

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

LAUNCESTON CITY COUNCIL CODE OF CONDUCT

Complaint brought by Mr Michael Stretton against Councillor Joe Pentridge

Code of Conduct Panel

- Jill Taylor (Chairperson),
- Liz Gillam (Local Government Member)
- Graeme Jones (Legal Member)

Date of Determination: 26 February 2024

Content Manager Reference: C31267

Summary of the complaint

A Code of Conduct complaint was submitted by Mr Michael Stretton the General Manager of the Launceston City Council on 20 September 2023.

The complaint alleges that Councillor (Cr) Joe Pentridge breached the following parts of the Code of Conduct for Aldermen, approved by the Launceston City Council on 25 January 2023.

Part 3 - Use of Office

1. The actions of a Councillor must not bring the Council or the office of Councillor into disrepute.

Part 7 - Relationships 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.

Part 8 – Representation

7. The personal conduct of a Councillor 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 Act.

Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- part of the complaint, namely Part 8.7 of the Code be dismissed in accordance with section 28ZB (1) (b) on the basis that this Part of the Code does not substantially relate to a contravention of the Code as Cr Pentridge was not representing Council as a councillor.
- the balance of the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that the correspondence by Cr Pentridge contained rude and offensive comments. Furthermore, Cr Pentridge was not treating the recipient of his correspondence with respect and the recipient may have found that offensive.

- the complainant had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion having regard to Mr Stretton's statement that Cr Pentridge undertook extensive education on the Code of Conduct and that since his election Council officers have engaged with him in a respectful and consistent manner.
- the balance of the complaint substantially related to a contravention of the Launceston City Council's Code of Conduct for Elected Aldermen, approved on 25 January 2023 namely Parts 3.1 and 7.1 (a) and (b).
- the complaint does not disclose that an offence may have been committed or that it should more appropriately be dealt with by another person or authority.
- 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 3.1, 7.1 (a) and (b) of Mr Stretton's complaint.

The complainant, respondent councillor and the Acting General Manager were notified of the outcome of the outcome of the initial assessment by letter dated 7 November 2023.

Investigation

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

Material considered by the Panel

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

- Mr Stretton's complaint against Cr Pentridge submitted under cover of a statutory declaration dated 20 September 2023.
- Letter from Cr Pentridge, Director, Holly Pty Ltd dated 15 August 2023.
- A response from Cr Pentridge by statutory declaration dated 5 December 2023 covering a letter from his legal representative, Mr Chris Groves dated 5 December 2023.
- Launceston City Council's Code of Conduct for Elected Aldermen approved on 25 January 2023.
- A copy of a letter to Mr Stretton from Ms Kate Hanslow, Simmons Wolfhagen, dated 22 August 2023.
- A copy of a letter from Mr Chris Groves, Dobson, Mitchell and Allport dated 22 January 2024.

By letters dated 18 December 2023, the complainant and respondent councillor were notified of the Panel's intention to proceed to determine the complaint without a hearing. Both parties were invited to provide any objection in writing within 14 days of date of advice as well as the opportunity to make any additional submissions. On 2 January 2024, Mr Stretton responded and attached a copy of a letter he had received from Ms Hanslow dated 22 August 2023 which he had received prior to the lodgement of his complaint. On 10 January 2024, Mr Stretton advised that he agreed to not having a hearing. In his letter of 5 December 2023, responding to Mr Stretton's complaint, Mr Groves stated that Cr Pentridge had advised him that the complaint could be determined without a hearing. However, when Cr Pentridge was formally advised that the matter would not go to a hearing, he indicated that he wanted to consult with Mr Groves in relation to a further submission and whether to conduct a hearing. Owing to Mr Groves being on annual leave, Cr Pentridge requested an extension, which was granted for a further 7 days. The letter from Mr Groves dated 22 January 2024 was sent as Cr Pentridge's final submission which also advised he agreed that a hearing was not required. A copy of Mr Groves' letter was sent to Mr Stretton who advised that he did not wish to make any further comment.

