

ARBITRATION PURSUANT TO DIVISION 5 OF PART 6 OF THE LOCAL GOVERNMENT ACT 2020

Internal Arbitration Process – Darebin City Council

(IAP 2023-18)

Applicant: Cr Susanne Newton
Respondent: Cr Emily Dimitriadis
Arbiter: Dr Meredith Gibbs
Date of Hearing: 24 November 2023

DETERMINATION

Pursuant to section 147(1) of the *Local Government Act 2020 (Act)* the Arbiter makes a finding of misconduct against Cr Emily Dimitriadis.

STATEMENT OF REASONS FOR DECISION

BACKGROUND AND PROCEDURAL MATTERS

The Application

1. On 21 August and 21 September 2023, the Applicant made Application IAP 2023-18 (**Application**) seeking a find of misconduct against the Respondent.
2. The allegations relate to six incidents:

Allegation 1: The Respondent’s post on Facebook dated 28 June 2023 regarding her return to work after giving birth (Example 2 of the 21 August 2023 application)

Allegation 2: The Respondent’s comments at the Council meeting on 24 July 2023 during debate about the proposed removal of trees on Gladstone Avenue (Example 1 of the 21 September 2023 application)

Allegation 3: The Respondent’s comment in a Facebook post on Darebin Residents Group Facebook page regarding the replacement of the Gillies Street carpark lighting (Example 2 of the 21 September 2023 application)

Allegation 4: The Respondent’s questioning and comments at the Council meeting on 24 July 2023 during debate on the item relating to the advice of the Darebin Aboriginal Advisory Committee (**DAAC**) in formulating its recommendations to Council on the Voice to Parliament (Example 3 of the 21 September 2023 application)

Allegation 5: The Respondent’s entry into a “private room” at the rear of the Council Chamber during an adjournment of the 24 July 2023 Council meeting and her behaviour at that time (Example 4 of the 21 September 2023 application)

Allegation 6: The Respondent’s interaction with the Council’s CEO in the Chamber during an adjournment of the 24 July 2023 Council meeting (Example 5 of the 21 September 2023 application).

3. The Application contained an additional allegation, Example 1 of the 21 August 2023 application, which was out of time and is not before the Arbiter in this matter.
4. The Applicant alleges that the Respondent, Cr Dimitriadis, breached the standards of conduct set out in Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020 (Standards)* and therefore engaged in misconduct. The relevant clauses of the Standards alleged to have been breached are clauses 1, 3 and 4.
5. The Darebin City Council Councillor Code of Conduct (dated January 2021) (**Councillor Code**) reflects the Standards and contains a number of relevant policies and practices for the management of interactions between Councillors and Council staff.
6. The specific clauses of the Councillor Code alleged to have been breached are the requirements to:
 - a. treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, courtesy and respect, including by ensuring the Councillor:
 - i. does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors (clause 1(c));
 - ii. in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities (clause 1(d));
 - b. ensure the good governance of the Council and diligently and properly comply with ... (a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between Council staff and Councillors (clause 3(a));
 - c. behave in a manner that does not bring discredit upon the Council (clause 4(1)); and
 - d. not deliberately mislead the Council or the public about any matter related to the performance of their public duties (clause 4(2)).

First Directions Hearing

7. A Directions Hearing was held on 1 November 2023 at the Darebin City Council offices at which the Arbiter explained the arbitration process to the parties and heard submissions from the parties on various procedural matters including whether some of the Allegations could be heard “on the papers”. With the agreement of the parties, the Arbiter directed that Allegations 2 and 3 would be heard “on the papers” and Allegations 1, 4, 5 and 6 would be heard “in person” and set out a timetable for the exchange of submissions and supporting documentation for all Allegations. On 2 November 2023 the Arbiter issued a series of Directions to this effect.
8. In the weeks following, the Arbiter received requests for alterations to the timetable, and subsequent adjustments were made. The parties largely adhered to the adjusted dates.

Second Directions Hearing

9. On 13 November 2023, the Respondent emailed the Councillor Conduct Officer, Ms Bobbie-Lea Bright (Head Governance and Risk, Corporate & Governance Strategy), asking that she forward a request to the Council’s CEO, Mr Peter Smith, for Ms Bright to appear as a witness for the Respondent in relation to Allegation 6 as follows:

I would like to call the closest witness sitting next to me with regard to Allegation 6. In this instance, from the video, this would be the seat for the Acting Head of Governance and Risk, which is yourself. In accordance with the direction from the Arbiter on 18 of October 2023, could you please pass this request onto the CEO?

10. On 15 November 2023, Ms Bright advised the Respondent that the CEO had denied her request to call Ms Bright to appear as a witness because “*he does not believe that [it] is appropriate for staff below the Executive level to be called as witness and consequently directed me to decline your request*”. Ms Bright advised that the CEO had also directed her to decline requests for other staff below Executive level to be witnesses in this matter. The position held by Ms Bright is below Executive level.
11. In her witness statement dated 16 November 2023, the Respondent stated:

I wanted to call Ms Bright because she was present for the relevant events and could give her account of whether I yelled at the CEO (which I deny). I believe my case has been prejudiced by the CEO’s decision to not allow me to call relevant witnesses. I believe there is a conflict of interest in the CEO alleging I yelled at him, and then denying me the opportunity to call witnesses who could rebut that and support my account, which is that I did not yell at him. In these respects, I refer to and rely on the emails attached as Allegation 6 Annexure 17.
12. On 23 November 2023, a second Directions Hearing was held to hear submissions on whether the parties wished to call any Executive level staff members as witnesses and if so, how that might be accommodated (for example, further time could be given to provide such witness statements and potentially a further Hearing date). The Arbiter noted that the powers of an internal arbiter under the Act do not include powers to subpoena any witness or direct the provision of information. Each party made submissions with the Respondent maintaining her position that her case had been prejudiced by the CEO’s decision. However, neither party chose to call any Executive level witnesses (of which there were a possible three). At the Hearing, the Respondent said:

I strongly submit that it would be most unfair for a finding to be made against me in circumstances where I’ve not been permitted to call the witnesses I wanted to call, and the person making that decision is the person who is the subject of my alleged behaviour. I’ve come into this with one arm tied behind my back. For all anyone knows, there could be three or four people (indistinct) never know because (indistinct) in circumstances I submit in the strongest possible terms that as a matter of procedural fairness, no finding should be made against me.
13. The Arbiter proceeded to hear the case on the basis that there was sufficient material before her with respect to the events at the 24 July 2023 Council meeting, notwithstanding the inability of either party to call non-executive Council staff. This material included a written witness statement from Ms Jodie Watson, who at the time of the 24 July meeting was General Manager Governance and Engagement at Council but is no longer employed at Council. Ms Watson appeared at the Hearing, giving evidence in chief and answering questions from the parties and the Arbiter. The Arbiter also gave weight to the fact that neither party took up the offer to call executive level staff present at the 24 July meeting to give evidence when this option was made available to them.

Witness Statements and the Hearing

14. Prior to the Hearing, the parties reached agreement on a number of facts, set out in **Annexure A**.

15. Both parties provided written submissions and supporting documentation, including witness statements, prior to the Hearing and oral submissions at the Hearing. The parties provided witness statements as follows:

Witness name	Called by	Allegation/s	Appeared in person (for Allegations 1, 4, 5 and 6)
Mr Peter Smith	Applicant	5, 6	Yes
Mr (Uncle) Alan Brown	Applicant	5	Yes
Ms Jodie Watson	Applicant	1, 5, 6	Yes
Mayor Julie Williams	Respondent	5	No
Cr Emily Dimitriadis (Respondent) 2 statements	Respondent	1, 4, 5, 6	N/A
Cr Gaetano Greco 2 statements	Respondent	1, 4, 6	Yes
Cr Lina Messina 2 statements	Respondent	1, 6	No
Cr Tim Laurence 2 statements	Respondent	1, 4, 6	No
Uncle Phil Cooper	Respondent	4, 5, 6	Yes
Dr (Aunty) Jill Gallagher	Respondent	4, 5, 6	No
Dr (Aunty) Esmerelda Bamblett	Respondent	4, 5, 6	No
Mr Ioannis Tsiavos	Respondent	4, 6	Yes
Mr Thomas Nash	Respondent	4, 6	No
Mr Thomas Balakas	Respondent	4, 6	Yes
Ms Clare Elliott	Respondent	4, 6	No
Mr Dylan Vigilante	Respondent	4, 6	Yes
Mr Adam Hodges	Respondent	4, 6	No
Ms Kiz Blanca-Jackson	Respondent	6	No
Mr Marcus Stewart	Respondent	4	No

16. Over 130 documents were lodged for consideration by the Arbiter across the six Allegations.
17. An all-day, in-person Hearing of Allegations 1, 4, 5 and 6 took place on 24 August 2023 at the Darebin City Council in the Council Chamber.
18. In this Statement of Reasons, when referring to events that took place in the Chamber the following conventions are adopted:
- The “rear” of the Chamber refers to the area behind the Chamber which includes the Function Room (also referred to as the dining room).
 - The “top” of the Chamber refers to the area where the Chief Executive Officer (**CEO**) and the Mayor usually sit.
 - The “bottom” of the Chamber refers to the gallery area where the public sits.
 - The right and left hand-sides of the Chamber are as if one is standing in the gallery area facing the Chamber.

THE ALLEGATIONS

19. Four of the Allegations relate to events which occurred at the Council meeting on the night of Monday 24 July 2023. These will be dealt with in the order that they occurred, being Allegation 5, Allegation 6, Allegation 4, then Allegation 2.
20. The remaining two Allegations relate to social media posts and will be dealt with in date order, being Allegation 1, then Allegation 3.

ALLEGATIONS RELATING TO THE COUNCIL MEETING ON 24 JULY 2023

Allegation 5

21. Allegation 5 concerns the actions of the Respondent during the adjournment of the 24 July Council meeting which occurred immediately prior to the agenda item to discuss the Darebin Aboriginal Advisory Committee (DAAC) advice to Council on the Voice to Parliament Referendum (DAAC item) (approximately 8.20pm-8.30pm).
22. The Applicant alleged:
 - a. The Respondent entered the Function Room at the rear of the Council Chamber when the two Co-Chairs of DAAC (being the Mayor, Cr Julie Williams and Aboriginal Elder, Mr (Uncle) Alan Brown) were having a private meeting.
 - b. The Function Room was a “safe space” or “safe haven” for Councillors and not ordinarily open to the public.
 - c. Mr Brown had not felt culturally safe sitting in the Chamber prior to the adjournment due to the presence in the Chamber of other Aboriginal Elders who were YES supporters of the Voice to Parliament, and he had been taken by Council staff to the Function Room to speak privately with the Mayor.
 - d. The need for privacy for the two Co-Chairs of DAAC and to foster cultural safety was paramount.
 - e. Cr Dimitriadis sought to enter the Function Room while the meeting was taking place and the CEO, Mr Peter Smith, intervened to stop Cr Dimitriadis entering the Function Room.
 - f. After having been asked to leave the Function Room, the Respondent “barged into” the Function Room a second time during the private meeting and let several Aboriginal Elders (who were attending the Council meeting to oppose the DAAC advice) into the Function Room who “berated” Mr Brown.
23. The Applicant submitted this conduct constituted misconduct by breaching:
 - a. clause 1 of the Standards because the Respondent did not show the CEO and Mr Brown courtesy and respect; and
 - b. clause 3(a) of the Standards because the Respondent breached the Councillor Occupational Health & Safety Policy (**Councillor OHS Policy**) which states:

Councillors’ role under this policy

 - *Comply with this policy as well as all other applicable policies or procedures.*
 - *Make themselves familiar with the provisions of this policy and procedure, raise any concerns or questions about the policy’s coverage or application.*
 - *Take reasonable care to protect their own health and safety, as well as the health and safety of others in the workplace.*
 - *Refrain from behaving in a manner that exposes employees to a psychosocial risk, physical risk or any other risk which could compromise the health and safety of employees.*

...

- *Support any reasonable intervention which is implemented by Council to ensure the safety and wellbeing of Councillors or those within the scope of Council's staff OHS Policy.*
- *Provide support and assistance to the CEO to ensure Council's compliance with the OHS Act.*
- *Adhere to their duty under the OHS Act to ensure, so far as is reasonably practicable, the health and safety of the CEO (including psychological safety).*

The Applicant's submissions on Allegation 5

24. The Applicant submitted that the Respondent should have been aware of the security measures in place for the 24 July Council meeting, and that the Function Room, hallway behind the Chamber and Councillor rooms are 'safe spaces' where Councillors would be evacuated to if required to ensure their safety. It was a "*well understood convention*" that the Function Room was a safe space and Councillors had received an email from the General Manager Governance and Engagement at lunchtime that day which advised:
- a. Protestors on two unrelated issues were expected to be present at that night's meeting.
 - b. As a result, additional security measures and monitoring would be in place at the meeting to ensure the safety of all.
 - c. Councillors would be briefed prior to the meeting, over dinner at 5:30pm, and reminded of what to do in the event of the need to evacuate the Chamber.
25. The CEO, Mr Peter Smith, gave evidence:
- a. The CEO was aware the Co-Chair of DAAC, Mr Brown, was due to make a statement on behalf of DAAC on the DAAC item at the 24 July Council meeting.
 - b. During the meeting prior to the adjournment, the CEO was advised (electronically) that Mr Brown no longer wished to speak on the DAAC item as he felt culturally unsafe because several pro-Voice Aboriginal Elders were present in the Chamber and DAAC's advice to Council was to be neutral on the matter.
 - c. The CEO advised the Mayor (who is also a Co-Chair of DAAC) of this fact and the Mayor replied that she wished to speak to Mr Brown. The CEO then suggested the Mayor adjourn the meeting so that she could speak privately with her Co-Chair.
 - d. The Mayor subsequently adjourned the meeting and the CEO organised for her and Mr Brown to use the Function Room to meet privately.
 - e. The Function Room is a 'safe space' as defined by Council's security arrangements for Council meetings and it was well known that it was a safe place in the event of an incident in the Chamber.
 - f. It was unclear whether Cr Dimitriadis was at the 5:30pm security briefing (over dinner) that night. The practice of briefing Councillors at dinners prior to Council meetings was inadequate and at the Hearing, the CEO accepted that the briefing on the night was inadequate.
 - g. The Mayor and Mr Brown began their conversation privately, but with the CEO and two Council staff (Managers) remaining in the room in case support was needed.
 - h. Around two minutes into the conversation, Cr Dimitriadis came into the room and demanded in a loud voice that she should be included in the conversation.
 - i. The CEO considered that entry of Cr Dimitriadis into the Function Room would further exacerbate Mr Brown's feelings of being culturally unsafe due to comments Cr Dimitriadis had made during previous Council debates on the Voice to Parliament and the CEO believed that Mr Brown may have thought that Cr Dimitriadis invited the other Elders to

the Council meeting that night *“to put pressure on him as Chair of DAAC to either not make a statement to Council or make changed statement”*.

- j. Mr Smith believed that he was required under Council’s OHS policies and the law to act to deal with an unsafe workplace situation, which includes cultural safety. He could request Cr Dimitriadis to leave the room but could not require her to do so. However, as a Councillor, Cr Dimitriadis had a duty to support the CEO to provide a safe workplace.
 - k. The CEO then said, *“Cr Dimitriadis please leave as the Mayor wishes to speak privately with Uncle Alan”*. Cr. Dimitriadis became visibly angry and said in a raised voice, *“This is appalling behaviour Peter you can’t stop me being in here”*. At the Hearing, Mr Smith confirmed that Cr Dimitriadis was aggressive, loud and not courteous towards him.
 - l. The CEO then asked the Mayor to ask Cr Dimitriadis to leave, which the Mayor did.
 - m. Cr Dimitriadis then questioned why staff were in the Function Room if it was a private meeting. The CEO explained they were there for support.
 - n. Cr Dimitriadis then said *“This is appalling, you can’t do this”* in a loud voice in front of the Council staff present and then left the room to go back to the Chamber.
 - o. The CEO asked the other staff to leave the Function Room and then left the room himself. The Mayor and Mr Brown remained in the Function Room to continue their private conversation.
 - p. The CEO then left the Chamber for a toilet break and when he returned, he was advised that Cr Dimitriadis had returned to the Function Room with the other Aboriginal Elders present at the meeting and had intervened in the discussion between the Mayor and Mr Brown.
 - q. As a result of this incident (and Allegation 6) and others, the CEO conducted a review of the incident under Council Occupational Health & Safety (OHS) Policies and introduced measures to prevent further risks to staff psychological safety in Council Meetings. These included:
 - iii. reviewing security arrangements at Council Meetings;
 - iv. limiting staff attendance in the Council Chamber during meetings; and
 - v. requiring all Councillors to provide him with a written acknowledgement that they had read and understood the “Council OH &S Policy” and “Councillor Interaction Protocols” which govern interaction between Councillors and staff.
26. Ms Jodie Watson, who at the time of the incident was General Manager Governance and Engagement at Council, gave evidence:
- a. The 24 July Council meeting was adjourned due to cultural safety concerns for Mr Brown. The CEO, Mayor and Ms Watson were aware of these concerns and the reason for the adjournment.
 - b. The area at the rear of the Chamber *“is a restricted space, entered via staff security pass access through the hallway or via the door at the rear of the Chamber which is where staff and Councillors are seated during a Council meeting. This is also the designated ‘safe haven’ for Councillors in the event of an incident who would retreat to the Function Room”*. She said:

that is like our safe refuge in terms of that space. And so it's not uncommon that we will need to adjourn, break, and there might need to be a Council discussion around something that is not playing out well in the Chamber. They could use that space or that type of space to - to have a private conversation, so that's not uncommon.
 - c. Ms Watson could not confirm whether a security briefing had taken place at 5:30pm that night over dinner.

