

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
APPEALS AND POST SENTENCE APPLICATIONS LIST

Revised
Not Restricted
Suitable for Publication

Case No. AP-25-0955

DEAN HURLSTON

Appellant

v

MELINA SEHR

Respondent

JUDGE: HER HONOUR JUDGE CLAYTON
WHERE HELD: Melbourne
DATE OF HEARING: 18 August 2026
DATE OF JUDGMENT: 18 September 2026
CASE MAY BE CITED AS: Hurlston v Sehr (No 2)
MEDIUM NEUTRAL CITATION: [2026] VCC 1514

REASONS FOR JUDGMENT

Subject: SUBSTANTIVE APPEAL
Catchwords: Appeal – personal safety intervention order – whether conduct constituted prohibited behaviour or stalking – whether communications made in the normal course of a lawful publishing business or in engaging in political activities or communicating with respect to public affairs – whether malice established
Legislation Cited: *Personal Safety Intervention Orders Act 2010* (Vic)
Cases Cited: *AAA v County Court of Victoria & Ors* [2023] VSC 13
Coleman v Power (2004) 220 CLR 1
Hurlston v Sehr [2026] VCC 813
Roberts v Bass (2002) 212 CLR 1
Smit & Yemini v Simon [2022] VMS 29
Judgment: The decision of the Magistrates' Court on 1 July 2025 is set aside.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Appellant	Mr G Chisholm	Stary Norton Halphen & Galbally
For the Respondent	Mr M Cenacchi	XARY Lawyers

HER HONOUR:

- 1 Ms Sehr, the mayor of the City of Stonnington, sought and obtained an intervention order against Mr Hurlston, the president and CEO of Council Watch and the publisher of Stonnington Council Watch Facebook page.
- 2 Mr Hurlston appealed the decision granting that order. In my judgment of 11 June 2026, I found there had been error by the Learned Magistrate enlivening the jurisdiction of this court. Parties were provided with an opportunity to make application to put on new or fresh evidence and to make submissions.
- 3 At the hearing of the substantive appeal, no application was made for new or fresh evidence. The appeal proceeded by way of a broad re-hearing on the existing record,¹ being the transcript and exhibits from the Magistrates' Court hearing.
- 4 Ms Sehr submits that as the appeal jurisdiction was enlivened by the identification of two errors, "it follows that the findings untouched by the identified errors stand"² and as a result this appeal is confined to "consideration of reliance on falsity or reckless disregard for truth as an indicium of malice and the internally inconsistent path of reasoning to the s61(4) conclusion".
- 5 In finding that jurisdiction was enlivened I did not conduct a broad re-hearing, nor did I examine all the grounds of appeal, as is apparent from my ruling on the jurisdictional matter.³ I limited my enquiry to whether there was any error that would enliven jurisdiction. In *AAA*, Dixon J identified there was no right to a *de novo* appeal and that County Court jurisdiction must be enlivened by the identification of error by the magistrate. The fact that in *AAA* the appeal judge had identified an error of the magistrate in relation to the duration of the order, did not remedy the error by the judge in conducting the appeal as a *de novo* hearing. That finding does not mean the requirement to conduct a broad re-hearing once

¹ *AAA v County Court of Victoria & Ors* [2023] VSC 13 ("*AAA*")

² Ms Sehr's submissions dated 2 September 2026 at page 2, paragraph [4]

³ [2026] VCC 813

jurisdiction is enlivened is obviated. I am obliged to conduct a broad re-hearing on the existing record.

The Magistrate's decision

- 6 The magistrate in her ruling said “the contents of the material speak for themselves and I do not intend to repeat the information contained therein”.⁴ She gave examples of two posts, one where Mr Hurlston said Ms Sehr had weaponised her mother’s death, and another where she was depicted as “Miss Piggy” and referred to as Kermit’s girlfriend, and said “[t]hey are just two of the posts in a series of very ... similar posts in the same vein through the exhibits that were tendered to this court”.⁵
- 7 The magistrate found “the derogatory names and images he uses”⁶ provided “ample evidence of ill will, spite and animosity towards Ms Sehr” and “the gendered and personal undertones cross the line from fair commentary into targeted ridicule as the accentuating or substantive cause of Mr Hurlston’s publications”.⁷
- 8 The magistrate proceeded on the basis that her jurisdiction was enlivened to make a final order, at least on the basis of stalking given her finding of mental harm. She accepted the conduct had occurred in the normal course of a lawful business or for the purpose of engaging in political activities, but found the conduct crossed the line so that the actuating motivation for the publication was Mr Hurlston’s intention to cause Ms Sehr harm because of ill will, spite and animosity.

Issues

- 9 The issues that must be determined depart slightly from those questions suggested by the parties. The issues I must determine are:
- (a) Does the conduct complained of amount to prohibited behaviour or stalking?

⁴ Transcript (“T”) 550
⁵ T553, L (“Lines”) 31 – T554, L1
⁶ T555, L7
⁷ T55, L31 – T556, L3

- (b) Were Mr Hurlston's communications made in the normal course of a lawful publishing business or in engaging in political activities or communicating with respect to public affairs?
- (c) What does "malice" mean in this context?
- (d) Do the facts establish malice?
- (e) Should the application have been dismissed?

Background

- 10 I set out here some of the key events gleaned from the evidence that assists in providing explanation and context for the exhibits.
- 11 Ms Sehr has been a councillor for more than twenty years and is the current mayor of the City of Stonnington. In addition to her work as the mayor, she is the director of a company called Wonder Ever After Pty Ltd.
- 12 She gave evidence she worked in a "program development role" in her company. She said her professional income was derived from her role as an IT professional and "that is well known".⁸
- 13 She said she was "engaged by VCAT in a consulting manner to help them with an IT transformation project".⁹
- 14 Her company held a contract with VCAT for services. She said the contract was "publicly available".¹⁰
- 15 As a councillor Ms Sehr was required to publicly disclose personal interests. The publicly available statement of personal interests required her to disclose any:
 - (a) corporate directorships or memberships of a governing body;

⁸ T93
⁹ T247
¹⁰ T248

- (b) unincorporated associations of which she was a member and had a leadership role;
 - (c) business partnerships or joint ventures in which she was a member;
 - (d) trusts of which she was a trustee or beneficiary;
 - (e) paid employment where she received more than \$10,000 and the name of employer, the position held and the nature of the role;
 - (f) consultancies, contracts or agencies where payments exceeded \$10,000 and the name of the person or body and the nature of the business or activities conducted by her.
- 16 Ms Sehr's publicly available personal interest disclosure to 31 March 2024 declared:
- (a) income of more than \$10,000 from employment as a program director for Wonder Ever After; and
 - (b) consultancies, contracts or agencies where payment exceeded \$10,000 from Wonder Ever After in her capacity as program director.
- 17 Ms Sehr otherwise declared she was a trustee or beneficiary of the Sehr Family Trust and had no corporate directorships or membership of a governing body of a corporation or an unincorporated association.
- 18 It appears the publicly available information about the business of Wonder Ever After was "baked goods". Ms Sehr said "[t]hat is how it is categorised with ASIC".¹¹
- 19 She said she had "another company that ... relates to baked goods"¹² through which she makes and sells gingerbread houses at Prahran Market over the

¹¹ T249

¹² T95

Christmas period. She described this as a “hobby”.¹³ She runs a company that makes gingerbread houses and has a trading or marketing name “Gingerbread Queen”. On the profile page of the Instagram account for Gingerbread Queen she describes the company as “a proud and independently owned and operated custom order Gingerbread company based in Melbourne Australia”.¹⁴

20 Ms Sehr said there was no requirement for her to indicate in her personal interests disclosure that her company held a contract with VCAT. She said, “It is not VCAT that is paying me, VCAT is paying my company and it is my company that’s paying me and that is what the form requests”.¹⁵ I am not sure assertion is correct, given the distinction between employment and contracts and consultancies however that is irrelevant to the decision I must make. Nevertheless Ms Sehr said she did disclose the contract with VCAT¹⁶ and the publicly available information was only “partially what I put on my personal interest form”.¹⁷

21 The Personal Interest Disclosure Form required her to disclose corporate directorships. In error, her directorship of Wonder Ever After was not disclosed on her publicly available summary. The publicly available information also mischaracterised the business of Wonder Ever After as “baked goods”. The publicly available information did not disclose the contract with VCAT, although Ms Sehr said the contract itself was publicly available.

