by nearly all candidates during elections.



n. **Post 8** - (28/09/2019) - Regulation 7(1)(a) and 7(1)(b):



Dot Newton

Why have you got that lovely photo of Tracey & Pete on your page? Strange considering the comments you are making affecting two people who have tried to help you and your partner.

21 w

This comment is self-explanatory, clearly Cr Newton making her alignment to the other Mayoral candidate public, questioning my intentions and character publicly.

o. **Post 9** (28/09/2019) - Regulation 7(1)(b)



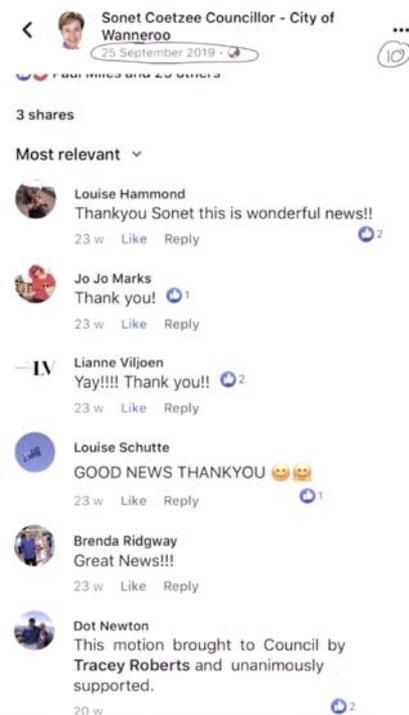
Dot Newton

surprised since you learnt that this land is not Councils to sell that you have not removed this video. ....

20 w

This post also caused detriment to myself as the competing Mayoral candidate and implies that I am incompetent and incapable of being a Mayor.

p. **Post 10** (25/09/2019) - Regulation 7(1)(a) and 7(1)(b):





Further comments by Cr Newton who is clearly not impartial and demonstrates she is against the Complainant and the fact that she ran for Mayor.

17. The Panel was also provided with copies of the various Posts as shown above.

### **Respondent's Response**

18. By an email dated 8<sup>th</sup> April 2020, Cr Newton provided a response to the Complaint.
19. Cr Newton denies that she has committed any minor breach.
20. Cr Newton also makes the following comments with respect to the Complaint:
- a. At no time were my posts in the name Cr Dot Newton JP, but Dot Newton's personal Facebook Page showing a photo containing her and her. These were personal comments some in response to the screenshots sent to her by friends concerned with the content.
  - b. Cr Newton does not believe by any stretch of the imagination that the 200,000 residents of the City would be aware that she is an elected member.
  - c. Personally, if Cr Newton was offended by posts and felt they did not reflect the item accurately she would reply or remove the comment and block the person. None of this occurred.
  - d. The complaint form outlining the breach and listing details of the 10 attachments is repetitive and does not accurately detail what the Posts reflected at the time.
  - e. Cr Newton did publicly support the Mayor just as some elected members openly supported Cr Coetzee.
  - f. Regulation 7 is not in place for actions taken by Cr Newton personally during an election (where she only has one vote) but to cover Cr Newton's role as an elected member of Council when dealing with items submitted to councillors for determination.
  - g. The Posts relate to the Mayoral election in the City that Cr Newton lives in. Cr Newton has an absolute right to not support a candidate.
  - h. It would appear that as a Councillor the Complainant believes Cr Newton should not support the other candidate for Mayor, but it is entirely acceptable for other elected members to openly support the Complainant and other candidates while not supporting sitting elected members.
  - i. Copies of Facebook Pages (all 10) not quite true and accurate, as there is an absence of exactly what Cr Newton was commenting on.
  - j. Many of the relevant posts were sent to Cr Newton by concerned residents in her ward.
  - k. Cr Newton addresses each allegation as follows:
    - i. **Post 1** - Reference to Liberal backed Mayoral Backed Candidate.
      - A. There was a Public announcement in the local paper by former Member for Wanneroo Liberal member Paul Miles announcing he would not nominate, but supported Ms. Coetzee.



