IN THE MATTER OF APPLICATIONS FOR AN INTERNAL ARBITRATION PROCESS

COLAC OTWAY SHIRE

IAP 2026-15

Applicant: Councillor Christopher Potter

Respondent: Councillor Jason Schram

-AND-

IAP 2026-16

Applicant: Councillor Christina de Deugd

Respondent: Councillor Jason Schram

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

Date of hearing: Monday, 5 October 2026

Place of hearing: Colac Otway Performing Arts and Cultural Centre, 95-97 Gellibrand Street, Colac

Arbiter: Simon Heath

DECISION:

Councillor Potter and Councillor de Deugd have made separate Applications for an Internal Arbitration Process seeking a finding of misconduct against Councillor Schram. Both seek a finding in relation an alleged breach of Clause 2 of the Model Councillor Code of Conduct by Councillor Schram in an email he sent on 1 May 2026.

I find that the email constitutes a breach of that Clause by Councillor Schram and, as such, I make a finding of misconduct against him.

I direct that Councillor Schram make a written apology to Councillor Potter and Councillor de Deugd for that breach.

In the apology, Councillor Schram should acknowledge that his email failed to treat Councillor Potter and Councillor de Deugd with "dignity, fairness, objectivity, courtesy and respect", particularly by falsely stating that they had "misled or lied to the public" in relation to Council's consideration of a proposed lease for the Colac Otway Performing Arts and Cultural Centre. Councillor Schram should also apologise for the distress the email caused them, as well as unreservedly withdrawing any suggestion of improper conduct on their part.

I also direct that the apology be read aloud by Councillor Schram at the Council meeting on Tuesday, 24 November 2026. Should that meeting not proceed, the apology is to be read at the first Council meeting after that date.

In addition, Councillor de Deugd seeks a finding of misconduct against Councillor Schram in relation to an alleged breach of Clause 3 of the Model Councillor Code of Conduct in emails he sent on 22 June 2026.

I find that Councillor Schram has not breached that Clause and therefore make no further finding of misconduct against him.

STATEMENT OF REASONS

The Applications

1. Councillor Potter's 'Application for an Internal Arbitration Process' is dated 30 July 2026 **(Potter Application)**.

2. Councillor de Deugd's 'Application for an internal Arbitration Process' is dated 29 July 2026 **(de Deugd Application)**.

3. The Potter Application and the de Deugd Application seek findings of misconduct against Councillor Schram in relation to alleged breaches of the 'Model Councillor Code of Conduct' **(Code)**.

4. Councillor Potter and Councillor de Deugd allege that Councillor Schram breached the Code by reason of an email dated 1 May 2026 headed "Councillor Duties" **(email).** The email was sent to five of six Councillors, the Chief Executive Officer **(CEO)** and a Director of the Colac Otway Shire **(Council).**

5. The email was as follows:

   "I am writing this email in my duty as Mayor. Under sections (sic) 18 of the local government act (e) promote behaviour among Councillors that is consistent with the Model Councillor Code of Conduct; and (f) assist Councillors to understand their role; This section of the act also has the following point, (3) To avoid doubt, reasonable steps taken by a Mayor carried out in a reasonable manner to perform their role in accordance with subsection (1)(e) or (f) is not bullying.
   It was very disappointing that some Councillors at Tuesdays (sic) meeting either deliberately or by failure to read briefing papers, attend briefings, or just didn't listen in briefings, misled or lied to the public with comments made in the chamber.
   The staff at the Colac Otway Shire have been offended by Councillors stating incorrect and just plain wrong information.
   It is a councillors (sic) role to inform the public with facts not lies or wrong assumptions.
   I am referring to the statements made by at least two Councillors that the Council was not given detailed information and modelling if the management of the cinema and theatre was to be run by Council. At the request of Council the staff spent many hours preparing realistic modelling and presented a detailed briefing to Council with expenditures and costs and the reasons for the assumptions. To help those navigate the briefing papers that may still be having trouble accessing or understanding information provided to make the best decisions, it is in the Council folder on COPACC dated February 17th 2026.

If a Councillor does not read the briefing papers, does not attend briefings or doesn't understand anything it does not mean the information wasn't provided. It is your obligation as a Councillor to catch up, ask questions or ask for help.

It does not give you the right to spread misinformation to the public, drum up fear or bring the Council into disrepute for your failures to perform your role as a Councillor properly.

The facts are, we have had many briefings over the past 18 months on Council regarding COPACC. From going out for EOI and not getting any positive responses to continue the cinemas service to then going out for EOI to not only run the cinema but also the bookings for theatre shows based on repeated feedback from the community and the organisation that the bookings and theatre side of things had become unworkable for the community. We were given ample opportunity to ask questions, attend briefings and read pages of information on many scenarios for the management of COPACC. We asked for things to go into the EOI which would form part of the lease and we went out to the public with the details of the lease. How the company will run their business to best suit them to get the best out of increasing offerings and foot traffic into COPACC are not lease conditions, And Councillors should not be involved in telling them how to run it. We endorsed the EOI and conditions and made changes based on feedback. Again this information was provided in papers and reports.

