

Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT

HOBART CITY COUNCIL CODE OF CONDUCT

Complaint brought by Mr Greg Barns against Councillor (Cr) Louise Elliot

Code of Conduct Panel

- Jill Taylor (Chairperson),
- David Sales (Local Government Member)
- Amber Cohen (Legal Member)

Date of Determination: 30 April 2024

Content Manager Reference: C31676

Summary of the complaint

A code of conduct complaint was submitted by Mr Greg Barns to the General Manager of the Hobart City Council on 11 November 2023.

The complaint alleges that Councillor (Cr) Louise Elliot breached the following parts of the City of Hobart Elected Member Code of Conduct (the Code), adopted by Council on 20 February 2023, by posts on her social media platforms on 26 November 2023.

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.*

PART 8 - REPRESENTATION

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.*

Initial assessment

Following receipt of the complaint, the Chairperson conducted an initial assessment 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 complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that the complainant alleges that posts on social media by Cr Elliot were unfair, offensive and embarrassing, lacked respect and could

be construed as bullying or harassment. Furthermore, the complainant alleges that the posts reflected or had the potential to reflect adversely on the reputation of Council. All of which if proven could be a breach of the Code.

- the complainant had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion in light of Mr Barns' request to Cr Elliot to remove the posts. He also stated that any further attempts to resolve the issue with Cr Elliot would be pointless and this was clear from Cr Elliot's response to him.
- the complaint substantially related to a contravention of City of Hobart Elected Members Code of Conduct, namely Parts 7.1 (a), (b) & (c) 8.6 and 8.7;
- 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 that the complaint was to be investigated by the Code of Conduct Panel (the Panel).

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 19 December 2023.

Investigation

In accordance with section 28ZE of the Act, the Panel investigated the complaint.

The subject matter of this complaint relates to the current conflict in the Middle East. It is not the role of the Panel to consider the relative merits of this situation, despite the fact that Cr Elliot has provided several links supporting her position in response to Mr Barns' complaint. The role of the Panel clearly is to determine whether the content of Cr Elliot's social media posts has breached the Code. However, the Panel is cognisant of the difference between Hamas and the Palestine people and understands the flag in question is that of the state of Palestine.

On 26 November 2023, Mr Barns has alleged that Cr Elliot, or someone on her behalf, posted on X her views in relation to a matter that had been the subject of discussion at a Council meeting, relating to flying a Palestine flag at the Town Hall. The post in question follows –

"Flying the Palestinian flag was on the agenda for the #Hobart City Council, until a last-minute switch to pointless letter writing. How on earth anyone can propose flying the flag of a country that is governed by terrorists is beyond me, especially when around 75% of their population supports the horrific massacre of hundreds of people. I truly worry about the mind virus that brings these concepts into the Council Chamber. It's sickening. I will not in any way – however lame and symbolic - support terrorism, genocide and repulsive brutality."

Mr Barns in response posted on his account *"Inciting hatred is unbecoming of an elected representative #Palestine"*.

On the same day 26 November 2023, Mr Barns claims that Cr Elliot, or someone on her behalf, added a further post as follows –

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.

"I despise Hamas with every cell in my body. I'm sickened by anyone who supports or apologises for Hamas, their actions or objectives. I don't need to 'incite hatred' towards Hamas - they do that themselves. My heart breaks for all innocent people caught up in this. It's horrific".

Mr Barns provided evidence of a message he sent to Cr. Elliot, requesting her to remove her posts. Cr Elliot responded by saying that she would not be deleting them.

The Panel determined that there were two issues that could be interpreted as inflammatory and capable of causing offence, and/or other breaches of the Code contained in Cr Elliot's posts, namely reference to those who have a "*mind virus*" in Council and the lack of differentiation between Hamas and the state of Palestine and its people.

