

Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT

HOBART CITY COUNCIL CODE OF CONDUCT

C34631 - Complaint brought by Councillor (Cr) Mike Dutta against Cr Louise Elliot

Code of Conduct Panel

- David Sales (Chairperson)
- Roseanne Heyward (Local Government Member)
- Anthony Mihal (Legal Member)

Date of Determination: 19 September 2025

Content Manager Reference: C34631

Summary of the complaint

Cr Mike Dutta submitted a code of conduct complaint to the General Manager of the Hobart City Council on 3 May 2024 (the Complaint).

The Complainant alleges that Cr Louise Elliot published on X (formerly Twitter) on 26 or 27 November 2023 and on Facebook on 27 November 2023 the following post: -

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

which breached the following parts of the Hobart City Council Code of Conduct adopted on 20 February 2023 (the Code).

PART 5 - USE OF INFORMATION

...

2. *An elected member must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation*

PART 7 - RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES

7.1 A councillor –

...

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

PART 8 - REPRESENTATION

1. *When giving information to the community, an elected member must accurately represent the policies and decisions of the Council.*

2. *An elected member must not knowingly misrepresent information that they have obtained in the course of their duties.*

...

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

6. *An elected member must show respect when expressing personal views publicly.*

7. *The personal conduct of an elected member must not reflect, or have the potential to reflect, adversely on the reputation of the Council.*

Assessment of complaint

The Chairperson assessed the complaint in accordance with section 28ZA of the *Local Government Act 1993* (the Act). The Chairperson considered whether it should be referred to another person or authority under section 28ZC(1) of the Act and determined that it did not require referral as it did not disclose that an offence may have been committed and it was not more appropriately dealt with by another person or authority.

The Chairperson did not consider that any of the matters in section 28ZB(1) of the Act applied to the complaint. That section is as follows:

(1) *The chairperson of the Code of Conduct Panel, on an initial assessment, may dismiss the code of conduct complaint, or part of it, if he or she considers that –*

- (a) *the complaint or part is frivolous, vexatious or trivial; or*

- (ab) *the complainant has not made a reasonable effort to resolve the issue that is the subject of the complaint; or*

- (b) *the complaint or part does not substantially relate to a contravention of the code of conduct of the relevant council; or*

- (c) *the complainant has made the complaint or part in contravention of –*

- (i) *a determination of the chairperson made under section 28ZB(2) of the Act; or*

(ii) a determination of the Code of Conduct Panel made under section 28ZI(3) of the Act.

Having done so, he determined that pursuant to section 28ZA(1) of the Act, the complaint should be investigated and determined by the Code of Conduct Panel.

The Chairperson made this determination for the following reasons:

- The complaint substantially relates to alleged contraventions of the Code.

If the allegations are proven, they are capable of constituting a breach of Parts 5(2), 7(1)(b) and 8(1), (2), (5), (6) & (7) of the Code.

- The complaint is not frivolous, vexatious or trivial and appears to relate to matters of substance under the Code and does not appear to be trifling, insignificant or a misuse of the Panel's resources.
- He considered that a reasonable effort had been made to resolve the issue that is the subject of the complaint being that Cr Dutta requested removal of and an apology for the Facebook post on 27 November 2023 and the respondent indicated that she would not accommodate his request.

Enquiries were made of the Code of Conduct Panel Executive Officer and the Chairperson was advised that the complaint (or part of the complaint) has not been made in contravention of a determination of the chairperson of a Code of Conduct Panel under section 28ZB(2) of the Act or a determination of the Code of Conduct Panel under section 28ZI(3) of the Act.

The Investigation

The complaint as made did not identify the dates on which the relevant social media publications were made. The Respondent wrote to the panel before our investigation commenced seeking clarification. Cr Dutta made a further statutory declaration setting out the relevant dates of each post, which we took to be an amendment to the complaint made in accordance with Section 28X(1) of the Act.

The Respondent then provided the Panel with a written response to the complaint, and we commenced our investigation.

