

Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT HOBART CITY COUNCIL CODE OF CONDUCT

Complaint brought by Deputy Mayor, Cr Zelinda Sherlock, against Cr John Kelly

Code of Conduct Investigating Panel

- Lynn Mason AM (Chairperson),
- Roseanne Heyward (Local Government Member)
- Audrey Mills (Legal Member)

Date of Determination: 28 August 2025

Content Manager Reference: C35913

Summary of the complaint

A code of conduct complaint was submitted by Cr Sherlock to the Hobart City Council CEO on 16 October 2024.

The complaint alleged that during the Ordinary Council Meeting of 16 September 2024, Cr Kelly breached the following parts of the *Local Government (Code of Conduct) Order 2024* (the Order):

PART 7 - Relationships with community, councillors and council employees

1. *An elected member must–*

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

2. *A councillor must –*

- (a) listen to, and respect, the views of other councillors in council and committee meetings and all other proceedings of the council; and*
- (b) endeavour to ensure that issues, not personalities, are the focus of debate.*

Initial assessment

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

- The whole of the complaint should be investigated, as he did not deem it to be frivolous, vexatious, or trivial;
- Cr Sherlock had made a reasonable effort to resolve the issue that is the subject of the complaint;
- There were aspects of the complaint that, if proven, could result in a finding of breach Parts 7.1 and 7.2 of the Code;
- 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 Assessor determined that the complaint should be investigated.

The complainant and the respondent councillor were notified of the outcome of the initial assessment by letter dated 17 December 2024.

Summary of the complaint

The complaint alleged that Cr Kelly had:

- reacted in an inappropriate and disproportionate manner during the Council meeting of 16 September 2024, after Cr Sherlock had expressed her disappointment about the number of elected members who had failed to put themselves forward for nomination to a committee;
- acted in a way that was derogatory and harassing towards Cr Sherlock, making her feel unsafe;
- continued to harass and bully Cr Sherlock after the meeting was adjourned by the Lord Mayor.

Investigation

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

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

- Cr Sherlock's complaint submitted under cover of statutory declaration, 16 October 2024, 5pp, and including a video recording taken on Cr Sherlock's phone during an adjournment of the Ordinary Council meeting of the Hobart City Council on 16 September 2024;
- Cr Kelly's response to the complaint, submitted under cover of a statutory declaration, 31 January 2025, 15pp, including
 - a witness statement from Cr Louise Bloomfield, 30 January 2025, 2pp;
 - a witness statement from Ald Marti Zucco, submitted under cover of a statutory declaration, 30 January 2025, 1p;
 - a witness statement from Cr Louise Elliot, submitted under cover of a statutory declaration, 28 January 2025, 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.

- Witness statement from Cr Ryan Posselt, submitted under cover of a statutory declaration, 28 October 2024, 1p;
- Witness statement from Cr Bill Harvey, submitted under cover of a statutory declaration, 22 October 2024, 1p;
- Cr Sherlock's comments on the Cr Kelly's response, submitted under cover of a statutory declaration, 27 February 2025, 14pp;
- Further response from Cr Kelly, submitted under cover of a statutory declaration, 26 March 2025, 7pp;
- Witness statement from Cr Will Coats, 1 August 2025, 2pp;
- The *Local Government (Code of Conduct) Order 2024*.

The Panel met on 4 February 2025, 4 March 2025 and on 4 April 2025. All submissions and statements were considered by the Panel. At the outset of the investigation, Cr Kelly raised his concerns on two matters: the composition of the Panel, and the admissibility of the video recording taken on Cr Sherlock's phone. Both matters were responded to by the Panel.

In accordance with section 28ZG of the Act, the Panel determined to conduct a hearing into the matter.

Hearing

As per section 28ZH of the Act, the Code of Conduct Panel held a hearing on 4 August 2025 in the Executive Building, Murray Street Hobart. Cr Sherlock called Crs Ryan Posselt and Bill Harvey as witnesses, and Cr Kelly called Cr Will Coats as his witness. Cr Coats appeared by video link.

The Chairperson opened the hearing with a statement about the procedures to be followed, and a summary of those parts of the complaint being investigated.

