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Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT

CITY OF HOBART ELECTED MEMBER CODE OF CONDUCT

Complaint brought by (then) Councillor Helen Burnet against Councillor Louise Elliot

Code of Conduct Panel

- Liz Gillam (Chairperson)
- Matt Evans (Local Government Member)
- Anthony Mihal (Legal Member)

Date of Determination: 16 July 2024

Content Manager Reference: C31555

Summary of the complaint

Ms Helen Burnet MP made a complaint against Councillor Louise Elliot (Cr Elliot) dated 10 November 2023 pursuant to Section 28V of the *Local Government Act 1993* (the Act). At the time of the complaint, the Complainant was Deputy Mayor of the Hobart City Council (the Council) and Cr Elliot was an elected member of the Council.

The complaint relates to Cr Elliot's social media activity and communication with the Complainant after they attended an Elected Member workshop on 4 September 2023. The Complainant says that Cr Elliot breached the *City of Hobart Elected Member Code of Conduct* (the Code) adopted by the Council on 20 February 2023:

- by publishing a 'post' about the workshop on social media;
- by publishing a letter from the Complainant together with Cr Elliot's responding letter on social media;
- in the content of Cr Elliot's letter responding to the Complainant, published on social media;
- in failing to moderate certain comments on, or 'replies' to, social media posts.

The Complaint as made alleged that the above conduct breached several parts of the Code.

The Chairperson conducted an initial assessment of the complaint in accordance with the requirements of Section 28ZA of the Act, and determined to dismiss the complaint except in so far as it relates to breaches of the following parts of the Code:

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

1. An elected member—

- ...
- b) must not cause any reasonable person offence or embarrassment; and*
-

PART 8 – REPRESENTATION

- ...
5. *An elected member's personal views must not be expressed publicly in such a way as to undermine the decision of the Council or bring the Council into disrepute.*
-
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 Chairperson determined that those parts of the complaint that relate to the above mentioned parts of the Code were to be investigated and determined by the Code of Conduct Panel (the Panel) pursuant to Section 28ZA(1)(f) of the Act. That determination was made on 13 December 2023 and communicated to the parties and the Acting General Manager of the Council by letter of that date, which included the Chairperson's reasons.

Investigation of the Complaint

On 15 December 2023, the Executive Officer of the Panel selected Ms Elizabeth Gillam, Mr Anthony Mihal and Mr Gregory Preece to constitute the Panel to investigate and determine the complaint.

On 2 January 2024, after considering the complaint materials and Cr Elliot's response to the complaint, the members then constituting the Panel determined to write to the parties inviting their submissions as to whether either party considered she would be disadvantaged if the Panel determined, pursuant to Section 28ZG(2), to investigate the complaint without holding a hearing.

Following consideration of the parties' submissions, the Panel determined pursuant to Section 28ZG(2) to investigate the complaint without holding a hearing. The reasons for that decision were that:

- neither party would be disadvantaged if a hearing was not held and it was appropriate in the circumstances not to hold a hearing; and
- a hearing was unnecessary in the circumstances because the investigation could be adequately conducted by means of written submissions or examination of documentary evidence.

The parties, by letter dated 19 January 2024, were informed of this decision and invited to make any further submissions.

On 6 February 2024 the Panel met to consider the complaint. It was noted that Cr Elliot had been suspended as an elected member for a short period. For the avoidance of any doubt that Cr Elliot had been provided with a reasonable opportunity to respond, taking into account her period of suspension, Cr Elliot was provided with an extension of time to make any further submission.

On 21 February 2024, Cr Elliot objected to Mr Preece constituting part of the Panel on the basis of a perception of bias she alleged arose because of adverse findings made by the Panel constituted in part by that member in relation to another complaint against Cr Elliot. Mr Preece chose to recuse himself from further investigation and determination of the complaint, which is not to be taken as a concession that there was merit to Cr Elliot's submissions or otherwise.

On 21 March 2024, the Executive Officer selected Mr Evans to constitute the Panel to investigate and determine the complaint together with the Chairperson and Mr Mihal. The investigation of the complaint then started afresh.

On 2 April 2024, the Panel met to investigate the complaint. Mr Evans concurred with the previous determination to investigate the complaint without holding a hearing and the Panel affirmed the determination to investigate the complaint without holding a hearing. The parties were informed of this determination on 4 April 2024.

