

Local Government Act 1993
CODE OF CONDUCT PANEL DETERMINATION REPORT
HOBART CITY COUNCIL

Complaint brought by Mr Thomas Riley against Alderman Marti Zucco

Code of Conduct Panel

- David Sales (Chairperson)
- Sharyn von Bertouch (Local Government Member)
- Don Jones (Legal Member)

Date of Determination: 24 April 2026

Content Manager Reference: **C39660**

Summary of the Complaint

1. A code of conduct complaint was submitted by Mr Thomas Riley to the Chief Executive Officer of the Hobart City Council on 7 November 2025 (the Complaint). The Chief Executive Officer forwarded the complaint to the Executive Officer of the Code of Conduct Panel on 13 November 2025.
2. The Complaint alleges that Ald Marti Zucco breached the following Part of the Local Government (Code of Conduct) Order 2024 (the Code), by the statement made at the Hobart City Council Meeting held on 28 July 2025.

PART 7 - Relationships with community, councillors and council employees

1. A councillor must —

(a) treat all persons fairly; and

(b) not cause a reasonable person offence or embarrassment;

Initial assessment

3. Following receipt of the Complaint, Ms Audrey Mills, a legal practitioner, conducted an initial assessment in accordance with the requirements of section 28ZA of the Act. Ms Mills assessed the Complaint against the provisions of sections 28ZB and 28ZC of the Act.
4. Ms Mills noted in her assessment that Ald Zucco had advised the General Manager that he was not prepared to apologise or otherwise engage in alternative dispute

resolution, and she considered that Mr Riley had made a reasonable effort to resolve the dispute. This is supported by the correspondence between Mr Wes Young, Manager of Legal and Corporate Governance of the Council, and Mr Riley. On 13 November 2025 in an email forwarded to Mr Riley, Mr Young stated at Point 3:

"Considering points 1 and 2 he [Ald Zucco] is not prepared to apologise or otherwise engage in alternate dispute resolution, per the City's policy as provided for under the Local Government Act, as he believes he has not acted contrary to the relevant Code provision."

5. Ms Mills determined on 5 December 2025 pursuant to section 28ZA(1)(e) of the Act that the whole Complaint was to be investigated and determined by the Code of Conduct Investigating Panel (the Panel). She assessed the allegations concerning Ald Zucco's conduct, specifically against the part of the Code nominated in the Complaint, namely Part 7.1 (a) and (b) and was satisfied on the material lodged with the Complaint, subject to the totality of material that may be put before the Panel, such Panel could find that Ald Zucco was in breach of the Code.

Investigation

6. In accordance with section 28ZE of the Act, the Panel investigated the Complaint.
7. The Complaint related to the statement that Ald Zucco made at the Hobart City Council meeting on 28 July 2025.
8. It is alleged that Ald Zucco made this statement:

"There's one person in this country that I admire more than anybody that's got Aboriginal heritage, that has got more knowledge of the Aboriginal community than we at this table would have or any person in this room would have, is Jacinta Price, who fights for her community".

"If Jacinta Price can send the message to all of us, who deals with the Aboriginal community in Australia on a regular basis, maybe we should take notice of a person who has a mother, and as stated in parliament, she has a black mother"

9. Ald Zucco in his response to the Complaint has conceded that he used the alleged words.
10. Mr Riley completed the prescribed complaint form and the only additional evidence submitted was a copy of a letter which he had sent to Ald Zucco outlining the concerns he had with Ald Zucco's statement. In that undated letter annexed to his Complaint he outlined the statement he objected to and concluded the letter thus:

"I believe your comments during the council session were racist and wrong. Your level of ignorance is on you, I encourage you to speak

with more Tasmanian Aboriginal people and evolve your level of knowledge of our experiences and what it really is like to be us.

An apology is requested, without an apology and a public acceptance that you need to better educate and inform yourself regarding my community, I believe it will be difficult for many Aboriginal people to continue to work with the Hobart council to reach a form of reconciliation.”

11. Mr Riley relied on Part 7.1 (a) and (b) of the Code that provide:
 1. A councillor must -
 - (a) Treat all persons fairly; and
 - (b) Not cause a reasonable person offence or embarrassment;
12. Ald Zucco’s response was fairly detailed and covered the accusation that he was “racist and wrong” as well as assessing his statement against the Part of the Code that Mr Riley alleged he has breached.
13. In particular, Ald Zucco stated that he did not believe any part of the statement was racist and if there were errors in the statement, being wrong was not a breach of the Code.
14. Ald Zucco also raised the issue of the implied freedom of political speech in the Australian Constitution.
15. Mr Riley was supplied with a copy of Ald Zucco’s response. Mr Riley’s submission in reply firstly listed a number of requirements of the Code, only one of which was mentioned in the Complaint. He then went on to address the specific Part of the Code which his Complaint alleged Ald Zucco has breached.

