

Section 28ZK (7) of the *Local Government Act 1993* requires that any person who receives a determination report must keep the determination report confidential until the report is included within an item on the agenda for a meeting of the relevant council. Failure to do so may result in a fine of up to 50 penalty units.

Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT

BURNIE CITY COUNCIL CODE OF CONDUCT

Complaint brought by Mr Simon Overland APM against the Mayor, Cr Teeny Brumby

Code of Conduct Panel

- Ms Lynn Mason AM (Chairperson),
- Mr David Sales (Local Government Member)
- Ms Amber Cohen (Legal Member)

Date of Determination: 17 April 2025

Content Manager Reference: C35363

Summary of the complaint

A code of conduct complaint was submitted by Mr Simon Overland in accordance with a resolution passed by the Burnie City Council at its meeting of 23 July 2024. In summary, the complaint related to the conduct of Cr Brumby in respect to:

- the process of appointing a new General Manager of Council;
- alleged unfair behaviour towards Councillors; and
- alleged unfair behaviour towards staff, including undermining Councillors' confidence in staff.

The complaint was submitted to the Executive Officer – Burnie City Council on 7 August 2024 (the Complaint). At the time that the Complaint was submitted, Mr Overland was the General Manager of Burnie City Council. Mr Overland's tenure as General Manager concluded on 3 November 2024.

The Complaint alleged that Cr Brumby breached the following parts of the Burnie City Council Code of Conduct, version 6, dated 28 February 2023, at Burnie City Council between April 2024 and 1 August 2024:

PART 1 - Decision making

- 1) A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the Council's role as a Planning Authority.
- 2) A councillor must make decisions free from personal bias or prejudgement.

PART 3 - Use of Office

- 2) A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.

PART 7 - Relationships with community, councillors and Council employees

- 1) A councillor –
 - a) must treat all persons fairly; and...

Initial assessment

Following receipt of the Complaint, the Chairperson conducted an initial assessment of the Complaint in accordance with the requirements of section 28ZA of *Local Government Act 1993* (the Act). Having assessed the Complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- the complainant had made a reasonable effort to resolve the Complaint. The Chairperson arrived at this conclusion as evidenced by Mr Overland's statement that all efforts to modify the Mayor's behaviour, including directly with the Mayor, had been unsuccessful, and thus the Complaint had been submitted to the Office of Local Government;
- the Complaint substantially related to a contravention of Burnie City Council's Code of Conduct, namely Part 1.1, 1.2, Part 3.2, and Part 7.1(a);
- the Complaint could not be dismissed on the grounds that it was frivolous, vexatious or trivial; and
- having made enquiries of the Code of Conduct Executive Officer, there was no relevant direction under section 28ZB(2) or 28ZI of the Act that would apply to the complainant and the Complaint.¹

On this basis, the Chairperson determined that the Complaint should be investigated.

The complainant, respondent councillor and the General Manager, Burnie City Council, were notified of the outcome of the initial assessment by letter dated 11 September 2024.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel (the Panel) investigated the Complaint.

The Panel determined that further information was required to investigate the Complaint. The Panel wrote to the complainant on 18 September 2024, requiring the following information:

- The Panel requested that for each clause cited in the Complaint, the specific behaviours or conversations or emails which constituted alleged breaches of that particular clause be clearly indicated; and
- The Panel also requested that where the Complaint relied on evidence provided by another party, such as a Councillor, that person provide a Statutory Declaration attesting to the accuracy of their evidence.

The complainant responded on 25 September 2024 and his further information was sent with the original Complaint to Cr Brumby on 1 October 2024 to enable her response to the Complaint.

Councillor Brumby's response, supported by statutory declaration, was received on 15 November 2024.

Material considered by the Panel

- The Complaint from Mr Overland, accompanied by a Statutory Declaration dated 7 August 2024, 20pp;
- Further information provided by Mr Overland, dated 25 September 2024, 3pp;
- Statutory Declaration from Cr Dorsey, 25 September 2024, 1p;
- Statutory Declaration from Cr Aitken, 25 September 2024, 1p;
- Statutory declaration from Cr Simpson, 25 September 2024, 1p;

¹ Section 28ZB(2) and 28ZI of the Act enable the Chairperson or the Panel (as applicable) to issue a direction to a complainant in prescribed circumstances not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

- Response from Cr Brumby, accompanied by a Statutory Declaration, 15 November 2024, 11pp;
- Response from Mr Overland to Cr Brumby's submission of 15 November 2024, 6pp, accompanied by a Statutory Declaration dated 20 January 2025;
- Witness statement from Cr Dorsey with Statutory Declaration, 23 January 2025, 2 pp;
- Witness statement from Cr Simpson with Statutory Declaration, 29 January 2025, 1p;
- Witness statement from Cr Aitken with Statutory Declaration, 3 February 2025, 1pp;
- Additional material submitted by Cr Brumby, 12 February 2025, 12pp;
- Additional material submitted by Mr Overland, 18 February 2025, 30pp, with attachments -
 - Attachment A – letter of resignation from Council staff member, sent to Mr Overland, dated 12 May 2024, 2pp; and
 - Attachment B – Impact statement and complaint from Council staff member, dated 15 June 2024, sent to Mr Overland, 4pp;
- Statutory Declaration from Cr Brumby, 14 March 2025, attached to 'final submission', 5pp; and
- The Burnie City Council's Councillor's Code of Conduct adopted 28 February 2023.

