

COUNCILLOR CONDUCT PANEL

In the matter of an Application by Frankston City Council concerning Councillor Steven Hughes (CCP 2022-14)

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

Applicant: Frankston City Council

Respondent: Cr Steven Hughes

Date of hearing: 16 May 2023

Hearing location: Frankston City Council Chamber

Panel Members: Diana Price (Chairperson)
Jan Boynton

Date of decision: 31 August 2023

FINDINGS & DETERMINATIONS

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

1. engaged in serious misconduct;
2. is reprimanded; and
3. is suspended from the office of Councillor for a period of three calendar months 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*.

Diana Price
Chairperson

Jan Boynton
Panel Member

STATEMENT OF REASONS FOR DECISION

The Application

1. By application dated 4 October 2022, Frankston City Council (the **Council**), sought findings of serious misconduct against Councillor Steven Hughes pursuant to s 154(2) of the *Local Government Act 2020* (the **Act**) (the **Application**). Mayor Nathan Conroy was appointed to act as representative of the Council.
2. The Application contains three allegations that Cr Hughes breached the Councillor Code of Conduct adopted by the Council on 15 February 2021 (the **Code**). It is said that each of the allegations constitutes an act of misconduct, and further, that this misconduct is serious misconduct as it is continued and/or repeated.

Procedural history and evidence at hearing

3. Written evidence was submitted by both the Council and Cr Hughes prior to the hearing, including statements made by witnesses who later gave evidence at the hearing.
4. Oral evidence was provided by the following individuals:
 - (a) Mayor Nathan Conroy;
 - (b) Cr Kris Bolam;
 - (c) Cr Claire Harvey;
 - (d) Cr Brad Hill; and
 - (e) Cr Steven Hughes.
5. Supplementary information was provided by both parties after the hearing, which supported evidence submitted to the Panel prior to and during the Councillor Conduct Panel hearing.

Jurisdiction and procedures of the Panel in relation to the Application

6. 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 the Council following a resolution by Council, per s 154(2).

7. 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.
8. 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. These are the Standards of Conduct prescribed in Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020, which are reproduced in paragraphs 2.1 to 2.5 of the Code.
9. 'Serious misconduct' is defined in s 3 to include 'continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b)' of the Act.
10. 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

11. For reasons that will become clear upon consideration of the Application, it is necessary to outline several prior instances in which Cr Hughes was either an applicant or respondent in an internal arbitration process or councillor conduct panel hearing.

12. By application dated 5 March 2021, the Council, then represented by Cr Kris Bolam, brought an application for internal arbitration pursuant to s 143 of the Act (IAP 2021-3). It was alleged that Cr Hughes engaged in multiple acts of misconduct relating to three social media posts made by him in January and February 2021. In one of the subject social media posts Cr Hughes likened the conduct of the Council to North Korea, stating a ‘taste of North Korea justice comes to Frankston with a move that would make Kim Jon-Un (sic) nod in approval’.
13. The Arbiter published his decision on 27 July 2021. He found each of the four allegations proven, in that Cr Hughes failed to comply with the prescribed standards of conduct. He made four findings of misconduct pursuant to s 147(1) of the Act (the **Arbiter Decision**).
14. On 1 December 2021 Cr Hughes made an application seeking a finding of serious misconduct against Cr Kris Bolam (CCP 2021-7). He alleged that Cr Bolam behaved in a manner which was ‘intimidating, harassing, offensive and disrespectful’ and constituted bullying. This application was heard by a differently constituted councillor conduct panel. On 29 July 2022 the panel found that none of the allegations were proven and dismissed the application pursuant to s 167(1)(d) of the Act (the **Prior Panel Application/Decision**).

Allegation One

15. Allegation One relates to comments made by Cr Hughes regarding the earlier Arbiter Decision. It reads as follows:

On a date which is unknown but which was before 23 August 2022 Cr Hughes told a journalist from the Frankston Times that the 2021 internal arbitration (in which Council was the Applicant and he was the Respondent) was a ‘disgrace’. His comments were published in the Frankston Times on 23 August 2022 (see Attachment C).

16. It is alleged that in so commenting Cr Hughes breached para 2.1 of the Code by failing to treat the arbiter with dignity, fairness, objectivity and/or respect (clause 1 of the Standards of Conduct). It is also said that the comment breached para 2.2 of the Code in that Cr Hughes failed to perform the role of Councillor responsibly (clause 2 of the Standards of Conduct). It is also said that the post breached para 2.4 of the Code in that he brought discredit upon the Council (clause 4.1 of the Standards of Conduct).