The following documents were taken into account in the investigation:

- *City of Hobart Elected Member Code of Conduct* adopted 20 February 2023
- Ms (formerly Councillor) Helen Burnet's complaint 10 November 2023
- Cr Elliot's response 20 December 2023
- Ms Burnet's letter 12 January 2024
- Cr Elliot's letter 16 January 2024
- Ms Burnet's letter 25 January 2024
- Cr Elliot's response 23 February 2024
- Cr Elliot's submission as to sanction 27 May 2024
- Minutes of Hobart City Council Ordinary Meeting 20 February 2023
- Audio recording of Hobart City Council Ordinary Meeting 20 February 2023
- Minutes of the Hobart City Council Ordinary Meeting 25 September 2023
- Hobart City Council Governance Framework
- Hobart City Council Elected Members Development and Support Policy

Determination

As per section 28ZI of the Act, the Panel determines that Cr Elliot has breached Part 8 (5) and Part 8 (7) of the Code, and therefore the Panel upholds part of the complaint.

The Panel dismisses the allegation in the complaint that Cr Elliot breached Part 7 (1) (b) of the Code.

Reasons for Determination

Cr Elliot's post on social media about the workshop

On 4 September 2023, a workshop was provided to Hobart City Council Elected Members about inclusion and gender diversity pursuant to a motion passed at a Council meeting on 20 February 2023, which included, *inter alia*, that:

"The City provide all elected members equality, inclusion and gender diversity training through a formal workshop. Specifically, their obligations as they relate to the Council's Social Inclusion Policy and the *Anti-Discrimination Act 1998* (Tas)."

On 14 September 2023, Cr Elliot published on Twitter/X a copy of a document given to councillors by the presenters of the workshop, together with the following commentary:

"check out this 'fact sheet' is [sic] was given as part of the "inclusion training" (re-education) that was imposed on me by the Hobart City Council".

The document referred to in the post set out a series of answers to 'frequently asked questions' about gender identity and transgender people, that is people whose gender identity is not the same as their gender assigned at birth. The document also referred to gender diverse people, that is people who identify with a gender or genders that are not

male or female. The topic is sensitive because the people referred to in the document suffer significant prejudice and disadvantage in the community. They are also protected by anti-discrimination law from unfavourable treatment on the basis of their gender identity including gender expression, and from disadvantage as a result of the imposition of unreasonable conditions, requirements and practices.¹ A person must not by a public act incite hatred or serious contempt for a person on the ground of their gender identity, including gender expression.² Both those protections and the Code leave room for respectful debate in local government and the community about matters including competing rights, and the type of behaviour intended to be caught by anti-discrimination law.

Cr Burnet submitted that Cr Elliot sought to cause reputational damage to the Council by her description, which suggested that the training was compulsory and directed at Cr Elliot. Cr Burnet said that the workshop was not compulsory and that a similar workshop had been delivered in November 2019.

Cr Burnet further submitted that the use of the term 're-education' has connotations that are related to totalitarian regimes and that it was used to bring the Council into disrepute.

Cr Elliot responded that elected members are required to make 'every effort' to attend workshops and that if she had not done so, her "non-attendance would have been weaponised at length and by many".

Cr Elliot submitted that the motion which included the proposal for the workshop was in retaliation for a motion she had on the February 2023 Council agenda, relating to the provision by the City of change rooms and toilet and shower facilities.

The Panel finds as follows in relation to Cr Elliot's post on social media about the workshop:

8 - (5) An elected member's personal views must not be expressed publicly in such a way as to undermine the decision of the Council or bring the Council into disrepute.

The Panel finds that Cr Elliot's social media post on 14 September 2023 was a public expression of Cr Elliot's personal views about the workshop on 4 September 2023 that did undermine a properly made decision of Council. The relevant decision was to provide Elected Members with gender diversity training and training as to Elected Member's responsibilities under anti-discrimination law by way of the workshop.

The Oxford English Dictionary³ relevantly defines the word 'undermine' as "to lessen the effectiveness, power, or ability of, especially gradually or insidiously", and 'insidiously' as "in a gradual, subtle way, but with harmful effects".

The use of the words 'imposed' and 're-education' in the relevant social media post was inappropriate in that neither term could fairly be used to describe the decision to hold the workshop or the workshop itself. Both were intended to be derogatory.