Both Cr Kelly and Cr Sherlock, and the witnesses, took the oath or read the affirmation statement prior to giving their evidence or making statements to the Panel.

1. Cr Sherlock reiterated her reasons for lodging the complaint in her opening statement. She repeated the words spoken by the Lord Mayor during the council meeting of 16 September 2024, during debate on Item 14 Council Governance Review, when the Lord Mayor made a ruling on a Point of Order, and specifically noted that the words being used by Cr Sherlock during her intervention in the debate could not be taken as offensive to a reasonable person; thus the Point of Order was overruled.
2. Cr Kelly was permitted to question Cr Sherlock at the conclusion of her opening statement. He asserted that there had only been two meetings of the Planning Committee (the Committee) cancelled because of the absence of a quorum, not three or four as stated by Cr Sherlock. He questioned what evidence there had been of unfavourable community comment regarding the cancellation of the Committee meetings, and Cr Sherlock responded that there had been commentary in *The Pulse*, and the *Mercury* newspaper, and online.

Cr Kelly then asked if he was a member of the Committee, despite not having nominated. Cr Sherlock responded that he was not a member of the nominated Committee, but that if he attended a meeting, he would be co-opted onto the committee for the duration of that meeting, and would therefore be able to vote.

Further questions were asked by Cr Kelly and answered by Cr Sherlock regarding the committee and the number of nominees.

Cr Kelly questioned Cr Sherlock about the gestures he used during his words to her in the exchange which is the subject of this complaint. Cr Sherlock stated that it was not only the gestures which she found to be derogatory and offensive and threatening, but also the tone and manner of his speaking.

3. Cr Kelly then responded to the complaint. He explained at length the previous committee structures of the Council and the roles he had played in those committees. When asked by the Chairperson simply to respond to the complaint about his behaviour during the meeting of 16 September 2024, he contended that his record of participation in council duties accounted for his reaction to Cr Sherlock's intervention, viz., he was offended, and considered that the provocation was *so great* because, as he described it, Cr Sherlock's words unfairly described him and were a *total misrepresentation*. He said it was *all about my credibility*. He described Cr Sherlock's tone of voice as *really heated*. He considered that his reaction had been *normal*.

Cr Kelly said that in telling Cr Sherlock that she was disgusting, he was expressing *his strong disapproval* of how he was being *vilified and humiliated*. He said that he had *owed it to himself and to the public*. He said that he had had to 'protect his honour' by responding as he did.

4. Cr Coats appeared at approximately 12.18 pm as a witness for Cr Kelly. Cr Coats provided a brief description of the relevant events at the council meeting of 16 September 2024, and was then questioned by Cr Sherlock. Cr Coats said he did not think that Cr Kelly had been shouting, although he conceded that *voices may have been raised in a very heated meeting*. He described the meeting as an environment where there was a heightened risk of confrontation occurring, and he did not consider that Cr Kelly's response to Cr Sherlock was premeditated. In responding to questioning from the Panel, Cr Coats said that he thought Cr Kelly's response had been *candid and direct*, but that Cr Kelly was upset, rather than angry. Cr Coats said that he did not see threatening or aggressive behaviour from Cr Kelly towards Cr Sherlock.

During Cr Kelly's questioning of Cr Coats, Cr Kelly tried to ask Cr Coats a question about the admissibility of video recordings taken on a personal phone during a council meeting. The Chairperson disallowed the question on the grounds that the opinion of Cr Coats could carry no weight on this matter, as it was a legal question. Cr Kelly was told that he could make submission on the matter in his closing statement.

5. Cr Harvey appeared as a witness for Cr Sherlock. He appeared at approximately 12.49 pm. He said that all elected members had the right to say what they felt, and have the right to be heard and be listened to, and not make personal remarks about other elected members. He noted that the Lord Mayor, as chairperson of the meeting, was under *an enormous amount of pressure* because of the behaviour of another elected member, and there was an escalation in the tension in the meeting room.

