

**IN AN INTERNAL ARBITRATION PROCESS FOR DAREBIN CITY COUNCIL
UNDER SECTION 143 OF THE *LOCAL GOVERNMENT ACT 2020***

LGA IAP REF: IAP 2022-5 and IAP 2022-6
APPLICANT: Cr Susanne Newton
RESPONDENT: Cr Tim Laurence
BEFORE: Arbiter J Silver
HEARING DATE: 5 August 2022 at Preston
DATE OF REASONS: 31 October 2022

ORDERS MADE:

Liability

1. Allegations 3, 4, 5, 9, 11, and 12 are proven.
2. Allegations 1, 2, 6, 7, 8, 10, 13, 14, 15 and 16 are dismissed.
3. Under sub-s 147(1) of the *Local Government Act 2020* (**'the Act'**), I find that Cr Tim Laurence has engaged in misconduct.

Sanction

4. Under sub-s 147(2) of the Act, I make the following orders:
 - (a) within 3 months of the tabling of my reasons, Cr Laurence must repeat his training under section 32 of the Act;
 - (b) within 3 months of the tabling of my reasons, Cr Laurence must deliver a public apology at a Council Meeting, in which he notes that an arbiter has found that he has engaged in misconduct by disparaging his fellow Councillors, and apologising sincerely for that behaviour; and

- (c) I suspend Cr Laurence from the office of Councillor for a period of two weeks (14 calendar days) commencing the next day from the tabling of my reasons.

Other Matters

5. On 19 October 2022, I issued my reasons under sub-s 147(3) of the Act, and sought submissions on whether the ruling contains confidential information required to be redacted under sub-s 147(5) of the Act.
6. No confidential information having been identified, I issue these reasons for tabling under sub-s 147(4) of the Act.

APPEARANCES

The parties appeared in-person.

STATEMENT OF REASONS (LIABILITY AND SANCTION)

A. Background, Arbitration Process and Summary of Findings

1. On 3 and 5 April 2022, Cr Susanne Newton lodged applications under section 143 of the *Local Government Act 2020* ('**the Act**') with the Principal Councillor Conduct Registrar.
2. The first application (IAP 2022-5) made 13 allegations of misconduct against Cr Tim Laurence, and the second application (IAP 2022-6) made 3 more; in these reasons, the respective allegations in the applications are numbered 1 to 13, and 14 to 16.
3. The allegations concern online statements made by Cr Laurence (in social media and by email), and reported remarks in a newspaper.
4. Several statements contain multiple sub-statements, that on their own could breach the standards in schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* ('**Governance Regulations**').
5. In general, Cr Newton alleged that Cr Laurence had breached two standards, with reference to one or both in each allegation:

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—

(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.

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.¹

6. In response, Cr Laurence filed materials totalling 26 pages.
7. Although I read and considered the full content (as I did for all Cr Laurence's material), an arbiter's work under section 141 of the Act is limited to the misconduct alleged in an application. I cannot enquire into matters beyond those allegations.
8. On 18 and 31 May 2022, the Principal Councillor Conduct Registrar appointed me to hear each of the applications, and I determined (with the parties' agreement) that I should hear the applications concurrently.
9. After a first directions hearing and orders, the arbitration was listed for a hearing on 14 July 2022, but I contracted COVID-19 a few days beforehand, so the hearing date was adjourned to 5 August 2022.
10. The hearing considered each allegation at a time, in sequential order, with the parties making submissions and giving evidence concurrently. During that process, Cr Newton withdrew allegations 6, 10, 15 and 16.
11. After the hearing, I allowed the parties to submit any further materials that they wished to, with liberty to respond.
12. The statements in allegations 4 and 8 were alleged to release confidential information, as defined in the Act. As doing so is 'serious misconduct' under the Act, it appeared that I had to make a referral under section 146, and could not hear the allegations.
13. Cr Laurence did not challenge the confidentiality allegation during or before the hearing. He instead did so a short time afterwards, before the referral was made, and showed the confidentiality allegation was wrong. Rather than convene a further

¹ While Cr Newton also relied on sub-standard 4(2), it only concerns where a Councillor misleads Council or the public about any a matter relied to 'the performance of their public duties' (meaning Cr Laurence's public duties). There was no evidence to suggest Cr Laurence misled anyone concerning his public duties.

hearing, I invited Cr Laurence to make written submissions in response to allegations 4 and 8, which he did.

