



Local Government Standards Panel

Complaint Number	20240354
Legislation	<i>Local Government Act 1995</i>
Complainant	Councillor Ben Hodsdon
Respondent	Mayor Fiona Argyle
Local Government	City of Nedlands
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> Regulation 34D of the <i>Local Government (Administration) Regulations 1996</i>
Panel Members	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Renee McLennan (Member)
Heard	14 March 2024 Determined on the documents
Finding	1 x Breach Regulation 18 No breach of Regulation 34D

FINDING AND REASONS FOR FINDING

29 April 2024

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.



Summary of the Panel's decision

1. On 14 March 2024, the Panel found that Mayor Fiona Argyle, the Mayor of the City of Nedlands (**"the City"**):
 - a. did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* (**"the Regulations"**); and
 - b. did not commit a minor breach pursuant to the Act and Regulation 34D of the *Local Government (Administration) Regulations 1996* (**"the Administration Regulations"**),

when she made certain comments in a social media Post that was further reported in the media as further set out in paragraph 17 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
6. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.¹
7. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
8. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate²; and

¹ Section 5.106 of the Act

² *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1



- b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding³.
9. The Panel does not possess investigative or supervisory powers.⁴ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.
10. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
11. The Panel also must have regard to the general interests of local government in Western Australia⁵.
12. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Jurisdiction and Procedural Fairness

13. On 8 February 2024 the Panel received a complaint from Mr Tony Free acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 2 February 2024.
14. In the Complaint of Minor Breach Form the Complainant has alleged that, Mayor Argyle has breached:
 - a. Regulation 18 of the Regulations; and
 - b. Regulation 34D the Administration Regulations,when she made certain comments in a social media post that was further reported in a news article as further set out in paragraph 17 ("**the Complaint**").
15. The Panel convened on 14 March 2024 to consider the Complaint.
16. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Mayor Argyle was:
 - i. elected to the Council of the City in October 2023 for a term expiring in October 2027;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 14 March 2024;

³ Briginshaw v Briginshaw (1938) 60 CLR 336

⁴ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁵ Section 8(6) of Schedule 5.1 of the Act

- b. was satisfied the Complaint was made within six months after the alleged breach occurred⁶;
- c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁷;
- d. was satisfied the Department had provided procedural fairness to Mayor Argyle; and
- e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

17. The Complainant provided the following comments and arguments in respect to the Complaint as summarised by the Panel below:
 - a. Mayor Argyle posted name-calling and unsubstantiated claims and implied threats in hashtags in breach of Regulation 34D.
 - b. Mayor Argyle used the post to secure personal advantage, such as winning elections.
18. The Complainant provided an article from Perth Now in September 2023 as follows:



⁶ Section 5.107(4) and 5.109(2) of the Act

⁷ Section 5.107 and 5.109 of the Act



19. The text of the relevant Facebook Post is as follows:

" argyle4nedlands To the dinosaurs, who complaint about a good woman.

Please know that this woman is highly intelligent, hard-working, and does not need to be here! (Google it)

Please know this for me is service. Please know I work hundreds of hours every week for a community, whom I love and care about.

They deserve better!

Please know your days are numbered.

@argyle4nedlands

#hardworking

#womeninleadership

#womensupportingwomen

#dinosaurs

#getalife

#communityfirst

#argylefornedlands

#youwilldie

#shameonyou

#youdestroyeditforalllofus

("the Post")



The Respondent's Response

20. Despite being provide with an opportunity by the Department to address the Complaint in writing, Mayor Argyle did not provide a response to the Complaint.

PANEL'S CONSIDERATION

Regulation 18

21. Regulation 18 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

“ 18. Securing personal advantage or disadvantaging others

(1) A council member must not make improper use of their office —

(a) to gain, directly or indirectly, an advantage for the council member or any other person; or

(b) to cause detriment to the local government or any other person.

(2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.”

22. To make a finding of a minor breach of regulation 18(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Mayor Argyle was an elected member or a candidate at the time of the alleged breach and the time of the determination;
 - b. Mayor Argyle made use of her office as a Council member or candidate of the City;
 - c. when viewed objectively, such use was an improper use of M Mayor Argyle's office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
 - d. Either:
 - i. In respect to regulation 18(1)(a) - Mayor Argyle engaged in the conduct with the intention of gaining an advantage for herself or another party; and
 - ii. In respect to regulation 18(1)(b) - Mayor Argyle engaged in the conduct in the belief that detriment would be suffered by another person.



