

**IN AN INTERNAL ARBITRATION PROCESS FOR EAST GIPPSLAND SHIRE  
COUNCIL UNDER SECTION 143 OF THE *LOCAL GOVERNMENT ACT 2020***

**LGA IAP REF:** IAP 2022-13  
**APPLICANTS:** Crs Tom Crook, Mendy Urie, Jane Greacen, Mark  
Reeves, Arthur Allen (representative)  
**RESPONDENT:** Cr Sonia Buckley  
**HEARING:** On the papers  
**BEFORE:** Arbiter J Silver  
**DATE OF REASONS:** 6 December 2022

Orders

1. The application is dismissed.

**APPEARANCES**

The hearing was conducted on the papers.

## STATEMENT OF REASONS

1. On 24 May 2022, the applicants filed an application with the Principal Councillor Conduct Registrar, alleging that Cr Buckley had engaged in misconduct.
2. On 25 October 2022, the Principal Councillor Conduct Registrar appointed me as arbiter to hear application IAP 2022-13 under sections 144 and 149 of the *Local Government Act 2020* ('the Act'), after an earlier hearing was aborted.
3. The particulars of the allegation, as far as I need to repeat them, are that in a (closed) Council briefing meeting on 19 April 2022, Cr Buckley stated that Councillors were being '*a little bit misled*' about ongoing lease negotiations for Council land.
4. The briefing was verbal alone, with no briefing paper provided beforehand.
5. Because a recording of the alleged misconduct existed, I considered the application in writing (rather than in-person), as permitted under sub-reg 11(3)(a) of the *Local Government (Governance and Integrity) Regulations 2020*.
6. As a matter of ordinary language, a person can be 'misled' by a second person, without that second person intending to mislead. In contrast, if the second person *intended* to mislead, the person led astray has been 'deceived.'
7. Except if context attaches a different meaning to a word (or phrase), words should be given their ordinary meaning.
8. After making the 'misled' statement, Cr Buckley was asked to explain what she meant. She stated that a draft Council lease document had been returned to Council, with annotations. It seems Cr Buckley felt this fact should have been mentioned. But the Mayor, Cr Reeves, interrupted before she could elaborate.
9. Those with a legal or business background would understand that the return of a signed document, but with annotations prepared by one party only, does not lead to a concluded agreement, but is instead considered a counteroffer.

10. Although I am not ultimately sure why Cr Buckley thought the annotated lease was relevant (as she was interrupted), there is no doubt that the standards in schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* permit Councillors to offer respectful criticisms in closed briefings.
11. That means Councillors can state that information in briefing material is incorrect, missing, or ‘misleading’, even if the Councillor is misinformed, misguided, or simply wrong.<sup>1</sup> And as suggested, someone can be misled innocently.
12. While Cr Buckley could have been more measured in her statement, which no doubt is a fair observation of many first-term Councillors, I find this application devoid of merit, and I dismiss it accordingly

**J A SILVER**

ARBITER

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<sup>1</sup> In contrast to suggesting that a briefing paper ‘contains lies’, which suggests an element of deception: see IAP 2021-25 (*Clancey and Others & Gibson*)