

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
HOBART CITY COUNCIL CODE OF CONDUCT**

Complaint brought by Councillor Ryan Posselt against Councillor Louise Elliot

Code of Conduct Panel

- Jill Taylor (Chairperson)
- Frank Neasey (Legal Member)
- David Sales (Local Government Member)

Date of Determination: 16 October 2024

Content Manager Reference: C33689

Summary of the complaint

A code of conduct complaint was submitted by Councillor (Cr) Ryan Posselt to the General Manager – Hobart City Council under cover of a statutory declaration dated 10 July 2023. Cr Posselt's complaint was investigated and determined by a previous Panel that found the whole or part of the complaint proven. Cr Elliot appealed that decision.

On 19 March 2024, a Consent Order was issued by the Hobart Magistrates Court setting aside the original decision ordering that it be remitted to a differently constituted Panel for redetermination in accordance with procedural fairness.

The complaint alleges that Cr Elliot breached the following parts of the City of Hobart Elected Member Code of Conduct adopted by Council on 20 February 2023.

PART 7 - RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES

7.1 A councillor –

- (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.

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

7. The personal conduct of an elected member must not reflect, or have the potential to reflect, adversely on the reputation of the Council.

Initial assessment

Following the decision of the Court, the Executive Officer forwarded Cr Posselt's complaint of 10 July 2023, to the Chairperson to conduct an initial assessment in accordance with the requirements of section 28ZA of the *Local Government Act 1993* (the Act). Apart from Cr Posselt's complaint of 10 July 2023 no other documentation from the original investigation and determination was made available to the Panel.

Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- the complaint should not be dismissed on the grounds that it was frivolous or vexatious regarding the social media posts made by Cr Elliot that he found to be personally offensive, and which have undermined Council decisions and her fellow councillors;
- the complainant had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion having regard to email requests by Cr Posselt to Cr Elliot requesting her to remove some of the posts and desist from re-tweeting others;
- the complaint substantially related to a contravention of City of Hobart Elected Member Code of Conduct, namely Parts 7.1. (a), (b) and (c) and Parts 8.1, 8.5, 8.6 and 8.7;
- the complaint does not disclose that an offence may have been committed or that it should more appropriately be dealt with by another person or authority;
- 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.

On this basis, the Chairperson determined that the complaint be investigated.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 9 May 2024.

Claim of apprehended bias

On 8th July 2024, Cr Elliot sent an email to the Acting Director of Local Government, Michael Mogridge, expressing concern that the Panel would be unable to bring an open, unbiased mind to the determination of the complaint and that the panel should be replaced.

Upon being informed of this, ultimately the Panel wrote to Cr Elliot on 23rd July 2024 requesting that she make a submission in respect of her claim of apprehended bias, detailing the reasons to support her allegation. Cr Posselt was also invited to make a submission regarding apprehended bias, but he declined to do so.

Cr Elliot provided her written response on 29 July 2024 which the Panel considered. The Panel concluded that Cr Elliot had not provided sufficient reasons for the Panel to recuse itself and Cr Elliot was advised of this on 8 August 2024.

Investigation

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

Material considered by the Panel

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

- Cr Posselt's complaint under cover of a statutory declaration dated 10 July 2023 with attachments (19 pages in all)

- City of Hobart Elected Member Code of Conduct adopted by Council on 20 February 2023
- Cr Elliot's response to the complaint under cover of a statutory declaration dated 17 June 2024
- City of Hobart Policy – Elected Members' Development and Support – Corporate Governance – Part T – adopted by Council on 24 April 2023

Cr Posselt alleges that Cr Elliot has used social media (Twitter now X and Facebook) to post information that brings the Hobart City Council into disrepute, undermines its decisions and contains inaccurate information resulting in misinformation. He further alleges that Cr Elliot has bullied him and other councillors and has named him in a defamatory manner which he claims is unfair, embarrassing and offensive. Cr Posselt submitted eight examples of social media posts by Cr Elliot supporting his complaint.

Cr Elliot provided her response under cover of a statutory declaration dated 17 June 2024. Whilst not denying she engaged in the social media, Cr Elliot pointed out that in some instances the initial posts were made by others.

Hearing

As per section 28ZH of the Act the Code of Conduct Panel held a hearing on 9 September 2024 at Floor 6 of the Executive Building, 15 Murray Street, Hobart.