The Panel rejects the submission that the motion to hold the workshop was 'retaliation' for Cr Elliot's motion about public toilet and shower facilities. Cr Elliot proposed a motion that Council provide at least three "segregate communal shared spaces" in each such facility: one only for men, one only for women and one "for people of all sexes and genders". Both proposed motions were included in the agenda of the Council meeting on 20 February 2023. Even if one was a response to the other, it does not mean the decision to hold the workshop

¹ *Anti-Discrimination Act 1998, ss 14 and 15*

² *Anti-Discrimination Act 1998, s 19*

³ Accessed online on 25 April 2024

was directed at Cr Elliot and therefore an 'imposition on' her. There is no evidence in support of the submission in any event.

The use of the word 'imposed' improperly connoted that Cr Elliot was required or compelled to attend the workshop. The Hobart City Council Governance Framework in relation to elected member workshops provides as follows:

Regular Elected Member workshops will be held fortnightly and timed as consistently as possible, in expectation that Elected Members will endeavour to attend all such workshops unless there is a reasonable reason why they cannot do so, noting, however, that attendance is not a statutory requirement but attendance will be recorded and published on the Council website.

The minutes of the Hobart City Council Ordinary Meeting 25 September 2023 indicate that ten elected members, including Cr Elliot, attended the workshop on 4 September 2023. In general, a high proportion of Hobart City Council elected members appear to attend at workshops.

Even if Cr Elliot attended the workshop to avoid criticism by others as she submits, and not because she appreciated "hearing people's personal experiences and their perspective, including when they differ to my own" as she told the complainant in a letter of 17 September 2023, it is not appropriate to write that the workshop was 'imposed' on her when she voluntarily attended it.

Cr Elliot submitted that the use of the word 're-education' was appropriate because "the reduction [sic] session had the clear intention of changing my views" relying on a dictionary definition of 're-education' as follows: "to train again especially to rehabilitate through education". That definition may be applicable, but the word is also capable of referring to a totalitarian state's abuse of its citizens for political thought or expression, as the Complainant submits. Using a word with those connotations in connection with a workshop about the sensitive topic of anti-discrimination and gender inclusion was provocative and had the effect of undermining the relevant decision. It unfairly implied equivalence between the decision of Council and human rights abuses.

The use of the words 'imposed' and 're-education' in the post had a harmful effect, which Councillor Elliot ought to have anticipated, in the form of the derogatory comments published on social media by others in response to Cr Elliot's post.

The expression of Cr Elliot's personal views, having regard to the sensitivity of the subject matter and the obligations under anti-discrimination law referred to above and the comments elicited by the expression of Cr Elliot's personal views, had the effect of bringing the Hobart City Council into disrepute.

Accordingly, this part of the complaint is upheld.

Cr Elliot's posting of Cr Burnet's letter and Cr Elliot's response on social media.

On 15 September 2023, Cr Burnet, as Acting Lord Mayor, wrote to Cr Elliot expressing concern about the Twitter/X post she had made in relation to the workshop referred to above.

On 17 September 2023, Cr Elliot replied to Cr Burnet. As well as sending the response to Cr Burnet, Cr Elliot published both it and Cr Burnet's letter on social media.

Cr Burnet submitted that Cr Burnet's letter to her was not confidential and that she was within her rights to share this information.

Cr Elliot also notes that she had intended to send the response to Cr Burnet in the first instance but used the incorrect email address. She provided evidence supporting this.

Cr Elliot re-posted the letters on social media on at least one occasion since being made aware of Cr Burnet's complaint.

The Panel found as follows in relation to the posting of the correspondence on social media:

7 - (1)(b) An elected member must not cause any reasonable person offence or embarrassment.

The Panel accepts that the Complainant was offended or embarrassed by Cr Elliot posting the relevant correspondence on social media. There was no serious challenge as to that.

Having made that finding, a literal interpretation of this part of the Code would require us to determine whether or not the Complainant is a reasonable person. A literal interpretation makes little sense. A reasonable person can act capriciously from time to time but remain generally a reasonable person. Neither party made submissions or provided evidence that the Complainant is a reasonable person or otherwise.

The parties took the question before the Panel to be whether or not it was reasonable for the Complainant to be offended or embarrassed. The Panel also formed a view that it was required to determine that question.

