

Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT

CITY OF HOBART CODE OF CONDUCT

Complaint brought by Cr Ryan Posselt against Cr Louise Elliot

Code of Conduct Investigating Panel

- Lynn Mason AM (Chairperson),
- Andrew Paul (Local Government Member)
- Steve Bishop (Legal Member)

Date of Determination: 9 June 2025

Content Manager Reference: C36496

Summary of the complaint

A code of conduct complaint was submitted by Cr Ryan Posselt to the Chief Executive Officer of the Hobart City Council on 9 December 2024.

The complaint alleges that Cr Elliot breached the following parts of the *Local Government (Code of Conduct) Order 2024* (the Order):

Part 7.1. An elected member must–

- (a) treat all persons fairly; and*
- (b) not cause a reasonable person offence or embarrassment; and*
- (c) not bully or harass a person.*

Initial assessment

Following receipt of the complaint, the Initial Assessor (the Assessor) conducted an 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 *Local Government Act 1993* (the Act), the Assessor determined that:

- the complainant had made a reasonable effort to resolve the complaint. The Assessor concluded that Cr Posselt had tried in correspondence to resolve the complaint, but that the responses from Cr Elliot did not appear to be conciliatory in nature, suggesting that any further steps taken to resolve the matter would have been rebuffed;
- the complaint substantially related to a contravention of the Order, namely Part 7.1 (a), (b), and (c);
- the complaint could not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that while certain matters

of complaint might be considered trivial if viewed in isolation, the complaint was that when considered together, those matters formed a course of conduct which when viewed in totality were not trivial, and had had a significant effect on the complainant;

- 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 Assessor determined that the complaint should be investigated.

The complainant, respondent councillor and the Chief Executive Officer were notified of the outcome of the initial assessment by letter dated 28 February 2025.

Investigation

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

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

- The complaint submitted by Cr Posselt, attached to a Statutory Declaration dated 9 December 2024, 60pp;
- Response submitted by Cr Elliot, attached to a Statutory Declaration dated 26 March 2025, 54pp;
- *Louise Elliot v Hobart City Council Anti-Discrimination Stream A/2025/2 – Application to Add Complaint of Victimisation*;
- The *Local Government (Code of Conduct) Order 2024*.

In accordance with section 28ZG of the Act, the Panel determined to conduct a hearing into the matter.

Hearing

As per section 28ZH of the Act, the Code of Conduct Panel held a hearing on 13 May 2025 in the Executive Building, 15 Murray Street Hobart.

The Chairperson opened the hearing with a statement about the procedures to be followed, and a summary of the complaint. The Chairperson stated that the complaint alleged that Cr Elliot had:

- Engaged in bullying, harassment, and targeted intimidation of Cr Posselt during a council workshop held on 30 September 2024;
- Deliberately tried to silence and intimidate Cr Posselt by references in emails and in a previous Code of Conduct hearing to an Application lodged by Cr Elliot with the Tasmanian Civil and Administration Tribunal, Anti-Discrimination stream (hereafter referred to as the ADT);
- Attempted to intimidate, bully and harass Cr Posselt by circulating personal correspondence from the Director of Local Government to all elected members immediately prior to the council meeting of 11 November 2024. The letter stated that Cr Posselt had been issued with a warning by the Director as a result of a breach of the Local Government Act 1993 (the Act);

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.

- Sent an *aggressively worded email condemning the conduct of seven elected members*, including Cr Posselt, to the Director of Local Government, the CEO of the City of Hobart, and some council staff members, thus attempting to undermine a council decision;
- Throughout November 2024, targeted Cr Posselt on social media by rebroadcasting specific content from a previous Code of Conduct determination report, thus republishing the very material for which her actions had already been found to have breached the Code of Conduct. It was alleged that this was designed to undermine the code of conduct determination, and encourage and facilitate further negative comment about Cr Posselt.

Neither Cr Posselt nor Cr Elliot called witnesses to the hearing. Cr Posselt spoke to his complaint, and answered questions from the Panel. Cr Elliot had no questions for Cr Posselt. Cr Elliot then spoke to rebut the complaint, and answered questions from the Panel and from Cr Posselt. During Cr Elliot's address she tabled an additional document, *Louise Elliot v Hobart City Council Anti-Discrimination Stream A/2025/2 – Application to Add Complaint of Victimisation*. Copies were provided to the Panel. Cr Posselt assured the Chairperson that his legal team would have a copy of the document, thus not needing to have another copy provided. Cr Elliot added that Cr Posselt's legal team would have had a copy of the document 'for weeks'.