- d. Ms Watson was at the rear of the Chamber during the adjournment, checking on staff, when she saw several people from the gallery come through the rear of the Chamber to enter the Function Room, following Cr Dimitriadis. She said it was “*most unusual*” to have a member of the public present in this area.
 - e. Ms Watson then entered the Function Room and saw the Mayor and Mr Brown seated next to each other at one of the tables, with Cr Dimitriadis and several members of the gallery, who she later understood were Aboriginal Elders, standing on the opposite side of the table trying to speak. They were asking the Mayor for their turn to speak and interrupting the discussion between the Mayor and Mr Brown. Other staff were also present including one staff member who then intervened and ushered them all out of the room.
 - f. When questioned, Ms Watson confirmed that the Aboriginal Elders who had entered the Function Room did not shout at the Mayor or Mr Brown but their voices (directed at the Mayor) were raised and there was heightened intensity (in the sense of frustration) about wanting their turn to speak.
 - g. Ms Watson had considered making an internal incident report and had drafted a statement about the incidents that night, but she did not file it “*because my experience has been that it has no impact*”.
27. The Applicant submitted that the seriousness of the breaches of OHS policy by Cr Dimitriadis is evidenced by the fact that the CEO changed the OHS arrangements around Council meetings **as a result of** Cr Dimitriadis’s behaviour. She provided a copy of the CEO’s briefing PowerPoint slides which included statements indicating that there had been multiple community members and staff reporting feeling culturally and psychologically unsafe at the 24 July meeting.
28. The Applicant submitted the damage to the reputation of Council within the Aboriginal community, including the DAAC itself, has been significant. She submitted there has also been significant damage to the ability of the DAAC to retain and recruit Aboriginal and Torres Strait Islander people to work at Darebin. As evidence of this the Applicant cited the resignation letter of a DAAC member on 26 October 2023 that gave a reason for resignation as:
- an overwhelming attitude of inherent colonialism, disrespect and disregard for the process of Self Determination to both the DAAC and our organisation including the debacle over the motion to support the Yes campaign have left me personally struggling to come to terms with the respect and pride I originally felt working with the DAAC.*
29. The Applicant submitted that at the 24 July meeting Mr Brown was not there as a ‘member of the public’ as submitted by the Respondent, but rather as Co-Chair of a Council Committee and therefore on Council business.
30. The Applicant contended, “*Cr Dimitriadis shows no understanding of the hurt she has caused, or that she did anything wrong*”.

The Respondent’s submissions on Allegation 5

31. The Respondent denies that she let Aboriginal Elders into the Function Room or that she tried to barge, or actually barged, into the room with the Aboriginal Elders.
32. The Respondent stated:
- a. During the adjournment she spoke with Aboriginal Elders in the gallery area.
 - b. She noticed Mr Brown walking through the Chamber with some Council staff and they all went out the back door of the Chamber. She thought it was strange that a “*member of the public*” was allowed to go through the Chamber as she had never seen this before.

- c. She decided to get a snack from the Function Room and moved through the Chamber to the rear. When she opened the door to the Function Room, she was surprised to see Mr Brown, the Mayor and about four staff in the room.
- d. At the door to the Function Room, the CEO and the Respondent then had a brief conversation as follows:

He said, "you can't be here".

I said, "what's going on?"

He said, "you can't be here, this is a private conversation".

I asked, "why?"

He abruptly said, "this is a private conversation".

I said "this is appalling Peter you can't stop me from being here" as he was still using his physical presence to actively block my view of the room.

I said, "if this is a private conversation why are all the other staff in here?" At this point, I still couldn't see past him to the table where the staff were.

He said, in an abrupt tone, "this is a private conversation between the Mayor and the Chair of DAAC".

I said, "this is appalling, you can't do this" in reference to him blocking me from seeing what was going on and wanting to remove me from the room that we ate our dinner in.

- e. The CEO did not explain why the meeting was private and there were no other indications that the meeting was private such as a sign on the Function Room door or someone at the door preventing others from entering the room.
- f. The Respondent left the room when the Mayor said loudly "*this is a private conversation everybody out*" and returned to the Chamber where she began speaking with Aboriginal Elders in the gallery. They were asking the reason for the adjournment and how long it would be. Cr Dimitriadis said that the Mayor was in the Function Room with Uncle Alan, "*I'll go ask her*".
- g. As Cr Dimitriadis walked back through the Chamber to the rear and the Function Room, she realised Dr Gallagher was following her. She stated:

I immediately thought since Uncle Alan [Mr Brown], a member of the public, was allowed through the chamber, it would also be okay for Aunty Jill [Dr Gallagher], being an Aboriginal Elder that everyone knew, to walk through the Chamber too. There were also over 15 staff members at this meeting, as well as two security guards in the room, so if there were any concerns with Aunty Jill walking through the Chamber, then I assumed that a staff member or a security guard would have stopped her or at least spoken to her.

...

As I opened the door to the Function Room, almost immediately, Aunty Jill walked in and before I could speak, asked the Mayor how long it would take for the meeting to resume. At this point I was standing at the door, and Uncle Alan was still sitting next to the Mayor at the same table. Aunty Jill walked over to the table but stood about 1.5 meters back and asked "How much longer is this going to be because I have to go home. I have other commitments".

- h. The Mayor replied that the adjournment would not be much longer and that the Elders would be able to give their submissions. She repeated that she was having a private conversation.
 - i. Cr Dimitriadis then left the Function Room and returned to the gallery area.
33. When questioned, Cr Greco gave evidence that there was a protocol that the Function Room was a 'safe space'.
 34. The Mayor gave evidence that she adjourned the meeting "*due to the discomfort some attendees were experiencing*". She stated:
 - During this break, I entered the function room and invited Uncle Alan Brown to join me for a private conversation.*
 - Shortly after our discussion commenced, Emily [the Respondent] opened the door to allow gallery attendees into the room. Aunty Jill Gallagher, Uncle Phillip Cooper, and Aunty Muriel Bamlett entered ...*
 - Aunty Jill Gallagher posed some direct questions, and once I addressed their inquiries, they left the room. At this juncture, I cannot confirm whether Councillor Emily Dimitriadis had already left the room, and I do not recall Councillor Dimitriadis approaching the table.*
 35. Aboriginal Elder, Dr (Aunty) Jill Gallagher AO, CEO of Victorian Aboriginal Community Controlled Health Organisation (VACCHO), gave evidence that she approached Cr Dimitriadis to take her to speak to the Mayor during the break, as she had to leave the meeting.
 36. Aboriginal Elder, Mr (Uncle) Phil Cooper, President of the Aborigines Advancement League, gave evidence that when Dr Gallagher approached Cr Dimitriadis to inquire about the delays in the proceedings "*she handled the situation with the utmost professionalism and kindness*". He said that the Respondent then made her way to the back of the Chamber to seek clarification on the delay. He said Dr Gallagher followed Cr Dimitriades and signalled to him to follow as well. By the time he reached Dr Gallagher, Cr Dimitriadis was standing at the Function Room door and Dr Gallagher was making her way to leave the room having received an answer from the Mayor that the meeting would resume shortly. He and Dr Gallagher then returned to the Chamber.
 37. Aboriginal Elder, Dr (Aunty) Esmerelda Bamblett, CEO of the Aborigines Advancement League Inc. Victoria gave evidence she ended up in the Function Room when she and Ms Muriel Bamblett went looking for a cup of tea. She said that when they were told the meeting was private, they left the room immediately.
 38. The Respondent said she was unaware that the Function Room was a 'safe space'. She did not attend the safety briefing at 5:30pm because she was outside watching the protest and forgot that it was scheduled. She said that no-one updated her on security measures.
 39. She maintained it was incumbent on the security guards to secure the private areas. It is not up to Councillors to act as security guards for the Council and there is no evidence that she took the Aboriginal Elders into the Function Room.
 40. The Respondent submitted that Cr Newton did not provide any witness statements to substantiate that she *barged* into the Function Room or that Uncle Alan was *berated*.
 41. The Respondent submitted that the Applicant's reference to non-compliance with clause 3(a) of the Standards does not apply to this Allegation because clause 3(a) relates to policies managing the interactions between Councillors and Council staff and this incident relates to an interaction between a Councillor and members of the public.

Findings of the Arbiter on Allegation 5

42. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Emily Dimitriadis on the basis that the Respondent has breached clauses 1 and 3(a) of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

Reasons

43. I accept the evidence that the Function Room was conventionally used as a 'safe space'. The Respondent has a duty to inform herself of security arrangements and appropriate procedures so that she can meet the requirements of the Councillor OHS Policy to "*take reasonable care to protect their own health and safety, as well as the health and safety of others in the workplace*".
44. When Cr Dimitriadis first entered the Function Room, I accept that she did not know that there was a private meeting taking place and when told, although she protested (which I will come back to), she left the room. However, when she entered the Function Room a second time, she understood a private meeting was taking place and chose to disregard this. This shows blatant disrespect for the Mayor and Mr Brown, and their privacy.
45. On the evidence before me, it is not clear whether when Cr Dimitriadis entered the Function Room the second time the Aboriginal Elders came in at her invitation or they came in of their own volition. It is not clear whether the Respondent "*barred*" in or not, but she certainly entered the second time uninvited, knowing that a private meeting was taking place. There is no evidence the Elders who entered with Cr Dimitriadis "*berated*" Uncle Alan, rather it appears that they spoke solely with the Mayor about the resumption of the meeting. Regardless, Cr Dimitriadis did nothing to stop the Elders entering what she knew to be a private meeting or inform them it was inappropriate for them to interrupt the private meeting. Again this demonstrates a lack of respect for the privacy of the Mayor and Mr Brown.
46. In addition, I find the Respondent's protests at being asked to leave the Function Room by the CEO were disrespectful to the CEO, particularly because Council staff members were present. It was not courteous behaviour. There were many ways in which the Respondent could have dealt with the situation without needing to speak the way she did and challenge the CEO in front of his staff.
47. I therefore find that Cr Dimitriadis has breached clause 1 of the Standards.
48. I accept Mr Smith's evidence that as a result of the 24 July meeting he introduced measures to prevent further risks to staff psychological safety in Council Meetings. This is evidence of the impact of Cr Dimitriadis's behaviour.
49. I find that the Respondent's conduct was inconsistent with the requirement of the Councillor OHS Policy to:
- a. take reasonable care to protect the health and safety of others in the workplace;
 - b. refrain from behaving in a manner that exposes employees to a psychosocial risk, physical risk or any other risk which could compromise the health and safety of employees;
 - c. support any reasonable intervention which is implemented by Council to ensure the safety and wellbeing of Councillors or those within the scope of Councils staff OHS Policy; and
 - d. provide support and assistance to the CEO to ensure Council's compliance with the OHS Act.
50. The way that Cr Dimitriadis challenged the CEO when she entered the Function Room the first time and the fact that she entered a second time demonstrate a lack of care for the health and safety of those in the private meeting and the staff there in support. She exposed the CEO and his staff to a psychosocial risk by failing to act respectfully and courteously. The CEO's efforts to prevent Cr Dimitriadis entering the room were a reasonable intervention to ensure the

wellbeing of the Mayor and Mr Brown (who was feeling culturally unsafe) and this intervention was not supported by Cr Dimitriadis. I find this to be the case even though it appears that Cr Dimitriadis may not have known that Mr Brown was feeling culturally unsafe, and this was the reason for the private meeting. From the evidence before me, particularly oral accounts of the incident, it was clear that the situation had become heightened and something “*was going on*”. It was inappropriate for Cr Dimitriadis to challenge the CEO’s intervention in this manner regardless that she did not know the exact reason for the private meeting. She certainly did not provide support and assistance to the CEO on this occasion.

51. The Respondent’s submissions seem to suggest that respecting the privacy of others or ensuring that members of the public do not enter restricted areas was the responsibility of Council staff and the security staff on the night. She submitted that because she was not challenged by staff or security staff that allowing members of the public to move through the Chamber and enter restricted areas was acceptable. She also referred to the fact that no one updated her on security arrangements when she forgot to attend the security briefing. These comments demonstrate a lack of awareness of her responsibilities as a Councillor for ensuring workplace safety.
52. The Councillor OHS Policy is a policy developed and implemented by the CEO in accordance with section 46(3)(c) of the Act for managing interactions between members of Council staff and Councillors and clause 3(a) of the Act applies. The Respondent submitted that the Applicant’s reference to non-compliance with clause 3(a) of the Standards does not apply to this Allegation because clause 3(a) relates to policies managing the interactions between Councillors and Council staff and this incident relates to an interaction between a Councillor and members of the public. I accept the Applicant’s submission that Mr Brown was not simply a “member of the public” in this instance. Mr Brown had been invited to the meeting by Council to make a submission as Co-Chair of DAAC on the DAAC item. As member of DAAC, a Council Community Advisory Committee, Mr Brown is a volunteer under Council’s Volunteer Policy which states, “*Volunteers are covered by all relevant Council policies and legislative and regulatory provisions in relation to OHS ...*”. Accordingly, Mr Brown was covered by Council’s OHS requirements referred to above.
53. I therefore find that Cr Dimitriadis breached clause 3(a) of the Standards.

Allegation 6

54. Allegation 6 also concerns the actions of the Respondent during the adjournment of the 24 July Council meeting which occurred immediately prior to the DAAC item, immediately after the events of Allegation 5 when the Respondent had returned to the Chamber.
55. The Applicant alleged:
 - a. When the Respondent returned to the Chamber, she yelled at CEO, Mr Peter Smith for blocking her entry into the Function Room (Allegation 5).
 - b. The incident took place in a public place and was witnessed by numerous staff.
 - c. The Respondent's behaviour created a psychosocial risk to the CEO and his employees who witnessed the incident.
 - d. As a result of the Respondent's behaviour, the CEO took several actions relating to improvement of OHS arrangements.
56. The Applicant alleged that this conduct constituted misconduct:
 - a. The Respondent did not treat CEO Peter Smith with "*dignity, fairness, objectivity, courtesy and respect*" in a situation where the Response is expected not to "*engage in abusive, obscene or threatening behaviour in the dealings with members of the public, Council staff and Councillors*" in breach of clause 1 of the Standards.
 - b. The Respondent's actions were in breach of her obligations under the Councillor OHS Policy because they created an unsafe workplace in breach of clause 3(a) of the Standards.
 - c. The Respondent's behaviour damaged the reputation of the Council as a place to work which brings the Council into disrepute in breach of clause 4(1) of the Standards.

The Applicant's submissions on Allegation 6

57. The CEO, Mr Peter Smith, gave evidence:
 - a. When he returned to the Chamber after a toilet break (referred to in Allegation 5), Cr Dimitriadis approached "*and spoke to me in a raised aggressive and angry voice in front of my staff saying something like, 'What you did is appalling Peter, you can't treat me like that'*". At the Hearing, Mr Smith stated that the Respondent had spoken in a loud, accusatory voice, was visibly agitated: "*I certainly felt you were getting very angry*".
 - b. The level of Cr Dimitriadis's voice was loud enough to carry a distance and to be heard by a number of people in the vicinity.
 - c. He then said "*Emily, please do not talk to me like that in front of my staff and in public, if you have a concern, please raise it with me privately or if you wish to make a formal complaint you can raise it with the Mayor*". Cr Dimitriadis again yelled at the CEO, and he repeated his request to raise the matter privately.
 - d. At the Hearing, the CEO explained:

My memory of it, writing it down the day after, was that I was yelled at. It's a subjective word, clearly, but it was in a raised voice, it was an angry voice, and her demeanour was aggressive, um, to the point where I felt it was inappropriate for anyone to talk to me like that, ah, as a CEO. Um, so, you know, I think these things are subjective, but other people I've spoken to who witnessed that certainly described it as yelling or inappropriate behaviour towards me.
 - e. The incident was witnessed by a General Manager, a Manager, and other Council staff. Some staff who witnessed the incident approached the CEO afterwards to ask if he was all right and needed any support.

- f. After the meeting, the CEO checked on the welfare of several staff present, and a number reported feeling very distressed seeing their CEO spoken to by a Councillor in that way.
 - g. Staff lodged incident reports on Council's OHS system, and the CEO received a written complaint from a staff member who has since left the organisation which was ultimately not pursued. One incident report concerned the CEO being shouted at inappropriately and stated that Cr Dimitriadis was being aggressive towards the CEO. Mr Smith said that he was aware of a number of other staff who did not lodge incident reports about the incident that night because they were worried about doing so, he thought due to the power imbalance between Councillors and staff members.
 - h. The CEO is aware that other complaints from members of the public were considered but not progressed.
 - i. In response to these concerns, the CEO met privately with Cr Dimitriadis in the fortnight after the 24 July meeting. At that meeting, Cr Dimitriadis advised him that she did not recall that she had raised her voice at him or that she spoke to him inappropriately. The CEO provided her with feedback on his expectations in terms of respectful behaviour towards himself and staff and they discussed appropriate coaching support for Cr Dimitriadis so that she could prosecute her arguments in Council debate without impacting on others. As a result of Cr Dimitriadis agreeing to undertake coaching and to be mindful of the way in which she spoke to him, and to and about staff, going forward he considered the matter was settled. Cr Dimitriadis accepted his feedback, and they remain on respectful terms.
 - j. After the meeting the Respondent received coaching and her behaviour had improved (namely, an increase in respect towards the CEO and staff) in recent months.
 - k. As a result of these incidents (Allegations 5 & 6) and others, the CEO conducted a review of Council OHS policies and introduced measures to prevent further risks to staff psychological safety in Council meetings. These included:
 - i. reviewing security arrangements at Council meetings;
 - ii. limiting staff attendance in the Council Chamber during meetings; and
 - iii. requiring all Councillors to provide written acknowledgement that they had read and understood the "Council OH & S Policy" and "Councillor Interaction Protocols" which govern interaction between Councillors and staff.
58. Ms Jodie Watson, who at the time of the incident was General Manager Governance and Engagement at Council, gave evidence:
- a. When the incident occurred she was sitting (temporarily) at the desks on the left-hand side of the Chamber allocated to staff. Other staff were standing in this immediate area. Ms Watson saw Cr Dimitriadis "*shouting*" at the CEO, Mr Smith, "*in a raised voice with an aggressive tone*" in the Chamber during the adjournment. They were both seated at the top of the room.
 - b. At the Hearing, Ms Watson amended this to:

I'm not going to say 'shouting' because it – it wasn't quite shouting, but it was certainly aggressive in a raised voice. ... so she [the Respondent] appeared to be telling him [the CEO] off in quite a loud and kind of aggressive manner, in terms that she's clearly upset and frustrated.
 - c. Mr Smith "*was listening and very calm and responded to Cr Dimitriadis very calmly with a low tone telling her the matter should be discussed later*".
 - d. There were other Councillors and staff, including Ms Watson's staff present. She was also concerned that members of the gallery could hear Cr Dimitriadis speaking in this way to the CEO. She said:

- e. It was highly inappropriate behaviour and in a public setting and so I got up out of my chair to intervene, but by the time I headed toward them Cr Dimitriadis had retreated and the exchange had ended.
 - f. Ms Watson had considered making an internal incident report and had drafted a statement about the incidents that night, but she did not file it *“because my experience has been that it has no impact”*. She said that she thought the Respondent’s behaviour was *“undermining leadership”* and that these kinds of conversations are *“best had behind closed doors in a more respectful way than had in front of other people”*, particularly in the setting of a Council meeting.
59. The Applicant submitted the Respondent should be well aware of the behaviour expected of her as a Councillor given comments in the [Municipal Monitor’s Report to the Minister for Local Government](#) (John Watson, Municipal Monitor appointed to Darebin City Council from April 2022 to January 2023) (**Monitor’s Report**) and the extensive advice and training given to the Councillor group by the Monitor regarding appropriate behaviour by Councillors towards staff.
60. The Applicant submitted the fact that the CEO changed staff OHS arrangements around Council meetings because of Cr Dimitriadis’s behaviour is evidence that the Respondent’s conduct constituted a workplace health and safety risk. She also noted that the CEO’s presentation to the Councillor group on this matter on 21 August 2023 referred to relevant inappropriate behaviour leading to the changes as including, *“The CEO being spoken to inappropriately in public and in front of staff.”* In his evidence, the CEO confirmed that the Respondent’s behaviour was one of the reasons the OHS arrangements were changed.
61. The Application referred to an email dated 26 July 2023 (two days after the meeting) from the Applicant, Cr Messina and Cr McCarthy to the Respondent expressing serious concern about the Respondent’s behaviour towards the CEO at the 24 July Council meeting and asking her to apologise to the CEO. The Councillors also stated they had an OHS responsibility for the health and wellbeing of the CEO as their only employee and considered that to verbally attack the CEO during a public meeting was *“completely unacceptable behaviour”*. They also said, *“We have witnessed you making many verbal attacks on staff and Councillors over many occasions over the last 2.5 years, in Council briefings, meetings, by social media and by email ... We can no longer remain silent in the face of this repeated behaviour”*. They also referred to other unacceptable behaviour on the same night (relating to Allegation 2).
62. The Applicant submitted Cr Dimitriadis *“has no sense of remorse and seemingly no awareness that her behaviour could cause harm”*. Reflecting on the 24 July meeting she said:
I think this just really reminds me that through the behaviour that I've certainly witnessed from Cr Dimitriadis, I don't think that a safe workplace is provided for councillors, for council staff, or for the public, and I think the examples ... show that quite clearly.