The Panel accepts Cr Elliot's explanation regarding Cr Burnet not receiving her response prior to it being published online. Even if Cr Elliot had sent her letter of 17 September 2023 to the complainant before publishing the correspondence on social media, arguably doing so was discourteous. Cr Burnet did not intend for the exchange to be made public.

That said, Cr Burnet wrote on Lord Mayoral letterhead in her capacity as acting Mayor and requested a response from Cr Elliot as to her intentions in publishing the social media post about the Council workshop. It was not private correspondence, and no confidential information was imparted. We find that it was not reasonable for the complainant to be offended by the publication of correspondence of that nature.

Accordingly, the Panel determines that this part of the Complaint is dismissed.

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 Complainant submitted that by publishing the complainant's letter of 15 September 2023 together with Cr Elliot's response of 19 September 2023 on Facebook, Cr Elliot created the potential to adversely reflect on the reputation of the Council by virtue of its contents. That publication took place on 19 September 2023.

The letters are as follows:



OFFICE OF THE LORD MAYOR
HOBART TOWN HALL

Councillor Louise Elliot
Elected Member
City of Hobart

Via email: cr.elliott@hobartcity.com.au

Dear Cr Elliot

I am disappointed by the way that you have taken to social media after last week's workshop on inclusion and gender diversity (September 4).

You describe the information provided to you at the workshop as "re-education" and training that was "imposed" on you (see retweet attached). You may recall that the workshop was organised as an outcome of a Council decision in February 2023.

Do you mean to be disrespectful towards the people providing information on gender diversity, staff, other elected members, as well as the trans community?

You have consistently spoken out against transgender people, and have on the public record refuted that transgender women are women. Even after the opportunity to meet with transgender people that I organised on March 24, soon after you took to social media in what I regarded then as a public display of attack on this community.

I would appreciate your response on this matter.

Yours sincerely

A handwritten signature in black ink that reads 'Helen Burnet'.

Cr Helen Burnet
ACTING LORD MAYOR

Friday 15 September 2023

17 September 2023

Councillor Helen Burnet
Acting Lord Mayor
Hobart City Council

Via email: cr.burnet@hobartcity.com.au

Dear Cr Burnet

I am disappointed that you have chosen to further contribute to the bullying I am experiencing by some fellow Council members and officials for holding and sharing a different perspective in relation to gender ideology.

Firstly, I will address the specific points you have raised in your letter.

I understand that you are disappointed that I have 'taken to' social media after the session that Working It Out provided. It is natural for people to feel uncomfortable and dislike it when someone disagrees with and/or analyses and articulates the impossible, illogical, anti-science, unkind, exclusionary, hypocritical and dangerous aspects of their beliefs. This discomfort is part of living in a democratic and diverse society. I appreciate that you are likely to be extra sensitive to my critique of the information the re-education session was based on given the Tasmanian Greens – of which you are a prominent and active member – has unquestioningly adopted this ideology as part of their political platform and strategy to capture young, impressionable voters.

I also note your dissatisfaction with me referring to the session as re-education. The session was re-education in nature if not in name. The session, the information it contained and the manner in which the session came about made it clear that the intention of the session was to change my beliefs in relation to biological realities, the concept of 'gender identities' and gender ideology more broadly, and the impact this ideology has on women and children, and the validity of women and children's needs.

I note you are also unhappy with me stating that the re-education was imposed on me. I very clearly recall that the session was an outcome of a Council decision. I recall that meeting vividly given how appalling conduct of some councillors in that meeting. As an Elected Member, I am required to make 'every effort' to attend workshops and this re-education session was directly targeting me. The session was part of a retaliatory Motion put forward by Councillor Posselt and Councillor Sherlock for my failure to adhere to the beliefs of gender ideology.

I wish no harm or disrespect to anyone – including transgender people – except for predatory and dangerous individuals of any variable. That said, I hope that health professionals and other parties who are inflicting permanent physical and likely psychology harm on children under the guise of ‘kindness’, ‘affirmation’ and promising the impossible and doing so without a sound evidence base are held accountable for their actions. The immense damage that is being caused and will continue for some time is heartbreaking.

My criticism and concerns are with some of the concepts and consequences of gender ideology, not transgender people or other individuals who chose to practice this set of beliefs. That said, I strongly condemn the behaviour of activists (transgender or not) who abuse, assault, threaten, intimidate and otherwise act disrespectful, unfair and illegally towards people with whom they disagree, including those who hypocritically do so in the name of ‘trans rights’, acceptance, inclusion, tolerance and kindness.

