

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
BURNIE CITY COUNCIL**

C35605 - Complaint brought by Mr Simon Overland (the Complainant) against Councillor (Cr) Ken Dorsey (the Respondent).

Code of Conduct Panel

- David Sales (Chairperson),
- Matt Evans (Local Government Member)
- Frank Neasey (Legal Member)

Date of Determination: 4 July 2025

Content Manager Reference: C35605

Summary of the Complaint

A code of conduct complaint (the Complaint) was submitted by the Complainant to the General Manager of the Burnie City Council on 2 September 2024.

The Complainant alleges that on 27 August 2024, the Respondent received a Determination Report of a Code of Conduct Complaint relating to a different matter which had been lodged sometime prior, by the Complainant against the Respondent.

The Complainant further alleges that later on that same day, the Respondent attended a meeting of the Burnie City Council (the Council) which commenced with the closed section of the Meeting. During this section of the Meeting, the Council considered a Consultant's Report. The Complainant alleges that the comments the Respondent made during the debate on whether to receive the report and his voting against the motion to receive it could only have been an adverse reflection on the manner in which the Complainant had carried out his duties as General Manager of the Council.

Later in this part of the Meeting, it is further alleged that the Respondent endeavoured to convene a meeting of the General Manager Performance Review Committee (the Committee). Because this action was in breach of the requirements to convene a meeting of this Committee, the proposal did not proceed. It is alleged that because of their comments, it was apparent that some other councillors had forewarning of this proposal and knew its object was to lobby other councillors to pay out the Complainant's contract of employment and not allow him to work through to his effective date of resignation. It is alleged that should this have happened the Complainant would have suffered great reputational damage.

The Complaint alleges that by these actions the Respondent breached the following parts of the Burnie City Council's Councillor's Code of Conduct (the Code), adopted by Council on 25 June 2024.

Part 1 – Decision making

2) A councillor must make decisions free from personal bias or prejudgement

Part 2 – Conflicts of interest that are not pecuniary

1) When carrying out his or her public duty, a councillor must not be unduly influenced, nor be seen to be unduly influenced, by personal or private interests that he or she may have;

6) A councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must –

a) declare the conflict of interest and the nature of the interest before discussion of the matter begins; and

b) act in good faith and exercise reasonable judgement to determine whether a reasonable person would consider that the conflict of interest requires the councillor to remove himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.

Part 7 – Relationships with community, councillors and Council employees

(1) A councillor

(a) must treat all persons fairly; and

.....

(c) must not bully or harass any person.

Initial assessment

In accordance with section 28ZC (1) of the *Local Government Act 1993* (the Act), the Chairperson assessed the complaint to determine whether it should be referred to another person or authority. Having done so, he determined that it did not require referral as it did not disclose that an offence may have been committed or that it would be more appropriately dealt with by another person or authority.

In accordance with section 28ZB (1) of the Act, the Chairperson assessed the Complaint to determine whether:

- (a) the Complaint or part is frivolous, vexatious or trivial; or
- (ab) the Complainant has not made a reasonable effort to resolve the issue that is the subject of the Complaint; or
- (b) the Complaint or part thereof does not substantially relate to a contravention of the code of conduct of the relevant council; or
- (c) the Complainant has made the Complaint or part in contravention of –
 - (i) a determination of the Chairperson made under section 28ZB (2) of the Act;or
 - (ii) a determination of the Code of Conduct Panel (the Panel) made under section 28ZI (3) of the Act.

Having done so, it was determined that pursuant to section 28ZA (1) of the Act, the Complaint should be investigated and determined by the Panel. The allegations, if proven, were capable of constituting a breach of the Code.

The Complainant, Respondent and the General Manager were notified of the outcome of the initial assessment by letter dated 10 January 2025.

Investigation

The Panel commenced to investigate the Complaint and the following documents had been presented to the Panel to consider as evidence in this matter.