The subject matter of the social media publications relevant to the complaint was the ongoing conflict in Gaza. We did not consider it necessary to determine whether the posts were factually correct, and in particular whether Palestine is a country that is governed by terrorists and that seventy-five percent of its population support the horrific massacre of hundreds of people. Cr Elliot's response to the complaint included material supporting the factuality of her position but we did not consider that material relevant to determining whether Cr Elliot breached the Code by publishing social media posts with that content.

Cr Elliot did not dispute that she published the relevant posts. That being the case, it fell on us to consider the words themselves to determine whether publishing them amounted to a breach of any of the relevant parts of the Code. We did not consider any need to engage in analysis of the situation in the middle east, suffice to say that many in the community hold deeply held and differing views.

Cr Elliot submitted that other than being factually correct, her posts included her ‘fair and valid political opinion’ and that the post could not breach the code because she was protected by the implied freedom of political communication conferred by the Australian Constitution. She referred us to the decision of Magistrate Brown in *Howard v Code of Conduct Panel* [2019] TASMC 6, who held that the Code should be “read down so as not to impinge on that freedom unduly”¹.

In September 2024, the Panel wrote to both parties seeking their views on whether we should exercise the discretion under section 28ZG of the Act to investigate the complaint without a hearing.

On 13 November 2024, the Supreme Court of Tasmania delivered its judgment in *Howard v Code of Conduct Panel* [2024] TASSC 64 per Blow CJ. The Court held that the Panel was not required to take the implied freedom of political communication into account when determining complaints under the Act². We referred the parties to the decision and invited further submissions.

Submissions were received from both parties. Nothing in those submissions dissuaded us from the view that *Howard v Code of Conduct Panel* [2019] TASMC 6 is not a proper statement of the law and that we were not required to take the implied freedom of political communication into account as stated by Blow CJ.

Again, on 18 March 2025, the Panel wrote to both parties seeking their views on whether a hearing was necessary. The Complainant indicated that he did not consider that a hearing was necessary, however the Respondent requested that a hearing be held.

The Panel considered these requests and in accordance with s28ZG(2)(a) and (b) of the Act, determined that a hearing not be held because there were no significant areas of factual dispute, and therefore the inquiry was limited to considering the provisions of the Code and characterising the social media publications.

In response to this advice, the Panel received correspondence from the Respondent expressing her dismay that there would not be a hearing and indicating that she had important additional evidence she wished to submit but it was of a nature that she would only be comfortable in submitting orally.

The Panel considered the Respondent’s submission and in the interests of providing natural justice to Cr Elliot and in accordance with s28ZG(4) of the Act determined that it would hold a hearing. S28ZH of the Act provides that the investigating Panel may regulate the procedure of its hearings. In view of the fact that the Panel considered that it had sufficient evidence before it to determine the matter, the Panel decided that the hearing would be restricted to the Respondent providing the additional evidence and allowing the Complainant the opportunity to question the Respondent and make submissions as to anything that arose in relation to any new evidence, but that the parties could otherwise rely on the extensive written submissions we had already received from them.

The hearing took place on 27 June 2025. The Respondent briefly presented the additional evidence and the Complainant was given the opportunity to question the Respondent and make

¹ *Howard v Code of Conduct Panel* [2019] TASMC 6 at [53]

² *Howard v Code of Conduct Panel* [2024] TASSC 64 at [37]

submissions. The Respondent indicated that the evidence she gave was very personal in nature and she did not want it to be made public. The evidence was about her personal background, family and politics. We did not consider any of it relevant to our consideration of the complaint.

During the course of the hearing the Panel advised that it had decided in the interests of procedural fairness and in view of the protracted nature of the investigation of this Complaint, to give both parties to this Complaint the opportunity to make a final submission prior to it determining the Complaint.

This was conveyed to the parties on 30 June 2025 together with an invitation to make submissions as to sanction if any of the alleged breaches were upheld.

A final submission was received from Cr Elliot on 2 July 2025 in which she reiterated her position and indicated that she felt she had not breached the Code and no sanction was warranted.