14. Having considered all of the evidence, I have determined as follows:

- (a) I dismiss allegations 1, 2, 7, 8, 13 and 14; and
- (b) I find allegations 3, 4, 5, 9, 11, and 12 proven, and accordingly find that Cr Laurence has engaged in misconduct.

and I order the following sanctions:

- (a) within 3 months of the tabling of my reasons, Cr Laurence must repeat his training under section 32 of the Act;
- (b) within 3 months of the tabling of my reasons, Cr Laurence must deliver a public apology at a Council Meeting, in which he notes that he has engaged in misconduct and apologising sincerely for disparaging his fellow Councillors and Council staff;² and
- (c) I suspend Cr Laurence from the office of Councillor for a period of two weeks (14 calendar days) commencing the next day from the tabling of my reasons.

These sanctions are proportionate to Cr Laurence's misconduct, focusing on denunciation and deterring future misconduct.

15. The sanctions include a period of suspension, for two reasons.

16. First, if I do not suspend Cr Laurence, I consider he will continue to discredit Council through the same kind of misconduct I have found he engaged in: in his evidence and submissions, Cr Laurence's attitude was uncompromising, with little to show that he

² I leave the exact choice of words to Cr Laurence.

understood the concerns arising from his actions, or his obligations under the standards (which his post-hearing submissions conceded he did not read until after the hearing).³

17. Second, because the behaviour referred to in allegation 12 demands condemnation and punishment (see allegation 12).
18. A consistent theme in Cr Laurence's argument (and I am summarising its effect, rather than his words) was that his misconduct must be understood with reference to the alleged poor behaviour of other Councillors, and that he had no ability to hold them to account without engaging in misconduct himself.
19. If local government were the wild west, that might be true, but sections 143 and 154 of the Act provide to the contrary.
20. If a Councillor wishes to allege misconduct or serious misconduct by another Councillor, an application alleging as-much is the appropriate course (or in the case of a conflict of interest, a complaint to the Chief Municipal Inspector⁴).

B. The scope of 'robust debate' and the other standards

21. Cr Newton's applications allege several examples where, 'in performing the role of a Councillor' Cr Laurence has engaged in behaviour that brought 'discredit upon the Council,' in contravention of sub-standard 4(1).
22. On what occasions a Councillor is considered to be 'performing' their role was considered by Arbiter Blacher in *Morgan v Lew* [IAP 2021-19; 2021-23]. I accept Arbiter Blacher's reasoning that section 28 does not limit the role of a Councillor.

³ The standards are reproduced, in full, in the standard form application through which Councillors make an application for an internal arbitration. They are also included in the Councillor Codes of Conduct for each local government in Victoria, a document that Cr Laurence would have read and signed.

⁴ Note *Local Government Act* 2020 sub-s 154(4)

23. In practice, a Councillor fulfils their role whenever they engage in activities in connection with their role as Councillor, which includes publicly commenting on matters in relation to Council (including interactions with their colleagues).
24. Another issue previously considered, and which is of some relevance to sub-standard 4(1), is the scope of 'robust debate' in standard 5.
25. Given the expansive meaning of the phrase 'role of a Councillor' in the standards, it follows that a Councillor can do much that might 'bring discredit' upon Council for the standards' purposes.
26. 'Bring discredit' includes behaviour that harms Council's reputation.
27. Examples of that would include using vulgar language in the Council chamber, or drunken behaviour at a Council function: however, if engaged in during a Councillor's morning walk, the same behaviour is probably not within their role (even if the deleterious effect on Council is just the same).
28. The allowance for 'robust debate' means that a Councillor does not breach the standards merely because, by criticising a Council decision (based on a policy decision which they consider wrong or contrary to the bests of their municipality), that criticism might be said to bring discredit upon Council, or to have discredited Council.
29. But there are limits.
30. The Panel in *Councillor Conduct Panel Application 2021-3* (Hely & Lew) (15 July 2022), at paragraph 7 of their ruling, explained 'robust debate' thus:

... in the local government context, political debate can be robust but at the very least it must not involve behaviour towards another councillor which involves repeated unreasonable behaviour, which also constitutes a risk to the health and safety of another councillor. Unreasonable behaviour was held by the Panel in *O'Reilly v Toms*, to mean behaviour that a reasonable person would regard in the circumstances as unreasonable. In the local government context, the Act also

requires civility set out in the standards of conduct, the breach of which may result in an arbiter or Panel finding misconduct or serious misconduct.

The Panel also referred to a passage from Kirby J's ruling in *Coleman v Power* (2004) 220 CLR 1, in which his Honour was critical of the behaviour of Commonwealth parliamentarians, but indicated such behaviour was within the scope of the implied freedom of political communication in the Commonwealth Constitution.

31. The Panel view ensures that standard 1 has some work to do: if any disrespectful or uncivil behaviour by Councillors were considered robust debate, there would be little space in which standard 1 would have operation.
32. Cr Laurence argued that he was engaged in robust debate in response to several allegations. I have agreed in some instances, but not when his statements argued that impropriety or corruption was at-play.

C. Findings and Reasoning

(I) Allegation 1

33. Allegation 1 concerns a 21 March 2022 post by Cr Laurence in the 'Darebin Residents' Facebook group, which has about 2,100 members, and which attached an article from *The Guardian Australia*.
34. In the post and his response made to another user's comment on the post, Cr Laurence made comments to the effect that Council was not spending on its neediest residents, and suggested that while Council was happy to support '*cultural symbolism*,' Council's expenditure was not in the area where its poorest residents (including First Nations people) live. He describes this as '*wilful neglect*.'
35. Cr Laurence described Council's budget approach as a '*5 year Greens led capital strike above Bell Street*,' which he then went onto describe as '*a sick example of using a Council budget to do state pork barrelling in a marginal seat*.'

36. In this allegation (unlike allegation 11), Cr Laurence used the term "pork barrelling" in its usual sense (that is, money spent for political reasons in a particular geographic area, without any true underlying merit), and attached no undertones of corruption or impropriety.

37. These statements are robust debate, and are not misconduct.

(II) Allegation 2

38. In late 2021, the number of Councillors participating in the CEO recruitment and selection process was reduced to a smaller group, and some Councillors (including Cr Laurence) were excluded. This decision was subsequently reversed.

39. In a comment on a post in the Darebin Residents Group, Cr Laurence made statements to the effect that the decision to limit group numbers was undemocratic and excluded parts of the community from the CEO selection process, and referred to his colleagues as a '*Greens minority dictatorship in action.*'

40. Such dramatic statements are robust debate, not misconduct.

(III) Allegation 3

41. Allegation 3 concerns a late-night Facebook post by Cr Laurence from 16 March 2022. While deleted a short time later, the full contents were republished on page 1 of *The Local Paper* on 23 March 2022, together with additional comments by Cr Laurence on page 3 (see allegation 4).

42. Cr Laurence made the post following the unexpected resignation of Council's CEO.

43. The post repeats a common theme in Cr Laurence's messaging, which is that Council's failure to rebuild or refurbish the Reservoir Leisure Centre (rather than Northcote Aquatic and Recreation Centre) is the result of other Councillors having compromised the independence of Council staff.

44. While the post otherwise comprises robust debate, the statement that '*under the influence of certain councillors the CEO and officers have failed to bring objective options to the council chambers regarding the redevelopment*' of Reservoir Leisure Centre is not. In other words, interference with Council staff's public duties.
45. Through alleging improper conduct, Cr Laurence breached standard 1 and sub-standard 4(1): he was unfair, discourteous and disrespectful, and brought discredit upon Council.
46. Allegation 3 is proven.

