

INTERNAL ARBITRATION PROCESS – Merri-bek City Council

In the matter of an Application by Councillor Mark Riley concerning Councillor
Oscar Yildiz
(IAP 2024-34)

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

Applicant: Councillor Mark Riley

Respondent: Councillor Oscar Yildiz

Arbiter: Jo-Anne Mazzeo

DETERMINATION

At the Directions Hearing in this matter on 2 August 2024 Cr Yildiz conceded that he did use offensive and disrespectful language in a short message service (SMS) exchange via mobile phone between himself and a local Merri-bek resident and indicated his preparedness to provide an unreserved verbal and written apology to the resident after the Directions Hearing.

While the Arbiter is satisfied that Cr Yildiz’s behaviour fell short of the standard required by the prescribed standards of conduct, given the contrition Cr Yildiz showed during the Directions Hearing, his openness and willingness to both take accountability for and change his actions, the immediacy of his apology after the Directions Hearing, and his outstanding record as a councillor, the Arbiter has formed the view that a finding of misconduct is not warranted in the circumstances.

Accordingly, pursuant to s147(1) of the *Local Government Act 2020* the Arbiter makes no finding of misconduct against Cr Yildiz.

STATEMENT OF REASONS FOR DECISION

The Application

1. The Application dated 2 July 2024 by the applicant sought a finding of misconduct against the respondent relating to comments made by the respondent in a short message service (SMS) exchange via mobile phone on 13 April 2024 between himself and a local Merri-bek resident.
2. In particular, one of the messages sent from the respondent to the local resident (and submitted in evidence supplementary to the Application) read as follows:

"You are such a vile human being!"
3. The Application alleged that the respondent (in his SMS communication) had breached Standards 1 (Treatment of Others) of the prescribed standards of conduct set out in Schedule 1 to the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations) by:
 - (a) Labelling someone as vile, which is a form of verbal abuse and an offensive term that demeans and insults the individual, which constitutes abusive behaviour; and
 - (b) Calling someone vile is inherently disrespectful, failing to acknowledge the individual's dignity and worth, violating the requirement to treat all persons with respect.
4. The Application went on to state that the applicant had met with the respondent on 27 June 2024 prior to lodging the Application for a finding of misconduct to request he consider apologising to the resident and bringing the matter to a resolution. The respondent declined to make an apology and as such the Application for a finding of misconduct was lodged.

Evidence provided

5. A Directions Hearing was listed and heard on 2 August 2024. Both parties agreed that an in-person Arbitration hearing was not required and were satisfied with the Arbiter making a decision based on the written evidence presented.
6. The parties both agreed on the facts as presented in the Application regarding the SMS exchange, and the prior request made by the applicant for the respondent to apologise.
7. The respondent conceded at the Directions Hearing that, on reflection, he did use offensive and disrespectful language and requested the applicant consider withdrawing the application on the basis that the respondent would provide an unreserved verbal and written apology immediately after the

Directions Hearing. He reflected his disappointment at his actions and wanted to bring the matter to a resolution without taking up anymore Council time or resources.

8. The applicant did not support the approach proposed by the respondent and requested the Arbiter make a Determination on the matter.
9. The applicant was invited to provide a written submission regarding an appropriate sanction in the event that a finding of misconduct was made.
10. The respondent was invited to provide a written response to the allegations made in the Application, and the submission as to sanction.
11. This Statement of Reasons does not summarise all of the information submitted to the Arbiter but refers to the information relied on by the Arbiter to make her decision.

The jurisdiction of the Arbiter in relation to this Application

12. Section 143 of the *Local Government Act 2020* (the Act) provides that an Arbiter may hear an Application that alleges misconduct by a Councillor.
13. Pursuant to section 147 of the Act an Arbiter may determine whether or not a Councillor has engaged in misconduct.
14. "Misconduct" is defined in section 3 of the Act and is defined as follows:
 "... any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct."
15. The standards of conduct are set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020. The standard relevant to this matter provides as follows:

1. Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor –

- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- (d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

Evidence of the Applicant

16. The applicant alleged that the conduct of the respondent fell short of that expected of a councillor and required by the prescribed standards of conduct.
17. The applicant did not accept the respondent's willingness to resolve the matter immediately following the completion of the Directions Hearing, submitting in his written evidence that a councillor with in excess of 16 years standing as a councillor was invited to resolve the matter before lodging the Application for a finding of misconduct and should have done so.
18. Regarding sanction, the applicant submitted that the Arbiter consider directing the respondent to attend or undergo training and/or counselling specified by the Arbiter.

Evidence of the Respondent

19. In his written submission to the Arbiter, the respondent gave context to his ongoing and somewhat fractured interactions with the Meri-Bek resident who was engaged in the SMS exchange with the respondent. The respondent explained that he felt that he had been subjected to personal attacks by the resident, who in his opinion, has been attempting to destroy both his reputation and political career. The respondent also pointed out that the resident does not reside in his ward, or his area so has no direct need to engage in contact with him.
20. The respondent has blocked the resident on all forms of social media due to their interactions regarding culturally sensitive issues.
21. Regarding his tenure as a councillor, the respondent submitted that in sixteen years as a councillor there had not been one complaint lodged against him, and no prior issues with any residents or councillors.
22. Both at the Directions hearing and in his written submission, the respondent also reiterated that he had offered to apologise both verbally and in written form to the resident for the use of the word "vile", acknowledging it fell below the standard expected of a councillor. The respondent confirmed that at 10.49am on 2 August 2024 (at the completion of the Directions Hearing) he sent a text to the resident apologising for his previous text, and then at 10.57am sent a text to the applicant confirming he had apologised in writing to the resident.

Findings of the Arbiter and Reasons for the Arbiter's Decision

23. The Arbiter is satisfied that the respondent engaged in conduct that fell below the standard expected of a councillor under Standard 1 of the *Local Government (Governance and Integrity) Regulations 2020* by engaging in

behaviour (via SMS) that was abusive, and also failed to afford the recipient of the SMS with dignity or respect.

24. Section 147(1) of the Act states:

“If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standard of conduct, the arbiter may make a finding of misconduct against the Councillor.”

25. Taking into account the particular matters outlined directly below at paragraphs 26 and 27, the arbiter has determined not to make a finding of misconduct in this instance.

26. While the respondent initially declined the applicant’s suggestion that he consider apologising to the resident, at the Directions Hearing the respondent unreservedly acknowledged that an apology was warranted, and sent a text to the resident apologising for his text of 13 April 2024 immediately after the Directions Hearing.

27. Given the contrition which the respondent showed during the Directions Hearing, his openness and willingness to both take accountability for and change his actions, the immediacy of his apology after the Directions Hearing and his outstanding record as a councillor - the Arbiter has determined that it is not appropriate to make a finding of misconduct in this instance, or direct remedial action of any nature. The respondent has already apologised to the resident of his own volition and this is acknowledged by the Arbiter.

Jo-Anne Mazzeo

Arbiter

Date: 31 August 2024