- B. The Federal member Mr Christian Porter placing a sign of support outside his property in Yanchep. The Complainant engaged in double campaigning via emails, SMS with other candidates in each Ward who were all members of the Liberal Party.
- C. Cr Newton did not say that the Complainant was a member of the Liberal Party.
- ii. **Post 2** - Support for Tracey Roberts
  - A. Cr Newton believes she has a right to support a candidate.
  - B. Cr. Coetzee had not completed two years as an elected member and her performance in the Council chamber (which is a public forum and others had commented) was very limited. Cr Newton believed she was still on a steep learning curve as she had not been involved in local government or attended meetings prior to becoming a Councillor.
  - C. In Post 2 Cr Newton said she would support Tracey for Mayor. She also referred to the election packages which included many candidates .
- iii. **Post 3** - Cr Newton has no idea what the original posts were, however her reply was based on personal knowledge. The local paper referred to Cr. Coetzee as a “relative newcomer”. This was a public newspaper and Cr Newton repeated that opinion.
- iv. **Post 4** - This comment was made in response to one of the many widely circulated videos by Cr. Coetzee standing in front of the City's Ashby Operations Centre (Depot) stating that the facility should be located further north and the land sold for development.
  - A. This land is not freehold land held by the Council but vested land. It was concerning that facts were not checked first and showed her inexperience.
  - B. The response video did show three of the Ward Councillors who were concerned about the content and also showed support for the Mayor.
- v. **Post 5** – This was a response to posts regarding the avalanche of emails sent to personal and work emails received by electors seeking support for candidates.
  - A. “Cr Newton states that the election resembled a state or Federal election. No reference was made to a specific candidate”.
  - B. This comment was not aimed at the Complainant and Cr Newton’s further comment listed, quite clearly referred to a male candidate.
- vi. **Post 6** - This attachment is very misleading.
  - A. The actual post made showed a vehicle that the Mayor drove with a line through it stating *“If I am Mayor I will use my own vehicle”*.
  - B. The prior posts made by Cr Newton in respect to the actual travel mileage amount have not been provided.

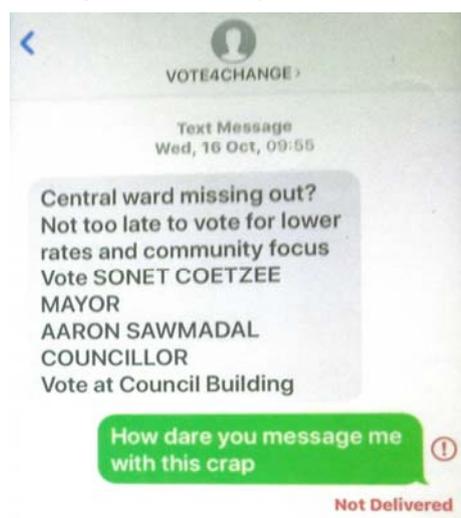


- C. The point Cr Newton was making was with high claims as an elected member, using the Complainant's own vehicle as Mayor would have increased mileage. No claims for mileage appear in the Warrant of payments for the Mayor.
- vii. **Post 7** - Cr Newton's comment about the shirts with names on did not come from the photo shown on the attachment submitted by the Complainant, but from a photo showing her and other candidates dividing up their brochures to support one another.
- A. All appeared to have links to the Liberal Party, Cr Newton disputes the reference that it is common practice by nearly all candidates during elections.
- B. This has been common in State & Federal for a number of years. Cr Newton doesn't recall having candidates standing against her ever going to this expense, costs of mail, brochures, signs advertising are all expensive, particularly in Wanneroo where there are only three wards covering 684sq Kms. A candidate can only claim \$1000.00 tax relief for the campaign.
- viii. **Post 8** - It is a question based on the Complainant not removing this photo from her page.
- A. Cr Newton totally refutes her statement that it "*publicly questions my intentions and character*".
- B. Cr Newton does however admit that she had supported the Mayor in this and other campaigns and had previously been a Deputy Mayor.
- ix. **Post 9** – Cr Newton was and still is surprised that the video was left in place on the page "as one of the new ideas" of the Complainant when it had been pointed out that this just was not possible.
- A. Cr Newton however, cannot be sure what was the original post she was responding to. Possibly it was one of the other videos that was taken outside the Wanneroo Recreation Centre promoting another "new idea" when this had been the subject of a report to Council which was unanimously supported which included Cr. Coetzee.
- x. **Post 10** – the information provided does not show the post about a proposed swimming pool in Yanchep this is contrary to the report to a Council. However Mr Baker and the Complainant posted that he and the Complainant had a plan to support the press release made by Yanchep Beach Joint Venture.
- I. Cr Newton makes the following comments in respect to the alleged breaches of the Code of Conduct of the City:
- i. **2.1 General Principles** - Cr Newtown does not accept that she has have breached this principle as it is aimed at behaviour in the capacity as a Member. She was not posting as a Councillor Dot Newton JP.
- ii. **2.3(a) Personal Behaviour** - Cr Newton has acted properly in her posts but once again did not act in the capacity of a Councillor.

