

*Local Government Act 1993*

**CODE OF CONDUCT PANEL DETERMINATION REPORT**

**HOBART CITY COUNCIL CODE OF CONDUCT**

**Complaint made by Ms Nala Mansell against Councillor Louise Elliot**

**Code of Conduct Panel**

- David Sales (Chairperson)
- Roseanne Heyward (Local Government Member)
- Sam Thompson (Legal Member)

Date of Determination: 26 September 2024

Content Manager Reference: C30651

**The complaint**

The complaint relates to social media posts by Councillor Louise Elliot regarding the removal of a statue from Franklin Square in Hobart and voting at Hobart City Council Committee/Council Meetings

The complaint alleged that the following sections of the Aldermanic Code of Conduct, (the Code), adopted by the Hobart City Council on 20 February 2023 were breached:

**PART 1 - DECISION MAKING**

1. *An elected member must bring an open and unprejudiced mind to all matters being decided upon in the course of their duties, including when making planning decisions as part of the Council's role as a Planning Authority.*
2. *An elected member must make decisions free from personal bias or prejudgement.*
3. *In making decisions, an elected member must give genuine and impartial consideration to all relevant information known to them, or of which they should have reasonably been aware.*
4. *An elected member must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

**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**

6. *An elected member must show respect when expressing personal views publicly.*

**Initial assessment of the complaint**

Following receipt, on 5 September 2023, of Ms Nala Mansell's complaint which related to a Council Committee meeting held on 23 October 2023 and social media posts by Councillor Elliot immediately prior and subsequent to this meeting, the Chairperson conducted an initial

assessment of the amended 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:

- 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 complainant had provided an adequate explanation of why she would feel uncomfortable in endeavouring to contact Councillor Elliot to try and resolve the situation; 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 Panel made under section 28ZI(3).

The Chairperson determined that the complaint should be investigated and determined by the Code of Conduct Panel (the Panel) as the allegation substantially related to alleged contraventions of the Code. If proven, they were capable of constituting breaches of the Code.

The complainants, respondent Councillor and the General Manager of Hobart City Council were notified of the outcome of the initial assessment by letters dated 4 October 2023.

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

- Code of Conduct Complaint from Ms N. Mansell against Councillor L Elliot dated 28 August 2023 (including attachments).
- Response to Code of Conduct Complaint from Councillor L. Elliot received 25 October 2023.
- Correspondence dated 13 December 2023 from Ms N Mansell in reply to the Panel's request for further particularization of the complaint supported by a Statutory Declaration dated 15 January 2024.
- The Hobart City Council Elected Member Code of Conduct adopted 20 February 2023.
- Further submission dated 23 February 2024 from Councillor L. Elliot
- Email dated 27 May 2024 from the CEO of Hobart City Council detailing Councillor Elliot's attendance at various Council and Committee Meetings.
- Submission dated 2 June 2024 from Councillor Elliot in response to the Panel's request regarding meeting attendance.
- Further submission dated 7 June 2024 from Councillor Elliot in response to the Panel's request regarding meeting attendance.
- Submission dated 1 July 2024 from Ms Mansell in response to the Panel's request regarding meeting attendance.
- Statutory Declaration from Councillor Elliot dated 31 July 2024 with an attachment.

### **Investigation**

The Panel met on 9 September 2023 to consider the documentation before it. The Panel at the meeting decided to request Ms Mansell to further particularise her complaint as requested by Councillor Elliot in order to enable Councillor Elliot to respond to the complaint.

The Panel again met on 5 February 2024 and decided to write to the parties asking if they wished to make a final submission to enable the Panel to consider whether the complaint could be determined without a formal hearing and also to request whether they were of the opinion that a hearing was necessary. Councillor Elliot provided a further submission and both parties indicated that they considered that the complaint could be determined without a formal hearing.

Following receipt of Councillor Elliot's submission and advice that both parties agreed that the complaint could be determined without a hearing, the Panel was of the opinion that the complaint could be determined without a formal hearing into the complaint. In arriving at this position, the Panel had considered the provisions of Section 28ZG (2)(a) and (b) of the Act, which states:

*The Code of Conduct Panel may determine that a code of conduct complaint may be investigated without a hearing if it reasonably considers that-*

- (a) Neither the complainant nor the councillor against whom the complaint is made will be disadvantaged if a hearing is not held and it is appropriate in the circumstances not to hold a hearing; or*
- (b) A hearing is unnecessary in the circumstances because the investigation can be adequately conduct by means of written submissions or examination of documentary evidence, or both*

The Panel then met on 23 May 2024 with a view to determining the complaint. In reviewing the evidence before it, the Panel noted an anomaly in the evidence regarding Councillor Elliot's attendance at Council/Committee meetings where the issue of the removal of a statue from 70 Macquarie St. Hobart was discussed and voted on. The Panel was of a view that it could not reach a determination until such time as it resolved this anomaly and subsequent to the meeting contacted Hobart City Council for details of the Council Meetings.