Code of Conduct

23. The City has a *Code of Conduct for Council Members, Committee Members and Candidates* adopted 27 April 2021 (“**the Code of Conduct**”) which governs the conduct of elected members.
24. A breach of the Code of Conduct may indicate that an elected member has acted improperly in breach of Regulation 18.
25. The relevant provisions of the Code of Conduct Code are as follows:

“ 4. Personal integrity

- (1) *A council member, committee member or candidate should —*
 - (a) *act with reasonable care and diligence; and*
 - (b) *act with honesty and integrity; and*
 - (c) *act lawfully; and*
 - (d) *identify and appropriately manage any conflict of interest; and*
 - (e) *avoid damage to the reputation of the local government.*
- ...

“5. Relationship with others

- (1) *A council member, committee member or candidate should —*
 - (a) *treat others with respect, courtesy and fairness; and*
 - (b) *respect and value diversity in the community.*
- (2) *A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.”*

“ 8. Personal integrity

- (1) *A council member, committee member or candidate —*
 - (a) *must ensure that their use of social media and other forms of communication complies with this code; and*
 - (b) *must only publish material that is factually correct.”*

“9. Relationship with others

- A council member, committee member or candidate —*
- (a) *must not bully or harass another person in any way; and*
 - (b) *must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and*
 - (c) *must not use offensive or derogatory language when referring to another person; and*



- (d) *must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and*
- (e) *must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.”*

Regulation 18

Mayor Argyle was an Elected Member or a candidate at the relevant times

- 26. Mayor Argyle was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
- 27. This element is met.

Mayor Argyle made use of her office as a Council Member or candidate for the City

- 28. Due to the facts that:
 - a. Mayor Argyle made the relevant Post on her election and councillor Facebook page which she consistently uses to communicate with her electorate;
 - b. the Post related to her election signage and advertising; and
 - c. Mayor Argyle was purporting to communicate with and guide the local municipality,

the Panel finds that it is more likely than not that Mayor Argyle was acting in her capacity as an elected member and made use of her office as a council member when undertaking the conduct.

- 29. This element is met.

Mayor Argyle's use was improper

- 30. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.
- 31. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent.
- 32. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as the councillor's formal role and responsibilities.
- 33. In the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is



- exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused⁸.
34. In this case, the Panel was provided with very little explanation as to the nature of the alleged breach, further Mayor Argyle did not provide any response or explanation. As such, the Panel has taken the same on face value in respect to the alleged Regulation breached.
 35. On review of the Post the Panel notes that the predominant problem issue with the Post are the hashtags used rather than the remaining contents. In particular *#getalife* *#youwilldie* *#shameonyou*.
 36. The Panel comments as follows in respect to those hashtags:
 - a. *#getalife* – although not particularly courteous, this sentiment can be characterised as imprudent rather than being improper.
 - b. *#youwilldie* – it is hard to characterise this hashtag as anything other than a direct insult and threat.
 - i. Despite the addition of the comment “...*your days are numbered*”, the Panel does not consider that Mayor Argyle actually wished to hurt the persons it was aimed at (the “dinosaurs”) or for them to come to any physical harm, and that the overarching sentiment was one that meant a “political death” of not being voted back in rather than any physical threat.
 - ii. Despite this, the wording used was entirely inappropriate within the context of an election when used towards other standing candidates, or their supporters.
 - c. *#shameonyou* – the Panel does not see this comment as improper in the context. It is perhaps discourteous at the highest level.
 37. It is clear that the Post came from a place of frustration. However, Mayor Argyle should have more carefully considered the hashtag she used in the context of the Post she was making.
 38. The Panel considers that the hashtag, in combination with the tone and content of the Post breaches the following terms of the Code of Conduct:
 - a. Clause 5(1)(a) to treat others with respect, courtesy and fairness - the hashtags were not courteous or respectful; and
 - b. Clause 8(1)(a) to ensure use of social media and other forms of communication complies with the Code.
 39. Given the above, the Panel finds that it is more likely than not that the use of the hashtag *#youwilldie* in the Post was improper as:
 - a. the conduct was in breach of the Code of Conduct;

⁸ Treby and Local Government Standards Panel [2010] WASAT 81 (at 31); Chew v The Queen (1992) 173 CLR 626 (at 640 - 641 [Dawson JJ]); R v Byrnes (1995) 183 CLR 501 – (at 514 - 515 [Brennan, Deane, Toohey and Gaudron JJ] and at 521 [McHugh J]).



- b. the conduct was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
- c. the conduct is deserving of a penalty.