- iii. **2.3(c) Act in good faith in the interests of the City and Community**  
- Cr Newton could argue that she has acted in the interests of the community by pointing out inaccuracies in some posts. However these posts were personal and not in the capacity of a Councillor.
- iv. **2.3(d) Make no allegations which are improper or derogatory (unless true and in the public interest)** – Cr Newton asserts that many of her posts pointed out inaccuracies quoted by this candidate some of which went against items she had voted in support of. All the information quoted is publicly available via the Council Website or Community Newspapers. If the candidate was embarrassed they had two options available to her on Facebook, you can block someone, remove the post or reply refuting it. As previously stated the posts listed were not as Cr Dot Newton JP which is Cr Newton’s elected member page.
- v. **2.4(a) Honesty and Integrity** – Cr Newton’s standard of honesty and integrity is being questioned by the Complainant. Cr Newton believes she has maintained her honesty and integrity during the posts. However items submitted to the Panel have much of the content missing.
- vi. **2.5(b) Performance of Role** - This is quite obviously aimed at decision making when dealing with items before Council. There is no relevance to Cr Newton’s preference of a candidate for Mayor. Cr Newton has been honest in her posts which could have been provided if many of them had not been deleted.

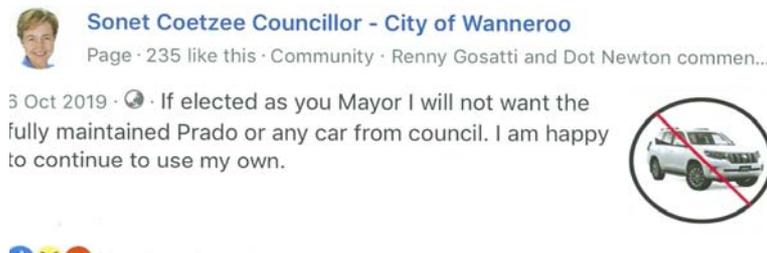
21. Cr Newton also provided the following:

- a. Extract from an online article (undated) of a local community newspaper noting that the Complainant as a “*relative newcomer*” was running for Mayor;
- b. Candidate details sheet relating to Chris Baker;
- c. Text message received by Cr Newton:



- d. Various photographs undated and untitled;
- e. Facebook post by Chris Baker undated referring to text messages;

- f. Facebook Post by the Complainant dated 28 September 2019 in respect to certain Land within the City;
- g. Undated Facebook Extract showing image of car crossed through;
- h. Facebook Extract of undated Post by the Complainant:



- i. Facebook Extract showing a photo of various parties wearing election t-shirts;
- j. Extracts from Minutes of Ordinary Council meeting relating to vote on Aquatic and Recreation Centre;
- k. Facebook Post dated 18 October 2019 by the Complainant as follows:



### **Panel's Consideration**

22. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
  - a. Cr Newton was an elected member at the time of the alleged breach and the time of the determination;
  - b. Cr Newton made use of her office as a Council member of the City;
  - c. when viewed objectively, such use was an improper use of Cr Newton's office in that it:
    - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
    - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
  - d. Either:
    - i. in respect to Regulation 7(1)(a) - Cr Newton engaged in the conduct with the intention to gain directly or indirectly an advantage for any person; OR



- ii. in respect to Regulation 7(1)(b) - Cr Newton engaged in the conduct in the belief that detriment would be suffered by another person.

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

23. Cr Newton was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
24. This element is met.

#### Cr Newton made use of her office as Council Member of the City

25. Cr Newton asserts that she was not acting in her capacity as an elected member as she used her personal Facebook account which showed a picture of her with her husband.
26. The fact that an elected member may use a “private” Facebook account rather than a “councillor” Facebook account is simply not conclusive evidence that a party is acting in their personal capacity.
27. A person does not only engage in the “use of” their office in circumstances where they are exercising their formally granted powers of a councillor or making decisions relating to matters before council.
28. Various elements may indicate whether a Councillor is acting in their capacity as a councillor when making a Facebook post or making other public comments such as:
  - a. the subject matter or contents of the communication and the degree to which the same are related to the Council or local community;
  - b. the public or private nature of the communication;
  - c. the passive or active nature of the communication; and
  - d. the audience with which the communication is shared.
29. In this case:
  - a. the Posts were made on publicly accessible Facebook Pages of various people during an election period;
  - b. the Posts made were expressly related to posts or comments or matters regarding the City the upcoming local government election and often expressly relating to the Complainant and her actions and her role as a Councillor;
  - c. due to Cr Newton’s long standing role as a councillor (almost 20 years), many persons that were interested in the City elections, or were actively looking at posts relating to the upcoming elections for the City, would have been aware that Cr Newton was a councillor; and
  - d. it would take very little research or effort for a community member to find out Cr Newton was a councillor of the City.
30. The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position. Once a person occupies a public position, and that public position is generally known, it is a difficult

undertaking to separate that person's actions undertaken in their public capacity from that person's actions in their capacity as an individual.