Following the Panel's decision to proceed to a hearing in accordance with section 28ZG (1) the Executive Officer contacted the parties to arrange for a mutually convenient day and time for the hearing. On 15 August 2024 Cr Elliot advised by email that for her own safety and mental health she would not be attending a hearing and that she did not wish to receive any more correspondence from the Panel. Considering this advice, the Panel wrote to Cr Elliot on 15 August 2024 advising her that she could have a support person attend a hearing with her or alternatively appear electronically. Ultimately neither of these options were taken up by Cr Elliot.

In order to meet the requirements of section 28ZE (1)(c), observing the rules of natural justice, the Panel provided written notice to both Cr Elliot (on 19th August 2024) and Cr Posselt (on 20th August 2024) of the date, time and location of the hearing.

As a matter of protocol, the Executive Officer called Cr Elliot in the foyer of the Executive Building prior to the commencement of the hearing. Cr Elliot was not in attendance.

Given that only Cr Posselt was in attendance, the process was adopted whereby Cr Posselt spoke to each of the eight examples of the alleged social media posts made by Cr Elliot. He was then questioned by Panel members in relation to each one. The Panel drew Cr Elliot's submission to each of the social media posts to his attention asking Cr Posselt to respond.

Each of the eight social media posts were allocated (by the Panel) a reference identifier as follows:

- A A tweet and re-tweet on 4 July 2023 by Cr Elliot referring to Cr Posselt as "Clown Man"
- B A tweet dated 2 July 2023 by Cr Elliot with headline "HOBART HATES WOMEN"
- C A tweet dated 28 February 2023 by Cr Elliot with headline "MALE COLLEAGUE AT BOILING POINT AS FEMALE COUNCILLOR PROPOSES MOTION TO MAKE PUBLIC SPACES SAFE FOR ALL"
- D A Facebook post by Cr Elliot on 7 July 2023 (as noted by Cr Posselt) with headline "POLICY DEVELOPMENT – The Hobart Way". The Panel noted that the date on the post was 24 June 2023.
- E A Facebook post by Cr Elliot on 7th July 2023 relating to the absence of policy consultation and policy to support major changes
- F A Facebook post by Cr Elliot dated 21 June 2023 with headline "VACANT LAND TAX"

G A Facebook post by Cr Elliot dated 15 April 2023 with headline “EMPTY HOUSE WARNING”

H A retweet on 6 July 2023 by Cr Elliot to a tweet by Mr. Man containing graphic content

Exhibit A

Cr Posselt alleges that this breaches Parts 7.1 (a), (b) and (c). Cr Posselt said that this was entirely intended to undermine him by inferring he is not a kind person and is adversarial. Cr Posselt also claims this is one example of Cr Elliot bullying and harassing him. Cr Posselt further alleges that because Cr Elliot has many followers, she intentionally tweets and retweets knowing her followers will make offensive remarks of Cr Posselt. He added that it is not reasonable for Cr Elliot to name call referring to him as a hypocrite and a clown. Cr Posselt sent an email to Cr Elliot on 4 July 2023 asking her to delete a tweet which she replied that she would not.

When questioned by the Panel as to why Cr Elliot referred to him as “Clown Man”, Cr Posselt said that she regularly called him that on social media and it stemmed from a Council meeting where he referred to that Council as being a circus, which he said he apologised for and withdrew the comment within one minute. Regarding Cr Elliot referring to him as a hypocrite, the Panel questioned him about comments he made about Cr Zucco. It was put to Cr Posselt that this was the reason Cr Elliot may have called him a hypocrite as Cr Zucco may have been offended by his comments. Cr Posselt said that he could see how Cr Elliot was trying to draw a comparison, but Cr Posselt said that a previous Panel deemed it to be “political discourse”. This related to a complaint that Cr Elliot had lodged against Cr Posselt, which Cr Zucco co-signed. The Panel asked whether Cr Posselt was being unkind to or trashing Cr Zucco with his comment. Cr Posselt replied by saying he did not agree that he had been unkind to Cr Zucco or had trashed him as the context was different, although he could see that Cr Elliot was trying to draw the link to show him in a bad light. Cr Posselt stressed that he takes offence to being called a hypocrite and a “Clown Man” and, in his complaint, alleges Cr Elliot’s posts target him, and she refuses to refrain when requested to do so.

In her written response to the complaint Cr Elliot stated that she did not support name-calling, adding it was a mistake by her to call Cr Posselt “Clown Man”. However, she said that this should be considered in the context of how Cr Posselt has treated her and the lasting impact it has had on her.

Exhibit B

In his written complaint Cr Posselt alleges this breaches Part 7.1 (a), (b) & (c), as well as Part 8.1, 8.5 and 8.7. Cr Posselt claims this was “way beyond the limit of the code of conduct”. He said it was completely inaccurate and outrageous. The Council and the councillors in this photo to his knowledge have never intimidated women as a cohort.

