

Local Government Code of Conduct Panel

Executive Building, 15 Murray Street, HOBART TAS 7000 Australia

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PRIVATE AND CONFIDENTIAL

Mr Nick Heath
General Manager
Hobart City Council
generalmanager@hobartcity.com.au

Dear Mr Heath

Code of Conduct Panel Determination Report – *Local Government Act 1993 (Section 28ZJ)*

In accordance with section 28ZK of the *Local Government Act 1993* (the Act) the Code of Conduct Panel has made its determination in relation to the complaint lodged by Mr Paul Daniels against Cr Holly Ewin. A copy of the Determination Report is enclosed.

As per section 28ZK (2) of the Act, copies have also been provided today to Mr Daniels, Cr Ewin, and to the Director of Local Government.


Section 28ZK (7) of the *Local Government Act 1993* requires that any person who receives a determination report must keep the determination report confidential until the report is included within an item on the agenda for a meeting of the relevant council. Failure to do so may result in a fine of up to fifty penalty units.

In accordance with section 28ZK (4) of the Act, you are to ensure that the Report is tabled at the first meeting of the Council at which it is practicable to do so and which is open to the public.

As the code of conduct complaint has been upheld in part, Mr Daniels is entitled, under section 28ZO of the Act, to a full refund of the lodgement fee. Please arrange a refund of this fee within 28 days of the date of this letter.

I may be contacted on (03) 6232 7013 or by email at lgconduct@dpac.tas.gov.au if you have any queries.

Yours sincerely



Helen Medhurst
Executive Officer
Code of Conduct Panel

6 March 2020

Encl. Determination Report

Local Government Act 1993

HOBART CITY COUNCIL CODE OF CONDUCT DETERMINATION REPORT *

Complaint by Mr Paul Daniels against Councillor (Cr) Holly Ewin

(Reference : C19471)

Determination made on 4 March 2020

Code of Conduct Panel:

Lynn Mason (Chairperson), Robert Winter (community member with experience in local government), Graeme Jones (legal member)

Summary of the Complaint

The complaint from Mr Daniels was submitted to the Executive Officer of the Code of Conduct Panel (the Panel) on 22 November 2019.

The Chairperson of the Panel undertook an initial assessment of the complaint and advised on 4 December 2019 that it should be referred to a Panel for investigation.

The City of Hobart Elected Member Code of Conduct (the Code) in force at the time of the alleged breaches was approved by Council in February 2019. The sections of the Code which Mr Daniels alleged Cr Ewin breached are:

Part 5 – Use of Information

- 1. An Elected Member must only access or use Council information needed to perform their role and not for personal or non-official purposes.*
- 2. An Elected Member must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.*

Mr Daniels also alleged a breach of the *Local Government Act 1993* by Cr Ewin, and that Council had breached its obligations under the *Personal Information Act 2004*.

Mr Daniels was informed that the Code of Conduct Panel (the Panel) only had jurisdiction to investigate alleged breaches of the Code.

The Complaint

The complaint alleged that on or about 21 May 2019 Cr Ewin posted on the Facebook site *Holly Ewin, Hobart City Councillor*, a screen shot of an email sent only to Hobart Councillors, and that this screen shot was still posted on Cr Ewin's Facebook page until at least 30 October 2019. Council adopted its *Elected Member Social Media Guidelines* on 9 September 2019. The post had the name of the sender blocked out, but the telephone number of the sender was clearly visible. It is alleged that this information was available to Cr Ewin only because of being a councillor with Hobart City Council, and therefore, any release of that information had to be in accordance with the policies and procedures of the Council and in compliance with relevant legislation, which the complaint alleges it was not.

* Section 28ZK (7) of the *Local Government Act 1993* requires that any person who receives a determination report must keep the determination report confidential until the report is included within an item on the agenda for a meeting of the relevant council. Failure to do so may result in a fine of up to 50 penalty units.