A final submission was received from Cr Dutta on 14 July 2025 in which he also reiterated his position. He also indicated that if it was found that Cr Elliot had breached the Code a sanction of a public apology together with a suitable training course would be appropriate.

The Panel then proceeded to make a determination. The Panel had before it the following materials which we considered in making our determination:

- Hobart City Council Councillor Code of Conduct adopted 20 February 2023;
- Code of Conduct Complaint (C34631) by Cr Mike Dutta against Cr Louise Elliot dated 3 May 2024;
- Email from Cr Dutta clarifying some of the information which was included in the initial complaint dated 29 August 2024;
- Response from Cr Elliot to Cr Dutta's complaint dated 18 September 2024;
- Submission of Cr Elliot in response to the Panel's letter of 9 December 2024, dated 18 January 2025; and
- Submission of Cr Dutta in response to the Panel's letter of 9 December 2024, dated 28 February 2025.
- Final submission received from Cr Elliot on 2 July 2025
- Final submission received from Cr Dutta on 14 July 2025.

Determination

Pursuant to section 28ZI(c) of the Act the Panel determines the Complaint by upholding that part of the Complaint that relates to Part 7(1)(b) and Part 8(6) and (7) of the Code, and dismissing the remainder of the Complaint, that is that part of the Complaint that relates to Part 5(2), and Part 8(1), (2) and (5) of the Code.

Reasons for the Determination

PART 5 - USE OF INFORMATION

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2. An elected member must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation

The allegation is that Cr Elliot breached the code because the relevant social media posts were a “release” of council information, being that the Council did not pass a resolution to fly the Palestinian flag which was on the agenda for the closed part of its meeting on 27 November 2023, other than in accordance with relevant policies, procedures and legislation.

It is alleged that Cr Elliot’s posts amounted to a disclosure of information contrary to Section 338A of the Act, which is as follows:

338A. Disclosure of information

- (1) Except as required, or allowed, by this Act, another Act or any other law, a councillor must not disclose information –
 - (a) seen or heard by the councillor at a meeting or part of a meeting of a council or council committee that is closed to the public that is not authorised by the council or council committee to be disclosed; or
 - (b) that is, on the condition that it be kept confidential, given to the councillor by the mayor, deputy mayor, chairperson of a meeting of the council or council committee or the general manager.

It was not at issue that Cr Elliot was not present at the relevant council meeting. That means she did not disclose anything she saw or heard at that meeting contrary to section 388A (1)(a) of the Act.

There was no evidence before us that Cr Elliot was given the information about the motion not passing on the condition it be kept confidential such that we could find it was disclosed contrary to section 388A(1)(b) of the Act.

The evidence before us was that there was a publicly available summary of agenda items for the closed meeting which indicated that the flying of the Palestine flag would be discussed and therefore was public knowledge before the Meeting. Cr Elliot, by a process of deduction was able to know that the motion did not pass. Accordingly, she did not ‘release’ any council information contrary to policy, procedure or law and this allegation of the complainant is not upheld.

The Panel dismisses the alleged breach of Part 5 (2) of the Code.

PART 7 - RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES

7.1 A councillor –

.....

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

We had evidence before us that at least two people were offended by Cr Elliot's social media posts. The first is Cr Dutta who said he and several of his fellow councillors who supported motions before the Council concerning the Gaza war were offended by Cr Elliot's reference to them having a "*mind virus*".

In her response to the complaint, Cr Elliot made the following submissions:

*My reference to 'mind virus' is in relation to **woke culture** as a broad and general political ideology. It is not a literal phrase – a metaphor perhaps – and all reasonable people know that. This was NOT a reference to any individual. It was a reference to wokeism. There are countless examples of this phrasing used in this way.*

To the extent that we are able to understand that submission, having not before come across the term "mind virus" until being introduced to it by Cr Elliot and not knowing precisely what is meant by "woke culture", we reject it. Cr Elliot's intention is to suggest that a reasonable person could not be offended by someone saying that they have a "mind virus" for taking a particular view about an issue.

