

*The Local Government Act 1993*  
**HOBART CITY COUNCIL CODE OF CONDUCT PANEL DETERMINATION REPORT \***  
**Complaint by Ms Tanya Denison against Councillor (Cr) Anna Reynolds**  
**Determination made on 13 August 2020**

**Code of Conduct Panel:**

Jill Taylor (Chairperson), Steven Bishop (Legal Member) and Penny Cocker (Member)

**Summary of the complaint**

On 20 February 2020, Mr Nick Heath, General Manager, Hobart City Council forwarded to the Executive Officer of the Code of Conduct Panel a Code of Conduct Complaint (the complaint) made by Ms Tanya Denison against Cr Anna Reynolds. At the time Ms Denison was a Councillor of the Hobart City Council but has since ceased to be so. Mr Heath confirmed that the complaint met the provisions of Section 28V (3) of the Act.

The complaint alleged that Cr Reynolds had breached Part 4.2, Part 7.1 (a), (b) and (c) and Parts 8.1, 8.2, 8.5 and 8.6 of the City of Hobart Elected Member Code of Conduct (the Code), which was adopted by Council on 18 February 2019. The relevant parts of the Code are outlined below:

**Part 4 – USE OF RESOURCES**

2. *An Elected Member must not use Council resources for private purposes except as provided by Council policies and procedures.*

**Part 7 – RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS AND COUNCIL EMPLOYEES**

1. *An Elected Member–*
  - (a) *must treat all persons fairly; and*
  - (b) *must not cause any reasonable person offence or embarrassment; and*
  - (c) *must not bully or harass any person*

**Part 8 – REPRESENTATION**

1. *When giving information to the community, an Elected Member must accurately represent the policies and decisions of the Council.*
2. *An Elected Member must not knowingly misrepresent information that they have obtained in the course of their duties*
5. *An Elected Member's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*
6. *An Elected Member must show respect when expressing personal views publicly.*

Specifically, Ms Denison alleged that on 29 August 2019 Cr Reynolds sought information on a personal basis from Council staff. She further alleged that because of an article published by Cr Reynolds in her personal newsletter, Hobart News, dated September 2019 and a letter to the Editor of the Mercury Newspaper dated 20 January 2020 she was not treated fairly, was offended or embarrassed and was bullied or harassed.

Additionally, Ms Denison alleges that Cr Reynolds provided incorrect information and knowingly misrepresented information in a letter to the Editor of The Mercury newspaper. Ms Denison alleged that by doing so Cr Reynolds undermined the Council, brought it into disrepute and failed to show respect to her.

\* 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.

The Chairperson undertook an initial assessment and on 2 March 2020 advised that further investigation was warranted in relation to the complaint. Ms Denison, Cr Reynolds, and the General Manager, Hobart City Council, were advised of this determination on the same day. Cr Reynolds was also forwarded a copy of the complaint and asked to provide a response to the allegations within 14 days from receipt of the advice.

## Investigation

On 2 March 2020, in accordance with Section 28L of the Act, Mr Steven Bishop and Ms Penny Cocker were appointed as Panel members to investigate the complaint.

Cr Reynolds provided a statutory declaration dated 19 March 2020 which included Attachments "A" to "F". Her statutory declaration provided a comprehensive response to Ms Denison's complaint.

The Panel met on 30 March 2020 to consider the complaint and Cr Reynolds' response. Following that meeting a request was sent to Ms Denison on 1 April 2020 to ascertain whether she had made any further efforts to resolve the matter since her meeting with Cr Reynolds on 26 August 2019. The Panel also requested that Mr Nicholas Heath, General Manager, and Mr Neil Noye, Director, City Planning, each provide a statutory declaration regarding their recollection of Cr Reynolds' alleged request for information in August 2019.

