

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**

### **CITY OF HOBART ELECTED MEMBER CODE OF CONDUCT**

**Complaint made by Ms Anna Maree Sharman against Councillor Ben Lohberger**

#### **Code of Conduct Panel**

- Lynn Mason AM (Chairperson)
- Craig Perkins (Local Government Member)
- Graeme Jones (Legal Member)

Date of Determination: 21 August 2023

Content Manager Reference: C28910

#### **The complaint**

The complaint alleged that Councillor Ben Lohberger breached the Elected Member Code of Conduct (the Code) by a tweet which he posted on the afternoon of 21 March 2023. The tweet stated:

*No shouting from me today, but I was proud to stand with the trans community, and even prouder of the big #Hobart turnout in support. This is how you treat nazis #politias*

The tweet was in reference to a Let Women Speak event held on the lawns of Parliament House on 21 March 2023. The complainant alleged that while attending the event in support of the Let Women Speak movement, she 'experienced prolonged verbal abuse by a crowd of trans rights activists, who surrounded, shouted at, and harassed us for approximately two hours....'. The event was attended by Tasmania Police officers.

The complaint alleged that Councillor Lohberger breached the following sections of the Code:

#### **Part 7 - Relationships with community, Elected Members, and Council employees**

7.1. 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.

#### **Initial assessment of the complaint**

Following receipt of the complaint, the Chairperson of the Code of Conduct Panel (the Panel) conducted an initial assessment of the complaint in accordance with the requirements of section 28ZA(1) of the *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 in accordance with section ZA(1)(b), part of the complaint should be investigated by the Panel, and part of it dismissed. The Chairperson determined that:

- the complaint that Councillor Lohberger breached sections 7.1(a) and 7.1(b) substantially related to a contravention of the Council's Code of Conduct. If the allegations therein were substantiated, they would constitute a breach of the Code;
- this part of the complaint was not frivolous, vexatious or trivial. The complaint appeared to relate to matters of substance under the Council's Code of Conduct and did not appear to be trifling, insignificant or a misuse of the Panel's resources;
- the reasons for not attempting to resolve the complaint directly with the respondent were adequately explained; and

- the complaint was not made in contravention of
  - a determination made by the Chairperson under subsection (2); or
  - a determination of the Code of Conduct made under section 28ZI(3).

The Chairperson of the Panel determined that the complaint that Councillor Lohberger breached Part 7(1)(c) be dismissed, on the grounds that his behaviour did not constitute bullying or harassment. It was not personalized and only one incident was cited. The Chairperson therefore determined that this part of the complaint was frivolous, i.e., lacking in substance. The Chairperson determined to investigate the remainder of the complaint.

The complainant, respondent councillor and the Chief Executive Officer of the Hobart City Council were notified of the outcome of the initial assessment by letter dated 14 June 2023.

### **Material considered by the Panel:**

- The City of Hobart Elected Member Code of Conduct, 20 February 2023;
- The complaint from Ms Anna Sharman, accompanied by a Statutory Declaration, dated 7 May 2023;
- Address for a United Nations website, sent by Ms Sharman, 14 June 2023;
- Statutory Declaration from Councillor Ben Lohberger, dated 3 July 2023, with response to the complaint, 6pp;
- Response to Councillor Lohberger's statement from Ms Sharman, 18 July 2023, 6pp.

### **Procedure**

In accordance with section 28ZE of the Act, the Panel investigated the complaint as it related to the clauses of the Code cited above.

The complaint was sent to Cr Lohberger, along with the website address submitted by Ms Sharman on 14 June 2023. The Panel met on 25 July 2023 to consider the complaint and response. On 28 July 2023 the Panel wrote to both Cr Lohberger and Ms Sharman, informing them that the Panel considered that the matter could be determined on the basis of the material already available to it, without disadvantage to either party. In accordance with section 28ZG of the Act, the parties were asked to inform the Panel if they considered that they would be disadvantaged if a hearing were not held. Both parties agreed that a hearing would not be necessary. The Panel therefore proceeded to make its determination without conducting a formal hearing.

### **Determination**

Pursuant to section 28ZI(1)(b), the Panel dismisses the complaint.

### **Reasons for determination**

The Panel notes that Cr Lohberger did not participate in the Let Women Speak event, nor the protest rally which took place at the same time and place. He was there as an observer.

The Panel considers that the tweet referred to in the complaint was not directed at any person. In particular, it did not identify the complainant nor any other person. While the complainant considered that the tweet inferred that she was a 'nazi', the language of the tweet is so general as to make this inference untenable.

The Panel therefore determines that the complainant had no cause to be offended or embarrassed; nor could it be said that the complainant was treated unfairly, given the lack of particularity in the tweet. While the use of the word 'nazi' was open to misinterpretation and was unwise, again, it is used so broadly that it cannot be seen to be encouraging prohibited behaviour, as alleged.

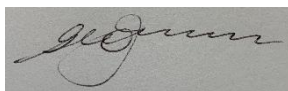
The Panel therefore determines to dismiss the complaint.

**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**



Graeme Jones  
**Legal Member**



Craig Perkins  
**Member**

Date: 21 August 2023