31. As to whether all "200,000" electors in the area would be aware that Cr Newton was a sitting councillor, it is not necessary to establish this. It is enough that a reasonable person would find it is more likely than not that Cr Newton was acting in this role in the particular circumstances.
32. Where the comments are made by a sitting local councillor in relation to a party running for the office of local councillor or Mayor, then any comments made by that person will, more likely than not, be informed and directed by the knowledge and interests of that person as a councillor, rather than as a solely private individual.
33. It is not enough to show that Facebook posts or comments are made using a personal account. The relevant context applies. This position has been affirmed by the State Administrative Tribunal<sup>9</sup>.
34. Given the above, the Panel finds that it is more likely than not that Cr Newton was acting in her capacity as an elected member and that a reasonable person would anticipate that such comments were made in her capacity as an elected member.
35. This element is met.

#### Cr Newton's use was improper

36. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom<sup>10</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.
37. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent<sup>11</sup>.
38. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
39. The Complainant asserts that Cr Newton's actions were improper:
  - a. as they were in breach of various elements of the City's Code of Conduct; and
  - b. they called into question the Complainant's ability and integrity.
40. Cr Newton asserts that she did not act improperly and acted in accordance with the Code of Conduct.
41. The relevant extracts from the Code of Conduct mentioned by the Complainant are as follows:
  - a. **"2.1 General principles**

*It is a requirement of this Code that Members observe the general principles referred to in Regulation 3(1) of the Rules of Conduct Regulations.*

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<sup>9</sup> *Keperit and Local Government Standards Panel [2019] WASAT 78*

<sup>10</sup> Complaint of Minor Breach No. SP 3 of 2013

<sup>11</sup> *Chew v R [1992] HCA 18*



*Footnote: Regulation 3(1) of the Rules of Conduct Regulations provides as follows:*

*General principles to guide the behaviour of Members include that a person in his or her capacity as a Member should –*

- (a) act with reasonable care and diligence; and*
- (b) act with honesty and integrity; and*
- (c) act lawfully; and*
- (d) avoid damage to the reputation of the local government; and*
- (e) be open and accountable to the public; and*
- (f) base decisions on relevant and factually correct information; and*
- (g) treat others with respect and fairness; and*
- (h) not be impaired by mind affecting substances.”*

b. **“2.3 Personal behaviour**

*A Member must:*

- (a) act, and be seen to act, properly and in accordance with the requirements of the law, Council policies, resolutions and the terms of this Code;*

.....

- (c) act in good faith and fidelity in the interests of the City and the community; and Policy Manual*
- (d) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of the Member’s role, which may cause any reasonable person unwarranted offence or embarrassment.”*

c. **“2.4 Honesty and integrity**

*A Member must:*

- (a) observe the highest standards of honesty and integrity, and avoid conduct which might suggest any departure from these standards; and*

*...”*

d. **2.5 Performance of role**

*A Member must:*

- (a) .....; and*
- (b) be consistent in his or her decision making but must treat all matters on individual merits, in an honest and fair manner.”*

42. The Panel refers to each of the relevant Posts individually below:

a. **Post 1**

- i. In respect to this Post, the Complainant argues:



- A. Cr Newtown has improperly supported sitting Mayor Tracey as a Mayoral candidate;
  - B. the comment that the Complaint was “Liberal backed” was false and therefore improper;
  - C. the Post implies that the Complaint was unqualified, incompetent and incapable of being a Mayor.
- ii. In respect to Cr Newton supporting Mayor Tracey, is a usual and commonly accepted practice for sitting councillors to provide support to, or endorsement of, their preferred candidates in the lead up to an election. There is nothing untoward or improper in this practice.
  - iii. Existing councillors will have preferences as to either councillor or Mayoral candidate and it is acceptable to promote these preferences, to the extent that they do not improperly reflect negatively on another party.
  - iv. The reference in clause 2.3 of the Code of conduct to “*impartiality*” does not lend itself to the interpretation that Councillor must support all matters (or candidates) equally. This view is not supportable where elected members are required to often make decisions which may or may not support one point of view.
  - v. It must be read in conjunction with Clause 2.5 of the Code of Conduct that only requires that decisions be “*consistent*” and all matters treated on their “*individual merits, in an honest and fair manner*”.
  - vi. The Panel finds to the required standard that such conduct/support was in breach of the Code of Conduct and not improper.
  - vii. The Panel does not consider that comment that the Complainant was “Liberal backed” to be false. It is apparent from evidence supplied that the Complainant did have the support of members of the Liberal Party. Further, Cr Newton does not assert at any time that the Complainant was actually a member of the Liberal Party.
  - viii. In addition, the Panel does not consider that the relevant comment can be reasonably considered to be improper, or even necessarily negative, in nature.
  - ix. The Panel finds it is more likely than not that this comment was not improper.
  - x. In respect to the assertion that the Post implies that the Complaint was unqualified, incompetent and incapable of being a Mayor, the Panel does not consider that the comments go this far.
  - xi. The particular wording used that could be considered as negative is as follows:
    - “...*apparently she is unaware of the report to Council regarding...*”
    - “... *this lady is not ready to be the Mayor of our City..*”
  - xii. It is difficult for the Panel to guess the exact context of the comments where the initial post or comment has not been supplied. In the absence of such evidence, the Panel finds it was more likely than not that that the comments