40. This element is met.

Regulation 18(1)(a) Mayor Argyle intended to gain an advantage

- 41. The definitions of the noun ‘advantage’ in the Shorter Oxford English Dictionary (6th ed) include: a favouring circumstance; something which gives one a better position, benefit; increased well-being or convenience or pecuniary profit.
- 42. The Panel considers the term ‘advantage’ in regulation 18(1)(a) is to be construed widely, and includes a financial or a non-financial benefit, gain or profit, or any state, circumstance, opportunity or means specially favourable.⁹
- 43. It is not necessary to find whether any advantage actually gained¹⁰ but an intent to gain such advantage must be established.
- 44. Taking into account the relevant text of the Post and context, the Panel finds that it is more likely than not that:
 - a. a reasonable person would not consider the Post as an attempt to gain votes as alleged; and
 - b. there was no advantage intended to be gained by Mayor Argyle, but rather Mayor Argyle was attempting to berate the persons who the Post was aimed at.

45. This element is not met.

Regulation 18(1)(b) Mayor Argyle intended to cause a disadvantage

- 46. “Detriment” means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
- 47. It is not necessary to find whether any detriment was actually suffered, but an intent to cause such detriment must be established.
- 48. In this case the Panel considered that the purpose of the Post, when taken in its entirety and, in particular, the hashtag #youwilldie was intended to denigrate the persons it was aimed at and to call them out on what Mayor Argyle considered to be poor behaviour.

49. This element is met.

Conclusion

⁹ Complaint SP 12 and 13 of 2011

¹⁰ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



50. Given the above, the elements required to find a breach of regulation 18 of the Regulations have been met with respect to Regulation 18(1)(b).

Regulation 34D of the Administration Regulations

51. Regulation 34D of the Administration Regulations reads:

“(1) In this regulation —

“local law as to conduct” means a local law relating to conduct of people at council or committee meetings.

(2) The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.”

52. Section 5.105(1)(b) of the Act states as follows:

“A council member commits a minor breach if he or she contravenes

...

(b) a local law under this Act, contravention of which the regulations specify to be a minor breach.”

53. To make a finding of a minor breach of regulation 34D of the Administration Regulations the Panel must be satisfied, to the required standard, that:
- Mayor Argyle was a councillor at the time of the alleged breach and the time of the determination;
 - the conduct occurred during a council or committee meeting; and
 - Mayor Argyle breached a valid provision of local law as to conduct being the *City of Nedlands Standing Orders Local Law 2009 (“the Standing Orders”)*;

Allegation 8 - Panel’s Consideration – Regulation 34D

Mayor Argyle was a Councillor at the relevant times

54. Mayor Argyle was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.
55. This element is met.

Relevant Elements

56. A breach of section 34D of the Administration Regulations firstly requires that the relevant conduct took place at a Council or Committee meeting.
57. In this case the relevant conduct relates to a Facebook Post and, as such, a breach of this Regulation cannot be made out as the conduct does not fall under the scope of section 34D of the Administration Regulations.



Conclusion

58. The elements required to find a breach of regulation 34D of the Regulations have not been met.

PANEL'S FINDINGS

59. Mayor Argyle did commit a breach of Regulation 18 of the Regulations and therefore did commit a minor breach.
60. Mayor Argyle did not commit a breach of Regulation 34D of the Administration Regulations and therefore did not commit a minor breach.

Signing

Tim Fraser (Presiding Member)

Renee McClennan (Deputy Member)

Emma Power (Member)



Local Government Standards Panel

Complaint Number	20240354
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Councillor Ben Hodson
Respondent	Mayor Fiona Argyle
Local Government	City of Nedlands
Regulation	Regulation 18 <i>of the Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for Penalty Consideration	Ms Emma Power (Presiding Member) Ms Suleila Felton (Member) Ms Bronwyn Ife (Member)
Heard	14 March 2024 Determined on the documents
Penalty Considered	31 July 2024
Outcome	Public Apology

DECISION AND REASONS FOR DECISION

Delivered 21 August 2024

DEFAMATION CAUTION

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Introduction

1. At its meeting on 14 March 2024, the Panel found that Mayor Fiona Argyle, the mayor of the City of Nedlands (**“the City”**), committed a minor breach under the *Local Government Act 1995 (WA)* (**“the Act”**) and regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* (**“the Regulations”**) when she used certain improper hashtags on social media (**“the Minor Breach”**).

Jurisdiction and Law

- ii. The Panel convened on 31 July 2024 to consider how it should deal with the Minor Breaches.
- iii. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that on this date there was no available information to indicate that Mayor Argyle had ceased to be, or was disqualified from being, a councillor.
- iv. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
- v. By a letter dated 29 April 2024, Mayor Argyle was:
 - a. notified of the Panel’s finding of the Minor Breaches;
 - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
 - c. offered an opportunity to make submissions as to how the Minor Breaches should be dealt with under section 5.110(6) of the Act.