22 Ms Sehr said there was an error in the publicly available information.¹⁸ After a story appeared about this issue in the *Herald Sun* newspaper in around early January 2025, the CEO of the council issued a public statement which said Ms Sehr had made appropriate disclosures of her personal interests however “due to

¹³ T96
¹⁴ T82, L21-23
¹⁵ T250, L9-12
¹⁶ T96, L17
¹⁷ T89, L30-31
¹⁸ T96

an administrative error, her declarations were not properly transcribed to the publicly available version published on Council's website".¹⁹

- 23 Ms Sehr said that as a result of the publicity around this matter her company lost the contract with VCAT.
- 24 In January 2025, Ms Sehr's mother died. For a period of time in early January 2025 Stonnington Council Watch posted a number of posts which asked about Ms Sehr's whereabouts, accompanied by images of the characters "Where's Wally" and "Where's Wanda". These posts could be fairly characterised as critical of Ms Sehr's unexplained absence from her mayoral duties.
- 25 When Ms Sehr posted on her own social media that her mother had died, Stonnington Council Watch posted an article suggesting she had "weaponised" her mother's death. Mr Hurlston's position, through his post, appeared to be that the death of her mother was an understandable reason for Ms Sehr's absence, but the fact she had not communicated she was on leave, left her absence open to legitimate questions. As a result, Council Watch had asked those questions and had been subjected to criticism from others for doing so.
- 26 Separately from these two issues Mr Hurlston posted a picture of "Kermit the Frog" and Miss Piggy with a title "Meet your A team".²⁰ This appeared as a comment on a post. Ms Sehr was not sure what comment that picture related to. She said "I'm not sure. I've just cut and pasted it, so I'm not sure how the post was created by the author".²¹ She said she believed the comment with the picture was posted at some point after her 21 November 2024 post announcing her appointment as mayor. Mr Hurlston said the picture and comment "Meet your A team" was a reference to Ms Sehr and her deputy mayor Tom Humphries as "Muppets".²²

¹⁹ Exhibit 15
²⁰ Exhibit 11
²¹ T227, L27-29
²² T338

- 27 Other commenters, in particular a user called “Duke Green”, picked up the reference to Ms Sehr and described her as “Kermits (sic) Girlfriend” in a number of comments.
- 28 Mr Hurlston also posted about the use of ratepayer money to provide catering at council meetings and events. This resulted in comments from other users that at least inferentially referred to Ms Sehr’s weight.
- 29 Other issues that were the subject of the posts on Stonnington Council Watch relied on by Ms Sehr included:
- (a) parking issues within the municipality;
 - (b) the cancellation of the Chapel Street Festival;
 - (c) an enquiry into the Chapel Street Precinct Association;
 - (d) crime and firebombing in Stonnington;
 - (e) the conduct of councillors, council management and council meetings.

The documentary evidence

- 30 In total there were forty-three exhibits before her Honour. Many of them reference matters that require extrinsic knowledge of council events and people. Many contain bundles of posts. I have summarised the documentary evidence before the Court. This summary is not intended to be an exhaustive itemisation of the content of every post, some of which were long. I have endeavoured to identify the gist of the posts, but this was not always possible as the posts were targeted at an audience with extrinsic knowledge of events in the City of Stonnington. Further, the posts are far from a complete record of Stonnington Council Watch posts over the period. No doubt some posts follow from other posts not in evidence which may have shed light on their meaning. Where it appeared to me that the comments were relevant to the issues to be decided I have included a summary

of those comments. Square brackets indicate my own explanation or comment on the post.

31 The documents in evidence were:

- (a) Ms Sehr's personal interest returns to 31 March 2024;
- (b) a series of text messages between the parties from 2021, to 2024. Some of the messages attach articles from mainstream newspapers, some attach posts from Council Watch, and some attach posts from a person called Brendan Corr. One text said:

"Oh dear Melina,
Your little mate Corr can't seem to land a punch
What's becoming evident to the community based on council meeting footage is that some councillors are just not coping without power. ...
Who would've thought the people screwed over by the gang, would ultimately be the ones to show how to behave and how to lead.
Never seen staff so happy"

Another post said:

"Boy I hope you run in October.
Mike Scott will wipe the floor with you.
Plus we have plans for a few of you.
Funny how FOI works.
How was your phone call to Mr Developer on. (sic) sunday about that rescission motion?
Did you not realis we know you know the land owner.....oh dear.
You did a boo boo";

- (c) a post from 25 January 2020 which reprinted a recruitment advertisement from Stonnington Council for various employment roles. Above the advertisement is written "And the cost will be?";
- (d) a post from 9 February 2020 about plans to declare a climate emergency and changes made to Prahran Square, Treyvaud Memorial Park and Gardiner Park;

- (e) a post on 29 February 2020 about a private car-parking company engaged by council “the councillors responsible must GO. Stefanopolous, Sehr, Koce, Klisaris and Chandler must go”;
- (f) a screenshot from a YouTube video dated 24 May 2020 with photos of councillors Koce, Sehr, Stefanopoulos, Chandler and Klisaris and the title “Support expensive projects”;
- (g) a post from 26 July 2020 showing a screenshot of an online council meeting with a link to a YouTube video titled “The Angry Mayor. Questions to the mayor regarding his behaviour in a restaurant, when he threat”. The rest of the headline is cut off. The post said “Sent to us by South Ward Residents..... The Angry Mayor”:[Ms Sehr was not the mayor at this time]
- (h) a post from 29 July 2020 about rate rises with a link to a 7NEWS report;
- (i) a post from 31 August 2020 “Tonight Stonnington City Council passed its budget” and details of who voted for and against the budget;
- (j) a post from 4 September 2020 about a tram-stop upgrade “Wow 5 councillors against disability access to public transport under the guise of ‘heritage protection’”. The post named the five councillors including Ms Sehr and assigned a hashtag “VoteThemOut”;
- (k) a post from 19 September 2020 “Explosive ... There are more questions than answers here” with a link to an article in *The Age* with the headline “The art of flattery: How a property developer courted a council”;
- (l) a post from 21 September 2020 “Well done City of Monash for a value for money project - only \$25M Amazing - seems others can’t deliver same value for rate payers money” with a link to a YouTube video about the Oakleigh Recreation Centre redevelopment;

- (m) a post from 20 September 2020 about the requirement for councillors not to do media appearances in the election period, with the hashtag “rulesdontapplytosome” and a link to a 7NEWS report with a screenshot of an unidentified man. One commenter on the post has written “I’m dumbfounded that Melina Sehr would have him #2 on her ticket. That tells us she’s ok with all the bad behaviour”;
- (n) a post from 25 September 2020 about where rates are spent;
- (o) a post from 5 October 2020 titled “Our Endorsed Candidates” setting out a mock “how to vote” card with “WHO TO PUT FIRST” and “who to put last”. Ms Sehr and three others are in the “WHO TO PUT LAST” group;
- (p) a post from 6 October 2020 titled “THE TYPICAL NAMES OF 5 says it all” and an article about five councillors, including Ms Sehr, who voted against a recommendation to support a tram-stop upgrade;
- (q) a post from 8 October 2020 which attached a screenshot of an online council meeting with an apparent quote from CEO Jackie Weatherill “Should there be any further instances the mayor will be prosecuted” [the mayor at this time was not Ms Sehr];
- (r) a post on 18 February 2021 with a video attached of an online council meeting and a post “A new Councillor Code of Conduct has been adopted. Let’s hope it stops the conduct in this video. Tactical use of ‘points of order’ and language to dismiss factual arguments are all too common”;
- (s) a post on 24 February 2021 which attached an article from the *Stonnington Leader* with the headline “Stonnington councillors Mike Scott, Melina Sehr, Nicki Batagol under fire for face mask-less photo” and the comment “Oh dear”;

- (t) a post on 16 March 2021 about commencement of community consultation on a mutual respect and obligation charter with the notation “the DEATHLY silence from certain councillors was noted”;
- (u) a post on 21 March 2021 which attached photographs from a council meeting where a woman, presumably Ms Sehr, has her hand on a seated man’s shoulder. The post said:
- “Last weeks (sic) council meeting delivered an odd visual.
Is it ever OK for any councillor to touch staff?
What do employment laws and codes of conduct say about this.....?What is the need?
Perhaps the councillor can explain or apologise?
What would the commentary be if a man did this? Is it any different?”;
- (v) a post on 1 April 2021 about the purchase of an electric vehicle suitable for the mayor and executives to use as a “pool car”. “What do you think is appropriate with ratepayers money here?” In the comment section Mr Hurlston wrote “Koce, Sehr and Klisaris remain and are intent on doing what they know best”;
- (w) a post on 9 June 2021 titled “This weeks public budget meeting ended in chaos” and described Ms Sehr’s “train wreck justification”. The post links to a 3AW broadcast with the headline “Tom Elliot clashes with councillor over lockdown motion”;
- (x) a post on 3 July 2021 about Councillor Mike Scott which said Stonnington Council Watch had “always supported” Mr Scott, alleged Mr Scott had previously been “heckled” and laughed at by Steve Stefanopoulos and Ms Sehr, and alleged Mr Scott had since made a series of “about faces” including voting for rates increases;
- (y) a post on 15 July 2021 which attached various screenshots from a Facebook page headed “Stonnington Resident’s posts”. The post said:

“... Seems a former mayor may be closely associated with running a certain page in these images. Apparently it’s an attempt to use the platform to attack incumbent councillors”.