Cr Posselt said that the trigger for Cr Elliot was that a specific motion (relating to public toilets) she put to Council did not get majority support. Cr Posselt told the hearing that he chose to walk out of the meeting and did not participate. Despite this his photo was included. Cr Posselt said that social media is all about exposure and in this instance over 6000 people had seen this tweet. Cr Elliot has tagged people with the same views on the subject matter. The Panel asked Cr Posselt what he thought Cr Elliot’s post was referring to with the descriptor “Nazi name calling and like Hitler calling others rats”. Cr Posselt said that this was a comment linked to Posie Parker’s visit to Australia where there were Nazi salutes at her speech in Melbourne.

Cr Posselt said in his view women are equals and probably the most offensive thing to say about him is to call him a misogynist. When asked by the Panel whether he was only concerned about himself in relation to this tweet, Cr Posselt responded by saying that whilst he can only speak for himself, he was positive that everyone in the photograph would be offended. Cr Posselt stated that the action of this tweet by Cr Elliot led to some councillors identified being bullied online.

In her written response, Cr Elliot stated that she did not create the post, but she was empathetic to

Women Speak Tasmania. Cr Elliot added that she reconsidered her post and deleted it within hours. When asked by the Panel whether he thought Cr Elliot had deleted the post within hours Cr Posselt said he didn't know but he thought she probably did because at that time the Director of Local Government became involved. Cr Posselt said that irrespective, once a tweet is made you lose complete control. At that point it had been seen by 6,700 people and possibly many more before it was deleted.

The Panel questioned Cr Posselt in relation to his allegation that this tweet breached Part 8.1, not accurately representing policies and decisions of council. Cr Posselt said Council had adopted "the modern way of providing public toilets", that is single cubicles and all gender use. Cr Posselt added that the motion was defeated because Council already had a policy on this, and that defeat of the motion was not aimed at women's right to speak without fear and intimidation. Cr Posselt said that this post was inaccurate because Cr Elliot made it an issue about women's safety. Cr Posselt was then asked if the post represented an inaccurate decision of Council. Cr Posselt responded that the post does not reflect exactly what Council's position is in relation to public toilets.

Cr Posselt added that this post adversely effects the reputation of Council by showing a majority of councillors who Cr Elliot wrongly claims hate women.

Exhibit C

Cr Posselt alleges this breaches Parts 7.1 (a), (b) and (c).

Cr Posselt told the hearing that he made a complaint to Tasmania Police following receiving thousands of twitter notifications within a 48-hour period, some of which were threatening. Cr Posselt said it was hard to estimate how many views Cr Elliot's tweet received but suggested it was "in the order of millions". As a result of this Cr Posselt claimed that he received many threats to him and his family. Cr Posselt said he received so many messages that he was forced to turn his phone off for a time. Cr Posselt said he went to Tasmania Police on the advice of the CEO, Hobart City Council. Cr Posselt alleges that during this period Cr Elliot kept responding to messages asking who he was and replying that he was a councillor and member of the Australian Labor Party. Cr Posselt said that Cr Elliot could have resisted responding to these comments, but she did respond to keep debate alive. Cr Posselt said that Tasmania Police suggested that he install security lights and consider resigning as a councillor.

Following this advice from Tasmania Police, Cr Posselt sent Cr Elliot an email on 24 February 2023 at 9.47am headed "Cease and Desist" asking her "to cease and desist from fuelling the fire". At 10.22am on the same day with the same heading Cr Posselt received an email from Sall Grover asking him to '...cease and desist from ...stating that a Tweet I posted of Louise Elliot's speech is causing 'damage' to you and your family...', being a demonstrably false claim. Cr Posselt made the point that Cr Elliot had deliberately passed Cr Posselt's email on to Sall Grover, who was making a big deal of this matter, with the intention of making the situation worse. Cr Posselt stated that he was so concerned that he sent an email on 24 February 2023 to the then Director of Local Government, the CEO of Hobart City Council and the Minister for Local Government.

When questioned by the Panel, Cr Posselt agreed that he did roll his eyes, going on to say that he is prone to moving around and does not like sitting still. Cr Posselt said that he rolled his eyes in response to evidence Cr Elliot had cited that he felt was clearly incorrect. Cr Posselt claimed that the post Cr Elliot made on social media was a select clip of a debate that went for over one hour.

The Panel asked Cr Posselt to comment on some of the descriptors Cr Elliot used to describe him in her written response to his complaint. She had described his behaviour as "immature, atrocious, and that he was highly unprofessional and disrespectful". Cr Posselt said that he disagreed adding, in his opinion, those words could be used to describe Cr Elliot.