We find that to suggest that someone has been infected by a transmissible mental illness because they hold particular political beliefs is inherently offensive. The metaphor itself is offensive and we accept that Cr Elliot caused offence and embarrassment to Cr Dutta by its use in her social media posts. It was reasonable for Cr Dutta to be offended, and given the publications were on public forums, reasonable for Cr Dutta to be embarrassed by them. It was very discourteous of Cr Elliot to refer to her fellow councillors in that manner.

It is to that extent that we find Cr Elliot has breached this part of the Code and for that reason this allegation of complaint is upheld.

We had evidence that Cr Elliot's social media post also caused offence to Dr Adel Yousif, a senior lecturer at the University of Tasmania, in the form of a letter to Cr Dutta in which Dr Yousif wrote the following:

As a member of the Palestinian community, I am extremely offended, distraught, and indeed outraged that Cr Elliot would suggest that our country of origin is governed by terrorist and that three quarters of the population support 'horrific massacre of hundreds of people'. These sorts of wild and unfounded allegations are dehumanising, make it very difficult to promote acceptance and are a source of acute embarrassment for members of our community who already struggle with being accepted into our local societies. Being maligned and targeted as 'brutal terrorist' within our community only causes more division and distress for us as we seek to be part of Australian society.

We accept that Dr Yousif was genuinely offended by the assertions in Cr Elliot's social media posts that Palestine is "*a country governed by terrorists*" and that "*around 75% of their population support the horrific massacre of hundreds of people*". Cr Elliot attempted to provide evidence to convince us that her assertions were true and suggested that for that reason, it was not reasonable for Dr Yousif to be offended by them.

It is beyond our capacity to undertake an investigation into the complexities of Israel and the Palestinian people. We are of the view that it is unnecessary for us to do so to determine the complaint. Clearly Cr Elliot and others genuinely believe in the truth of the assertions.

The relevant part of the Code is poorly drafted. If we were to take it literally, we would be required to undertake an inquiry as to whether or not Dr Yousif is a reasonable person. That would not be sensible. An inquiry into whether or not it was reasonable for Dr Yousif to be offended is also not a useful one in this instance. As a member of the Palestinian community, it is perfectly understandable and reasonable for the comments to have caused great hurt and offense to him and his fellow community members for whose feelings no regard was given in the writing of the social media posts.

What the provision of the Code properly constructed calls for is for us to put an objective bystander, the “reasonable person” in Dr Yousef’s shoes to determine whether offence would be caused. The context for Cr Elliot’s posts is a polarising and highly controversial political topic in which opposing views are genuinely and passionately held.

In that context, we cannot be satisfied that the relevant assertions were objectively offensive and find that to the extent the complaint relates to offence caused to Dr Yousef, it is not upheld.

The Panel upholds the alleged breach of Part 7(1)(b) of the Code in so far as it relates to inferring that fellow Councillors have a “*mind virus*”

PART 8 - REPRESENTATION

- 1 When giving information to the community, an elected member must accurately represent the policies and decisions of the Council.*

Cr Dutta says that Cr Elliot breached this part of the Code by publishing the following words in her social media posts:

“flying the Palestinian flag was on the Agenda for the Hobart City Council, until a last-minute switch to pointless letter writing”.

The gravamen of the complaint is that the above misrepresents the Council’s meeting agenda and the timing of the decision. It is not alleged that a policy or decision itself was not accurately represented, which is required if this matter of complaint could be upheld. It cannot be.

The complainant appears to submit that Cr Elliot misrepresented a decision of council by saying that a motion which passed at the relevant council meeting for the mayor to write a letter to the prime minister was “lame and symbolic”. That is a characterisation of the effect of that decision – a characterisation with which Cr Dutta disagrees and would say is unfair – but it is not a misrepresentation of the decision itself. For that reason, we find this matter of complaint cannot be upheld.

The Panel dismisses the alleged breach of Part 8(1) of the Code.

