

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

DEWENT VALLEY COUNCIL

Complaint brought by Ms Amanda McCall against Councillor Wayne Shoobridge

Code of Conduct Panel

- David Sales (Chairperson),
- Philip Cocker (Local Government Member)
- David Palmer (Legal Member)

Date of Determination: 27 September 2024

Content Manager Reference: C33941

Summary of the complaint

A code of conduct complaint was submitted by Ms. Amanda McCall to the General Manager of the Derwent Valley Council on 3 May 2024.

During the course of conducting the initial investigation, the Chair became aware that the Derwent Valley Council Code of Conduct (the Code) displayed on the Council's website was not in accordance with the Model Code.

The Chair sought advice from the Executive Officer to the Code of Conduct Panel (the Panel) and after investigation was advised that the Council had adopted the Code in its correct form and that the version shown on the website was caused by a formatting error.

This meant that the original complaint quoted incorrect Part and Clause numbers. Ms. McCall was supplied with a correct version of the Code and submitted a revised complaint on 5 August 2024 supported by a Statutory Declaration

The revised complaint alleges that Councillor (Cr) Wayne Shoobridge breached the following parts of the Derwent Valley Council Elected Member Code of Conduct (the Code), adopted by Council in March 2022 by making an inappropriate comment to Ms. McCall at the New Norfolk Dawn Service, Anzac Day 2024 and also at during a subsequent conversation between the Mayor and Cr Shoobridge at a Council Workshop on 8 May 2024.

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;*

Initial assessment

Following receipt of the original 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 comments by Cr Shoobridge were unfair, offensive and embarrassing. All of which if proven could be a breach of the Code.
- the complainant had made a reasonable effort to resolve the complaint. The Complainant had approached the Mayor who had written to Cr Shoobridge about the alleged incident. The complainant had received no feed back at the time she submitted the complaint.
- the complaint substantially related to a contravention of Derwent Valley Council Elected Members Code of Conduct, namely Parts 7.1 (a) & (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

It was at this stage, the Chairperson became aware of problem with the posting of the Code on the Council's website and made the enquiries outlined above.

On the bases of the inquiries made, 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 28 June 2024 and the complainant was requested to revise the complaint to align with the correct numbering of the clauses of the Code.

Investigation

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

The basis of the Complaint was at the conclusion of the 2024 New Norfolk Anzac Day Dawn Service, Cr Shoobridge approached Ms McCall and made a comment which Ms. McCall alleges she found offensive and embarrassing. Ms McCall was accompanied by her 2 children and was sitting adjacent to Cr J Cosgrove. The parties as well as a witness did not all agree on the exact words used and the volume and manner in which the words were spoken. The Panel was of a view that these discrepancies were immaterial as it was accepted by both parties that the comment by Councillor Shoobridge related to the attendance of Ms McCall's 2 young children at the Dawn Service and her apparent inability to obtain a babysitter.

Cr Shoobridge in evidence indicated that he quickly realised that the comment he made had upset Ms. McCall and he apologised for upsetting her. Ms McCall indicated although she accepted Cr Shoobridge's apology she felt he was only apologising for upsetting her and not for using the words he did in the comment and she felt he did not realise the words he used were entirely inappropriate in an employer/employee situation.

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 McCall reported the incident to the Mayor who wrote to Cr Shoobridge pointing out the inappropriateness of his behaviour.

Subsequently, at a Council Workshop on 8 May 2024, Ms McCall alleges she overheard a conversation between the Mayor and Cr Shoobridge about the incident and it was also overheard by several other Councillors and staff members which further embarrassed Ms McCall.

Mayor Michelle Dracoulis and Cr Jessica Cosgrove were called as witnesses and generally confirmed the above with the exception of the exact words used and the manner and volume in which they were spoken.

Cr Shoobridge said in evidence that he was slightly deaf and consequently the volume of his voice may have been slightly raised.

Material considered by the Panel

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

- Code of Conduct of the Derwent Valley Council approved March 2022
- Complaint by Ms McCall covered by Statutory Declaration dated 13/5/24 accompanied by attachments.
- Response from Cr Shoobridge covered by Statutory Declaration dated 15/7/24 accompanied by 5 attachments
- Additional information from Ms McCall covered by Statutory Declaration dated 5/8/24.
- Further response from Cr Shoobridge covered by Statutory Declaration dated 26/8/24 (including a Statutory Declaration from Celia Hooker dated 25 August 2024).
- Statutory Declaration from witness Rebecca Tudor dated 7/8/24.

Determination

Pursuant to section 28ZI of the Act the Panel determines that Cr Wayne Shoobridge has breached part 7.1 (b) of the Code of Conduct, in relation to the comment made to Ms McCall at the 2024 Anzac Day Dawn service at New Norfolk and the conversation at the Council Chambers on 8 May 2024. The Panel dismisses the complaint in relation to part 7.1 (a).

Reasons for determination

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

1. An elected member

a) must treat all persons fairly; and

The use of the term “fairly” implies that for a complaint to be upheld under this clause, it must be shown that a person or persons have been treated unfairly. The Panel is of a view that Ms McCall has not introduced any evidence which could persuade the Panel that a person or persons have been treated any differently to any person or persons in the same circumstances.

The Panel dismisses the complaint in respect of Part 7 (1) (a) of the Code.

b) must not cause any reasonable person offence or embarrassment;

In the evidence given by him at the hearing, Cr Shoobridge admitted, regardless of the actual words used or the manner in which they were delivered, that he accepted that what he had said had caused Ms McCall offence and embarrassment which he sincerely regretted. He again apologised to Ms McCall at the hearing. He said he had learnt his lesson and would be much more careful in choosing his words in future. Cr Shoobridge accepted that he had breached the Code.

The Panel, independently of Cr Shoobridge's concession, also determines that, by making the comments, in public, and which were the subject of the complaint, Cr Shoobridge breached Part 7 (1) (b) of the Code, as his comments were inappropriate and would cause a reasonable person offence or embarrassment in the circumstances. The Panel notes the personal apology made by Cr Shoobridge to Cr McCall following soon after on the day in question (Anzac Day 2024), however, and which is to his credit.

The Panel upholds the complaint in respect of Part 7 (1) (b) of the Code.

Sanction

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

Ms McCall in her complaint indicated that she felt training in workplace relations might be an appropriate sanction.

Cr Shoobridge was asked during the hearing what he thought an appropriate sanction may be. He indicated he would be happy to accept the determination of the Panel.

The Panel after considering all the circumstances of the complaint determines that the sanction should be a caution.

Pursuant to s 28ZA(2)(a), Cr Shoobridge is cautioned

The Panel accepts that Cr Shoobridge understands that his comment was inappropriate and has undertaken to choose his words more carefully in future.

The Panel would make the suggestion to the Council that if it has not already done so, it may be appropriate to arrange a workshop on workplace relations which could be attended by Councillors and senior staff.

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 -

- The delay in determining whether Derwent Valley Council had correctly adopted the model code of conduct and subsequently Ms McCall submitting a revised complaint.

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*

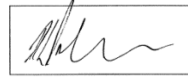
Appeals Division) Act 2001, an appeal must be lodged within 28 days of the date of receipt of this determination.



David Sales
Chairperson



Philip Cocker
Member



David Palmer
Legal Member

Date: 27 September 2024