Cr Elliot made it clear in her submission that she did not create the post, but did agree that she shared it. In her submission Cr Elliot expressed concern about Cr Posselt's body language stating that he was "huffing and puffing, shaking his head and rolling his eyes". Cr Posselt does not disagree with this assessment but says that the context is missing. Cr Elliot claims that Cr Posselt ridiculed her to the Chamber when there were members of the public watching in person and online.

At the conclusion of the hearing Cr Posselt provided a hard copy of an email he sent on 24 February 2023 to the Minister for Local Government, the Director of Local Government and the CEO, Hobart City Council, to which was attached an email to him of the same date from Cr Elliot. An electronic version of the email was later sent on 20 September 2024 to Cr Elliot by the Executive Officer for her information, given that she was not present at the hearing. The Panel, however, determined that it did not make any material difference to its investigation. Both Cr Posselt and Cr Elliot were advised of this on 20 September 2024.

Exhibit D

Cr Posselt alleges this breaches Parts 8.1 and 8.5. Cr Posselt said that this post is inaccurate and goes to undermining Council process.

Cr Posselt was asked by the Panel whether there is any written documentation that once all councillors have debated an issue and voted on it, councillors are expected to support the Council position irrespective of how they voted on the motion. Cr Posselt said that this goes to the heart of the part of the Code that says councillors cannot undermine Council policy and decisions. Cr Posselt went on to say that a councillor may make comment on any matter, but they must portray it in an accurate, delicate and sensitive manner and make it very clear that it is a personal view.

Cr Posselt said that Cr Elliot's post suggests that Council policy is being developed through social discourse and is being changed on the fly. Cr Posselt said that is not how policy is developed at the Hobart City Council. In the case of doubling Council rates for some properties, Cr Posselt said that Council made the decision to do so, and it was up to the officials to work out how it is done. The Panel asked Cr Posselt what in Cr Elliot's post was inaccurate. Cr Posselt replied that Cr Elliot had thrown a lot of doubt about the process that led to the decision thereby undermining the decision. Cr Posselt went on to say that Cr Elliot may not have agreed with the decision, but her post inferred a lack of governance and no policy, thus relating to the process. The Panel then put the question to Cr Posselt whether Cr Elliot was wrong when she said there was no policy. Cr Posselt replied that there was a Council paper so effectively there was policy on this matter.

In her written response to the complaint, Cr Elliot states that she is permitted to disagree and highlight areas of concern, and she believes that she communicates honestly. She points to a recent determination where a Panel found that an expression of criticism in itself is not disrespectful. Cr Elliot states that some of the comments made by the councillor in that particular case were highly critical of his Council.

Exhibit E

Cr Posselt alleges this breaches Part 8.5. Cr Posselt said that his post was still in relation to the previous one, i.e. the doubling of Council rates. The motion was put and passed 8 votes to 4. The Panel asked Cr Posselt whether the debate on the rates item was specific to it or part of the overall budget documentation. Cr Posselt said his recollection was that there was a paper on the rate increase which was dot pointed but it formed part of the overall budget documentation. The Panel asked Cr Posselt how Cr Elliot's posts brought the Council into disrepute. Cr Posselt replied by saying Cr Elliot's post "NO consultation, NO policy NO idea" suggests that Council does not do due diligence which is totally incorrect. According to Cr Posselt, Cr Elliot claims that there was no deep detailed consultation, but he believes that consultation did occur as he remembers having discussion with landowners and short-stay proprietors.

The Panel put to Cr Posselt that merely inaccurately reporting what a council is doing doesn't necessarily go to undermining its decisions or bringing Council into disrepute. Cr Posselt agreed with this as a general rule but claims that Cr Elliot's post, particularly saying Council has no idea, does bring Council into disrepute and she deliberately tried to undermine the decision of the 8 councillors who had voted for the motion. Cr Posselt added that this post suggested the Council is unworkable.

In her response Cr Elliot says she has done no more than express fair, albeit critical, comment about her own Council for the purpose of highlighting areas of concern. Cr Elliot claims this permits her to use hyperbole. Cr Posselt disagreed with this but said a councillor can make comment if they believe something is inaccurate, but they should do it in a respectful manner. Cr Posselt said that Cr Elliot's post said there was no consultation when, in fact, there was.