Working It Out Session

The session conducted by Working It Out was in direct response to the Motion I brought to Council in February 2023 regarding the need for third all sex/gender communal spaces. The Motion by Cr Posselt and Cr Sherlock was retaliation for me not subscribing in full to the gender ideology belief system and for raising the need for **all** community members to feel safe and comfortable using Council’s changeroom facilities and propose a logical solution.

Interestingly, I note that the Working It Out representative spoke about feeling uncomfortable using the Council’s women’s change facilities, and feeling “unsafe” using the men’s facilities, and referred to the benefit of unisex/all gender facilities. It was this exact concept that I advocated for earlier this year which was, disappointingly, but unsurprisingly, voted down by the Council.

While it goes without saying, the session was not successful in changing my beliefs and I don’t accept the alternative facts that were presented. That said, I appreciate hearing people’s personal experiences and their perspective, including when they differ to my own.

Community Meeting

I found the meeting you arranged with some transgender members of the community insightful. I am always open to hearing the views and experiences of others, and I appreciated their acknowledgement that the women who spoke at the Hobart Let Women Speak Even in March should have been heard.

It was disappointing the Equality Tasmania representatives declined to publicly condemn the behaviour of their protesters who physically intimidated and trapped, screamed at and abused others at close proximity, spat on fellow Tasmanians, and harassed them as they left towards their car. I have never experienced anything like it. I was a nightmare I didn’t think people of Hobart were capable of. You are the Deputy Mayor and you remained silent.

If your impression was that by talking to a few people that I would magically change my fundamental beliefs and ignore fact, I am afraid you are mistaken. That said, the discussion was valuable and worthwhile. I want everyone to be treated fairly and to be safe, happy and healthy. I am empathetic to the stresses and concerns transgender people can experience and believe we need to work through ways to reduce these negative experiences that are based on honesty, fairness, safety and respect.

My rights and beliefs

Notwithstanding my obligation to comply with legislation and policies, including the Elected Member Code of Conduct, I am free to form, hold and communicate facts and my own beliefs.

You have no right to determine my beliefs or threaten or attempt to silence me for my beliefs or statement of facts. I understand you want me to subscribe to the set of beliefs that comprise gender ideology – or at least remain silent and not express my disagreement and concerns – but I am an independent thinker, have integrity, am not afraid to say what needs to be said, and will do what I think is right.

When it comes to gender ideology, I acknowledge the medical condition of gender dysphoria and the significant distress it can cause and believe that people should receive treatment based on a robust evidence base. I also welcome an individual's right to express and present themselves in a way that is true to them, such as through the name of their choice and how they choose to present themselves. There are, however, several other important aspects of gender ideology that I do not accept and will not be subscribing to.

One of the fundamental beliefs that I do not subscribe to is that humans can change sex. I strongly disagree with the statement that transwomen are women and will continue to refute that impossibility as women are adult human females. I note your displeasure that I have stated that transwomen are transwomen and remain men. My legal team and I will be unrelenting in defending the right for Australians to speak the truth.

I also do not subscribe to the existence of 'gender identities' and find it perplexing the belief held by some that gender is a social construct, yet is also as something innate within individuals. In my opinion, we have male, female and intersex people and people fall somewhere along a spectrum of masculinity and femininity.

Like you, I am allowed an opinion. I also have the right to not believe. I ask that you respect that my belief is different to yours. I do not wish harm or offence as a result of my belief, but it will not be changing as it is based in biological reality. I am thankful we live in Australia where freedom of belief and expression and freedom from discrimination due to political belief are valued, although admittedly under threat.

Kindness and Inclusion

I deeply value true kindness and inclusion and understand that this must be appropriately balanced with safety, fairness and dignity. I do not believe it is kind to lie and promise the impossible. I do not believe it is inclusive to enact beliefs that disadvantage or place women at risk women, such as through the placement of men in women's sports, prisons, shelters, and changerooms. I believe it is downright cruel to force lesbian women underground as men have gatecrashed their already limited spaces. I will not stop speaking up in defence for women, children, fairness, safety, reality, science and the truth.