On 3 April 2020, Ms Denison responded to the Panel's request regarding any efforts she had taken since August 2020 to resolve the situation with Cr. Reynolds. Ms Denison advised that she had not met with Cr Reynolds since their meeting in August 2019 but in an email exchange between the two she was led to believe the "disagreement was over". In fact, Ms Denison included copies of two Facebook posts showing that she and Cr Reynolds were "working constructively together". Ms Denison added that Cr Reynolds' newsletter and letter to the editor came as a "complete surprise" to her. She said that it was only after the letter to the editor was published, which was after she had resigned from Council, that she decided to lodge a formal complaint.

Mr Noye's statutory declaration dated 9 April 2020 stated that the Lord Mayor did not request any information from him or his staff in relation to her voting patterns.

Mr Heath's statutory declaration dated 15 April 2020 provided details of the communication protocols for elected members and advised that he was not aware of any requests the Lord Mayor had made of Mr Noye in relation to her voting patterns.

On 20 April 2020, the Panel met and in accordance with Section 28ZG (2), concluded that a hearing was not required as there was no dispute about the facts alleged in the complaint.

On 21 April 2020 the Panel wrote to Ms Denison and Cr Reynolds advising of the Panel's intention not to hold a hearing and inviting comment on this intention. Ms Denison and Cr Reynolds were also provided with a list of the evidence before the Panel and asked to notify the Panel if they had not received all of the documents listed. Additionally, Ms Denison and Cr Reynolds were given the opportunity to provide any further evidence to the Panel within 14 days. The letter to Cr Reynolds also invited her to comment on any sanctions she considered appropriate if, all or part of, the complaint was upheld.

Ms Denison confirmed on 21 April 2020 she was satisfied that no hearing was required.

On 30 April 2020 a response was received from Cr Reynolds in which she expressed her concern that Ms Denison had not provided an adequate response to the Panel's request of 1 April 2020. Cr Reynolds further stated that she "stood by her response to Ms Denison's complaint". Whilst Cr Reynolds did not specifically state acceptance of the Panel's intention to proceed to resolve the

matter without a hearing, she did not reject this proposition nor provide any reasons not to proceed as planned.

The Panel met on 14 May 2020 to finalise its investigation and determine the complaint without a hearing. The Panel based its considerations on the following documents.

Ms Denison's complaint dated 18 February 2020 with attached statement titled "Summary of Breaches"

- Ms Denison's accompanying statutory declaration dated 19 February 2020
- Cr Reynolds' statutory declaration with attachments "A-F" dated 19 March 2020
- A twelve (12) page statement from Ms Denison dated 3 April 2020
- A statutory declaration from Mr Neil Noye dated 9 April 2020
- A statutory declaration from Mr Nicholas Heath dated 15 April 2020
- Advice from Ms Denison dated 21 April 2020 relating to not holding a hearing
- Advice from Cr Reynolds dated 30 April in response to not holding a hearing
- City of Hobart Elected Member Code of Conduct February 2019

In considering the complaint, the Panel made the following observations.

#### ***Alleged breach 29 August 2019***

In July 2019, Ms Denison published on her Facebook page a table showing voting results by individual members over the previous three and a half years in relation to individual multi-residential developments. Ms Denison said she made it clear that this table was not a complete record of all planning decisions. Ms Denison alleged that some six weeks after her Facebook post Cr Reynolds requested a meeting with her on 26 August 2019. Ms Denison alleged that at that meeting Cr Reynolds wanted her to delete the post and if she did not, Cr Reynolds "would write a story in her newsletter". At that meeting Cr Reynolds is alleged to have said that she would get "Neil's people to put together" something for her to share.

Cr Reynolds agreed that a meeting took place on 26 August 2020 which she said was of a "friendly nature" but denied that she made any threats. Cr Reynolds added that she had made it clear to Ms Denison that she did not agree with the information Ms Denison presented and would provide a "more complete" record of her voting patterns. Cr Reynolds advised that her information was based on detailed personal notes and that she did not tell Ms Denison she would approach Mr Noye for information.