When the information was supplied by Hobart City Council it was forwarded to both parties so that they could confirm that the information supplied by Hobart City Council was correct. Subsequently the Panel received three further submissions from Councillor Elliot and one from Ms Mansell. Both parties indicated that they believed the information supplied by Hobart City Council was correct. Both parties were supplied with copies of these submission submitted by the other party.

## **Determination**

The Panel met again on 21 August 2024 to determine the complaint. Pursuant to section 28ZI of the Act the Panel determines that Councillor Louise Elliot has breached part 7.1 (b) and 8.6 of the Code of Conduct. The Panel dismisses the complaint in relation to parts 7.1 (a) and (c) of the Code.

## **Reasons for determination**

### **PART 1 - DECISION MAKING**

- 1. An elected member must bring an open and unprejudiced mind to all matters being decided upon in the course of their duties, including when making planning decisions as part of the Council's role as a Planning Authority.*
- 2. An elected member must make decisions free from personal bias or prejudgement.*
- 3. In making decisions, an elected member must give genuine and impartial consideration to all relevant information known to them, or of which they should have reasonably been aware.*
- 4. An elected member must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

Ms Mansell in her complaint indicates that Councillor Louise Elliot in social media postings showed bias and promoted a petition objecting to the removal of the statue of William Crowther from Franklin Square and failed to declare an interest when the matter was discussed at Council.

Ms Mansell provided screenshots of 9 social media posts by Councillor Elliot covering the period June/August 2023 which predominantly related to issues around the removal of the statue of William Crowther from Franklin Square and alleged that Councillor Elliot had shown a bias which would have precluded her bringing an unprejudiced mind to the making of a decision as part of Hobart City Planning Authority. Councillor Elliot responded by indicating that she was not in the Council Chambers when the matter was considered by the Planning Authority. The Panel sought clarification from Hobart City Council regarding Councillor Elliot's attendance at Council/Planning Authority Meetings.

The information supplied by Hobart City Council indicated that this matter was discussed at an open Planning Authority meeting on 23 August 2023. The official minutes show that Councillor Elliot did not vote on this matter and had removed herself from the Meeting when the vote was

taken. No other evidence was offered that Councillor Elliot had breached Part 1 of the Code. The Panel dismisses the complaint in respect of Part 1 of the Code.

## **PART 7 - RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS AND COUNCIL EMPLOYEES**

### *1. An elected member–*

#### *a) must treat all persons fairly; and*

The use of the term “fairly” implies that for a complaint to be upheld under this clause, it must be shown that a person or persons have been treated unfairly. The Panel is of a view that Ms Mansell has not introduced any evidence which could persuade the Panel that a person or persons have been treated unfairly in relation to any other person or persons. The Panel dismisses the complaint in respect of Part 7 (1) (a) of the Code.

#### *b) must not cause any reasonable person offence or embarrassment; and*

It is necessary to first consider the ambit of this clause.

An elected member should maintain a high standard of behaviour as a representative of Council. This applies not only to a councillor’s conduct in a council meeting or at council events, but also to a councillor’s public commentary such as Facebook posts. Councillors may hold strongly held views. They are elected representatives and have political functions: see the *Local Government Act 1993*, s 28. However, the Code imposes limits on councillors.

Those limits are to be read in light of Magistrate Brown’s reasons in *Howard v Code of Conduct Panel*, Magistrates Court of Tasmania, unreported decision, 10 February 2017, Launceston. It is worth repeating some of his Honour’s observations which were based, in part, on the constitutional implied freedom of political communication:

- At [54], the Code “should not be interpreted in such a way as to give councillors any lesser right as to how they engage in political debates than are enjoyed by non- councillors”
- At [58], “any slight, real or perceived, against them or their views, concerns or opinions. It should not be interpreted in a way that unreasonably inhibits frank, open, even passionate debate or – within reasonable limits - the use of legitimate debating techniques which might include the use of humour, hyperbole, sarcasm and invective. Matters of political debate often involve vehemently held opinions and strongly opposed positions being debated by electors and by the elected. Feelings can run high and sensitivities are heightened. Such is the nature of politics.”
- At [60], “comments made during such debates may be “foolish or misguided or even against the canons of good taste” but nevertheless not amount to objectively failing to treat ones political opponents with dignity and respect. The code should not be interpreted so as to sanitize debates by reference to some unreasonably lofty standard of decorum, sophistication or good taste.

