

## **COUNCILLOR CONDUCT PANEL**

### **In the matter of an Application by Councillor Tracie Lund concerning Councillor Melissa Ferguson**

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

Applicant: Cr Tracie Lund

Respondent: Cr Melissa Ferguson

Date of hearing: 25 March 2024

Hearing location: Century Inn, Traralgon

Panel Members: Diana Price (Chairperson)  
Matt Evans

Date of decision: 29 May 2024

#### **FINDINGS & DETERMINATIONS<sup>1</sup>**

By way of findings and determinations, the Panel orders as follows. The Respondent:

1. engaged in serious misconduct;
2. is reprimanded;
3. is suspended from office for one (1) month commencing the day after the meeting of Council at which this decision is tabled pursuant to s 168(2) of the *Local Government Act 2020*; and
4. is directed to undergo remedial action, being to attend and complete training on or before 13 September 2024.

Diana Price  
Chairperson

Matt Evans  
Panel Member

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<sup>1</sup> Revised on 30 May 2024

## STATEMENT OF REASONS FOR DECISION

### The Application

1. By application dated 19 September 2023, Councillor Tracie Lund sought a finding of serious misconduct against Councillor Melissa Ferguson pursuant to s 154(2) of the *Local Government Act 2020* (the **Act**) (the **Application**). Both the Applicant and Respondent are serving councillors at Latrobe City Council (the **Council**).
2. The Application contains one allegation that Cr Ferguson failed to comply with an internal arbitration process and a direction given to her by an arbiter following an earlier finding of misconduct.

### Procedural history and evidence at hearing

3. This matter was first listed for a directions hearing on 10 November 2023. Upon application by Cr Ferguson, this directions hearing date was altered to 27 November 2023.
4. A timetable was set down at the directions hearing on 27 November 2023. Orders were made for the Applicant to file any additional materials by 11 December 2023, with the Respondent to do likewise by 18 December 2023. Subsequently neither party submitted any materials on or before those dates. The matter was listed for hearing on 23 January 2024.
5. On 22 December 2023, Cr Ferguson sought to adjourn the hearing listed in January as she had suffered a bereavement. The hearing date was vacated and relisted for 25 March 2024.
6. Following correspondence between the parties and the principal councillor conduct registrar, a directions hearing was listed on 19 March 2024. On that date Cr Ferguson applied to be legally represented at the hearing. This application was refused. There is no right to representation at a panel hearing, except if a panel considers that a party requires representation to ensure the hearing is conducted fairly. The Panel did not consider that representation was so required. The Panel confirmed the hearing date of 25 March 2024 and directed that it would consider receipt into evidence of any additional evidence relied upon by the parties.
7. Both parties attended in person at the final hearing on 25 March 2024. Cr Lund sought to rely on additional materials provided to the Panel and Cr Ferguson on 17 March 2024. Cr Ferguson sought to rely on additional materials which were emailed to the principal councillor conduct registrar, who was based in

Melbourne, at 9.45am on the morning of the hearing. The matter was stood down to enable these materials to be forwarded, printed and properly considered by Cr Lund and the Panel. The Panel decided to accept receipt of the materials presented by Cr Lund and Cr Ferguson.

8. No witnesses were called at the hearing, however both the Applicant and the Respondent made oral submissions.

### **Jurisdiction and procedures of the Panel in relation to the Application**

9. Section 154(1) of the Act provides that the Panel has jurisdiction to hear an application that alleges serious misconduct by a councillor. In this case, the application was made by Cr Lund per s 154(2)(b).
10. Section 163(1) of the Act provides that the Panel must not make a determination against a councillor until it has conducted a hearing. Following such a hearing, the Panel has the powers outlined in s 167. This includes to make a finding of serious misconduct, a finding of misconduct, a finding that remedial action is required, or it may dismiss the application.
11. Misconduct is defined in s 3 of the Act. It means 'any breach by a Councillor of the standards of conduct'. 'Standards of conduct' in turn is defined to have the meaning referred to in s 139(3)(a), being the standards of conduct prescribed by the regulations expected to be observed by councillors.
12. 'Serious misconduct' is defined in s 3 to include the failure by a councillor to comply with a direction given to the councillor by an arbiter under section 147. Section 147 relates to sanctions that may be imposed by an arbiter on finding of misconduct.
13. If the Panel makes a finding that a councillor engaged in serious misconduct it may impose any one or more of a number of determinations. Section 167(3) provides:

If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor Conduct Panel may do any one or more of the following—

- (a) reprimand the Councillor;
- (b) direct the Councillor to make an apology in a form or manner determined by the Councillor Conduct Panel;
- (c) suspend the Councillor from office for a period specified by the Councillor Conduct Panel not exceeding 12 months;

- (d) direct that the Councillor is ineligible to chair a delegated committee of the Council for a period specified by the Councillor Conduct Panel not exceeding the remainder of the Council's term.