The complaint alleged that the information Cr Ewin released through Facebook (from the email sent to Councillors, and Cr Ewin's subsequent posts on Facebook) was used for personal reasons, viz., *to gain publicity and to denigrate the opinions of those who disagree with her ideology.*

Procedure

On 4 December 2019 the Panel received an email advising that Cr Ewin would not be responding to the complaint, as Cr Ewin considered that the matters contained therein had already been dealt with in previous complaints. The Panel met on 12 December 2019 to consider the complaint. On 16 December 2019 the Panel wrote to Cr Ewin requesting submission on whether the Panel should conduct a hearing and on penalty, should any part of the complaint be upheld. In response to an email from Cr Ewin on 4 December 2019, the Panel also provided Cr Ewin with an explanation of the Chairperson's decision that the complaint from Mr Daniels was not the same matter as had been investigated in previous complaints brought against Cr Ewin.

On 16 December 2019 the Panel wrote to Mr Daniels, requesting his submission on whether the Panel should conduct a hearing.

The Panel received a response from Mr Daniels on 22 December 2019, indicating that he was content for the Panel to proceed without conducting a hearing. No response was received from Cr Ewin.

On 3 January 2020 Cr Ewin and Mr Daniels were informed that the Panel would conduct a hearing into the complaint on a date to be advised. On the same day, Cr Ewin responded that it was not possible to attend a hearing at any time between 8 am and 5 pm on weekdays, and between 8 am and 11 am on Saturdays due to work commitments.

On 10 January the Panel wrote to Cr Ewin and Mr Daniels, asking for their availability to attend a hearing on any of nine possible dates in January and February. On 16 January the Panel advised Cr Ewin and Mr Daniels that a hearing was to be held on 13 February 2020, with a request that the Panel be told if this was not a day on which they could attend. On the same day Cr Ewin advised that business commitments made 13 February impossible, and detailed other regular commitments outside business hours to be noted by the Panel.

On 17 January 2020 the Chairperson advised Cr Ewin that an alternative date for hearing had been provisionally set for 25 February 2020, and again invited response to the complaint, given that two previous invitations to respond had not elicited any material for the Panel to consider. Cr Ewin responded on the same day, stating that *I am not able to come to a hearing, meeting, event or otherwise during my business hours. I am sorry if this is inconvenient; but I have a business to run.*

On 21 January 2020 the Panel met to consider Cr Ewin's response. On 24 January 2020 Cr Ewin and Mr Daniels were informed that the Panel intended to proceed to make its determination on the material already provided to it.

On 18 February the Panel met to consider all material available to it and to consider its Report.

Material considered by the Panel

- Statutory Declaration by Mr Paul Daniels, 15 November 2019
- Complaint submitted by Mr Paul Daniels, 11 pp, including attachments:
 - Email sent from Mr Daniels to Cr Ewin, 1.22 pm, 8 November 2019;
 - Letter entitled GENDER HAS NO INFLUENCE ON THE USE OF TOILET FACILITIES, signature blotted out, sender designation Women Speak Tasmania, posted on Facebook of Holly Ewin, Hobart City Councillor, 21 May 2019;
 - Facebook posts with commentary by Holly Ewin, Hobart City Councillor, 21 May 2019, including a letter addressed to all Councillors regarding previous Facebook posts by Cr Ewin;
 - Excerpts from Holly Ewin, Hobart City Councillor Facebook page, 15 October 2019;
 - Email from Mr Daniels to Ms Joanna Pinkiewicz, 11.23 pm, 30 October 2019;
 - Email from Ms Joanna Pinkiewicz to Mr Paul Daniels, 11.49 am, 4 November 2019;
- Email from Cr Ewin to the Executive Officer (EO), 12.36 pm, 4 December 2019
- Email from Cr Ewin to the EO, 1.00 pm, 4 December 2019
- Email from Mr Daniels to the Chairperson, via the EO, 8.01 pm, 5 December 2019
- Email from Mr Daniels to the Chairperson, via the EO, 5.44 pm, 20 December 2019, including:
 - Submission re necessity for a hearing
 - Amendments to links to Cr Ewin's Facebook page
 - On-going behaviour of Cr Ewin
- Email from Cr Ewin to the EO, 4.50 pm, 3 January 2020
- Email from Cr Ewin to the EO, 6.49 pm, 16 January 2020
- Email from Cr Ewin to the EO, 6.25 pm, 17 January 2020
- Hobart City Council *Elected Member Social Media Guidelines*, adopted by Council at the ordinary Council meeting on 9 September 2019.

