

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

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| LGA IAP REF: | IAP 2025-9 |
| APPLICANT: | Cr Mia Shaw |
| RESPONDENT: | Cr Robert Szatkowski |
| HEARING: | On the papers |
| BEFORE: | Arbiter J Silver |
| DATE: | 23 June 2025 |

Outcome

The application is dismissed.

APPEARANCES

The hearing was conducted on the papers.

STATEMENT OF REASONS

A. Overview

1. On about 18 April 2025, the applicant, Cr Mia Shaw, made an application for internal arbitration under section 143 of the *Local Government Act* 2020 (**'the Act'**) against the respondent, Cr Robert Szatkowski.
2. On 8 May 2025, the Principal Councillor Conduct Register appointed me to hear the application, numbered IAP 2025-9.
3. On reviewing the application, I issued preliminary directions on 16 May 2025, which included a direction under sub-s 145A(1)(c) of the Act that Cr Szatkowski provide me with certain documents. I received two documents that responded to the direction. I have included my reasoning on that discrete issue below.
4. I conducted a hybrid directions hearing on 20 May 2025, with the parties participating from Council premises, and myself through Microsoft Teams.
5. During the hearing, Cr Shaw clarified her application, and the parties agreed to the application being heard "on the papers" by an exchange of documents. I then made further directions to give effect to that course, and received submissions from both parties accordingly, which I have considered in preparing these reasons.
6. The application turns on this question: by providing a copy of a letter that he had sent to the Minister for Local Government to a third party (which was then published), did Cr Szatkowski engage in misconduct within the meaning of sub-cl 4(1)(a) of the Model Councillor Code of Conduct?
7. In this case (perhaps not in other cases with different facts), the answer is "no", and for the reasons which follow, the application is dismissed.

B. Documents produced under sub-s 145A of the *Local Government Act* 2020

8. Using the power of an arbiter under the Act to direct (or more accurately, to compel) a party to produce documents is a serious step that must be taken with some care. The power must be exercised only in furtherance of the application, in the form it was made to the Principal Councillor Conduct Registrar.
9. This calls for precision in the class of documents the subject of a direction, and for care in the handling of those documents, so that the internal arbitration process is not used to produce irrelevant information outside the scope of the application: it is implied that the power in section 145A is there so the arbiter can obtain *relevant information*, and the arbiter is responsible for deciding what is relevant.
10. This means an arbiter is not required to circulate documents upon their production to the arbiter, nor that the documents are automatically introduced into evidence. Rather, the arbiter must decide if the documents are relevant and answer the direction.
11. It is not an arbiter's role to conduct an inquiry into a Councillor's conduct more generally: given the additional purposes for which internal arbitration information can lawfully be used under the Act, it would not be appropriate for an arbiter to allow an internal arbitration to be used as an effective process of coercive discovery.
12. Under the Act, "confidential information" includes internal arbitration information as defined by section 145, which includes all information provided to or produced to an arbiter. If disclosed in an internal arbitration process, the disclosure of internal arbitration information is not an offence.
13. The clear meaning of the Act is that documents produced in one internal arbitration process can be used in, or even to commence, a further internal arbitration process (as the documents might reveal further misconduct, for which a separate application would be needed), without an offence being committed.
14. Although I had considered if in an internal arbitration process, the same implied undertaking that applies to documents produced to a court would also apply to

documents produced to an arbiter,¹ I formed the view that the Act's treatment of "confidential information" covers the field, which leaves no room for the operation of any other form of obligation.

15. In this application, I directed Cr Szatkowski to produce his letter to "Council Watch", and any communications with "Council Watch" concerning the publication of the letter. To ensure that Cr Szatkowski's documents were treated sensitively before I decided their relevance (not, **I make very clear**, out of any concern of a risk of misuse or improper disclosure), I also directed production directly to my secure email account (maintained by Barristers Chambers Limited).

16. On reviewing the documents that Cr Szatkowski had produced, I considered that two of them fell within my direction, and prepared copies redacted to remove irrelevant information, which I then provided to the Councillor Conduct Officer for release to both parties. I have not taken the other information that was produced into account, as it was not relevant to the application.

17. I have been conscious that, under sub-s 141(2)(b) of the Act, the parties must have an opportunity to be heard. Having provided Cr Szatkowski's documents in redacted form, Cr Shaw did not object to my approach, such that I consider that she had an opportunity to be heard on this issue.