Material considered by the Panel

16. The Panel based its investigations on the following documentation:
 - 16.1. Mr Riley’s Complaint submitted under cover of statutory declaration dated 7 November 2025 (PDF – eight pages)
 - 16.2. Alderman Zucco’s response to the Complaint, submitted under cover of a statutory declaration dated 2 January 2026 (PDF – six pages)
 - 16.3. The Complainant’s comments on the Councillor’s response under cover of a statutory declaration dated 16 February 2026 (PDF – two pages).
17. A copy of all documentary evidence was supplied to both parties.
18. The Panel, after considering all the evidence submitted, determined there was no dispute regarding the facts of the Complaint and the Panel’s main task would be to

analyse the evidence to determine whether a breach of the Code had occurred. The Panel formed a view that a hearing may be unnecessary and sought the opinion of the parties as to whether they were seeking a formal hearing.

19. Both parties agreed that they would not be disadvantaged by not holding a hearing and consequently the Panel determined, in accordance with s28ZG(2), that a hearing be not held.

The Determination Meeting

20. The Determination Meeting took place on 23 March 2026.
21. The Panel accepted that Ald Zucco made the statement alleged, at the Council Meeting. This fact is not in dispute. The Panel determined its task was to characterise this statement in order to reach an opinion as to whether Ald Zucco has breached Part 7.1 (a) and (b) of the Code.
22. Although the facts were not disputed by the parties, the Panel considered that the investigation of the Complaint raised several issues which it needed to resolve before it could reach a determination.
23. Ald Zucco detailed a number of authorities and previous panel determinations which raised three specific issues. These were:
 - 23.1. The issue of the implied freedom of political communication in the Australian Constitution;
 - 23.2. The determination of what was a “reasonable man”; and
 - 23.3. The determination of unfair behaviour.

Implied freedom of political communication in the Australian Constitution

24. The most recent authority on the implied freedom of political communication that the Panel can locate is the following judgement in the case of *Howard v Code of Conduct Panel* [2024] TASSC 64¹.
25. This was an appeal against a determination made by a Code of Conduct Panel. It required the Supreme Court to consider the question of the implied freedom of speech. In that case the applicant contended that certain provisions relating to the Code of Conduct in the *Local Government Act 1993*² were invalid because they are incompatible with the implied freedom of communication concerning political and public affairs under the Commonwealth of Australia *Constitution*³. Alternatively, the applicant contended that the provisions in question should be read down so as not to apply to communications concerning such matters.

¹ <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/tas/TASSC/2024/64.html>

² <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1993-095>

³ https://www.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/coaca430/

26. In delivering his judgement Blow CJ at [34] – [35], said:

“34. ...the applicant [Cr. Howard] contends that the implied freedom of political communication was a relevant consideration, and that the determinations of the Panel involved an improper exercise of power because it failed to take that consideration into account.

*35. However, as Mason J (as he then was) said in Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24 at 39, “The ground of failure to take into account a relevant consideration can only be made out if a decision-maker fails to take into account a consideration which he is **bound** to take into account in making that decision (The Panel’s emphasis.)”*

And again, at Para [36] and [37]:

“36. There is no provision in the Local Government Act that expressly or impliedly requires a code of conduct panel to consider the implied freedom of political communication.

*37. In relation to Mr Willrath's complaint, the applicant said nothing in relation to the implied freedom of political communication in his written submissions to the Panel or during its hearing. In relation to Mr Archer's complaint, he referred to the implied freedom in written submissions and provided the Panel with a decision of a magistrate in relation to the implied freedom: **Howard v Code of Conduct Panel [2019] TASMC 6**. In its reasons, the Panel said that it had regard to the magistrate's decision, and that it acknowledged the applicant's "right to free speech". These grounds must fail on the basis that the Panel was not required to take the implied freedom into account in either case, and on the basis that it did take it into account in relation to the Archer complaint.”*

27. Applying this reasoning, the Panel has determined that it was not required to take into account the implied freedom of speech.

Not to cause a reasonable person offence or embarrassment

28. In considering Part 7.1 (b) of the Code, the Panel deliberated on the issue of the “reasonable man” test and noted that Ald Zucco cited a number of authorities in relation to this matter, including those listed below.

29. In the decision in *Howard v The Code of Conduct Panel [2019] TASMC 6*, an appeal by a respondent against a Code of Conduct Determination, it was said at para 58:

“The code [of Conduct] should not be interpreted so as to pander to the feelings of those who are hyper-sensitive to any sleight, real or perceived, against them or their views, concerns or opinions. It should not be interpreted in a way that unreasonably inhibits frank, open, even passionate debate or – within

reasonable limits - the use of legitimate debating techniques which might include the use of humour, hyperbole, sarcasm and invective.”

