

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 Ms Louise Elliot against Lord Mayor Anna Reynolds

Code of Conduct Panel

- Jill Taylor (Chairperson)
- Liz Gillam (Local Government Member)
- Rob Winter (Legal Member)

Date of Determination: 18 October 2022

Content Manager Reference: C24163

Summary of the complaint

A Code of Conduct complaint was submitted by Ms Louise Elliot to the General Manager of the Hobart City Council which was dated 25 April 2022. The General Manager referred Ms Elliot's complaint to the Code of Conduct Panel on 20 May 2022.

The complaint alleges that Cr Reynolds breached the following parts of the City of Hobart Elected Member Code of Conduct, adopted on 18 February 2019, by posting a comment on the Lord Mayor's public Facebook page during the period 3-8 March 2022.

Parts of the Code alleged to have been breached are -

*Part 7.1 An elected member—
(a) must treat all persons fairly;*

Part 8.6 An elected member must show respect when expressing personal views publicly.

Part 8.7 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 receipt of the complaint, the Chairperson conducted an initial assessment of the complaint in accordance with the requirements of section 28ZA of the *Local Government Act 1993* (the Act). Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- the complainant had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion as Ms Elliot had contacted the Lord Mayor by email requesting that she remove the relevant posts which she did not do until after Ms Elliot arranged for her legal representative to send a similar request to Cr Reynolds on 8 March 2022.
- part of the complaint substantially related to a contravention of the City of Hobart's Elected Member Code of Conduct, namely parts 7.1(a) and 8.6.

- part of the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that if proven, the elected member would have breached Parts 7.1(a) and 8.6 of the Code.
- 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.¹

On this basis, the Chairperson determined to investigate parts 7.1(a) and 8.6 and dismiss part 8.7.

The complainant, respondent Councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 14 June 2022.

Investigation

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

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

- complaint by Ms Elliot dated 25 April 2022 under cover of a statutory declaration with attached copy of letter to Cr Reynolds from Murdoch Clarke dated 8 March 2022 and screen shots of booking.com sites;
- Cr Reynolds' response under cover of a statutory declaration dated 28 July 2022;
- a statutory declaration dated 6 September 2022 by Ms Elliot;
- an email dated 4 October 2022 from Cr Reynolds; and
- City of Hobart Elected Member Code of Conduct adopted on 18 February 2019.

By letters, dated 21 September 2022, the complainant and respondent Councillor were notified of the Panel's intention to proceed to determine the complaint without a hearing in accordance with section 28ZG(2) of the Act. Both parties were invited to provide any objection in writing within 14 days of receipt of the letter. No objections were received.

Determination

As per section 28ZI of the Act the Panel determines that Cr Reynolds has not breached the Code of Conduct, and therefore the Panel dismisses the complaint.

Reasons for determination

In early March 2022 a "fake profile" identity (Nerippa Eye) posted a comment or reply on the Lord Mayor's (Cr Reynolds) public Facebook page responding to a comment posted there by Ms Elliot. Ms Elliot posted two further comments or replies to Nerippa Eye before Cr Reynolds allegedly posted a comment "great idea".

In an undated email, likely sent on 4 March 2022, Ms Elliot wrote to Cr Reynolds requesting that she take down these posts. Cr Reynolds responded to this email on 7th March 2022 explaining that Ms Elliot was herself able to remove the comments to which she objected. Ms Elliot did not do this. Ms Elliot's legal representative wrote to Cr Reynolds on 8 March 2022 requesting that the posts be removed within 24 hours of the date of the letter. Cr Reynolds stated, "whilst not agreeing or accepting the views expressed" in the letter, that she realised that Ms Elliot was not going to remove her post/comment and therefore deleted her own comment/post after the 8 March 2022.

In her response to the complaint, the Lord Mayor attached a screenshot of the initiation of the Facebook commentary between Ms Elliot, Nerippa Eye and Cr Reynolds, which showed that Ms Elliot had initiated a discussion in response to a motion by Cr Burnet to accommodate refugees in Hobart.

