

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 against Councillor Ryan Posselt (the respondent) by Councillor Louise Elliot (the complainant)

Code of Conduct Panel

- David Sales (Chairperson),
- Craig Perkins (Local Government Member)
- Amber Cohen (Legal Member)

Date of Determination: 28 February 2024

Content Manager Reference: C29781

Background

The complaint was submitted by Cr. Louise Elliot through the General Manager, Hobart City Council, in accordance with s28Y of the Act, and received on 1 August 2023. The complaint was forwarded to the Chairperson on 15 August 2023 to undertake an initial assessment in accordance with s28ZA of the Act.

The complaint alleges that:

- At the Hobart City Council meeting on 20 February 2023, while Cr. Elliot was speaking to a motion, Cr. Posselt through body language, ridiculed Cr. Elliot.
- Later in the meeting when speaking to oppose Cr. Elliot's motion, Cr. Posselt referred to a statement made during the previous Council election campaign that Council was a circus, and stated "but I only see one clown here". This was in the context of an unusually full public gallery. Cr. Elliot understood this referred to her and caused her ridicule and embarrassment.
- Subsequent to the meeting, social media posts made by Cr. Posselt demonstrated that Cr Posselt had intended to disrespect Cr. Elliot.
- On 3 July, in a social media post which referenced a newspaper article, Cr. Posselt made comments about Cr. Zucco which were "unfair, disrespectful and offensive" and designed to portray him as incompetent.

Preliminary Procedure

The Chairperson of the Panel informed the complainant and the respondent on 29 September 2023 that he had assessed the complaint as a whole, and in accordance with s28ZA (1) (e) of the Act, determined that the complaint was to be investigated and determined by the Code of Conduct Panel for the following reasons:

1. The complaint substantially related to alleged contraventions of the Hobart City Council's Code of Conduct; and
2. The complaint did not appear to be frivolous or vexatious in nature.

The Panel advised the respondent that should he wish to respond to the complaint, he could do so in writing by noon on 13 October 2023. The respondent's response was received on 2 October 2023 and was sent to the complainant for her information.

Hobart City Council Councillors Code of Conduct

The relevant Parts of the Hobart City Council Councillor Code of Conduct, that the complainant alleges the respondent has breached are as follows:

PART 7 - RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS AND COUNCIL EMPLOYEES

1. An elected member–

- (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.

2. An elected member must listen to, and respect, the views of other elected members in Council and committee meetings and any other proceedings of the Council, and endeavour to ensure that issues, not personalities, are the focus of debate.

PART 8 - REPRESENTATION

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.

Details of the Complaint

The complainant alleges that while she presented a motion to Council, Cr. Posselt's *"body language (was) intentionally disrespectful, immature, showed clear disdain and featured microaggressions towards me"*.

She further alleges that "During Cr. Posselt's verbal response to my Motion, Cr. Posselt intentionally personally ridiculed me beyond embarrassment. Cr. Posselt stated that 'during the elected (sic) campaign that certain elected members of the now Council tried to prosecute an argument that the Council was a circus, but I only see one clown here' ". Cr. Elliot alleges that this could only have been referring to her and she was offended and embarrassed by this comment.

Cr. Elliot also alleges that on 22 February 2023 and subsequent days, Cr. Posselt posted social media posts which belittled and demeaned her.

Finally, Cr. Elliot alleges that a social media post on 3 July, by Cr. Posselt concerning Cr. M. Zucco, was an *"unfair, disrespectful and offensive statement clearly designed to portray Alderman Zucco as incompetent as an elected member"*.

Cr. Zucco submitted a Statutory Declaration supporting the part of Cr. Elliot's complaint which related to him.

The Hearing

The Panel advised that the following documents had been received in evidence and that these documents had been circulated to all parties and the parties had acknowledged receipt thereof: -

- The City of Hobart Elected Member Code of Conduct, 20 February 2023;
- The complaint from Cr Elliot, dated 1 August 2023, 11pp, accompanied by a statutory declaration referring to 3 videos;
- The response to the complaint from Cr Posselt, dated 2 October 2023, 13pp, accompanied by a statutory declaration;
- A response from Cr Elliot dated 8 November 2023 pp13 accompanied by a statutory declaration dated 30 November 2023;
- A statutory declaration from Cr. M Zucco dated 9 August 2023.

The Panel advised it had viewed the video footage referred to.

Cr. Elliot requested that Cr. Zucco be called as a witness.

The hearing was originally scheduled for Monday 22 January 2024. However, the Panel was unable to confirm that the complainant was available to attend the hearing on that date.

The hearing was re-scheduled for 10.15 a.m. on Monday 19 February 2024.

Both Cr Posselt and Cr Elliot made an affirmation to the effect that the evidence they would submit would be the truth.