Exhibit F

Cr Posselt alleges this breaches Part 8.5. Cr Posselt said that this post is like the previous one in terms of the breach of the Code, in that it undermines a Council decision and suggests that there was no policy to support the decision. Cr Posselt added that Cr Elliot's post suggesting that the policy is a form of punishment is inaccurate. Cr Posselt said the reason Council passed this policy was to provide a disincentive for land banking in the current housing market. He added that Cr Elliot may take a different view.

Cr Posselt agreed that Cr Elliot has the right to make comment on issues she does not agree with but stressed that it must be done in an accurate, respectful and sensitive manner. Cr Elliot saying it is a "punitive broad-brush punishment by a Council that believes that they own your property" is inaccurate and inflammatory, he said.

In her response, Cr Elliot said that she was sharing her concerns with the community relating to how she perceives Council decisions and policy change is made at Council. She added that in her opinion her posts are true.

Exhibit G

Cr Posselt alleges this breaches Part 8.6. The Panel asked Cr Posselt if he could identify any of the people in the photograph. He said he recognised the woman with curly blonde hair as someone who sits on the Council's Housing with Dignity committee, but he did not know her name. The other one he knew, sitting at the right of the photo, was Ben Bartl from the Tenant's Union.

Cr Posselt said that he made a complaint in relation to this post because he had been contacted by a "multitude" of people complaining about Cr Elliot's comments, saying it was "bad and dangerous". Cr Posselt went on to say that it had the potential to put people in the photograph at risk and to cause them to be treated unfairly. Cr Posselt said that the concern was that Cr Elliot raised the level of anxiety by suggesting that property owners of empty dwellings need to assess their security arrangements.

Cr Posselt said that not all people in the community are reasonable and posts such as this could be antagonistic and a trigger for some. Cr Posselt added that by making the allegation about what someone said in a post with a photograph of four people, infers that one of those in the photograph made that statement. This means that there are three people there who could be targeted and did not make such a comment. Cr Posselt questioned the ethics of doing this.

The Panel asked Cr Posselt if there was a problem with Cr Elliot reporting what she had heard. Cr Posselt responded by saying the issue is not what was said but the implication that someone in the accompanying photograph has said it.

The Panel asked Cr Posselt if the comments were made without the photograph would it be disrespectful. Cr Posselt said that if the picture wasn't there, he still felt the comments were inappropriate, but it may not have breached the Code.

In her written response, Cr Elliot did not dispute she made this post on Facebook, which included the photograph, adding that she did not name the person who made the comment. Cr Elliot said she made the post with genuine concern for property owners saying that it was a "highly credible threat of trespass and squatting."

Exhibit H

Cr Posselt alleges this breaches Part 8.7. Cr Posselt stated that this tweet contained sexually explicit content with disrespectful and inflammatory language. In her written response Cr Elliot submitted that she re-considered the matter and deleted the photographs within 24 hours. Cr Posselt did not dispute Cr Elliot's claim but pointed out that in a 24-hour period these could have been shared a multitude of times.

The Panel noted that in her response, Cr Elliot indicated that she did not refer to herself as a

councillor in this tweet. Cr Posselt claimed that this was irrelevant as Cr Elliot has a public profile as a councillor and just because she omits that from one social media post, the general public would not pick up on this omission as they are continually seeing her posts as a councillor of the Hobart City Council. Cr Posselt added that the fact that she uses the same photo on all her posts ties her to council activities. Cr Posselt added Cr Elliot has a national profile as a Hobart City councillor regularly appearing on Sky news.

Cr Elliot also said in her written response said the images were subject to a warning. Cr Posselt replied by saying that all that does is require someone to make “one extra click” to see the images. Cr Elliot also made the point that the images of the genitalia were blurred and not graphic. Cr Posselt said that he totally disagreed.

The Panel asked Cr Posselt how Cr Elliot’s post has the potential to adversely affect the reputation of Council. Cr Posselt responded by saying that the behaviour of one person (who is a councillor) must reflect badly overall upon Council membership. Cr Posselt said that as he had lodged this complaint some time ago, on reflection now he may not have identified the correct part of the Code, but still believes it is a breach.

Prior to the conclusion of the hearing, the Panel provided Cr Posselt with an opportunity to comment on Cr Elliot’s response of 17 June 2024. Cr Posselt said he considered he had been given the opportunity to comment on that during the hearing.

In his summation, Cr Posselt said that there was some confusion about “where the bar is set” in relation to social media commentary. Cr Posselt said that the social media posts he submitted with his complaint were only a selection and there were several more of that vein posted by Cr Elliot during the period covered by his complaint. He added that in his view they went beyond what was acceptable in relation to the Code. Cr Posselt completed his presentation by saying it was up to the Panel to establish a threshold in making its determination.