The Respondent’s submissions on Allegation 6

63. The Respondent denied the Allegation.
64. The Respondent said she approached the CEO who at the time was sitting in his usual seat at the top of the Chamber during the adjournment to ask what was going on because she was concerned that the CEO would stop the meeting and the Aboriginal Elders would not be able to make their submissions that night. She said she was less than a metre from his seat when she had about a five second conversation with the CEO:
I asked, “What's going on Peter? Why is there a hold up?” and the CEO said “I'll tell you later, Emily”. I said “What's going on Peter? The Elders are wanting to leave. This is appalling”. ...

The CEO looked past me and said in a very loud voice, "I don't appreciate being spoken to like that in front of my staff". I turned to see who he was saying this to, and it appeared he was looking at the direction of the staff sitting in their seats near the side of the exit door, who were about 4-5 meters away from us. I honestly do not believe they would have been able to hear what I was asking the CEO.

I did not try to echo the loud tone of the CEO's voice as I did not want to cause a scene given the already charged environment in the gallery, so I repeated under my breath but loud enough for the CEO to hear, "this is appalling" and walked off, as it appeared to me that the CEO was trying to get the attention of his managers rather than speak to me.

65. The Respondent said she did not yell. She said:
- I spoke in a normal volume and my tone was not aggressive. The most I could say is that I may have spoken quickly, and being in a room with many people, I spoke at a volume that was appropriate, to ensure I was heard. ... I am passionate about this issue and was seeking to advocate for this issue and for the Elders who were supporting the "yes" position.*
66. The Respondent provided witness statements from three Councillors and ten members of the public who were present in the Chamber at the time. Each of these states they did not witness Cr Dimitriadis yell or raise her voice at anyone. Of these, one Councillor (Cr Greco), one Aboriginal Elder (Mr Cooper) and three members of the public present in the gallery gave oral evidence at the Hearing.
67. Cr Greco gave evidence that during the adjournment:
- initially, for a short while, he remained in his seat which is next to where the CEO sits and he did not hear any shouting or loud voices;
 - towards the end of the adjournment he left the Chamber for a toilet break;
 - on the way to the toilet he stopped to speak to the Aboriginal Elders in the gallery area and did not hear any yelling or shouting by Cr Dimitriadis while in the gallery area.
68. Cr Messina's evidence was that she did not hear or witness the incident and that her knowledge of events was based solely on information relayed to her by third parties. This was the basis of her agreement to send an email to the Respondent with Crs Newton and McCarthy. She said she only wanted Cr Dimitriadis to apologise to the CEO and did not want to take the matter further.
69. In his written statement, Cr Laurence said that during the adjournment, from the "west end" of the Chamber table (that is, on the right-hand side of the Chamber near to the gallery area), he witnessed Cr Dimitriadis and the CEO speaking but did not hear any yelling by either party:
- ...it looked like a respectful conversation. I did not see any raising of arms or rolling of eyes or shaking of heads that would indicate a tense exchange.*
70. Aboriginal Elder, Mr (Uncle) Phil Cooper, President of the Aborigines Advancement League, gave evidence that upon returning to the Chamber (refer Allegation 5), while in the public gallery area, "I did not witness any form of aggression from Cr Dimitriadis, nor did I hear anything in her conversation with the CEO." Mr Cooper's evidence was that some Councillors were speaking loudly amongst themselves and there was a lot of noise in the Chamber.
71. Aboriginal Elder, Dr (Aunty) Esmerelda Bamblett, CEO of the Aborigines Advancement League Inc. Victoria gave (written) evidence she did not witness any aggressive behaviour by Cr Dimitriadis in the meeting and her conduct was professional throughout.
72. Mr Dylan Vigilante, Mr Thomas Balakas, Ms Kirra 'Kaz' Blanca-Jackson and Mr Ioannis Tsiavos each gave evidence they did not hear or witness Cr Dimitriadis yell or raise her voice at the CEO. At the relevant time, each was seated in the back row of the public gallery.

73. Mr Thomas Nash’s written evidence was that Cr Dimitriadis acted in a professional manner “*and at no time was ever flagrant or unruly*”. It is not clear from his witness statement whether he was in the Chamber during the adjournment, and if so where in the Chamber he was located.
74. Mr Adam Hodges’ written statement said he did not recall Cr Dimitriadis speaking to anybody in an inappropriate manner. He was sitting in the back row of the gallery for most of the meeting and at one point during the adjournment had been in the front row of the gallery speaking with Dr Gallagher.
75. Ms Clare Nash’s written statement did not expressly address this incident.
76. Cr Dimitriadis submitted:
- My experience as a woman, and having a multicultural background, is that sometimes speaking, advocating and making points about an issue, is perceived as aggressive or otherwise perceived negatively. This is a bias that is widely acknowledged to exist. I cannot speak to how the CEO felt, however given my knowledge of my own behaviour on that evening, I submit that it is possible his perception of my behaviour was affected by this type of bias.*
- ...
- This should also be seen in the context of the CEO being an experienced executive, holding a senior position of considerable power, and being a male who is physically larger than me.*
77. Cr Greco gave evidence that in some cultures, such as his own, people tend to use their hands when they speak and to others it can seem like they are screaming when they are not; speaking louder is normal, just a cultural trait and not intended to be offensive.

Findings of the Arbiter on Allegation 6

78. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Emily Dimitriadis on the basis that the Respondent has breached clauses 1, 3(a) and 4(1) of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

Reasons

79. Based on the testimony provided by witnesses, I am satisfied that when the alleged incident occurred:
- a. there were at least 30 people in the Chamber and public gallery area including Councillors, staff, security staff and members of the public;
 - b. people were moving about the room, and coming and going from the room;
 - c. there were many conversations taking place at the same time throughout the room; and
 - d. some people were speaking loudly, expressing frustration at the delay.
80. The evidence presented by the Respondent provided no useful guidance on whether or not Cr Dimitriadis yelled, shouted or spoke disrespectfully to the CEO during the adjournment.
81. Cr Greco said that he did not hear any shouting or notice anything to suggest that the Respondent had yelled or become angry with the CEO. However, Cr Greco’s evidence was that while he was in his usual seat adjacent to the CEO’s seat at the beginning of the adjournment, he later went to the public gallery area to speak with people there and after that left the room. Therefore, it is possible he was not within earshot of the incident or looking in the direction of the Respondent and the CEO when the incident occurred and may not have even been in the Chamber at the relevant time. Further, on several occasions at the Hearing (which took place in the Chamber and only one person spoke at a time), Cr Greco could not hear the questions being

asked of him and it was necessary for the questions to be repeated loudly before he could hear them. Given that at the time of the incident many people were speaking at once and some loudly, it is unclear whether Cr Greco would have heard the incident if he was any distance away.

82. Mr Cooper also said that he did not hear any shouting or see anything to suggest the same. Except for the period when he went to the Function Room as set out in Allegation 5, he was in the public gallery area throughout the adjournment. Like Cr Greco, it is possible he was not within earshot of the incident or looking in that direction when the incident occurred. Further, on several occasions while giving his evidence at the Hearing, Mr Cooper could not hear the questions being asked of him and it was necessary for questions to be repeated loudly before he could hear them. Therefore, he simply may not have heard the incident.
83. Mr Vigilante and Mr Tsiavos (who both gave oral evidence at the Hearing) did not hear or observe anything to suggest that the Respondent yelled or shouted at the CEO. At all times during the adjournment, both witnesses were seated in the back row of the public gallery and therefore, it is possible that they did not hear the incident, their view of it may have been blocked at the time or they may have been looking elsewhere. This also applies to other members of the public who were in the Chamber during the adjournment and who, as members of the public, would have been in the public gallery area.
84. In contrast, I found both Mr Smith and Ms Watson who appeared for the Applicant to be compelling witnesses. I accept their testimony that Cr Dimitriadis spoke to Mr Smith in a raised and angry voice and in essence 'told him off' in a public setting which included Council staff situated nearby. I also accept Mr Smith's evidence that this incident was one of the reasons he decided to review Council OHS arrangements for Council meetings and implemented revised arrangements to better ensure workplace safety.
85. I am not convinced by the Respondent's argument that when speaking to Mr Smith she was exhibiting cultural traits, and that Mr Smith incorrectly interpreted her behaviour as aggressive due to unconscious bias. This is because her words, saying that what he did was appalling and that he couldn't treat her like that, were clearly accusatory and critical of his behaviour.
86. Therefore, on the balance of probabilities, I find that Cr Dimitriadis did raise her voice at the CEO and criticise him in an angry and disrespectful manner in breach of clause 1 of the Standards. Even if not "yelling", this behaviour was disrespectful of the CEO and undermined his position, especially given the setting. The Respondent has therefore breached clause 1 of the Standards.
87. I also find that the Respondent's behaviour created an unsafe workplace during the incident. Cr Dimitriadis did not take reasonable care to protect the health and safety of others in the workplace, particularly the CEO and the Council staff in the vicinity. Her behaviour exposed members of the workplace to a psychosocial risk that could compromise their health and safety and did not ensure the health and safety of the CEO (including his psychological safety), all of which are requirements of the Councillor OHS Policy. Her conduct is therefore in breach of clause 3(a) of the Standards.
88. I also find that the Respondent's behaviour brought the Council into disrepute by damaging the reputation of the Council as a safe place to work in breach of clause 4(1) of the Standards. The Councillor Code provides guidance on the appropriate standard of conduct (p10):
- Councillors recognise that the conduct and behaviour of an individual Councillor reflects on Council as a whole and that, as community leaders, they should be role models, setting the standard for other people to follow. To this end, Councillors are committed to maintaining high standards of personal and professional conduct.*
- Cr Dimitriadis failed to set an appropriate standard of personal and professional conduct in this instance.

Allegation 4

89. Allegation 4 concerned the Respondent's questioning in the debate on the DAAC item, after the Council meeting resumed (approximately 8.30pm onwards).
90. The Applicant alleged that the Respondent breached clauses 1 and 3(a) of the Standards by:
- a. repeatedly questioning whether DAAC had consulted adequately before providing its recommendations to Council on the Voice to Parliament; and
 - b. her comments and conduct more generally in the debate on the DAAC item.
91. The DAAC advice contained several recommendations including that Council take a 'neutral' position (i.e. not take either a 'yes' or 'no' position) on the Voice, provide support to Aboriginal and Torres Strait Islander people over the referendum period, and encourage the Darebin community to inform and educate themselves about the Voice referendum.
92. The repeated questioning referred to in this allegation was that the Respondent asked five questions on the consultation undertaken by DAAC prior to finalising its advice to Council including whether DAAC had consulted:
- a. Aboriginal members of the community who live, work and study in Darebin;
 - b. the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (the Traditional Owners);
 - c. the First People's Assembly of Victoria; and
 - d. other Aboriginal and Torres Strait Islander organisations based in Darebin.
- The Respondent also asked whether a member from DAAC was present who might be able to answer her query regarding what other Aboriginal and Torres Strait Islander organisations based in Darebin had been consulted.
93. During this questioning, the Respondent referred to some Aboriginal Elders who were present in the public gallery at the time who were shaking their heads in disagreement with the responses by Council staff that DAAC had consulted the local Aboriginal community.
94. The Council officer responding to the Respondent's questioning (through the Mayor) indicated that the usual process in matters affecting Aboriginal and Torres Strait Islander people was for Council officers to go through (or consult) DAAC and the Traditional Owners (the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation). Council staff explained that the DAAC process was for it to engage (or consult) in a manner DAAC thought appropriate.
95. During the meeting, the Respondent said:
- Remaining silent is effectively a no vote, in my opinion. Tonight we heard from highly respected Elders and members of the First People's Assembly who apparently were not consulted on this matter, as we have heard from officers. ... the importance of Council not sitting on the fence as this is effectively a no vote ...*
96. The following facts were not in dispute:
- a. DAAC is one of fifteen Community Advisory Committees that Darebin Council has established.
 - b. The Applicant is a member of DAAC.
 - c. DAAC does not have delegated decision-making authority and can only provide advice and recommendations to Council.
 - d. The documents set out in **Annexures B and C** accurately reflect the role of DAAC and its relationship with Council.

The Applicant's submissions on Allegation 4

97. The Applicant submitted that the Respondent's line of questioning and comments in the debate on the DAAC item did not treat the members of DAAC with dignity, fairness, objectivity, courtesy and respect. Further, the line of questioning did not comply with the Council's Community Engagement Policy which outlines that Aboriginal and Torres Strait Islander communities must have the "authorising voice" in decisions affecting them. More generally, the Applicant submitted that the Respondent put at risk the cultural and psychosocial safety of Council staff, DAAC members and members of the public (both those attending in person and viewing online).
98. The Applicant submitted that DAAC had been delegated the responsibility of undertaking consultation for providing its advice to Council on the Voice to Parliament and had undertaken extensive engagement with the local Aboriginal community in Darebin. The Respondent's line of questioning was culturally inappropriate and undermined DAAC by suggesting that that DAAC had not adequately consulted before forming its recommendations. She said:
- Cr Dimitriadis implies quite clearly and repeatedly that she believes DAAC has not consulted adequately, rather than respecting the process that the DAAC used to consult within their own community.*
99. She submitted that DAAC's adopted approach was not to consult with statewide organisations such as the First People's Assembly and Aboriginal organisations which are based in Darebin but have a wider remit than just Darebin.
100. The Applicant said the Respondent's questioning was "very uncomfortable". She submitted that concerns should be dealt with in private or at a DAAC meeting, not in the Chamber in front of the public (in person and online). She also submitted Aboriginal staff members were distressed by the Respondent's debate on the DAAC item.
101. Aboriginal Elder and Co-Chair of DAAC, Mr (Uncle) Alan Brown gave evidence:
- a. He had been asked to come to the 24 July meeting to do a submission on the DAAC item.
 - b. DAAC had adequately and appropriately consulted the Darebin Aboriginal community, "we done our community business ... [and] discussed it formally and informally with DAAC members". This included six to eight weeks of work, drafts, meetings and conversations with a variety of groups and in a variety of fora. DAAC had challenged itself as to whether the consultation was sufficient. DAAC had not been provided with resources by Council to undertake consultation.
 - c. In reaching its recommendations to Council, all DAAC members supported the DAAC position regardless of individual members' personal positions on the Voice issue which included some who were YES supporters.
 - d. When he learnt that other Aboriginal Elders were present to make submissions on the DAAC item in support of the YES campaign, he felt uncomfortable. He said:

... the safety came around being publicly challenged about a position that the local community had formed after diligence. I didn't [want] any sledging and I wasn't comfortable that wasn't going to happen. Not from the Kooris. I wasn't sure about the room.
 - e. There had been previous occasions where DAAC positions had not been supported by Council and DAAC understood the final decision sat with Council. He said:

Councillors have every right to challenge [DAAC's position] ... I get that, but it's about how it's done ... I think [that] is really the critical thing ...
 - f. The impact of the debate on the DAAC item was that the DAAC felt "disrespected", the "circle of trust" had been broken, their work was not valued and DAAC members felt like resigning. One DAAC member did resign and one of the reasons was what happened at the 24 July meeting. It also had a reputational impact on DAAC.