Both Cr Posselt and Cr Elliot made closing statements to the Panel, after which the Chairperson made her concluding remarks. These included advice to Cr Elliot of the sanctions available to the Panel under section 28ZI(2) of the Act, viz:

- A caution
- A reprimand
- A requirement to apologise to the complainant or other person affected by the failure to comply with the Code of Conduct
- A requirement to attend counselling or a training course
- 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.

The Chairperson noted that a sanction would only be applied if any part or all of the complaint were to be upheld. Cr Elliot was asked if she wished to make submission on sanction before the hearing concluded, or if she would like further time to consider it. She replied that she would make submission immediately, and that, in essence, she considered that she had not breached the Code of Conduct in any way, and therefore, no sanction should be applied.

Cr Posselt was then asked if he wished to elaborate on the statement on his Statutory Declaration made at the time of submitting the complaint. In that statement he said that he wanted the complaint to be investigated and 'adequate sanction' imposed. He responded in the hearing that Cr Elliot had already had a complaint² against her upheld, and that the determination of that complaint had found that Cr Elliot had breached Part 7(1)(a), (b), and (c): exactly the same parts of the Code which Cr Posselt was alleging were breached by the behaviours cited in this complaint. He noted the sanction imposed in that Code of Conduct, viz, a reprimand and a requirement to undertake a training course that *details the purpose of the Code of Conduct and especially how any social media content produced by an elected member must comply with it*. Cr Posselt submitted that as similar behaviours by Cr Elliot were continuing against him since the publication of that Determination Report, the Panel should consider imposing a sanction to include a public apology to himself and a

² C31540, determined on 24 June 2024

suspension from performing and exercising the functions and powers of her office as a councillor for a period not exceeding 3 months.

Determination

As per section 28ZI of the Act the Code of Conduct Investigating Panel determines that Cr Elliot has breached the Code of Conduct, and therefore the Panel upholds the complaint.

Reasons for determination

Introduction

The Code of Conduct Panel considered the information provided by Cr Posselt and the response by Cr Elliot, and the testimony given under oath at the hearing. There were several themes used in a general way by Cr Elliott to justify her impugned conduct. As they pertain to each of the particular allegations, we comment on them in general as a preface to considering the individual allegations.

Reform of the Code Of Conduct Process

Cr Elliot stated several times in her responses that she was not targeting Cr Posselt with her Facebook posts, nor in her communications with other elected members and officers, including Cr Posselt. To illustrate this point she stated that she had also published her comments on the Code of Conduct determination made against her by a member of the public. She justified her actions on the grounds that she considered that the Code of Conduct Panels were '*setting the bar too low*' in upholding previous cases of unfairness, and of alleged offensive or embarrassing behaviour, or bullying and harassment. She said that it was her aim to bring changes to the Code of Conduct decision making processes, so that greater leniency would be allowed in considering whether behaviour had been offensive, embarrassing, bullying, or harassment of a councillor. In a social media post (early November 2024) Cr Elliot wrote:

My plan is to reform the entire framework and return the appropriate threshold for free speech and political communication, and accountability where it belongs.

Cr Elliot considered that by continuing the kinds of behaviours which had already been shown to breach the Code of Conduct, this would highlight a need for change to the Code itself.

Reform of any regulatory process is a democratic right of any citizen, However the intention to reform does not, *at the legal level*, justify breaching the existing provisions in order to highlight what is perceived to be an unduly restrictive governance framework.

In essence what Cr Elliott was saying, as her defence, is that she will continue to breach the Code as it is now applied, in order to bring public attention to it and provoke by political means a raising of the 'bar' so as to permit more robust interaction between Council representatives.

This civil disobedience is a political strategy.

However it is not and cannot be a defence to a charge of breaching the Code as it now exists. Cr Elliot has admitted as much by saying that continuing the kinds of behaviours that she thinks ought to be allowed is purposed to highlight the need for change.

In fact her repetition of those behaviours, given the two previous decisions, is essentially contumacious.

Acceptable Standards of Behaviour

Cr Elliot described Cr Posselt as thin skinned and hypersensitive, and continued to maintain that her actions did not constitute breaches of the Code, but rather, were about what she described as ‘accountability’: the accountability of a public figure (the councillor) to be open with his fellow councillors and his community, and to withstand or allow himself to be subject to adverse and occasionally strongly worded opinions about his character. This notion of accountability was a significant theme in Cr Elliot’s response to the complaint, in that, to her, it justified her actions.

