



Local Government Standards Panel

Complaint Number	20240448
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Simon Wheeler
Respondent	Mayor Mark Irwin
Local Government	City of Stirling
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) Ms Elanor Rowe (Deputy Member) Councillor Peter Rogers (Member)
Heard	3 October 2024 Determined on the documents
Outcome	One breach of Regulation 18(1)(b) One breach of Regulation 34D

FINDING AND REASONS FOR FINDING

Published 22 July 2025

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. The Local Government Standards Panel ("the Panel") found that Mayor Mark Irwin ("Mayor Irwin"), an elected member for the City of Stirling ("the City") committed one breach under the *Local Government Act 1995 (WA)* ("the Act") and Regulation 18(1)(b) of the *Local Government (Model Code of Conduct) Regulations 2021* ("the Regulations") and one breach of Regulation 34D of the *Local Government (Administration) Regulations 1996* when, at the Council Meeting held on 25 June 2024, he responded inappropriately to the Complainant's question during Public Question Time.

Jurisdiction and procedural fairness

2. The Act makes provision for the circumstances in which a council member commits a minor breach.¹
3. On 12 July 2024, the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form ("Complaint"). The Complaint was signed by Mr Simon Wheeler ("the Complainant") and contained two allegations of breaches of the Regulations by Mayor Irwin.
4. On 15 July 2024, the Department advised Mayor Irwin of the Complaint and invited him to respond. The Department sent Mayor Irwin copies of the original Complaint and all the supporting documents provided by the Complainant.
5. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.² On 3 October 2024 the Panel convened to consider the Complaint.
6. The Panel:
 - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Mayor Irwin was a councillor at the time of the alleged breaches, and was still a Councillor when the Panel met on 3 October 2024;
 - (b) was satisfied the Complaint had been made within six months after the alleged breaches were said to have occurred.
 - (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches³; and
 - (d) was satisfied that the Department had provided procedural fairness to Mayor Irwin.
7. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting

¹ Section 5.105 of the Act.

² Section 5.110(2)(a) of the Act.

³ Sections 5.107, 5.108, 5.109 of the Act.



the relevant Minister at the time instead of considering the Complaint itself.⁴ Mayor Irwin had not previously been found to have committed any breaches of the Regulations. Therefore, the Panel decided to not send the Complaint to the Chief Executive Officer of the Department.

8. Based on the information referred to above, the Panel found it had jurisdiction to determine whether Mayor Irwin had breached the Regulations in connection with the Complaint.

Panel's role

9. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
10. Any finding, that a councillor has committed a minor breach, must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).⁵
11. In order to find the allegation, proposition or conduct has been established, and where direct proof is not available, the Panel must be satisfied from the evidence that it is more probable than not that it has occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.⁶
12. For a finding that a councillor has breached a particular regulation, the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

Regulation 18

13. Regulation 18 provides:

“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.”

14. The Panel decided that the alleged conduct was not conduct that contravened section 5.93 of the Act or section 83 of *The Criminal Code*.

Elements of Regulation 18

⁴ Sections 5.110(2)(b), 5.111(1) of the Act.

⁵ Section 5.106 of the Act.

⁶ *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.



15. In order to find a breach of Regulation 18, the Panel must be satisfied to the required standard of proof that:
- (a) the person, the subject of the Complaint, engaged in the alleged conduct (first element);
 - (b) the person, the subject of the Complaint, was a council member both at the time of the conduct and the time when the Panel makes its determination (second element);
 - (c) by engaging in the conduct, the person, the subject of the complaint, made use of his or her office as a council member (in the sense that he or she acted in their capacity as a councillor, rather than in some other capacity) (third element);
 - (d) when viewed objectively, such use was an improper use of the person's office as a council member in that it:
 - (i) involved a breach of the standards of conduct that would be expected of a person in the position of a councillor, by reasonable persons with knowledge of the duties, power and authority of the councillor and the circumstances of the case; and
 - (ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;(fourth element);
 - (e) the person engaged in the conduct in the belief that:
 - (i) [in the case of regulation 18(1)(a)] an advantage would be gained either directly or indirectly for the person or any other person; or
 - (ii) (ii) [in the case of regulation 18(1)(b)] detriment would be suffered by the local government or any other person. (fifth element).

