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Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT
BURNIE CITY COUNCIL CODE OF CONDUCT

Code of Conduct complaint brought by Ms Patricia King and Ms Colleen Berryman against Councillor Ken Dorsey

Code of Conduct Panel

- Robert Winter (Chairperson)
- Liz Gillam (Local Government Member)
- Don Jones (Legal Member)

Date of Determination: 16 November 2022

Content Manager Reference: C24263

Summary of the complaint

The Code of Conduct complaint (the complaint) brought by Ms Patricia King and Ms Colleen Berryman against Councillor (Cr) Ken Dorsey was submitted on 14 June 2022 and was provided to the Chairperson for assessment on 21 June 2022.

The complaint alleged that during an interview Councillor Dorsey had with an Advocate Newspaper journalist which led to an article appearing in the Advocate Newspaper on 23 May 2022 in relation to Councillor Dorsey's Motion on Notice – Parking Attendants AO080-22, Councillor Dorsey's actions were disrespectful to Ms King and Ms Berryman in their roles as Burnie City Council Parking Officers and fuelled negative attitudes towards Parking Officers and made them feel unsafe. (The motion was withdrawn before the Council meeting on Tuesday 24 May 2022.)

The complaint alleged breaches of the following parts of the Council's Code of Conduct:

Part 7 – Relationship with community, Councillors, and Council employees.

- (1) A Councillor
 - (a) Must treat all persons fairly; and
 - (b) Must not cause any reasonable person offence or embarrassment; or
 - (c) Must not bully or harass any person.

Part 8 - Representation:

- (6) A Councillor must show respect when expressing personal views publicly.
- (7) The personal conduct of a Councillor must not reflect, or have the potential to reflect, adversely on the representation 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 section 28ZB and 28ZC of the Act, the Chairperson determined that:

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The complaint against Councillor Dorsey in relation to the alleged breaches of Part 7.1 (a) and (b) and (c) and Part 8 (6) and (7) should be further investigated as these substantially related to a contravention of the Burnie City Council's Model Code of Conduct adopted in February 2019.

The Chairperson also found that the complaint by both Ms King and Ms Berryman was permissible under section 28V(5), of the Act which relevantly states: 'a complaint may not be made by more than two complainants jointly.'

Material considered by the Panel

- The complaint submitted under cover of the statutory declaration, from Ms King dated 9 June 2022 and a statutory declaration from Ms Berryman dated 10 June 2022.
- Councillor Dorsey's response to the complaint by statutory declaration dated 26th July 2022 referring to documents provided 27 July 2022.
- Statutory declaration Ms King dated 4 August 2022 and statutory declaration Ms Berryman dated 8th August 2022 responding to Councillor Dorsey's statutory declaration of 26 July 2022.
- Audio recording of relevant part of the Burnie City Council meeting 24 May 2022. This was provided in the complaint documentation to Councillor Dorsey.
- Emailed response from Councillor Dorsey re sanction dated 4 November 2022

Investigation

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

The Panel met on 13 August 2022 to consider the complaint.

On the 31 August 2022 Ms King, Ms Berryman and Councillor Dorsey were asked in a letter from the Chairperson to provide their views on the possibility of the Panel determining the investigation without a hearing, on the basis that the evidence received and the material provided was sufficient to allow a determination to be made without the need for a hearing.

In his correspondence to Councillor Dorsey on 31 August 2022, the Chairperson also asked Councillor Dorsey to make submissions on sanction, should the Panel determine that all or any part of the complaint was upheld.

On 1 September 2022, Councillor Dorsey was provided with the statutory declarations of Ms King of 4 August and Ms Berryman of 8 August as he had not previously been provided with these documents.

On 12 September Ms King advised that she was content for the complaint to be dealt with without a hearing, and later that day Ms King, on behalf of Ms Berryman, indicated that Ms Berryman too, was happy for the complaint to be dealt with without a hearing.

On 16 September Councillor Dorsey, in an email to the Executive Officer of the Local Government Code of Conduct Panel, indicated that he did not wish to contest the matter further, nor did he wish to comment on the statutory declarations of Ms King of 4 August and Ms Berryman of 8 August.