17. The Panel was provided with a copy of the article in the Frankston Times. It relevantly provided:

Steven Hughes has been the subject of two arbitration applications since being elected to council. He was suspended for a month last year after the completion of one arbitration process and is currently in the midst of a second one. Frankston City Council began the process of applying for arbitration again in June after seven councillors signed a written dispute statement alleging Hughes had engaged in misconduct.

Last year's arbitration was initiated after Hughes made a Facebook post saying council's social media policy would "make Kim Jon-Un nod in approval"...

Hughes told *The Times* that he believes last year's arbitration process was a "disgrace"...

18. It was not in dispute that Cr Hughes spoke to the journalist about the Arbiter Decision. Cr Hughes gave evidence that he did speak to the journalist from the Times and used the word 'disgrace' in relation to the Arbiter Decision. However, he stated that he told the journalist that the decision of his fellow councillors to refer the matter to an arbiter was a 'disgrace'. He denied using the word to describe the arbiter personally.
19. There was no other evidence before the Panel as to precisely what Cr Hughes told the journalist concerned. For example, there is no recording of an interview or any written or oral evidence from journalist. Further, the use of the word 'disgrace' is not placed in context within a longer quotation.
20. In the absence of such evidence, the Panel is not satisfied that the word 'disgrace' was used in reference to the arbiter personally. Therefore, it has not been proven that Cr Hughes failed to treat the arbiter with 'dignity, fairness, objectivity, courtesy and respect' as required by the Standards of Conduct. Nor is the Panel satisfied to the requisite standard that in using the word 'disgrace' Cr Hughes failed to perform the role of councillor responsibly or brought discredit upon the Council. While his comments to the journalist might be ill-considered, the conduct falls short of establishing a breach of the Standards of Conduct.
21. The Panel therefore does not find Allegation One proven.

Allegation Two

22. Allegation Two relates to posts made by Cr Hughes to his public facebook page in which he discusses the Prior Panel Decision and the reimbursement of expenses to other councillors. It reads as follows:

On 8 September 2022 Cr Hughes posted on his Public Facebook Page text concerning:

1. his unsuccessful Councillor Conduct Panel application against Cr Kris Bolam; and
2. the reimbursement of expenses to all other Councillors (excepting Cr Liam Hughes) (see Attachment D). The post was removed shortly thereafter.

On or about 10 September 2022 Cr Hughes posted on his Public Facebook Page text similar to the text that had appeared in his Public Facebook Page post two days before (see Attachment E). It too concerned his unsuccessful Councillor Conduct Panel application against Cr Bolam and the reimbursement of expenses to all other Councillors (excepting Cr Liam Hughes).

The text of both posts imputed that:

- A. Cr Bolam had engaged in the behaviour alleged by Cr Hughes in his unsuccessful Councillor Conduct Panel application against Cr Bolam (the Behaviour As Alleged Imputation);
- B. Cr Bolam had intimidated Cr Hughes (the Intimidation Imputation);
- C. Cr Bolam had misrepresented various meetings and meeting dates to the Councillor Conduct Panel (the Misrepresentation Imputation);
- D. Cr Bolam had engaged in unacceptable behaviour (the Unacceptable Behaviour Imputation);
- E. all Councillors (other than Cr Hughes himself and Cr Liam Hughes) had applied for and received reimbursement of expenses to which they were not entitled (the Entitlement To Expenses Imputation);
- F. all Councillors (other than Cr Hughes himself and Cr Liam Hughes) had unnecessarily applied for the reimbursement of expenses (the Unnecessary Reimbursement Application Imputation);

G. all Councillors (other than Cr Hughes himself and Cr Liam Hughes) had sought and retained office as a Councillor for pecuniary profit (the Profit Motivation Imputation); and

H. all Councillors (other than Cr Hughes himself and Cr Liam Hughes) had sought and retained office as a Councillor for political gain (the Political Gain Imputation).

23. It was said that these various imputations breached paragraphs 2.1, 2.2 and/or 2.4 of the Code, as outlined at paragraph 16 above.

Version of the facebook post

24. The Application alleges that Cr Hughes made a post on his public facebook page on 8 September 2022, with a similar post being made again on 10 September 2022.
25. Contained in the materials filed on behalf of the Applicant was a document 'Facebook post of 8 and 10 September 2022 - edit history'. It is apparent from this document that the initial facebook post was repeatedly edited and reposted between 8 – 10 September 2022. By the Applicant's tally there were 37 versions of the same post, edited and reposted over those three days. These versions were tendered in evidence. Cr Hughes does not dispute that he made the posts, or that he repeatedly edited the post over several days.
26. For example, the first post read in part:

On the 29th July the verdict was returned and it found that 'none of (Cr. Bolam's) conduct fell within the definition of bullying in the Act'. While I accept the verdict I do not respect a verdict that values fiction over fact, confuses dates and timelines, and justifies the unjustifiable with little regard to the rights of a councillor representing their community.