The post mentions Mike Scott and questions “Double standard?”;

- (z) a post on 20 July 2021 which said Ms Sehr revealed the “TRUTH” about a \$46 million project “Sehr has effectively admitted stonnington (sic) has a south Ward vs east Ward mentality”;
- (aa) a post on 30 July 2021 about money spent by Mayor Hely on mediations, mentors and advisors and a Tesla. “How does any of this deliver ‘value for money’ to residents and ratepayers”;
- (bb) a post on 9 August 2021 about parking fees which attached a *Stonnington Leader* article;
- (cc) a post on 20 September 2021 about a blowout in the cost of the Percy Treyvaud Stadium, which attached a *Herald Sun* article;
- (dd) a post on 23 September 2021 about Councillor Griffin that identified six councillors, including Ms Sehr, who “pushed on and voted to demand” another councillor “be censured and apologise”;
- (ee) a further post on 23 September 2021 referencing the original post above post “elected representatives get over ruled (sic) by unelected CEO’s and questionable fellow reps”;
- (ff) a post on 31 December 2023 titled “How to lose the mayoralty in \$50 million ways” which said Councillor Sehr appears to have lost the mayoralty based on decisions she has made. “Might have built a stadium for \$50M but cost them 20 years of control”;
- (gg) a post on 21 February 2022 about recording councillor briefing sessions. The post asked what seven named councillors, including Sehr, have to hide;

- (hh) a post on 21 February 2022 “A visual display of the concrete incompetence around Union Street. Stonnington City Council has spent a fortune here and it still looks terrible.” The post ends with the words “shame on” and names Ms Sehr among others;
- (ii) a post on 25 February 2022 about culling trees in Percy Trevaud park which mentions six councillors, including Sehr;
- (jj) a post on 28 February 2022 reposting a post by Councillor Polly Morgan, with the comment “What do they say? Some expensive projects become the achilles’ (sic) heel of your next election campaign”;
- (kk) a post on 13 March 2022 about pay and allowance increases “Just one question - What do ratepayers get for this”;
- (ll) a post on 24 March 2022 about the Stonnington City Council rejecting findings of local government inspectorates and “abuse of council resources”;
- (mm) a post on 8 April 2022 about salary and allowance for Mayor Klisaris and Deputy Mayor Sehr;
- (nn) a post on 22 April 2022 about parking. In a comment on the post Mr Hurlston wrote “It’s not just the Greens but the legacy councillors Sehr, Klisaris and Koce who are the architects of the agenda to choke off Chapel St and convert parking in Stonnington to pay parking”;
- (oo) a post on 3 May 2022 about Councillor Morgan’s conduct defending a resident who made obscene comments and who campaigned for Councillor Klisaris and Ms Sehr;
- (pp) a post on 4 May 2022 which attached a *Herald Sun* newspaper article in which Councillor Griffin called for an external monitor due to dysfunction on council;

- (qq) a post on 13 July 2022 about open space in various councils;
- (rr) a post on 2 August 2022 about arbitrations lodged by councillors and the conduct of various councillors;
- (ss) a post on 23 August 2022 which attached news articles from various sources about a successful appeal to VCAT by a school against Stonnington Council;
- (tt) a post on 12 September 2022 about a council meeting and a councillor and staff interaction protocol;
- (uu) a post on 27 September 2022 titled “WHAT A \$HIT3 SHOW” about confidential business documents. “In a spectacular dummy spit Cr Sehr went on the attack claiming the documents were either ALL confidential or not. We agree! Release them all”;
- (vv) a post on 27 September 2022 “WOW. The games by Cr Morgan, Cr Koce and Cr Sehr are absolutely ABHORRENT”. The post attached a “Notice to Call a Council Meeting” signed by Morgan, Koce and Sehr to consider the motion to close the council meeting to the public;
- (ww) a post on 29 September 2022 titled “What do 3 lonely councillors and a mayor that can’t get Quorum look like?”, which attached a photo from [I infer] a council meeting;
- (xx) a post on 2 October 2022 titled “WHAT IS THIS COUNCIL MADE OF”. The post discussed audit reports from the Chapel Street Precinct Association and said Ms Sehr is the “master puppeteer, always appearing to have clean hands while others do her dirty work”;
- (yy) a post on 10 October 2022 titled “Percy Treyvaud Multipurpose Stadium an environmental disaster”;

- (zz) a post on 11 October 2022 titled “confidential bastardry unmasked at a cost of over \$800K of ratepayers money”. The post asked “What is it that Morgan, Sehr, Klisaris and Koce said that they don’t want you knowing about”;
- (aaa) a post on 12 October 2022 which attached a *Herald Sun* article about \$320 confidential funding review. The post said “Councillors Koce, Sehr, Morgan and Klisaris should publicly apologise and withdraw their motion or resign” and “What is it that this rabble gang of political hacks have to hide”;
- (bbb) a post on 12 October 2022 which started “There are times when we must admit we were wrong”. The post went on to apologise to Councillor Hely; [without understanding the context it is not clear what this post means]
- (ccc) a post on 15 October 2022 which attached a letter from the Toorak Road Business Association. The post said, “Small businesses need Stonnington City Council support more than ever”. In a comment on the post Mr Hurlston wrote “the Independents at Stonnington Council are fake Independents”; [Ms Sehr is an independent]
- (ddd) a post on 17 October 2022 with a photograph of Ms Sehr and Councillor Klisaris. “Some people want to keep power at all costs. No matter the casualties. No matter the cost”. The post asked whether it is time for the local government minister to sack “these two” or “is Melissa Horne MP not prepared to sack a LABOR mayor?”²³. In the comment section a commenter referred to Ms Sehr and Klisaris as B1 and B2. A different commenter writes it is “revolting” to comment on appearance. Mr Hurlston wrote that the comment B1 and B2 was about the clothes being worn but that the comment “sails close to wind” and “appearance commentary is unacceptable”;
- (eee) a post on 19 October 2022 about special rates scheme;

²³ Joint Court Book (“JCB”) 173

- (fff) a post on 22 October 2022 which attached an article from *The Age* newspaper headlined “Stonnington councillors boycott meetings to axe \$1.8m marketing scheme”;
- (ggg) a post on 23 October 2022 which attached a post from former mayor Steven Stefanopoulos. The post said, “Former MAYOR falsely accuses CSPA of misusing money” and “The gang of Stefanopoulos, Klisaris, Sehr and Koce is still trying to run this council”;
- (hhh) a post on 24 October 2022 titled “Cr Alexander Lew threatens to QUIT Stonnington City Council over bullying accusations amidst last minute threatening emails from CEO”;
- (iii) a post on 24 October 2022 titled “Now appearing at the Melbourne Comedy Festival. The 4 horsemen of the Stonnington City Council apocalypse”, with the faces of four councillors, including Ms Sehr, superimposed on an image of the Four Horsemen of the Apocalypse;
- (jjj) a post on 25 October 2022 that said “Stonnington City Council councillors Sehr, Klisaris, Koce and Morgan de fund business precincts. disgusting”;
- (kkk) a post on 26 October 2022 which attached an *Australian Financial Review* article with the headline “Deloitte calls crisis meeting, blames staff turnover for poor audit results”. The post said Ms Sehr and other councillors based many of their allegations [I infer about the CSPA] on a report completed by Deloitte on the retail traders associations.
- (III) a post on 27 October 2022 titled “ACCOUNTABILITY GOES BOTH WAYS” which said, “time for S/HE, HIM, HER, THEY to demonstrate their own financial integrity”. The post attached a media release from Stonnington Council Watch calling for an audit of corporate credit cards, staff expense

claims and senior staff, CEO and councillor expenses and any expense claims made;

(mmm) a post on 27 October 2022 which said “Given recent derogatory comments that have been made by Cr Morgan, Cr Klisaris, Cr Koce and Cr Sehr with respect to expenses of traders associations, it is only reasonable that all council staff are investigated in the very same matters”;

(nnn) a post on 29 October 2022 about a council meeting, council culture, transparency issues. [without context it is difficult to understand what this post refers to];

(ooo) a post on 1 November 2022 about problems with Prahan Market. The post asked where Ms Sehr and other named councillors were when public money was being “thrown at the market” and its results have worsened and answers the question “Hypocritically silent. That’s where”;

(ppp) a post on 2 November 2022 titled “Who would you like to see as Mayor and Deputy?” with a photo of Ms Sehr;

(qqq) a post on 5 November 2022 titled “The gang hasn’t changed ONE BIT”, which attached photos and videos from what appears to be a meeting;

(rrr) a post on 9 November 2022 titled “COUNCIL CONSIDERS REMOVING GENDERED TOILETS AND GOING GENDER NEUTRAL”. The post asked “WHAT DO YOU SAY. You can find info here” and links to the Stonnington Council webpage for LGBTIQA community;

(sss) a post on 15 November 2022 which attached a video of a council meeting. The post said Ms Sehr and other named councillors “have no plan and no clue”;

- (ttt) a post on 22 November 2022 titled “MAYORALTY PREDICTION” with a photo of Councillors Klisaris and Sehr. The post said, “I’m confident enough that these 2 will remain mayor and deputy because councillors are too weak to force change and growth amongst the councillor group” and “Sadly, this will just be more of the same - the same vanilla council. The same gang mentality”;
- (uuu) a post on 17 July 2023 showing the faces of four councillors, including Ms Sehr, superimposed on an image of the Four Horsemen of the apocalypse with the title “THE FOUR HORSEMEN OF THE STONNINGTON COUNCIL APOCALYPSE”. Below the image the post refers to a vote by council about disbanding the “5 traders’ precincts special rates schemes”;
- (vvv) a post from 5 August 2023 with a picture of Ms Sehr and other people outside a building. The post asked whether public statements about Cabrini were personal positions or the position of councillors and whether there had been a breach of the Councillor Code of Conduct;
- (www) a post on 5 February 2024 that said “Klisaris, Morgan, Sehr how embarrassing was that?! Get a grip ladies”. [It is not apparent what the post refers to. In a comment below the post Mr Hurlston responded “Sorry For anyone watching the council meeting the conduct and behaviour of those mentioned was rather appalling and churlish”];
- (xxx) a Stonnington Council Watch sponsored Facebook ad from 16 February 2024 to 24 February 2024. The screenshot is titled “Pahran Square is a \$70 million public money lemon” and includes photos of Ms Sehr and two other councillors;
- (yyy) a Stonnington Council Watch sponsored Facebook ad from 27 March 2024 to 2 April 2024. The screenshot said “stonnington (sic) said NEVER AGAIN”;

