

# **CODE OF CONDUCT PANEL**

## KING ISLAND COUNCIL CODE OF CONDUCT

Determination made 30 October 2018

*Local Government Act 1993*

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

Christine Fraser (Chairperson), Lynn Mason, Anthony Mihal

### **1. Summary of the complaint**

A code of conduct complaint was submitted by Mr Troy Brice as General Manager of King Island Council on 13 August 2018.

The complaint alleges that Councillor David Munday breached the King Island Council Code of Conduct.

The Chair wrote to Mr Brice on 21 August, explaining that a code of conduct complaint must meet the requirements set out in Section 28V (3) of the *Local Government Act 1993* (the *Act*), in that it must "state the provision of the relevant code of conduct that the councillor is alleged to have contravened". Mr Brice was asked to provide the specific section, or sections, of the Council's Code of Conduct to which he was referring. He responded by email on 21 August, indicating that the specific provisions of the relevant code were:

Part 2 – Conflict of Interest, items 3, 4 and 5.

Part 8 – Representation, items I, 5 and 7.

The effect of the Mr Brice's email was to amend his complaint by the inclusion of the above provisions of the Code as those that the councillor was alleged to have breached. Because the amendment was made before the Panel had commenced its investigation, the complainant could do so without the Panel's consent (the Act, Section 28X).

The Chairperson assessed that the complaint alleged breaches of the Council's Code of Conduct and should be investigated.

Councillor Munday was advised in a letter dated 30 August 2018 of the complaint against him and was sent a copy of the unamended complaint as originally submitted by Mr Brice. Councillor Munday forwarded his response in the form of a statutory declaration, dated 11 September 2018.

The Panel convened on 21 September 2018 to consider the complaint. At that meeting, the Panel accepted that the Mr Brice had amended the complaint by way of the email of 21 August 2018 as referred to above.

On 25 September 2018, Councillor Munday was advised about the amendment in writing. Councillor Munday was invited to submit any further information in response to the amended complaint. In response to this request, he forwarded a second statutory declaration dated 2 October 2018.

Mr Brice's complaint alleges that "a potential Code of Conduct violation by Councillor Munday" occurred, and that this was reported to him as General Manager by the Acting Mayor, Councillor Jim Cooper. It concerned "the social media King Island Community Facebook post by Cr Munday, stating his opposition to the Council's decision to amend airport fees and charges". Mr Brice stated that this was reported to him by concerned ratepayers. Mr Brice was concerned "that Cr Munday is employed by an airline operating at the Council-owned King Island Airport and that he has not declared a conflict of interest for related decisions". He attached copies of relevant pages from the King Island Community Facebook page.

Mr Brice also stated that the alleged Code of Conduct breach had "been amplified by the continued disunity and public disagreement demonstrated by Cr Munday on the budget approval of a commercial airport fee structure".

Notwithstanding references to "conflicts of interest for related decisions" and approval of the Council's budget, it is clear that the specific subject matter of the complaint is limited to the Facebook publication, because in answer to the question on the complaint form, "Date(s) of Incident(s)" the Complainant responds, "18 July 2018" and in answer to the question, "Location(s) of Incident(s)" the Complainant responds, "King Island Community Facebook Page".

The Facebook publication itself consisted of three 'comments' written by Councillor Munday to a post which was as follows:

"**Gina Green** shared a link. July 18 at 6:18 pm Press release from Rex cutting flights [www.rex.com.au](http://www.rex.com.au)".

Councillor Munday's first comment to the above consisted of the words:

"**David Munday** Nicole Conley could you show this to Royce and tell him from me to bunker down"

followed by two "smiley face" emoji and an angel emoji.

There followed an exchange of 'comments' between a Jamie Hollingsworth and Councillor Munday:

"**Jamie Hollingsworth** This isn't a laughing matter David this is why ppl can't afford to stay here

**David Munday** Jamie Hollingsworth totally agree. For your information Royce and myself voted against the introduction of landing costs going up and the introduction of the passenger tax.

**Jamie Hollingsworth** Why did it go threw?

**David Munday** Jamie Hollingsworth two is not a majority."

In his initial response dated 11 September 2018, Councillor Munday questioned several aspects of the complaint, and stated that he had also voiced his disappointment through a letter to the King Island Courier. He did not address the issue of perceived conflict of interest.