The complainant advised that she principally wished to rely on her written complaint but wished to take the opportunity to emphasise several aspects of her complaint. She wanted to make clear that the meeting was an exceptional one. She indicated that the public gallery was packed and the majority of the persons in the gallery opposed the motion she proposed to move. The topic of the motion was a sensitive one and "a heated topic globally". Cr. Elliot believed that she had spoken to the motion in a balanced, considered and reasonable way. She rightfully expected any response to be made in a respectful manner. She said the atmosphere at the meeting was hostile and this magnified the effect that Cr. Posselt's behaviour had on her. She felt that Cr. Posselt's words were scripted. In the circumstances she felt it reasonable that she felt intimidated by the body language and mortified by the clown comment.

Cr. Elliot conceded that Cr. Posselt had made an apology shortly after his clown comment after she had advised him of the offence she had felt. She explained, however, that following the meeting and the apology made, Cr. Posselt had then made two social media posts. The first of those was a statement "It's just a bit of political theatre", followed by a clown emoji and a circus tent emoji. In the second, Cr. Posselt shares a video extract of the Council meeting and says "...I sit next to her and let my disdain known through body language..." Cr. Elliot considered the first post to renege on the apology given and the second post to confirm it had been Cr. Posselt's intention to ridicule her.

The respondent then gave evidence that he had no intention of offending, embarrassing, bullying or harassing Cr. Elliot and that he regarded his actions as part of the normal debate that occurred at Council meetings. He did indicate however, that this was only the third Council meeting he had attended since his election and he was at that time, only part way through a steep learning curve regarding Council meeting procedures. In respect to the clown comment, he conceded he could have chosen his words more carefully. He indicated that he had made a public apology at the meeting as soon as he became aware of the extent of Cr. Elliot's disquiet. He also said that his social media posts were an attempt to make light of the video footage of the Council meeting, as the social media storm that followed Cr. Elliot's posts about it were having a direct impact on the safety of himself and his family. He had received a huge number of threatening posts to the extent that he had to involve Tasmania Police and install a home security system. He said his posts were not intended to cause further offence.

With regard to the expressed views via social media following the newspaper article exchange, with Cr. Zucco, Cr. Posselt indicated he felt these were part of normal political byplay and should not be regarded as offensive. He said he felt that we would be in difficult territory if we did not allow for a degree of debate on Council issues. During the course of Cr. Posselt giving his evidence, the Chair cautioned Cr. Posselt regarding the introduction of new evidence.

The Panel questioned Cr. Posselt regarding the post-election training provided to new Councillors and whether it had included reference to the Council's Elected Member Code of Conduct. Cr. Posselt responded that a substantial induction program was offered to new Councillors and that it had included a section on the Code of Conduct.

After the evidence of Cr. Elliot and Cr Posselt, Cr. Zucco was invited to join the hearing as a witness requested by Cr. Elliot. Cr Zucco made an affirmation to the effect that the evidence he would submit would be the truth.

Cr. Zucco spoke to his Statutory Declaration. He indicated that he found the social media posts by Cr. Posselt about him to be disrespectful, offensive and embarrassing.

Cr. Zucco in answering questions by Cr. Elliot gave evidence to the level of distress shown by Cr. Elliot at the Council meeting on 20 February 2023, confirming that she had advised him that she was so upset that she did not wish to join Councillors for dinner.

Cr. Elliot summarised by emphasising her distress caused by the actions of Cr. Posselt at the Council Meeting on 20 February 2023 and the subsequent social media exchanges. She further reiterated the offence and disrespect caused to Cr. Zucco by the social media postings about him.

Cr. Posselt summarised by indicating that he had had no intention of causing Cr. Elliot hurt and distress by his actions at the Council meeting or subsequently and that he believed the social media posts about Cr. Zucco following the newspaper article exchange should not be regarded as offensive or disrespectful, but rather part of necessary and reasonable public debate on issues before Council.

He agreed that the atmosphere at that Council Meeting was intense because of the crowded gallery. He felt as the year has progressed, he had adjusted his demeanour at Council meetings and that there had been a gradual improvement in the atmosphere at Council meetings generally. He also issued an unreserved apology to Cr. Elliot for any hurt she may have felt because of his behaviour at the meeting on 20 February 2023.

Before the hearing was concluded, the Parties were advised that the Panel had not formally determined this complaint and reserves its decision for further consideration.

However, it invited the parties to make any submission as to sanction if, after further consideration, the Panel were to uphold all or part of the complaint.

Cr. Elliot indicated that she felt that a caution would be an appropriate sanction and Cr. Posselt indicated that he felt no sanction was warranted.

Reasons for the Determination

The Panel's determination was based on the evidence put before it in writing and at the hearing as it relates to the relevant Parts of the Hobart City Elected Member Council Code of Conduct. The Panel's determination is detailed below.

PART 7 - RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS AND COUNCIL EMPLOYEES

1. An elected member—

(a) must treat all persons fairly;

In relation to Part 7 1(a) the Panel determines that there was no evidence of perceived bias against either Cr. Elliot or Cr. Zucco and for this reason the Panel believes that neither have been treated unfairly and consequently this part of the complaint is dismissed.

