

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

WEST TAMAR COUNCIL CODE OF CONDUCT

Complaint brought by Cr. Joshua Manticas against Mayor Christina Holmdahl

Code of Conduct Panel

- Mr. David Sales (Chairperson),
- Ms. Roseanne Heyward (Local Government Member)
- Mr. Graeme Jones (Legal Member)

Date of Determination: 11 September 2023

Content Manager Reference: C29124

Summary of the complaint

A code of conduct complaint was submitted by Cr. Manticas to the General Manager – West Tamar Council on 13 June 2023.

The complaint alleges that Mayor Holmdahl breached the following part of the West Tamar Council Code of Conduct, version 3 dated 21 February 2023 at Beaconsfield on 29 May and 1 June 2023

Part 7 – Relationships with community, councillors and Council Employees

- 1 A councillor -
-
- (b) must not cause any reasonable person offence or embarrassment;

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 the Act. The initial assessment determined that pursuant to section 28ZA (1) of the Act, the complaint should be investigated and determined by the Panel. The allegations, if proven, were capable of constituting a breach of the Code.

In accordance with section 28ZC (1) of the Act, the complaint was assessed to determine whether it should be referred to another person or authority. Having done so, it was determined that it did not require referral as it did not disclose that an offence may have been committed or that it would be more appropriately dealt with by another person or authority.

In accordance with section 28ZB(1) of the Act, the Chair determined that the Complaint should not be dismissed as:

- (a) the complaint or part was not frivolous, vexatious or trivial; or
- (ab) the complainant had made a reasonable effort to resolve the issue that is the subject of the complaint; or
- (b) the complaint or part does relate to a contravention of the code of conduct of the relevant council; or
- (c) the complainant had not made the complaint or part in contravention of –
 - (i) a determination of the chairperson made under section 28ZB(2) of the Act; or

(ii) a determination of the Code of Conduct Panel made under section 28ZI(3) of the Act.

On this basis, the Chairperson determined that the Panel should investigate the complaint. A copy of the complaint was provided to the other members of the Panel appointed to investigate the complaint.

The complainant, respondent councillor and the General Manager were notified of the outcome of the outcome of the initial assessment by letter dated 30 June 2023.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint.

The Panel determined that further information was required to investigate the complaint. On 13 July 2023 the Panel requested that the General Manager supply copies of emails referred to in the Complaint. They were supplied on 20 June 2023. (See list below for details).

Material considered by the Panel

The following documents have been presented to the Panel to consider as evidence in this matter:

- Code of Conduct Complaint by Cr. J. Manticas against Mayor C. Holmdahl in respect of alleged breaches on 29th May and 1st June 2023 dated 13th June 2023.
- Response to Code of Conduct Complaint by Mayor C. Holmdahl dated 14th July 2023.
- Email dated 31st May 2023.
- Email from Cr. Manticas to Mayor Holmdahl dated 5th June 2023.
- Email from Cr. Manticas to the Panel responding to Mayor Holmdahl's response dated 3rd August 2023.
- West Tamar Council Code of Conduct Version3 dated 23 February 2023.

The complainant alleges that on 29 May and 1 June 2023, Mayor Holmdahl made derogatory remarks about a third party who was not present on either occasion, to the complainant. The respondent, Mayor Holmdahl was invited to respond to these allegations which she did on 14 July 2023. The complainant, Cr. Manticas was supplied with a copy of this response and replied thereto on 3 August 2023.

By letters dated 9 August 2023, the complainant and respondent councillors were notified of the Panel's intention to proceed to determine the complaint without a formal hearing. Neither of the parties wished to have a formal hearing.

Determination

As per section 28ZI of the Act the Code of Conduct Panel determines that Mayor Holmdahl has not breached the Code of Conduct, and therefore the Code of Conduct Panel dismisses the complaint.

Reasons for determination

The Code of Conduct Panel considered the information provided by Cr. Manticas and the response by Mayor Holmdahl as well as the copies of emails requested. The Code of Conduct Panel concludes that Mayor Holmdahl's statements would not cause a reasonable person offence or embarrassment, and therefore did not breach clause 7 (1) (b) of the Code of Conduct which was current at the time of the alleged contraventions on 29 May and 1 June 2023.

In relation to the alleged offence on 29 May 2023, Cr. Manticas alleges that Mayor Holmdahl made a derogatory comment about another unnamed third party in the course of a Committee Meeting. Mayor Holmdahl denies using the specific words alleged by Cr. Manticas but agrees that the subject raised by Cr. Manticas was discussed in general terms but her comments were not specific and did not refer to any particular person. Cr. Manticas cited several witnesses to this exchange in his complaint but no evidence was submitted from any of these witnesses. Despite there being some discrepancies in the two versions, the Panel was of the view that as the comments related to a third party who was not identified, a reasonable person would not be offended or embarrassed by the comments and that a breach of the Code had not occurred.

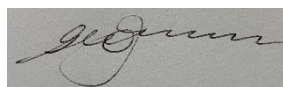
The second alleged offence took place in a conversation between Cr. Manticas and Mayor Holmdahl with no other persons present on 1 June 2023. Cr. Manticas alleges that Mayor Holmdahl made a derogatory statement about a named third party. Mayor Holmdahl indicated that she did make a "jovial" comment about that third

party. The Panel was of the view that because the alleged offence took place during a private conversation with no witnesses and the comment related to a third party, a reasonable person would not be offended or embarrassed by the comment and that a breach of Code had not occurred.

Although the Panel has determined that a breach of the Code had not taken place, the comments made by Mayor Holmdahl, on each occasion, was considered by the Panel to be unwarranted or unnecessary.

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. In accordance with section 17 of the *Magistrates Court (Administrative Appeals Division) Act 2001*, an appeal must be lodged within 28 days of the date of notification of the determination.



David Sales

Roseanne Heyward

Graeme Jones

Chairperson

Member

Member

DATE : 11 September 2023