

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 Councillor Kirsty Russell to the General Manager of King Island Council on 7 August 2018. The complaint was referred on 10 August 2018 by the Council's General Manager, Mr Troy Brice, in accordance with section 28Z of the *Local Government Act 1993* (the Act).

A question on the complaint form submitted by Councillor Russel is "Provisions of the Council's Code of Conduct that you believe each councillor has contravened". The complainant responded as follows:

"Conflict of intrest [sic]. Being employed by an airline and not passing a budget due to his job."

The Chairperson made an initial assessment on 30 August 2018. In accordance with section 28ZA of the Act, the complaint appeared to substantially relate to a contravention of the council's code of conduct; it was neither frivolous nor vexatious; and it did not require referral to another person or authority for investigation. Therefore, the Chair concluded that the complaint alleged breaches of the Council's Code of Conduct and should be investigated.

By letter dated 30 August 2018 Councillor Munday was advised of the complaint against him and provided with a copy of the original complaint. He forwarded his response in the form of a statutory declaration dated 11 September 2018.

Councillor Russell's complaint alleged that Councillor Munday had breached the Council's Code of Conduct by his:

"Continuing supporting of airlines and not the community and Council's Decision.

Failure to declare his job with the airline.

What he said to the meeting vs the Vortex letter to Council."

By phone, Councillor Russell confirmed that an article and letter published in the King Island Courier were what she referred to as "the Vortex letter". She forwarded the relevant pages from the Courier to the Panel.

In his response, Councillor Munday stated, "I no longer work for Vortex as a ground handler in a subcontractor basis. My employment was terminated on or around the 1st of June due to lack of golfers visiting the island."

The Panel convened on 21 September 2018 to consider the complaint and found that the complaint did not comply with Section 28V of the Act. A letter was sent to Councillor Russell on 25 September 2018, inviting her to consider applying to the Panel under Section 28X(2) of the Act for consent to amend the complaint, pointing out that:

Section 28V of the Act provides that a complaint must:

- (d) state the provisions of the relevant code of conduct that the councillor has allegedly contravened; and*
- (e) contain details of the behaviour of each councillor that constitutes the alleged contravention*

The complaint does not identify the specific provisions of the Code (by part and paragraph numbers or at all) that Councillor Munday was alleged to have contravened, nor the specific behaviour that might constitute each contravention. For that reason, the Panel considered that it was not seized of a proper complaint that it is capable of determining under the Act.

The Panel advised Councillor Russell that she should forward a proposed amendment by 2 October 2018 if she wished to seek the Panel's consent to amend the complaint. She was informed that before determining whether or not to give consent, the Panel would invite submissions from Councillor Munday and if consent was granted, the Panel would seek Councillor Munday's response to the amended complaint.

Councillor Russell did not submit a proposed amendment to the complaint, nor any further information, by 2 October 2018 as requested or at all.

2. Determination and Reasons

Because the Panel is not seized of a proper complaint which complies with Section 28V of the Act, it cannot undertake any investigation, nor can it make any determination under Section 28ZI of the Act. The Panel finds that it cannot take any further action in respect of this matter. The Panel lacks jurisdiction because it is not seized of a complaint.

3. 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