Diversity is more than just in age, ability, sexual orientation, sex or gender, and skin colour. Diversity also occurs in thought and belief. The Hobart City Council needs to do some deep reflection on how it is responding to gender ideology and how it impacts on all community members. The Council's contempt for people who do not subscribe to this set of beliefs and voice their concerns is atrocious, and certainly not inclusive or kind.

The Council cannot possibly say it values true inclusion, kindness, respect, safety and truth at present, let alone a commitment to the fundamental principles of freedom of belief and expression. For example, you and Cr Reynolds, Cr Dutta, Cr Harvey, Cr Sherlock and Cr Bloomfield astoundingly voted against the statement that *"women and girls must be able to constructively and respectfully and speak on issues of sex, gender and gender identity within the Council and in our community without fear or intimidation."*

While Cr Posselt intentionally left the room for the above vote, the way he behaved as I presented my Motion earlier this year and his decision to ridicule me and call me a clown for advocating for women and the safety and comfort of all, clearly communicates his views. You said nothing in the face of such disrespectful and unkind behaviour.

Furthermore, Cr Lohberger shared a photo of local people attending the Hobart Let Women Speak event with the commentary that "this is how you treat Nazis", a smearing and silencing tactic that has been condemned by the United Nations' Special Rapporteur on Violence Against Women and Girls. As far as I am aware, you as Deputy Mayor said nothing, and instead reinforced that this is acceptable given your failure to support the statement around women and girls being able to speak without threats and intimidation. The use of name-calling is a smearing and silencing tactic explicitly named in the statement from the Special Rapporteur.

The double-standards at play are deeply disturbing. I have received this letter from you, only hours after another broad threat from the Acting CEO, for sharing my views on aspects of gender ideology and related 'training'. It is becoming more and more obvious that, if you believe in gender ideology, that you have immunity and will not be held accountable for your actions, regardless of how unkind, unsafe, disrespectful, irrational and exclusionary they are.

I will continue to voice my concerns, speak up for people who cannot, and propose solutions. Women's rights and their need to some female-only sports, spaces and opportunities are too important for me to be silent. I will not sit back passively and watch the harms being done to children and other susceptible people.

Furthermore, I will continue to hold my own beliefs, speak the truth, and share my views. I ask you to please refrain from further attempts to gaslight, indoctrinate, censor, and threaten me in to silence and submission. This bullying behaviour must cease.

Thank you for the invitation to provide this response.

Yours sincerely

Louise Elliot

Whether one agrees or disagrees with either the Complainant's sentiments or those expressed by Cr Elliot, even if the expression of those sentiments might or might not offend against anti-discrimination law, or is offensive, insincere, deliberately provocative or insensitive, a reader of the relevant correspondence on social media would see a disagreement between two Elected Members of the Hobart City Council. The Panel was not able to discern how a person reading the exchange could reasonably form a diminished view of the Council itself, rather than the individuals involved in the disagreement or espousing their respective views.

In order to find that this provision of the Code has been breached, the Panel needed to be able to identify specifically what part of the content of the correspondence could reflect on the reputation of the Council itself and how. It could not and accordingly determined to dismiss this part of the complaint.

Unmoderated comments on Cr Elliot's social media.

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.

Both Cr Elliot's post of 14 September regarding the Elected Member workshop of 4 September and her publication on social media, on more than one occasion, of Cr Burnet's letter to her of 15 September 2023 and her response to Cr Burnet dated 17 September 2023 prompted extensive public response.

These included many negative comments, some which appear to be directed at Cr Burnet and others of which are directed at the Council generally. The language in a number of comments is objectionable and some are abusive. The Complainant provided the following examples:

"this is bat shit crazy";
"Tell them politely to FUCK OFF";
"Twit";
"Complete moron";
"What a fuckwit";
"Pervert-enabling moron";
"This is the CCP or North Korea if the CPP or Jong Un were totally insane";
"Box of frogs";

“Major Misogynist. Major Mutilation”;
“Insane”;
“Tell them to go to hell”;
“Her lies fly in the face all known standards required for child safeguarding... You & your dangerously deluded @Greens co-conspirators must resign”.

Cr Burnet has submitted that Cr Elliot, having provided the platform on which these comments were made, should have moderated these comments, and her failure to do so has had the potential to reflect adversely on the Council’s reputation.