(IV) Allegation 4

47. Allegation 4 concerns Cr Laurence's additional reported comments on page 3 of *The Local Paper* edition on 23 March 2022.
48. As the comments were not from his 16 March post, I asked Cr Laurence if he had spoken with *The Local Paper*, and if the words attributed to him were in fact his words.
49. In response, Cr Laurence denied speaking with *The Local Paper*, and suggested *The Local Paper* was inaccurate, and "chops and changes" material from different sources into one article.
50. The issue was not addressed further, either in his pre-or-post hearing submission.
51. While Cr Laurence may not have spoken to *The Local Paper*, it is equally possible his words came from a different social media post that Cr Newton had not located and included in her application. As either is an open possibility, and as Cr Laurence's denial was unpersuasive, I accept the page 3 comments originated from him.
52. While the page 3 comments are largely robust debate (unpleasant as they may be), Cr Laurence is also reported as stating that his and others being excluded from the CEO performance committee was '*solely because Cr [Trent] McCarthy has long history of being a "man child" when it comes to power and he will not share power with those he considers not adequately obedient to him.*'

53. This breaches standard 1, and allegation 4 is proven.

(V) Allegation 5

54. In a Facebook comment that he made on 30 March 2022, Cr Laurence refers to *'interesting instances where body language reveals delusions [of] power,'* and stated that at the previous night's Council meeting, Cr Susan Rennie had *'used hand gestures to signal to Cr [Gaetano] Greco to sit down,'* stating words to the effect that Cr Rennie had ordered Cr Greco to *'sit like a dog,'* and that Cr Rennie had treated Cr Greco *'like an animal.'* The relevant Councillors were not called to give evidence.

55. I pressed the parties on this allegation at the hearing, and Cr Laurence accepted that his use of language was inappropriate. He did not raise a robust debate defence.

56. Even without the concession, I find that allegation 5 is proven: suggesting a fellow Councillor is deluded brings discredit on Council. If Cr Laurence considered that Cr Rennie was engaged in misconduct, and wishes to take it further, social media was not the place. That said, this misconduct is relatively minor, and does not warrant a sanction.

(VI) Allegation 7

57. Allegation 7 arose from comment posted by Cr Laurence on 6 January 2022, in debating a resident on the Darebin Residents Group who was calling for the appointment of an Administrator.

58. Cr Newton alleged that Cr Laurence suggested Darebin was on a path to a Monitor. I do not consider that to be misconduct.

(VII) Allegation 8

59. Allegation 8 concerns a lengthy Facebook post by Cr Laurence on 2 April 2022, accompanied by the image "Darebin democracy in danger," in which he made several

comments about the limited membership of the CEO performance and recruitment committee, to the effect the arrangement was undemocratic.

60. This included stating that some Councillors had been excluded as *'pay back to those... who did not support large performance bonuses at Darebin,'* and suggested the CEO selection process was *'rigged.'*
61. It also states that Mayor Lina Messina was *'the initiator of this Greens inspired non-inclusive framework'* and that she *'must stop the crude Morrison-like spin and double speak and own the divisive consequences of her own role.'*
62. In my opinion, robust debate gives leeway to Councillors in a "minority grouping" to complain about the "majority grouping", so long as they remain civil. That includes suggesting that the 'majority' are making political decisions, or excluding the minority.
63. Cr Laurence's comments, unproductive as they might be, are robust debate.

(VIII) Allegation 9

64. Allegation 9 arises from a comment on a Darebin Residents Group post made by the 'Darebin Labor' Facebook page on 2 April 2022. Cr Newton alleged Cr Laurence controls this account.
65. Cr Laurence's response was equivocal: he accepted that he previously controlled the page (with others), stated he no longer controls it, but accepted the page sometimes re-posts comments he has made, and therefore it might still be his words.
66. Absent a more fulsome denial, and because the comment is clearly a first-person statement by a Darebin Councillor with the views Cr Laurence has expressed elsewhere, I am satisfied Cr Laurence was the author.
67. Although I consider most of the comment is robust debate (being similar to what I considered in allegation 8), the following is not:

This remains an unsafe workplace. The meetings seen by the public show some of the tensions but the private meetings organised by the Mayor and Deputy Mayor end up in naked aggression. The CEO quickly walked out on one of these meetings – so she leave (sic) Darebin and not be drawn back as a WorkCover witness. In this climate of bias and ‘us and them’ any code of conduct is unlikely to be pursued internally with impartiality.