## Background

14. On 8 June 2023, Cr Lund made an application seeking a finding that Cr Ferguson had engaged in misconduct. It was alleged that Cr Ferguson repeatedly breached the Council's Councillor Code of Conduct (February 2021) (**Code of Conduct**) by making numerous posts on Twitter (now re-branded as X) concerning the LGBTIQA+ community. This application was heard by an arbiter.
15. The Arbiter published her decision on 14 August 2023 (the **Arbiter's Decision**). The Arbiter considered 40 tweets made by Cr Ferguson. The Arbiter found at [62]:

While some individual tweets are not in themselves offensive and may be a legitimate engagement with academic articles on LGBTIQA+ issues, others are not. In my view there are many tweets that are offensive, disrespectful to trans people by inferring that trans people are paedophiles, grooming children and using their gender identity to legitimise paedophilic activity, disrespectful to other members of the public by stating that academics are trying to normalise paedophilia, are discriminatory and do not support the Council in its obligation to achieve and promote gender equality or treat members of the public with dignity, fairness, courtesy and respect.

16. The Arbiter found that these tweets could reasonably be interpreted as having been made by Cr Ferguson in the role of councillor. For example, 20 of the tweets considered were made under the twitter handle 'Cr Melissa Ferguson'. The Arbiter found that these tweets breached the standards which require a councillor to:

- 16.1. take positive steps to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*;
- 16.2. support the Council in fulfilling its obligation to achieve and promote gender equality; and
- 16.3. in considering the diversity of interests and needs of the municipal community, treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities; and
- 16.4. in performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.

17. The Arbiter noted that the standards of conduct are not intended to limit, restrict or detract from robust political debate in a democracy, but there is a balance to be attained between the right to express one's personal opinions and the rights of others not to be harmed by the expression of those opinions. The manner of debate must be respectful, fair, done with courtesy and afford dignity to all engaging as required by the Standard of Conduct.
18. The Arbiter therefore made a finding of misconduct against Cr Ferguson on the basis that she had breached clauses 1(a), 1(b), 1(d), 2(d) and 4(1) of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*, which contains the standards found within the Code of Conduct.
19. The Arbiter imposed the following sanctions at [38] – [39]:

Pursuant to s147(2)(a) of the Act the Arbiter directs Cr Ferguson to:

- a. make a verbal apology for her conduct on twitter which is to be provided at the Council meeting at which this decision (and statement of reasons) is tabled in accordance with s147(4) of the Act; and
- b. provide a written apology for her conduct on twitter which is to be included in a tweet on her twitter account (twitter handle @Melferg246) within one week of the Council meeting at which this decision (and statement of reasons) is tabled in accordance with s147(4) of the Act.

In each case, the apology must [be] unreserved and reference that Cr Ferguson has engaged in misconduct by breaching the standards of conduct in clauses 1(a), 1(b), 1(d), 2(d) and 4(1) of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* through her tweets about the LGBTIQ+ community.

Pursuant to s147(2)(e) of the Act the Arbiter directs Cr Ferguson to attend training to increase her understanding of:

- a. diversity, equity and inclusion with particular reference to the LGBTIQ+ community and what behaviour is required of a Councillor in meeting the Standards of Conduct;
- b. the appropriate use of social media and the role and responsibilities of being a Councillor which is to include Council's standards and expectations for Councillor use of social media for at least the following:
  - i. naming of accounts and twitter handles;
  - ii. standards for how Councillors are to communicate when they are acting in the role of Councillor and when they are acting in a personal capacity so as to comply with the Council Code;
  - iii. re-tweets, follows, likes and other forms of endorsement of third-party material;

- iv. engaging in respectful debate in accordance with the Standards of Conduct and handling of varying points of views on social media; and
- v. examples of engaging in debate on social media that does and does not breach the Council Code but still allows for robust public debate.