When asked if he wished to provide additional information given the amended complaint, Councillor Munday's stated that he had "not worked as a contractor for the said airline since early June 2018", and that "to be accused of voting against the airport budget because of a pecuniary interest is disappointing".

He also stated that "on the matter of speaking out about the Airport situation, I wanted the constituents to know that the Mayor and GM were not speaking on my behalf".

## **2. Determination**

In accordance with section 28ZE of the Act, the Code of Conduct Panel conducted an investigation on the evidence before it. The Panel considered the complaint, all the supporting material provided by the complainant including the relevant publication on Facebook, and both of Councillor Munday's statutory declarations. The Panel determined under section 28ZG (2) (b) that a hearing was unnecessary in the circumstances because the investigation could be adequately conducted by means of written submissions and examination of documentary evidence. The Panel could make that determination *inter alia* because Councillor Munday says that he made the relevant publication on Facebook. Essentially the evidence that it was necessary for the Panel to consider in coming to the determination below is undisputed.

It was unnecessary for the Panel to make any finding as to whether or not Councillor Mundy was employed by an airline operating at the King Island Airport. He says that he was not.

Under section 28ZI (1) (c) of the Act, the Code of Conduct Panel determines the complaint by dismissing it, on the basis that the matters of complaint cannot amount to a breach of Part 2; items 3, 4 and 5, or Part 8; items 1, 5 and 7, of the King Island Council Code of Conduct.

### **3. Reasons for determination**

#### **Part 2: Conflict of interest**

Part 2 (3) of the King Island Council Code of Conduct states that:

*A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting of the Council and at any workshop or any meeting of a body to which the councillor is appointed or nominated by the Council.*

Part 2 (4) of the King Island Council Code of Conduct states that:

*A councillor must act in good faith and exercise reasonable judgement to determine whether he or she has an actual, potential or perceived conflict of interest.*

Part 2 (5) of the King Island Council Code of Conduct states that:

*A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.*

The Panel concludes that the complaint is misconceived in that the conduct complained about, a publication on Facebook, cannot be a breach of Part 2; items 3, 4 and 5 of the King Island Council Code of Conduct in that it did not occur at a meeting of the Council, or a workshop, or a meeting of a body to which Councillor Munday had been appointed. Further there was no demonstrated conflict of interest in posting on the Facebook page, nor is it evident that Councillor Munday had a pecuniary interest in any relevant matter, whether or not he was employed by an airline operating at the King Island Airport at the time of the publication, or otherwise.

#### **Part 8: Representation**

Part 8 (1) of the King Island Council Code of Conduct states that:

*When giving information to the community, a councillor must accurately represent the policies and decisions of the Council.*

Part 8 (5) of the King Island Council Code of Conduct states that:

*A councillor's personal views must not be expressed in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

Part 8 (7) of the King Island Council Code of Conduct states that:

*The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.*

This matter of complaint is also misconceived in that Councillor Munday's publication of material on the Facebook page, to the effect that he and another councillor voted against a motion that was passed by a majority of the councillors, in no way misrepresents a policy or decision of the Council, does

not undermine the relevant decision of the Council, nor could it bring the Council into disrepute.

Councillor Munday's vote on the matter of airport charges was not confidential, and the Panel is not of the view that his disclosure of the vote could bring any disrepute to or undermine the Council.

His Facebook post was not objectionable and did not allege any misconduct or bad faith on the part of the Council or councillors who voted in favour of a proposition that he opposed. Without doing any of those things, Councillor Munday may publicly express disagreement with a policy or decision of the Council, as he is free to do.

The Panel concludes that this matter of complaint cannot amount to a breach of Part 8; items 1, 5 and 7 of the King Island Council's Code of Conduct on the part of Councillor Munday.

#### **4. The right to review**

A person aggrieved by the determination of the Code of Conduct Panel is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the ground that the Panel has failed to comply with the rules of natural justice.



Christine Fraser  
Chairperson



Lynn Mason  
Member



Anthony Mihal  
Member

9 November 2018