If the intent of any Councillor is to deliberately spread false information about Council, Councillors or staff and breech (sic) the code of conduct and local government act I will not hesitate to start a code of conduct proceeding.

This includes meeting with local individuals or groups and telling them the same misinformation. This has also occurred with this topic that Councillors weren't presented the information requested nor knowing what is in the lease. Completely false and misleading to stir up negative reactions against Council.

I have no problem with the way Councillors vote. But if the talk is false and misleading, I will cut it off in the future. I feel an apology should come from the Councillors who said we were never presented modelling if we were to run the entire COPACC facility. This should go via the CEO to the staff that spent many hours on the work at the request of Councillors.

I would encourage you to read the monitors report about revisiting directions of Council and performing your duties to best serve the community. It seems there is still elements of the past embedded or creeping into this Council that needs to change. I would hope the verbal spread of misinformation within the community also stop. I would encourage those that don't read briefing papers to start to perform your duty more by start reading the information provided.

I will also note that staff are entitled to bring code of conduct complaints against Councillors. I hope those can reflect on their behaviour at the meeting and improve in the future. The staff that provided Councillors with the information requested are unsure of why a Councillor would publicly state they were not given that information. It was disappointing. I would suspect certain motives, but the proof I have is the statements at the meeting and access to the same information you all have. The only Councillor that did not have access to any of this information was Cr (named) because of the COI.

In conclusion, some of you really need to do better, read the briefing papers, ask more questions if you don't attend briefings and don't publicly state wrong and misleading information."

6. Councillor Potter and Councillor de Deugd allege that the email constitutes a breach of Clause 2(1) of the Code, which relates to *'Behaviours'*. Omitting the irrelevant parts that Clause provides that:

   "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..." and,
   (b) not engaging in behaviour that intentionally causes perpetuates stigma, stereotyping, prejudice or aggression against a person or class of person..."

7. The de Deugd Application contains an additional allegation that Councillor Schram breached Clause 3 of the Code by failing to comply with Council's Governance Rules when responding to email requests by Councillor de Deugd on 22 June 2026 to be able to attend Council meetings remotely.

8. Omitting the irrelevant parts, Clause 3 of the Code specifies that;

   "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)...
   (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) ...
   (ii) requesting and approval of attendance at Council meetings and meetings of delegated committees by electronic means of communication;
   (iii)...

Arbiter's jurisdiction

9. On 19 August 2026, the Principal Councillor Conduct Registrar **(PCCR)** appointed me to the Council to hear the Potter Application pursuant to sections 144 and 149 of the *Local Government Act 2020* **(Act).**

10. On 20 August 2026, the PCCR referred the de Deugd Application to me pursuant to section 144(1B) of the Act on the basis that the subject matter would more appropriately be dealt by me having already been appointed to hear the Potter Application.

11. Section 143 of the Act provides that an Arbiter may hear an application that alleges misconduct by a Councillor.

12. Section 143(3) of the Act provides that an Application "must be made within 3 months of the alleged misconduct occurring". The Potter Application and the de Deugd Application, which were made on 30 July 2026, both allege misconduct occurring on and after 1 May 2026 so this requirement is satisfied.

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 as follows:

    "...any breach by a Councillor of the Model Councillor Code of Conduct".

15. 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.

16. The Code is set out in Schedule 1 to the *Local Government (Governance and Integrity) Amendment Regulations 2024.*

17. As required by Section 139(4) of the Act, the Code is published on the Council's website, and a copy thereof is attached hereto.

Hearing

18. The internal arbitration process for each Application comprised directions made on 27 August 2026, a video- conference directions hearing on 3 September 2026, further directions made on 3 September 2026, and an in-person hearing on 5 October 2026.

19. Because of the commonality of issues and evidence, the parties consented to both Applications being heard together.

Applicants' evidence

20. Councillor Potter's evidence comprised the Potter Application, an undated document titled 'Applicant's Supporting Material' containing additional information and documents, and an undated document responding to Councillor Schram's written submissions.

21. Councillor Potter also gave oral evidence and made submissions at the hearing.

22. Councillor de Deugd's evidence comprised the de Deugd Application, an email dated 10 September 2026 with additional information and documents, and an email dated 1 October 2026 responding to Councillor Schram's written submissions.

23. Councillor de Deugd also gave oral evidence and made submissions at the hearing.

Respondent's evidence

24. Councillor Schram provided a document titled 'Response concerning allegations of misconduct by Cr Christina De Deugd and Cr Chris Potter' dated 25 September 2026.