102. The CEO, Mr Peter Smith, gave evidence:

- a. Prior to the 24 July meeting, there had been briefings by DAAC providing feedback and advice to Council on the consultation undertaken by DAAC on the Voice to Parliament issue. In those briefings Mr Brown had made it clear that there needed to be a culturally safe engagement with the Aboriginal community because there were a range of views on the Voice within the Aboriginal community in Darebin. He did not know whether the Respondent had attended those briefings.
- b. His understanding was Council had delegated consultation with the Darebin Aboriginal community to DAAC for the purposes of forming its advice to Council on the Voice.
- c. Mr Brown had felt culturally unsafe in the 24 July meeting due to the presence of other Aboriginal Elders present to support the YES campaign.
- d. Mr Smith met with some Aboriginal staff after the meeting who said that were distressed that the Chair of DAAC had felt culturally unsafe.
- e. Staff lodged incident reports on Council's OHS system, and the CEO received a written complaint from a staff member who has since left the organisation which was ultimately not pursued. One incident report concerned the general lack of cultural safety at the 24 July meeting.
- f. Cultural safety is clearly within Council's OHS policies and he had duties under OHS legislation to ensure a safe workplace for all workplace users.

103. The CEO provided the file note on which his written witness statement was based. That note stated:

At the briefing of Council on this matter [referring to the DAAC item], Uncle Allan [Mr Brown] had stressed the importance of ensuring cultural safety during any discussion on The Voice and this was included in DAAC's formal advice to Council. I note that Cr Dimitriadis did not attend this briefing. She did request video of the DAAC Meeting where the Voice was discussed, and this was offered to her on Monday 24th of July. I am unclear if she reviewed this video prior to the Council meeting.

...

In the video of the DAAC meeting I am aware that there were concerns raised at that meeting about Councillors and specifically Cr Dimitriadis politicising the debate. I was also aware that Uncle Allan had previously requested information on making a complaint about Cr Dimitriadis given previous comments made by her in the Council Chamber.

...

In my view this series of incidents and the behaviour of Cr Dimitriadis created an extremely unsafe environment, both in terms of cultural safety for Uncle Allan and Aboriginal staff or members of the public who were watching online and emotional and psychological safety for myself, managers and staff present, other Councillors and those watching online. It is a repeat of behaviour that I have witnessed several times during my time here at the City of Darebin.

In my view this behaviour creates a clear breach of Council's OH &S policy, Council's Code of Conduct, the Councillor Contact Guidelines and our security protocols to ensure safety during Council Meetings, creating hazardous conditions for myself, staff, other Councillors and those attending Council meetings.

104. When questioned, the Applicant (who is also a member of DAAC) did not recall a briefing to Councillors on the consultation undertaken by DAAC.

105. Ms Jodie Watson, who at the time of the incident was General Manager Governance and Engagement at Council, gave evidence she had considered making an internal incident report about the events at the 24 July meeting and had drafted a statement, but she did not file it

“because my experience has been that it has no impact”. When questioned by the Arbiter about her concerns, Ms Watson explained that the most upsetting impact of the night was the loss of trust between DAAC and the Council and the lack of cultural safety for Mr Brown as Co-Chair of DAAC who had come to the meeting at the request of Council to speak to the DAAC item and other Aboriginal community members involved.

106. The Applicant submitted that accepting the DAAC’s recommendations was not to remain silent and that the DAAC recommendations were *“detailed and thoughtful”*. She said, *“The DAAC is our local Voice, but they were not listened to by Cr Dimitriadis”*.
107. The Applicant also submitted that the Respondent disrespected the DAAC and *“left the DAAC feeling blindsided”* by proposing an amendment that removed Council endorsement of the DAAC’s advice and replacing it with *“noting”* the DAAC advice. The Applicant said this also damaged the Council’s reputation with DAAC and the wider Aboriginal community in Darebin. The Applicant provided further examples of the Respondent’s behaviour in the debate and the series of amendments that followed, citing multiple examples of Cr Dimitriadis saying that DAAC had not properly consulted the Aboriginal community.
108. The Applicant submitted it was important to consider the context in which Cr Dimitriadis’s comments and conduct were made. Here, the questioning and debate took place in a public forum *“in a live and recorded meeting that anyone could watch”*. She said that due to the history of interactions between the Respondent and the DAAC prior to the 24 July meeting:
It is hard to imagine that Cr Dimitriadis was not aware that DAAC had been deeply uncomfortable with her putting forward notices of motions that they did not want her to put forward that they saw as hurtful and harmful.
109. She submitted that the Respondent’s conduct had caused a loss of trust and hurt to members of the DACC as evidenced by the minutes of the DAAC meeting following the Council 24 July 2023 meeting which include the following statements:
DAAC – has been going on for 23 years. One instant on Monday night [referring to 24 July 2023 which was a Monday] undid twenty years of great work. Trust has been shattered and it will take a long time to rebuild.
... Councillors and behaviour were terrible.
Our voices are undermined, we provided consultancy and advice; Cr Dimitriadis made us look like liars.
A neutral position is not ‘fence-sitting’. Saying so is disrespectful and offensive.
110. In her closing comments, the Applicant submitted that the Respondent’s debate was more than robust political debate, and this was evidenced by the fact that the CEO had to change the OHS arrangements for future Council meetings including that less staff would be attend future meetings in person. She said it was also evidenced by the significant impacts caused by Cr Dimitriadis’s behaviour to the trust between DAAC and Council. The Applicant said Cr Dimitriadis shows no indication of remorse or understanding of the hurt caused by her actions.

The Respondent’s submissions on Allegation 4

111. The Respondent denied that her questions or comments during the DAAC advice debate breached the Standards. She submitted that her questions and comments were reasonable and part of robust political debate.
112. The Respondent said she had wanted to understand whether other members of the Darebin Aboriginal community had been consulted on what she saw as an important question. She was representing her constituents, many of whom contacted her with concerns relating to the

consultation undertaken by DAAC and the advice that Darebin should not take a position on the Voice Referendum.

113. When questioned by the Arbiter, the Respondent said that she had initiated contact with several Aboriginal Elders and organisations in the municipality to ask whether they had been consulted by DAAC, including the Elders who were present at the 24 July Council meeting night and made submission in support of the YES vote. The Respondent had invited them to attend and make a submission.

114. Cr Dimitriadis said:

My comments represented my honest opinion and reflected the position that many Aboriginal people had put to me. I was seeking to represent my community to the best of my ability, as a passionate advocate of the "yes" position in the Voice Referendum.

...

Given the allegations that Cr Newton has made are based on issues that we fundamentally do not see eye to eye on or where Cr Newton has voted differently to me, I am led to believe that these allegations are politically motivated, vexatious, discriminatory, a form of intimidation and I do not believe the dispute resolution process should be used in this manner. I fail to see how I could have avoided this complaint from Cr Newton, other than not engaging in any questions or debate. I do not consider Cr Newton's position in this regard to be reasonable or in line with community expectations in relation to the role of a Councillor.

115. She submitted that there was a lack of detail provided to Councillors about what consultation had been undertaken, and the Mayor as a Co-Chair of DAAC could have answered her question about what consultation DAAC had undertaken.

116. The Respondent provided several witness statements from Aboriginal Elders who said that they and their organisations had not been consulted by DAAC. For example, Mr (Uncle) Phil Cooper, President of the Aborigines Advancement League and Elder in Darebin, said that his organisation had not been consulted about the Council's position on the Voice. Elder (Aunty) Dr Jill Gallagher AO, CEO of Victorian Aboriginal Community Controlled Health Organisation (VACCHO), said:

It was my understanding that Council was going to engage with the Aboriginal Orgs within the Darebin area to seek their views on this matter. So you can imagine my disappointment when I was advised that VACCA and the AAL were not consulted at all, and I also believe that VACSAL was also not consulted.

117. Mr Cooper gave evidence the Respondent invited him to the 24 July meeting to make a submission because she was concerned that Council was not getting views of the Aboriginal community in Darebin, particularly on the YES position. He said he and the other Elders supporting the YES campaign were insulted by the adjournment in the meeting without explanation. Mr Cooper did not accept that DAAC had the right to form a view as the local Voice of Darebin.

118. Cr Laurence said in his witness statement on this Allegation that some Aboriginal Elders in the Gallery were distressed, uncomfortable and hurt by the unexplained delay (the adjournment). He said:

It was clear from speaking to some elders that they were uncomfortable and hurt with yet again having a non-indigenous institution (the Darebin council) delaying the meeting with little explanation and this created an anxiety that the local government system may deny them a chance to speak on that night. This experience of powerlessness and lack respect unfortunately appeared to create a culturally unsafe experience for several of the elders who were waiting to speak. One Elder told me that they had faced this type of silencing before.

119. Cr Greco gave evidence that Cr Dimitriadis *"diligently asked a few questions through the Mayor seeking clarification on the motion before Council"*. When debate on the motion commenced, Cr Dimitriadis spoke in favour of her amendments *"respectfully channelling some of the genuine frustration expressed by Aboriginal Elders in the gallery"*. When questioned, Cr Greco said that the atmosphere on the night was *"quite charged"* and Aboriginal Elders were *"very frustrated, very concerned ... very passionate about expressing that concern"*.
120. Cr Messina's evidence was the atmosphere in the Chamber became *"quite charged"* during the discussion on the DAAC item. She said, *"This was due to the entrance of several indigenous leaders, which made members of the DAAC uncomfortable and contributed to an overall sense of unease."*
121. The Respondent submitted DAAC is an advisory committee only and does not have delegated decision-making authority on behalf of Council under its Terms of Reference. She said it is not incumbent on Council or Councillors to accept all advisory committee recommendations without questions or amendments. It is not misconduct to not accept the recommendation of an advisory committee.
122. In relation to issues around the alleged loss of trust between DAAC and Council, the Respondent submitted that *"levels of trust between an advisory committee and Council are not grounds for misconduct"* and *"Councillors are the decision makers and must weigh up various considerations when making a decision, including recommendations from advisory committees"*.
123. The Respondent referred to Darebin's Governance Rules on questions and disorderly conduct, noting that the Chair of the meeting could have limited her questions or debate and did not do so. She said this implies that her questioning was appropriate.
124. The Respondent said she did not intend to undermine DAAC in her line of questioning and apologised if her questions or comments caused offence or hurt to any member of DAAC.

Findings of the Arbiter on Allegation 4

125. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Emily Dimitriadis on the basis that the Respondent has breached clauses 1 and 3(a) of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

Reasons

126. Viewed in isolation, the Respondent's questioning at the 24 July meeting appears diligent and persistent, but polite. As for the motions which Cr Dimitriadis either put or supported to change the Council resolution from an endorsement of the DAAC advice to grateful receipt of it, again viewed in isolation these appear to be an entirely normal use of process. However, I agree with the Applicant's submission that the context in which these events occurred is important.
127. The following matters are relevant:
 - a. The Respondent's behaviour took place in a Council meeting before an audience that included other Councillors, Council staff (both online and in person), Aboriginal Elders (both online and in person) and other members of the public (both online and in person). There were around 30 people in the Chamber (maybe more noting the Mayor's evidence that there was a full gallery of approximately 50 people that night), more watching in a room nearby to the Chamber, and still more online. As at the time of writing this decision, the video recording of meeting remains available online on YouTube and can be watched by anyone.
 - b. The Respondent invited Aboriginal Elders to the meeting to make submissions requesting the Council take a YES position on the Voice, contrary to the DAAC advice.

- c. DAAC had been consulting and working on its advice for 6-8 weeks and had had meetings and communication with Council over that time. Briefings had stressed the need for cultural safety during discussions on the Voice Referendum.
- d. Cr Dimitriadis's previous dealings with DAAC had led to cultural safety concerns both in terms of DAAC and Aboriginal Council staff.
- e. DAAC's advice, attached to the Council Report on the DAAC item, stated:

Foremost we wish to acknowledge and recognise that there are a diversity of views within the Darebin Aboriginal and Torres Strait Islander community, including that of DAAC members, and which reflects our own diversity of experience, knowledge and perspective.

DAAC is aware that for many people in Darebin and across the State, the priority is the Victorian Treaty and Yoorrook truth-telling process which is well underway. This is having an influencing impact on how the Voice to Parliament is viewed and potential level of engagement.

...

Regardless of where we sit on the spectrum of opinions and views, all of us are united in the clear understanding that DAAC offers the following advice as an accurate mirror of the local Darebin Aboriginal people and community.

- f. The DAAC recommendations had been formed notwithstanding that some members of DAAC were themselves YES supporters.
 - g. There was no evidence before me that had DAAC consulted the organisations referred to by the Respondent that its recommendations to Council would have changed.
 - h. At least one OHS incident report was filed alleging a lack of cultural safety at the meeting.
 - i. There is clear evidence of actual harm caused by the events of the 24 July meeting and specifically Cr Dimitriadis's actions and the lack of cultural safety that night. In particular, the minutes of the DAAC meeting following the 24 July Council meeting evidence the impact: *"One instant on Monday night undid twenty years of great work. Trust has been shattered and it will take a long time to rebuild. ... Councillors and behaviour were terrible. Our voices are undermined, we provided consultancy and advice; Cr Dimitriadis made us look like liars."*
128. The key question is whether the Respondent was disrespectful towards DAAC (and its members) in her line of questioning and the subsequent debate on the DAAC item in the context of the above factors. The principal defence presented by the Respondent is that her questions and comments were reasonable, robust political debate.
129. The right to express a political opinion and engage in political debate is reflected in the Standards which provide:

5 Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust political debate in a democracy.

130. While the Standards are not intended to limit robust political debate, they set clear requirements of Councillor personal conduct for *how* that debate is to be conducted. Key amongst these is the requirement that political debate be conducted with courtesy and respect to all. Reflecting this, the Councillor Code requires Councillors to fully participate in Council meetings by using *"reasonable, polite and temperate language in debates (irrespective of the issue)"* (p19), addressing issues in a *"respectful manner"* (p11) and *"acting ... with reasonable care for the health and safety of others"* (p11).

131. These provisions demonstrate that there is a balance to be attained between the right to express one's personal and political opinions and the rights of others not to be harmed by the expression of those opinions. The debate on the Voice to Parliament was hotly contested throughout Australia. In achieving robust political debate on such a sensitive and hotly contested topic, the line between appropriate and inappropriate expression must be carefully struck but it does not mean that all debate must be shut down. It means the *manner* in which opinions are expressed must be respectful, fair, done with courtesy and affording all engaging in the debate dignity and respect. For a Councillor, that is what is required by clause 1 of the Standards of Conduct.
132. It is the manner in which Cr Dimitriadis acted at the 24 July Council meeting that took her behaviour beyond robust political debate. She pursued her line of questioning without reasonable care for the cultural safety of those in the Chamber and watching online. In doing so, she disrespected the consultation that DAAC had undertaken, its self-determination in deciding how that consultation would appropriately be undertaken (noting that this appears to have been delegated to DAAC and no funding was provided to DAAC to undertake its consultation process) and the matters it had considered prior to forming its recommendations to Council. She put or supported a series of motions that effectively supplanted the DAAC consultation process with another which she decided was preferable. Further, Cr Dimitriadis invited Aboriginal Elders known to be YES supporters to the meeting to speak against the DAAC advice thereby creating (or at least contributing greatly to) a charged or heightened atmosphere in the Chamber that ultimately led to a lack of cultural safety. The initial lack of cultural safety felt by Mr Brown that led to the adjournment and the incidents referred to in Allegations 5 and 6, in turn led to the other Aboriginal Elders present feeling disrespected because they were forced to wait for an unknown reason.
133. I consider that the Respondent must take responsibility for creating the culturally unsafe situation that underlies this allegation (together with Allegations 5 and 6). I find that she breached clause 3(a) in failing to take reasonable care to protect the health and safety of others in the workplace. The workplace on that night included those present such as Mr Brown (up until Mr Brown removed himself from the meeting) who, as discussed above, was covered by Council's staff OHS policy as a volunteer. It also included all those DAAC members and Council staff watching online, Councillors in the Chamber, and public in the gallery.
134. Focussing on the issue of DAAC's consultation process, I consider it would have been more appropriate for the Respondent to have followed her line of inquiry about the perceived lack of consultation by DAAC *prior* to the Council Meeting through appropriate Council channels. I consider that given the context, the Respondent's questioning and comments could reasonably have been interpreted by DAAC and other members of the Aboriginal community as disrespecting DAAC and its self-determination in determining a culturally appropriate method to undertake consultation. I accept the evidence that members of the DAAC did in fact find Cr Dimitriadis's conduct on the night disrespectful.
135. As for the following debate in the Chamber (leaving aside the issue of consultation), Cr Dimitriadis could have taken the position (as was taken by at least one other Councillor) that she continued to support the YES vote but nonetheless supported DAAC's advice. This would have aligned with the Council's Engagement Policy and Aboriginal Protocols Guide which both state "*advice cannot be sought then ignored*". Having said this, I consider this policy directive must be treated with caution because in this case, where DAAC had no delegated authority to decide what position Council would take on the Voice to Parliament, it ultimately remained Council's decision whether to accept DAAC's advice. Accordingly, I find that it was within the ambit of robust political debate for the Respondent not to support the DAAC item and to speak to that in

the surrounding debate. However, she was required to do so in a respectful manner. I find the Respondent's repeated criticism of the consultation process undertaken by DAAC, noting the contextual factors above, to be disrespectful of DAAC and the work that it had done to formulate its advice. It is also relevant that the questions and comments were in front of known YES campaigners from the Aboriginal community who the Respondent referred to as shaking their heads when the question of extensive consultation was referred to.

136. The Respondent has therefore breached clause 1 of the Standards.

137. Therefore, in my view the Respondent's submission that the only way that she could avoid this complaint was not to engage in debate must be rejected. It is incumbent on Cr Dimitriadis to learn to prosecute her political opinions in a respectful manner so that she can effectively represent her constituents in an appropriate manner as required by the Standards and the Councillor Code. Indeed, she is encouraged to do so. Therefore, to be clear, this finding of misconduct is not based on the Respondent's rejection of the DAAC recommendation or the loss of trust that ensued.

138. Insofar as the Applicant relies on breach of the Community Engagement Policy to ground a breach of clause 3(a) of the Standards, it is not a policy of the type referred to in clause 3(a) and therefore a breach of this policy cannot by itself found a finding of misconduct. However, the Arbiter considers it relevant as general context of the consultation processes used by Council and evidence of why DAAC members may have found it disrespectful to have their adopted mode of consultation challenged.