The Panel notes that the information presented by Ms Denison clearly described the nature of the statistics she presented, which was only a segment of Council development decisions. The information submitted by Cr Reynolds captures a broader range of development application voting. Ms Denison said that on 29 August 2019, Cr Reynolds provided her with three images and requested that she put them up on her Facebook page. Ms Denison declined to do this on the basis that it would require an immense amount of resources which she did not have access to.

The Panel concluded that information presented by Ms Denison was not disputed by Cr Reynolds, but rather Cr Reynolds had stated that the data presented by Ms Denison was incomplete.

The Panel accepts the statutory declaration by Mr Neil Noye that neither he nor his staff were requested to provide information to Cr Reynolds in relation to this matter.

#### ***Alleged breach 1 September 2019***

Ms Denison's complaint referenced the article published in Cr Reynolds' September 2019 newsletter "Hobart News", where the councillor chose terms such as "shouting invective", "condemning rivals"

and “perform to their own tribes” to describe how politics seem to be developing. Ms Denison claims that as an example of proving this point, Cr Reynolds then used Ms Denison’s July Facebook post. Ms Denison alleged that Cr Reynolds did not treat her fairly and in accordance with Section 7.1(a) of the Code.

Cr Reynolds claimed that the information published by Ms Denison was to damage her politically and she felt she had the right to respond. Cr Reynolds said that the Ms Denison’s July Facebook post had been widely circulated for several months and she needed to address the inaccuracy. Cr Reynolds said that the article in her newsletter was simply “to correct the record”. Cr Reynolds denied that her article was a “hit piece” solely attacking Ms Denison, but rather stated that Ms Denison’s publication was a “hit piece” to damage her reputation. Ms Denison said that she found the article “very offensive” and had no warning, based on her conversations with Ald Reynolds, that it would be “so aggressive and offensive”.

The Panel accepts that from her perspective, Cr Reynolds wanted to “set the record straight” and used her newsletter as a means of achieving that outcome. However, in the Panel’s view Cr Reynolds’ subsequent publication was not correcting the information posted by Ms Denison but rather providing a different set of data. In making general statements about “city politics”, Cr Reynolds singled out Ms Denison’s data as an illustration of “interest groups” using social media to condemn rivals. There was no dispute about the content of Cr Reynolds’ September 2019 newsletter.

#### ***Alleged breach 20 January 2020***

Ms Denison alleged that Cr Reynolds’ letter to the Editor of the Mercury, stating that the data in Ms Denison’s Facebook post was “nonsense” and “flawed”, was an “attack” on her. Furthermore, Ms Denison alleged that Cr Reynolds made these public comments after she had resigned from Council and was no longer able defend her position within Council. Ms Denison re-iterated that her information was not incorrect, saying that “neither Cr Reynolds nor anyone else has ever claimed any of the data is wrong”. Ms Denison alleged that the content of Cr Reynolds’ newsletter and letter to the editor were attacks on her “credibility and reputation”.

In relation to the Mercury article, Cr Reynolds advised that she was responding to an opinion piece from “one of Ms Denison’s Liberal colleagues, Ms Louise Bloomfield”. She further stated that “the article did nothing more than correct the record” and was in “no way designed to cause offence or embarrassment to Ms Denison”. Cr Reynolds did accept that Ms Denison may have been embarrassed, because she, herself, had published incorrect data.

Cr Reynolds’ letter to the Editor occurred some six months after Ms Denison’s Facebook post and after her resignation from Council. However, the Panel accepts that Cr Reynolds was prompted to write the letter in response to an opinion piece by another person who referenced material relating to Ms Denison’s Facebook post. Cr Reynolds stated her concern was that Ms Denison’s data was being used by another person in a different context and she wanted to point out it was “selective” and “flawed”.

#### **Determination**

The Panel’s task is to investigate (Sections 28ZE and 28ZH) and determine (Sections 28ZI) the complaint. In particular, the Panel must consider whether, based on the evidence provided by the complainant, Cr Reynolds breached the Code. That evidence is outlined previously in this document.