Material considered by the Panel

The following documents have been presented to the Panel to consider as evidence in this matter and were forwarded to Mr Barns and Cr Elliot on 12 March 2024:

- City of Hobart Elected Member Code of Conduct adopted on 20 February 2023
- Mr Barns' complaint with attachments under cover of a Statutory Declaration dated 27 November 2023, including a statement relating to the post by Cr Elliot and his reply
- Cr Elliot's response with attachments under cover of a Statutory Declaration dated 20 December 2023
- Further submission by Mr Barns dated 9 February 2024 under cover of a Statutory Declaration dated 13 February 2024
- Further submission by Cr Elliot with attachments under cover of a Statutory Declaration dated 27 February 2024

The Panel identified a further document, identified below, which it determined was relevant to the complaint and admitted it into evidence: -

City of Hobart Policy – Elected Members' Development and Support – Corporate Governance adopted on 24 April 2023 – Part T – Elected Members Use of social media

A copy of this document was forwarded to the complainant and respondent on 19 March 2024

For the benefit of any doubt, Cr Elliot did not deny having published the statements on X, as alleged. She did deny that publishing the statements could amount to a breach of the Code.

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

By letters dated 19 January 2024, 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 to not holding a hearing and make any final submissions. No objections were received.

Determination

Pursuant to section 28ZI of the Act the Panel determines that Cr Louise Elliot has breached part 7.1 (b), 8.6 and 8.7 of the Code of Conduct, in relation to social media posts of 26 November 2023. The Panel dismisses the complaint in relation to parts 7.1 (a) and (c).

In arriving at this decision, the Panel considered the complaint by Mr Barns dated 27 November 2023 and his further submission dated 13 February 2024, Cr Elliot's response dated 20 December 2023, and her further submission dated 27 February 2024. The Panel also had regard to the City of Hobart Code of Conduct for Elected Members endorsed by Council on 20 February 2023 and the Council's policy on elected member's use of social media dated 24 April 2023.

Reasons for determination

In his complaint, Mr Barns alleged that in her first post Cr Elliot, *"appears to incite hatred, cause offence and failed to show respect to those of us who support the Palestinian cause"* and flying the flag at the Hobart Town Hall. He claims that Cr Elliot's comments could cause offence to a reasonable person, defining *"a reasonable person"* in his submission. Mr Barns further alleged that in using the term *"mind virus"*, Cr Elliot was referring to some of her Council colleagues as well as other persons who supported the flying of the Palestine flag.

Cr Elliot did not deny the alleged conduct but defended the posts as being fair. She rejected the allegations made by Mr Barns by saying *"it is an absurd claim that she had "incited hatred"*. Cr Elliot alleges that Mr Barns has a *"clear bias towards the Palestine cause"*, which Mr Barns acknowledges.

Cr Elliot's reference to the Palestinian Flag or the *"Palestine cause"* does not delineate the Palestinian people from Hamas. She does not reference Hamas at all in her first post. The Panel finds that it is reasonable to assume that Palestinian people and their supporters could be offended by Cr Elliot's comments.

As an elected member, Cr Elliot has a responsibility to ensure that her comments cannot be *"deemed as offensive, discriminatory, defamatory or vulgar"* as outlined in the Council's social media guidelines for elected members.

Details of the determination

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

Part 7.1.(a) – 1. An elected member must treat all persons fairly;

Whilst Cr Elliot's comments may be construed as inappropriate in relation to those supporting the Palestine cause, there was insufficient evidence or submissions to support a view that she was treating a particular person or group of people unfairly in relation to others. Mr Barns listed this subsection in his complaint but did not refer specifically to how Cr Elliot had acted in an *"unfair"* manner in his complaint. No further evidence was tendered to support this allegation. The Panel therefore dismisses this part of the complaint.

Part 7.1 (b) – An elected member must not cause any reasonable person offence or embarrassment.

The Panel identified that there were two groups of people that Cr Elliot may have caused offence to. Firstly, her reference to her colleagues who supported the flying of the Palestine flag as having a *"mind virus"* and secondly, the Palestinian people are not one and the same as Hamas, which as she quite rightly points out, is a declared terrorist organisation. The Panel is of the view that by describing her fellow councillors in such a way, being those that brought the issue to Council or supported it, a reasonable person would find this embarrassing and offensive. The take-out from her comments, suggest that Cr Elliot does not respect views that differ from her own. Her choice of describing her Council colleagues, with an opposing view, as having a *"mind virus"* would be offensive and embarrassing to those people and to any reasonable person. The Panel upholds this part of the complaint.