Allegation 2

139. Allegation 2 relates to comments made by the Respondent during the Council meeting on 24 July 2023 at approximately 9:07pm in the debate on an item regarding the proposed removal of three trees in Gladstone Avenue. This was after the DAAC item.
140. The Applicant alleges the Respondent:
- did not treat Council staff with dignity, fairness, objectivity, courtesy and respect in breach of clause 1 of the Standards;
 - created a psychologically unsafe work environment in breach of clause 3(a) of the Standards; and
 - brought discredit on the Council in breach of clause 4(1) of the Standards.
141. The following facts were not in dispute:
- The Councillor Code requires a Councillor to “*advise the CEO in a timely fashion of any concerns that a Council officer has acted contrary to a Council policy or decision, noting that any discussion pertaining to the performance of a Council officer must be held privately with the CEO and in a constructive manner*” (section 5.1).
 - Cr Dimitriadis’s comments in the Council meeting related to the Report “Options to Retain Trees in Gladstone Avenue, Northcote” (**Tree Report**). This public report included a recommendation by Council officers to remove three trees due to electrical safety requirements.
 - The CEO and/or senior managers review and approve public reports before they are published in the public Agenda, as per s46(2)(d) of the Act and the Darebin Governance Rules.
142. This Allegation was heard “on the papers”.

The Applicant’s submissions on Allegation 2

143. The Applicant’s allegations focussed on the following comments of the Respondent (emphasis added by the Applicant) made during debate:
- The officer’s report presented to us fails to discuss the options available to us ...*
 - Instead Darebin is rushing in, chainsaw first by stating, if supported, the trees ... would be removed immediately.***
 - In May 2023, Darebin wrote to Energy Safe Victoria, in part noting that after Black Saturday bushfire clearance requirements were increased. **Energy Safe Victoria replied rightfully pointing out that this argument is nonsensical ...***
 - With these missing aspects and the nonsensical arguments presented to Energy Safe Victoria, I personally do not have confidence that Darebin has the internal expertise in electrical engineering and power distribution, nor has explored all options engaging suitable experts.***
144. The Applicant submitted:
- Referring to staff’s work as ‘nonsensical’ disrespects staff and brings discredit on Council.
 - The Collins Dictionary says “*if you say something is nonsensical, you think it is stupid, ridiculous, or untrue*”.
 - Saying Council staff do not have the expertise needed to do their work is offensive and untrue.
 - The Respondent’s statements infer that Council staff are incapable of doing their jobs which is offensive and amounted to public shaming of Council staff which is uncalled for an inappropriate.

- e. If the Respondent had concerns about the Tree Report or staff work the appropriate way to address this was to speak privately with the CEO.
 - f. To say that “*Darebin is rushing in, chainsaw first*” implies Council has not done proper due diligence and Council is cutting down trees without thought or necessary work and this brings Council into disrepute.
 - g. The Tree Report provided was extensive and extensive briefings on the issue had taken place.
 - h. The Energy Safe Victoria (ESV) reply referred to did not say the argument was ‘nonsensical’.
 - i. The Respondent’s comments, made in front the officer who authored the Tree Report in a public forum where members of the public were present and which is available online live and as a recording on YouTube, creates a psychologically unsafe work environment in breach of the Councillor OHS policy which states that Councillors must:
 - *Take reasonable care to protect their own health and safety, as well as the health and safety of others in the workplace.*
 - *Refrain from behaving in a manner that exposes employees to a psychosocial risk, physical risk or any other risk which could compromise the health and safety of employees.*
 - j. As a result of this and other incidents at the Council meeting on 24 July 2023, the CEO had to make changes to OHS procedures around Council meetings including who attends meetings and reduce staff attendance “*to try and reduce harm*”.
145. The Applicant submitted Cr Dimitriadis cannot claim to be unaware of the need not to criticise staff publicly and referred to comments in the Monitor’s Report¹:

The relationship between councillors and staff has been explained to councillors a number of times including by the CEO and the Monitor to the extent that no councillor could claim ignorance. It is very clear in the Councillors Code of Conduct that if a councillor is concerned about or has a complaint about any council staff or the organisation, then they should raise the matter privately with the CEO.

The Respondent’s submissions on Allegation 2

146. The Respondent denied the allegation of misconduct.
147. The Respondent provided a detailed rebuttal of the Applicant’s submissions which can be summarised as follows:
- a. The Respondent accepted that the ESV reply did not use the term ‘nonsensical’ in its reply. She submitted that she had used the term ‘nonsensical’ when referring to Darebin’s arguments to ESV to mean that the argument put forward by Council to ESV did not make sense.
 - b. The term ‘nonsensical’ has been commonly used in Council meetings without consequence with the result that the Applicant was imposing different rules on the Respondent than on other Councillors.
 - c. The Respondent’s comment “*Darebin is rushing in, chainsaw first*” was “*clearly meant as hyperbole as part of robust political debate*” and she felt strongly about the proposed removal of the trees from an environmental perspective. Further, she was echoing community sentiment and concern regarding the loss of the trees.

¹ https://www.localgovernment.vic.gov.au/_data/assets/pdf_file/0031/196681/Attachment-A1-Darebin-Municipal-Monitor-Report-and-attachments.pdf

- d. The Respondent's comments in the debate supported her opposition to the recommendations in the Tree Report because ESV had advised:
 - i. there were engineering considerations which could avoid tree removal, including the use of 'conductor covers', which the report had not explored; and
 - ii. CitiPower could be consulted as an expert body on electrical engineering and CitiPower had not been consulted on all the options suggested by ESV.
 - e. The Tree Report was "*evidently not satisfactory*" as demonstrated by the ESV reply. After the 24 July Council meeting, Councillors received an email stating that one of the trees had been saved but the Tree Report did not present this as an option. This showed the Tree Report did not investigate and identify all possible solutions.
 - f. The Respondent was unable to locate evidence of any briefings on the matter and her request to the Councillor Conduct Officer did not reveal any such briefings either. Therefore, the Tree Report and the briefings could not be said to be extensive.
 - g. "*It is my right, and indeed my responsibility, as a Councillor to carefully consider the reports and briefings presented, and raise any relevant concerns. Cr Newton appears to be suggesting that because (in her view) the report/briefings were 'extensive', that not following the recommendations of officers is somehow improper or inappropriate.*"
 - h. No internal staff holds the relevant registration required to provide professional electrical engineering services and therefore, the Respondent's comment that she did not have confidence that Darebin has the internal expertise in electrical engineering was "*entirely factual*".
 - i. To take the matter up internally with the CEO would have meant that those voting on the time would not have had all relevant information before them.
148. The Respondent also submitted that during the debate, no Councillor called a point of order nor did the CEO interrupt her to suggest that any aspect of her speech was inappropriate or non-factual.

Findings of the Arbiter on Allegation 2

149. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Emily Dimitriadis on the basis that the Respondent has breached clauses 1 and 4(1) of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

Reasons

150. The Arbiter accepts the word 'nonsensical' can be used to mean 'making no sense' as well as in a more derogatory sense as meaning 'stupid' or 'ridiculous'. To describe the arguments made by Council staff in a communication to ESV as 'nonsensical' in the context of the range of criticisms of the work of Council staff in preparing the Tree Report that were canvassed by Cr Dimitriadis in her speech could, in my view, reasonably be interpreted as being disparaging of both the staff involved and of the Council more broadly. The correspondence between Council staff and ESV suggests that there may have been confusion about some aspects of the application of the tree clearance requirements, including the impact of the changes to clearance requirements following the Black Saturday bushfires. However, on balance, and in the context where the comments were made in the Council Chamber in front of a staff member who prepared the Tree Report as well as members of the public (in person and online, live and recorded), I find Cr Dimitriadis comments were disrespectful of Council staff and their work. This is a breach of clause 1 of the Standards.

151. Similarly, to suggest that “*Darebin is rushing in, chainsaw first*” crosses the line of respectful political debate. The comment could reasonably be interpreted as suggesting that Council has not undertaken proper due diligence, reflecting badly on the Council and bringing it into disrepute, when that was not the case as evidenced by the exchange of letters between Council and ESV. The fact that not every single option was canvassed in the Tree Report does not mean that an appropriate level of due diligence was not undertaken. There might be good reasons that particular options were not referred to in the report. If Cr Dimitriadis had concerns, the appropriate course was to raise the matter privately with the CEO who could have investigated the matter.
152. By way of context, the Councillor Code states (p16):
Councillors commit to behaving courteously and respectfully in their dealings with Council staff, protecting their professional integrity and ensuring that neither offence nor embarrassment is caused when considering advice or recommendations. They will acknowledge and address Council staff appropriately at all Council meetings and events. Councillors will not be publicly critical of the organisation.
- It also states that Councillors “*will not harm or attempt to harm, maliciously or recklessly, directly or indirectly, the reputations of others (including those of fellow Councillors and Council staff)*” (p15).
153. Cr Dimitriadis’s comments such as referring to the Darebin response to ESV as ‘nonsensical’, inferring that due diligence has not been undertaken by Council staff in preparing the Tree Report and publicly stating that she does not have confidence in the internal expertise of Council all undermine the reputation of the Council staff involved in preparing the report and do not protect the professional integrity of those staff, in breach of the Councillor Code. It is also disrespectful of the organisation and brings Council into disrepute in breach of clause 4(1) of the Standards.
154. Turning to the submissions that Cr Dimitriadis’s comment created a psychologically unsafe workplace in breach of the Councillor OHS Policy, her comments must be viewed in the context of them being made publicly in the Chamber in front of staff and the public. The Councillor Code requires a Councillor to address any complaint against Council staff or the organisation privately with the CEO. It is also relevant to consider that the Monitor appointed to Council specifically reported on this type of behaviour and had advised Councillors to stop making negative comments about the organisation and the staff due to the negative impact. It was of high concern to the Monitor who:
... reminded the councillors that staff have left and were leaving Darebin because of councillor behaviour. In a hard recruitment market, it was even harder at Darebin because the city had grown a poor reputation as a place to work.
155. On balance, I find there is insufficient evidence on the psychological impact of Cr Dimitriadis’s words to make a finding that her comments during this agenda item, in and of themselves, created a psychologically unsafe workplace, even considering this item came directly after the DAAC item (refer Allegations 4-6) in respect of which I have found that there was a psychologically unsafe work environment in the in the Chamber at the time (Allegations 4, 5 and 6). Certainly, the Respondent’s behaviour is not consistent with a psychologically safe workplace and was clearly in breach of the Councillor Code. In addition, it is reasonable to assume that a staff member present in the Chamber when the Respondent publicly criticised their work would be negatively impacted particularly given that a Councillor holds a position of power, even though not the direct employer of Council staff, and to be publicly shamed by a Councillor could have severe impacts. It is also relevant that Monitor’s Report refers to the

impact of Councillor conduct on poor staff retention at Darebin and difficulty in recruiting new staff as noted above.

156. In this context, although I do not make a finding of misconduct due to a breach of clause 3(a), these reasons further support my finding that the Respondent has brought discredit on the Council in breach of clause 4(1) of the Standards.

ALLEGATIONS RELATING TO USE OF SOCIAL MEDIA

Allegation 1

157. Allegation 1 relates to posts made by the Respondent on Facebook and LinkedIn and a video posted on Facebook.
158. The Applicant alleged that the Respondent's Facebook post about the challenges she faced as a first term Councillor at Darebin City Council on 28 June 2023, and which was also posted on her LinkedIn page, is a breach of clauses 1(d) and 4(1) of the Standards.
159. The post read as follows:
- Being a first term Councillor at Darebin City Council has had many challenges.*
- ...
- It was a privilege to speak at the LGPro conference and share my experiences.*
- *I spoke about the importance of council officers being honest and transparent with Councillors, so we can make informed decisions on all matters ...*
 - *I also gave examples of some of the challenges I encountered after giving birth to my children and having to return to work almost immediately because council brought forward important decisions that would impact our entire community, such as the waste charge and parking restrictions.*
160. Related to this is a video that as at 21 August 2023 was publicly available on the Respondent's Facebook page. In that video the Respondent said:
- ...I was unfairly obliged to return to work only a week after having an emergency caesarean. This was because the organisation I work at had unfairly scheduled meetings and briefings only three days after I had informed them ... I had given birth. Yet senior managers of the organisation had informed me I would be supported while I was on maternity leave. Some even claimed that because it was coming up to Christmas [and] the organisation was usually quiet during that period, so I had nothing to worry about. This was certainly not the case as non-urgent matters were brought forward and I had to return to work to fulfil my duties and have appropriate input. Women should not be put through this unacceptable behaviour.*
161. The following facts were not in dispute:
- a. The Respondent was acting in her role as Councillor when making the posts.
 - b. It is not possible for the work of Council and Council decision-making to cease during the period a Councillor is on leave.
 - c. Councillors are not employees of the Council.
 - d. The waste charge issue was a controversial and significant issue that impacted all areas/wards of Darebin.
 - e. Cr Dimitriadis's daughter was born on 24 October 2021.
 - f. Cr Dimitriadis attended the Council meeting on 22 November 2021 and requested support from all Councillors in that meeting to defer the waste charge issue. Some Councillors (including Cr Newton) voted against the deferral.
 - g. The Councillor Code requires a Councillor to "advise the CEO in a timely fashion of any concerns that a Council officer has acted contrary to a Council policy or decision, noting that any discussion pertaining to the performance of a Council officer must be held privately with the CEO and in a constructive manner" (section 5.1).

The Applicant's submissions on Allegation 1

162. The Applicant submitted:

- a. The statement *“I spoke about the importance of council officers being honest and transparent with Councillors”* implies that Council staff have not been honest or transparent. This is disrespectful to Council staff.
- b. The Facebook post statement *“I also gave examples of some challenges I encountered after giving birth to my children and having to return to work almost immediately because council had brought forward important decision that would impact our entire community, such as the waste charge and parking restrictions”* strongly implies that Council staff have brought forward important decisions as a result of the Respondent giving birth which the Applicant says *“is a serious, and false, accusation”*. The video statements that said the *“organisation I work at had unfairly scheduled meetings”* and referred to assurances made by senior managers did not respect Council staff or treat them with courtesy or respect, misled the public and brought the Council into disrepute. The post implies that by going ahead with Council decision making, briefings and meetings around the time Cr Dimitriadis was due to give birth, Council staff were acting inappropriately.
- c. Council officers did not discriminate against Cr Dimitriadis due to her giving birth and there is no evidence that decisions were *“brought forward”* after the Respondent gave birth.
- d. It is unrealistic for Council decision-making to stop because one Councillor is on leave. Council’s governance rules require only five councillors to be in attendance for a quorum. There is no requirement for a particular Councillor to be in attendance for decision-making to proceed. Section 35(6) of the Act provides that Councillors who give birth can be away from their duties for six months without ceasing to hold office. Councillors are not Council staff and cannot be compelled to return to work by Council officers.
- e. The Respondent was well aware of her responsibility not to criticise Council staff on social media and referred to this issue as discussed in the Monitor’s Report:

The relationship between councillors and staff has been explained to councillors a number of times including by the CEO and the Monitor to the extent that no councillor could claim ignorance. It is very clear in the Councillors Code of Conduct that if a councillor is concerned about or has a complaint about any council staff or the organisation, then they should raise the matter privately with the CEO.

...

Shortly after the commencement of the new Chief Executive Officer, he together with myself addressed a session with all councillors on 14 October 2022. The CEO used the opportunity to explain to councillors very clearly, his legal obligations and responsibilities for the staff within the organisation. He also made it very clear to the councillors that they must not criticize the staff or the organisation and that if a councillor has a concern, they must raise it privately with him.
- f. Cr Dimitriadis *“crosses a line beyond sharing ‘honest experiences’ when she makes public statements that bring council into disrepute and do not treat Council staff with respect”*.
- g. On the waste charge, the material provided by the Respondent shows Council staff made *“a lot of effort”* to ensure that Cr Dimitriadis was included in discussions, even if she was not able to attend all briefings. The material provided on the waste charge and the other examples do not evidence any items were *“brought forward”* due to Cr Dimitriadis’s pregnancy or due date, simply that they were *brought* to a briefing by staff.
- h. Many of the documents provided by Cr Dimitriadis refer to decisions not being deferred by Councillors. Councillors voting not to defer an item is not the same as council staff bringing forward important decisions which is what the Respondent’s social media posts say.

- i. Cr Dimitriadis shows no remorse or awareness that her statements may have caused harm. The Applicant submitted there is a power imbalance between Councillors and staff:

Council staff have no ability to speak back if a Councillor is saying something like, 'I've been made to return early by Council staff'. What they can do is leave and that's what we have seen.

- j. Council has above 20 per cent staff turnover.

163. Ms Jodie Watson, former General Manager Governance and Engagement at Council, gave evidence:

- a. At some point between July and September 2023, Ms Watson emailed Cr Dimitriadis with information about parental leave for Councillors including that under the Act a Councillor was able to not attend Council meetings for six months (after having a child) without compromising their elected status as a Councillor. At the time Ms Watson was aware that Cr Dimitriadis was pregnant and due to give birth around October/November 2021, but did not know the due date.
- b. Cr Dimitriadis responded by email, advising Ms Watson that she had not decided whether to take parental leave and would wait and see how things went when the baby arrived.
- c. Ms Watson had no record of Cr Dimitriadis advising of her intention to take parental leave from her role as a Councillor. Ms Watson had no knowledge of any other person at Council, including the (former) CEO Sue Wilkinson and (former Mayor) Cr Messina, being advised of the Respondent's intention to take parental leave.
- d. Ms Watson was the General Manager responsible for leading the introduction of the waste charge from mid-2021 onwards. The intention was to establish a Council position early enough to enable the preparation for the proposed service change (universal FOGO), enable the operational and administrative adjustments required to implement the separation of waste cost recovery from general rates to a separate waste charge and waste rate, and establish a decision of Council separate to the budget consultation process March – June, to ensure advance notice to the community of the change and transparency of the decision. Councillors were advised the service change required the purchase of FOGO bins and at least one additional FOGO vehicle, both of which had long lead times from order to delivery (estimated to be 8 months for bins and 6+ months for the truck).
- e. From a management perspective, the decision for the waste charge was originally intended to be put to Council at the 25 October Council meeting, but the complexity of the financial modelling required to mitigate impact on disadvantaged members of the community and satisfy Councillor concerns meant that more time was required. To meet strategic and operational needs, Ms Watson delayed the relevant report to Council by a month with the result that and the decision on the waste charge was pushed back to the Council meeting on 22 November 2021.
- f. Ms Watson emphasized that at the time she delayed the waste charge report she did not know of the Respondent's due date. When questioned, she confirmed that it would not have been operationally possible to delay the decision by a further month to the December 2021 meeting and still meet the deadlines for the changes.
- g. Approximately six Councillor briefings were held over several months on the proposed introduction of the waste charge. A special briefing was given to Cr Dimitriadis prior to the November 2021 meeting to ensure that she was fully informed as she had missed one or two briefings due the birth of her child.