Determination

As per section 28ZI of the Act the Code of Conduct Panel determines the complaint by upholding part of the complaint and dismissing the remainder of it, as outlined below.

The Code of Conduct Panel considered the information provided by Cr Ryan Posselt and the written response to the complaint submitted by Cr Louise Elliot as well as evidence given by Cr Posselt at the hearing. The Code of Conduct Panel concludes that Cr Elliot has breached Parts 7.1 (a), (b) and (c) and 8.5, and to that extent upholds the complaint, but did not breach Parts 8.1, 8.6 and 8.7, of the Code of Conduct which was current at the time of the alleged contraventions between 28 February 2023 and 7 July 2023, to that extent dismissing the complaint.

Reasons for determination

Having provided commentary on each of the Exhibits Cr Posselt provided to support his complaint, the Panel refers to those it has determined are evidence of a breach of the Code under the various Parts. Where an Exhibit is not referenced in relation to a specific Part of the Code, the Panel was not satisfied that it amounted to sufficient evidence of a breach of the Code.

The Panel finds that Cr Elliot was in breach of the following Parts of the Code

Part 7.1 (a)

Having regard to the evidence before it, the Panel determined that Exhibits A and B, being tweets and/or retweets of Cr Elliot, amounted to breaches of this part of the code by her. The Panel determined that Cr Posselt had been unfairly singled out by Cr Elliot, often referring to him as ‘Clown Man’ and by including him in a photograph under the heading “HOBART HATES WOMEN”. Cr Posselt stated that he has the utmost respect for women and felt his treatment in relation to this post in particular was unfair. Furthermore, in the Panel’s view the fact that Cr Posselt absented himself from that debate is evidence of unfair treatment of him by Cr Elliot.

The Panel determines that Cr Elliot breached this part of the Code.

Part 7.1(b)

Cr Posselt submitted that Exhibits A, B and C demonstrated a breach of this part of the Code. The Panel accepted Cr Elliot's reference in exhibit A to Cr Posselt as a clown and a hypocrite publicly would have caused him embarrassment and offence. As to exhibit B, the Panel accepts that there was no evidence presented that demonstrates Cr Posselt "hates women". Cr Posselt indicated that any suggestion that he is misogynistic is the most offensive allegation that can be made against him. The Panel accepts that Cr Posselt was not present in the Chamber when the motion in question was debated and yet he was included in the photograph. The Panel concludes this tweet was aimed at offending Cr Posselt and possibly others.

In relation to Exhibit H, Cr Posselt contended that it demonstrated a breach of Part 8.7 of the Code. The Panel concluded that there was insufficient evidence that this post brought or had the potential to bring the Council into disrepute. However, the Panel is satisfied that Cr Posselt was, as a reasonable person, offended by the post and therefore determined that based on the evidence before it this Exhibit demonstrated a breach of Part 7.1 (b).

The Panel determines that Cr Elliot breached this part of the Code.

Part 7.1 (c)

Cr Posselt submitted that exhibits A, B and C demonstrated a breach by Cr Elliot of this part of the Code. Cr Posselt claimed in evidence that he was regularly referred to as 'Clown Man' by Cr Posselt in her social media posts. In her statement, Cr Elliot admitted that, in relation to exhibit A, she did call Cr Posselt 'Clown Man' whilst also admitting that it was a mistake. In relation to that exhibit the Panel accepted Cr Posselt's contention that Cr Elliot retweeted comments for the primary purpose of inciting others to make derogatory comment in relation to him. However, these intentional re-tweets resulted in Cr Posselt receiving many threats to his and his family's safety. In considering whether, in the context of exhibit A, Cr Elliot had breached this part of the Code, the Panel concluded that there was insufficient evidence establishing that she had bullied Cr Posselt, but it did agree that he had been harassed by the constant derogatory comments of Cr Elliot, either posted or re-tweeted on her social media.

The Panel determines that Cr Elliot breached this part of the Code

Part 8.5

Cr Posselt submitted Exhibits B, D, E and F are evidence that Cr Elliot made comment on Twitter that is inaccurate and misleading and as a result undermines the decisions of the Council. Cr Posselt said that a councillor can make comment in relation to a Council decision that they do not personally agree with provided that they make it clear it is their view only and that the content is factual and portrayed in a sensitive manner.

The evidence before the Panel shows that Cr Elliot, as an elected member, made public statements expressing personal views and asserting or implying that the Council as a body holds strong views against certain groups of people ('Hobart Hates Women'-exhibit B; several members of Council want to punish short-stay permit holders and owners of vacant land-exhibit F) and is effectively hopelessly inefficient and lacks any structure around policy development and decision making ('EPIC governance failure'-exhibit D; 'NO consultation NO policy NO idea'-exhibit E).