were made in response to particular claims or assertions made by the Complainant.

xiii. Although the tone of the post is somewhat sarcastic, and appears to be questioning the judgement or awareness of the Complainant, the Panel finds to the required standard:

A. although the Post expressly states that the Complainant is “*not ready*” to be the Mayor, this opinion is not necessarily improper in and of itself. The same appears to be a genuinely held belief based upon reasonable evidence; and

B. the Post does not go so far as to imply the Complainant is incompetent;

xiv. the Panel considers that perhaps the language and tone used in Post 1 was imprudent, but did not amount to be improper.

**b. Post 2**

i. It is argued that Post 2 is evidence of Cr Newton’s support of Mayor Roberts and implies that the Complainant was a Party Political Candidate.

ii. As noted above, there is nothing improper in a sitting councillor showing support of one Mayoral candidate over the other.

iii. In respect to the other asserted implication that the Complainant was a Party Political Candidate, there is nothing supplied that gives the impression that Cr Newton was in fact speaking about the Complainant. The comment is general in nature and does not refer to the election of the Mayor in particular. Further, it is apparent that there were candidates for the position of elected members that did have political affiliations with the Liberal Party.

iv. In this case, the Panel finds, to the required standard, that Cr Newton was not specifically referring to the Complainant in this Post, but to the election and candidates in general and that, therefore, the contents of Post 2 cannot reasonably be said to be false.

v. the Panel finds that it is more likely than not that Post 2 would not be considered improper by a reasonable person.

**c. Post 3**

i. The Complainant argues that Post 3 states that the Complainant did not have enough experience to be elected as Mayor, which was false.

ii. The relevant text reads as follows:

*“Maybe but as councillor not this candidate not enough experience.”*

iii. It is clear that Post 3 clearly expresses the opinion that the Complainant was not experienced enough to be Mayor. However, the assertion that this assertion is “false” is not necessarily made out.

iv. It is clear this statement is an expression of a personal opinion. It is not necessary for the Panel to make a finding of whether the comment is factually true or not. It is only necessary to consider whether the same is of such a nature as to be reasonably considered inappropriate or improper in the context.



- v. To be considered inexperienced is not necessarily a negative reflection. On the basis of her time of service as an elected member the Complainant can objectively be considered “inexperienced”.
- vi. The Panel finds, it is more likely than not, that Post 3 does not meet the required bar and is relatively benign in content.

**d. Post 4**

- i. The Complainant asserts that the phrase “*did not check the facts*” implies that the Complainant was incompetent and incapable of being Mayor.
- ii. It is difficult for the Panel to assess the intended meaning of this Post where no context has been provided as to what communication Post 4 was made in response to.
- iii. The Panel is prepared to accept that it is more likely than not that (in respect to the phrase “*did not check the facts*”) Cr Newton was referring to the Complainant, as she was the only other candidate running for Mayor.
- iv. The Panel has interpreted the phrase in its normal meaning, simply that the Complaint did not check facts about a particular matter.
- v. The Panel cannot find that such phrase goes so far as to imply incompetence or inability to act as Mayor. At the most the phrase implies inexperience or a lack of meticulousness.
- vi. In the event that Post 4 related to the video circulated by the Complainant about moving the City's Ashby Operations Centre (as asserted by Cr Newton), then it is a reasonable assumption that the Complainant did not check all relevant facts relating to the ownership of such land in that case.
- vii. Even if the phrase did not relate to this specific instance, the same is relatively benign in content and not enough to be considered improper.
- viii. The Panel finds to the required standard that Post 4 was not improper.

