

IN THE MATTER OF AN APPLICATION FOR AN INTERNAL ARBITRATION PROCESS

WYNDHAM CITY COUNCIL

IAP 2025-25

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

Applicant: Councillor Robert Szatkowski
Respondent: Councillor Josh Gilligan
Date of hearing: Tuesday, 3 February 2026
Place of hearing: Wyndham City Council, 45 Princes Highway, Werribee
Arbiter: Simon Heath

DETERMINATION:

Councillor Szatkowski has made Application for an Internal Arbitration Process seeking a finding of misconduct against Councillor Gilligan. The finding is sought in relation to a post on Councillor Gilligan's Facebook page on 18 September 2025. The post is set out below.

I determine that the post constitutes a failure by Councillor Gilligan to comply with the 'Model Councillor Code of Conduct' and, as such, make a finding of misconduct against him.

I direct that Councillor Gilligan make a written apology to Ms Kim McAliney for the post.

I also direct that Councillor Gilligan be suspended from the office of Councillor for a period of one month.

STATEMENT OF REASONS

The Application

1. The 'Application for an Internal Arbitration Process' is dated 7 November 2025 (**Application**).
2. In the Application, the Applicant seeks a finding of misconduct against the Respondent in relation to alleged breaches of the 'Model Councillor Code of Conduct' (**Code**).
3. The alleged breaches of the Code are contained in a post by the Respondent on his Facebook page on 18 September 2025 (**post**). The post, headed "Cr Josh's Post", was as follows:

"This raging lunatic recently proclaimed she won't pay her council rates (which is illegal) sprouting anti-government propaganda you usually see from the sovereign citizen movement.

Not satisfied anyone was listening to her, she has now decided to see what column coverage she could get as a "former Wyndham Mayor".

She resigned abruptly in 2020. You'll note Wyndham City was noticeably quiet at the time of her resignation. No written statement. In my opinion, rightly so.

Why? Well I'll be bringing a Notice of Motion at our October meeting to release confidential minutes to reveal one of the suspected contributory factors, given Ms McAliney loves to throw around words like good governance, transparency and integrity.

Ms McAliney, in my opinion, resigned because of the shame she brought upon herself.

Notably, the article fails to point out Ms McAliney was a paid staffer of the former Labor MP for Werribee and has a history of being named, in Parliament, for engaging in destabilising conduct with councillors she didn't like."

4. The Applicant alleges that in making the post, the Respondent breached the standards of conduct (**Standards**) included in the Code relating to 'Behaviours' and 'Integrity'. Details of those standards are set out below.

Arbiter's jurisdiction

5. I was appointed pursuant to sections 144 and 149 of the *Local Government Act 2020 (Act)*.
6. Section 143 of the Act provides that an Arbiter may hear an application that alleges misconduct by a Councillor.
7. Section 143(3) of the Act provides that an Application "must be made within 3 months of the alleged misconduct occurring". The alleged misconduct occurred on 18 September 2025 so this requirement is satisfied.
8. Pursuant to section 147 of the Act, an Arbiter may determine whether or not a Councillor has engaged in misconduct.
9. "Misconduct" is defined in Section 3 of the Act as follows:
"... any breach by a Councillor of the Model Councillor Code of Conduct".
10. Section 139(3)(b) of the Act specifies that the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions are to be included in the Code.
11. The Code is set out in Schedule 1 to the *Local Government (Governance and Integrity) Amendment Regulations 2020*.
12. As required by section 139(4) of the Act, the Code is published on the Council's website, and a copy thereof is attached as Annexure A.

Hearing

13. The internal arbitration process comprised directions made on 12 December 2025, a video-conference directions hearing on 16 December 2025, and an in-person hearing on 3 February 2026.

Applicant's evidence

14. The Applicant's evidence comprised the Application and six Annexures, which included a copy of the post as well as a Statutory Declaration of Kim McAliney declared on 2 November 2025 (**Declaration**).
15. The Applicant gave oral evidence and made submissions at the hearing.

Respondent's evidence

16. The Respondent's evidence comprised a written response to the Application titled "Respondent submission" which annexed supporting documents most of which were copy emails.
17. The Respondent also gave oral evidence and made submissions at the hearing.

Arbiter's findings

18. I determine that the Respondent breached clauses 2(1)(a) and 4(1)(a) of the Standards included in the Code.

Arbiter's reasons

19. The post relates to Ms McAliney, a former Councillor and three-term Mayor of Wyndham City Council.
20. The Applicant alleges that the post constitutes misconduct by the Respondent particularly by reason of:
 - (a) Ms McAliney being labelled as a "raging lunatic";
 - (b) the assertion that Ms McAliney was "sprouting anti-government propaganda you usually see from the sovereign citizen movement"; and,
 - (c) the reference to a foreshadowed application for the release of "confidential minutes" containing "suspected contributory factors" relating to Ms McAliney's resignation.
21. While the Respondent says that he removed the post prior to the Application, it is important to note that the post remained on a public page for at least three days and possibly as many as five days. Further, no explanation was provided on the page as why the post had been deleted.
22. As the post was also covered by "Wyndham TV", it is likely to have been read by many residents.