- h. The timing of matters coming to briefings and Council meetings for decisions is mapped out on a forward planner which is an internal schedule, but timings change due to a variety of reasons including operational and resourcing issues as well as Councillor questions. When questioned, Ms Watson explained that the schedule of matters coming before Council involved balancing a lot of different priorities whilst ensuring the quality of work coming before Councillors was maintained.
 - i. Ms Watson stated she had no knowledge of any staff raising, discussing, or considering a Councillor's ability to attend a meeting as a matter influencing timing of matters coming before Council except perhaps in one instance where a Councillor was overseas and a briefing may have been pushed back by one week to accommodate their return, although her memory was unclear on this example.
 - j. At the Hearing, Ms Watson stated she had raised concerns with the CEO at the time about the Respondent's comments in the Facebook and LinkedIn posts the subject of this allegation. She said she raised it with the CEO because she had concerns that the Council was being discredited by the implication that the Respondent had been forced back from maternity leave which she did not believe to be true.
164. The CEO, Mr Peter Smith, gave evidence that he had no knowledge of any matters being brought to Council at a particular time so that the Respondent would not be able to attend and in any case, that would be discriminatory and against Council's policies and the law. He acknowledged that Council struggled to get all Councillors at briefings and meetings sometimes and there is a need to be flexible.
165. The Applicant submitted that the Facebook and LinkedIn posts were of concern almost regardless of whether they were factually correct or not because they criticised Council staff and the organisation publicly, in breach of the requirements in the Councillor Code to raise such matters privately with the CEO and bringing disrepute on the Council.

The Respondent's submissions on Allegation 1

166. The Respondent denied the allegation.
167. Cr Laurence gave evidence:
- a. *Leading up to the 22 November 2021 council meeting, my impression was that some topics were being rushed forward. I remember that these topics included the waste charge, parking and John Cain Memorial Park. These matters were not time sensitive because they were not included in the current budget and the formation of the next financial year budget was going to start in February 2022.*
 - b. In relation to the waste charge:
 - i. There were a lot of Council briefings.
 - ii. There were a lot of questions being asked about the waste charge leading up to the November 2021 Council meeting.
 - iii. The matter could have been safely deferred another month to ensure adequate community consultation.
 - c. Cr Laurence and Cr Greco asked for a workshop scheduled for 27 October 2021 on the parking charge, a matter of importance to Cr Dimitriadis, to be rescheduled so that Cr Dimitriadis could attend. The other Councillors did not agree to this.
 - d. Cr Laurence and Cr Greco requested the John Cain Park item, which was not urgent, be deferred. Councillors did not agree to this.
168. Cr Greco's evidence was:
- a. Saying that Council officers should be open and transparent is a given.

- b. There has been a general courtesy towards Councillors where they have a particular interest in an issue but cannot attend, “we generally try to offer some ... indulgence ... to try and defer issues so that the Councillor can actually be part of ... any decision making or any discussions”. It is not codified but is a courtesy.
 - c. Cr Dimitriadis had requested that “important and long-standing matters affecting her Ward (Parking Permits, John Cain Memorial Park and Waste Charges) to be slightly deferred to accommodate her parenting responsibilities so she could participate in briefings and any decision making”. Cr Greco said, “There was nothing unusual about her request given Darebin’s strong commitment to gender equality and especially in situations where important issues had a particular impact on a Councillor’s Ward.” This request was denied by other Councillors even though this courtesy had been afforded to another Councillor (male) for “important and non-urgent matters” when they were absent.
 - d. The waste charge was an important issue and there were unresolved questions. No decision had to be made at the November meeting and it could have been pushed back to the December meeting. The decision to introduce a waste charge was “rushed”, and “things were sort of, in a way, brought forward”. When questioned, Cr Greco could not point to any evidence that the waste charge item was “brought forward” but he maintained that scheduling is always very fluid.
 - e. Another Councillor, Cr McCarthy requested an item concerning his Ward be rescheduled on the agenda of the November 2023 meeting to accommodate his late arrival at the briefing, which was “*acknowledged without unnecessary dissent or antagonism*”.
169. Cr Messina gave evidence that a request to reschedule a briefing relating to the Resident Parking Permit review scheduled for 16 November 2021 was denied by the CEO at the time.
170. The Respondent submitted:
- a. The comment that officers should be honest and transparent is similar to saying they should give “*frank and fearless advice*” and is not controversial.
 - b. The comments in the posts are factual and gave a true account of her personal experience “*that I had felt I had to return to my Councillor role as a result of decisions being brought forward*”.
 - c. In the later months of her pregnancy the Respondent was considering how long she would be absent from her Councillor duties and “*was particularly concerned that certain matters might be brought forward and decided in my absence*”. She spoke individually with eight of the nine Councillors about her concerns and received assurances from some that “*if any matter arose that was contentious and non-urgent and would impact my ward, they would support deferring the item to a later date*”. Other Councillors gave other promises of support and one Councillor said that “*not much input is required of Councillors during the Christmas break and it would be unusual for Councillors to make important decisions in that period*” and “*also assured me there would be no contentious and non-urgent issues raised at Council after I gave birth*”.
 - d. The Respondent stated that she had told all eight Councillors and the (then) General Manager, Ms Watson, that she “*would return to work as soon as possible after giving birth and I was simply asking to be accommodated so I could fulfill my role as a Councillor and not be disadvantaged because of my parental responsibilities*”.
 - e. Around the end of October 2021, shortly after giving birth Cr Dimitriadis became aware that “*various unexpected and non-urgent matters, such as parking and the waste charge were brought forward to briefings and to the next Council meeting on 22 November 2021, in contradiction to the Councillors’ assurances*”. She said:

This made me believe that some of the Councillors' motives in encouraging me to take leave may have been disingenuous and politically motivated, because when I did attend the Council meeting on 22 November 2021 (only 3 weeks after being discharged from hospital and with a difficult recovery after an emergency caesarean), I raised a motion to defer the waste charge matter and Cr Rennie, Cr McCarthy, Cr Hannan, Cr Newton and the (then) Mayor Messina voted against this deferment

- f. Because she believed that non-urgent matters could have been deferred, “my perception was that Council (being the Councillor group as a whole) agreed to bring forward these items”.
 - g. The Respondent had relied on advice that the waste charge report would come to the November 2021 Council meeting. This did not state that a decision on the waste charge would be made at that meeting. She said:

So, to me, it felt like it was brought forward, and it was very rushed when key parts of that particular [motion] could have been deferred to December.
 - h. The Respondent had sought to have the waste charge item deferred from the November 2021 meeting to the December 2021 meeting, but this motion was not carried even though the motion she put forward allowed urgent aspects of the waste charge to proceed, namely the operational aspects relating to the purchase of FOGO bins and contracting for the FOGO collection service.
 - i. On 27 October 2021, just three days after the Respondent had an emergency caesarean, a workshop on the parking items was scheduled “unexpectedly” for 16 November 2021. A deferral of this workshop was declined. The parking issue was not urgent which the Respondent submitted is “evidenced by the fact that Councillors have still not resolved this issue, two years later”. Because it could have been heard at a later date but was not, it was “brought forward”.
 - j. Cr Newton misapplies section 35(6) of the Act without careful consideration of section 35 in its entirety. Section 35 of the Act does not mention “leave” and does not cover briefings or workshops, only official Council meetings.
171. The Respondent provided detailed evidence to support her contention that various decisions had been brought forward around the time of the birth of her child including documents to parking, the waste charge, and John Cain Memorial Park.
172. She also provided material relating to her advice to Council regarding her attendance at Council meetings and briefings.

Findings of the Arbiter on Allegation 1

173. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Emily Dimitriadis on the basis that the Respondent has breached clauses 1 and 4(1) of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

Reasons

174. In my view, the Respondent’s social media posts (including video statements) could reasonably be interpreted by members of the public as saying that Council, including Council staff, had brought forward decisions **as a result of** Cr Dimitriadis giving birth and being away (even for a short time) from her role due to her parental responsibilities. This is because the posts as framed in terms of the “challenges” faced by the Respondent and both the Facebook post (which also appeared on LinkedIn) and the video post clearly link the fact of Cr Dimitriadis giving

birth and the scheduling of meetings and briefing being “*brought forward*” or “*unfairly*” scheduled.

175. I accept the evidence of Ms Watson that Cr Dimitriadis did not formally advise Council that she would be taking a period of leave or would be absent from her role due to her parenting responsibilities. Cr Dimitriadis (by her own admission) advised she would return to work “*as soon as possible after giving birth*” and it appears that few, if any, staff knew of her exact due date. The Respondent’s materials state that she had an emergency caesarean on 24 October 2021. It is unclear which Council staff and Councillors became aware of the birth, and when. Therefore, although staff and Councillors may have been aware generally of her due date and that she might take leave around that time, there was no defined period of expected absence due to parenting responsibilities.
176. I accept the evidence of Mr Smith and Ms Watson that they did not have any knowledge of meetings or briefings being changed or brought forward so as to exclude Cr Dimitriadis.
177. I accept the evidence of Ms Watson that timing of matters coming to a Council meeting for a decision is somewhat fluid (a matter also supported by Cr Greco’s evidence), and although the timing for each item is planned that various factors feed into scheduling decisions by Council staff and that things can change. These factors can include staff resources available to complete the work required for an item to be considered ready for a decision, the complexity of the item including the number of type of questions raised by Councillors about the substance of the item, operational matters, budgetary and financial implications and so on. I also accept her evidence that the timing of the waste charge coming to the 22 November 2021 Council meeting for a decision was taken for strategic and operational reasons and had nothing to do with the Respondent’s due date or availability to attend due to parenting responsibilities.
178. Based on my review of the material submitted by the parties in relation to this allegation, I do not consider that there was any concerted or deliberate action by Council staff to schedule items for briefings or Council meetings to ensure those items came up during the period that Cr Dimitriadis would have been due to give birth or shortly thereafter, whether this was to “*bring forward*” matters or to delay them. I find no evidence that meetings or briefings were scheduled “*unfairly*”. I find that Council staff made efforts to ensure that Cr Dimitriadis was properly briefed after she had been absent due to the birth of her child. Clearly, Council decision-making cannot be deferred indefinitely due to absence of any particular Councillor, and the Council and its staff had received no notice from Cr Dimitriadis of any formal period of leave.
179. It appears that although Cr Dimitriadis was assured by some Councillors that they would delay items such as the waste charge until she returned to work, the fact that enough Councillors did not agree to defer the waste charge decision (for example) is part of the normal process. The evidence before me is that there was no requirement to delay matters if a Councillor was absent, that matters could be delayed as a matter of courtesy but that in this case there were valid operational reasons why the waste charge could not be delayed.
180. For these reasons, I find that neither Council nor its staff “*unfairly obliged*” or forced the Respondent to return to work by their actions in scheduling items for briefings and decision-making at Council meetings.
181. I therefore find that the challenges that Cr Dimitriadis spoke of in her Facebook post (and repeated on LinkedIn) and video post did not treat Council staff with respect because they made false accusations about staff conduct in a public forum and inferred that they had discriminated against her because of her parenting responsibilities. This is a breach of clause 1 of the Standards. Potentially, these statements are also defamatory. The Respondent’s comments also discredit the Council and bring it into disrepute because they infer that the organisation has discriminated against parents and made it difficult for women to have children while

maintaining their Councillor role. The comments could also be read as misrepresenting the Council's general position in terms of its support or otherwise for parental leave. This is a breach of clause 4(1) of the Standards.

182. The Applicant submitted that the Respondent's statement "*I spoke about the importance of council officers being honest and transparent with Councillors*" implies that Council staff have not been honest or transparent and this is disrespectful to Council staff. Again this must be viewed in the context that the Respondent framed this as a challenge of her first term as a Councillor. I consider that it could reasonably be inferred from this that the Respondent had had trouble or difficulty in getting staff to be honest with her (and potentially the Councillor group). This casts doubt on the integrity of staff at Darebin and brings the Council into disrepute because it suggests that its staff are dishonest. Again, it is relevant that a Facebook or LinkedIn post is public and can be shared with many others. It is also relevant that LinkedIn is a professional social media platform and that the reputation of Council staff on this platform may have been damaged by the Respondent's posts. The Respondent has, therefore, again breached clauses 1 and 4(1) of the Standards.

Allegation 3

183. Allegation 3 relates to comments made by the Respondent on a Facebook post in the Darebin Residents Group Facebook page on 11 September 2023 relating to the replacement of lights in the Gillies Street car park, including:

As the local ward councillor, I began fighting for the light to be replaced as soon as the car hit it. This was well over a year ago.

Despite clear safety concerns, this was rejected by council twice...

It was only after tireless campaigning internally, that I was able to secure the support of the majority of Councillors to fund the fixing of the light in the 23/24 council budget ... but we are still waiting on officers to organise the works. To say I am personally disappointed and ashamed of Darebins [sic] lacklustre response to the destruction of the old light is an understatement.

...

184. The Applicant also referred to the Respondent's "like" of a comment in the Darebin Residents Group Facebook page which referred to the Council as "DANGEROUS".

185. The Applicant alleges the Respondent by these comments:

- a. did not treat Council staff with dignity, fairness, objectivity, courtesy and respect in breach of clause 1 of the Standards;
- b. brought discredit on the Council in breach of clause 4(1) of the Standards; and
- c. breached the requirement of clause 4(2) of the Standards not to deliberately mislead the Council or the public about any matter related to the performance of their public duties.

186. The following facts were not in dispute:

- a. The comment on the relevant post was made by the Respondent in her role as Councillor.
- b. The accident that destroyed the light occurred on 7 March 2022.
- c. Darebin Council owns the Gillies Street car park.
- d. Replacement of the light project has been awarded to Leadsun who will install three new poles and six solar lights to the car park in January 2024 (Document 9). The sequence of events leading to this includes:
 - i. First, Councillors were informed that the light would be replaced in October 2023. (This is also evidenced in the Facebook post by the Mayor on 9th and 15th September 2023).
 - ii. On 16 October 2023, in a briefing, the CEO advised all Councillors that the replacement of the light would be delayed and would be installed in December 2023.
 - iii. On 20 October 2023, all Councillors received an email from the General Manager saying that the replacement light would now be installed in January 2024.
- e. Cr Dimitriadis's comment referred to in Allegation 3 was in response to an individual and in the "Darebin Residents Group" on Facebook.
- f. The Darebin Councillor Code of Conduct (Document 2) requires a Councillor to "advise the CEO in a timely fashion of any concerns that a Council officer has acted contrary to a Council policy or decision, noting that any discussion pertaining to the performance of a Council officer must be held privately with the CEO and in a constructive manner" (section 5.1).

187. This Allegation was heard "on the papers".

The Applicant's submissions on Allegation 3

188. The Applicant submitted that the Respondent's Facebook post:
 - a. does not treat Council staff with respect because the post implies that Council staff have not done their jobs well, or in a timely manner, or at all, and have failed at their task. Instead, the Applicant submitted that staff had made attempts to resolve the problem;
 - b. brings Council into disrepute by saying "... we are still waiting on officers to organise the works. To say I am personally disappointed and ashamed of Darebins [sic] lacklustre response to the destruction of the old light is an understatement" because it implies Council has not acted properly; and
 - c. misleads the public with false statements, namely the light replacement was rejected by Council twice. She submitted this implies that Councillors have twice voted to reject the light replacement, and this is not true.
189. The Applicant submitted that to "like" a comment that the Council is dangerous is to endorse the sentiment.
190. The Applicant estimated that the membership Darebin Residents Group Facebook group as at the time of the Respondent's post would have been at least 2000. She stated that on 7 November 2023 the number of members of the Darebin Residents Group Facebook group was 2,990.
191. She submitted that although the group is a private group on Facebook, given the number of members the forum is public in nature and any member can screenshot content from the group and post it elsewhere.

The Respondent's submissions on Allegation 3

192. The Respondent submitted that the statement "...we are still waiting on officers to organise the works. To say I am personally disappointed and ashamed of Darebins [sic] lacklustre response to the destruction of the old light is an understatement" constitutes robust political debate. She stated that to describe the response as "lacklustre" was reasonable given the lengthy time it had taken to fix the light and remedy unsafe conditions at the carpark, noting that the replacement lighting is due to be completed in January 2024.
193. She submitted many constituents had raised concerns about the delay in the replacement of the lighting and the Fairfield Traders Association had also expressed concern and requested action. She was "genuinely trying to advocate for the community I represent" and "channelling their frustration that a genuine health and safety issue had still not been addressed for 18 months".
194. The Respondent submitted she had made it clear that she was acting personally and not speaking on behalf of Council. She noted that her reply was to one individual.
195. She also stated that at the request of Cr Hannan, she edited the comment to remove the reference to feeling "ashamed".
196. In relation to the comment, "Despite clear safety concerns, this [the light being replaced] was rejected by council twice...", Cr Dimitriadis submitted that her comment did not reference Councillors rejecting the replacement of the light and her reference to "Council" does not imply that a formal vote of Councillors occurred.
197. The Respondent provided a detailed timeline of events from the time of the car accident that destroyed the light to the time of the Facebook post. She also provided the following to support her Facebook comments:
 - a. emails from the Fairfield Village group following up about the lack of progress on rectifying the light;

- b. examples of occasions where Council omitted to include the light pole in the Council budget and the rejection of temporary lighting for traders; and
- c. Facebook posts from the Mayor stating that details of the vehicle involved in the original accident were lost and that temporary lighting should have gone in.

198. She stated:

I acknowledge, on reflection, that I could have expressed my frustration in a more constructive way, however, I deny this comment constitutes misconduct or a breach of the Code of Conduct.