As Councillor Dorsey's response did not address all the matters raised with him, on 20 September, at the Chairperson's direction, the Executive Officer of the Local Government Code of Conduct Panel emailed Councillor Dorsey requesting his response to the following two questions:

1. Do you wish to have a hearing, or are you content for the Panel to determine the complaint on the material advised to you in a letter from Chair of the Code of Conduct Panel of 31 August 2022? and;
2. Do you wish to make submissions on sanction if the Panel decides to uphold the complaints? If you do, you have until 5:00 pm on Friday 21 to do so.

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At 1:17 pm on 20 September via email, Councillor Dorsey replied as follows to the above questions:

1. No, I do not want a hearing. I am content with the Panel to make a determination based on the information provided, and
2. I cannot comment on what I will do prior to an event occurring. I will make a determination at that point in time.

As a consequence of this advice, the Panel decided to determine the complaint and did so, referring to all of the previously indicated evidence when it met via Zoom on 24 October 2022.

Having determined that some aspects of the complaint were substantiated (refer subsequently in this determination report), further communication was had with Councillor Dorsey in relation to sanction which is set out further under the "Sanctions" heading of this determination report.

Determination

Pursuant to section 28ZI (1) (c) of the Act, the Panel determined to uphold part of the complaint and dismiss the remainder of the complaint.

The Panel upheld the complaint relating to the alleged breach of Part 7 (1) (b) – a Councillor must not cause any reasonable person offence or embarrassment but dismissed Part 7 (1) (a) and (c).

The Panel also upheld Part 8 (6) that Councillor must show respect when expressing personal views publicly but dismissed Part 8 (7) – the personal conduct of a councillor must not reflect or have the potential to reflect adversely on the reputation of the Council.

Reasons for determination

Part 7 – Relationship with community, councillors and Council employees

Having considered the evidence before it the Panel concluded that Councillor Dorsey had breached Part 7 (1) (b) of the Code of Conduct by referring to Parking Officers, in the article appearing in the Advocate newspaper on 23rd May 2022, as "they look like Dad's Army with all their different jumpers and what not. Let's look professional."

The Panel was satisfied that this comment was a comment which any reasonable person would have considered to be offensive or to cause embarrassment to those to whom it was directed.

In reaching this decision regard was had to Councillor Dorsey's response supplied to the Panel that the comment was, in his own words, "a stupid statement and I deeply regretted it". Councillor Dorsey also conceded that he was embarrassed by his own language and flippant comment which he described as stupid, insensitive, and ignorant. Clearly it was a disparaging comment that would have the effect of belittling or ridiculing those people to whom it was addressed.

Based on the evidence presented and his own concessions the Panel has determined that Councillor Dorsey's comment was of such a nature that it would cause any reasonable person offence and embarrassment and did cause offence and embarrassment to the complainants.

In his response to the complaint in documents attached to his statutory declaration of 26 July 2022, Councillor Dorsey asserted that the complaint should be brought against the Advocate Newspaper as he was unaware of what was to be published on 23 May 2022 following his interview. In his email of 4 November, Councillor Dorsey asserted that he had spoken to and written to the Advocate journalist after the article was published and that as he had not written the article- he would not have used the terminology therein. The Panel noted that Councillor Dorsey did not produce any evidence to substantiate he had spoken a person at the Advocate newspaper, nor did he tender a copy of the letter he purportedly sent to the newspaper.

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His explanation regarding the term "they looked like Dad's Army with all their different jumpers and what not. Let's look professional." and suggestion that the reporter was to blame and not him is diametrically opposed to his admission that he was flippant in his comments and his subsequent apology. The Panel does not accept and rejects his submissions on this point.

The Panel did not consider that the evidence supported a finding that by his conduct Councillor Dorsey had been unfair to, nor had he bullied or harassed, the Complainants.

Part 8 – Representation.

The Panel considered that the evidence before it was sufficient to support a finding that Councillor Dorsey had also not shown respect to the complainants when expressing personal views publicly which occurred in the interview leading to the Advocate article on 23 May.