**e. Post 5**

- i. Despite the assertions of the Complainant, the Panel finds that it is more likely than not that this Post does not relate to, and does not make any implication regarding, the Complainant.
- ii. The Post does not name the Complainant, speaks in generalities and, late in the comments, clearly refers to contacting a male candidate in relation to the matter.
- iii. Irrespective of these facts, Post 5 makes no accusations as to political affiliation, but only invites people to join Cr Newton to “find out” if such connections exist.
- iv. Therefore, the Panel finds to the required standard that Post 5 is not improper.

**f. Post 6**

- i. It is argued by the Complainant that:
  - A. Post 6 questions the Complainant's integrity; and



- B. that Cr. Newton falsely alleges the Complainant claimed excessive mileage allowances for the use of her vehicle.
- ii. The evidence provided simply does not bear these accusations out. There may be some background between the parties in respect to this matter, but the Panel has not been provided with the same.
  - iii. On the face of Post 6, it merely asks a question as to what the Complainant's past mileage claims are. This is a reasonable question (either by a councillor or an individual) where the Complainant has posted a remark about using her own vehicle for Council business.
  - iv. There is simply no implication that there was an excessive claim for mileage by the Complainant contained in the wording of Post 6.
  - v. Further, the fact that the question states a "candidate" wants to know is immaterial to the question of whether the same is considered improper or not.
  - vi. The Panel finds that it is more likely than not that Post 6 is not improper.
- g. **Post 7**
- i. The relevant wording of Post 7 is as follows:  
*"Shame you have to wear a shirt with your name on even in your own Ward says a lot."*
  - ii. It is asserted that this comment was degrading and that it is common practice for candidate to wear such shirts.
  - iii. In her covering letter to her response Cr Newton refers to this comment as "cheeky".
  - iv. In this case, the Panel finds that this comment is rude, unjustified and not in keeping with the nature of conduct that a reasonable person expects of elected members.
  - v. Clause 2.3 (d) of the Code of conduct requires that elected members *"make no allegations which are improper..... which may cause any reasonable person unwarranted offence or embarrassment."*
  - vi. The Panel finds that when making such comment Cr Newton would have been reasonably aware that Post 7 would cause offence and embarrassment to the Complainant.
  - vii. The Panel finds that Post 7 was in breach of the Code of Conduct and was improper in nature.
- h. **Post 8**
- i. The Panel has been given no photo or coherent context on which to base a reasonable finding of breach on this Post. The Complainant states that the same is "self-explanatory" however, there is simply no framework in which to place this isolated comment.
  - ii. Post 8 itself seems innocuous in content and not of the type that could reasonably give rise to an argument that its contents were improper.



- iii. As such, the Panel finds to the required standard that Post 8 was not improper.
- i. **Post 9**
  - i. The Complainant argues that Post 9 caused detriment to the Complainant as the competing Mayoral candidate and implies that she is incompetent and incapable of being a Mayor.
  - ii. This assertion cannot be supported by the evidence provided.
  - iii. It would appear that the comment relates to the video circulated by the Complainant about the City's Ashby Operations Centre which mistakenly implied the relevant land belonged to the City.
  - iv. The fact that the Complainant may have personally felt this implied she was incompetent or was unsuitable as Mayor does not mean the Panel can make that finding objectively.
  - v. Without the context provided as to exactly what was said before (or possibly after) Post 9, the Panel can only consider Post 9 as perhaps being discourteous, or sarcastic, but it does not reach the level of being objectively improper.
  - vi. The Panel finds to the required standard that Post 9 was not improper.
- j. **Post 10**
  - i. The Complaint argues that this comment shows Cr Newton is not impartial and against the Complainant running as Mayor.
  - ii. As noted above in paragraph 42.a, the word "impartial" in the context of the Code of Conduct does not impose a requirement to support all matters or candidates equally. To favour one candidate over another is not improper.
  - iii. In addition, there is no assertion by the Complainant that the contents of Post 10 are inaccurate. Post 10 only seems to be a factual account of a vote by Council to clarify a matter.
  - iv. The initial post or comment has not been provided by the Complainant. Cr Newton has supplied a partial post asserted to be that replied to, however, it is not conclusive if this was the relevant initial post in question and does not, in any event provide the entire post. As such, the Panel can make no definitive finding in respect to the context of Post 10.
  - v. Given the above, on the basis of the material supplied the Panel finds it is more likely than not that Post 10 was not improper.
- 43. In respect to Post 7 the Panel finds that the comment in Post 7 was more likely than not improper as:
  - a. the same was a breach of clause 2.3(d) of the Code of Conduct;
  - b. the alleged conduct 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. the conduct is deserving of a penalty.