Findings of the Arbiter

199. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Emily Dimitriadis on the basis that the Respondent has breached clauses 1 and 4(1) of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

Reasons

200. The Respondent accepted in the Agreed Facts dated 8 November 2023 that when making the relevant post she was acting in her role as Councillor. Despite this, in written submissions Cr Dimitriadis submitted that she was expressing a personal view and not speaking on behalf of Council.
201. The Supreme Court held in *Lew v Blacher* [2023] VSC 604 that the phrase ‘*in performing the role of a Councillor*’ as it appears in the *Local Government (Governance and Integrity) Regulations 2020* is capable of applying to behaviour of a Councillor in communicating with members of the public (including via social media) about matters for decision before the Council (rather than being limited to the formal decision-making itself). Therefore, the posts made by the Respondent in this instance are capable of being considered to have been made in her role as a Councillor.
202. The Respondent did not dispute the Applicant’s estimate that the membership Darebin Residents Group Facebook group at the time of the relevant post would have been at least 2000 and that on 7 November 2023 there were 2,990 of members. This is a significant number of members. Accordingly, although Cr Dimitriadis was posting on a ‘private’ Facebook group, the potential reach of the post was in the thousands (and potentially more if a group member took a screen shot and posted it elsewhere). I do not accept that because the reply was to a particular individual that it the comment was confined to a private setting. The post was public.
203. Finally, the copy of the relevant Facebook post reproduced in the Application clearly shows the post being made by “Councillor Emily Dimitriadis”. The Respondent begins her post with “*As the local ward councillor*”. Therefore, although the Respondent uses the words “*I am **personally** disappointed and ashamed*” (emphasis added), I consider there is no doubt that the post as a whole, and her view within it, was made in performance of her role as a Councillor.
204. The Respondent’s reference to “*...we are still waiting on officers to organise the works*” said in the context of the following sentence which expresses Cr Dimitriadis’s disappointment and feeling ashamed of the Council’s “*lacklustre*” performance could reasonably be interpreted as inferring that Council staff are to blame for the delays in rectifying the lighting and have not carried out their responsibilities appropriately. Given the reach of the Darebin Residents Group Facebook group as discussed above, this is a form of public shaming of staff and does not show them the appropriate respect. This is a breach of clause 1 of the Standards.
205. For similar reasons, stating publicly that a Councillor is “*disappointed and ashamed*” and describing its response as “*lacklustre*” is inappropriate and casts doubt on the Council’s ability to

undertake its core business and to address safety concerns in a timely manner. This brings the Council into disrepute in breach of clause 4(1) of the Standards.

206. I consider that to “like” a comment on a Facebook group that calls Council “dangerous” to be endorsing that view. As such, Cr Dimitriadis is effectively stating that she believes the Council is “dangerous”. This brings Council into disrepute and is again in breach of clause 4(1) of the Standards.
207. As discussed above, the Standards are not intended to limit robust political debate (clause 5) and the material provided by the Respondent indicates that there may have been some unnecessary delays in addressing the lighting. However, Facebook is not the place to ventilate such issues. The Councillor Code clearly provides that where a Councillor has concerns about the conduct of staff, that matter must be raised privately with the CEO. Mention has already been made of the Monitor’s Report on the impact of inappropriate Councillor use of social media on poor staff retention at Darebin and difficulty in recruiting new staff (discussed above).
208. In addition, the Councillor Code further states (p16):
Councillors commit to behaving courteously and respectfully in their dealings with Council staff, protecting their professional integrity and ensuring that neither offence nor embarrassment is caused when considering advice or recommendations. They will acknowledge and address Council staff appropriately at all Council meetings and events. Councillors will not be publicly critical of the organisation.
- It also states that Councillors “will not harm or attempt to harm, maliciously or recklessly, directly or indirectly, the reputations of others (including those of fellow Councillors and Council staff)” (p15). Cr Dimitriadis has breached these aspects of the Councillor Code indicating that her comments have gone beyond robust political debate.
209. A balance must be struck between robust political debate and protecting the reputations of Council and its staff. It also must be struck between representing one’s constituents and protecting the organisation. It is no defence to say that inappropriate comments are “channelling the frustrations” of constituents. A Councillor’s choice of words and the manner of undertaking robust political debate is all important and the Respondent’s has not chosen her words wisely.
210. The submissions on whether the Respondent deliberately misled the Council or the public about any matter related to the performance of her public duties (clause 4(2) of the Standards) focussed on whether the statements in the Facebook post were true or false, and whether the Council had twice rejected replacement of the carpark lighting. Having reviewed the documentation provided by both parties in relation to the sequence of events leading up to the Facebook post, I find insufficient evidence to establish that the Council “rejected” replacement of the light on any occasion.
211. One email from a Council officer to Fairfield Village states that installation of temporary lighting (while the permanent solution was being organised) was not something the Council normally did, but it was not a rejection outright of either permanent or temporary lighting solutions.
212. Another email, this from the CEO’s office (from an Acting Business Support Officer to the CEO) to Cr Dimitriadis in response to her query on the status of the light’s replacement, indicated that the matter had been referred (again) to Jemena. This was despite the fact that it had previously been established that the replacement was Council’s responsibility (and not Jemena’s). Given the nature of the email, I consider this was not a “rejection” of the matter by Council.
213. Further, I have before me no evidence of any resolutions of Council rejecting the replacement of the light.

214. Therefore, I find the Respondent's statement that Council twice rejected replacing the light to be false. A reader of this false comment could reasonably have been misled and have assumed that Council had specifically decided not to replace the light, which was not the case.
215. There were no submissions on whether or how the Respondent's comment "deliberately" misled the public which is required for a finding of misconduct based on clause 4(2) of the Standards. Cr Dimitriadis admitted that she was "channelling" the frustrations of her constituents when making this comment and appears to have done so without taking the time to check the facts. Her behaviour borders on deliberate disregard for the truth but I do not have any evidence before me that the Respondent intentionally set out to mislead the public on this matter. Therefore, I make no finding of misconduct on this ground.

Submissions on sanctions

216. The parties made no submissions on sanctions.

Sanctions

217. Pursuant to s147(2)(a) of the Act the Arbiter directs Cr Dimitriadis to:

- a. make a verbal apology for the disrespect she showed to DAAC members during the debate on the DAAC recommendations to council on the Voice Referendum and the hurt caused to them by her conduct at the 24 July Council meeting (Allegation 4);
- b. make a verbal apology to the CEO, Mr Smith, for speaking to him inappropriately during the adjournment of the 24 July Council (Allegation 6);
- c. make a verbal apology to Council staff for her comments criticising the work of Council staff made during the debate on the Gladstone Avenue tree removal item (Allegation 2) and for the harm and embarrassment caused by her comments;
- d. make a verbal apology to Council staff for the comments she made in the Facebook and LinkedIn posts the subject of Allegation 1, stating that Council staff did not force her to return to work and did not timetable meetings or briefings by reference to the birth of her child and apologising for the harm and embarrassment caused by her comments; and
- e. make a verbal apology to Council staff for the comments she made in relevant Facebook posts regarding replacement lighting at the Gillies Street car park (Allegation 3) and stating that Council did not reject replacing the lighting twice as she has alleged and it was inappropriate to call the Council's work "lacklustre", and apologising for the harm and embarrassment caused by her comments,

each of which apology is to be spoken by her in person at the next Council meeting after 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 Dimitriadis has engaged in misconduct by breaching the standards of conduct set out Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

218. Pursuant to s147(2)(a) of the Act the Arbiter directs Cr Dimitriadis to provide a written apology on the social media platforms indicated prior to the Council meeting at which this decision (and statement of reasons) is tabled in accordance with s147(4) of the Act:

- a. to Council staff for the comments she made in the Facebook and LinkedIn posts the subject of Allegation 1 and stating that Council staff did not force her to return to work and did not timetable meetings or briefings by reference to the birth of her child and that she apologises to Council staff for any harm or embarrassment caused by her comments, to be posted on Cr Dimitriadis's Facebook and LinkedIn accounts; and
- b. to Council staff for the comments she made in relevant Facebook posts regarding replacement lighting at the Gillies Street car park (Allegation 3) and stating that Council did not reject replacing the lighting twice as she has alleged and it was inappropriate to call the Council's work "lacklustre" and that she apologises to Council staff for any harm or embarrassment caused by her comments, to be posted in the Darebin Residents Group Facebook page,

in each case, the apology must unreserved and reference that Cr Dimitriadis has engaged in misconduct by breaching the standards of conduct set out Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

219. Pursuant to s147(2)(b) of the Act Cr Dimitriadis is suspended for the period of one month which will commence on the day after her verbal apologies are made in accordance with paragraph [217] above.

220. Pursuant to s147(2)(e) of the Act the Arbiter directs Cr Dimitriadis to attend training (which could take the form of coaching) to increase her understanding of:
- a. workplace safety requirements, including the role of a Councillor in providing a safe workplace including psychosocial and cultural safety (at least one session);
 - b. how to prosecute her political opinions in a robust manner while meeting the Standards, in particular the need to be respectful of all people and to maintain a safe workplace while engaging in political debate (at least monthly sessions over not less than six months);
 - c. 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. engaging in respectful debate in accordance with the Standards and handling of varying points of view on social media; and
 - ii. examples of engaging in debate on social media that does and does not breach the Standards but still allows for robust public debate (at least one session).

The Council (through the Chief Executive Officer and/or Council officers) is to organise the above training (or coaching) which may be provided by one or more providers as appropriate.

Reasons

221. Although invited to do so, neither party made any submissions on appropriate sanctions.

222. In reaching my decisions on appropriate sanctions I have considered the following matters:

- a. The findings in this arbitration demonstrate a pattern by the Respondent of using public fora to criticise Council staff and the organisation itself despite the Councillor Code clearly requiring such matters be raised privately with the CEO. This behaviour was specifically called out as inappropriate and damaging to staff morale and the reputation of the Council in the Monitor's Report and about which the Darebin Councillor group have previously received training and advice.
- b. Considerable harm has actually been suffered as a result of the Respondent's behaviour. The minutes of the DAAC meeting following the 24 July Council meeting are clear evidence of the extent of that harm.
- c. At the Hearing and throughout these proceedings, the Respondent showed little insight into the impact of her behaviour and little remorse when presented with evidence of the impacts of her behaviour. Her submissions indicate that she believes that if she is channelling constituent concerns, she can say what she likes without concern for the impact of her words on others. For example, while Cr Dimitriadis stated she did not intend to give offence or to harm DAAC, she has displayed a real lack of understanding of the wider context and her role in ensuring cultural and psychosocial safety of the workplace in which she operates. For this reason, I consider it necessary for Cr Dimitriadis to undertake further training on cultural and psychosocial safety requirements of the workplace in order to meet her OHS responsibilities and to support the CEO in these matters as required by the Councillor Code. I also took account of the clear words of the Councillor Code on the role and impact of a Councillor in performing that role (p12):

Councillors recognise that the conduct and behaviour of an individual Councillor reflects on Council as a whole and that, as community leaders, they should be role models, setting the standard for other people to follow. To this end, Councillors

are committed to maintaining high standards of personal and professional conduct.

- d. I believe that a one month suspension will provide an appropriate length of time for Cr Dimitriadis to reflect on the harm that she has caused by her behaviour.
 - e. I have given weight to the positive statements in various witness statements about Cr Dimitriadis's work in the Darebin community and as a Councillor. The Respondent gave the impression of being a highly diligent and passionate advocate for the causes she believes in, and this is to be commended. However, Cr Dimitriadis needs to develop and hone her skills in prosecuting her political opinions so as to meet the requirements of the Standards while engaging in robust political debate. She also needs to develop habits that allow her time to properly check facts before speaking or posting on social media and to better channel her constituent's frustrations. I have also given weight to the evidence of the CEO, Mr Peter Smith, that the Respondent's behaviour has improved in recent months, that she appears to have benefitted from coaching put in place after the 24 July meeting and she is now better able to prosecute her arguments. For these reasons, I direct that she continues her coaching sessions monthly for a period of (at least) six months.
 - f. I have weighed the Respondent's submissions that she was disadvantaged by the CEO's decision not to allow non-Executive level Council staff to give a witness statement in these proceedings. I have also taken into account the fact that neither party chose to call any Executive level witnesses (of which there were a possible three) when this option was offered to them at the second direction hearing held for this purpose. In these circumstances, I consider procedural fairness was provided to the parties.
 - g. I do not consider sanctions under ss147(2)(c) or (d) of the Act to be appropriate because I am not aware of any position representing the Council or chair of a delegated committee held by the Respondent.
223. The Arbiter has no power to direct the Respondent to take down the offending social media posts referred to in Allegations 1 and 3. However, while those posts remain in the public domain, they continue to constitute breaches of the Standards and could form the basis of future allegations of (serious) misconduct. I therefore recommend that the Respondent remove these posts from all social media platforms as soon as possible if she has not already done so.

Dr Meredith Gibbs

Legal Member

Date: 15 January 2024

ANNEXURE A – AGREED FACTS

Newton & Dimitriadis (IAP 2023-18)

Agreed facts –8 November 2023

General (applies to all Allegations)

	Fact	Agreed (Y/N)
1	Both parties have signed and adopted the “Councillor Acknowledgement of Standing Security Arrangements, OHS Responsibilities of Councillors & Councillor Interaction Protocols” (attached to the Application) – Documents 3 and 4.	Y
2	The “Councillor Acknowledgement of Standing Security Arrangements, OHS Responsibilities of Councillors & Councillor Interaction Protocols” were introduced after the 24 July 2023 Council meeting.	Y
3	“Councillors commit to taking reasonable steps to resolve any interpersonal difference or dispute that arises without recourse to formal processes with a view to maintain effective working relationships”, according to clause 15 of the Darebin City Council Councillor Code of Conduct 2021 (Document 2, page 29).	Y

Allegation 1

	Fact	Agreed (Y/N)
1	The post was made by the Respondent in her role as Councillor.	Y
2	The Darebin Councillor Code of Conduct (Document 2) requires a Councillor to “advise the CEO in a timely fashion of any concerns that a Council officer has acted contrary to a Council policy or decision, noting that any discussion pertaining to the performance of a Council officer must be held privately with the CEO and in a constructive Manner” (section 5.1).	Y
3	It is not possible for the work of Council and Council decision-making to cease during the period a Councillor is on leave.	Y
4	Councillors are not employees of the Council.	Y
5	The LGPro Local Government Women’s Professional Development Forum referenced in Allegation 1 occurred on 9 November 2022.	Y
6	Clause 1.1.4 of the Darebin Governance Rules - adopted by Council on 22 August 2022 (hereafter Governance Rules) states that “at least six (6) days prior to a scheduled meeting, an Agenda incorporating the business to be dealt with must be: ... (b) delivered to each Councillor by electronic means”. Refer Document 16.	Y
7	The waste charge issue was a controversial and significant issue that impacted all areas/wards of Darebin.	Y
8	Cr Dimitriadis’s daughter was born on 24 October 2021.	Y
9	Cr Dimitriadis attended the Council meeting on 22 November 2021 and requested support from all Councillors in that public meeting to defer the waste charge issue.	Y

10	Some Councillors (including Councillor Newton) voted against the deferral (refer Document 12).	Y
	Noted: Section 35(6) if the <i>Local Government Act 2020</i> (Vic) is noted.	

Allegation 2

	Fact	Agreed (Y/N)
1	The reference by the Respondent in her debate to section 86 of the Act is to section 86 of the <i>Electricity Safety Act 1998</i> .	Y
2	The Darebin Councillor Code of Conduct (Document 2) requires a Councillor to “advise the CEO in a timely fashion of any concerns that a Council officer has acted contrary to a Council policy or decision, noting that any discussion pertaining to the performance of a Council officer must be held privately with the CEO and in a constructive manner” (section 5.1).	Y
3	Cr Dimitriadis’s comments in the Council meeting related to the Report “Options to Retain Trees in Gladstone Avenue, Northcote” (Document 15). This public report included a recommendation by Council officers to remove three trees due to electrical safety requirements.	Y
4	The CEO and/or senior managers review and approve public reports before they are published in the public Agenda, as per s 46(2)(d) of the <i>Local Government Act 2020</i> and the Darebin Governance Rules.”.	Y

Allegation 3

	Fact	Agreed (Y/N)
1	The comment on the relevant post was made by the Respondent in her role as Councillor.	Y
2	The accident that destroyed the light occurred on 7 March 2022.	Y
3	The Street Lighting Safety Renewal Program is categorised as a capital works program.	Y
4	Darebin Council owns the Gillies Street car park.	Y
5	Replacement of the light project has been awarded to Leadsun who will install 3 new poles and 6 solar lights to the car park in January 2024 (Document 9). The sequence of events leading to this includes: <ol style="list-style-type: none"> 1. First, Councillors were informed that the light would be replaced in October 2023. (This is also evidenced in the Facebook post by the Mayor on 9th and 15th September 2023). 2. On 16 October 2023, in a briefing, the CEO advised all Councillors that the replacement of the light would be delayed and would be installed in December 2023. 3. On 20 October 2023, all Councillors received an email from the General Manager saying that the replacement light would now be installed in January 2024. 	Y
6	Cr Dimitriadis’s comment referred to in Allegation 3 was in response to an individual and in the “Darebin Residents Group” on Facebook.	Y
7	The Darebin Councillor Code of Conduct (Document 2) requires a Councillor to “advise the CEO in a timely fashion of any concerns that a Council officer has acted contrary to a Council policy or decision,	Y

	noting that any discussion pertaining to the performance of a Council officer must be held privately with the CEO and in a constructive Manner” (section 5.1).	
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Allegation 4