68. Alleging that other Councillors' behaviour caused a CEO to depart clearly brings Council into discredit, and is disrespectful to other Councillors, as is suggesting that their behaviour has created an unsafe workplace.

69. I find that allegation 9 is proven.

(IX) Allegation 11

70. This allegation concerns a Facebook post by Cr Laurence on 14 March 2022 in the Facebook group "Reservoir 3073".

71. The post shared a newspaper article about statewide Councillor allowance increases, and invited ratepayers' views on "*paying 5 Councillors a collective total of \$295,000 per annum to the block voting pro-Greens group who have a shameful history of voting against investing in the Reservoir Leisure Centre.*" This is well within the scope of robust debate.

72. However, in a comment on the post, Cr Laurence went further, explaining why he felt that his fellow Councillors were shameful:

Pork barrelling which is a form of political corruption and public maladministration in my view distorts the outcomes for the majority in Darebin on the issue of aquatic facilities ... That is why I raise issues with tens of thousands of residents before I draft Notices of Motion so that I avoid the bias and limitations that come from factionally controlled consultations. I have formed my own views on council matters [in the past] And I am still doing the same with a Greens factionally controlled Council.

The statement did not concern a specific item of Councillor business at a particular Council meeting, but the Reservoir and Northcote leisure facilities generally, and Cr Laurence's belief that expenditure would be occurring at Reservoir facility but-for the need to "pork barrel" in Northcote.

73. Cr Newton argued this statement contravened sub-standard 4(1), and I agree.

74. Corruption (or rather 'corrupt conduct') has an established legal meaning in Victoria,⁵ and for many that is also its ordinary meaning. It does not usually overlap with "pork barrelling", a phrase that refers to politically motivated expenditure, usually announced close to an election without prior public service input, and which targets an area in which votes must "be won over." A poor form of decision-making, perhaps, but not corruption in its legal and accepted sense.

75. However, in adding the descriptors '*corruption and public maladministration*', Cr Laurence went further.

76. Under Part 4 of the Act, Councils have extensive budgetary and financial processes planning obligations: in practice, it means Council expenditure does not occur on Councillor whims, but based on formal processes set-down in the legislation, which includes a significant level of community and Councillor consultation.

77. In the hearing, Cr Laurence acknowledged those processes had occurred, but suggested that they are usually unreliable because the consultations are '*factionally controlled*'. As best I can understand it, Cr Laurence justifies that conclusion by circular logic (ie. there is something wrong with the process if his desired outcome did not result).

78. Cr Laurence argued that he should not be understood as alleging corruption in its usual sense, but instead 'grey corruption' or 'soft corruption', where "*your affiliations or your actions discriminate against a whole class of people, and they lose resources. And the problem with corruption or nepotism is really we often want to punish*" and that when it occurs "*rules haven't been applied.*"

⁵ *Independent Broad-based Anti-corruption Commission Act 2011* s 4

79. I reject that submission, because that is not what he wrote.

80. If Cr Laurence merely stated that "Council expenditure is unfairly focused on Northcote", or "Reservoir residents are getting hard done by the Greens majority", or even "my colleagues do not care about Reservoir residents and should hang their head in shame", that would be robust debate. Alleging corruption or breaking the law is not.

81. I find that allegation 11 is proven.

(X) Allegation 12

82. On 28 March 2022, Cr Laurence sent a four-paragraph email to the-then Minister for Local Government, the Member for Northcote in the Parliament of Victoria, and carbon-copied in all Darebin Councillors and the CEO.

83. Titled 'Potential breach of Local Government Act and code of conduct,' Cr Laurence stated in his first paragraph that:

The concerns of many South West Ward residents is that in relation to the Thornbury Park Heritage Study there was an incomplete declaration of the two conflicts of interest of councillor and that the councillor in question could benefit materially or suffer a loss depending on the decision.