30. Earlier in the same judgment, at para 57, referring to the decision of *Ball v McIntyre* (1966) 9 FLR 237 it was stated:

“The sensibilities of those who complain or of the public generally are required to be more than delicate. Such behaviour, conduct or language must be offensive to a reasonable, tolerant, understanding person of some robustness.”

31. Similarly, in *Monis v The Queen* [2013] HCA 4 at para 90 it was stated that:

“A “reasonable man” in Ball v McIntyre was “reasonably tolerant and understanding, and reasonably contemporary in his reactions. A reasonable person was said, in the Supreme Court of New South Wales, to be “neither a social anarchist, nor a social cynic”. The reasonable person is a constructed proxy for the judge or jury. Like the hypothetical reasonable person who is consulted on questions of apparent bias, the construct is intended to remind the judge or the jury of the need to view the circumstances of allegedly offensive conduct through objective eyes and to put to one side subjective reactions which may be related to specific individual attitudes or sensitivities.”

32. In reaching its determination, the Panel applied these principles to the facts of this case.

Treat all persons fairly

33. Finally, the Panel considered the concept of fair treatment in deliberating on Part 7.1 (a) of the Code.

34. Again, Ald Zucco provided an example from a previous Code of Conduct Panel decision.

35. In [*Mansell v Elliot*](#)⁴ the Panel stated:

“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.”

36. The Panel is of a view that the use of the word “fairly” in the Code implies a comparison against some other person or group of persons and has framed its determination on the basis of this assumption.

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https://www.dpac.tas.gov.au/divisions/local_government/local_government_code_of_conduct/determination_reports/Determination-Report-26-September-2024-Hobart-City-Council-Ms-Nala-Mansell-against-Councillor-Louise-Elliot.pdf

Determination

37. Pursuant to section 28ZI of the Act the Panel dismisses the Complaint in relation to Part 7 (1) (a) and (b) of the Code.

Details of the determination

PART 7 - Relationships with community, councillors and council employees

(1) A councillor must —

(a) treat all persons fairly; and ...

38. Mr Riley has alleged that he, as well as the Tasmanian Aboriginal Community, has not been treated fairly by Ald Zucco making the statement he did, at the Council Meeting on 28 July 2025.
39. In his original complaint Mr Riley did not specifically address why he felt he or the Tasmanian Aboriginal Community had been treated unfairly by Ald Zucco, but in his second submission Mr Riley stated:

“I have shown he has treated me unfairly by his words, saying that: There’s one person in this country that I admire more than anybody that’s got Aboriginal heritage, that has got more knowledge of the Aboriginal community than we at this table would have, or any person in this room would have, is Jacinta Price.

This is treating me unfairly, as I was in the room....”

40. Mr Riley has not provided any further evidence as to how he was treated unfairly, and the Panel can only make its determination based on the evidence before it.
41. He has not provided any evidence that the reasonable person would have felt he or she was being treated unfairly by the words spoken. The Welcome to Country is a political issue that affects every ratepayer in Tasmania, it is hotly debated, every person has a view as to its continuation or removal, and Ald Zucco was stating an opinion on the issue when it arose at the Council Meeting. He was entitled to speak his opinion as was Mr Riley. Mr Riley has given his opinion on the words spoken by Ald Zucco and on the Alderman’s character. He has used his freedom of speech. Whether Ald Zucco wishes to take the matter further in another jurisdiction has nothing to do with the Panel. It was a question of debate.
42. The Panel is not satisfied that Mr Riley, or anyone else, has been treated unfairly.
43. The Panel dismisses the Complaint in relation to part 7 (1) (a) of the Code.

PART 7 - Relationships with community, councillors and council employees

(1) A councillor must — ...

(b) not cause a reasonable person offence or embarrassment;

44. The Panel gave considerable thought as to whether a reasonable person would have been offended or embarrassed by Ald Zucco's statement. It referred to some of the previous case law that has been cited above and on applying those principles, the Panel was satisfied that a reasonable person would not have been offended or embarrassed by the words spoken. A person may disagree with Ald Zucco's viewpoint and may be angered by it; however, the Panel is not persuaded that a reasonable person would have found his comments offensive or embarrassing.
45. The Panel dismisses the Complaint in relation to part 7 (1) (b) of the Code.

Timing of the Determination

46. 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 Initial Assessor's determination that the complaint is to be investigated, which in this complaint was on 5 December 2025.
47. The Panel has been unable to determine the complaint within 90 days, owing to: correspondence being sent to a wrong email address.

Right to review

48. 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 Tasmanian Civil and Administrative Tribunal for a review of the determination on that ground.



David Sales
Chairperson



Sharyn von Bertouch
Member



Don Jones
Member

DATE: 24 April 2026