Cr Harvey said that there were words spoken that were inappropriate, including the word 'disgusting' used by Cr Kelly to describe Cr Sherlock. He also said that it was

inappropriate to gesture aggressively and point to Cr Sherlock as Cr Kelly had done. In answer to questions from Cr Sherlock, Cr Harvey said that he personally was offended by what Cr Kelly had said in the meeting itself, and that he was 'shocked' by the words and gestures made by Cr Kelly. He said he had been worried about Cr Sherlock's reaction to Cr Kelly's words and gestures, that she looked *stunned*. He reiterated that he had advised Cr Kelly during the adjournment to *keep it cool John* with the intention of de-escalating the situation. He said that he did not consider Cr Kelly's behaviour to have been justified, as *we are all entitled to have an opinion*. He described Cr Kelly's language as offensive and uncalled for.

Cr Sherlock's support person, Mr John Abetz, left the hearing at approximately 1.06 pm. He was reminded by the Chairperson before he left that the hearing was closed, and that he must not reveal anything he had heard or seen in the room to any other person.

6. Cr Posselt appeared as a witness for Cr Sherlock. He appeared at approximately 1.07 pm. He stated that the council meeting had descended into a *degree of chaos* as a result of the *bad behaviour* of some elected members. He said that he had witnessed Cr Kelly using *aggressive and threatening language* towards Cr Sherlock. He said that he had seen Cr Sherlock's reaction to Cr Kelly and had tried to intervene, whereupon he said that he *had got a mouthful as well*.

The Panel asked Cr Posselt about the *aggressive manner* of Cr Kelly's address to Cr Sherlock. Cr Posselt noted that the Lord Mayor had already asked Cr Kelly to desist, but Cr Kelly had persevered.

Cr Kelly had no questions for Cr Posselt. Cr Sherlock asked Cr Posselt if he had heard her say that she felt threatened by Cr Kelly, and Cr Posselt replied that he had heard her say that, and he understood her feeling threatened by Cr Kelly in light of what he described as the *male/female, older man/younger woman dynamic*.

Cr Posselt left the hearing at approximately 1.22 pm and after a short break, the hearing resumed. Cr Kelly was asked if he wished to add anything to his statement in response to the complaint, but he declined to add anything at this point.

7. Cr Kelly was then questioned about this statements to the hearing. In answer to a question from the Panel about the words he had used in talking to Cr Sherlock, and whether he considered them appropriate in a council meeting, he responded that 'disgusting' may have been 'inappropriate', but that the Panel should consider what he called the *mitigating circumstances*. He said that he considered Cr Sherlock's words were insulting and offensive. He admitted that his words may have been inflammatory. He said that it was a *high octane environment* and that the Council had had *worse meetings than this*. He said that Cr Sherlock's intervention in the council meeting had *crossed the line*, and that his response had been understandable. He noted that at the time he had said to Cr Sherlock *bullshit.... someone's disgraceful behaviour has brought this meeting to its knees.... well done Deputy Mayor, shame on you, shame* the meeting had gone, in his words, *completely off the rails*.

The complainant and the respondent were then given the opportunity to make a closing statement to the hearing.

Cr Sherlock opened her statement by emphasising the significance of the Planning Committee in the role of local government. She then said that she had left the meeting (of 16 September 2024) early because she could not stay in the room because she felt threatened. She noted that both the CEO, and Crs Harvey and Posselt, had noticed her

response to Cr Kelly's words and gestures. She considered that the Cr Kelly's behaviour had been offensive because he was attacking her, albeit verbally.

In his closing submission Cr Kelly again said that the nominating for members of the Committee in the meeting of 16 September 2024 was 'normal', and that it was provocative of Cr Sherlock to record the exchange that took place between them during the adjournment on her mobile phone. He alleged that he had not known he was being recorded and that Cr Sherlock's action was illegal.

He then quoted from a letter from the Acting Director of Local Government which said that the behaviour of some elected members during that council meeting had been *offensive and antagonistic*. Cr Kelly said that he relied on the words in that letter of 7 October 2024, in that it appeared to indicate that in the view of the Acting Director, Cr Sherlock's speech during the debate had been inflammatory, and not furthering the debate, thus relieving elected members of their responsibility to comply with acceptable rules of debate in council.