27. Whereas the last post read in part:

On the 29th July the verdict was returned and it found that 'none of (Cr. Bolam's) conduct fell within the definition of bullying in the Act'. While I accept the verdict I disagree with an outcome that justifies behaviour with little regard to the rights of a councillor representing their community.

28. There were other slight variations between the posts, however much remained unchanged over its various iterations. For convenience, it will be referred to as the post singular within these reasons.

The alleged imputations

29. The post the subject of Allegation Two is said to contain eight imputations. These imputations can usefully be considered in two parts. The first four imputations relate to the Prior Panel Decision, in which a panel dismissed an application made by Cr Hughes against Cr Bolam. The latter four imputations relate to claims by other councillors for the reimbursement for expenses, and whether those other councillors were motivated for profit and political gain. The question therefore is whether the post, in any of its iterations, contained the alleged imputations, and if so, whether the Standards of Conduct were breached.

The first group of imputations

30. Alleged imputations A – D relate to Cr Hughes' dissatisfaction with the Prior Panel Decision. In its decision dated 29 July 2022, a panel dismissed each of the nine allegations made by Cr Hughes against Cr Bolam. The panel did not find that Cr Bolam had engaged in bullying, or behaviour that was intimidating, harassing, offensive or disrespectful.
31. In the present application, it is said that Cr Hughes' facebook post imputed that Cr Bolam had in fact engaged in the conduct complained of in the Prior Panel Decision, such as intimidation and unacceptable behaviour. It is further said that the post imputed that Cr Bolam had misrepresented various meetings and meeting dates in the hearing of the unsuccessful panel application.
32. It is not the role of this Panel to conduct a rehearing of Cr Hughes' unsuccessful panel application. Instead the task of this Panel is to carefully consider the content of the facebook post together with the other evidence presented at the hearing to determine whether the post contains the alleged imputations and, if so, whether the Standards were breached.
33. The post began as follows:

The verdict has been returned in the serious misconduct case against former Mayor Kris Bolam regarding his alleged inappropriate behaviour.

In November 2021 I brought a case of serious misconduct against the former Mayor, Cr Kris Bolam, in relation to his behaviour while he was Mayor in 2020/21. Cr Bolam himself has publicly stated his

interpretation of the outcome and it is important to state my position so you, the resident, can have the full picture.

Cr Bolam's behaviour impacted me personally, but more seriously, inhibited my ability to represent the residents of Frankston and defend their best interests. My arguments included: ...

34. Cr Hughes goes on to list seven dot points of the arguments he made in the unsuccessful prior panel application. It is not until approximately half way into the post that Cr Hughes mentions that none of his allegations against Cr Bolam were proven. He states:

On the 29th July the verdict was returned and it found that 'none of (Cr. Bolam's) conduct fell within the definition of bullying in the Act'. While I accept the verdict I do not respect a verdict that values fiction over fact, confuses dates and timelines, and justifies the unjustifiable with little regard to the rights of a councillor representing their community. Am I surprised by this verdict? Not at all. This is the same system that found me guilty of bringing council into disrepute, and suspended me for a month after I posted unquestionable evidence that Frankston rates are too high - a very real concern for many residents in Frankston.

35. This paragraph is amended in later versions of the post so as to read:

On the 29th July the verdict was returned and it found that 'none of (Cr. Bolam's) conduct fell within the definition of bullying in the Act'. While I accept the verdict I disagree with an outcome that justifies behaviour with little regard to the rights of a councillor representing their community. Am I surprised by this verdict? Not at all. This is the same system that found me guilty of bringing council into disrepute, and suspended me for a month after I posted unquestionable evidence that Frankston rates are too high - a very real concern for many residents in Frankston.

36. In both versions of the post he states:

The pursuit of justice is necessary, especially when unacceptable behaviour is being normalised in a forum which is supposed to promote fair discussion and how to best serve the residents being represented...