- (zzz) a post on 3 October 2024 about disclosure by Mr Corr of confidential information under the *Local Government Act* 2020. The post said “we bet Sehr, Klisaris or Stefanopoulos have been working in cahoots with obscene Corr”;
- (aaaa) a post on 3 October 2024 about a new VEC requirement to disclose digitally altered images, which attached a photo of a poster for Ms Sehr’s campaign with red words “THIS IMAGE HAS BEEN DIGITALLY ALTERED BY AI OR EXCESSIVE PHOTO SHOP” written over the image;
- (bbbb) a post on 11 November 2024 titled “Mike Scott quits the Greens” which said “Steve Jami, Melina, Brendan, Erin and Dinesh should be utterly ashamed of their toxic, nasty, abusive behaviours, and they needed to CHEAT by attempting to discredit and defame their opponents” and “These people are sick and toxic”. The post attached a statement from Mike Scott which itself attached a photograph of Kermit the Frog with the words “GOODBYE”;
- (cccc) a post on 21 November 2024 titled “THE REIGN OF THE HOUSE DRESS HAS ARRIVED” and said “Election update ... Breaking NEWS ... Stonnington City Council ELECTS MELINA SEHR MAYOR AND TOM HUMPHRIES deputy mayor”. The post said Ms Sehr thanked her mentors Ullin and Chandler and said Ullin was “notoriously dodgy” and Chandler “was a perpetual drunk” and “the toxic behaviours of Sehr, Stefanopoulos, and Klisaris ALL stem from the vile ‘men who taught them everything they knew about Local Government’”;
- (dddd) a post on 5 December 2024 which said “I said this would happen when they claimed they’d find another option last year. Nasty Liars”, with a photo of Sehr and Klisaris and a post about Gardiner Preschool. The post said, “A classic case of Councillors passing a nothing burger motion that made them look supportive during the election, only to have the administration bastardise the

reports and essentially say ‘we will do nothing’. And “Unless she pulls off a plan to save Gardiner Pre School and Childcare, she’s a liar”;

- (eeee) a post on 9 December 2024 about state liquor licensing and outdoor dining. The post said Sehr “exerts untold influence over staff” and “The use of council officers for Melinas own personal vendettas will no doubt continue; she is a nasty piece of work indeed”;
- (ffff) a post on 9 December 2024 which said, “That was a poor Stonnington City Council meeting”. The post then scores each councillor’s performance out of ten. Ms Sehr scores 2/10 and the comment “couldn’t chair a chook raffle”. Other councillors get scores ranging from 1/10 to 9/10. Tom Humphries gets no score “what the absolute F was he crapping on about ... anyone got a translator for bullshit”;
- (gggg) a post on 12 December 2024 which shows a photo of rubbish built up around rubbish bins and skips titled “Stonnington City Council workers on strike!!!! Bin collection and rubbish services banned”. It provides a list of councillor email addresses and said “If you are unhappy email the councillors”;
- (hhhh) a post on 13 December 2024 titled Stonnington City Council opens “the new Izett Street pocket park”. The post said “To be blunt it’s a shocking cost and as usual the money is AGAIN being spent in Mayor Melina Sehr’s ward. Always things for HER constituents”;
- (iiii) a post on 15 December 2024 “Word on the street is that in this week’s Mayor and Deputy training at Municipal Association of Victoria Cr Melina Sehr offended MANY”. “Word is many were offended that she was so blind in her display of self-righteous ego” and “me me me”. In the comment section “Duke Green” again calls Ms Sehr Kermit’s girlfriend.

(jjjj) a post on 15 December 2024 which shows a screenshot of an interview on 7NEWS with the headline “FAMILIES TURN OUT FOR THE FESTIVE CELEBRATIONS”. Ms Sehr is pictured side on with her face partially obscured by her hair. Below the screenshot is another screen shot with “Cousin It” superimposed over Ms Sehr’s head and the tag “Who wore it better”. The post said “Mayors that have been on council ‘for 24 years’ and love to lecture everyone else that they know best, really need media training. What a train wreck interview”;

(kkkk) a post on 16 December 2024 which said:

“We are also informed from Councillors that attended last weeks (sic) Mayor and Deputy training that Mayor Sehr created quite an argument with Mayor Klisaris (from Monash) in front of everyone else. She really has become a little unhinged. The robust discussion apparently centred around her expecting an agreed stance from all councillors - she likes the autocracy the mayoralty gives her.”

There is an image attached of a comic-book style woman with a low-cut dress wearing an apron in a kitchen;

(llll) a post on 16 December 2024 – “Tonight’s Council Meeting” in which councillors are again scored out of ten on their performance as a councillor. Ms Sehr was scored 3/10 “she still cannot chair a meeting, she rambles and is incoherent at times”. Klisaris, 2/10 “again not prepared. No idea, just walks in and fakes her way through it”. Hely, 7/10 “tried and got shot down and disrespected. Humphries “OMFG 0/10 - he could not be bothered, played with his phone and hair, wasn’t listening for most of the meeting, again said something that made no sense, waste of Toorak money”. Stefanopoulos, 2/10 “is the Christopher Pine of this council ... All show, no go”;

(mmmm) a post on 17 December 2024 with the headline “Melina Sehr SLAYS the Golden Goose”, which attached a screenshot from Golden Goose bar announcing its closure due to council noise restrictions. The post asked “Why does Mayor Melina Sehr HATE local businesses”;

- (nnnn) a post on 19 December 2024 titled “Melina Sehr’s Stonnington City Council where businesses DIE”;
- (oooo) a post on 20 December 2024 titled “Crime in Stonnington City Council. How safe is it? Do you feel safe? What should Council be doing to assist the police”;
- (pppp) a post on 24 December 2024 that said “On 22/7/24, 3 councillors voted FOR a development that was 44% above the Stonnington height limits ... Who are the ‘developers useful idiots?’ Sehr, Klisaris (and retired Koce)”;
- (qqqq) a post on 6 January 2025 which said, “BREAKING NEWS - FINE DINING ON YOUR PUBLIC PURSE - COUNCILLORS AND EXECUTIVES EAT YOUR RATES MONEY - IN A COST OF LIVING CRISIS”. The post said:

“Mayor Melina Sehr confirms her Council is wasting up to \$100K a year on Councillor and Staff meals using a chef and waiters for Council meetings and briefing meetings. Is it time to stop the waste of public money?”

In comments on this post, user “Imran Jreige” commented:

“I reckon about half that amount is to feed the Mayor alone. Lite & Easy is more cost effective and it comes with the benefit of low calories. Not saying the Mayor needs to lower her calorie intake....sometimes photos add 20 kilos.”.

User “Spilli Villi” posted “Before” and “After” photographs of Ms Sehr and Klisaris, purporting to be “Before and After” photographs “of when she ate the ginger bread”;

- (rrrr) a post on 7 January 2025 titled “CHAPEL STREET FESTIVAL KILLED OFF BY STONNINGTON COUNCIL” which said, “Acting CEO to KILL CHAPEL STREET FESTIVAL costing over 450 jobs and millions in lost business just 6 weeks out at the delight of Melina Sehr”. The post quotes former mayor

Joe Gianfriddo saying “my experience with Cr Sehr is that when she doesn’t get what she wants, she throws a tantrum and resorts to screaming at people until she does”;

(ssss) a post on 9 January 2025 “Brendan Corr has a problem” and describes Corr as a terrible person. The post said, “What’s so disappointing here is the mayor and her cronies playing toxic, petty personal agendas instead of supporting thousands of businesses that would benefit from any festival”. The post said, “[t]he real arseholes here are the council staff (that earn millions in salaries paid for by you and I, to peddle these nasty witch hunts that tear people down” and “I’d sack the entire economic development team at council and use the money to actually improve something. God knows these people are utterly useless”, and “the mayor has a toxic dumpster of bullying allies, and she is 1000% compromised on many levels here. Wait until we reveal where she works”;

(tttt) a post on 9 January 2025 which attached a statement from the Stonnington City Council CEO Dale Dickson referring to an article in the *Herald Sun* that implied an incomplete personal interest disclosure had been made by Ms Sehr. The statement said:

“For the record, I wish to confirm that Councillor Sehr’s personal interest disclosures in 2024 were properly made, however, due to an administrative error her declarations were not properly transcribed to the publicly available version published on the Council’s website.

...

I also note the comments attributed to Mr Dean Hurlston, in the same article, which characterise Cr Sehr’s day job as ‘double dipping’. It is time to call out the hypocrisy of such a statement. Cr Sehr is performing her Mayoral duties whilst also earning an income, which is the reality for many Mayors, including her immediate predecessor”.

The Stonnington Council Watch post said “STONNINGTON CEO USES COUNCIL PLATFORMS TO MAKE POLITICAL STATEMENTS IN

SUPPORT OF MAYOR” and “The fact that the Mayor likely demanded the CEO do this for a matter related to HER is appalling”;

(uuuu) an Instagram post on an unknown page on 10 January 2025: “Chapel Street festivals cancelled..... WTF”. There is a comment on this post from dino_andrew123 “let Melina know she might need a spare set of undies soon”. Ms Sehr alleged dino-andrew123 is Mr Hurlston;²⁴

(vvvv) an email on 11 January 2025 from “Jeremy” at News24 Melbourne to Ms Sehr which asked questions about “Mayors and their day jobs” and specifically asked:

- “1. Do you currently work at VCAT in any capacity?
2. Are you paid via your personal company Wonder Ever Acter Pty Ltd?
3. If you are working for VCAT have you disclosed this to Council CEO or any of the Councillors?”

and other questions; [Ms Sehr alleged Mr Hurlston was Jeremy]

(www) a text message on 12 January 2025 sent by Mr Hurlston to another councillor giving that councillor a “heads up” that the media were making enquiries about Ms Sehr’s contract with VCAT, that someone at VCAT lodged a “whistleblower disclosure” and media had approached him;

(xxxx) a post on 15 January 2025 titled “Another day, another firebombing on Chapel St”. The post said:

“Where is Mayor Sehr?
What are Stonnington City Council doing?