Cr Kelly emphasised that Cr Sherlock had used the word 'disappointed' several times in her intervention in the debate, and that had been a mitigating factor for him for his behaviour. He emphasised that his intentions were *pure* and that he regretted it if he had *pushed things to the boundary*. He reiterated that he had been offended and embarrassed by Cr Sherlock's intervention in the debate. He continued to assert that it was Cr Sherlock's behaviour that was the reason for his response, and hence, the reason for the Code of Conduct complaint against him.

In closing the Chairperson asked Cr Kelly if he wished to make any submission on sanction in the event that the Panel upheld any part or all of the complaint against him. Cr Kelly said that he considered that no sanction should be imposed.

Panel determination on the Admissibility of the Video Recording taken on Cr Sherlock's Mobile Phone

Listening Devices Act 1991 (Tas)

Cr Kelly objected to the recording taken by Cr Sherlock on her mobile phone of his discussion with Cr Sherlock during the adjournment of a Council meeting on 16 September 2024 at the Hobart City Council meeting rooms. Cr Kelly objected on the basis that this was a personal conversation and he had not consented to it being recorded.

The *Listening Devices Act* (the Act) prohibits the recording of "private conversations" subject to some exceptions and limitations as set out in the Act. Private conversations are defined at section 3 of the Act:

private conversation means any words spoken by one person to another person or to other persons in circumstances that may reasonably be taken to indicate that any of those persons desires the words to be listened to only –

(a) by themselves; or

(b) by themselves and by some other person who has the consent, express or implied, of all those persons to do so;

The evidence at the hearing revealed that the recording was taken in the Council meeting room and that there were many other people in the room at the time. Cr Posselt and Cr

Harvey both gave evidence that they heard parts or all of the conversation between Cr Kelly and Cr Sherlock which was recorded. There were also other Councillors in the meeting room and the Chief Executive Officer and some staff in the adjacent area.

The evidence establishes that this recorded conversation of Cr Kelly's was conducted in a public space where other people were listening or moving about or were present and therefore it cannot be determined to be a private conversation. This means that the *Listening Devices Act* does not apply to this recording and consent is not required pursuant to that Act.

The Panel's hearing process is not subject to the rules of evidence and it has a wide discretion to consider all relevant evidence. The Panel has determined that the recording is relevant and should be admitted and considered in its determination.

Determination of the Complaint

As per section 28ZI(c) of the Act, the Code of Conduct Investigating Panel determines that Cr Kelly has breached the Code of Conduct. The Panel upholds the complaint that Cr Kelly breached Parts 7.1 (a), 7.1(b), and 7.1(c), and Part 7.2 of the Code.

Reasons for determination

Preliminary

The Panel noted that Cr Kelly relied on a letter dated 7 October 2024 from the Acting Director of Local Government, cited above in Cr Kelly's closing submission, to justify his response to Cr Sherlock's intervention in the relevant debate.

However, Cr Kelly knew from submission made by Cr Sherlock, that a subsequent letter from the Acting Director and the Acting Deputy Secretary of the Department of Premier and Cabinet clearly stated that they *in no way, consider that the actions of councillors can be wholly, or partially justified by the contribution of the Deputy Lord Mayor to the debate* (on Item 14 at the council meeting of 16 September 2024).

The Panel therefore sets aside Cr Kelly's assertion that he was justified in relying on the letter of 7 October 2024, and gives no weight to the contents of that letter.

Alleged breaches of the Code

That Cr Kelly breached Part 7.1(a), 7.1(b), and 7.1(c), and Part 7.2 of the Code, viz.,

PART 7 - Relationships with community, councillors and council employees

1. *An elected member must –*

(a) treat all persons fairly; and

(b) not cause a reasonable person offence or embarrassment; and

(c) not bully or harass a person.

2. *A councillor must –*

(a) listen to, and respect, the views of other councillors in council and committee meetings and all other proceedings of the council; and

(b) endeavour to ensure that issues, not personalities, are the focus of debate.