## Part 4 – USE OF RESOURCES

*2 - An Elected Member must not use Council resources for private purposes except as provided by Council policies and procedures.*

The Panel determined that Cr Reynolds did not breach this Part of the Code. Cr Reynolds denied this allegation in her statutory declaration, maintaining that she drew the data from her own personal records. Mr Heath and Mr Noye both provided statutory declarations stating that Cr Reynolds had not requested Mr Noye or his staff to provide development information to her. No evidence to the contrary was produced. This part of the complaint is therefore, dismissed.

## Part 7 – RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS AND COUNCIL EMPLOYEES

### *1. An Elected Member–*

- (a) must treat all persons fairly; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must not bully or harass any person*

The Panel determined that Cr Reynolds breached Part 7.1 (a) and (b) but did not breach Part 7.1 (c).

“Fairly” is not defined in the Model Code of Conduct. It is therefore left to the Panel as representatives of the community to apply the word in a way the community would expect. Although it will no doubt mean different things to different people in different circumstances, the notion the word conveys is along the lines of what is right, or what is proper, what is reasonable, what is deserved, what is apt. It establishes a standard of behaviour in a conceptual sense, leaving it to the good sense of the Panel members to apply it to the individual facts and circumstances that come before the Panel.

The Panel is acutely conscious of the fact that in politics, those who engage are expected to have a reasonably thick skin and not be oversensitive to fair criticism. There is a constant tension between the dictates of the constitution which the High Court has held contains an implied freedom of political communication as an indispensable part of the system of representative and responsible government, and the requirements of Codes of Conduct. However as the High Court has held in *Comcare v Banerji* [2019] HCA23 (7 August 2019) this is not a personal right of free speech and can be restricted by codes such as the Australian Public Service Code of Conduct (as in that case) or the Hobart City Council Code of Conduct.

So, within the framework of the constitution and the Code of Conduct, the Panel must decide whether what Councillor Reynolds said was “fair” in a local government political context.

What Cr Reynolds did in her newsletter article was criticise the standard of debate in the local government context, characterising some in that debate as “*shouting invective*”, condemning “*their rivals as part of performing to their own tribe*” and “*slagging off*”.

She then went on to say that “*a recent example of this was a post on 10 July by my colleague Ald Tanya Denison*”,

In so doing she characterised Ms Denison as a person who had acted in those ways in that post.

In that post Ms Denison had said “*The real story – Hobart Alderman’s voting history*

- This is the voting history for multiple dwellings (two plus) since January 2016.*
- To keep it simple I have not included unanimous results or votes where there is only one dissenter (usually me!).*

- *-I have not included Hotels or subdivisions but I have got that info together now too if there is much interest in it.*
- *Let's get the real story out –SHARE!"*

There then followed in tabular form the results of voting by each Councillor on various proposals.

Cr Reynolds felt that this portrayed her *"in a particularly negative light and ... had generated some unfair comments"* and felt that *"when the entire record is presented it shows"* a different picture.

Those may be valid criticisms from a contrary point of view. That sort of valid, fact-based engagement is fair political dialogue. However, it was simply incorrect to characterise Ms Denison's post as *"shouting invective .... Condemning rivals .....performing to their own tribe ..... or slagging off"*

All Ms Denison herself did was present certain facts in a tabular form. It may or may not be a valid criticism that the picture generated by those was incomplete, slanted, or not the full story. Unfortunately, and ironically, Cr Reynolds fell into the very error she had been criticising others for, by in effect saying, Ms Denison was *"slagging off"* etc.

The Panel is of the view that this was unfair of Cr Reynolds to Ms Denison. In effect, she herself condemned Ms Denison rather than challenging the Denison post itself.

In so doing, Cr Reynolds clearly caused Ms Denison offence and embarrassment. Ms Denison had been unfairly (at least when based only on the newsletter) called out as a type of person who engaged in gutter politics, by *"shouting invective"* and *"slagging off"* when she had not done that in her post.

For these reasons, the Panel upholds the complaint insofar as it relates to Part 7.1(a) and (b).