- 2 An elected member must not knowingly misrepresent information that they have obtained in the course of their duties.*

We have simply not been able to identify any information that Cr Elliot has obtained in the course of her duties as councillor that was misrepresented in her social media publications.

The Panel dismisses the alleged breach of Part 8(2) of the Code.

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

The Complainant says that Cr Elliot undermined the decision of the Council when she wrote that a motion which passed at the relevant council meeting for the mayor to write a letter to the prime minister was “*lame and symbolic*” and that it in some way supported “*terrorism, genocide and repulsive brutality*”. That is a characterisation of the effect of that decision – a characterisation with which Cr Dutta disagrees and would say is unfair.

Cr Dutta submitted as follows:

“While individual opinions are valued, it's crucial for Council members to uphold unity and support the decisions made collectively to ensure the Council's credibility and effectiveness in addressing important issues.”

We reject that submission. The Code allows a councillor to publicly disagree with a decision of council and to say why they disagree. Here, Cr Elliot has expressed emphatic disagreement. We are unable to find that she did so to the extent of undermining the decision and cannot therefore find that this matter of complaint is upheld.

The Panel dismisses the alleged breach of Part 8(5) of the Code.

- 6 *An elected member must show respect when expressing personal views publicly.*

Cr Elliot's conduct was to publish a statement that she was “*sickened*” by those with a “*mind virus*” who brought the matter of flying the Palestine flag into the Council chamber and went on to infer that those who supported the flying of the flag “*supported terrorism, genocide and repulsive brutality*”. We find that in doing so, Cr Elliot showed a lack of respect for those who have a different view to her. Cr Elliot posted offensive and derogatory comments on social media about her fellow councillors, showing a lack of respect for her fellow councillors.

The Panel upholds the alleged breach of Part 8(6) of the Code.

- 7 *The personal conduct of an elected member must not reflect, or have the potential to reflect, adversely on the reputation of the Council.*

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

Although no evidence has been introduced to support the claim that Council has suffered reputational damage, the Panel considers that Cr Elliot's conduct had the potential to adversely reflect on the reputation of Council.

The Panel upholds the alleged breach of Part 8(7) of the Code.

Sanctions

In accordance with section 28 ZI(2) the Panel may

- (a) uphold the complaint; or
- (b) dismiss the complaint; or
- (c) uphold part of the complaint and dismiss the remainder of the complaint

Sanctions that may be imposed

If the complaint or part of the complaint is upheld the Panel may impose one or more of the following sanctions:

- (d) a caution;
- (e) a reprimand;
- (f) a requirement to apologize to a person affected by the failure to comply with the code of conduct;
- (g) a requirement to attend counselling or a training course, or
- (h) a suspension.

The Panel may also determine not to impose a sanction despite upholding the complaint.

During the course of the hearing both parties were asked whether they wished to make submissions as to sanction should all or part of the Complaint be upheld. Both parties made submissions as to sanction.

The Panel imposes a sanction of -

- A reprimand; and
- A requirement to attend a training course as directed by the Director of Local Government.

The Director of Local Government will identify an appropriate training course for Cr Elliot to attend and will communicate his decision to the General Manager of the Hobart City Council.

The Panel considered whether the sanction should include a requirement for Cr Elliot to apologise to her fellow Councillors for the offensive manner in which she described them. The Panel felt that Cr Elliot's views on this matter were so strongly held that any apology she

might proffer would not be made genuinely and, in the circumstances, considered it better not to impose a requirement to apologise.

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 -

- Delays owing to the Christmas/New Year holiday period.
- Prolonged illness of one of the Panel Members.
- Availability of a mutually convenient time for Panel members to meet.
- Panel members were involved in several other complaints.

Right to review

A person aggrieved by the determination of the Code of Conduct Panel, on the ground that the Panel failed to comply with the rules of natural justice, is entitled under section 28ZP of the Act to apply to the Tasmanian Civil and Administrative Tribunal for a review of the determination on that ground.



David Sales
Chairperson



Anthony Mihal
Member



Roseanne Heyward
Member

DATE: 19 September 2025