In her response Cr Elliot submits that the content she has posted is correct. However, the Panel does not accept these assertions or implications as factually correct. On the contrary, the Panel is of the view that these posts, particularly the bolded content, are aimed at "grabbing the headline" thereby deliberately conveying a poor perception of the Council. The Panel agrees that Cr Elliot could have posted her opinion in these instances and about these matters in an objective and less inflammatory manner, while still being critical of the relevant decisions by Council.

In respect of exhibits D, E and F Cr Elliot makes reference to an earlier decision of another Code of Conduct Panel, namely the matter of Keygan v Dorsey (Determined 1 August 2022; Content Manager Reference: C23924)

In that matter complaint had been made by Cr Keygan against Cr Dorsey about his strong and critical statements about the Burnie City Council and its councillors (of which he was one), both on Facebook and in the Advocate newspaper, concerning alleged inaction by the Council to protect fairy penguins that had been killed in a dog attack on the north-west coast near Burnie. In reasonably strong terms Cr Dorsey in both media expressed extreme disappointment with his fellow councillors in basically being unable to make even a simple decision to protect the penguins and effectively doing nothing.

Cr Keygan alleged a breach of a number of parts of the relevant Code of Conduct, including (relevant to the current matter) Part 8.5.

While Cr Dorsey did not dispute making the relevant personal and public statements, before the Panel proceeded to determine the matter (on the papers) it asked the complainant to identify the Council decision about which she alleged Cr Dorsey expressed a personal view. Apparently, she was unable to do so because ultimately the Panel dismissed the complaint under Part 8.5 of the Code as made (undermining decisions of Council) on the basis that the complainant could identify no relevant decision that was undermined by Cr Dorsey's remarks.

No such problem exists in the present case as the Panel had sufficient evidence before it to identify two relevant decisions, namely the motion relating to public toilets Cr Elliot put to Council that did not get majority support (see exhibit B) and the decision to increase rates (see exhibits D, E and F). The relevant decisions were, we are satisfied, undermined in the sense intended by Part 8.5, by the nature of Cr Elliot's public statements.

However, the Panel did make some general comments about the circumstances in which a councillor may criticise his/her fellow councillors, in saying:

'There is a line between legitimate criticism and expression of opinion by a councillor about his or her fellow councillors or council and statements that are misleading, insulting, abusive or otherwise causative of reputational damage. The line must be clearly crossed before the Panel can determine that a breach of the Code has occurred. Here, the Panel could not be satisfied that the line was crossed'

The Panel is satisfied that in the present case Cr Elliot did 'cross the line'. The statement that 'Hobart hates women' is plainly absurd and the idea that a body of councillors has set out to deliberately punish a particular group of landowners equally so. So too is the suggestion that the Hobart City Council, as a decision-making body with a budget of millions of dollars, is essentially incapable of discharging its primary function, namely, to make decisions. Responsible political debate is one thing. Inflammatory, attention grabbing, wholly unobjective and essentially child-like statements like the above are quite another.

The Panel does not find that the decision in Keygan v Dorsey is of any particular assistance to Cr Elliot.

The Panel determines that Cr Elliot has breached this part of the Code, at least to the extent of undermining Council decision making.

The Panel does not find that Cr Elliot was in breach of the following parts of the Code

Part 8.1

Cr Posselt submitted that exhibits B and D demonstrated that Cr Elliot breached this part of the Code. The Panel determined that whilst Cr Elliot may have been selective with the information she posted, it does not necessarily follow that she misrepresented the policies and decisions of Council. On this basis, the Panel was not convinced that there was sufficient evidence that Cr Elliot had inaccurately misrepresented Council policies and decisions.

The Panel dismisses this part of the complaint.

Part 8.6

Cr Posselt submitted that Exhibit G demonstrated that Cr Elliot breached this part of the Code, by linking her comments to those individuals photographed. Whilst the Panel acknowledged that some if not all of those individuals photographed might have been inappropriately considered to have made the alleged statement, the Panel did not agree that Cr Elliot had been disrespectful in making this Facebook post.

The Panel dismisses this part of the complaint.

Part 8.7

Cr Posselt submitted that Exhibit H demonstrated that Cr Elliot breached this part of the Code. Whilst Cr Posselt contended that the actions of one must necessarily reflect on others within a particular body of people. The Panel does not support this view. The Panel concluded that there was insufficient evidence that this post reflected, or had the potential to reflect, adversely on the reputation of the Council. However, based on Cr Posselt's evidence that he found this post "offensive and derogatory", the Panel is satisfied that Cr Posselt, as a reasonable person, was caused offence and embarrassment by it.