	Fact	Agreed (Y/N)
1	Documents 5 and 6 accurately reflect the role of the Darebin Aboriginal Advisory Committee (DAAC) and its relationship with Council.	Y
2	The Council’s “Statement of Commitment to Traditional Owners and Aboriginal and Torres Strait Islander people” is relevant to this matter (Document 11).	Y
3	DAAC is one of fifteen Community Advisory Committees that Darebin Council has established.	Y
4	DAAC does not have delegated decision-making authority and can only provide “advice and recommendations” to Council.	Y
5	<p>The following is a true and correct copy of the Minutes of the Council meeting on 24 July 2023 in respect of the Council Resolution related to this Allegation (Minute No. 23-051:</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p style="text-align: center;">ORDINARY COUNCIL MEETING MINUTES 24 JULY 2023</p> <hr/> <p style="text-align: center;">Extension of Time</p> <p>MOVED: Cr. T McCarthy SECONDED: Cr. L Messina</p> <p>9.00pm – That Council extend the meeting by 30 minutes.</p> <p style="text-align: center;">CARRIED UNANIMOUSLY</p> <p><i>The word “Indigenous” within the substantive motion, was corrected to “Aboriginal and Torres Strait Islander”.</i></p> <p><i>The substantive motion was put to vote and became the Council Resolution as follows:</i></p> <p style="text-align: center;">Council Resolution MINUTE NO. 23-051</p> <p>MOVED: Cr. S Rennie SECONDED: Cr. T Hannan</p> <p>That Council:</p> <ol style="list-style-type: none"> (1) Gratefully receives the advice prepared by the Darebin Aboriginal Advisory Committee on the Voice to Parliament referendum and supports the actions recommended by the Darebin Aboriginal Advisory Committee as outlined in Appendix A. (2) Thanks, the Aboriginal members of the Darebin Aboriginal Advisory Committee for their sustained, robust, and always principled support and guidance, and express particular gratitude to them in preparing this advice to Council, acknowledging the challenges around cultural load and cultural safety on this matter. (3) Requests and authorises the CEO to make operational arrangements to implement the actions recommended by DAAC. (4) Seeks the formal position of the Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation on the Voice to Parliament referendum. (5) Seeks the formal position of the First People’s Assembly of Victoria on the upcoming Voice to Parliament referendum. (6) Seeks the formal position of all Aboriginal and Torres Strait Islander organisations within Darebin on the upcoming Voice to Parliament referendum. (7) Requests a report be provided to Council upon receiving the formal position from Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation, the First People’s Assembly of Victoria and Aboriginal and Torres Strait Islander organisations in Darebin on the upcoming Voice to Parliament referendum. <p style="text-align: center;">CARRIED</p> <p>For: Cr’s Dimitriadis, Hannan, Rennie, McCarthy, Laurence, Messina, Greco and Williams (6) Abstained: Cr. Newton (1)</p> <hr/> <p style="text-align: right;">Page 24</p> </div>	Y
6	Clause 5.1(6) of the Governance Rules provides: “Pursuant to the Act, for the purpose of determining the result of a vote, a Councillor in attendance at the meeting who does not vote is to be taken to have voted against the motion or amendment.”	Y

Allegation 5

	Fact	Agreed (Y/N)
1	The alleged incident occurred in the Function Room (referred to as the dining room in the Application).	Y
2	The Mayor and Uncle Alan Brown (Co-chair of the DAAC) were in the Function Room when the alleged incident occurred.	Y

Allegation 6

	Fact	Agreed (Y/N)
1	The alleged incident occurred in the Chambers during an adjournment in the Council meeting on 24 July 2023.	Y
2	There is no barrier between the Gallery and the Councillors' seats in the Council Chamber.	Y
3	The alleged incident occurred in front of over 30 people who were present in the Chambers, including Council staff, Councillors, members of the public and two security guards.	Y

TERMS OF REFERENCE for Community Advisory Committees and Community Reference Groups



Darebin Aboriginal Advisory Committee

<p>1. Application of these Terms of Reference</p>	<p>These Model Terms of Reference apply to all Community Advisory Committees, Community Reference Groups and similar groups formally constituted by resolution of Darebin City Council.</p> <p>For the purpose of this Model Terms of Reference, all such groups and committees are referred to as “the Committee”.</p>
<p>2. Purpose and Scope</p>	<p>The <i>purpose</i> of this Committee is to provide advice and recommendations (were appropriate) to Council in relation to the matters specified in Appendix A</p> <p>In conducting its activities associated with its purpose and scope the Committee will;</p> <ul style="list-style-type: none"> • Conduct itself according to, and within, the Terms of Reference and any relevant Council resolution; • Inform itself of issues, opportunities, constraints and urgent actions relating to maintenance and promotion of the Committee; • Provide honest, considered, constructive and impartial advice to Council that will improve Council decision making; • Provide advice on strategic and other planning work to help set short and longer-term direction and action; • Foster a Committee culture that seeks to understand and explore diverse views of Committee members so that advice to Council reflects such diversity of views, and; • Report to Council periodically on its work, in order to ensure accountability for its conduct. <p>In providing advice, all members will be given every opportunity, encouragement and support to put their views before the Committee and that this will be considered in Darebin’s policy, program and project development.</p> <p>The <i>scope</i> of this Committee is to act in an advisory capacity to the Council only and has no delegated authority to make decisions.</p> <p>The Committee does not have an operational role and neither it, nor its members, may direct Council staff in the performance of their duties.</p> <p>The Committee shall have regard to and act in accordance with Council’s strategic objectives and priorities. Specifically, the Committee will have regard to the strategies, plans, frameworks, policies and plans referenced in Appendix A.</p>

<p>3. Committee Specific Protocols and Operating Practices</p>	<p>It is acknowledged that these model Terms of Reference may not in all instances provide the required or adequate clarity regarding a Committees functioning. To this extent, Committees may develop specific protocols and operating practices to supplement these ToR</p> <p>These protocols and operating practices may deal with any matters that the Committee determines are relevant to the efficient and effective functioning of the Committee and may include matters such as consideration of the social and cultural diversity of the Darebin community, inclusiveness of multicultural, educational, indigenous, religious, disability, youth, aged, sexual and gender communities, Aboriginal and Torres Strait Islander peoples, membership numbers, support for members to facilitate participation and consideration of sitting fees.</p> <p>Any such protocols and operating practices must not conflict with these ToR and must be endorsed by the Committee, the relevant General Manager and be attached to these ToR when formally adopted by Council. Should agreement not be reached by the Committee and the relevant General Manager, this will be escalated to the Chief Executive Officer.</p>
<p>4. Composition, Recruitment, Appointment and Tenure</p>	<p>This Committee comprises Councillor(s) appointed by Council annually and a Council Officer nominated by the Chief Executive Officer (both non-voting) and any other persons, and representatives of organisations as determined by resolution of Council and as specified in Appendix A.</p> <p>All Advisory Committees will sunset on 30 June following each General Council election, unless they have been re-established in the new Council term or the work of an Advisory Committee has been completed prior to this date.</p> <p>Specified members of Committees (excluding Councillors) shall be appointed to a Committee for the term specified in Appendix A. All appointments will be for an initial period of 2 years with the option for a further maximum period through to the 30 June in the year following each General Election upon re application.</p> <p>If the Council Officer (in consultation with existing Committee members) believes that staggered appointment terms are appropriate for the Committee, these may be instituted within the parameters of the 2 years period.</p> <p>Where a member is appointed to the Committee as a representative of a particular organisation a proxy may attend meeting on their behalf if the nominated person cannot attend.</p> <p>Council will appoint one proxy Councillor to each Committee annually. Councillors appointed as a proxy through the annual appointment process may attend Committee meetings.</p> <p>All vacancies shall be publicly advertised by Council prior to appointment.</p> <p>Prospective candidates shall submit an Expression of Interest in a form and manner prescribed by Council to enable Council to consider their appointment to the Committee. The criteria for the appointment of members will be developed by the Council Officer based on the required skills and knowledge and the existing Council policy and practices that promote diversity and inclusion. The Council Officer will consult with the Committee regarding any skill or experience</p>

	<p>deficiency or gap in the existing Committee that may need to be specifically considered during a recruitment and appointment process</p> <p>Where vacancies occur 'mid-term', a replacement Committee member may be appointed by Council's Chief Executive Officer, subject to an Expression of Interest process as above.</p> <p>Committee members appointed as a result of a 'mid-term' vacancy will serve the balance of the former Committee member's term</p> <p>Notwithstanding any of the above, Council may at any time by resolution set a date or a milestone that when reached or completed causes the cessation of the Committee and the expiry of Committee members' terms.</p> <p>A member may not complete more than 2 successive Council terms ie 8 years unless exceptional circumstances supporting the continuation of the members participation are demonstrated.</p>
<p>5. Responsibilities, Duties and Conduct of Members</p>	<p>In performing the purpose of the Committee, members must act honestly, treat others with respect, exercise reasonable care and diligence, and not make improper use of their position or make improper use of information acquired because of their position.</p> <p>The expectation of members' behaviour is that they will behave with respect and openness by listening to one another and by allowing all members to have a voice. Respectful behaviour is inclusive of all Committee meetings, emails, correspondence, telephone calls and on-line meetings.</p> <p>Members must work co-operatively with other members, respect the authority of the Chair and meeting procedures and must not seek to dominate the meeting or insist or imply that their own views and ideas carry more weight than those of others.</p> <p>Members must respect the confidential and sensitivity of information as appropriate.</p> <p>Committee members will be required to participate in an induction workshop arranged by Council and may be required to participate in specified training relevant to the work of the Committee from time to time.</p> <p>Upon appointment, Chairs including Co-Chairs must undertake or demonstrate relevant recent training and proficiency in running effective meetings.</p> <p>Committee members must not speak for Council and are not authorised to speak to the media in respect of the Committee's activities and deliberations.</p> <p>Committee Members are required to abide by Council's Employee Code of Conduct to the extent applicable to volunteers and the Council's Volunteer Policy. Failure to abide by the conduct principles, (and relevant Council policies, including Council's Occupational Health and Safety Guidelines) will result in the member being deemed to be in breach of their obligations and may result in their removal from the Committee by a Council resolution, or in urgent circumstances by Council's Chief Executive Officer if the Chief Executive Officer considers that such action is necessary.</p>

6. Meetings

Attendance at Committee meetings is expected in normal circumstances and is critical to fulfilment of appointment as a member.

The Chairperson shall be appointed as specified in **Appendix A**

Meetings will be held quarterly unless determined by the Committee Chair and Council Officer in order to allow for the timely consideration and provision of advice to Council on particular, time-sensitive matters from time to time. Committees may, with the approval of the relevant General Manager, meet more frequently on a limited and specific basis (if required).

Working Groups may be established as required for a specific purpose and on a limited timeframe to enable a focus on a specific task or project. These are subject to the approval by the relevant General Manager after consideration of their specific need, the availability of resources to support their operation and their agreed timeframes and tenure.

If the Chairperson is not present at a meeting, the Committee members will determine to appoint a Chairperson for the purposes of conducting the meeting.

The appointed Council officer will take responsibility for providing executive support to the Committee including provision of meeting agendas and minutes.

Committee agendas will be forward to Committee members by email no later than five working days before a scheduled meeting.

Minutes will be provided to Committee members and all Councillors no later than 10 working days of the meeting and will include a summary of discussions, details of any conflicts of interest disclosed and any decisions made. The Chair, including Co-Chairs, shall ratify the minutes of the meeting prior to their distribution. Formal endorsement of the minutes will occur at the subsequent Committee meeting.

Committee agenda items will be identified by Council Officers in consultation with the Chairperson. Members are able to request items to be listed subject to them being raised with the Council Officer and with the Chairpersons consent

Notice of any additional Committee meetings will be provided 2 weeks in advance.

Committee meetings may be held virtually

Committee meetings are closed to the public.

Special guests / subject matter experts may be invited to the meeting at the combined discretion of the Chair, including Co-Chairs and Council officer.

A quorum will be half of the voting Committee members plus one. In the absence of a quorum, a Chairperson may conduct the meeting for discussion purposes. Committees have no delegated authority to make decisions on behalf of Council, therefore any vote is on a position or recommendation to be made to Council if appropriate.

	<p>Whilst voting on matters is expected to be uncommon a member must be in attendance (either virtually or in person) to vote.</p> <p>Any Conflicts of Interest must be declared and recorded at the commencement of the meeting. A member who has a conflict of interest must leave the meeting when the item is discussed.</p>
7. Transparency	<p>In order to maintain transparency of Committee operations and in alignment with Council's Governance Rules the following information is to be published on Council's website in respect of each Committee:</p> <ul style="list-style-type: none"> a) The Terms of Reference. b) The names of all members c) Minutes of Advisory Committees meetings d) Reports of Committee activities (as reported biannually to Council) as prepared by Council Officers
8. Opportunities for Cross Collaboration and Induction of Committee members	<p>Council may, from time to time, facilitate meetings, forums, workshops and the like to enable the members of the various Committees to come together for knowledge sharing, professional development and the collaborative provision of advice as appropriate.</p> <p>Committees and new Committee members will be provided with an appropriate induction at the commencement of their term that includes an overview of the Council's structure and functions, the relationship of the Committee with Councillors and the community and any other matters to ensure they are well supported.</p>
9. Reporting, Monitoring and Evaluation	<p>The specific advice of a Committee in relation to a particular matter will be communicated to Council by the relevant Council officer in an appropriate format if and when required. The progress and activities of a Committee will be reported bi annually through a combined six-monthly Council meeting report on the progress and activities of all Committees to be prepared by Council Officers. The operation of the Committee will be evaluated annually via a number of methods including self-evaluation of the Committee (arranged by the Council Officer) to ensure that the Committee is achieving its objectives. Results of the evaluation will be reported in an annual progress report submitted to Council detailing the Committee's activities and achievements.</p>

APPENDIX A

Name of Committee	Darebin Aboriginal Advisory Committee
ToR Clause 2	<p>The <i>purpose</i> of this Committee is to provide advice and recommendations (where appropriate) to Council in relation to:</p> <ul style="list-style-type: none"> • Issues and barriers affecting Aboriginal and Torres Strait Islander community in the Darebin region. • Input into Council’s policy and decision-making processes. • Informing, monitoring the implementation of and evaluating delivery of plans including the Darebin Aboriginal and Torres Strait Islander Employment Strategy and Action Plan and the Darebin Aboriginal and Torres Strait Islander Action Plan. • Assisting in the development of future action plans. <p>The Committee shall have regard to and act in accordance with Council’s strategic objectives and priorities. Specifically, the Committee will have regard to the following strategies, plans, frameworks, policies and plans:</p> <ul style="list-style-type: none"> • Community Vision • Council Plan 2021-2025 • Towards Equality: Equity, Inclusion and Human Rights Framework 2019-2029 • Statement of Commitment to Traditional Owners and Aboriginal and Torres Strait Islander People • Towards an Age Friendly Darebin • Aboriginal and Torres Strait Islander Employment Strategy and Action Plan 2017-2027. <p>Specific Council strategies, frameworks, plans and policies relevant to this Reference Group:</p> <ul style="list-style-type: none"> • Darebin Aboriginal and Torres Strait Islander Action Plan 2017-2021
ToR Clause 3	<p>Committee Specific Protocols and Operating Practices</p> <p>The guiding principles are:</p> <ul style="list-style-type: none"> • Respect and recognition of Aboriginal and Torres Strait Islander communities’ values, living culture and practices, including their cultural and spiritual connection to land and the right to self-determination. • Aboriginal and Torres Strait Islander people who live, work or study in Darebin have the right to equal access to services, projects and programs initiated by Darebin City Council and to participate in all aspects of community life. • The right of all Aboriginal and Torres Strait Islander people in Darebin to live without fear of discrimination or any form of social disadvantage. • The need for continued Aboriginal and Torres Strait Islander community participation and awareness-raising in processes of advocacy and community-based action to address barriers to equality, health, education and social justice in closing the gap in Darebin. • Reflecting Council’s commitment to self-determination, the DAAC agenda is primarily directed by DAAC members while also being inclusive of Darebin City Council’s agenda items.

	<ul style="list-style-type: none"> • Recognition and respect for the differing role and standing of the Wurundjeri Woi-Wurrung as Traditional Owners and that of DAAC in providing advice and guidance to Council. <p><i>Sitting Fee for Community Membership</i></p> <p>To allow diversity in participation and taking into account the multiple responsibilities Aboriginal and Torres Strait Islander people have to their cultural obligations both in their work roles and wider community responsibilities and to acknowledge and value Aboriginal and Torres Strait Islander member's cultural knowledge, advice and guidance - the Council will provide Aboriginal members with a sitting fee of \$80.00 for each formal meeting.</p> <p>The Community Co-Chair will receive a higher sitting fee to reflect the increased responsibilities and standing of this role.</p>
<p>ToR Clause 4</p>	<p>Maximum number of community committee members: 11 (excluding Council Officers).</p> <p>Membership is open to Aboriginal or Torres Strait Islander people who live, work or study in Darebin. Organisations, groups or bodies are ineligible to apply.</p> <p>Upon joining, members agree to provide confirmation of Aboriginal or Torres Strait Islander heritage if required.</p> <p>The Committee should reflect the full diversity of Darebin Aboriginal community in terms of:</p> <ul style="list-style-type: none"> • Age • Gender balance • Aboriginal and Torres Strait Islander status (Youth, Elders) • Equity across family groups and clans • Education and employment status • Role within community <p>The Committee will seek to build and reflect diversity within membership and be inclusive in practice.</p> <p>As a standing order of meetings, Committee members who represent DAAC on other Council committees shall have the opportunity to report back to the Committee.</p>
<p>ToR Clause 6</p>	<p>The Committee Chairperson shall be a Councillor with a nominated community member as Co-Chair. The Co-Chair role is for a 2-year term aligned with Committee terms and will be elected at a committee meeting with voting limited to community members.</p>

ANNEXURE C – ROLE OF THE DAREBIN ABORIGINAL ADVISORY COMMITTEE

The role of the Darebin Aboriginal Advisory Committee (DAAC) and its relationship with Council (as applicable on 24 July 2023)

Refer to the Darebin Aboriginal Advisory Committee Terms of Reference (**ToR**) (as adopted August 2021) (Document Number 5). The ToR sets out the purpose and guiding principles for DAAC as outlined on page 6.

The voting members of the Committee DAAC comprise Councillor(s) appointed by Council annually and a Council Officer nominated by the CEO (both non-voting – page 2) and a maximum of 11 Aboriginal and Torres Strait Islander people who live work or study in Darebin.

The DAAC has provided advice to Council on projects such as Ganbu Gulin, Citizenship Ceremonies, Road and Place Naming Policy, Climate Emergency Plan, Flag Policy, the new Aboriginal Action Plan, the MOU with Aboriginal Housing Victoria, the Voice to Parliament, Aboriginal employment, prepared a statement on ‘Our Black Lives Matter’, and advised on the development of Council’s Statement of Commitment to Aboriginal and Torres Strait Islander People.

The DAAC generally provides its advice to Council prior to relevant matters being considered by Council.