...

We have just been provided proof that ex CSPA director Martha Tsamis has been trying to speak with the Mayor Melina Sehr...for a couple of days - she has had ZERO response. Why? Where is Sehr?”;

²⁴ T59 – T60

- (yyyy) a post on 15 January 2025 titled “WHERE IS SEHR?” which said “Deputy Tom Humphrise quoted again. Is she busy? She is earning \$138,506 to be full-time mayor”;
- (zzzz) a post on 16 January 2025 titled “Machetes, Ram Raids, and Fire bombings.....the new norm in parts of Stonnington City Council”. The post said “Why is the mayor silent? Where is Melina Sehr?” and attached photographs of newspaper articles about Chapel Street fire bombings and a picture of cartoon character “Where’s Wally”. In the comments Mr Hurlston said “We are not blaming Melina for crime. That would be stupid - no mayor causes the crime. We are calling out the silence and inaction”;
- (aaaaa) a post on 16 January 2025 which said “MELINA SEHR AND JAMI KLISARIS WENT TO THE ELECTION PROMISING TO SAVE WINDSOR CHILD CARE ... Is someone lying here”;
- (bbbbb) a post on 16 January 2025 titled “Stonnington City Council MAYOR Melina Sehr accused of double charging tax/ratepayers” and said, “Perhaps this explains why we cannot find her”. The post attached a picture of Sehr with a large question mark “WHERE IS SEHR”. The comments section on this post includes discussion about whether a mayor or councillor should also be working at VCAT. Mr Hurlston posted in the comments:

“Our sources tell us she is involved in the digital transformation project which one would assume has access to a lot of people and information. We wonder if there is any issue that other Councils might have knowing a Mayor of any Council (in this case Stonnington) has information on them. We expect VCAT needs to make a clarifying statement immediately”;

Mr Hurlston posted another comment: “our sources allege she is working at \$1500 per day with VCAT in a full-time capacity. HMMMMMMMMMMMM. Why seek the mayoralty? Is it about power and free money?”. In response to a comment that Ms Sehr is a partner in a significant Australian law firm, Mr

Hurlston has replied “She has not updated her linked in. She does not work at Ashurst”;

(ccccc) a post on 16 January 2025 which said “Stonnington has become a crime infested ghetto. Where’s Melina? We can’t find Wally”. There is a picture of cartoon character “Where’s Wanda” with Ms Sehr’s face superimposed and the words “WHERE’S MELINA. MISSING IN ACTION?”;

(ddddd) a post on 18 January 2025 which said, “There’s a certain type of person that weaponizes death to throw the media off”. The post said the *Herald Sun* has been chasing Ms Sehr for days and “It’s understandable now why she was busy”. The post said, “Melina’s mothers passing is sad” and said “We did not know. How could we”. The post said “there was no out of office on her email ... there was no statement from council, there was no one ... contacting anyone who emailed her. In fact not one of the people who left her emails or messages had any contact in around 2 weeks”. The post said, “For the record, Toula was apparently an amazing community advocate and adored by many”. Attached to the post is a post on social media from Ms Sehr announcing that “Today I farewelled my beautiful mother, Dimitra Toula Sehr at a private funeral service” and posts from others expressing condolences. The post also attached a post from Brendan Corr saying Mr Hurlston “recently” learned that Ms Sehr’s mother had passed but that instead of sending flowers, messages of sympathy or commiseration, he “decided the most appropriate thing to do was to harass, insult and vilify the Mayor”;

(eeeeee) a post on 3 February 2025 titled “GINGERBREAD QUEEN SETS POLICE ON US”, which said “What does the ... ‘Gingerbread Queen Mayor’ do when she realises the media is on to her? She sends the police to my home claiming I am stalking her”. The post attached photos of Ms Sehr with a gingerbread house and photographs of the IVO application;

(fffff) a post on 4 February 2025 which attached a report about a CEO statement that it was an administrative error that the public record of the personal interest disclosure was incorrect;

(ggggg) a post on 5 February 2025 titled “ANOTHER STABBING IN CHAPEL STREET” “Where is the Stonnington City Council Mayor. What is she doing about community safety”, which attached a report from the *Herald Sun* about the stabbing, and a photograph of Ms Sehr with a gingerbread house;

(hhhhh) a post on 5 February 2025 with the title “the story so far ... What will we discover next”, with attached photographs of four councillors, including Ms Sehr, with partially obscured writing. In relation to Ms Sehr, the writing said “works for VCAT on [the amount is obscured] tax payer funded contract whilst mayor on \$138 [obscured]”;

(iiii) a post on 6 February 2025 titled “Council of war” which attached an article from *The Age* about Ms Sehr’s application for an intervention order against Mr Hurlston;

(jjjjj) a post on 6 February 2025 titled “Stonnington City Council REGISTERS FAIL TO BE UPDATED”, which said:

“Councils website shows that mandatory registers are not being updated since the election of the NEW council in October.

...

Is the CEO now going to take the blame saying this too was an ‘administrative error’

Are the Mayor and Deputy out of their depth and not ensuring public disclosures and transparency?”;

(kkkkk) a post on 6 February 2025, which said “Today, I wrote to the Local Gov Minister and Attorney General in relation to the position of VCAT. We do not allege the mayor of any wrongdoing, rather, VCAT’s ability to remain independent is the question”. The post attached a letter to Mr Staikos and

Ms Kilkenney and attached articles about Ms Sehr with photographs of her with her gingerbread houses;

- (lllll) a post on 6 February 2025, "Safety forum tonight at Prahran Town Hall";
- (mmmmm) a post on 6 February 2025, "SIGN OUR PETITION TO DEMAND THE MAYOR STEP DOWN IF SHE WILL NOT BE FULL TIME" and said "We were asked to form a petition over the Gingerbread issue";
- (nnnnn) a post on 7 February 2025, "IT APPEARS COUNCILLORS THAT WERE ELECTED IN OCTOBER HAVE HAD 7 WEEKS OFF AND BEEN PAID";
- (ooooo) a post on 7 February 2025, which said "Last night's forum was an EPIC FAIL";
- (ppppp) a post on 7 February 2025, which said "We are aware of serious allegations about workplace safety issues at council";
- (qqqqq) a post on 8 February 2025, which said "If the CEO can descend into political commentary on external parties - here is some feedback for him". The post said Mr Dickson has presided over a workplace environment that raises serious concerns about governance, accountability and workplace culture and he is entangled in a "now politicized relationship with the Mayor, which has compromised the impartiality of Stonnington's administration and further eroded staff confidence in executive leadership";
- (rrrrr) an undated Stonnington Council Watch comment [not post] "Meet your A TEAM" with a picture of Miss Piggy and Kermit. User "Duke Green" commented "why does Sehr resemble one of the muppets....probably don't need to detail which one". "Duke Green" further commented "Kermits Girlfriend is only concerned for herself and doesn't care who looks bad as long as the heat is taken off her. She's as disgusting as those ginger bread houses she creates in her home zoo";

- (sssss) an undated comment from user “Duke Green”, which said “The take away for me is just how much botox and fillers Kermit (bogan/bigoted governance guy) girlfriend (fiancé) has had”. In response to this comment Stonnington Council Watch has replied “Do you mean Mr no style Thompson”;²⁵
- (ttttt) an undated post with a diagram of various councillors, candidates and others. In relation to Ms Sehr the diagram said “sees herself as the Matriarch of the Stonnington Council. Has held a vice like grip on the council for decades and wants it back”. This post said “Scum of Stonnington. They had to cheat to make sure they could get control of their Council again. What a pathetic lot. More to come”
- (uuuuu) screenshots of Mr Hurlston’s exchanges with people other than Ms Sehr and posts on his Twitter account under the name “Brendo Pervert” about people other than Ms Sehr; [none of these refer to Ms Sehr]
- (vvvvv) undated extracted comment by a user with the name Mouratidis “Rope is cheap and gravity is free all treasonous”; [it is not apparent what the context of the comment is]

Does the conduct amount to prohibited behaviour or stalking?

Prohibited behaviour

- 32 “Prohibited behaviour” is defined in **the Personal Safety Intervention Orders Act 2010** (Vic) as: assault; sexual assault; harassment; property damage or interference; or making a serious threat.²⁶ There is no allegation that Mr Hurlston engaged in assault, sexual assault, property damage or interference, or made a serious threat. Ms Sehr alleges the conduct amounted to harassment. “Harassment” is defined as “a course of conduct by a person towards another

²⁵ JCB 210
²⁶ Section 5 of the Act

person that is demeaning, derogatory or intimidating and includes such conduct that is carried on by or through a third person”.²⁷

- 33 The behaviour was a course of conduct that was, at least at times, demeaning and derogatory. That is sufficient to amount to prohibited behaviour.

Stalking

- 34 “Stalking”, for the purposes of the Act, requires a person, A, to engage in a course of conduct towards another person, B, that has particular defined characteristics, and which the person intends or believes or ought to understand will probably cause physical or mental harm, including self-harm, or apprehension or fear in B for B’s own safety or that of any other person.²⁸

- 35 There is no dispute that Mr Hurlston engaged in a course of conduct, which included publishing on the internet.

- 36 The definition of stalking also requires an intention to cause physical or mental harm or arouse fear in a person for their own safety. For the purposes of the Act, a person intends to cause physical or mental harm, or to arouse fear of a second person’s own safety, if the person knows, or ought to have understood, that the conduct would be likely to cause such harm or arouse such fear.