44. In respect to the remaining Posts, the Panel finds that it is more likely than not the conduct by Cr Newton was not improper as:
  - a. such Posts are not in breach of the Code of Conduct;
  - b. the alleged conduct was not of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
  - c. the conduct is not deserving of a penalty.
45. This element is met only in respect to Post 7.

Cr Newton intended to cause a disadvantage OR intended to gain directly or indirectly an advantage

46. As the above element has only met in respect to Post 7, the Panel has not considered this element further in respect to the remaining Posts.
47. Further, in respect to Post 7 it was only argued by the Complainant that a detriment has occurred so the Panel has disregarded regulation 7(1)(a) of the Regulations in this regard.
48. “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.
49. It is not necessary to find whether any detriment was actually suffered<sup>12</sup>, but an intent to cause such detriment must be established.
50. The Complainant does not make any direct assertion as to the intentions of Cr Newton, but asserts that the comment was “degrading”.
51. Cr Newton similarly makes no assertion as to her intention, however, argues that the practice of wearing candidate t-shirts is not common for local council elections in Western Australia.
52. The Panel finds that the nature of Post 7 was one step more than “cheeky” and was intended to embarrass and belittle the Complainant by implying that, without a named t-shirt, her electors would not know who she was.
53. The tone of Post 7 also indicates the comment was intended to be sarcastic and to denigrate the Complainant.
54. The Panel finds that it is more likely than not that Cr Newton did have an intent to cause a detriment to the Complaint when she made Post 7.
55. This element is met, with respect to Post 7 only.

Conclusion

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

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<sup>12</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



57. The Panel makes the general comment that elected councillors should be moderate and careful in their interactions with others at all times, particularly when comments made relate directly to another party.
58. Despite the finding of no breach in respect to the majority of the Posts, the Panel would urge Cr Newton to carefully consider the context and manner in which she makes comments in a public forum.

### **Panel's Findings**

59. In respect to Post 1 Cr Newton did not commit a breach of Regulation 7(1)(a) of the Regulations or Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
60. In respect to Post 2 Cr Newton did not commit a breach of Regulation 7(1)(a) of the Regulations or Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
61. In respect to Post 3 Cr Newton did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
62. In respect to Post 4 Cr Newton did not commit a breach of Regulation 7(1)(a) of the Regulations or Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
63. In respect to Post 5 Cr Newton did not commit a breach Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
64. In respect to Post 6 Cr Newton did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
65. In respect to Post 7 Cr Newton did commit a breach of Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.
66. In respect to Post 8 Cr Newton did not commit a breach of Regulation 7(1)(a) of the Regulations or Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
67. In respect to Post 9 Cr Newton did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.
68. In respect to Post 10 Cr Newton did not commit a breach of Regulation 7(1)(a) of the Regulations or Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.

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Mick Connolly (Presiding Member)

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Emma Power (Member)



A handwritten signature in black ink, appearing to read 'Peter Rogers', written over a horizontal line.

Peter Rogers (Member)





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## Local Government Standards Panel

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Complaint Number	SP 2020-028
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Sonet Coetzee</b>
<b>Respondent</b>	<b>Councillor Dot Newton</b>
Local Government	<b>City of Wanneroo</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mrs Emma Power (Presiding Member) Cr Peter Rogers (Member) Mr Gordon MacMile (Deputy Member)
Heard	10 June 2020 Determined on the documents
Penalty Considered	12 August 2020
Outcome	Public Apology

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### DECISION AND REASONS FOR DECISION

Delivered 28 August 2020

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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



## Introduction

1. At its meeting on 10 June 2020, the Panel found that Councillor Dot Newton, a councillor for the City of Wanneroo (“**the City**”), committed 1 minor breach under the *Local Government Act 1995 (WA)* (“**the Act**”) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* (“**the Regulations**”) when she made a comment on Facebook that was intended to denigrate the Complainant in the lead up to the 2019 Mayoral Elections of the City (“**the Minor Breach**”).

## Jurisdiction and Law

2. The Panel convened on 12 August 2020 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 Newton 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 7 July 2020, Cr Newton 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*
    - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount*

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<sup>1</sup> *Local Government Act 1995 (WA)*, s 5.110(5).