Fourth element - meaning of "to make improper use of....office"

16. The Macquarie dictionary definition of "improper" is "*not in accordance with propriety of behaviour, manners, etc; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.*"⁷ The Shorter Oxford dictionary definition is "*irregular, wrong; unsuitable, inappropriate; unbecoming, unseemly.*"⁸

17. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a councillor, and all the circumstances of the particular case, form the view that the councillor had breached the standards of conduct expected of a councillor?⁹ "*For behaviour to be improper it must be such that a right-thinking person would regard the conduct*

⁷ Macquarie Dictionary, Revised Third Edition.

⁸ Shorter Oxford English Dictionary, Sixth Edition.

⁹ *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.



*as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.*¹⁰

18. Under the Act Panel members must have regard to the general interests of local government in Western Australia.¹¹ It is in the interests of local government that councillors are, and are seen to be, professional and respectful in their dealings with fellow councillors, local government employees and members of the public.
19. The meaning of “*improper*” must be considered in the context of relevant legislation, such as the Act and the Regulations, and other rules and standards that apply to a councillor’s role and conduct, such as the circumstances and context of the case.¹² All these provisions form part of the backdrop to the Regulations and give context to a complaint but the alleged conduct must also be judged in the particular circumstances.
20. Conduct can be improper even though the councillor’s judgement is that it isn’t improper. A councillor’s use of his or her office can be improper even though the councillor is intending to benefit the local government, the council or the ratepayers and residents.¹³

Fifth element - meaning of “*to gain directly or indirectly an advantage for the person or any other person*” and “*to cause detriment to the local government or any other person*”

Advantage

21. “*Advantage*” is defined as “*favouring a circumstance; something which gives one a better position ... benefit; increased well-being or convenience ... pecuniary profit ...*”¹⁴
22. “*To*” in “*to gain directly or indirectly an advantage*” indicates that for this element to be established, a councillor must have intended to gain an advantage for themselves or another person.
23. For this element to be established, it is not necessary to find that the councillor’s actions did, or reasonably could have, delivered the result sought.

Detriment

24. “*Detriment*” means loss, damage or injury.¹⁵ It includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage. A person can suffer detriment through others thinking less favourably of them.¹⁶

¹⁰ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

¹¹ Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

¹² *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10.

¹³ *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby* 2010.

¹⁴ Shorter Oxford English Dictionary, Sixth Edition

¹⁵ Macquarie Dictionary Revised Third Edition, 2001.

¹⁶ *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.



25. For Regulation 18(1)(b) to be satisfied it is not necessary to show that the local government or the person concerned actually suffered detriment.¹⁷ However, it is not enough to show that the local government or the person concerned suffered detriment or could have suffered detriment. The Panel must find that it is more likely than not that the councillor believed that his or her actions would cause detriment and intended to cause detriment.¹⁸

26. “*To cause detriment*” has been interpreted as meaning “*in order to*” or “*for the purpose of*” causing detriment, or “*with the will to*” cause detriment.¹⁹ There can be a finding of intent if, after considering all the evidence, the only reasonable inference is that the councillor intended to cause detriment.²⁰

Regulation 34D

27. Regulation 34D provides:

(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.”*

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

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

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

Elements of Regulation 34D

29. In order to find a breach of Regulation 34, the Panel must be satisfied to the required standard of proof that:

- i. The conduct occurred at a council or committee meeting;
- ii. A standing orders local law or meeting procedures local law applied at the meeting; and
- iii. The relevant local law prohibited the specific conduct displayed by the council member.