Possible Sanctions

- vi. Section 5.110(6) of the *Local Government Act 1995 (WA)* (**“the Act”**) provides that the Panel is to deal with a minor breach by:
 - (a) *ordering that no sanction be imposed; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
or
 - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*
or
 - (iii) *the person against whom the complaint was made undertake training as specified in the order;*
or
 - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount*

¹ *Local Government Act 1995 (WA)*, s 5.110(5).



of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;

or

(c) ordering 2 or more of the sanctions described in paragraph (b).

Mayor Argyle's Submissions

7. By an email dated 17 July 2024 the Department received a response from the legal advisor of Mayor Argyle.
8. Mayor Argyle's legal advisor provided the following comments and arguments, as summarised by the Panel:
 - a. Mayor Argyle respectfully requests that no sanction be imposed in relation to the breach.
 - b. Mayor Argyle quickly deleted the relevant post. However, before the post was deleted it appears that a screenshot was taken and provided to Perth Now, who published an article in relation to the post.
 - c. The screenshot of the post shows that it received only 8 "likes", which suggests that it was seen by a small number of people before it was deleted.
 - d. Mayor Argyle acknowledges that she did not provide a response to the complaint before it was considered by the Panel on 14 March 2024.
 - e. Mayor Argyle asserts she was advised by the then Chief Executive Officer not to respond. That was not sound advice. Mayor Argyle ought to have been directed to obtain external advice in relation to the complaint, her options, and the consequences of not providing a response.
 - f. Mayor Argyle was not in a position to meaningfully respond to the complaint on her own as a result of significant stressors caused by bullying behaviour she was experiencing at the time.
 - g. The correct and preferable outcome in relation to the Minor Breach against Mayor Argyle is ordering that no sanction be imposed for the following reasons:
 - i. Mayor Argyle has been an elected member for a number of years and has had significant achievements during her tenure as Mayor;
 - ii. Mayor Argyle is a hard working elected member that devotes many hours to her position and to the local community;
 - iii. Mayor Argyle has an unblemished record as an elected member;
 - iv. The post was a one off and isolated incident;
 - v. Mayor Argyle immediately realised that her post may be construed in a different light and took immediate steps to remove the post;
 - vi. The post did not name or identify anyone;
 - vii. Mayor Argyle's post came from a place of frustration, and at a time when Mayor Argyle was being subjected to unfair and unsubstantiated complaints in relation to her election campaign;
 - viii. Mayor Argyle publicly acknowledged that she could have provided better context to the words used in the post;



- ix. Mayor Argyle was not able to respond to the complaint and was not provided with any assistance with respect to dealing with the complaint, and had she responded the Panel may have taken a different view about whether the complaint is substantiated; and
- x. The conduct, in all the circumstances, is a minor transgression and not deserving of a penalty.
- h. Further, the other sanctions that the Panel could impose are not appropriate in the circumstances:
 - i. A public censure or a public apology are significant sanctions and involve a high degree of public admonition. Those sanctions would be manifestly disproportionate to the conduct in question.
 - ii. Mayor Argyle has already been exposed to criticism from the public as a result of the Instagram post being re-published by Perth Now, and she took that opportunity to show contrition and acknowledged that she could have provided better context to the words used in the post.
 - iii. Further, public censure or a public apology are not necessary as a deterrent because there is no pattern of behaviour. We reiterate Mayor Argyle has already addressed the Instagram post via Perth Now.
 - iv. Training is also not an appropriate sanction because Mayor Argyle has already completed all of the training that is required to be undertaken by elected members under the Act. There is no further relevant training that Mayor Argyle could complete.
 - v. The imposition of a monetary order is likewise not appropriate for all the reasons articulated above. The breach occurred as a result of an isolated incident which has already been addressed by Mayor Argyle.