- Sworn Code of Conduct Complaint from Mr. S. Overland against Cr. K Dorsey (including attachments) dated 2.9.24 pp22.
- Sworn response to Code of Conduct Complaint from Cr. K. Dorsey dated 19.2.25 pp7.
- Sworn Correspondence from Mr. S. Overland dated 20.3.2025 pp2 in reply to Cr. Dorsey's response
- The Burnie City Council Councillor's Code of Conduct adopted 25 June 2024.
- Further sworn response from Cr. Dorsey dated 5.5.25 8pp.

Copies of all documentary evidence were supplied to both parties.

On 17 April 2025, the Panel wrote to the parties advising that it proposed to hold a hearing.

Subsequently, both the Complainant and the Respondent advised the Panel (on 5 May 2025) that they did not consider that it was necessary to hold a hearing into the Complaint.

In the circumstances and in accordance with section 28ZG(2)(b) of the Act, the Panel determined that a hearing was unnecessary because the investigation could be adequately conducted on the basis of the written material provided and, in the Panel's view, neither party would be disadvantaged.

Determination

Pursuant to section 28ZI(c) of the Act the Panel determines the Complaint by upholding part of the Complaint and dismissing the remainder of the Complaint; i.e. it determines that Cr Ken Dorsey has breached part 2 (1) of the Code, but dismisses the Complaint in relation to parts 1 (2), 2 (6) (a) and (b), and 7 (1) (a) and (c).

Details of the Determination

Part 1 – Decision making

2) A councillor must make decisions free from personal bias or prejudgement

The Panel takes the view the "decisions" in this part of the Code relate to decisions of the Council or its committees made upon a vote. The only Council decision raised in the evidence, is the decision of the Council at the meeting of 27th August 2024 (item AC091-24) relating to the Consultant's Report. The Complainant alleges that there is only one possible inference that can be drawn from the Respondent being the only councillor to vote against the motion in respect of that report; i.e. that it be received by Council, and his vote was in retaliation to the Complainant lodging a previous code of conduct complaint against him. Each councillor is, of course, entitled to form their own opinion and vote in the manner they see fit. That is in fact, why they are councillors. The Panel is of the view that a reasonable person would consider a link as suggested by the Complainant as tenuous indeed. It amounts to the Complainant suggesting that for the Respondent to vote anything else but 'yes' in the circumstances, inevitably amounted to a breach of the Code. Without more compelling evidence the Panel is unable to accept this.

The Panel dismisses this part of the Complaint.

Part 2 – Conflicts of interest that are not pecuniary

- 1) *When carrying out his or her public duty a councillor must not be unduly influenced, nor be seen to be unduly influenced, by personal or private interests that he or she may have;*

Part 2 (1) is not restricted to the making of decisions at a Council Meeting and it includes all actions of a councillor while carrying out his or her public duty. The Complainant has alleged that in endeavouring to convene a meeting of the Committee on the evening of 27th August 2024 with a view to the Committee deciding to pay out early the General Manager's contract the Respondent was influenced by the unfortunate relationship between the two parties and was seeking retaliation against the General Manager, as an early payout of his contract would damage his reputation. The Respondent in his evidence admits that the attempt to convene a meeting of the Committee did take place but because it was not successful should be regarded as irrelevant.

The Panel is of the view that when the Respondent attempted to convene the relevant meeting he was, as a councillor, carrying out his public duty. The Panel is satisfied that in attempting to convene the meeting at the time that he did it was his intention that the Committee determine to pay out the Complainant's contract earlier than his proposed date of resignation (3 November 2024) and that the Respondent was careless of any reputational damage that the Complainant might suffer as a result. Further, the Panel finds that in attempting to convene the meeting the Respondent was unduly influenced, or at the very least seen to be so, by his personal interests arising from his poor relationship with the Complainant and was seeking retaliation against him. The attempt to convene the meeting was, in the Panel's view, ill-considered, premature and unnecessary at the time, being immediately prior to the conclusion of the closed section of the meeting of 27th August. It was also contrary to meeting procedure rules.

The Panel upholds this part of the Complaint

Part 2 – Conflicts of interest that are not pecuniary

6) *A councillor who has an actual, potential or perceived conflict of interest in a matter before Council must –*

a) declare the conflict of interest and the nature of the interest before discussion of the matter begins; and

b) act in good faith and exercise reasonable judgement to determine whether a reasonable person would consider that the conflict of interest requires the councillor to remove himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.