Cr Elliot did not dispute that those comments were published as alleged but submitted that she cannot moderate or delete other people’s comments, and that she is “not responsible for the actions (and words) of others”.

It is a matter of common knowledge that it is possible for a person to review and manage activities performed on a social media platform. User-generated content on a person’s or organisation’s social media accounts may require actions, whether by responding, reporting, or removing content (often referred to as ‘moderating’). There is a range of options for this depending on the platform⁴. Aside from those options, a Councillor could include a form of words discouraging others from making abusive comments, for example in a post that might attract such comments or in a response to those publishing the abusive material.

The Hobart City Council Elected Members Development and Support Policy⁵ provides guidance to Elected Members on the use of private social media accounts. Section T of the Policy ‘Elected Member Use of Social Media Guidelines’ contains the following guidance:

1. *Elected members may maintain their own social media accounts identifying themselves as elected members for the City of Hobart.*
2. *Elected members should qualify their comments on social media as being their own, and not necessarily the position of the Council.*
3. *Information that is not already publicly available must not be disclosed at any time.*
4. *The personal details of City of Hobart staff or management must not be shared or disclosed.*
5. *Content that could bring the City of Hobart, its elected members or its employees into disrepute, or which defames or otherwise harms the reputation of the City of Hobart should not be published or shared.*
6. *All external communications must be respectful of all members of the community and comply with the principles of the Elected Member Code of Conduct.*
7. *Personal (not specific to their role as an elected member) social media accounts may also be maintained by elected members but are subjected to the same conditions as their more official accounts.*
8. *Elected members are reminded that they are responsible for all content published on their social media accounts whether this be posted by themselves or a third party.*
9. *Comments, links, images and videos that includes material that may be deemed as offensive, discriminatory, defamatory or vulgar to any person should be removed.*

Of relevance to the complaint that Cr Elliot did not effectively moderate the comments posted under her Facebook post, point 8 above reminds elected members that “they are responsible for all content published on their social media accounts whether this be posted by themselves or a third party” and point 9 directs elected members to remove comments that “may be deemed as” offensive, discriminatory or vulgar.

⁴ Information on managing content on social media platforms is readily available e.g. <https://help.twitter.com/en/using-x#tweets> and <https://www.facebook.com/formedia/blog/moderating-your-facebook-page> and <https://www.facebook.com/help/841213946569182>

⁵ <https://www.hobartcity.com.au/files/assets/public/v/5/council-meetings-aldermen/policies/policies-current/corporate-governance/elected-member-development-and-support.pdf>

In *Fairfax Media Publications Pty Ltd v Voller* (2021) 95 ALJR 767, the High Court confirmed that media organisations that maintain Facebook pages are the publishers of defamatory comments made by third parties on articles posted on those Facebook pages. The person who controls those posts facilitates the comments of others and is responsible for them.

Councillors must be cautious when 'liking' or 'sharing' content on social media, and there is a need for Councillors to actively manage content added on their pages or under their posts.

The Panel finds that Cr Elliot facilitated the offensive comments that are the subject of this part of the Complaint and in doing so and in failing to moderate them, exposed the entire Council to potential reputational damage because of the abusive and offensive nature of the comments that were directed towards the Council and its Deputy Mayor.

Accordingly, the Panel determined that this matter of complaint is upheld.

Sanction

Section 28ZI (2) of the *Local Government Act 1993* provides for the Panel to impose one or more of the following sanctions if it upholds the complaint or part of it-

- a. a caution;
- b. a reprimand;
- c. a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;
- d. a requirement to attend counselling or a training course; or
- e. 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.

On 20 May 2024, Cr Elliot was advised that a number of the allegations made in the complaint were likely to be upheld and provided with an overview of how each part of the complaint might be determined by the Panel. Cr Elliot was invited to make a submission as to what, if any, sanction should be applied in the event that parts of the complaint were upheld. Cr Elliot's submission was received on 27 May 2024.

Taking into account Cr Elliot's submission, the Panel has determined to impose a caution. The Panel also strongly recommends that Cr Elliot investigates the range of opportunities available to her to moderate content on various social media platforms.

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 was unable to determine the complaint within 90 days, primarily due to the delay in reconstituting the Panel following the recusal of Mr Preece and the work and other commitments of Panel members.

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.



Liz Gillam
Chairperson



Matt Evans
Member



Anthony Mihal
Legal Member

Date – 16 July 2024