Substance of the Complaint

30. At the Council Meeting held on 25 June 2024, the Complainant asked a question (“Question”) during Public Question Time. The question was in relation to the

¹⁷ *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

¹⁸ *Re and Local Government Standards Panel [2014] WASAT 111*, paragraph 51, referring to *Australian Securities and Investments Commission v Australian Property Custodian Holdings Ltd* [2013] FCA 1342.

¹⁹ *Chew* 2010.

²⁰ *Treby* 2010.



financial prudence of reserving \$500,000 in the City's budget to undertake a feasibility study for a Trigg-Scarborough boardwalk across two kilometres of Bush Forever protected remnant dunes on a class A reserve ("Dunes"):

Q3. *"A fatality of pedestrians waiting to happen. I think that's slightly problematic. My third question was going to be, in a year or so when Mr Hadley is requesting itemised costs of exactly how much the failed Trigg boardwalk debacle has cost us, will that video and push polling be included in the costings? Should myself and Mr Hadley live long enough to see an actual answer? All was revealed when half a million dollars appeared in tonight's agenda to investigate the feasibility of a coastal boardwalk, which has already been investigated at least three times by the City and found to be altogether unfeasible. It is a project that will not pass go, it will not return your \$500,000, it will not gain required environmental approvals and most certainly will not gain community support other than from the weak of mind who think that this will magically turn Scarborough into Merimbula or the Kalbarri Skywalk.*

It's an endangered remnant Dune system and a bush forever zone Class A reserve, which is already an attraction. How did we get to the point, Councillors, in the current financial climate where you might for even one second consider spending half a million

dollars on a feasibility study of the unfeasible, having not even had the courtesy to first ask the community if they even want or need it? The last two times they were asked the answer was a deafening no. With an estimated cost of some \$3,502,012 Councillors, this is financial irresponsibility of the highest order. I hold significant concerns with how this process came to be in the first place, but my question is, will Councillors vote to remove this item from the budget or the community plan or wherever the hell it is until the community has been properly and fairly consulted about spending millions of ratepayer dollars when cheaper, more logical, sustainable and environmentally friendly options are available?"

31. In his response, Mayor Irwin had:

- attacked the Complainant's integrity;
- accused the Complainant of hypocrisy by referring to a Facebook post ("Facebook Post") from either an electronic device or printed on paper;
- stated that the Complainant had previously campaigned alongside ex-Councillor Ms Felicity Farelley ("Ms Farelley") for the introduction of a boardwalk as part of his unsuccessful 2023 Coastal Ward Election campaign and that it had been his "*election commitment*" to progress the project;
- acknowledged that the Facebook Post had not been published by the Complainant, however noted that he had "*liked*" it; and
- ended his response with the words "*hypocrisy Mr Wheeler.*"

32. The Complainant submitted that he had never supported a boardwalk across the Dunes. Rather, as a local government Councillor candidate, he had pledged to support the protection of the Dunes.

33. Mayor Irwin's call of hypocrisy was made to deliberately mislead the gallery, the Council and those watching on the live stream.

34. The Complainant had known Mayor Irwin for several years; Mayor Irwin knew his position on many environmental issues through his previous opposition to any

building on Bush Forever land. The Complainant was also involved with several environmental groups.

35. The Complainant believed that his “*Not In My Back Yard*” association preceded his reputation in the City and at Council.

Facebook Post

36. Mayor Irwin had referred to the following Facebook Post:



37. With regard to the Facebook Post, Mayor Irwin had not been confused. He had not picked out a post at random or made some “*accidental incorrect determination*”; he had the Facebook Post ready beforehand and had intended to use it to ridicule and belittle Complainant in public at the Council Meeting.

38. The Facebook Post was published during one of the three election campaigns the Complainant had run in the City.

39. The Facebook Post was not published by the Complainant, the words attributed to him were not his and instead Mayor Irwin had provided “*alternate facts*” to the Council, the gallery and the live-stream audience on the Complainant’s known and stated position.