The Council (through the Chief Executive Officer and/or Council Officers) is to organise the above training which may be in one or more sessions.

20. As is required by s 147(4) of the Act, a copy of the Arbiter's Decision was tabled at the next Council meeting. The Act also requires that an arbiter's decision and statement of reasons be recorded in the minutes of the meeting. In this case, the Arbiter's Decision was tabled at a Council meeting on 4 September 2023 (the **Council Meeting**). The Panel notes that the Act did not permit the tabling of the Arbiter's Decision to be deferred to a later Council meeting.

### **The Allegation**

21. In the present application, it is alleged that Cr Ferguson failed to comply with a direction of the Arbiter by:
- 21.1. failing to make an unreserved verbal apology at the Council Meeting;
  - 21.2. abstaining from the vote in which the decision was tabled at the Council Meeting; and
  - 21.3. failing to make an unreserved written apology on her Twitter account within one week of the Council Meeting.
22. During the hearing, Cr Lund withdrew particular (b) of the Allegation. Abstaining from the vote in which the Arbiter's Decision was tabled was not itself a failure to comply with a direction of an arbiter. It is the Act which requires an arbiter's decision to be tabled, rather than the arbiter.
23. The remaining issues are therefore whether Cr Ferguson's statement to the Council on 4 September 2023 and statement on Twitter on 11 September 2023 complied with the direction of the Arbiter. This involves consideration of whether each statement was indeed an 'apology', and if so whether the apologies were 'unreserved'.

## Evidence and submissions of the parties

### *Statement at the Council Meeting & the Twitter Statement*

24. The Arbiter's Decision was tabled at the Council Meeting on 4 September 2023. Cr Ferguson abstained from voting. Thereafter Cr Ferguson was afforded an opportunity to speak to the nature of the sanction (the **Statement to Council**). She said:

I'd like to state clearly that I'm considering my legal options surrounding appealing the arbiter's findings and reserve all my rights accordingly. I will need to state also clearly that notwithstanding my reserved rights, and to comply with the direction of the arbiter, I will be making the apology. From there you can make the apology in the manner directed. If that suits, I can do that now for you. Does that sound good?

As stated in the arbiter's finding, 'in each case, the apology must unreserved and reference that Cr Ferguson has engaged in misconduct by breaching the standards of conduct in clauses 1(a), 1(b)... 2(d) and 4(1) of Schedule 1 of the Local... (Governance and Integrity) Regulations 2020 through her tweets about the LGBTIQA+ community.' Thank you.

25. On 11 September 2023, Cr Ferguson made three tweets (necessary due to character limits per tweet) which read together were as follows (the **Twitter Statement**):

I have been directed to apologise but am considering my legal options including review of the decision through the appropriate means

Pursuant to s147(2)(a) of the Act Cr Ferguson has engaged in misconduct by breaching the standards of conduct in clauses 1(a). 1(b). 1(d). 2(d). and 4(1) of schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 through her tweets about the LGBTIQA+ community

26. There was no dispute that Cr Ferguson made the above statements as outlined in the Application, or that the Application correctly outlined the precise words used.

### *The evidence and submissions of Cr Lund*

27. Within the Application and in oral submissions, Cr Lund submitted that the Statement to Council and Twitter Statement were merely recitations of the Arbiter's Decision and not genuine apologies, and as such Cr Ferguson failed to comply with a direction of the Arbiter. She relied on the words as used by Cr Ferguson and placed particular reliance on Cr Ferguson's use of the third person.

28. In addition to the statements themselves, Cr Lund relied on other material to establish that they were not apologies, let alone unreserved ones. This material included an interview which aired on SkyNews on 11 September 2023. During this interview Cr Ferguson referred to 'dictated apologies' and described the arbitration process as being politicised and likened it to a 'soviet-style system'.
29. Cr Lund also provided two Facebook posts made by Cr Ferguson on 7 March 2024. The first post read:
- It's important to note that if there is two serious misconduct matters successful a councillor is legally disallowed to run for council ever again .. undermining democracy via arbitration is not right at all. Let people decide at the polls.
30. The second post read:
- As this was raised in parliament yesterday I am resharing the ridiculous tweets that were submitted to the kangaroo court arbitration against me and have added the context to what they in fact were. I have also never deleted any of them so can be found that the quote made in the ABC article was attached to a video of a now convicted serial paedophile. My concerns were from a place of protecting children and I in fact was concerned that predators are "hiding behind the rainbow" instead I was shamed and punished for genuinely trying to expose a paedophile...
31. Cr Lund submitted that these materials are relevant to an assessment of Cr Ferguson's attitude towards the directions of the Arbiter, whether she did in fact apologise and if so whether those apologies were unreserved.