- 37 “Mental harm” is exhaustively defined as “grief, anxiety, distress or trauma” at s4 of the Act. However that definition is expanded at s10 in relation to stalking to include psychological harm and suicidal thoughts. It is difficult to understand how the exhaustive definition at s4 is materially expanded by the inclusive definition at s10, given that ordinarily one would imagine that suicidal thoughts would cause distress and anxiety, as, most likely, would psychological harm.

- 38 Nevertheless, it is not open, on a plain reading of s10, to require psychological harm or suicidal thoughts in order to be satisfied that the elements of stalking were

²⁷ Section 7 of the Act

²⁸ Section 10 of the Act

satisfied. Grief, distress, anxiety and trauma also satisfy the definition of mental harm for the purposes of s10.

39 I deal with the element of intention below.

Is the power of the Court to make a final order invoked?

40 In relation to prohibited behaviour, the power of the Court to make a final order requires the Court to be satisfied on the balance of probabilities that the respondent has committed prohibited behaviour and is likely to continue to do so or do so again, *and* the respondent's prohibited behaviour would cause a reasonable person to fear for his or her safety; or has stalked the affected person and is likely to continue to do so or do so again.²⁹

41 That is, it was not open for the magistrate to make an order only because she was satisfied that Mr Hurlston's conduct amounted to harassment. She also had to be satisfied that his conduct would cause a reasonable person to fear for his or her safety.

42 Mr Hurlston submits there was no finding by the magistrate on this element.

43 Ms Sehr said the posts made her feel humiliated, belittled and intimidated. She felt they were untrue and conveyed misinformation. She felt she was unfairly targeted. She found the posts hurtful and distressing. She felt they were harassing. She felt she was being watched all the time and criticised unfairly. She felt they were deliberately designed to make her feel fear. She felt she was being mocked.

44 Ms Sehr said she believed she had been "surveilled" by Mr Hurlston's domestic partner when he drove past a property she owned. I am not satisfied it was open on the evidence for the magistrate to conclude that this conduct occurred at the behest of Mr Hurlston. The magistrate said she was "not giving much weight in

²⁹ Section 61 of the Act

relation to that particular part of the evidence in regard to ... the respondent in any event”.³⁰ In her reasons, the magistrate did not refer to Mr Gianfriddo’s conduct as surveillance, nor did she make a finding that this occurred at the behest of Mr Hurlston.

45 On only one occasion in her evidence did Ms Sehr refer to fear for her safety. She said that over the years Mr Hurlston had gone to “great lengths to humiliate, ... harass, ... belittle, and undermine me and make me fear for my safety”.³¹ She did not explain in what way she feared for her safety.

46 In any event, Ms Sehr’s subjective feelings about the prohibited behaviour are not relevant to the test, which required the magistrate be satisfied that the prohibited behaviour would cause a reasonable person to fear for his or her safety.

47 In the circumstances of this case, I can readily accept that Mr Hurlston was an enormous nuisance to Ms Sehr. I have no doubt that she felt he was unfair in his criticism and misinformed in his reporting. I accept that comments about her personal appearance, such as references to Cousin It and Miss Piggy, were hurtful.

48 I accept the posts could have made Ms Sehr feel that her actions and conduct, both as a councillor and in her professional life running a business and in making and selling gingerbread, which she described as a “hobby”, were being scrutinised and criticised. Mr Hurlston did not hold back his open criticism of Ms Sehr and many other members of council in his posts.

49 I accept the posts could have caused fear there would be further posts, that there would be further criticism and scrutiny and further hurtful comments made. Indeed, Ms Sehr gave evidence that she feared what would be posted next. That sort of fear, however, is not the same as a fear for one’s safety.

³⁰ T394, L5-8

³¹ T259, L14-16

- 50 It is impossible to consider the response of a putative “reasonable person” without regard to the context. The prohibited behaviour occurred in the context of Ms Sehr being a local councillor and mayor and Mr Hurlston being the publisher of a Facebook page devoted to scrutiny of that council, which included her actions as a councillor and mayor. While a reasonable person would be distressed, perhaps anxious, upset, frustrated, irritated and aggrieved, I am not persuaded that the prohibited behaviour of Mr Hurlston could have caused a reasonable person to fear for their safety. To the extent Mr Hurlston could be regarded as having made “threats”, they were very clearly threats to disclose information that would be politically or professional damaging, such as the VCAT contract. There was no threat to Ms Sehr’s safety.
- 51 As submitted by Mr Hurlston, the magistrate recited the test but did not make a finding as to whether a reasonable person would fear for their safety as a result of the prohibited conduct. Given that the magistrate’s reasons focused primarily on mental harm, I infer the magistrate determined that her power to make a final order arose because she was satisfied Mr Hurlston had stalked Ms Sehr rather than that she was satisfied that Mr Hurlston had engaged in prohibited behaviour which would have caused a reasonable person to fear for their safety.
- 52 The magistrate concluded that in all the circumstances Mr Hurlston not only ought to have understood that engaging in the course of conduct would be likely to cause mental harm or fear, but that he knew that it would cause mental harm and intended for it to do so.
- 53 The magistrate recited Ms Sehr’s evidence of experiencing anxiety, sleep disturbance, feeling monitored, shame, humiliation and persistent worry about what would be next, and made a finding that Ms Sehr was a credible witness. I infer she accepted Ms Sehr’s evidence about the distress and anxiety she experienced. Distress and anxiety are sufficient to amount to mental harm for the purposes of the definition of stalking under the Act.

- 54 The magistrate made adverse credit findings about Mr Hurlston. She said his expression of regret was “undercut by contradictory remarks under cross-examination”³² and his denial of intent, justification of harm and affirmation of the posts “suggested the expressions of remorse were not genuine but tactical. The pattern indicates an absence of sincere contrition and reinforces the view that the conduct was deliberately harmful”.³³ She considered his claimed purposes for publication to be inherently implausible given what she found to be the personal, gendered and targeted character of the publications.³⁴
- 55 The magistrate had the advantage of seeing the witnesses in person. However her findings were based on the substance of the evidence given by Mr Hurlston and Ms Sehr, rather than any particular characteristic in the manner in which they gave their evidence. In any event, while the magistrate had the advantage of hearing the evidence in person, this does not mean her conclusions about what the evidence demonstrated must be accepted without examination.
- 56 The magistrate said Mr Hurlston gave contradictory evidence under cross-examination which caused her to doubt the veracity of his limited expression of remorse. His attempts to justify and explain his conduct also demonstrated, to the magistrate’s satisfaction, that he had little or no remorse or contrition, and this supported a conclusion he intended to cause harm.
- 57 An intention to cause harm or fear for personal safety is an essential element an applicant must prove to establish stalking has occurred.
- 58 A lack of contrition or remorse, however, does not amount to an intention to deliberately cause mental harm, particularly in the circumstances of this case.

³² T554, L5-6
³³ T554, L8-11
³⁴ T555

- 59 A finding that a lack of remorse or contrition indicates an intention to have caused harm can only be made if the circumstances and the evidence supports such a finding.
- 60 In this case, I am not persuaded a lack of contrition or remorse is indicative of an intention to cause harm. Nor am I persuaded that a targeted, gendered or personal course of conduct demonstrates an actual intention to cause harm in the context of publication of news and current affairs, or engagement in political activity. Contrition or remorse cannot be the determinative indicator of intention.
- 61 The magistrate found that the language and images Mr Hurlston used was evidence of Mr Hurlston's ill will, spite and animosity towards Ms Sehr. In turn, it was his ill will, spite and animosity that caused the magistrate to conclude Mr Hurlston intended to cause Ms Sehr mental harm.
- 62 Mr Hurlston gave unchallenged evidence that there were four posts in particular that Ms Sehr had told him, through her counsel, she found deeply offensive. These were posts in relation to her whereabouts at the time of her mother's death. Mr Hurlston said:
- "... we [Ms Sehr's counsel] spoke in the hallway, I literally within 10 minutes deleted those posts because at that moment I realised I'd really upset her. ... and I looked at the words and I thought they were a poor choice of words indeed. And for me it was around not showing up, not being there, being paid, just answer the questions. It's public money, just answer the questions." ³⁵
- He said "I knew I had no obligation to remove them but I believed it would be decent, fair and respectful to just delete them. So I immediately did". ³⁶
- 63 He conceded, however, had he been told other posts were objectionable or that a particular level of exception had been taken to them, he would not necessarily have removed them. ³⁷

³⁵ T458, L24-30

³⁶ T467, L8-10

³⁷ T467

- 64 The fact that as a consequence of publication harm could be caused does not mean the publisher intended to cause that harm.
- 65 Other than Ms Sehr's personal belief that Mr Hurlston intended to cause her mental harm, she gave no evidence to support a finding of actual intention.
- 66 In the circumstances of this case, where Ms Sehr was a councillor and mayor and Mr Hurlston ran a website devoted to commentary about the council, it is not apparent to me from the reasons, nor from a careful review of the evidence, what evidence the magistrate relied on other than her finding Mr Hurlston displayed a lack of contrition or remorse, to conclude that Mr Hurlston had the requisite intention. Even if I were to accept the magistrate's characterisation of the images and language as demonstrating ill will, spite and animosity, I am not persuaded that establishes he had an actual intention to cause mental harm.
- 67 I am not satisfied Ms Sehr established that Mr Hurlston had an actual intention to cause harm.
- 68 However, intention can also be found if the magistrate was satisfied that, in all the particular circumstances, Mr Hurlston ought to have understood the conduct would be likely to cause harm and that harm was caused.
- 69 It was open to the magistrate to find Mr Hurlston ought to have understood that engaging in the course of conduct would be likely to cause distress and anxiety. Having accepted Ms Sehr's evidence about the distress and anxiety the course of conduct caused, it was open to the magistrate to find that Mr Hurlston had stalked Ms Sehr. This enlivened the power of the Court to make an order.
- 70 I pause here to note that under the very broad definition of stalking, where distress is sufficient to amount to mental harm and "intention" is satisfied if one could have understood that the conduct would be likely to cause distress, a great many journalists writing for mainstream publications about politics, law, crime, business

and even the arts, would be likely to be engaging in “stalking”. For example, a theatre reviewer who repeatedly negatively reviewed a performer “ought” to know that such a course of conduct would be likely to cause distress. This would appear to be a far cry from the main purposes of the Act, which are to protect the safety of victims of assault, sexual assault, harassment, property damage or interference with property, stalking and serious threats, and to promote and assist in the resolution of disputes through mediation.