40. The Facebook Post was one of several posts published by Ms Farrelly that he had ‘*liked*’. It included a picture of the Complainant, his partner and Ms Farrelly



at a local sporting club. Ms Farrelly was the outgoing retiring councillor and as such her support was important - hence the like and share.

41. The Complainant had never campaigned for a boardwalk across the Dunes; he had campaigned to the contrary. Ms Farrelly was and remains in favour of a boardwalk.
42. Following the Council Meeting, the Complainant's peers had questioned him regarding in what manner he supported the boardwalk. They were confused given their foreknowledge of his position on the matter.

Conclusion

43. Ratepayers should not expect to be subject to ridicule or belittlement in a such fashion. Mayor Irwin's conduct would have deterred other members of the public from speaking and asking questions and had eroded the concept of democracy within local government.

Mayor Irwin's Response

44. On 15 July 2024 the Department requested comment on the allegations from Mayor Irwin.
45. On 15 July 2024, DLGSC received a response from Mayor Irwin. Mayor Irwin did not accept the information detailed in the Complaint and denied that he had committed the alleged misconduct.
46. The Complainant had made several public attacks against the Council and consequently many people had been carefully watching his actions.
47. Mayor Irwin had no reason to prepare for the Council Meeting or "troll" the Complainant's Facebook account.
48. The Facebook Post was public and had been sent to Mayor Irwin by members of the public and the Council. During the lead up to the Council Meeting the Complainant had been very critical of the Council. The Complainant had interpreted Mayor Irwin's actions in a very different way to the public's perception.
49. In the weeks leading up to the election, the Complainant had attended events and public engagements with then Councillor, Ms Farrelly, whilst he wore his green "vote *Simon Wheeler*" shirt.
50. Ms Farrelly had campaigned alongside the Complainant. She had posted that they would relook at the boardwalk between Scarborough and Trigg. There was no denial or attempt by the Complainant to not support that. In fact, the Complainant knew that it had been popular in the media and so he liked the Facebook Post and then shared it on his own page. That was not "*petty*" politics – the Complainant's campaign was disingenuous and clearly, he wanted people to know that he was in support of a boardwalk.
51. Mayor Irwin had not acted in a misleading manner – that was ridiculous. He simply noted at the Council Meeting that the Complainant had previously been in



support of the boardwalk as proven in the very clearly worded Facebook Post that he shared. He had liked and shared the Facebook Post to get votes.

52. Following the Council Meeting, Mayor Irwin had called the Complainant and suggested that his behaviour was becoming more aggressive and unproductive. Mayor Irwin had offered to sit down with him and apologise / arrange mediation if he had somehow offended him. The Complainant responded that he did not have time and that it was of a “*political nature*” for him to continue.
53. When seen as a whole, the intent of the Facebook Post was very clear. It aligned exactly with the Council resolution and position – to relook at the boardwalk and ensure the environment was protected.

Panel’s Consideration

First Allegation – alleged breach of Regulation 18

54. The Panel finds that Mayor Irwin engaged in the conduct that was the subject of the Complaint, and that he was a Councillor and was acting as a Councillor at all relevant times. The first, second and third elements are established.

Whether Mayor Irwin acted improperly (fourth element)

55. The Panel is satisfied that Mayor Irwin acted improperly during Public Question Time at the Council Meeting:
- a) The Panel had viewed and listened to the video of the Council Meeting, and in particular Public Question Time when the Complainant asked the Question:
- In his response to the Question, Mayor Irwin commenced by thanking the Complainant for the Question/statement and noted that he disagreed with some of it. Mayor Irwin explained that it was the Council at the time that had disagreed to progress with the boardwalk (not for environmental reasons) and there had been several Council resolutions since then. He viewed the study as a logical and practical way to move forward.
 - Mayor Irwin then stated that it had in fact been part of the Complainant’s election campaign along with former Councillor, Ms Farrelly, to progress the boardwalk.
 - The Complainant denied that and there was then some back and forth between the two parties. The Complainant stated that it was Ms Farrelly who was in agreement to re-look at the boardwalk but that he had never been in agreement with it.
 - Mayor Irwin referred to the Facebook Post, which he ultimately acknowledged had been published by Ms Farrelly. The Complainant made a comment/remark as to whether Mayor Irwin would be reporting him to the local media “*or just those you brand a racist.*”