However, Part 7 of the Code does not mention ‘accountability’. It sets out a series of proscriptions and prohibitions which endeavour to prescribe acceptable standards of behaviour for Councillors. They are not to be watered down by political notions of accountability.

The Panel disagreed with Cr Elliot’s view that she was justified in continuing to publish material on social media which a reasonable person would find unfair, offensive and embarrassing. The Panel heard that Cr Elliot considered that as Cr Posselt is a public figure as an elected member, his sensitivity to such material should be different from that of a private person who is not a public figure. This is not the wording of the Code of Conduct, which does not distinguish between ‘reasonable persons’ and ‘reasonable persons’ who are councillors. Ergo, the Panel determines that allowing material to be published on her Facebook page which would be considered offensive and embarrassing to a reasonable person, as determined objectively by the Panel, is a breach of the Code.

Implied Freedom of Political Communication

The Panel noted Cr Elliot’s reliance on the implied freedom of political communication to justify the standards which she considers acceptable in published material.

The implied freedom in the context of the Code was exhaustively examined by the former Chief Justice, Justice Blow (as he then was) in *Howard v Code of Conduct Panel* 2024 TASSC 64 which is binding upon the Panel.

At para 20 His Honour said:

The implied constitutional freedom of political communication recognised by the High Court in Lange and subsequent cases operates as a limitation on legislative power, but does not confer private rights.

In other words, as is made even clearer in paras 22, 26, and 32, the limitation only operates on statutory provisions. His Honour went on to hold that that the relevant provisions of the *Local Government Act 1993* do not burden political communication.

He also found that the Panel was not bound to take into account the implied freedom by any provision of the Act.

Accordingly this decision has been made and in accordance with the doctrine of stare decisis the Panel is bound by it.

As a result any defence purporting to be based on the implied freedom is misconceived.

The Panel determines that unfair, offensive, and/or embarrassing posts on social media are personal remarks about the person targeted. As a result, such comments must not be unfair, offensive, or embarrassing to the person targeted.

Harassment as a ‘Bunch of Trivia’

The Panel notes the statement from the Initial Assessor, that

the complaint could not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that while certain matters of complaint might be considered trivial if viewed in isolation, the complaint was that when considered together, those matters formed a course of conduct which when viewed in totality were not trivial, and had had a significant effect on the complainant.

Cr Elliot stated in her concluding remarks that the matters of the complaint were either not breaches of the Code, or they were trivial. She described the complaint as *a bunch of completely trivial conduct* (sic) that she did not believe *stacks up to bullying and harassment*. The Panel agrees that taken in isolation, some of the incidents cited are relatively minor. However, the Panel accepts the Macquarie Dictionary definition of harassment as

harass – 1. To trouble by repeated attacks, incursions, etc. as in war or hostilities; harrass; raid 2. To disturb persistently; torment as with troubles, cares, etc....

As far back as 1969 the House of Lords said, *A series of pinpricks can amount to cruelty*. In *Carnes v Visser* 2000 TASSC 136 the former Justice Slicer confirmed this approach (at para 2) saying *It is the giving of trouble or stress to another which is the central import of the term*. The Panel determines that it is the totality of the conducts cited which constitute harassment of Cr Posselt, and therefore disagrees with Cr Elliot's assessment of the complaint.

Particular allegations

1. That Cr Elliot engaged in bullying, harassment, and targeted intimidation of Cr Posselt during a council workshop held on 30 September 2024.

Cr Elliot told the Panel that during the workshop on 30 September 2024, she was preparing a submission to the Anti-Discrimination Commission at the same time as she was listening to the presentations at the workshop. The submission in question contained details of behaviours from Hobart City Councillors which she considered could be upheld as discrimination against herself on the grounds of her political beliefs. She was making notes and highlighting various items in the supporting documents she had brought with her to the workshop. She did not deny that some of the materials comprised private emails sent by Cr Posselt to other councillors, but not to herself. These were the pages photographed by Cr Posselt, and he alleged that the pages in question were 'printed on bright yellow paper in plain view' and oriented towards him.

Cr Elliot said that the pile of papers she was dealing with was about 'half an inch thick'.

The Panel considers that on the balance of probabilities, Cr Elliot's actions in orientating particular private correspondence between Cr Posselt and other councillors toward him during a council workshop in which he was seated beside her was done deliberately. In effect, it allowed Cr Posselt to know that correspondence he had thought private was in Cr Elliot's possession. Taken in concert with other actions detailed in the complaint, the Panel determines that Cr Elliot's actions at that workshop constituted harassment of Cr Posselt.