- 71 Nevertheless, the legislation provides an extremely broad definition which must be applied. Those journalists who do fall within the definition of stalking under s10 must rely on the operation of s61(4) to ensure they can continue to do their jobs without the imposition of an intervention order upon them.

Were Mr Hurlston’s communications made in the normal course of a lawful publishing business or for the purpose of engaging in political activities or communicating with respect to public affairs?

- 72 The Act provides that the Court must not make a final order if satisfied on the balance of probabilities that the respondent engaged in the prohibited behaviour or stalking without malice:

- (a) in the normal course of a lawful business, trade, profession or enterprise, including that of any body or person whose business, or principal business, is the publication or arranging for the publication of news and current affairs material; or
- (b) for the purpose of an industrial dispute; or
- (c) for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.³⁸

- 73 The magistrate accepted that the course of conduct had been engaged in, in the normal course of a lawful business, being the publication of news or current affairs

³⁸ Section 61(4) of the Act

material, or for the purpose of engaging in political activities or discussion or communicating with respect to public affairs.

74 The parties do not seek to litigate that point in this court. Ms Sehr submits that while the Court is invited to assume that the s61(4) categories are satisfied and to proceed directly to the question of malice, the general character of Council Watch's publication is not an answer to the purpose enquiry.³⁹

75 Mr Hurlston accepts that, on a broad re-hearing, this court must satisfy itself that the course of conduct falls within the s61(4) categories.

76 Given there is little contention on this point it suffices to say the evidence establishes:

- (a) Mr Hurlston ran a lawful business, Council Watch, which published a Facebook page devoted to individual councils, including Stonnington Council;
- (b) the purpose of those Facebook pages was to publish news and current affairs about local councils;
- (c) in the course of publishing those Facebook pages he also engaged in political discussion and communicated with respect to public affairs.

77 Aside from his publications on Stonnington Council Watch, Mr Hurlston also engaged in text message exchanges with Ms Sehr, some of which were civil and even complimentary and some of which were not. These messages related to council affairs. Some of them were seeking comments or explanations from her, some of them were "threatening" in the sense of telling her that a certain candidate would "wipe the floor" with her in the election or inferred that he would use Freedom of Information legislation to make disclosures about her. These were directed to

³⁹ Ms Sehr's submissions, page 4 at paragraph [9]

her in her capacity as a councillor or as mayor and as such were for the purposes of engaging in political activity.

78 Separately from the publications on Stonnington Council Watch, Mr Hurlston posted comments on other social media sites under various identities. These were not about Ms Sehr, with the exception of one comment posted by an apparent alias “dino_andrew123”. It is not clear to me what this comment is intended to mean, but in any event it also relates to council activity and would fall within the definition of engaging in political activities or discussing or communicating with respect to public affairs.

79 To the extent Mr Hurlston posted about other people, or sent text messages to other people, the evidence does not disclose that any of that conduct was about Ms Sehr. That conduct may say much about Mr Hurlston’s character, but it cannot form part of the course of conduct in relation to Ms Sehr.

80 Mr Hurlston engaged in the course of conduct in the normal course of a lawful news business and for the purpose of engaging in political activity or discussing public affairs.

What does “malice” mean in this context?

81 Malice is not defined in the legislation.

82 The legislature intended to preclude the making of an intervention order in certain circumstances, even where prohibited behaviour or stalking has occurred. By including the words “without malice”, the legislature ensured that the protection afforded by s61(4) would be contained. Engaging in a lawful news business, an industrial dispute or political activity will be insufficient to prevent a final order being made unless the prohibited behaviour or stalking was engaged in without malice.

83 Mr Hurlston submits that malice is an intention to inflict mental harm on the person as an end in itself, divorced from any political objective.

- 84 Ms Sehr accepts that an intention to cause political damage, without more, is not an improper purpose but submits it is not appropriate to divorce malice from a political objective. A political objective may be in play but does not preclude the conduct from being malicious.
- 85 Some assistance as to the meaning of malice can be obtained from defamation law. The publisher of a defamatory imputation has a defence if the publication was published on an occasion of qualified privilege. Qualified privilege is said to exist where the publisher has a duty, and the consumers of the publication have an interest, in the imputations said to be conveyed. As truth is a complete defence, where a qualified privilege defence is relied on the imputations are either not true or their truth cannot be proved.
- 86 An important constraint on the protection afforded by a qualified privilege defence is that it is undone where it can be shown that the publisher acted with malice.
- 87 In *Roberts v Bass*⁴⁰ the High Court said the privileged occasion must not be used for a purpose or motive “foreign to the duty or interest that protects the making of the statement”.⁴¹ The High Court went on to say that ill will, recklessness, bias and prejudice may be a basis for drawing an inference that a defendant was actuated by an improper motive. However, with the exception of actual knowledge of falsity “mere proof of the defendant’s ill-will, prejudice, bias, recklessness, lack of belief in truth or improper motive is not sufficient to establish malice”.⁴² A finding of malice requires evidence that the ill will, prejudice, bias, recklessness, lack of belief in truth or improper motive existed *and* actuated the publication.
- 88 Malice requires that there be an improper motive (or ill-will, bias *et al*) *and* that the improper motive be the actuating motive for the publication. The existence of an improper motive alone is insufficient to establish malice.

⁴⁰ (2002) 212 CLR 1 (“*Bass*”)

⁴¹ *Bass* at 30, paragraph [75]

⁴² *Bass* at 31, paragraph [76]

- 89 Knowing something is not true and publishing anyway would usually be sufficient to prove the existence of malice as there is unlikely to be a duty to or interest in false information. [The High Court however pointed to the occasion of police officers who are bound to report statements concerning other police officers to their superiors, even if they know the statements to be false. The purpose of publishing the statements is not actuated by the knowledge of falsity and therefore the privilege is not lost.]
- 90 Conversely, even a belief that the information is true will not protect a publisher if the publication was actuated by a motive foreign to the privileged occasion.⁴³
- 91 In the context of the Act, the protection provided by the s61(4) categories applies only where a person engages in prohibited behaviour or stalking without malice. Malice, in the sense intended by the Act, requires both the existence of an improper motive, *and* that the improper motive actuated the conduct. That is, mere ill-will, prejudice, bias or recklessness is insufficient.
- 92 Ms Sehr submits the existence of a political purpose is insufficient to prove the publication was without malice. That is correct, just as the existence of ill will is insufficient to establish malice. What must be proved is improper purpose. In this case, I must be satisfied that the dominant purpose of the publications was Mr Hurlston's ill will, hostility, spite and animosity or other improper motive.

Do the facts establish malice?

- 93 Ms Sehr says the facts establish malice because:
- (a) the magistrate found Mr Hurlston knew and intended his conduct to cause mental harm;
 - (b) Ms Sehr was found to be credible and Mr Hurlston was found not to be a credible witness;

⁴³ *Ibid*

- (c) the magistrate's finding of intention to inflict mental harm demonstrates malice;
- (d) there was escalation in the conduct which shows Mr Hurlston's purpose in publishing about Ms Sehr changed, because he had a grievance towards her which he was ventilating;
- (e) Mr Hurlston sent private messages to Ms Sehr which were "taunting, personal and ... carrying an unmistakably menacing edge";⁴⁴
- (f) Mr Hurlston admitted holding a personal grievance against Ms Sehr which on his own account justified retribution;
- (g) he continued to post after being served with the application for an intervention order and showed no remorse.

94 I have dealt already with the magistrate's findings in relation to Mr Hurlston's credit.

95 However, even if Mr Hurlston did have an actual intention to cause mental harm, that would not amount to malice unless it was the actuating purpose of the publications.

96 I accept Ms Sehr's submission that the existence of any political purpose whatsoever is insufficient to defeat a finding of malice. The crucial test is whether the improper motive was the dominant or actuating motive for the publication. If so, that would be an improper purpose. If the dominant reason for publication was to cause mental harm, that would be an improper purpose.

97 If the primary or actuating purpose was to cause political harm, even if Mr Hurlston did have ill will toward Ms Sehr, then that is the very motive that is protected by the operation of s61(4)(c) and could not be said to be an improper purpose.

⁴⁴ Ms Sehr's submissions at pages 12-13, paragraph [30]

98 To determine whether the actuating motive for publication was improper, the evidence must be carefully examined.

99 The evidence from Ms Sehr and Mr Hurlston is not particularly helpful in this endeavour. Ms Sehr made assertions as to Mr Hurlston's motives for his publication. The magistrate found the derogatory names and images established ill will, spite and animosity "crossed the line" from fair commentary. She found that "targeted ridicule" was the actuating cause of the publications.