37. Cr Hughes gave evidence that his reasons for making the post included to communicate his side of the story regarding the Prior Panel Decision. This included communicating the seven dot point arguments he raised before that prior panel. This Panel considers that these dot points do convey, in general terms, the likely arguments made by Cr Hughes in his unsuccessful panel application.
38. However, the arguments contained in the dot points must be seen in the context of the post as a whole. Immediately prior to the dot points Cr Hughes states 'Cr Bolam's behaviour impacted me personally, but more seriously, inhibited my ability to represent the residents of Frankston and defend their best interests.' He says in one version of the post '[w]hile I accept the verdict I do not respect a verdict that values fiction over fact, confuses dates and timelines, and justifies the unjustifiable with little regard to the rights of a councillor representing their community.' He further writes the 'pursuit of justice is necessary, especially when unacceptable behaviour is being normalised in a forum which is supposed to promote fair discussion and how to best serve the residents being represented...'.
39. When the post is considered as a whole, it is apparent that Cr Hughes continues to allege that Cr Bolam engaged in the misconduct complained of in the Prior Panel Application. He continues to describe Cr Bolam's behaviour as 'unjustifiable' and 'unacceptable' which he says impacted him personally and in the representation of the residents of Frankston. Even in evidence Cr Hughes maintained each of the unsubstantiated allegations against Cr Bolam.
40. The Panel is therefore satisfied that the post imputed the following, notwithstanding the outcome of the Prior Panel Decision:
 - A. Cr Bolam had engaged in the behaviour alleged by Cr Hughes in his unsuccessful Councillor Conduct Panel application against Cr Bolam (the Behaviour As Alleged Imputation);
 - B. Cr Bolam had intimidated Cr Hughes (the Intimidation Imputation);
 - C. Cr Bolam had engaged in unacceptable behaviour (the Unacceptable Behaviour Imputation);
 - D. Cr Bolam had engaged in unacceptable behaviour (the Unacceptable Behaviour Imputation);
41. As stated above, the Panel is not conducting a rehearing of Cr Hughes' unsuccessful panel application to determine what evidence should or should not have been accepted regarding prior meeting dates. Due to this limitation, the Panel does not find that imputation C is established. This, however, does not affect the outcome of the Allegation as a whole.

The second group of imputations

42. The second four imputations relate to claims made by councillors, other than Cr Hughes and his son Cr Liam Hughes, for reimbursement of expenses. It is said that the post imputed that the councillors were not entitled to make these reimbursement claims, or otherwise such claims were unnecessary. It is also said that the post imputed that councillors, other than Cr Hughes and his son, sought and retained office for pecuniary profit and for political gain.
43. After discussing his unsuccessful panel application, Cr Hughes segues to discussion of council finances. The post contains the following:

The pursuit of justice is necessary, especially when unacceptable behaviour is being normalised in a forum which is supposed to promote fair discussion and how to best serve the residents being represented. Therefore, it is especially important to see how else your rates are being spent.

Below is a table highlighting councillor expenses from Nov 2020 to June 2021. It shows councillors spending over \$47,000 of ratepayer money on personal expenses including travel, childcare, director's courses, and Arts Centre tickets. This table does not capture other additional costs like buffet meals and alcoholic beverages. Also, earlier this year, councillors voted through a pay rise that will see councillor allowances rise by up to 89% and will cost the ratepayer an approx. \$60,000 of additional expense annually.

As can be seen on the table below I take my financial responsibility with your rates seriously. I will always stay true to my election promise that I will not spend one cent of your money for my own benefit.

I did not become a councillor for political gain or for profit, I am just a local resident who wanted to make a difference as I grew tired of a council that is out-of-touch with the needs of the community. Yet, if the system fails to defend a councillor from intimidation and misrepresentation and then worse, punishes the same councillor for speaking the truth, then I question what can be achieved in such an environment. I work for you, residents of Frankston, and I will continue to represent your concerns as best I can in this climate.

44. The table attached to the post is not an official Council document. Cr Hughes gave evidence that he compiled the table himself using publicly available information. The table indicates that Cr Hughes and Cr Liam Hughes made no claims for reimbursement in the relevant period. The table lists what claims

were made by each other councillor, divided into categories such as information and communications, conferences, training and travel, childcare, materials and arts centre tickets. The table provided the total claimed by each councillor and how this claim had increased or decreased from the previous reporting period.

45. The Panel had the benefit of hearing evidence from Mayor Conroy and Councillors Bolam, Harvey and Hill. They each gave evidence that all expenses were incurred in good faith and were for out-of-pocket expenses reasonably and necessarily incurred in the performance of their roles as councillors. Each councillor spoke of their motivations to become councillors, none of which was for financial profit or political advancement.
46. For example, Cr Claire Harvey gave evidence that she was motivated to become a councillor as she was interested in local issues such as housing, waste, active transport, local employment and sustainability. As a single parent of two then primary-aged children she made minimal claims for child-care expenses, instead usually relying on friends or family. These modest claims were necessary to ensure she could attend and participate in the business of council, noting that meeting often occurred in the evening.
47. Cr Harvey spoke of the impact of the facebook post. She stated that she felt 'strongly that the attention that was drawn to child-care expenses was a personal attack' as no other councillor made similar claims. She took great offence to the claim she was motivated for pecuniary profit and noted that she had in fact reduced her other paid work in order to meet the demands of her role as councillor. Cr Harvey noted it is important to ensure diversity of experience amongst Council members, and single parents should not be dissuaded from civic participation by public attacks such as that made by Cr Hughes in his post.
48. Cr Harvey also gave evidence that she used much of her own time to engage in professional development programs to better enable her to represent Frankston residents, although the cost of some of those programs such as the Australian Institute of Company Directors Course were reimbursed by Council. She stated that the Company Directors Course allowed her to significantly upskill and improve her ability to represent residents and participate as a delegate to the Peninsula Leisure Board. Cr Brad Hill similarly spoke of the benefit of this Course, as he was better able to consider the issues and subsequent decisions of Council. He noted the Course had a strong focus on financial strategy and good governance.