Procedure

The Code of Conduct Panel (the Panel) met on 11 September 2024, 9 December 2024, 5 March 2025, and 28 March 2025.

At its meeting on 9 December 2024, the Panel determined to conduct a hearing into the matter, in accordance with section 28ZG of the Act.

At the request of Cr Brumby, the following witnesses were called to appear at the hearing: the Deputy Mayor Cr Giovanna Simpson, Cr Trent Aitken, and Cr Ken Dorsey. Cr Brumby requested that Mr Des Hodgetts be her advocate, in accordance with section 28ZH(6) of the Act. This was approved by the Panel.

Hearing

Pursuant to section 28ZH of the Act, the hearing was conducted at the Burnie City Council offices on 6 February 2025. In attendance for the Panel were the Chairperson Ms Lynn Mason AM and Ms Amber Cohen (legal member). Mr David Sales (local government member) appeared by video link.

Cr Brumby attended and was represented by her advocate, Mr Des Hodgetts. Mr Overland appeared by video link.

After introductory remarks and guidance from the Chairperson, Mr Overland spoke to the evidence on which the Complaint was based. In particular, Mr Overland was asked by the Panel to clearly outline which parts of the Complaint were effectively a duplicate of a complaint or complaints he had previously made to the Office of Local Government against Cr Brumby. In respect to this, Mr Overland explained that the Complaint was the result of a direction given to him by the Council at its meeting on 23 July 2024, at Item AC083-24, entitled *Motion on Notice – Work Health and Safety Matter*, which was considered in the confidential part of the meeting. He also explained that he was unable to inform the Council that he was already a party to two complaints against Cr Brumby, both of which alleged breaches of many of the same clauses of the Code and on the same factual basis. Both of these investigations were still in progress, with no determinations as yet made, when the Notice of Motion was passed by the Councillors on 23 July 2024. The Panel accepts that there may have been confidential information provided in those complaints which Mr Overland was not able to disclose to Council, and thus accepts his explanation that he was not able to disclose the other complaints to the full Council.

Mr Hodgetts then spoke to refute the allegations made in the Complaint on Cr Brumby's behalf. In so doing he referred to evidence which he said had already been provided to the Panel in Cr Brumby's responses. It became clear to the Panel that at least some of this evidence had not been sent to this Panel; it appeared that Cr Brumby's involvement in similar investigations

simultaneously had led to different pieces of evidence of a similar nature being submitted to different investigation panels.

Both Mr Overland and Cr Brumby expressed concern about the fact that three investigations were underway in respect to very similar allegations, each with different Panel members, with the possibility that depending on what evidence was presented in each case, the Code of Conduct Panels could make different determinations on each allegation.

The Panel asked the parties to retire while it considered how to proceed when faced with these difficulties. The Panel determined to adjourn the hearing, pending further consideration of the evidence before it, and consideration of any further information it might require from the parties. Mr Overland and Cr Brumby and Mr Hodgetts were recalled and informed of the Panel's decision to adjourn the hearing. The witnesses were told that the Panel would not be taking evidence from them at this juncture, and that they would be kept informed of the Panel's decision about resumption of the hearing.

Further Procedure

Following the adjournment, and at the request of the Panel, both parties made further submissions to the Panel, respectively dated 12 February 2025, 18 February 2025, and 14 March 2025.

At its meeting on 5 March 2025, the Panel determined that it had identified only one allegation in the Complaint which did not appear in either of the other complaints to which both Mr Overland and Cr Brumby were parties, details of which had been supplied to the Panel by the complainant. This was an alleged breach of Part 3.2 of the Code.

In a letter to Cr Brumby on 6 March 2025, Cr Brumby was advised as follows:

The Panel considers that there may be only one allegation of a breach of the Code which is not already raised in any previous or current separate complaint, viz., that you have breached clause 3.2 of the Code:

Part 3 – Use of Office

2. A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.

The Panel notes your response to this allegation at Paragraph C.4 of your response, dated 15 November 2024. In order to ensure that both parties have a fair opportunity to address the Panel on that allegation that is unique to this matter, the Panel is providing each party with a further opportunity to provide any further detail relating directly to the allegation of breach of Part 3.2 of the Code as set out in the complaint. The Panel notes there are references to that alleged breach of the Code at page 8 of the Complaint and at page 6 of the agenda of the confidential meeting of 23 July 2024 (annexed to the complaint) and that Mr Overland has made further reference to those allegations in his submissions. It is of course, open to you to address any other part of the material you feel relates to that particular allegation in your response.