23. I accept the matters contained in the Declaration and therefore did not require further evidence from Ms McAliney.
24. In particular, I accept that the post caused Ms McAliney considerable distress because of what Ms McAliney describes as "offensive" and "derogatory" comments by the Respondent. In addition to being called a "lunatic", I accept that being linked to the sovereign citizen movement was upsetting to Ms McAliney. Ms McAliney is the widow of a deceased police officer and the post was just over three weeks after a claimed member of that movement had allegedly killed two police officers and seriously injured a third.
25. No evidence was provided to indicate that Ms McAliney's resignation from Council over five years ago was for inappropriate reasons. In this regard, it is to be noted that despite his stated intention to do so, the Respondent did not pursue an application for the release of "confidential minutes" he refers to in the post.
26. The Respondent submitted that the post was justifiable in the context of Ms McAliney being:
- (a) a "political activist" with "factional alignments";
 - (b) part of a group which has attacked him "personally and reputationally" for "half a decade";
 - (c) an opponent to his mayoralty and a challenger in an election; and,
 - (d) someone who has shown "obsessive behaviour" towards him.
27. I do not accept that any of these reasons justify the contents of the post.
28. The Respondent misguidedly sought to justify the post by saying that it contained his opinion and was not made "on behalf of the Council". The post was clearly made as a Councillor and therefore the Respondent is required to comply with the Standards.
29. The "supporting material" supplied with the Respondent in response to the Application shows that while he and Ms McAliney may have differing views on several issues, their exchanges appear to fall within his performance of the role of Councillor.
30. I do not accept the Respondent's contention that the post constituted "robust public debate".
31. Clause 2 of the Standards relates to 'Behaviours' and requires that:
- '(1) A Councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect including by-*
- (a) not engaging in demeaning, abusive, obscene or threatening behaviour ...'*
32. Referring to Ms McAliney as a 'raging lunatic' is belittling, demeaning, abusive and insulting. I find this to be a failure by the Respondent to treat a "member of the public" with "dignity, fairness, objectivity, courtesy and respect" and therefore a breach of Clause 2(1) of the Standards.

33. The Respondent's assertion that Ms McAliney's use of "former Wyndham Mayor" simply to gain "column coverage" is discourteous and disrespectful. The term is factually correct.
34. The Respondent could have indicated that he had concerns with Ms McAliney's indication that she would not pay rates if private security patrols were paid. I find however that asserting that Ms McAliney was 'sprouting anti-government propaganda you usually see from the sovereign citizen movement' was also a failure by the Respondent to treat Ms McAliney with "dignity, fairness, objectivity, courtesy and respect".
35. Clause 4 of the Standards relates to 'Integrity' and includes the following:
- '(1) A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by-*
- (a) ensuring that their behaviour does not bring discredit upon the Council; and*
- (b) not deliberately misleading the Council or the public about any matter related to the performance of their public duties ...'.*
36. Ms McAliney describes the Respondent's assertion that she resigned "because of the shame she brought upon herself" as "wholly inaccurate". The Respondent's insinuation that the Council holds "confidential minutes" containing compromising material in relation to 'one' of the reasons Ms McAliney resigned, may "diminish the public's trust and confidence in the integrity of local government". As such, I find that the Respondent has also breached Clause 4(1) of the Standards.
37. In view of my finding(s) of misconduct against him, pursuant to section 147(2)(a) of the Act, I direct that the Respondent provide a written apology to Ms McAliney which acknowledges and apologizes for the post which failed to treat her with "dignity, fairness, objectivity, courtesy and respect" and that he regrets any distressed caused (**apology**).
38. The apology is to be published on the Respondent's "Cr Josh Gilligan" Facebook page within 72 hours after the Arbiter's decision is tabled at the next Council meeting, presently scheduled for 24 February 2026. The apology is to remain for a period of not less than 30 days.
39. The Applicant provided a copy of a Determination by Arbiter Dr Lily O'Neill in two Applications for Internal Arbitration Process against the Respondent in 2022. While no finding of misconduct against the Respondent was made in one of the Applications, there was a finding in the other because the Respondent failed to treat another Councillor with "dignity, fairness, objectivity, courtesy and respect".
40. The learned Arbiter exercised the discretion provided in section 147(2) of the Act not to sanction the Respondent despite the misconduct finding but relevantly to this Application commented as follows:
- "I (therefore) do not think it is appropriate that he be sanctioned in this instance. If this behaviour continued towards residents into the future, a sanction would be appropriate".*

41. Unfortunately, as the Respondent has not tempered his behaviour or language, pursuant to section 147(2)(b) of the Act, I also suspend the Respondent from the office of Councillor for a period of one month. The suspension is to take effect the day after this determination and statement of reasons is tabled at the next Council meeting, (presently scheduled for 24 February 2026), or on 25 February 2026, whichever is sooner.