49. Cr Bolam gave evidence that Council had resolved to reimburse his expenses for defending the unsuccessful panel application made against him by Cr Hughes. Evidence was also given about councillors being reimbursed for the cost of mobile telephones used for Council business, and for meals when meetings took place later in the evening.
50. The state of the evidence is therefore that each councillor was entitled to seek reimbursement for the expenses listed in the table prepared by Cr Hughes. In evidence, Cr Hughes agreed that each of the claims for reimbursement was legitimate. However, the post as a whole conveyed the opposite. Cr Hughes described the claims for reimbursement as 'personal expenses'. He speaks of increases to councillors' pay, neglecting to mention that was a statewide increase. He says he will not 'spend one cent of your money for my own benefit', implying that is what other councillors did.
51. The Panel is therefore satisfied that the post incorrectly imputed that other councillors were not entitled to make these reimbursement claims, or otherwise that such claims were unnecessary. None of the claims for reimbursement were for 'personal expenses' as claimed by Cr Hughes. For example, councillors are to be encouraged to undertake professional development to improve their ability to represent the constituency. Councillors may make reasonable claims for reimbursement for childcare expenses to enable them to attend meetings out of regular business hours. The claims were instead made for expenses incurred in relation to the performance of each councillor's public duties.
52. The Panel is also satisfied that the post further imputed that councillors other than Cr Hughes and his son Cr Liam Hughes sought and retained office for profit and political gain. After discussing the claims for reimbursement made by other councillors Cr Hughes states '[a]s can be seen on the table below I take my financial responsibility with your rates seriously. I will always stay true to my election promise that I will not spend one cent of your money for my own benefit...I did not become a councillor for political gain or for profit...' In this post, Cr Hughes directly compared himself to the other councillors, and in doing so portrayed them as political profiteers.

Did the post contravene the Code?

53. It is then necessary to consider whether the post, containing the above imputations, contravened the Standards of Conduct. The Panel is satisfied that Cr Hughes breached clause 1 of the Standards of Conduct (paragraph 2.1 of the Code). Cr Hughes posted to his public facebook page, intending that post to be read by members of the municipality. In fact, he paid facebook to ensure his post was distributed widely within Frankston and seen by people who are

not his facebook friends/followers. The post is about the workings of Council, and the conduct of other councillors. He implies that the other councillors are motivated for financial gain and political profit. He suggests that the other councillors have received payment for private expenses, a false and mischievous allegation. In making this post, Cr Hughes therefore failed to treat his fellow councillors with 'dignity, fairness, objectivity, courtesy and respect'.

54. Likewise, his post contravenes clause 2 of the Standards of Conduct (paragraph 2.2 of the Code), being that a councillor 'must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly...'. Cr Hughes post was wholly irresponsible. His post has the risk of misleading the municipality about the motivations of other councillors and proper basis of reimbursement claims.
55. The post also contravenes clause 4 of the Standards of Conduct (paragraph 2.4 of the Code). In making this post, Cr Hughes brought discredit upon the Council, and mislead the public about the proper basis for reimbursement claims.
56. Allegation Two is proven.

Allegation Three

57. Allegation Three relates to a different facebook post which discussed matters arising from meetings of Council. The allegation reads (in part) as follows:

On or about 14 September 2022 Cr Hughes posted on his Public Facebook Page text concerning Council's rates and charges (Attachment F).

The post imputed that, at a meeting of Council in June 2022 at which rates and charges for the 2022/2023 Financial Year were being considered, Cr Bolam represented that the proposed increase in rates and charges would only be the equivalent of the cost of a bucket of Kentucky Fried Chicken (KFC). In fact, Cr Bolam made no mention of KFC at any meeting in June but had told a meeting in April 2022 that any reduction in rates on account of Cr Hughes' proposed rate reduction would, in each quarter, be the equivalent of a bucket of KFC.

By reason of the aspect of the post Cr Hughes misrepresented what Cr Bolam had said, and breached...