The Panel therefore dismisses this part of the complaint to the extent that it relates to Part 8.7. However, based on the evidence presented and accepting that Cr Posselt said that he was offended by it, determined that a breach of Part 7.1(b) had occurred.

Sanctions

In accordance with section 28ZI(2) of the Act the Code of Conduct Panel may impose one or more of the following sanctions on the respondent if the complaint is upheld either fully or in part.

- a. A caution;
- b. A reprimand;
- c. A requirement to apologize to a person affected by the failure to comply with the code of conduct;
- d. A requirement to attend counselling or a training course, or
- e. A suspension.

On 18 September 2024, the Panel wrote to Cr Elliot inviting her to make a submission on sanction should the Panel find that the whole or part of the complaint was to be upheld. As Cr Posselt did not state what sanction he considered appropriate at the time of lodging his complaint, the Panel offered him the same opportunity to provide comment.

Cr Posselt responded by email on 18 September 2024 at 2.37pm stating that he considered a suspension was warranted given their number and varied nature and the continued insistence by Cr Elliot that she is innocent of any wrongdoing. Cr Posselt also submitted that Cr Elliot be required to make an apology to the elected members pictured in the post "Hobart Hates Women".

During the hearing Cr Posselt stated that he was offended and embarrassed by the post "Hobart Hates Women" for the reasons described above but when asked by the Panel whether he thought the other councillors photographed were offended, he replied that he could only speak for himself, but he thought that they would be. As the Panel was not satisfied based on the evidence before it, that all the councillors were offended by Cr Elliot's post, the Panel determined that there was no basis to require Cr Elliot to make an apology to those councillors.

Cr Elliot responded by email on 19 September 2024 at 9.59 am submitting that she considered no penalty should be applied. Cr Elliot stated that she had already served 17 days of a 30-day suspension in relation to this very complaint, prior to her appeal to the Magistrate's Court being upheld. The Executive Officer confirmed this to be the case.

The Panel determined that some form of sanction was required as it agreed with Cr Posselt's contention that Cr Elliot had re-tweeted content intentionally to cause offence and embarrassment to Cr Posselt. Furthermore, when requested by Cr Posselt that the posts be removed, owing to him receiving threats against himself and his family, Cr Elliot refused to do so.

The Panel concluded that whilst Cr Elliot stated that she did not initiate some of the posts, she understood by re-tweeting reference to Cr Posselt, it would draw negative comment about him. Even though Cr Elliot had subsequently removed two of the posts, she would have known that once posted, there is an immediate impact, especially when that person has a wide following.

The Panel determined, in relation to Part 8.5 of the Code, that some of Cr Elliot's comments about the Hobart City Council were inaccurate and misleading, using headlines implying that it was dysfunctional, thus undermining council decision making.

Given her insistence that her behaviour has not breached the Code, the Panel concluded that Cr Elliot fails to understand that an elected member has obligations over and above that of the everyday citizen. Specifically, the need to comply with the Code of Conduct.

The Panel is conscious that Cr Elliot has already served 17 days of a 30-day suspension imposed by the previous Panel in respect of breaches of the same complaint as found by that Panel. Nevertheless, it considers in all the circumstances that a sanction is required, both in terms of a short period of suspension and a requirement to attend a training course.

Cr Elliot is suspended from performing and exercising the functions and powers of her office as a councillor for a period of 7 days. The commencement of the suspension should take effect on the date following the completion of appeal period (section 28ZP of the Act), which is 28 days from the date of determination report.

In addition, Cr Elliot is required to attend a training course within a period of 6 weeks of the tabling of this determination to enable her to distinguish between her role as an elected member and private citizen when making posts using social media.

The Panel recommends that the Office of Local Government identify a suitable training person/organisation.

Timing of the Determination

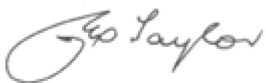
In accordance with section 28ZD (1) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the chairperson's determination that the whole complaint is to be investigated and determined.

The Panel has been unable to investigate and determine the complaint within 90 days of that determination, for the following reasons:

- Unavailability of Panel members, complainant and/or respondent at mutually convenient times for hearing due to other commitments
- Deliberating and deciding on the issue of apprehended bias

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 on that ground. 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 receipt of this determination.



Jill Taylor
Chairperson



Frank Neasey
Legal Member



David Sales
Member

DATE: 16 October 2024