And in the final paragraph, that the conflict was a '*known conflict of interest*', and that Council staff '*lack the influence to stop a repeat breach of the LG Act*' at the Council meeting scheduled for that evening, and which proposed to send a proposed planning scheme amendment to panel stage (see Item 8.2 on the Agenda).

84. The Councillor whom Cr Laurence was referring to was Cr Newton. She was a recipient of the email.

85. Cr Newton gave evidence that she took advice, and was satisfied that she had an exemption under sub-s 129(b) of the Act (where an interest in held in common with a

substantial proportion of residents). She stated she had declared her reliance on that exemption at previous Council meetings, which Cr Laurence did not dispute, and in the Minutes of Meeting for 28 March 2022, it is recorded that she stated her exemption.

86. Cr Laurence's evidence was that he emailed the Minister merely to raise resident concerns that Cr Newton had failed to declare a conflict of interest, and he was, in effect, protecting Council's reputation and processes.
87. Giving Cr Laurence the benefit of the doubt, I am not concerned with his emailing the Minister, but his inclusion of Cr Newton in the same email.
88. Even if the Minister could not (or was unlikely to) intervene in the manner requested,⁶ I am satisfied that Cr Laurence's inclusion of Cr Newton email was intended to coerce Cr Newton into withdrawing from the vote (through disincentivising her participation), or was, to use Cr Laurence's language in another allegation, a form of "payback" because Cr Newton had a different view from him, and he wished to cause her discomfort.
89. Councillors must treat one another with respect. A Councillor who causes or attempts to cause another Councillor to withdraw from a decision, through improper pressure or making a threat (which is the effect of Cr Laurence's email), despite that Councillor's entitlement to participate, is not respectful.
90. I find allegation 12 proven.

(XI) Allegation 13

91. On 4 March 2022, Cr Laurence emailed a member of Council staff and other Councillors concerning the adjournment of the 28 February 2022 Council meeting, after Cr Julie Williams either left or was disconnected from the virtual meeting.

⁶ Under sub-s 154(4) of the Act, only the Chief Municipal Inspector can seek a finding of serious misconduct, for a failure to declare a conflict of interest, from a Councillor Conduct Panel.

92. Cr Laurence took issue with how Cr Williams' departure from the meeting was handled. Cr Newton took issue with how Cr Laurence took issue.

93. Cr Laurence's email evinced frustration, at most, and I am not satisfied that it amounts to misconduct.

(XII) Allegation 14

94. This allegation arises from a Facebook comment by Cr Laurence on 3 April 2022, on a post in the Darebin Residents Group.

95. In the comment, Cr Laurence stated:

(a) That it was *'odd that an incomplete report [relating to the Northcote Golf Course] would be submitted by officers to the council agenda weeks before the meeting. I am concerned the decision to pull the report came from directions given inside a council briefing'*, and that this was *'a fast track to poor governance'*; and

(b) *'It also appears the Mayor (sic) salary is now being used to buy the Greens voting outcomes. This would explain motivations on not releasing results that are inconvenient for the execution of last years (sic) Mayoral deal'*.

96. Both statements are on the borderline of sub-standards 1(d) and 4(1), but I have concluded the problematic aspect is robust debate.

97. The first statement, at most, is inaccurate and prone to mislead (albeit not in the sense covered by sub-standard 4(2)): it is not 'odd' (in the sense of out of the ordinary) for Council staff to postpone the presentation of a report to a Council meeting, based on Councillor feedback in a prior briefing session.

98. It can be preferable to do so if the feedback identifies that a report does not include all relevant information, or if it indicates that a further issue must be addressed. Cr Laurence accepted as much during the arbitration.

99. But it does not breach the standards, poorly as it might reflect on Cr Laurence.
100. On one view of the "vote-buying" statement, it suggests Cr Lina Messina's decision was "bought." On the other hand, and noting what I have said about minority and majority groupings on Council, I think the more reasonable meaning is that Cr Laurence is complaining that Cr Messina is a politician who chose politics over principle. That is an unhelpful statement, but it is also robust debate.

J A SILVER

ARBITER