(b) must not cause any reasonable person offence or embarrassment;

In relation to Part 7.1 (b) the Panel believes that in the circumstances prevailing at the Council meeting on 20 February 2023, a reasonable person would have been offended or embarrassed by Cr. Posselt's clown comment, and for that reason this part of the complaint is upheld.

However, the Panel considers that Cr. Zucco as a Councillor with long service on Council would have been very experienced in dealing with differing views. He willingly engaged in the debate and a reasonable person would have considered the social media posts about him to be part of that debate. This part of the complaint is dismissed.

(c) must not bully or harass any person

In relation to Part 7 (1) (c) the Panel determined that Cr. Elliot had not been subjected to repeated, prolonged and unwarranted behaviour against her which would normally constituted bullying and harassment. This part of the complaint is therefore dismissed.

2. *An elected member must listen to, and respect, the views of other elected members in Council and committee meetings and any other proceedings of the Council, and endeavour to ensure that issues, not personalities, are the focus of debate.*

In relation to Part 7 (2), the Panel considered the degree of disrespect which would have to be shown for a breach of this part of the Code to occur. The Panel is of the view that the behaviour of the respondent at the Council meeting on this occasion was such that proper respect was not shown to the complainant, albeit at the lower end of the scale that this Part may have been intended to protect against. The Panel determines that this part of the Complaint is upheld but notes the low level of the breach.

PART 8 - REPRESENTATION

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.*

In relation the Part 8 (5), the Panel is of view that the only views expressed publicly were several social media posts referred to in the complainant's evidence. The Panel feels that they neither undermined any Council decision or brought the Council into disrepute. The Panel determines that this part of the Complaint is dismissed.

6. *An elected member must show respect when expressing personal views publicly.*

In relation to Part 8 (6) the Panel is again of the view that the only personal views expressed publicly were the several posts. The Panel felt that the social media posts could be viewed as disrespectful of Cr. Elliot insofar as they highlighted the clown comment to some extent. The Panel determines that this part of the Complaint is upheld, but again notes the minimal degree of breach of this Part of the Code.

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

In relation to Part 8 (7), the Panel is of a view that although the personal conduct of the respondent may reflect adversely on the respondent, it was not of sufficient scale to reflect adversely on the reputation of the Council. The Panel determines that this part of the Complaint is dismissed.

Determination

For the reasons outlined above the Code of Conduct Panel dismisses parts of the complaint against Cr Posselt relating to allegations of breaches of Part 7 (1) (a) and (c) and Part 8 (5) and (7) of the Council's Code of Conduct. The Panel upholds parts of the complaint relating to allegations of breaches of Part 7 (1) (b) and (2) and Part 8 (6).

Conclusion and Sanction

The Panel accepts that the motion under discussion at the Council meeting related to a divisive issue which had stirred considerable public interest and that the gallery at the Council Meeting was full mostly with people who opposed Cr. Elliot's Notice of Motion and that the atmosphere at the Council meeting was tense. As elected members, Cr Elliot and Cr Posselt have the right and the responsibility to make their views known. The Code of Conduct sets out the boundaries which should not be crossed in making these views known. A number of the allegations made against Cr Posselt have been dismissed, on the grounds that the Panel was not satisfied that Cr Posselt had breached the Code of Conduct by his actions. Nevertheless, the Panel finds that in some of the incidents cited in the complaint, Cr. Posselt has more than once caused offence or embarrassment to a person, and has failed to show respect to Cr. Elliot in his actions.

In determining the following sanction, the Panel has taken into account a number of mitigating circumstances. The Panel recognises that this was only the third meeting for both the complainant and respondent and no matter how thorough any induction programme was, both would be still not fully conversant with acceptable conduct and Council procedures especially in the presence of a highly charged public gallery. In addition, the respondent issued a public apology at the meeting and again during the course of the hearing issued an unreserved apology to Cr. Elliot. The Panel also accepts that Cr. Posselt has modified his behaviour at Council meetings since that time, having experienced significant backlash through social media in respect to his conduct. Nonetheless the Panel is dealing with a Complaint about behaviour at a Council meeting in February 2023.

Pursuant to section 28ZI (2) of the Act, the Panel imposes the sanction of a caution on Cr Posselt.

Delay in issuing the determination report

S28ZD of the Act requires a Panel to make every endeavour to issue a determination within 90 days of the chairperson of the Panel determining under [s28ZA](#) to investigate and determine the complaint.

The chairperson completed the initial assessment on 29 September 2023.

When the period exceeds 90 days from the date of the initial assessment, the Panel is required to outline in the Determination the reasons for the delay.

The delay was caused by:-

- There was difficulty in arranging a date for the hearing in late 2023 which was suitable to all parties and which would have enabled the timeline to be complied with.
- A date was originally arranged for mid-January 2024. Because of the fact that one of the parties was overseas and the Executive Officer was unable to serve some documents, the hearing had to be delayed until 19 February 2024.

Right to review

Under s28J of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.



David Sales

Chairperson



Craig Perkins

Member



Amber Cohen

Member

DATE : 28 February 2024