C. What Cr Szatkowski did

18. At 8.08pm on 6 April 2025, Cr Szatkowski sent an email to the Minister for Local Government, CC-ed to Council's CEO, with the subject line '*Notification of Correspondence to the Chief Municipal Inspector*' (**'the Email'**).

19. I received an electronic copy of the Email (or at least, a version of the Email that was forwarded to others, which appears unaltered) from Cr Szatkowski in answer to my direction to him under sub-s 145A(1)(c) of the Act.

¹ For which *Harman v Secretary of State for Home Department* [1983] 1 AC 280 is often cited as authority.

20. The email to the Minister stated:

Dear Minister Staikos,

Please find attached a letter advising that I have written to the Chief Municipal Inspector regarding governance concerns at Wyndham City Council.

This action has been taken in good faith, with the aim of supporting transparency, accountability, and public confidence in our local government.

I remain available to discuss this further at your convenience.

The attached letter, in PDF, stated as follows:

Dear Minister Staikos,

I am writing to inform you that I have formally written to the Chief Municipal Inspector regarding serious and ongoing governance concerns at Wyndham City Council.

The correspondence outlines matters relating to decision-making processes, financial oversight, councillor conduct, and adherence to the principles of transparency and good governance. I have requested that the Inspectorate give these concerns its urgent attention, and consider whether the appointment of a Municipal Monitor is warranted.

As you would appreciate, it is essential that the community can have full confidence in the integrity of local government operations. I have taken this step in good faith and in the interests of accountability and restoring trust.

Please do not hesitate to contact me should you wish to discuss these matters further.

21. Despite referring to it, Cr Szatkowski's letter to the Chief Municipal Inspector was not supplied to the Minister. Nor, on consideration, did I consider it appropriate to obtain a copy for myself, as its contents would not impact the application.
22. Cr Shaw does not allege (and rightly so) that Cr Szatkowski breached the Model Code by sending this letter to the Minister in the first place.
23. The following morning, Cr Szatkowski took a further step.
24. At 8.09am on 7 April 2025, Cr Szatkowski forwarded a copy of the Email to an email account associated with "Council Watch."
25. "Council Watch" is the name of an incorporated association, whose activities seem to be synonymous with those of Mr Dean Hurlston, described in material before me as the "President and CEO" of "Council Watch Inc". Mr Hurlston is sometimes quoted in media articles concerning issues in the local government sector, and the association also has an active Facebook page named "Council Watch Victoria Inc" (which has about 10,000 "followers" and 6,300 "likes").
26. There was no evidence before me concerning who exactly "follows" or "likes" this Facebook page, including to what extent its readership is based in any of the City of Wyndham, the State of Victoria, or Australia more generally.
27. On 7 April 2025, after Mr Hurlston messaged Cr Szatkowski asking if he was "happy to go public at all", a copy of Cr Szatkowski's letter was included in a post to the "Council Watch Victoria Inc" Facebook page, which included the following description:

Labor Councillor Robert Szatkowski asks LG Minister to consider appointing monitors at Wyndham, based on poor decision-making processes and governance concerns. He has also asked the Local Gov Inspectorate to intervene.

This is on the back of the \$36 Million some Councillors decided to "keep" from Pt Cook residents that was uncovered as incorrectly spent elsewhere [for which the post linked readers to content on another website, "Wyndham TV.com.au"].

28. Because there is no evidence that Cr Szatkowski authored or authorised the precise wording of the "Council Watch" post, I am not prepared to treat him as its author, and as such, I will limit my consideration to his forwarding of his original letter to "Council Watch", and the re-publication by "Council Watch".

D. Analysis

29. Each sub-clause of clause 4 of the Model Code is to be read as if the clause includes the words of the main clause, followed by the words of the sub-clause, in a single sentence, such that sub-cl 4(1)(a) reads:

A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by... ensuring that their behaviour does not bring discredit upon the Council.

30. Through reliance on sub-cl 4(1)(a), Cr Shaw alleges (in effect) that by forwarding the Email to "Council Watch," Cr Szatkowski engaged in behaviour that brings discredit upon Wyndham City Council, because in releasing the letter to "Council Watch", he has acted in a manner that might diminish the public's trust and confidence in the integrity of local government, in particular, Wyndham City Council.
31. This allegation is clearly arguable. While there is a conceptual distinction between—
- (a) a Councillor who "brings discredit on Council" (ie. because the Councillor is badly behaved); and
 - (b) a Councillor who "discredits Council" (ie. because the Councillor is publicly critical of Council, but is not badly behaved),
- it is clear to me that sub-cl 4(1)(a) applies to both scenarios, noting that the Model Code's protection of robust public debate would often mean that a Councillor who "discredits Council" does not engage in misconduct.