- Mayor Irwin stated: *“It’s hypocrisy Mr Wheeler”* to which the Complainant replied: *“you would know all about it.”*
- b) The chairing of council meetings is a formal process. This is because of the importance of local government meetings, and to ensure fairness and accountability. It was Mayor Irwin’s role to chair the Council Meeting.
- c) Some of the important attributes of an effective presiding member include being: fair and reasonable; objective and impartial; firm but friendly and considerate, tactful and courteous.
- d) Public question time is a means by which the public can seek responses from their council about issues affecting the local government that are of concern to them.
- e) Perhaps frustratingly, the Complainant had not only asked a Question during Public Question Time, but had also made a statement (which he himself acknowledged). However, in this case, clearly, once Mayor Irwin responded, the exchange between the two parties spiralled rather quickly and insults were given on both sides.
- f) When respect evaporates at a council meeting, respect for the whole local government sector is diminished. As the level of government closest to the people, a local government must be accessible to its community.
- g) The crux of the Complainant’s Question related to the proposed spending of \$500,000 by the Council on the study. Mayor Irwin had addressed that point. That should have been the focal point of his reply.
- h) However, he then went on to speak about the Complainant’s previous election campaign and the Facebook Post, and what he saw as the Complainant’s shifting standpoint in relation to the boardwalk itself. He let his personal attitude effect his neutrality in carrying out his role as Chair.
- i) Unfortunately, Mayor Irwin had not used his skills on this occasion to create a co-operative and productive forum. He had referred to the Complainant’s attitude and statements as “hypocrisy”.
- j) Hypocrisy refers to *“a situation in which someone pretends to believe something that they do not really believe, or that is the opposite of what they do or say at another time”*.
- k) Clearly, that was a disrespectful and offensive comment.

Whether Mayor Irwin intended to gain an advantage or cause detriment (fifth element)

56. The Panel is satisfied that Mayor Irwin intended to cause a detriment to the Complainant when he acted as he did:



- a) Anyone wishing to submit a question was required to do so prior to the Council Meeting. Therefore, Mayor Irwin had advance notice of the Complainant's Question.
- b) In his response to the Question, Mayor Irwin referred to the Facebook Post published on 11 October 2023. The Council Meeting took place almost eight months later. The Panel finds it more likely than not that Mayor Irwin had prepared in advance and intentionally referred to the Facebook Post during Public Question Time.
- c) Clearly, Mayor Irwin had time to both digest the Question and prepare a response. Therefore, the Panel finds that when he used the term "*hypocrisy*", he had intentionally decided to call out what he deemed to be the Complainant's negative behaviour and degrade the Complainant in front of those watching.
- d) Finally, SO 7.14 of the City's *Meeting Procedures Local Law 2021* stated as follows:

7.14 Withdrawal of offensive language

A member who, in the opinion of the Presiding Member, has infringed clause 7.13 must withdraw a reflection, imputation or expression and, if required, make a satisfactory apology.

- e) Therefore, Mayor Irwin had the ability to withdraw his statement during the Council Meeting. However, he had not done so.

Findings

57. Accordingly, for the above reasons, the Panel finds that Mayor Irwin had breached Regulation 18(1)(b) in relation to the First Allegation.

Second Allegation – alleged breach of Regulation 34D

58. Regulation 34D relates to the conduct of people at council or committee meetings. Based on the evidence before it, the Panel is satisfied that Mayor Irwin breached Regulation 34D during Public Question Time at the Council Meeting:

The conduct occurred at a council or committee meeting

- a. The alleged conduct occurred at the June 2024 Council Meeting.