The post also imputed that, when setting rates and charges for the 2022/2023 Financial Year, Council had deliberately reduced the burden on commercial ratepayers and increased the burden on residential ratepayers. In fact, any redistribution of the rate burden was due to the extent of increases in the valuations of residential properties.

By reason of this aspect of the post Cr Hughes breached...

58. It is convenient to consider the relevant meetings of Council, before returning to consider the facebook post itself. The Panel was invited to and did watch audio visual recordings made of the Council meetings. Transcripts were also in evidence.
59. At a meeting of Council on 4 April 2022, Cr Bolam spoke against a notice of motion moved by Cr Hughes. Cr Bolam addressed the Council about the need to maintain adequate funding for various endeavours such as infrastructure maintenance and development. He said that Cr Hughes' proposed rate reduction would be roughly equivalent to the cost of one bucket of Kentucky Fried Chicken per ratepayer per quarter. He said that such a reduction would come at too high a price in terms of the loss of infrastructure development, essential services and council staff.
60. At a meeting of Council on 6 June 2022, Cr Bolam spoke in relation to a motion that Council adopt the proposed budget and declare rates and charges. Cr Bolam again likened Cr Hughes' proposed rate reduction as equivalent to the cost of a bucket of Kentucky Fried Chicken per ratepayer per quarter.
61. At this point of the meeting Cr Hughes interjects with a point of order, the content of which suggests that he mistakenly thought Cr Bolam was speaking of future rate rises, when he was instead speaking about proposed rate reductions. This misunderstanding was compounded by the Chief Financial Officer, who cites a figure for an increase to residential ratepayers. What follows is an unprofitable debate in which each party seemed to misunderstand the other. However, Cr Bolam did reiterate that the Kentucky Fried Chicken analogy related to Cr Hughes' proposed rate reductions.
62. It is several months later when Cr Hughes places on his public facebook page the post the subject of Allegation Three. It says, in part:

Why did the chicken cross the road? Because council rates were half the cost in the neighbouring suburb.

...

At the meeting, Cr Kris Bolam, Councillor for the North West Ward (Seaford, Karingal and Frankston North), brought a bucket of KFC into

the council chamber to illustrate the costs of the rate rise to residents. In what he called his 'Simba moment', Cr Bolan held the bucket above his head and, in defence of the proposed rate increases, stated that the rate increase will only cost Frankston residents 'a bucket of KFC per year'.

63. The post contains further allusions to fried chicken and is written in a provocative style. The post as a whole appears to be a vehicle by which Cr Hughes seeks to reiterate his views on Council spending and the setting of rates. However, Allegation Three focuses upon what is said to be two key imputations. Before considering these two imputations, the Panel notes that the Allegation is incorrect in so far as it states that the Kentucky Fried Chicken analogy was discussed only in the June 2022 meeting. It was discussed at both the April and June 2022 meetings.
64. The first imputation is said to be that Cr Hughes misrepresented Cr Bolam. It is correct that the facebook post did not accurately convey the statements of Cr Bolam, whose analogy related to proposed rate reductions rather than anticipated rate rises. However, whether the misstatement by Cr Hughes is deliberate or inadvertent cannot be determined with certainty.
65. Cr Hughes appeared confused during the debate in June 2022, and this confusion is borne out in the latter facebook post. The Panel does not find that the post contained the first imputation, as it is unable to conclude that Cr Hughes' deliberately misstated the position of a fellow councillor. Instead, Cr Hughes ought to do more to responsibly check his facts before making any public statement, such as by speaking to his colleagues or reviewing the transcript, recording and minutes of Council meetings.
66. Allegation Three is also said to contain a second false imputation, that being when setting rates and charges for the 2022/2023 Financial Year, Council had deliberately reduced the burden on commercial ratepayers and increased the burden on residential ratepayers. The Applicant says that any redistribution of the rate burden was due to the extent of increases in the valuations of residential properties.
67. The relevant part of the facebook post reads as follows:

Yet not everyone will receive a rate increase for FY23. Local business and industrial properties will have rates decreases of 12.21% and 3.06% respectfully next year. While any rate cut should be applauded, your residential rates have been increased to offset the lost revenue from these business reductions. In short, Frankston households are

being made to pay the cost of a rate decrease for Frankston businesses.

Council and councillors argue that it is house prices and commercial rates that are the main drivers in Frankston's exorbitant rates. This is just deep fried nonsense. House prices merely distribute the rate expense among Frankston residents, so residents with a higher house value pay more than those with a lower house value. And if commercial rates are key drivers of residential rates in Frankston why then did council decide to lower business rates in FY23 and make Frankston households foot the bill?