The Panel determines that Cr Kelly did not treat Cr Sherlock fairly. Cr Kelly stated that he was upset, offended, humiliated, and vilified by Cr Sherlock's comments in open council. The Panel does not accept that this was a reasonable response to Cr Sherlock's expression of her disappointment that more elected members had not nominated for the Committee. It is apparent to the Panel that the process of finding the necessary seven nominees was protracted as a result of the reluctance (for whatever reason) of enough elected members to volunteer their services. To describe Cr Sherlock's expression of her disappointment as *bringing the Council to its knees* was a gross overstatement by Cr Kelly, and was unfair to Cr Sherlock.

Cr Kelly's comments were made in open council, with members of staff present, as well as persons in the public gallery. In addition, the meeting was being live streamed. In other words, Cr Kelly's comments about Cr Sherlock reached a wide audience. Cr Sherlock said that she was offended and embarrassed, and this statement was corroborated in statements by witnesses. The Panel determines that a reasonable person would be offended and embarrassed by the accusations made against her, given that she had the right to speak in the debate, and that her tone was moderate, in no way extreme. The Panel disagrees with Cr Kelly's assertion that Cr Sherlock's tone was *really heated*, and considers that this statement by Cr Kelly is a completely false interpretation of the actual words, tone, and bearing of Cr Sherlock during the relevant debate.

Further, Cr Kelly continued to harass Cr Sherlock during the adjournment period referring to Cr Sherlock as an "upstart" and as "disgusting". The recording on Cr Sherlock's phone clearly shows this and that the tone of Cr Kelly was inappropriate.

The Panel determines that Cr Kelly's behaviour towards Cr Sherlock on this occasion constitutes a breach of clause 7.1(c), viz., Cr Kelly was bullying and harassing Cr Sherlock. The Panel accepts that bullying is most often described as behaviour repeated on a number of occasions over time. However, in this case the Panel determines that the tone, gestures, words, and stance adopted by Cr Kelly in his speech in reply and in the adjournment where he spoke to Cr Sherlock were an attempt to cower Cr Sherlock. In addition, much of his speech was directed specifically to Cr Sherlock. The Panel determines that this was bullying and harassment.

In accordance with section 28ZI(1) of the Act, the Panel upholds the complaint that Cr Kelly breached Part 7.1(a), (b) and (c) of the Code of Conduct.

The Panel determines that Cr Kelly failed to respect the views of Cr Sherlock during the relevant debate at the council meeting of 16 September 2024. During the hearing Cr Kelly appeared to be of the view that while he regarded Cr Sherlock's statement about her disappointment in the matter of nominations for the Committee to be insulting, offensive, and humiliating, and a direct attack on himself, he could be absolved of responsibility for his own inappropriate response on the grounds of what he regarded as mitigating circumstances. The Panel does not agree with this view. The Panel determines that Cr Kelly did not respect Cr Sherlock's views or her right to express those views in accordance with the standards of acceptable behaviour for elected members, which the Panel determines she did.

Cr Kelly's speech in reply was addressed personally to Cr Sherlock, and she was named several times. The Panel determines that this is a breach of Part 7.2 of the Code.

In accordance with section 28ZI(1) of the Act, the Panel upholds the complaint that Cr Kelly breached Part 7.2 of the Code of Conduct.

Sanction

The Panel notes that Cr Kelly has not had a code of conduct complaint upheld against him to this point, and notes also that Cr Kelly considered that no caution should be imposed, should the Panel determine to uphold any part or all of the complaint.

However, the Panel determines that the behaviour of Cr Kelly towards Cr Sherlock during the council meeting of 16 September 2024 was well beyond behaviour which complies with the Code of Conduct. Cr Kelly showed little restraint, and while he stated to the Panel that he may have expressed his views differently in different circumstances, he did not indicate at any time in the hearing or in his submissions that he understood the necessity to behave in a reasonable and respectful manner in carrying out his duties as an elected member of the Council.

The Panel reprimands Cr Kelly for his breaches of the Code of Conduct.

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 Initial Assessor'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 the parties and the Panel members, which prevented conduct of the hearing and 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 Tasmanian Civil and Administrative Tribunal for a review of the determination on that ground.



Lynn Mason

Chairperson



Audrey Mills

Member



Roseanne Heyward

Member

DATE : 28 August 2025