A local law relating to conduct applied at the meeting

- b. Under the Act a local government can make "*local laws*", including laws that are necessary or convenient to enable the local government to perform its functions. Under the Act and Regulation 34D of the *Local Government (Administration) Regulations 1996*, a council member who contravenes a "*local law as to conduct*" commits a minor breach. A "*local law as to conduct*" includes a local law about the conduct of councillors at meetings.



- c. The City's *Meeting Procedures Local Law 2021* is a local law that applied at the Council Meeting.

There was a contravention of a local law

- d. SO7.14(1) states:

7.13 Offensive language

- (1) A member must not disparage a decision of the Council or a committee except on a motion that the decision be revoked or changed.
 - (2) A member must not -
 - (a) disparage the character or actions of another member, employee or person;
 - (b) impute any motive to a member or employee; or
 - (c) use an expression that is offensive or objectionable.
- e. Mayor Irwin had not denied that he had used the words attributed to him. The Panel had already found above at Regulation 18 that the term "*hypocrisy*" was offensive and that he had disparaged the character of the Complainant publicly.



Findings

59. Accordingly, for the above reasons, the Panel finds that Mayor Irwin did breach Regulation 34D in relation to the Second Allegation.

Signing

A handwritten signature in black ink, appearing to be 'T Fraser'.

Tim Fraser (Presiding Member)

A handwritten signature in black ink, appearing to be 'Elanor Rowe'.

Elanor Rowe (Deputy Member)

A handwritten signature in black ink, appearing to be 'Peter Rogers'.

Peter Rogers (Member)



Local Government Standards Panel

Complaint Number	20240448
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Simon Wheeler
Respondent	Mayor Mark Irwin
Local Government	City of Stirling
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 for Penalty Consideration	Mrs Emma Power (Presiding Member) Mr Ethan Redshaw (Member) Mr Peter Rogers (Member)
Heard	10 October 2024 Determined on the documents
Penalty Considered	25 August 2025
Outcome	Public Apology

DECISION AND REASONS FOR DECISION

Delivered 06 October 2025

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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



Introduction

1. At its meeting on 10 October 2024, the Panel found that Mayor Mark Irwin, a councillor of the City of Stirling (“**the City**”), committed a minor breach under:
 - a. 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. the Act and Regulation 34D of the *Local Government (Administration) Regulations 1996*,when, during the Council Meeting of June 2024, he responded inappropriately to the Complainant’s question during Public Question Time (“**the Minor Breach**”).

Jurisdiction and Law

2. The Panel convened on 25 August 2025 to consider how it should deal with the Minor Breach.
3. 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 Irwin had ceased to be, or was disqualified from being, a councillor.
4. 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
5. By a letter dated 22 July 2025, Mayor Irwin was:
 - a. notified of the Panel’s finding of the Minor Breach;
 - 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 Breach should be dealt with under section 5.110(6) of the Act.

Possible Sanctions

6. Section 5.110(6) of 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*

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



- (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 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 Irwin's Submissions

7. By an email dated 14 August 2025 the Department received a response from Mayor Irwin.
8. The Panel reiterates that is not empowered to reconsider its findings at this stage of the proceedings and so comments by Mayor Irwin regarding this issue are not reproduced here. In the event Mayor Irwin wishes to appeal the matter the appropriate forum is the State Administrative Tribunal.
9. Mayor Irwin provided the following comments as summarised by the Panel:
 - a. The word "hypocrisy" is a commonly used term to define a situation where someone says or does something and then the actions don't match or are used to deceive. If there was a more appropriate word, maybe it could have been used, but in the pressure of endeavouring to answer questions Mayor Irwin is not an orator, but simply an elected member trying his best.
 - b. There was no intent to degrade or cause detriment.
 - c. Mayor Irwin takes accountability seriously and where he has been wrong and fallen short, he owns it and has previously contacted individuals unprompted to apologise.
 - d. Mayor Irwin contacted Mr Wheeler following this Council meeting and offered a mediation which he declined. Mayor Irwin has a cordial relationship with Mr Wheeler.
 - e. The City prides itself on public question time and its open and transparent answering of questions and provision of information. This has been acknowledged previously by the government and the community. The sanctions that are proposed will have a material effect on this. Without the ability to try to respond and provide answers freely, the opportunity will not be there.
 - f. To have the added pressure in the heat of public question time for a Chair to guess which words in the dictionary are able to be used or not is unreasonable.
 - g. As the Panel's findings are purely based on the assumption that Mayor Irwin had prior warning of Mr Wheeler's question and therefore his comment on hypocrisy was premeditated. This is false.
 - h. As such, no sanctions should be imposed on Mayor Irwin and the breach should be set aside due to Panel's finding being based on factually incorrect information.