100 The magistrate ruled that:

"Political commentary in the course of publishing news or current affairs material or for the purpose of engaging in political activities or discussion or communicating with respect to public affairs bears the following hallmarks. Focused on policy, issue based communication, criticism of a candidate's political stance." ⁴⁵

101 These might be the desirable hallmark of political commentary, but this is too narrow a definition to apply to s61(4). The personal integrity of politicians, quite apart from their policy positions, is a legitimate subject for news and current affairs. The manner in which a politician engages with staff is a legitimate subject which is not related to policy, political stance or issues-based communication. Personal disclosure of interest is a legitimate subject for news and current affairs. The fact that in publishing about those matters language and images are used that are derogatory, demeaning, even offensive, does not necessarily establish there was an improper purpose.

102 Ms Sehr submitted it was Mr Hurlston's onus to establish that the publications were published "without malice" and that if he was unable to do so on the balance of probabilities, then he could not be afforded the protection of s61(4).

103 In *Smit & Yemini v Simon* ⁴⁶ the magistrate held that once a respondent pointed to evidence that s61(4) was engaged the onus to establish malice was displaced to

⁴⁵ T555, L20-26
⁴⁶ [2022] VMC 29

the applicant. Ms Sehr submits this approach is not binding on this court and should not be followed.

104 This approach follows the established practice in defamation law where the defence of qualified privilege is defeated by a finding of malice. In defamation, the onus to prove malice must land on the plaintiff, as it defeats a defence.

105 I agree with Ms Sehr that this approach is not necessarily applicable to the Act. In any event, I agree with both parties that it does not matter who bears the onus because the outcome is the same. I must be satisfied that Mr Hurlston engaged in stalking without malice, meaning an improper purpose.

106 Mr Hurlston accepted that his Facebook page and publications were “100 per cent tabloid”. He said, “its salacious” and “it is not designed to be boring information”.⁴⁷ He said, “talking from a tabloid point of view” it is meant to be “gossipy in some parts” and to “get the community engaged in an issue”.⁴⁸ He said it was challenging to get the community to engage with an issue at all, and that using mocking commentary and satire is a deliberate choice to drive engagement. He said it was “offensive at time[s]” and “rude, blunt, crass”.⁴⁹ He said the purpose was “to agitate”⁵⁰ in order to drive engagement with the issues. I accept the submission of Mr Hurlston’s counsel that what is in issue in this case is Mr Hurlston’s conduct, not the conduct of commenters. This is not a defamation case where Mr Hurlston is liable as a publisher for the comments of others on his site.

107 The reason I summarised the documents in evidence in considerable detail is because they demonstrate, overwhelmingly in my view, a continuity of purpose. That purpose is the ventilation of matters of local concern to residents of Stonnington, a concern with council governance and his personal views about what has not been done well, or properly by the council. His posts criticise Ms

⁴⁷ T339, L26-29

⁴⁸ T340, L9-11

⁴⁹ T349, L11

⁵⁰ T384, L30-31

Sehr and many others. Indeed on the limited range of posts in evidence he seems to criticise most, if not all, councillors.

- 108 The specific images posted by Mr Hurlston that could be said to be demeaning or derogatory are the image of Miss Piggy, and the image of the cartoon woman which was characterised by the parties as a stereotypical housewife.
- 109 Mr Hurlston gave evidence that the Miss Piggy image was a reference to Ms Sehr and Mr Humphries being “muppets”, a common derogatory term in politics. It was other commenters who made reference to Ms Sehr’s weight. Notwithstanding Ms Sehr’s feelings of hurt, humiliation and distress, I am not persuaded the evidence establishes that the primary motive was something other than an expression of his political opinion that the mayor and her deputy mayor were not up to the job, a view he expressed many times in many posts. The evidence does not support a finding that the actuating motive was to cause Ms Sehr mental harm.
- 110 The cartoon image appears to be a reference to Ms Sehr’s “Gingerbread Queen” hobby. To the extent that it is intended to portray Ms Sehr in any particular way, for example as a curvaceous housewife, it does not substantially differ from many thousands of offensive political caricatures that could also cause hurt, distress and humiliation. Women in public life generally and politics in particular are often unfairly targeted in relation to their appearance. While one might bemoan this sorry state of affairs it is not a state of affairs that the Act was intended to address.
- 111 Ms Sehr said that the repeated use of photographs of her with gingerbread was intended to belittle and humiliate her and to denigrate a hobby that she engaged in for two weeks each year with her son. Mr Hurlston may have belittled and humiliated Ms Sehr about her hobby, but that does not establish that was the actuating motive. An examination of the posts demonstrates that the images of Ms Sehr holding her gingerbread houses are used in conjunction with discussion about whether Ms Sehr is properly performing her mayoral duties. Those

photographs are colourful and eye-catching and serve as a shorthand for his plainly critical stance on Ms Sehr in her role as mayor. Whether or not the role of mayor is intended to be fulltime, it is clear from Mr Hurlston's commentary that he considers the salary attached to the mayoralty requires it to be performed fulltime. His actuating motive was, I am satisfied, the publication of news and current affairs, political discussion or a matter of public interest.

- 112 Mr Hurlston's "Where's Wally" posts and the post about Ms Sehr "weaponizing" her mother's death were certainly insensitive given they occurred during a period of absence occasioned by the death of Ms Sehr's mother. However they did raise a real question about the extent to which an elected official needs to be accountable to the electorate for unexplained absence. This does not diminish the hurt and distress the posts caused Ms Sehr at a very sad point in her life. Again, however, this is not the sort of matter the Act was intended to address. The fact that those posts occurred at a sensitive time for Ms Sehr does not establish that the actuating motive was something other than a matter of genuine public interest, notwithstanding that Ms Sehr may have experienced them as a personal attack. Mr Hurlston clearly was not aware that Ms Sehr's mother had died. It is difficult to see how his actuating motive in those publications could have been something other in the normal course of publishing news or current affairs, or for the purpose of engaging in political activity or communicating with respect to public affairs.
- 113 The posts about VCAT, which Ms Sehr says were false, and caused her financial and reputational harm, again were matters of public interest, as the magistrate appeared to accept. The fact that the publicly available disclosure was incorrect raised legitimate questions as to whether proper procedures had been followed.
- 114 The fact Mr Hurlston may hold a personal grievance or have an improper motive is not sufficient in this context to establish malice. I have already rejected the notion that a lack of remorse establishes intention. I also reject that a lack of remorse establishes the actuating motive was something other than a purpose

protected under the Act. The fact Mr Hurlston continued to post after he was served with the application for the Intervention Order does not persuade me that he had an improper purpose for publication.

115 An “intention to embarrass Ms Sehr over the VCAT contract, to ridicule her performance of her mayoral duties, to diminish her public standing and even to drive her from office” is the protected purpose itself.⁵¹ Mr Hurlston may not abide by a journalistic code of conduct in relation to fair and balanced commentary. I do not understand that he pretends to. This does not mean he is not entitled to the protection afforded by s61(4).

116 To the extent his political grievances caused him to harbour personal ill will or hostility to Ms Sehr, that is insufficient to establish an improper purpose. It is permissible for Mr Hurlston to publish, filled with ill will, animosity, spite and hostility if the actuating motive for the publication is not improper.

117 The comments section on at least two occasions provides some insight into Mr Hurlston’s motive. On one occasion he clarifies he is not blaming her for crime, rather for inaction. Had his intention been simply to vilify Ms Sehr he could have let the comments section rage unchecked. On another occasion he corrects a commenter who posted she was employed by a major law firm. Had he simply wanted to cause her maximum damage, he could well have left that comment uncorrected. His clarification demonstrated that while he may have harboured ill will toward Ms Sehr he was not prepared to let something he knew to be false stand uncorrected. This supports an inference against a finding of malice.

118 As Kirby J observed about Australian political commentary:

“One might wish for more rationality, less superficiality, diminished invective and increased logic and persuasion in political discourse. But those of that view must find another homeland. From its earliest history, Australian

⁵¹ Mr Hurlston’s submissions dated 17 August 2026 at page 8, paragraph [23]

politics has regularly included insult and emotion, calumny and invective, in its armoury of persuasion.”⁵²

119 After careful review of the entirety of the evidence and transcript, I am satisfied the facts establish that Mr Hurlston engaged in the behaviour without malice, that is, that the actuating motive was the publication of news and current affairs and the discussion of political matters or matters of public interest.

Should the application have been dismissed?

120 It follows from my findings that, by reason of s61(4), the Order should not have been made. The section mandates that the court must not make an order if satisfied on the balance of probabilities that the respondent engaged in the prohibited behaviour or stalking without malice in the normal course of publication of news or current affair, or for the purpose of engaging in political activity or discussing public affairs.

121 I am satisfied the evidence discloses that Mr Hurlston acted without an improper purpose, which is how I have found malice must be defined.

122 The Court must not therefore have made an order.

123 Pursuant to s119 of the Act, the Court may on appeal confirm, set aside or vary the relevant decision.

124 It follows from my reasons that I set the decision of the Magistrates’ Court aside.

Orders:

125 I make the following orders:

126 The decision of the magistrate on 1 July 2025 is set aside.

127 I direct that the Registrar of the County Court of Victoria notify the Registrar of the Magistrates’ Court of Victoria of the outcome of this appeal.

⁵² *Coleman v Power* (2004) 220 CLR 1 at 91, paragraph [239]

128 A copy of this decision is to be provided to the Registrar of the Magistrates' Court of Victoria.