Mere subjective offence or embarrassment is insufficient. The test is objective. In that way, the Code is not concerned with trifles. Moreover, the Code must be read against a Councillor’s political functions under the *Local Government Act 1993* and, as Magistrate Brown noted, the implied freedom of political communication.

The particular social media post which appears to be the main subject of this part of complaint is a post (18.8.23) Councillor Elliot made as follows.

*“I’m fed up with this selective offense. Fed up with people who will never move on as one multicultural united Australia as there’s money and power at stake.....determined to try and induce guilt and shame, all while toddling around with [likely fake] designer handbags and soaking up all that today’s world has to offer.”*

Councillor Elliot in response indicated that she had not identified Ms Mansell and that she had at no time intended to offend or embarrass any person or persons by posting the above. The Panel's view was in the context of the other posts, a reasonable person may have interpreted the post as referring to Aboriginal people.

It is worth comparing Councillor Elliot's conduct with Mayor Howard's conduct in *Howard*. Magistrate Brown's observations related to a complaint where there were exchanges between an elector and an elected member which is the case in this complaint. Like in *Howard*, Councillor Elliot's social media posts were of a political nature. The Panel must therefore consider whether those posts breached the Code as alleged by Ms Mansell and, in particular, whether they exceed the "reasonable limits" referred to in *Howard*.

Ms Mansell in her complaint describes this post as "racial discrimination at its finest". It is not for this Panel to make that judgement but it is the Panel's view that this post goes beyond "humour, hyperbole, sarcasm and invective" and its content is more egregious than that considered by Magistrate Brown. While affording due weight to the reasoning in *Howard*, we consider Councillor Elliot's conduct to be distinguishable from Mayor Howard's. Each case must be assessed on its merits.

In these circumstances, the Panel was of a view that the post by Councillor Elliot of 18 August 2023, in view of its content, taken in the context of other posts made by her in relation to the removal of the statue would have caused a reasonable person offence or embarrassment. The Panel upholds the complaint in respect of Part 7 (1)(b) of the Code.

*(c) must not bully or harass any person.*

In relation to Part 7 (1) (c) the Panel determined that Ms Mansell had not been subjected to repeated, prolonged and unwarranted behaviour against her which would normally constituted bullying and harassment. While we accept that a single incident may breach this clause, Councillor Elliott's commentary, while perhaps distasteful, unkind, or unwise, did not involve bullying or harassing a particular person. There is insufficient evidence linking the post to Ms Mansell or to any other identifiable person. The Panel dismisses the complaint in respect of Part 7 (1) (c) of the Code.

## **PART 8 - REPRESENTATION**

*6. An elected member must show respect when expressing personal views publicly.*

The Panel were of the view that similar considerations existed in relation to the alleged breach of this Part as existed for the complaint under Part 7 (1)(b). It was of the opinion that the personal views expressed publicly by Councillor Elliot were not respectful in the context of the circumstances that existed at that time. The Panel upholds the complaint in respect of Part 8 (6) of the Code

### **Sanction**

The Panel sought the views of both the complainant and respondent on what they would consider would be an appropriate sanction. On upholding a complaint or part of a complaint, the Panel may impose one or more sanctions. Given that Councillor Elliot was a relatively new councillor at the time and the matters referred to above (including that the fact that the breach has been one of degree), the Panel determines a caution to be the appropriate sanction.

Pursuant to s 28ZA(2)(a), Councillor Elliot is cautioned.

The Panel also notes that amendments to the processes for Code of Conduct complaints have been recently proclaimed which introduce new grounds for complaints and the Panel considers it would be useful for Hobart City Council (if it has not already done so) to arrange a familiarisation session for the Councillors, to be conducted by Office of Anti-Discrimination Commissioner.

## Timeliness

The Panel was unable to complete its investigation and make a determination within the 90 day period specified by S28ZD of the Act. This occurred because of extensions granted to parties to respond to requests for information (including the piecemeal fashion in which further information was provided), sickness of both a party and a Panel member, the need to seek further information and the unavailability of a Panel Member for a period of time.

## 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.



David Sales  
**Chairperson**



Roseanne Heyward  
**Member**



Sam Thompson  
**Legal Member**

Date: 26 September 2024