*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 Newton's Submissions**

7. By an email dated 16 July 2020, the Department received a response from Cr Newton with the following comments and arguments as to penalty as summarised by the Panel:
- a. In the past few months elected members of the Council have been given advice on how to deal with social media and pitfalls for elected members, something that had been lacking.
  - b. When Cr Newton was first elected, Facebook was not a factor. Cr Newton honestly assumed that as the comments were made in her name and not as a Councillor that she had not breached any code.
  - c. Cr Newton points out that she did not post or share, but made comments in response to posts by the Complainant along with many others.
  - d. The relevant comment the subject of the breach finding was seen by 25 people.
  - e. Cr Newton has now removed all comments made by her during the Mayoral campaign as they still remained on the Complainant's page.
  - f. Cr Newton acknowledges that her letter in response to the complaints lodged was flippant when it referred to the comment on the T-shirt as "cheeky", for which she apologises. It was extremely unprofessional.
  - g. Cr Newton requests that the Panel takes into account her past record on Council.
  - h. Cr Newton openly admit to being shocked at receiving the initial contact from the Panel, particularly as almost six months had lapsed since the comments had been made with no replies at the time or since by the complainant.
  - i. This whole experience has caused Cr Newton stress, and she will not reoffend.
  - j. If the Panel decides to order a sanction, then Cr Newton suggests further training. Cr Newton believes a public apology in a Council meeting would cause the Complainant embarrassment, however, she will comply with any finding the Panel deems appropriate.
  - k. Cr Newton seeks a no sanction outcome, allowing her to finish her last term in office with an unblemished record.
  - l. Cr Newton respectfully requests that no order be made to cover the costs.



## Panel's Consideration

8. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
9. 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.
10. 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 LG 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>.
11. The Panel notes that Cr Newton accepts that she has breached the Regulations and is remorseful for her actions.
12. Further, the breach is on the lower end of seriousness. However, the conduct took place publicly, albeit in front of a small audience.
13. Despite this, the standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position.
14. The fact that Facebook posts or comments are made using a personal account of a Councillor is not enough to remove responsibility. The relevant context on the conduct must be taken into account. This position has been affirmed by the State Administrative Tribunal<sup>3</sup>.
15. Where the comments are made by a sitting local councillor in relation to Council business, or relating to a party running for the office of local councillor, then any comments made by that person will more likely than not be informed and directed by the knowledge and interests of that person as a councillor, rather than as a solely private individual.
16. In these circumstances, the Panel considers that the appropriate sanction is that Cr Newton make a public apology.

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

<sup>3</sup> *Kepert and Local Government Standards Panel [2019] WASAT 78*



17. The public nature of any apology given by a councillor under the Act is appropriate as a councillor's office is public in nature, and the conduct undertaken by Cr Newton was also public in nature.
18. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. 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.
19. In the relevant circumstances, the Panel considers that making a public apology is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Cr Newton recoup to the City the costs of the Department incurred with respect to the Complaint.

### **Panel's decision**

20. 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 Newton make a public apology in terms of the attached Order.

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Emma Power (Member)

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Peter Rogers (Member)

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Gordon MacMile (Deputy Member)

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



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## ORDER

Delivered 28 August 2020

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### DEFAMATION CAUTION

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Dot Newton, a councillor for the City of Wanneroo **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 Wanneroo first occurring after the expiration of **28 days** from the date of service of this Order on her, Councillor Newton 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 she made a comment on Facebook that was intended to denigrate Councillor Sonet Coetzee.
- i. The Panel found that I breached regulation 7(1)(b) of the said Regulations as my conduct was improper and deserving of a penalty.
- ii. I accept that I should not have made the relevant comment regarding Councillor Coetzee.
- iii. I now apologise to Councillor Coetzee, my fellow Councillors and the public."



3. If Councillor Newton 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 3 above:
  - a. Councillor Newton shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of:
    - i. the “Wanneroo Times” community newspaper; AND
    - ii. the “North Coast Times” community newspaper; AND
  - b. the Chief Executive Officer of the City of Wanneroo shall arrange for the notice of public apology to be published:
    - i. on the Facebook Page of the City of Wanneroo in no less than 10 point font size; and
    - ii. in an appropriate place on the website of the City of Wanneroo in no less than 10 point font size; and
    - iii. in the next occurring issue of any City of Wanneroo public newsletter (if any) whether in electronic or print copy) (if any) in no less than 10 point font size.

**PUBLIC APOLOGY BY COUNCILLOR DOT NEWTON**

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 she made a comment on Facebook that was intended to denigrate Councillor Sonet Coetzee.

The Panel found that I breached regulation 7(1)(b) of the said Regulations as my conduct was improper and deserving of a penalty.

I accept that I should not have made the relevant comment regarding Councillor Coetzee.

I now apologise to Councillor Coetzee, my fellow Councillors and the public.

Emma Power (Member)

Peter Rogers (Member)

Gordon MacMile (Deputy Member)



## 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."