A similar letter was sent to Mr Overland on 6 March 2025. That letter additionally stated:

If you wish to provide any further detail or submission to address that particular allegation (clause 3.2) in your complaint, please provide your response attached to or under cover of a statutory declaration to the Executive Officer by 4 pm on Friday, 14 March 2025. Any information received from Cr Brumby on this matter will be forwarded to you before a determination is made, and any response you provide will be forwarded to Cr Brumby. If you consider that any of your complaint with respect to alleged breaches of Parts 1.1, Part 1.2, Part 7.1(a) have not been addressed in previous complaints, please inform the Executive Officer of the relevant matters, with your reasons for raising them, by Friday, 14 March 2025.

In addition to these requests for submissions from the parties, Cr Brumby and Mr Overland were advised that in accordance with section 28ZG(2)(b) of the Act, the Panel considered that resumption of the hearing may be unnecessary in the circumstances because in its opinion the investigation could be determined on the basis of the of the written material provided and, in the Panel's view, neither party would be disadvantaged.

By the letters dated 6 March 2025, Mr Overland and Cr Brumby were notified of the Panel's view that a resumption of the hearing may be unnecessary.

The Panel invited submissions from the parties as to whether:

- either party would be disadvantaged if the formal hearing was not resumed, and it was appropriate in the circumstances not to resume the hearing; or
- a resumption of the hearing was unnecessary in the circumstances because a determination could be made on an examination of the documents referred to above, together with any further written submissions either party might wish to make.

Both parties indicated that they did not believe they would be disadvantaged if the hearing was not resumed and no objections to that course of action were received.

The Panel then determined in accordance with s28ZG of the Act that the Complaint should proceed direct to a determination and the hearing not be resumed.

After receipt of further information provided by Cr Brumby and Mr Overland, the Panel met on 28 March 2025, to consider the additional information and to consider its determination.

Determination

As per section 28ZI of the Act, the Code of Conduct Panel determines that Cr Teeny Brumby has not breached Part 3.2 the Code of Conduct, and therefore the Code of Conduct Panel dismisses this part of the Complaint.

As required by section 28ZI of the Act, the Code of Conduct Panel determines that the Complaint, insofar as it alleges that Cr Brumby has breached Part 1.1, Part 1.2, and Part 7.1(a) of the Code is dismissed.

Reasons for determination with regard to Part 3.2 of the Code

In accordance with section 28ZJ(2), this section of the Determination Report is included in the confidential addendum to the Report.

Reasons for determination with regard to Parts 1.1, 1.2 and 7.1(a) of the Code

Section 28ZI of the Act requires the Panel, after completing its investigation, to either uphold a complaint or dismiss it (or uphold part and dismiss part of it).

In this case, the Panel learned at the hearing and in subsequent correspondence and submissions that, through an unfortunate course of events, the Complaint before this Panel was, in large part, a duplicate of at least one previous complaint made by Mr Overland against Cr Brumby. That is, all those allegations which related to breaches of Parts 1.1, 1.2 and 7.1(a) had formed part of previous complaints filed against Cr Brumby by Mr Overland. Both Mr Overland and Cr Brumby acknowledged this at the hearing and through subsequent correspondence with the Panel. Mr Overland, as complainant, indicated he was open to the Panel determining how best to proceed in the circumstances. Cr Brumby submitted that to proceed to determine the Complaint, or at least those parts of it, would result in a lack of procedural fairness to her, given other panels were already considering the allegations and she had submitted evidence to those panels in respect to the issues.

The Panel determines to dismiss the parts of the Complaint that relate to Parts 1.1, 1.2 and 7.1(a) on the basis that those parts of the Complaint are being determined by another panel, with evidence in respect to those allegations having been provided to other panels, and in those circumstances, this Panel is not in a position to make a positive finding as to those allegations, nor would it be appropriate to do so.

Conclusion

In accordance with section 28ZJ(2), this section of the Determination Report, referring to the alleged breach of Part 3.2 of the Code, is included in the confidential addendum to the Report.

The Panel also concludes that the only appropriate course is to dismiss the Complaint as to breaches of Parts 1.1, 1.2 and 7.1(a) of the Act, for the reasons explained above.

Direction regarding further complaints

Under Section 28ZI (3) of the Act the Code of Conduct Panel instructs Mr Simon Overland not to make a further complaint in relation to the same matter for a period not exceeding 12 months, unless Mr Overland provides substantive new information in the further complaint.

Timing of the Determination

In accordance with section 28ZD (1) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the Chairperson's determination that the complaint is to be investigated.

The Panel has been unable to determine the Complaint within 90 days, owing to granting extension for responses and appearances, intervening holiday periods, and other commitments by members preventing preparation of the final report.

Right to review

A person aggrieved by the determination of the Code of Conduct Panel, on the ground that the Panel failed to comply with the rules of natural justice, is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination



Lynn Mason AM
Chairperson



David Sales
Member



Amber Cohen
Legal Member

DATE: 17 April 2025