Determination

The Panel met by teleconference on 30 January 2024 to consider the evidence as listed above.

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.

The Launceston City Council, unlike many other Councils contains a schedule attached to its Code, namely *SCHEDULE 1 - Additional Information to Support the Model Code of Conduct*. Included in the schedule is a description of the scope of the Code which states: -

SCOPE:

Application of code of conduct

This Code of Conduct applies to a Councillor whenever they:

- *conduct Council business, whether at or outside a meeting;*
- *conduct the business of their office (which may be that of Mayor, Deputy Mayor or Councillor); and/or*
- *act as a representative of the Council.*

The Panel notes the following:

- the letter from Council dated 10 August 2023 was directed to a corporate entity in its capacity as owner of land and Mr Pentridge was a director of that company;
- the correspondence between the parties related to a driveway crossover;
- the correspondence between the parties was of a private nature between the Council and a ratepayer;
- at all material times Mr Pentridge was acting in his capacity as a director of a private company;
- the publication of the letter (dated 15 August 2023) the subject of complaint, was between Mr Pentridge and the Council representative;
- at no time was Mr Pentridge acting in his capacity as a Councillor, nor was he conducting Council business or acting as a representative of Council.

Mr Stretton's legal representative cited two precedents where an elected members has been found to have breached their Council's Code of Conduct whilst declaring their actions were those of a private individual. The Panel had regard to these precedents and concluded the following –

1 Determination Report dated 12 August 2022, Waratah Wynyard Councillor Code of Conduct, complaints brought against Councillor Darren Fairbrother: Determination-Report-12-August-2022-Waratah-Wynyard-Council-Complaint-by-Mr-Mathew-Healey,-Cr-Mary-Duniam,-Cr-Andrea-Courtney,-Cr-Kevin-Hyland,-Cr-Celisa-Edwards-against-Fairbrother-Upheld-Tabled-15-August-2022.pdf (dpac.tas.gov.au)

In this instance the councillor concerned had been the subject of a criminal charge and was well-known in his community as a long-standing councillor. His behaviour and resulting charges, despite not performing in his role as councillor, were of such seriousness that the complaint was upheld.

2 Similar observations were made in the Code of Conduct Panel Determination Report dated 8 June 2020, Huon Valley Council Code of Conduct, complaint against Councillor Michael Newell: Determination_Report_8_June_2020_-_Huon_Valley_Council_-_Complaint_by_Mr_G_Swan_against_Cr_M_Newell_-_Partially_Upheld_-_Tabled_24_June_2020.PDF (dpac.tas.gov.au)

In this instance the councillor was a radio announcer, well known in his community as an elected member and the Panel determined that there was no clear line of delineation in comments he made in the public arena as an elected member or private citizen.

In the case of this complaint against Cr Pentridge, the Panel acknowledges the tone of Mr Pentridge's letter was robust in expression and bordering on being rude and offensive in part. Furthermore, the Panel is of the view that any elected member when communicating with their Council on all matters, even those not directly attributed to their role as a councillor should be aware of the health and safety impact such a communication may have on Council employees.

In the final analysis, however, by writing the letter dated 15 August 2023 to Mr Eberhardt, General Manager, Infrastructure and Assets as a private citizen and business owner this action was not covered within the scope outlined above.

The Panel therefore concludes that the Launceston City Council's Code of Conduct has no application in this matter and dismisses the complaint as the Panel has no power to deal with it.

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 complaint is to be investigated.

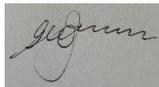
The Panel has been unable to determine the complaint within 90 days, owing to requests by the respondent to consult with his legal representative and the Christmas/New Year period intervening with some Panel members unavailable for periods of time.

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. In accordance with section 17 of the *Magistrates Court (Administrative Appeals Division) Act 2001*, an appeal must be lodged within 28 days of the date of receipt of this determination.



Jill Taylor
Chairperson



Graeme Jones
Legal Member



Liz Gillam
Member

Date: 26 February 2024