*The evidence and submissions of Cr Ferguson*

32. Cr Ferguson presented a written statement to the Panel. In this statement she explained that as of the date of the Council Meeting, she was exploring the possibility of appealing the Arbiter's Decision. She said she abstained from the vote to table the Arbiter's Decision as although she was 'naturally against the finding', she did not want to cause any problems. She then said 'I then read the apology as expressed in the IAP decision. I wanted to make sure that I said everything correctly so I quoted from the decision verbatim'. She provided a link to a YouTube recording of the Council Meeting.



33. As to the Twitter Statement, Cr Ferguson explained she provided a link to the Arbiter's Decision. She further said, 'I did this in a genuine attempt to comply with the arbiter's direction'.
34. Cr Ferguson also relied on written submissions prepared with the assistance of a legal practitioner. She submitted that she did not fail to comply with the Arbiter's Decision as she fully participated in the process and genuinely took steps to comply. She stated that she quoted directly from the Arbiter's Decision to ensure compliance. She submitted that her statements to Council and on Twitter bore all the hallmarks of an apology, that being defined in the Merriam-Webster dictionary as 'an admission of error or discourtesy accompanied by an expression of regret'.
35. In oral submissions, Cr Ferguson submitted that she quoted the Arbiter's Decision in her statements because 'this is a legal request that was made of me, so I take that quite seriously and read verbatim what I was asked to do'. She repeated these submissions several times, for example, 'I read verbatim exactly what I had been demanded to do'. She said this was the reason the purported apologies were in the third person. When asked why she could not have used ordinary, everyday language to make her apology, Cr Ferguson stated that everyone has different interpretations, and she could not control how others interpret matters.
36. In her oral submissions, Cr Ferguson also resiled from a submission contained in a written document prepared with the assistance of a legal representative. In that document Cr Ferguson said, in hindsight, she could have used the word 'I' in her statements. However, Cr Ferguson largely dis-endorsed that submission at the final hearing and maintained her statements were unreserved apologies in the form they were given.

## **Analysis**

37. The Panel has had the benefit of watching the relevant portions of the Council Meeting, which is publicly available on YouTube. This meeting was conducted by zoom, or a similar online conferencing facility. The decision of the Arbiter was tabled at the meeting. Cr Ferguson abstained from vote as to the tabling of the decision, stating 'obviously I am against it [laughs]... I'm abstaining 'cause I am just doin' what I'm been dictated to do...'.
38. Cr Ferguson was then given an opportunity to speak to the sanction contained within the Arbiter's Decision. During her oral address, Cr Ferguson reads a pre-prepared script from her mobile phone. In our analysis, the Statement to Council is comprised of a preamble, immediately followed by the purported apology.

39. In the preamble, reflected in the first paragraph listed at paragraph [24] above, Cr Ferguson mentions she is considering her legal options and reserves all her legal rights. She further says 'to comply with the direction of the arbiter, I will be making the apology'. She then says, '[f]rom there you can make the apology in the manner directed'. She then appears to ask the Council members '[i]f that suits, I can do that now for you. Does that sound good?'. There is no audible response by any councillor.

40. Cr Ferguson then makes the purported apology:

As stated in the arbiter's finding, 'in each case, the apology must unreserved and reference that Cr Ferguson has engaged in misconduct by breaching the standards of conduct in clauses 1(a), 1(b)... 2(d) and 4(1) of Schedule 1 of the Local... (Governance and Integrity) Regulations 2020 through her tweets about the LGBTIQA+ community.' Thank you.

41. We have considered carefully the content of the purported apology. It is not an apology. It is no more than a quotation of part of paragraph [38] of the Arbiter's Decision. Cr Ferguson does not speak in the first person, so at no stage does she state 'I apologise' or use any words to similar effect. She instead refers to herself in the third person whilst reciting part of the Arbiter's Decision. The Statement contains no reference to the subject matter considered by the Arbiter, being Cr Ferguson's tweets which were offensive, disrespectful, discriminatory and which brought discredit upon the Council. The statement bears none of the hallmarks of an 'apology'. Cr Ferguson makes no admission of error, nor any expression of regret.