Simon Heath

Arbiter

Dated: 13 February 2026

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Model Councillor Code of Conduct

Local Government (Governance and Integrity) Amendment
Regulations 2024

Model Councillor Code of Conduct

Schedule 1 of the Local Government (Governance and Integrity) Amendment Regulations 2024

Definitions

In this Schedule—

discrimination means unfair or unfavourable treatment of a person on the grounds of an attribute specified in section 6 of the **Equal Opportunity Act 2010**.

Standards of Conduct

1. Performing the role of a Councillor

A Councillor must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by—

- (a) representing the interests of the municipal community by considering and being responsive to the diversity of interests and needs of the municipal community; and
- (b) being fit to perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (c) diligently using Council processes to become informed about matters which are subject to Council decisions; and
- (d) not performing or purporting to perform any responsibilities or functions of the Chief Executive Officer; and
- (e) acknowledging and supporting the Mayor in the performance of the role of the Mayor, including by—
 - (i) respecting and complying with a ruling of the Mayor as the chair of Council meetings (unless dissenting from the ruling in accordance with the Council's Governance Rules); and
 - (ii) refraining from making public comment, including to the media, that could reasonably be perceived to be an official comment on behalf of the Council where the Councillor has not been authorised by the Mayor to make such a comment.

2. Behaviours

- (1) A Councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect, including by—

- (a) not engaging in demeaning, abusive, obscene or threatening behaviour, including where the behaviour is of a sexual nature; and
 - (b) not engaging in behaviour that intentionally causes or perpetuates stigma, stereotyping, prejudice or aggression against a person or class of persons; and
 - (c) not engaging in discrimination or vilification; and
 - (d) supporting the Council, when applying the Council's community engagement policy, to develop respectful relationships and partnerships with Traditional Owners, Aboriginal community controlled organisations and the Aboriginal community; and
 - (e) supporting the Council in fulfilling its obligation under the Act or any other Act (including the **Gender Equality Act 2020**) to achieve and promote gender equality; and
 - (f) ensuring their behaviours and interactions with children are in line with the Council's policies and procedures as a child safe organisation and obligations under the **Child Wellbeing and Safety Act 2005** to the extent that they apply to Councillors.
- (2) A Councillor, as an individual at the workplace, must take reasonable care for their own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons by—
- (a) adhering to applicable systems and policies put in place by the Chief Executive Officer to manage risks to health and safety in the workplace; and
 - (b) complying, so far as the Councillor is reasonably able, with any reasonable instruction that is given by the Chief Executive Officer to manage risks to health and safety.
- (3) A Councillor must act in accordance with any policies, practices and protocols developed and implemented under section 46 of the Act that support arrangements for interactions between members of Council staff and Councillors.

3. Good governance

A Councillor must comply with the following Council policies and procedures required for delivering good governance for the benefit and wellbeing of the municipal community—

- (a) the Council's expenses policy adopted and maintained under section 41 of the Act;

- (b) the Council's Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act, including in relation to—
 - (i) conduct in Council meetings or meetings of delegated committees; and
 - (ii) requesting and approval of attendance at Council meetings and meetings of delegated committees by electronic means of communication; and
 - (iii) the Council's election period policy included in the Council's Governance Rules under section 69 of the Act, including in ensuring that Council resources are not used in a way that is intended to influence, or is likely to influence, voting at a general election or by-election;
- (c) the Council's Councillor gift policy adopted under section 138 of the Act;
- (d) any direction of the Minister given under section 175 of the Act.

4. Integrity

- (1) A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by—
 - (a) ensuring that their behaviour does not bring discredit upon the Council; and
 - (b) not deliberately misleading the Council or the public about any matter related to the performance of their public duties; and
 - (c) not making Council information publicly available where public availability of the information would be contrary to the public interest.

Note

See the public transparency principles set out in section 58 of the Act.

- (2) A Councillor must not, in their personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), expressly or impliedly request preferential treatment for themselves or a related person or entity.

5. The Model Councillor Code of Conduct does not limit robust public debate

Nothing in the Model Councillor Code of Conduct is intended to limit, restrict or detract from robust public debate of issues in a democracy.

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