68. Mayor Conroy gave evidence that every year each rateable property is revalued independently by the state Valuer-General. In some years, the revaluation may lead to 'the Capital Improved Values of residential land increasing and the Capital Improved Values of commercial land decreasing or vice versa. It might also lead to Capital Improved Values of residential land increasing to a greater extent than increases in the Capital Improved Values of commercial land or vice versa.' He explained in that in 2022/2023 the Capital Improved Value of residential land and commercial land both increased, but the Capital Improved Value of residential land increased at a greater rate. As such, there was an increase in residential ratepayer's rates, but a decrease for that of commercial ratepayers. He said that this redistribution was not 'the conscious or deliberate result of any decision by Councillors when declaring rates and charges for the 2022/2023 Financial Year. Rather it was the natural impact of a revaluation that led to a greater rates burden being borne by residential ratepayers.'
69. Cr Hughes gave detailed evidence about the setting of rates, for example comparing rates in Frankston to those paid by the owners of similarly valued homes in other municipalities. It is apparent in the written material submitted by Cr Hughes and in his oral evidence, that the method by which rates are calculated is not his principal concern, but rather the larger issue of Council spending. In short form, he argues that Council should spend less and therefore rates could be lowered.
70. In the view of the Panel, the subject facebook post as a whole does much to confuse the issue of how and why rates are adjusted each financial year. Decontextualised figures and percentages are given throughout. The post is designed to shock and outrage readers, rather than to provide a balanced analysis of the debate. Cr Hughes fails to provide a clear summary of how and why residential and commercial rates are adjusted each year.

71. However, that is not in answer to the second imputation, which is that Cr Hughes falsely imputed that Council had deliberately reduced the burden on commercial ratepayers and increased the burden on residential ratepayers. The Panel regards this question as finely balanced, and as such is unable to find that the post contains the second imputation.
72. For the above reasons, Allegation Three is not proven.

The conduct constitutes serious misconduct

73. The Panel has found Allegation Two proven. It is 'serious misconduct' as it is 'continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b)' of the Act.
74. On two prior occasions Cr Hughes has been found to have engaged in misconduct and subject to sanction. As outlined above, on 27 July 2021 an arbiter found that Cr Hughes had on four occasions engaged in misconduct in relation to three social media posts made by him in January and February 2021 (the Arbiter Decision, IAP 2021-3). In a decision on sanction dated 28 August 2021, the arbiter suspended Cr Hughes from office for one month. It is noted that the conduct underpinning Allegation Two occurred after this decision.
75. In this context, the conduct underpinning Allegation Two meets the definition of 'serious misconduct'. At the time of engaging in the conduct, being September 2022, Cr Hughes had already been found by an arbiter (IAP 2021-3) to have engaged in misconduct. His conduct is therefore continued and/or repeated in the context of this earlier finding. The Panel notes the factual similarities between the conduct found proven in that matter and the conduct found proven in this matter, in that both related to Cr Hughes' ill-use of social media.
76. Cr Hughes was also found to have engaged in misconduct in a separate arbitration matter (IAP 2022-21). On 15 June 2022, an application was made against Cr Hughes. Four allegations of misconduct were proven, some of which related to Cr Hughes use of social media. In a decision dated 23 January 2023, the arbiter suspended Cr Hughes from office for one month and directed him to make a written apology.
77. The conduct alleged in IAP 2022-21 occurred before that contained in Allegation Two. Further, the finding of misconduct in IAP 2022-21 was made prior to the decision of this Panel. However, at the time Cr Hughes engaged in the conduct reflected in Allegation Two, he had not yet been found to have engaged in the misconduct alleged in IAP 2022-21. Whether this chronology

also engages the definition 'serious misconduct' found at paragraph (e) within section 3 is unnecessary to decide given the first Arbitrator Decision. However, the conduct proven in IAP 2022-21 remains relevant when determining what are appropriate determinations under s 167 of the Act.

Determinations

78. The Panel finds pursuant to s 167(1) of the Act that Cr Hughes engaged in serious misconduct. 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 Hughes, direct him to make an apology, suspend him from office for a specified period not exceeding 12 months and/or to direct that he is ineligible to chair a delegated committee of the Council for a specified period specified not exceeding the remainder of the Council's term.

The Applicant's submissions

79. The Applicant submitted that if the Panel finds Cr Hughes to have engaged in serious misconduct, then he ought to be suspended from office. It provided to the Panel the two prior arbitration decisions referred to above and said that his conduct is continued and/or repeated. It submitted that suspension was necessary to 'punish' Cr Hughes for breaching the standards of conduct, deter him for doing so in the future and to deter other councillors from engaging in misconduct and serious misconduct generally.