The Complainant asserts that in attempting to convene the meeting of the Committee at the time he did the Respondent was also in breach of Part 2(6) of the Code.

As indicated under Part 1(2), on the evidence the *only* matter relevantly before Council which might have required the Respondent to (among other things) declare a conflict of interest, is the item listed for discussion at the closed meeting of Council on 27th August 2024 (item AC091-24) to receive the Consultant's Report.

The Complainant alleges that the Respondent said words to the following effect during discussion about item AC091-24 in the closed section of the Council meeting on 27 August 2024;

‘This isn’t about you Simon, but we keep getting told that we are broke and that we don’t have any money to spend but we are about to commit to significant additional expenditure. We should wait. These issues are all about interactions and group dynamics and that is all about to change and I think the problem is going to resolve, we don’t need to do this now, we should wait and see what happens’.

The Complainant asserts that this was a clear reference to him as his forthcoming resignation was the only known change that would occur in the near future to the ‘group dynamics’ referred to by the Respondent.

Even if that is so, the Panel is not satisfied that the words quoted above (in the context of the Respondent later voting ‘no’ upon the relevant motion) demonstrate on their face that the Respondent had a conflict of interest, either actual, potential or perceived. Nothing in the Agenda Paper in relation to item AC091-24 in particular was suggestive of a conflict of interest in the Respondent; it relates to matters of a general nature, making no reference to any relationship between the parties (The Panel has not had any of the attachments to the Agenda Paper put before it).

In any event, the Respondent was entitled to express concern about the potential cost of what was proposed and if his view was that the forthcoming resignation of General Manager might alleviate the need to spend significant monies for the stated purpose as recommended, and therefore delay in acting on the recommendation was the better course, he was entitled to hold and express that view. It doesn’t necessarily follow that he was thereby deprived of his right to either discuss the motion or vote upon it by virtue of a conflict of interest and therefore neither paragraph (a) or (b) of Part 2(6) of the Code applied to him.

The Panel dismisses this part of the Complaint.

Part 7 – Relationships with community, councillors and Council employees

(1) A councillor

(a) must treat all persons fairly; and/or

No evidence has been introduced to show that the Respondent has been treated unfairly. The Panel accepts that the Respondent was somewhat constricted in the evidence he could introduce by the confidentiality requirements of the Act. The Panel however can only make its determination on the basis of the evidence before it.

In particular the Panel is not satisfied that in any cryptic reference to the Complainant by the Respondent in the remarks quoted above, and the subsequent vote of ‘no’ upon the relevant motion, nor in the attempted convening of the meeting of the Committee, did the Respondent treat the Complainant unfairly. As to the latter conduct, if the Committee had the power to determine to pay out the Complainant’s contract at a date earlier than 3 November 2024, in the Panel’s view it would not be possible to treat him unfairly merely by attempting to convene a meeting to decide to do that very thing.

The Panel dismisses this part of the Complaint.

Part 7 – Relationships with community, councillors and Council employees

(1) A councillor

...

(c) *must not bully or harass any person.*

The basis of determining that bullying or harassment has occurred is a demonstration of ongoing, unwarranted and inappropriate behaviour against another person (or group of people). The evidence before the Panel does not establish that the Respondent engaged in such conduct against the Complainant over a prolonged period.

The Panel dismisses this part of the Complaint.

Sanction

In accordance with section 28ZI (2) the Panel may impose one of the sanctions listed therein.

In his Complaint, the Complainant indicated that he believed that a suspension was an appropriate sanction. On 12 May 2025 the Respondent advised that he did not believe any sanction was appropriate.

Although most of the Complaint was dismissed, the Panel was of the opinion that a sanction was warranted.

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

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, owing to -

- Delays owing to the Christmas/New Year holiday period and additional leave by some Panel members;
- The prolonged illness of one of the Panel Members;
- Availability of mutually convenient time for Panel members to meet; and
- Panel members involved in several other complaints.

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.



David Sales

Chairperson

DATE: 4 July 2025



Matt Evans

Member



Frank Neasey

Member