2. That Cr Elliot deliberately tried to silence and intimidate Cr Posselt by references in emails and in a previous Code of Conduct hearing to a complaint raised by Cr Elliot with the Anti-Discrimination Commission.

On 8 November 2024 Cr Elliot sent an email to Cr Posselt asking him if he had heard the 'wonderful news' about a motion he had put forward with the Deputy Lord

Mayor during 2023. Additionally, Cr Elliot had referred to her complaint to the Anti-Discrimination Commission (A-DC) in a previous Code of Conduct investigation and hearing, a hearing which Cr Elliot and Cr Posselt both attended as they were parties to that complaint. Cr Posselt alleged in his current complaint to the Code of Conduct Panel that it was inappropriate to state that a complaint to the A-DC had been made until the parties to that complaint had been notified. On 8 November 2024 that had not happened, and at the time of sending that email on 8 November 2024, Cr Posselt had not been joined to the complaint. Cr Posselt stated that he considered the email to be an intimidatory tactic, designed to 'silence and intimidate' him or be faced with what he described as 'ongoing vexatious complaints'.

Cr Elliot stated that the motive for her complaint was 'accountability and prevention of further discrimination', and that it was not intended to intimidate Cr Posselt. She noted that there was no legal obligation on her to retain confidentiality about having made the complaint, and the Panel accepts this.

The Panel notes that Cr Elliot took exception to Cr Posselt's description of her complaint as 'vexatious'. The Panel accepts that there is a common meaning of vexatious, viz., causing worry or frustration, and the Panel accepts that Cr Posselt used the adjective 'vexatious' to mean 'causing worry or frustration' to himself.

It is not the role of the Panel to make any comment on possible outcomes of the complaint to the Anti-Discrimination Commission. The Panel is determining whether alluding to the Anti-Discrimination complaint brought by Cr Elliot against the Hobart City Council during a code of conduct hearing, and referencing a motion Cr Posselt put forward with the Deputy Lord Mayor as a particular in that matter, can be seen as an attempt by Cr Elliot to embarrass Cr Posselt, and to deter him from speaking out against her. The Panel determines that this, in the context of other incidents cited, constitutes harassment, and was done with the intention of embarrassing Cr Posselt.

3. That Cr Elliot attempted to intimidate, bully and harass Cr Posselt by circulating personal correspondence from the Acting Director of Local Government to all elected members immediately prior to the council meeting of 11 November 2024. The letter alleged that Cr Posselt had been issued with a warning by the Acting Director as a result of a breach of the *Local Government Act 1993*.

On 11 November 2024, immediately before the ordinary council meeting was due to commence, Cr Elliot circulated to all Councillors a copy of a letter from the Acting Director of Local Government, in which he responded to a complaint made to him by Cr Elliot against Cr Posselt. He said that he was *satisfied that there has been a technical breach of section 28ZK(7) of the Local Government Act 1993, as alleged* (by Cr Elliot). Further in the letter the Acting Director referred to relevant mitigation of the seriousness of the breach, and issued a warning to Cr Posselt³. While the letter was addressed to Cr Elliot, it was not marked confidential.

Cr Posselt alleged that circulating this letter was an attempt to undermine him and to damage his reputation amongst his colleagues. He also challenged the timing of sending the letter, saying that to send it immediately before a council meeting meant that his colleagues had no chance to discuss the matter with him or reasonably consider the implications of the letter before debate on matters in the agenda of the meeting commenced.

³ Cr Elliot stated in her response to the complaint that the Acting Director had issued a caution to Cr Posselt. In fact, the Acting Director warned Cr Posselt.

Cr Elliot stated that she had shared this information as *it is relevant to all elected members and a real-life case of the consequences of a breach*. The Panel accepts that it is relevant to all elected members to understand the imperative to keep the contents of a Code of Conduct Determination Report confidential until the report is tabled at a council meeting.

The Panel notes that Cr Elliot was provided with the letter from the Acting Director on 7 November 2024, but did not circulate it to her colleagues until immediately before the council meeting on 11 November 2024, thus potentially avoiding any opportunity for discussion of the implications of the Acting Director's findings, or any chance of hearing any defence that Cr Posselt might offer. The Panel heard from Cr Posselt that he was not afforded any opportunity by the Acting Director to respond to the complaint, which on the face of it appeared to be a denial of procedural fairness to Cr Posselt.

The Panel determines that the timing of the circulation of the letter was intended to embarrass Cr Posselt, and was unfair to Cr Posselt, in not giving him the chance to explain the circumstances of his use of a previous Determination Report to his colleagues. The Panel determines that this was unfair to Cr Posselt, and that the incident justifiably contributes to the Panel's finding that Cr Elliot has harassed Cr Posselt over the period cited in this complaint.