Determination

The Code of Conduct Panel upholds the complaint against Cr Ewin for breaches of Part 5(1) and (2) of the Council's Code of Conduct.

Reasons for the Determination

Alleged breach of Part 5(1) – Use of Information

1. *An Elected Member must only access or use Council information needed to perform their role and not for personal or non-official purposes.*

The Panel considered that comments posted by Cr Ewin regarding the letter sent to all Councillors regarding the use of toilet facilities, and posted on the Facebook site of Holly Ewin, Hobart City Councillor, were not intended to be posted for any official purpose, and were placed there to promote Cr Ewin's standing as a Hobart City Councillor representing particular sections of the community.

The post of 21 May 2019 (posted by Cr Ewin along with the email entitled GENDER HAS NO INFLUENCE ON THE USE OF TOILET FACILITIES), stated, in part:

It's important now more than ever to be good allies to marginalized people in our community, and to actively work to give all groups a sense of belonging and safety. Except for Nazis.

The Panel deems that this Council information was used for personal purposes, and had no official bearing whatsoever.

Alleged breach of Part 5(2) – 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.*

The *Elected Member Social Media Guidelines* was adopted by Council on 9 September 2019. The Panel determines that the following clauses of the adopted Guidelines were breached by these posts on Facebook:

ELECTED MEMBER USE OF SOCIAL MEDIA GUIDELINES

1.3 Information that is not already publicly available must not be disclosed at any time.

The email was sent only to Hobart City Councillors. It was not publicly available.

1.5 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.

Cr Ewin described the members of the Women Speak Tasmania organisation as *full of fear, anger and hate*, and suggested taking responsibility for setting up counselling for them. The Panel determines that this denigration of the members of an organisation on the social media site of an elected member of Hobart City Council is harmful to the reputation of the collective body of the Council, and is not respectful of all members of the community.

1.6 All external communications must be respectful of all members of the community and comply with the principles of the Elected Member Code of Conduct.

See the comments under 1.5 above

1.7 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.

The Panel determines that this section of the Policy makes it clear that should Cr Ewin consider the social media site headed Holly Ewin, Hobart City Councillor, as a personal site, the same strictures are in place as for elected members.

1.8 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.

Comments, links, images and videos that includes material that may be deemed as offensive, discriminatory, defamatory or vulgar to any person should be removed.

The Panel determines that the post of 21 May 2019 could be deemed offensive to the writer of the letter to Councillors, and to other members of the community.

Sanction

In accordance with section 28ZI (2) of the Act, if it decides to impose a sanction after upholding a complaint, the Panel may impose one or more of a number of sanctions on a councillor.

In determining an appropriate sanction, the Panel took into account that since initial election to Council in November 2018 two previous complaints against Cr Ewin have been upheld, and Cr Ewin has been issued with a caution, and also with a requirement to apologise to affected parties, and to attend local government training which would include:

- A councillor's responsibility to all constituents of the municipality
- A councillor's legal and moral relationship with fellow councillors
- A councillor's responsibility in making public statements on social media and other communication channels.

The Panel therefore imposes a reprimand on Cr Ewin.

Timing of Determination

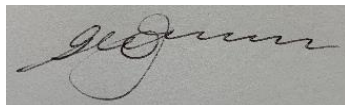
In accordance with section 28ZD (1) (a), the Panel is required to investigate and determine a complaint within 90 days of the Chairperson's decision to investigate the complaint. The 90 day period for this complaint expired on 3 March 2020. Investigation of this complaint occurred over the season of Christmas and New Year, and this caused a relatively brief delay in reaching the Determination.

Right to Review

Under s28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.



Lynn Mason
Chairperson



Graeme Jones
Legal Member



Rob Winter
Community Member with
experience in local government