25. Councillor Schram also gave oral evidence and made submissions at the hearing.

Arbiter's finding

26. I determine that Councillor Schram has breached Clause 2 of the Code.

27. I also determine that Councillor Schram has not breached Clause 3 of the Code.

Arbiter's reasons

28. For some time, the Council had been considering the future of the Colac Otway Performing Arts and Cultural Centre **(COPACC)**.

29. On 24 June 2025, Council unanimously resolved to endorse the release of an Expression of Interest for the lease of COPACC, to consider proposals seeking alterations to the proposed key terms of that lease, and to authorise officers to evaluate submissions and negotiate with the preferred operator to enable a final lease to be submitted for approval.

30. Over the next few months, briefing papers and reports were made available to Councillors and several briefings and meetings were held.

31. On 10 March 2026, the Council voted to endorse IVG Global as the preferred operator of COPACC but to undertake four weeks of community engagement on the lease terms.

32. Some 21 submissions were received from members of the public expressing concerns about the future management of COPACC. (A copy of one such submission is included in Councillor Potter's 'Applicant's Supporting Material'). Three submitters addressed the Council meeting on 14 April 2026.

33. An Ordinary Council Meeting took place on 28 April 2026 **(meeting)**. Agenda item 7.2 for the meeting was 'Proposal to enter into a Lease – COPACC'.

34. On the eve of the meeting, Councillor Potter gave notice to Councillors of an alternative motion to item 7.2. being a proposal that Council continue to operate COPACC instead of approving a lease to IVG Global. I accept Councillor Potter's evidence that the alternative motion was brought to address community concerns. Councillor Schram's evidence was that personal circumstances prevented him from reading the alternative motion however I note that before the meeting he acknowledged the email attaching it.

35. I have viewed a recording of the meeting. It was conducted in a respectful manner compatible with the standards in the Code.

36. Councillor Schram was not prepared to consider the alternative motion on the basis that it would commit the Council to an excessive unbudgeted expenditure.

37. On 1 May 2026, Councillor Schram sent the email to five of the six Councillors, as well as to the CEO and a director of the Council. The email was not sent to all six because one had declared a 'conflict of interest' in relation to COPACC.

38. Although the email does not identify *"some Councillors"* and *"at least two Councillors"* by name, it is clear from the recording of the meeting that Councillor Schram is referring to Councillor Potter and Councillor de Deugd.

39. On 4 May 2026, Councillor Potter responded to the email advising Councillor Schram that his accusations of *"lying to, or misleading the community"* were *"offensive and demeaning"*. Councillor Potter detailed what information in relation to COPACC had not been provided, indicated that he had not criticized Council staff, and said he would not be intimidated by threats of breach of governance complaints. Councilor Potter also disagreed with Councillor Schram's ruling on the alternative motion. Councillor Schram did not reply to this email.

40. On 4 May 2026, Councillor de Deugd also responded to the email which she described as *"intimidating and threatening"*. Like Councillor Potter, Councillor de Deugd denied misleading the public because previously requested information in relation to COPACC had not been provided. (Councillor Schram said he had not seen Councillor de Deugd's email requests dated 5 February 2026, 16 February 2026 and 8 April 2026 to the CEO before he sent the email). Councillor de Deugd also confirmed that Councillors were complying with their responsibilities, and raised concerns about debate on issues being restricted because motions were being dismissed.

41. Bearing in mind that Councillor de Deugd was addressing the email, which asserted that she had mislead or lied to the public and a threat of future conduct proceedings, it was hardly appropriate for Councillor Schram's response that day to include the following:

    "The use of words like intimidation, threatening and misleading leads me to a conclusion that conversation with yourself about the role of a councillor will not be met with anything other than disagreement. Therefore I will end communication in this matter and start formal code of conduct proceedings in due course over the comments in the meeting and subsequent online comments by other councillors..."

42. Councillor Schram says his response was *"not intended to dismiss her concerns or disparage her professional character"* but that is what it did.

43. Councillor Schram did make a complaint against Councillor de Deugd however he withdrew prior to a scheduled mediation.

44. Councillor Schram attempted to justify the email on the basis that he sent it in his role as Mayor pursuant to section 18 of the Act. That section requires a Mayor to "promote *behaviour among Councillors that is consistent with the Model Councillor Code of Conduct"* and to "*assist Councillors to understand their role.*" Putting aside the fact that the email was not sent to all Councillors, it was not consistent with the Code.

45. Councillor Schram said that he was aware that some Councillors were not reading materials provided to them not only in relation to COPACC but also other Council matters. If so, it would have been better for Councillor Schram to approach those who were not complying privately rather than in an email.

46. Contrary to Councillor Schram's assertion in the email, I accept Councillor Potter's and Councillor de Deugd's evidence that they had read the relevant COPACC papers, attended briefings, asked questions, and considered community submissions before the meeting. I also accept their evidence that at the time of the meeting not all the information requested including a draft lease, had been provided to them.