4. That Cr Elliot sent an 'aggressively worded email condemning the conduct of seven elected members', including Cr Posselt, to the Acting Director of Local Government, the CEO of the City of Hobart, and some council staff members, thus attempting to undermine a council decision.

On 12 November 2024, the day after the council meeting of 11 November 2024, Cr Elliot emailed seven councillors who had voted against a proposed change to the order of the agenda for the meeting the previous night. She said that she wanted to share *how disgusted I am with your voting last night* to refuse to move an agenda item forward in the meeting, as there were several community members in the gallery waiting to hear the item debated. She went on to say that she saw this as a *prime example stubborn (sic), immature and down-right (sic) mean behaviour*.

This email was not personal to Cr Posselt and the Panel determines that it was not an attempt to undermine a council decision, but a legitimate strongly worded opinion voiced by Cr Elliot. The Panel determines that this does not constitute a breach of any section of Part 7(1) of the Code of Conduct.

5. That Cr Elliot throughout November 2024, targeted Cr Posselt on social media by rebroadcasting specific content from a previous Code of Conduct determination report, thus republishing the very material for which her actions had already been found to have breached the Code of Conduct. It was alleged that this was designed to undermine the code of conduct determination, and encourage and facilitate further negative comment about Cr Posselt.

Cr Posselt said in his complaint that as a result of the specific content from the Code of Conduct determination report being republished on Cr Elliot's social media, he was subjected to what he described as unfair, offensive and embarrassing commentary about him personally. In response to a number of requests from Cr Posselt to Cr Elliot that she moderate some of the comments about him on her social media, she responded *If you can provide a list, that would be appreciated*.

Cr Posselt contended that it was Cr Elliot's responsibility to monitor and moderate her social media, and the Panel agrees with this view. The Panel notes that Cr Elliot

cannot delete comments made on X. However, the Panel noted in its review of the material cited in both the complaint and Cr Elliot's response, that Cr Elliot does not appear to have made any effort on the site itself to warn people that posts or comments made on her site should not be defamatory, unfair or offensive.

There are numerous personal comments about Cr Posselt on Cr Elliot's Facebook page which a reasonable person would consider to be unfair, offensive, and embarrassing. Cr Elliot in her response to the complaint frequently interspersed her text with the words:

These people are sharing their fair and valid opinion.

The Panel disagrees with this statement, and considers that in failing to remove unfair, embarrassing, and offensive personal remarks about a fellow Councillor from her Facebook page, Cr Elliot has breached Part 7(1) of the Code of Conduct.

Summary

In accordance with section 28ZI of the Act, the Panel determines that Cr Elliot has breached Part 7(1)(a), (b), and (c) of the Code of Conduct.

Sanctions

The Panel has taken into account that in her response to the complaint, and in her testimony to the Panel, Cr Elliot has shown no awareness of the constraints that the Code legitimately places on councillors in their interactions with other councillors. Nor has she shown any awareness of her responsibility to ensure that material published or republished on her Facebook page complies with the Code of Conduct.

The Panel also takes into account that in September 2024, a complaint that Cr Elliot had breached Part 7(1)(b) of the Code was upheld, and Cr Elliot was cautioned. In November 2024, a complaint that Cr Elliot had breached Part 7(1)(a), (b), and (c) of the Code was upheld, and Cr Elliot was reprimanded and required to undertake training in the Code of Conduct. This complaint is the third complaint in less than a year where the same parts of the Code are shown to have been breached, and there does not appear to have been any moderation of Cr Elliot's behaviour.

As per section 28ZL(2) of the Act the Code of Conduct Panel imposes the following sanctions on Cr Elliot:

- The Panel requires Cr Elliot to apologise to Cr Posselt for treating him unfairly, causing him offence and embarrassment, and harassing him over a period of several months. The apology is to be in writing and provided to Cr Posselt and the Chief Executive Officer at the council meeting at which this Determination Report is tabled; and
- The Panel suspends Cr Elliot from performing and exercising the functions and powers of her office for a period of one month.

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 Initial Assessor's determination that the complaint is to be investigated.

The Panel has been unable to determine the Complaint within 90 days, owing to granting extension for responses and appearances, intervening holiday periods, and other commitments by members preventing preparation of the final report.

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.



Lynn Mason

Chairperson



Andrew Paul

Member



Steve Bishop

Member

DATE: 9 June 2025