42. We further find that the purported apology was not 'unreserved'. In this respect, it is significant that Cr Ferguson delivered the purported apology in the third person. She did not, as is usual when making an apology, employ the first person, such as 'I apologise for...' or 'I am sorry that...'. Her use of the third person allowed Cr Ferguson to absolve herself of responsibility for the misconduct which had been found by the Arbiter.

43. Cr Ferguson therefore did not apologise to the Council as directed by the Arbiter. We further find that this constitutes a 'failure to comply' with a direction of the Arbiter. In this case, issues of 'fitness' to comply does not arise as it has in other matters.<sup>2</sup> Cr Ferguson agrees she was 'able' to comply with the Arbiter's direction. It was not argued by Cr Ferguson that her contemplation of an appeal prevented her from compliance, nor could such an argument succeed as a matter of logic or law.

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<sup>2</sup> See *Dance v Hume CC (Review and Regulation)* [2022] VCAT 1415.

44. It was clear that the Statement to Council was carefully considered by Cr Ferguson beforehand. She reads her preamble and then the purported apology. The purported apology contains the same small omission as found within Arbiter's Decision, in that the phrase ought to have been 'the apology must *be* unreserved...' This confirms that Cr Ferguson was indeed reading from a pre-prepared script when making her statement, and that the wording in part was taken from the Arbiter's Decision. Cr Ferguson's preparation and reading of a prepared script was a deliberative process. She considered what to say in advance, attended the virtual meeting with pre-written notes, and read from those notes. This speaks to the deliberate and wilful nature of her conduct.
45. The Statement on Twitter also contained a preamble in which Cr Ferguson states she has been directed to apologise but is considering her legal options. It then contains the following purported apology:
- Pursuant to s147(2)(a) of the Act Cr Ferguson has engaged in misconduct by breaching the standards of conduct in clauses 1(a). 1(b). 1(d). 2(d). and 4(1) of schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 through her tweets about the LGBTIQA+ community
46. No apology is contained within this tweet. Whilst Cr Ferguson mentions she had been 'directed to apologise', she does not do so. All that is written is an extract of paragraph [38] of the Arbiter's Decision. For the same reasons as expressed above, the Twitter statement is not an apology let alone an unreserved one. The Panel also concludes that Cr Ferguson's failure to comply with the direction of the Arbiter to issue an unreserved apology on Twitter was deliberate and/or wilful.
47. In reaching these findings, we have considered, and rejected, the evidence and submission of Cr Ferguson that the Statement to Council and Twitter Statement were unreserved apologies, genuinely made by her in fulfilment of the Arbiter's directions. This includes her contention that the statements were apologies made unreservedly by her because she quoted verbatim from the Arbiter's Decision.
48. The Panel was troubled by Cr Ferguson's lack of candour before the Panel. In addition to the requirement to offer unreserved apologies, the Arbiter also required Cr Ferguson to undergo training regarding diversity, equity, inclusion, the standards of conduct required of councillors and as to the appropriate use of social media. In her written statement, Cr Ferguson said '[f]urther to apologising, I have complied with all training requirements and have sought to do what is required of me'. Similarly, she said at paragraph [7] of her written submissions 'I have otherwise undertaken all training and counselling as

directed'. At paragraph 35(d) she said 'I have otherwise complied with every other direction including participating in all training and counselling that I have been directed to undertake. The same claim is repeated for the third time at paragraph 41.

49. These statements were false and/or misleading. As at the date of the final hearing Cr Ferguson had not yet commenced let alone completed any of the required training directed by the Arbiter. The Panel was advised that commencement of this training had been delayed due to issues identifying appropriate training providers and as Cr Ferguson suffered a bereavement. These are matters beyond Cr Ferguson's control and she therefore cannot be criticised for the delayed commencement of training. However, Cr Ferguson's positive assertions in her statement and written submissions that she has undertaken or participated in all training as directed by the Arbiter were false. This bears unfavourably upon the Panel's assessment of Cr Ferguson's credibility and reliability.
50. We note also the discord between Cr Ferguson's evidence and submissions to the Panel, and public statements made by her elsewhere. We have noted above her interview with SkyNews in which she expressed her dissatisfaction with the arbitration process and the requirement to offer 'dictated apologies' whilst later referencing the former Soviet Union. As recently as 7 March 2024, she posted on Facebook that she was 'resharing the ridiculous tweets that were submitted to the kangaroo court arbitration against me...'. These public statements undermine her submissions to the Panel that she genuinely sought to offer unreserved apologies to the Council and on Twitter.
51. We therefore prefer a natural and ordinary interpretation of the words used by Cr Ferguson in her statements to Council and on Twitter. Neither are apologies, let alone unreserved apologies.
52. In reaching the above conclusions, we have not relied upon the preamble portions of the Statement to Council or Twitter Statement in our interpretation of the subsequent purported apologies. We note that these preambles were, however, unnecessary. One does not lose a right of appeal by complying with a direction of an arbiter. We also have placed no weight upon Cr Ferguson's decision to abstain from the vote to table the Arbiter's Decision.