Panel's Consideration

10. Section 5.110(6) is solely about penalty. The Panel does not have the power to review any finding of a breach.
11. 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.
12. 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 seriousness.²
13. In this case it is noted that Mayor Irwin does not dispute he accused the Complainant of hypocrisy, but rather argues such comment was not pre-meditated.
14. However, as Mayor Irwin contacted the Complainant to either apologise undertake mediation following the relevant meeting, clearly it was apparent to Mayor Irwin that the Complainant was aggrieved as to his choice of words and that Mayor Irwin's conduct left something to be desired.
15. The Panel does not agree with the argument that imposing a sanction on Mayor Irwin will not allow:
 - a. public question time to be open and transparent; or
 - b. Mayor Irwin to answer questions freely.
16. It is certainly possible for a Presiding Member to fully answer a question (whether with or without notice) without disparaging the character of a member of the public. The Presiding Member and Mayor of every local government, as official spokesperson for that local government, should always be aware of nature, content and tone of all public comments, particularly those towards the public during official Council meetings.
17. As the conduct was public and specifically impacted a particular person, the Panel considers that a public apology is the appropriate sanction in the circumstances.

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



18. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing.³ It is a suitable and appropriate penalty when a councillor's conduct:
- adversely affects particular individuals;⁴ and/or
 - does not meet the standards other councillors seek to uphold.
19. 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 Irwin recoup to the City the costs of the Department incurred with respect to the Complaint.

Panel's decision

20. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the Minor Breach of regulation 34D of the Administration Regulations, Mayor Irwin make a public apology in terms of the attached Order.

Signing

Emma Power (Member)

Ethan Redshaw (Deputy Member)

Peter Rogers (Member)

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).



ORDER

Delivered 06 October 2025

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Mayor Mark Irwin, the Mayor of the City of Stirling **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 Stirling first occurring after the expiration of **28 days** from the date of service of this Order on him, Mayor Mark Irwin 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* and Regulation 34D of the *Local Government (Administration) Regulations 1996*, when I responded to member of the public inappropriately during public Council meeting.
- ii. The Panel found that I breached Regulation 18 and Regulation 34D and that my conduct did not meet the level required of Presiding Member of the Council.
- iii. I acknowledge that I should not have engaged in such conduct and I now apologise to Mr Simon Wheeler, as well the public and my fellow councillors."



4. If Mayor Mark Irwin 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 Stirling shall arrange for the notice of public apology to be published:
 - a. on the Facebook Page of the City of Stirling shall in no less than 10 point font size; and
 - b. in an appropriate place on the website of the City of Stirling shall in no less than 10 point font size; and
 - c. in the next occurring issue of any City of Stirling shall public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

PUBLIC APOLOGY BY MAYOR MARK IRWIN

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* and Regulation 34D of the *Local Government (Administration) Regulations 1996*, when I responded to member of the public inappropriately during public Council meeting.

The Panel found that I breached Regulation 18 and Regulation 34D and that my conduct did not meet the level required of Presiding Member of the Council.

I acknowledge that I should not have engaged in such conduct and I now apologise to Mr Simon Wheeler, as well the public and my fellow councillors.

Appeal

5. In the event that, prior to the date for compliance with the above Orders, Mayor Mark Irwin:
 - 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.”*