Panel's Consideration

- ix. Section 5.110(6) is solely about penalty. The Panel does not have the power to review any finding of a breach.
- x. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
- xi. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
 - a. the nature and seriousness of the breaches;
 - b. the councillor's motivation for the contravention;
 - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor's disciplinary history;
 - f. likelihood or not of the councillor committing further breaches of the Act;
 - g. personal circumstances at the time of conduct, and of imposing the sanction;



- h. need to protect the public through general deterrence and maintain public confidence in local government; and
- i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness².
- xii. In this case the Panel notes that Mayor Argyle has shown insight and remorse for the conduct.
- xiii. The Panel considers that while the use of the hashtags was unfortunate the breach is at the lower end of seriousness and, further, Mayor Argyle is unlikely to commit a similar breach under the Regulations and will consider the context and possible interpretations of her social media posts more carefully in the future.
- xiv. Despite the above, as the post was made in a public forum, referred to third parties (although unnamed) and was the subject to negative media commentary, the Panel considers that a public apology is the appropriate sanction in the circumstances.
- xv. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing³. It is a suitable and appropriate penalty when a councillor's conduct:
 - a. adversely affects particular individuals⁴; and/or
 - b. does not meet the standards other councillors seek to uphold.
- xvi. In the relevant circumstances, the Panel considers that making a public apology is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Mayor Argyle recoup to the City the costs of the Department incurred with respect to the Complaint.

Panel's decision

² *Chief Executive Officer, Department of Local Government and Communities and Scaffidi [2017] WASAT 67 (S)*

³ *Treby and Local Government Standards Panel [2010] WASAT 81 (Pritchard J).*

⁴ *Treby and Local Government Standards Panel [2010] WASAT 81 [127] (Pritchard J).*



- xvii. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the Minor Breach of regulation 18 of the Regulations, Mayor Argyle make a public apology in terms of the attached Order.

Signing

A handwritten signature in black ink, appearing to read 'E Power'.

Emma Power (Member)

A handwritten signature in black ink, appearing to read 'S Felton'.

Suleila Felton (Deputy Member)

A handwritten signature in black ink, appearing to read 'B Ife'.

Bronwyn Ife (Deputy Member)



ORDER

Delivered 21 August 2024

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Mayor Fiona Argyle, the mayor of the City of Nedlands **publicly apologise** as specified in paragraph 3; OR
2. Failing compliance with paragraph 3 within the specified timeframe, then paragraph 4 shall apply.

Public Apology

3. On the ordinary council meeting of the City of Nedlands first occurring after the expiration of **28 days** from the date of service of this Order on her, Mayor Argyle shall:
 - i. attend the relevant ordinary council meeting;
 - ii. ask the presiding person, or acting presiding person, for his or her permission to address the meeting to make a public apology to the public;
 - iii. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - iv. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021*, when I included certain improper hashtags on an Instagram post.
- ii. The Panel found that I breached Regulation 18 by my conduct.
- iii. I acknowledge that I should not have used the disrespectful hashtags and I now apologise to the public, and my fellow councillors."



4. If Mayor Argyle fails to, or is unable to, comply with the requirements of paragraph 3 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 3 above the Chief Executive Officer of the City of Nedlands shall arrange for the notice of public apology to be published:
 - a. on the Facebook Page of the City of Nedlands shall in no less than 10 point font size; and
 - b. in an appropriate place on the website of the City of Nedlands shall in no less than 10 point font size; and
 - c. in the next occurring issue of any City of Nedlands shall public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

PUBLIC APOLOGY BY MAYOR FIONA ARGYLE

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021*, when I included certain improper hashtags on an Instagram post.

The Panel found that I breached Regulation 18 by my conduct.

I acknowledge that I should not have used the disrespectful hashtags and I now apologise to the public, and my fellow councillors

Appeal

5. In the event that, prior to the date for compliance with the above Orders, Mayor Argyle:
 - a. commences an appeal the decision of the Standards Panel to the State Administrative Tribunal in accordance with section 5.125 of the Local Government Act 1995; and
 - b. notifies the Complaints Officer of such appeal in writing,THEN:
 - c. compliance with the above Orders may be delayed until the State Administrative Tribunal has made a finding in respect to the decision; and
 - d. such Orders may be amended by an order of the State Administrative Tribunal.



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a **complaint** and the person complained about each have the right to apply to the **State Administrative Tribunal (the SAT)** for a review of the Panel's decision in **this matter**. In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules **an application to the SAT under its review jurisdiction must be made within 28 days** of the day on which the Panel (as the decision-maker) gives a notice [see the Note below] under the *State Administrative Tribunal Act 2004 (SAT Act)*, section 20(1).
- (3) **The Panel's Breach Findings and these Findings and Reasons for Finding – Sanctions**, constitute the Panel's notice (i.e. the decision-maker's notice) given under the *SAT Act*, section 20(1).

Note:

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
 - (1) *Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed** to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, **unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.*** [Bold emphases added]
 - (2) *Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."*
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

 - (a) *by delivering the document to him personally; or*
 - (b) *by post in accordance with section 75(1); or*
 - (c) *by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or*
 - (d) *in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State."*