## Findings & Determinations

53. The Panel finds pursuant to s 167(1) of the Act that Cr Ferguson engaged in serious misconduct by failing to comply with a direction by the Arbiter.
54. Having made this finding, s 167(3) provides that the Panel may impose any one or more of a number of determinations, being to reprimand Cr Ferguson, direct her to make an apology, suspend her from office for a specified period not exceeding 12 months and/or to direct that she is ineligible to chair a delegated committee of the Council for a specified period specified not exceeding the remainder of the Council's term.
55. Pursuant to s 167(6) and (7), the Panel may also find that remedial action is required and direct Cr Ferguson to attend mediation, training and/or counselling, and may set reasonable conditions in respect of how and when remedial action is to be undertaken.

### *The Applicant's submissions*

56. Cr Lund submitted that if the allegation was proven, Cr Ferguson ought to be suspended from office for six months. She emphasised that Cr Ferguson's conduct has impacted other councillors and the Council as a whole. She submitted that suspension was required as, if the matter was proven, this would be the third occasion in which Cr Ferguson had been found to have engaged in misconduct or serious misconduct.

### *The Respondent's submissions*

57. Cr Ferguson submitted that if the allegation was proven, the Panel ought to exercise its discretion not to impose any sanction. In the alternative, she submits that she ought to be reprimanded and/or directed to issue 'a corrected apology in a form that is acceptable to the Panel'.
58. In the submissions prepared with the assistance of a legal practitioner, she relied on the following matters, among others:
  - 58.1. She genuinely attempted to comply with the Arbiter's Decision;
  - 58.2. The matter has been the subject to public attention, which is a form of punishment in itself;
  - 58.3. She has already been held accountable for her actions;
  - 58.4. She has 'complied with every other direction including participating in all training and counselling that I have been directed to undertake'; and
  - 58.5. There have been no further allegations of inappropriate use of social media.

59. In her oral submissions, Cr Ferguson noted her professional background and contribution to the community and several committees. She submitted that she was reliant on the allowance paid to councillors and was otherwise unemployed.

### *Analysis*

60. In determining the appropriate determinations, the Panel has had regard to the objects and purposes of the Act. One of the purposes of the Act is to require each council to develop a Councillor Code of Conduct, which is to include the standards of conduct expected to be observed by councillors in the course of performing their duties and functions, including prohibiting discrimination, harassment, and vilification. The Act also provides for Council integrity, the arbitration and councillor conduct panel processes being important mechanisms to assess and respond to Councillor who are alleged to have failed to meet the standards of conduct expected of them.
61. In the Arbiter's Decision, Cr Ferguson was found to have engaged in misconduct because her irresponsible use of social media was offensive, disrespectful, discriminatory and brought discredit upon the Council. Cr Ferguson was directed to apologise unreservedly to Council and on Twitter. She did not do so. The Panel does not accept Cr Ferguson's submission that this matter is a 'storm in a teacup'. These apologies were an important opportunity for Cr Ferguson to apologise for the harm caused, or likely to be caused, by her conduct. Further, Cr Ferguson's failure to apologise as directed undermined the arbitration process itself.
62. The Panel finds that it is appropriate to reprimand Cr Ferguson for her serious misconduct in failing to comply with the lawful directions of an arbiter. A reprimand is a professional censure, signalling that the conduct is condemned.
63. Furthermore, the Panel determines that given the nature and seriousness of the conduct and the harm that would be suffered if Cr Ferguson and other councillors were not deterred from engaging in similar conduct, a period of suspension is required. Cr Ferguson will be suspended from office for a period of 1 month commencing the day after the meeting of Council at which this decision is tabled pursuant to s 168(2) of the Act. The Panel also finds that remedial action is required to be undertaken, and directs Cr Ferguson to attend training to increase her understanding of:

- (a) diversity, equity and inclusion with particular reference to the LGBTIQ+ community and what behaviour is required of a Councillor in meeting the Standards of Conduct;
- (b) the appropriate use of social media and the role and responsibilities of being a Councillor which is to include Council's standards and expectations for Councillor use of social media for at least the following:
  - (i) naming of accounts and twitter handles;
  - (ii) standards for how Councillors are to communicate when they are acting in the role of Councillor and when they are acting in a personal capacity so as to comply with the Council Code;
  - (iii) re-tweets, follows, likes and other forms of endorsement of third-party material;
  - (iv) engaging in respectful debate in accordance with the Standards of Conduct and handling of varying points of views on social media; and
  - (v) examples of engaging in debate on social media that does and does not breach the Council Code but still allows for robust public debate.
- (c) The Council (through the Chief Executive Officer and/or Council Officers) is to organise the above training which may be in one or more sessions.
- (d) The above training is to be completed on or before 13 September 2024.

64. If Cr Ferguson has commenced the training directed by the Arbiter since the date of the final hearing on 25 March 2024, this will satisfy the above direction, provided the training is completed by 14 September 2024.
65. In determining the duration of the suspension and the necessity for remedial action, the Panel has considered a number of factors, including the nature and seriousness of the conduct. Further, general and specific deterrence are important considerations.
66. It is necessary to convey to all local councillors that conduct of this type is not acceptable and, if engaged in, will result in similar sanction. In addition, regard must be made to maintaining public confidence in councillors, the system of local government and the arbitration process. This public confidence is best achieved when councillors who breach the standards reasonably expected of them are properly held to account. It is also important to signal that councillors who are subject to a direction must comply with that direction.

67. Specific deterrence is particularly important in the present matter. As at the date of the hearing, Cr Ferguson had little to no insight into her own conduct and how it deviated from the standards expected of local government councillors. In the hearing Cr Ferguson was asked if, upon reflection, her tweets could have been regarded as offensive by members of the community. Cr Ferguson responded 'I think people have different perspectives and emotions around things and it's impossible to predict how people will interpret things'. She was also given the opportunity to reflect on how to best promote informed debate on contentious topics and how her online conduct affects the reputation and standing of the Council. Cr Ferguson's answers to these questions, and submissions in the hearing as a whole, indicate a fundamental lack of insight into how her conduct deviated from the standards of conduct required of all councillors. We note that Cr Ferguson, like all councillors, has signed the Latrobe City Council Councillor Code of Conduct, acknowledging that she has read those standards and agrees to abide by them.
68. In addition, Cr Ferguson does not appear to understand that her failure to comply with a direction of an arbiter has a consequential impact on the regulation of councillor conduct and the community's trust and confidence in councillors and arbitration processes. Decisions by arbiters and compliance with sanctions allow the entire council to refocus and move on to undertaking the important work that councils do.
69. Further, this is the third occasion in which Cr Ferguson has engaged in misconduct, there being two prior findings of misconduct. In addition to the Arbiter's Decision considered above, on 31 March 2022 Cr Ferguson was found by a differently constituted Panel to have engaged in misconduct. The Panel found that at a Council meeting on 2 August 2021, Cr Ferguson failed to treat her fellow councillors with respect (in her unfounded accusations regarding interference in her ward); failed to treat Council Officers with respect and made abusive and threatening statements towards Council Officers and members of the general public. She was directed to undergo training and make a verbal apology. There is no suggestion that she did not fulfil those directions. Specific deterrence therefore is an important consideration.
70. Regard has been had to the maximum possible period of suspension, being 12 months. Further, that pursuant to s 37 of the Act during such period of suspension Cr Ferguson would cease to be a councillor, not be entitled to receive allowances, and that if the suspension were greater than two months she would be required to return all council equipment and materials.



71. The Panel has also taken into account Cr Ferguson's contribution to the community, such as participation in a variety of committees. The Panel has also considered her personal circumstances and her written and oral submissions.
72. The Panel does not direct Cr Ferguson to apologise. Nonetheless, the Panel hopes that Cr Ferguson will use the period of her suspension to reflect upon her conduct and that she ultimately benefits from the training directed above. This will benefit her as a councillor, and the Council as a whole.

Diana Price  
Chairperson

Matt Evans  
Panel Member