Based on his own admission, the Panel was unanimously satisfied that Councillor Dorsey's comments showed a lack of respect for Parking Officers. He described his own comment "they looked like Dad's Army with all their different jumpers and what not. Let's look professional." as being flippant. According to the Oxford dictionary, flippant is defined as lack of respect or seriousness, frivolousness. It was clear that his comment was expressing a lack of respect for the Parking Officers, and it was so interpreted by the complainants.

The Panel was not however satisfied that Councillor Dorsey's comment in anyway reflected adversely on the reputation of the Council. The comment made no reference to the Council, was not directed at the Council and was directed at the manner of dress of the Parking Officers.

Accordingly, the Panel upheld the complaint so far as it related to Part 8 (6) of the Code of Conduct and dismissed the complaint in relation to Part 8 (7).

Sanctions

Section 28ZI (2) of the Act states that

(1) After completing its investigation of a code of conduct complaint, the Code of Conduct Panel is to determine the complaint by –

- (a) upholding the complaint; or*
- (b) dismissing the complaint; or*
- (c) upholding part of the complaint and dismissing the remainder of the complaint.*

(2) If the code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more of the following sanctions on the councillor against whom the complaint is made:

- (a) a caution;*
- (b) a reprimand;*
- (c) a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;*
- (d) a requirement to attend counselling or a training course;*
- (e) a suspension from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding 3 months.*

(3) If the code of conduct complaint or part of it is dismissed, the Code of Conduct Panel may determine that the complainant may not make a further complaint in relation to the same matter for a period not exceeding 12 months unless the complainant provides substantive new information in the further complaint.

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Subsequent to the Panel's meeting on 24TH October, when it determined the complaint, as a consequence of Councillor Dorsey's email of 20 September 2022, when he stated:

"I cannot comment on what I will do prior to an event occurring. I will make a determination at that point in time."

the Panel wrote to Councillor Dorsey on 31st October seeking his submissions regarding whether any, or what sanction he believed should be imposed.

On 4th of November 2022, Councillor Dorsey's submission was received, and this, along with the other material in the Panel's possession has been considered in the determination as to an appropriate sanction.

The material basing the Panel's determination of an appropriate sanction is as follows.

1. The material from complainants regarding prior issues as between them and Councillor Dorsey- (although not considered by the Panel in its determinations regarding culpability, this material indicated to the Panel that Councillor Dorsey's actions in the period 23- 24 May 2022 were similar to those previously and appeared contrary to his agreements regarding his actions when dealing with issues affecting the Complainants.)
2. The Complainants indications of wishing Councillor Dorsey to be held "accountable" for his actions.
3. Councillor Dorsey's own comments that he considered his comments were "flippant".
4. The timing of Councillor Dorsey's withdrawal of his motion relating to the Advocate article contents.
5. Councillor Dorsey's indications of regret at the Council meeting on 24th May when the withdrawn motion was discussed.
6. Councillor Dorsey's responses to the requests made from the Panel through the Chair which is relevant to his general attitude to the matter and to test the genuineness of his expressed remorse.

In determining sanctions, the Panel considered the need for personal and general deterrence. As Councillor Dorsey has failed to abide by his undertakings to resolve his previous issues with the Complainants, the Panel considers it appropriate to impose a strong sanction to ensure greater compliance and understanding that as an elected official Cr Dorsey and others must comply with the Code of Conduct.

Pursuant to section 28ZI(2)(c) of the Act, which provides a requirement to apologise to the complainant or other person affected by the contravention of the Code of Conduct, the Panel imposes the following sanctions:

1. A requirement that Councillor Dorsey provides a written apology to both complainants and all other Burnie City Council Parking Officers; and
2. A requirement that Councillor Dorsey apologies for his conduct at the Burnie City Council Meeting at which this determination report is tabled.

Delay in Determination

Due to the nature of Ms King and Ms Berryman's complaint, the significant documentation provided with the complaint, the timing of the provision of information requested by the Panel, and the leave and other commitments of all Panel members, it was not possible for the Panel to determine this complaint with the 90 day period prescribed by section 28ZD(2) of the Act.

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 Magistrates Court (Administrative Appeals Division) for a review of that determination.



Robert Winter
Chairperson



Don Jones
Legal Member



Liz Gillam
Local Government Member

DATE: 16 November 2022