47. In the email, Councillor Schram stated that staff were *"offended"* by Councillors *"stating incorrect and just plain wrong information"*. The recording of the meeting however reveals that Councillor Potter and Councillor de Deugd did not criticise staff or the Chief Executive Officer. In this regard, I also accept Councillor Potter's evidence that he discussed his alternative motion with staff prior to the meeting.

48. Councillor Schram concedes that the email was "poorly worded" and, on reflection, stated he did not intend to question Councillor Potter's and Councillor de Deugd's honesty. The issue is not what Councillor Schram says he "intended" the email to mean. Any objective reader would perceive that Councillor Schram was questioning their integrity.

49. Asserting in the email that Councillor Potter and Councillor de Deugd *"misled or lied to the public"*, *"spread misinformation to the public (to) drum up fear or bring the Council into disrepute"* and *"publicly state wrong and misleading information"* was a clear failure by Councillor Schram to treat them with *"dignity, fairness, objectivity, courtesy and respect"* and therefore a breach of Clause 2(1) of the Standards.

50. In view of my finding of misconduct against Councillor Schram, pursuant to section 142(2)(a) of the Act, I direct that he make a written apology to Councillor Potter and Councillor de Deugd **(apology)**.

51. In the apology, Councillor Schram is to acknowledge that his email failed to treat them with "dignity, fairness, objectivity, courtesy and respect", especially by falsely stating that they had "misled or lied to the public" in relation to Council's consideration of the future operation of COPACC. Councillor Schram should also apologise for the distress the email caused to Councillor Potter and Councillor de Deugd and unreservedly withdraw any suggestion of improper conduct on their part.

52. I also direct that the apology is to be read aloud by Councillor Schram at the Council meeting on Tuesday, 24 November 2026. Should that meeting not proceed, the apology is to be read at the first Council meeting held after that date.

53. Without providing details, the de Deugd Application contains an allegation that Councillor Schram failed to intervene when another Councillor questioned her fitness for the role. Insufficient particulars have been provided in relation to that allegation and therefore I am unable to determine whether or not any breach of the Code has occurred

54. Councillor de *Deugd* alleges that Councillor Schram breached clause 3 of the Code by failing to comply with Council's Governance Rules **(Rules)** when dealing with Councillor de Deugd's request to attend a meeting by electronic means.

55. Clause 3 of the Code relates to *"Good governance"* and the relevant parts are as follows:

"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) ...
(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)...
(ii) requesting and approval of attendance at Council meetings and meetings of delegated committees by electronic means of communication; and
(iii)...

56. The relevant Rules in relation to attendance at meetings are as follows:

63.1 Council and Delegated Committee meetings will be conducted face-to-face (in person) at a set location, unless the Mayor approves an alternative in accordance with the following sub-rules.

63.2 A Councillor or member of a Delegated Committee may request to attend a meeting by electronic means of communication (virtually) by submitting a request to the Mayor and Chief Executive Officer, not less than twenty-four hours prior to the meeting commencement time.

63.3 A request to attend a meeting via electronic means of communication should only be made for a reason such as (but not limited to) health issues, caring responsibilities, any risk to the health and safety of Councillors, staff, or the community or where a level of travel restriction has been imposed or recommended by government. Approval of the request will be at the discretion of the Mayor. The Mayor will not unreasonably deny a Councillor request to attend a meeting electronically and will take into consideration all of the reasons provided.

63.4 The request must be made in writing and state the reasons the Councillor or member of a Delegated Committee wishes to attend the meeting via electronic means."

57. On 21 and 22 June 2026, there was an email exchange between Councillor de Deugd and Councillor Schram in relation to Councillor de Deugd's written request for permission to attend a Council meeting electronically due to *"childcare needs"*.

58. I do not accept Councillor de Deugd's contention that simply raising *"childcare requirements"* provided a *"complete and sufficient reason under the Rules"* to be able to attend a meeting remotely.

59. I think it was not unreasonable for Councillor Schram to have sought further details of the *"childcare needs"* to ensure a consistent application of the Rules. Councillor Schram's

indication that something along the lines of *"I need to look after children at home therefore I can't travel from home"* would be sufficient for approval.

60. In any event, Councillor Schram approved Councillor de Deugd's request. As there was no denial, Councillor Schram has not breached Rule 63.3 above and therefore he has not breached Clause 3 of the Code.

61. Councillor Schram has indicated that he would support a review of the Rules in relation to electronic attendance at meetings. I encourage such a review as it would assist in clarifying the level of detail an applicant is required to provide when making a request, as well as situations where it is not possible to give 24 hours' notice before a meeting.

Simon Heath

Arbiter

Dated: 14 October 2026

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.