¹ Section 28ZB(2) and 28ZI of the Act enable the Chairperson or the Panel (as applicable) to issue a direction to a complainant in prescribed circumstances not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

Ms Elliot further alleged that Cr Reynolds “allowed and encouraged the sharing of personal and identifiable with malicious and retaliatory intent” by alleging that Cr Reynolds’ comment “great idea”- “was equivalent to saying that Louise Elliot lives at 413 Liverpool Street, West Hobart”. The Panel notes that none of the properties mentioned in the Facebook post related to 413 Liverpool Street.

Cr Reynolds denied this allegation stating that it was a third party who had made comments in relation to Ms Elliot’s interest in certain properties and that she, Ms Elliot, as the individual who had commenced this interaction had the ability to delete or hide her comment and all the replies. Cr Reynolds stated that she makes an effort to moderate the comments left on her page and where she considers these are inappropriate comments, she closes them down. This accords with her obligations as the owner or administrator of this Facebook page.

In this instance, Cr Reynolds took the view that because Ms Elliot continued to engage in a conversation she had initiated, she was satisfied to participate.

In her submission covered by a statutory declaration, dated 6 September 2022, Ms Elliot stated that “a reasonable person would have seen that I was concerned for my privacy when I first asked Cr Reynolds via email on 4 March to remove the comment with the identifying personal information.” Cr Reynolds responded that this statement was incorrect. The comment named three Airbnb properties and the information is publicly available on Ms Elliot’s Airbnb website.

In considering this complaint, the Panel notes that the Facebook posts occurred during the period 3-8 March 2022 and were taken down by Cr Reynolds shortly thereafter. Ms Elliot’s complaint dated 25 April 2022 was submitted several weeks later.

In considering the evidence before it, provided by Ms Elliot and Cr Reynolds, the Panel determines in relation to each part of the Code as follows:

Part 7.1(a)

Ms Elliot alleges that Cr Reynolds has not treated her fairly in contributing to a Facebook discussion hosted on the Lord Mayor’s public website, by use of her words “great idea”. Fairness is about treating people equally or in a way that is reasonable. In this instance, the Panel has determined that Ms Elliot has been an active participant in a dialogue which she initiated, hosted on the Lord Mayor’s public Facebook page. Even after the third party responded to her initial comment, Ms Elliot posted a further two comments and did not utilise her ability to delete or at least hide this discussion. According to Cr Reynolds her comment “great idea” was an effort to close the debate and not intended to deal with Ms Elliot in an unfair manner. On the matter of divulging Ms Elliot’s personal information, the Panel agrees that any information pertaining to properties that Ms Elliot has an interest in and that was accessible via the comments/posts on the Lord Mayor’s Facebook page was and is easily publicly available elsewhere. The Panel concludes that Cr Reynolds has not breached Ms Elliot’s privacy and has thus not treated Ms Elliot unfairly.

Part 8.6

The Panel accepts that Cr Reynolds has not expressed a personal view about Ms Elliot. She has made a comment in relation to a debate that was being played out on the Lord Mayor’s public Facebook page, which had been initiated by Ms Elliot. Cr Reynolds did not make any personal or derogatory comments about Ms Elliot.

The Panel does not consider that Cr Reynolds was disrespectful when she commented “good idea” when she participated in the string following the initial comment of Ms Elliot.

The Panel concludes that Cr Reynolds did not breach parts 7.1 (a) or 8.6 of the Code of Conduct which was current at the time of the alleged contravention between 3-8 March 2022.

Timing of the Determination

In accordance with section 28ZD (1) a 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 complaint is to be investigated.

The Panel has been unable to determine the complaint within 90 days, owing to granting an extension for responses and the requirement to reschedule meetings owing to other commitments of Panel members.

Right to review

A person aggrieved by the determination of the 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.



Jill Taylor

Chairperson



Liz Gillam

Member



Rob Winter

Legal Member

DATE – 18 October 2022