Part 7.1 c) – An elected member must not bully or harass any person

The basis of determining that bullying and harassment has occurred is a demonstration of ongoing, unwarranted behaviour against another person (or group of people). The evidence before the Panel, showed the alleged incident was confined to a single event and did not occur over a prolonged period. The Panel dismisses this part of the complaint.

PART 8 – REPRESENTATION

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

Cr Elliot's conduct was to publish a statement that she was "sickened" by those with a "mind virus" who brought the matter of flying the Palestine flag into the Council chamber and went on to infer that those who supported the flying of the flag "*supported terrorism, genocide and repulsive brutality*". Cr Elliot made no reference to Hamas in her statement, only to supporters of Palestine. The Panel determined that these statements could be interpreted by a reasonable person to mean that Cr Elliot showed a lack of respect for those who have a different view to her. Whilst Council debate enables councillors to put forward their own ideas on a variety of issues, it must be done in a respectful manner. Taking the issue outside of the Council chambers by posting derogatory comments on social media, shows a lack respect for her fellow councillors. The Panel upholds this part of the complaint.

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

The manner in which Cr Elliot describes her fellow elected members as having a "mind virus" can reasonably be construed as suggesting they are suffering from a form of mental illness or condition which could lead to a perception that those colleagues do not have the capacity to function capably or bring rational ideas to Council for debate. Cr Elliot's words can and will be taken at face value. Further, Cr Elliot's comments could be taken to suggest that members of Council were supporting terrorism and genocide and were attempting to involve Council in such support. This therefore has the potential to adversely reflect on the reputation of Council. The Panel upholds this part of the complaint.

Sanctions

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

On 8 April 2024, the Chairperson wrote a letter dated 6 April 2024, to Cr Elliot advising her the parts of the Code that the Panel had upheld and seeking her comment on what, if any, sanctions she thought should be imposed.

On 17 April 2024, Cr Elliot provided a lengthy response to this request, which included further information she considered relevant to the complaint by Mr Barns. However, the Panel determined that additional evidence would not be accepted as it had concluded its investigation into the matter at that point. It therefore only accepted the commentary Cr Elliot provided that went directly to sanction. In this regard, Cr Elliot commented that the complaint should be dismissed or upheld without sanction.

The Panel did not accept that no sanction should be applied. It had determined that the content of Cr Elliot's public commentary relating to the flying of the Palestine flag did not clearly delineate between the State of Palestine and its people and Hamas, a terrorist organisation. The Panel took the view that at the time of public debate on this issue, tensions were running high in the community and accepted Mr Barns contention that, in such circumstances, these comments could be seen as inciting hatred or at least be reckless as to that possibility. Cr Elliot submitted that her only intention was to make a broad political statement against Hamas. Whilst Cr Elliot was quite

within her rights to post her views, she should have ensured that her words left no doubt, about the Palestine people and their supporters as distinct from Hamas.

In relation to Cr Elliot's choice of words, saying that she was concerned about the "*mind virus that brings these concepts into the Council Chamber*", a reasonable person would have assumed that she was referring to those councillors who had a different view to her and/or who had asked for the matter to be put on the agenda. Cr Elliot has said that she was not referring to any specific person or group of people, yet she specified it was the person or persons who brought the matter to Council. The Panel concluded that those councillors who brought or supported the opposing view would have concluded that she was making a statement that they had a "*mind virus*" and the implications of that assessment on their duties as councillors. If she did not mean the words, she should not have posted the statement.

The Panel, therefore, determines that Cr Elliot be reprimanded for making public statements that would cause offence to sections of the community. Furthermore, Cr Elliot's comments in relation to her fellow councillors did not show respect and had the potential to reflect adversely on the reputation of Council.

Timing of the Determination

In accordance with section 28ZD (1) of the Act, 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 -

- Delays owing to the Christmas/New Year holiday period and additional leave by some Panel members
- Availability of mutually convenient time for Panel members to meet
- 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 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



Amber Cohen
Legal Member



David Sales
Member

DATE: 30 April 2024