In relation to Part 7.1 (c), the Panel did not find evidence that Cr Reynolds bullied or harassed Ms Denison, on the basis that the evidence did not identify any systemic or long-term negative treatment of Ms Denison.

Accordingly, Part 7.1 (c) is dismissed.

## **Part 8 – REPRESENTATION**

- 1. When giving information to the community, an Elected Member must accurately represent the policies and decisions of the Council.*
- 2. An Elected Member must not knowingly misrepresent information that they have obtained in the course of their duties*
- 5. An Elected Member's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*
- 6. An Elected Member must show respect when expressing personal views publicly.*

The Panel determined that Cr Reynolds did not breach Part 8 of the Code. There was no evidence before the Panel that Cr Reynolds produced incorrect information in the tables she published as a response to Ms Denison's Facebook post. Rather Cr Reynolds produced information showing different sets of data to that of Ms Denison. Consequently, there was no misrepresentation of the information published by Cr Reynolds. Cr Reynolds' claimed that the information published by her was based on records she had kept on her voting patterns and there was no evidence to suggest that this did not accord with Council records. The Panel acknowledges that whilst the letter to the Editor named Ms Denison, the response was in relation to a letter published in the Mercury by Ms Louise Bloomfield quoting Ms Denison's statistics. The Panel concluded that Cr Reynolds was not misrepresenting Council information nor undermining and bringing Council into disrepute.

Furthermore, Cr Reynolds was not being disrespectful to Ms Denison, simply challenging the data she produced.

This part of the complaint is therefore dismissed.

### Sanction

On 20 May 2020, the Panel wrote to Cr Reynolds advising that part of Ms Denison's complaint had been upheld and seeking her views on what, if any, sanction should be imposed. In response to this advice, a letter was received from Mr Daniel Zeeman, on Cr Reynold's behalf, making submissions as to sanction.

Essentially, the response by Mr Zeeman, submitted that "no sanction ought to be imposed" but if the Panel did not accept this proposition, it should do no more than issue a reprimand.

The Panel met on 30 July 2020 to consider Cr Reynolds' response and determine an appropriate sanction. In doing this, the Panel acknowledged that this was the first complaint against Cr Reynolds and the breach of the code that was upheld was of a lesser level of seriousness. However, Cr Reynolds has been a councillor for some time and ought to be aware of the provisions of the Code of Conduct. Furthermore, as Mayor she has a leadership role within Council, and it is reasonable to expect her to ensure that her public statements treat people fairly and are not offensive or embarrassing.

The Panel accepts Mr Zeeman's submission that it is not *obliged* to impose any sanction by reason of the discretion inherent in the word "*may*". However, the Panel is of the view that such a course would not sufficiently mark the importance of adherence to the Code of Conduct.

On the other hand, Mr Zeeman submitted that a reprimand would be appropriate.

Reprimand is a greater penalty than a caution. Whilst Cr Reynolds clearly breached the Code, the Panel is of the view that her culpability is of a lesser quantum than would merit a reprimand.

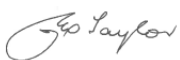
The Panel resolves that in the circumstances set out above, the appropriate sanction is a caution. Accordingly, the Panel cautions Cr Reynolds.

### Timing of Determination

In accordance with section 28ZD (1) (a), the Panel is required to investigate and determine a complaint within 90 days of the Chairperson's decision to investigate the complaint. The 90 day period for this complaint expired on 1 June 2020. Investigation of this complaint has been delayed by additional correspondence with the parties and the need to ensure parties were given adequate time to respond to the matters being investigated.

### Right to Review

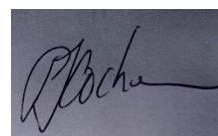
A person aggrieved by the determination of the Code of Conduct Panel is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the grounds that the Code of Conduct Panel has failed to comply with the rules of natural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



Jill Taylor  
Chairperson



Steven Bishop  
Legal Member



Penny Cocker  
Member