80. The Applicant submitted that the duration of any suspension is a matter for the Panel but said that suspension for one month would be inadequate given the allegation is of 'serious misconduct' rather than 'misconduct' simpliciter. It submitted that Cr Hughes' prior suspension has been an ineffective deterrent. It suggested that the duration of suspension ought to be four months.

The Respondent's submissions

81. Cr Hughes submitted that he is unable to offer an apology, as to do so would be insincere as he does believe he has engaged in any form of misconduct. He maintained that the Council's allegations 'are politically driven and not accurate'. He submitted that any other choice of sanction is a matter for the Panel.

82. The Panel also had available to it various positive references and testimonials written in support of Cr Hughes. These same materials were presented by him in a prior arbitration matter.

Analysis

83. 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 (including sexual harassment) and vilification. In other words, one of the purposes of the Act is to ensure councillors meet the standards of conduct expected of them.
84. The Panel finds that it is appropriate to reprimand Cr Hughes. A reprimand is a professional censure, signalling that the conduct is condemned. Furthermore, the Panel determines that given the nature and seriousness of the conduct and the harm that would be suffered if Cr Hughes and other councillors were not deterred from engaging in similar conduct, a period of suspension is required.
85. Cr Hughes will be suspended from office for a period of three (3) months. In determining the duration of the suspension, the Panel has considered a number of factors, including the nature and seriousness of the conduct.
86. The post undermines public confidence in those elected to local government. Councillors are entitled to make reasonable claims for reimbursement for expenses incurred in the better representation of the municipality. There is a strong public interest in ensuring all councillors are able to attend meetings, which is facilitated by the reimbursement for childcare expenses. They are entitled to be reimbursed for the cost of their council mobile phones, or for the cost of dinner when meetings sit late in to the evening. Further, there is a strong public interest in ensuring councillors are well trained, for example undertaking the Company Directors Course. One of the key vices of the post is that it falsely implied these expenses were improper, and that those councillors who applied for reimbursement were motivated by greed or for political gain. This does much to undermine public confidence, made all the worse for the fact that Cr Hughes' paid for the post to be distributed widely within Frankston. The post further undermines public confidence by continuing to allege improper conduct by a fellow councillor, where a properly constituted panel dismissed those allegations as unproven.
87. The social media post had a direct, adverse impact on some of Cr Hughes' fellow councillors. The professional reputation of one councillor was directly affected. Another councillor felt pressured to pay back the cost of attending a conference in which he represented Frankston at a national level, notwithstanding the reimbursement of this expense had been approved by

Council vote. Several councillors feared that the post would dissuade women and single parents from seeking election. This is relevant when assessing the gravity of the conduct.

88. Furthermore, the conduct is 'serious misconduct' as it is continued or repeated conduct after an earlier finding of misconduct had been made against him. That the finding is of 'serious misconduct' as opposed to 'misconduct' is a relevant consideration.
89. Cr Hughes has repeatedly displayed behaviours that are not conducive to a cohesive council that is able to work together for the betterment of the municipality and its ratepayers. His social media posts have undermined the reputation of the Council as a whole and a few councillors individually, which has led to elements of community distrust in the Council, the organisation, and its operations. These outcomes work to further destabilise the Council.
90. At a more detailed level, this is not the first occasion where Cr Hughes has been found to have engaged in a form of misconduct for his ill-use of social media. At the time of engaging in the serious misconduct Cr Hughes had already been through an arbitration process which resulted in his suspension. At the time of the hearing in this matter he had been suspended a second time for conduct which included his irresponsible use of social media. In making submissions to this Panel, Cr Hughes continued to deny any form of misconduct. He has not demonstrated any insight or acceptance of responsibility let alone remorse.
91. These matters indicate that specific deterrence is an important consideration. A period of suspension of sufficient length is necessary to convey to Cr Hughes that his conduct, repeated or continued as it is, is a breach of the standards expected of all councillors. The duration of the suspension is not intended to punish Cr Hughes, but rather to dissuade him from continuing to make false and irresponsible social media posts about the conduct of Council.
92. General deterrence is also a matter highly relevant to the duration of suspension. 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 and the system of local government. This public confidence is best achieved when councillors who breach the standards reasonably expected of them are properly held to account.

93. We have considered the evidence of good character presented by Cr Hughes, being the same which he presented in a prior matter. 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 Hughes would cease to be a councillor, not be entitled to receive allowances, and that if the suspension were greater than two months he would be required to return all council equipment and materials.
94. The Panel does not require Cr Hughes to give an apology for a reason similar to that offered by him: any apology would be insincere. Nonetheless, the Panel hopes that Cr Hughes will use the period of his suspension to reflect upon his conduct and to change, for the better, his use of social media and the way he treats his fellow councillors. This would be to the benefit of the residents of Frankston.