32. I have some sympathy for Cr Shaw's application: with respect, I struggle to see how Cr Szatkowski's distribution of his letter was not a self-interested exercise, designed to raise his public standing (ie. as a champion of good governance) at the expense of his fellow Councillors, and I can understand that his colleagues would see his unilateral actions as an implicit criticism that Cr Szatkowski alone was taking governance seriously.
33. This observation would remain true, even if Cr Szatkowski's allegations (whatever they might actually be) are ultimately substantiated.
34. Without deterring Councillors from raising *bona fide* governance and integrity issues in the appropriate way, Councillors must not ignore the fact that there are specialist agencies responsible for dealing with these matters under the Act.
35. Parliament has determined that governance and integrity concerns must be raised with these agencies, not in the court of public opinion (ie. governance is not a political issue). Raising these matters publicly, prior to any investigation, is unlikely to be consistent with the Model Code, given the conduct that it disapproves of, and the limitations of robust public debate.
36. Although I have not made a finding of misconduct against him, Cr Szatkowski would do well to consider my observations in *Newton & Laurence* (IAP 2022-5 and IAP 2022-6), which highlight the risks to Councillors who pursue governance issues by alternative means (ie. not by a complaint to an investigating agency).
37. Indeed, in acting as he has, it does not seem to me that Cr Szatkowski has fulfilled his responsibility under sub-s 28(2)(b) of the Act to support the role of a Council, which under section 8, is to ensure good governance in its municipal district: it is hard to see how a Council can provide good governance when its Councillors are publicly stating or implying that their colleagues are not taking governance and integrity seriously.
38. Of course, in the fullness of time, it might be shown he is not the sole cause of such issues.

39. Those observations aside, I am not satisfied that as a matter of substance, Cr Szatkowski has breached the Model Code.
40. Clause 4 of the Model Code concerns actions that diminish "*the public's trust and confidence in the integrity of local government*", which requires me to examine what, in fact, was contained in the letter to the Minister, and what a reasonable reader (being members of the public reading the letter) would conclude from reading it.
41. The letter is not very specific. It informs the Minister of a second letter (which was not circulated, either to the Minister or "Council Watch") that Cr Szatkowski has sent "*to the Chief Municipal Inspector regarding serious and ongoing governance concerns at Wyndham City Council.*" It does not disclose those "concerns," a word which I read as being a synonym for "allegations."
42. Without his stating his "concerns" precisely (which on one argument, he is presenting as truths, rather than allegations), it is hard to say that Cr Szatkowski has made any statement that could bring discredit on Council: you cannot bring discredit on Council, without saying what the reason for the discredit is. "The Boy Who Cried Wolf", of Aesop's Fables fame, springs to mind.
43. Further, while the phrase "serious and ongoing governance concerns" reads severely, it is also completely opaque. The fact that Cr Szatkowski says he has concerns, which he does not disclose, does not achieve what the applicant alleges either.
44. Moreover, although I would accept that most reasonable readers outside the local government sector – in fairness, probably many in the sector – would be unfamiliar with the role and responsibilities of the Chief Municipal Inspector, Cr Szatkowski's statement that he has asked the Inspector to "*give these concerns its urgent attention*", and to consider if a Municipal Monitor "*is warranted*", makes sufficiently clear to the reader that further action is subject to the Inspector's own investigations.
45. In my view, the imprecision of Cr Szatkowski's letter (which contains no details that allow the reader to assess his allegations) means that it falls short of bringing discredit

on Council: it informs the reader that unspecified allegations have been made, and that someone has been asked to assess those allegations. It is implicit that this might result in Cr Szatkowski being dismissed as a Councillor "crying wolf."

46. The fact that some readers among the public will jump to a conclusion, and engage in negative gossip, without that further process taking place, does not mean that, more generally, the public's trust in Wyndham City Council has been diminished. If the test for discredit were *any one member of the public* forming a negative opinion, there would be a need for many more members of the Arbiter Panel List.
47. Not all "bad behaviour" (or at least, behaviour that is less than best practice or conducive to good relations among Councillors and Council staff) in local government will involve a breach of the Model Code.
48. While Cr Szatkowski did not act ideally, I am not satisfied that he engaged in misconduct.

J A SILVER

ARBITER