

Breach of Code of Conduct – Members

Council Policy



Policy Name	Breach of Code of Conduct – Members		
Type	Council Policy		
Owner	Elected Members		
Responsible Officer	Director Corporate Services		
Decision Number	21859	Approval Date	29/09/2021
Records Number		Next Review Date	29/09/2023

1 Purpose

This policy sets out how Council will manage a complaint in relation to a breach of the Code of Conduct. This policy is developed in accordance with sections 119, 121 and Schedule 1 of the Act.

2 Definitions

For the purposes of this policy, the following definitions apply:

Term	Definition
Act	<i>Local Government Act 2019</i> (NT)
Code of Conduct	Means the Code of Conduct set out in Schedule 1 of the Act.
Complainant	Means the person who lodges a Code of Conduct complaint against a council member
Council panel	Means a panel of at least 3 Elected Members, established by Council under section 122(3) of the Act to decide a complaint relating to a breach of the Code of Conduct
Council staff	Includes persons employed by or providing services to Council on a permanent or fixed-term, full-time, part-time, casual or contract basis.
LGANT	Local Government Association of the Northern Territory, the corporate entity prescribed by the Regulations
Member	Member of an audit committee, a council, a council committee or local authority
Regulations	<i>Local Government (General) Regulations 2021</i>
Respondent	Council member who is alleged to have breached the Code of Conduct

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3 Policy Statement

The Council is committed to upholding the principle of equal opportunity by treating all people with dignity and respect.

A Member has a duty to uphold the law and to act on all occasions in accordance with legislation, the policies of Council and the trust placed in them by the public or Council. They have a general duty to act in the best interests of Council and the municipality of Alice Springs as a whole. The Council does not tolerate improper conduct by its members, namely conduct that would amount to unlawful discrimination, harassment (including sexual harassment), victimisation, racial or religious vilification, or bullying.

3.1 Guiding principles

In managing complaints and breaches of the Code of Conduct, the Council's guiding principles are to:

- Promote behaviour among all Members that meets the standards set out in the Code of Conduct, with a restorative approach that seeks to focus on constructive outcomes;
- Emphasise a preference that disputes and allegations be identified and resolved before they escalate to the stage of a formal complaint; and
- Recognise the leadership role of the Mayor and the responsibility of all Members to work together collaboratively pursuant to their corporate responsibilities.

3.2 Promoting of appropriate behaviour

Members are expected to use their best efforts to resolve disputes in a respectful and courteous manner.

The Mayor is to promote behaviour amongst all Members that meets the standards set out in the Code of Conduct.

Any Member aggrieved in relation to a potential Code of Conduct matter should raise the grievance in the first instance with the CEO to seek a resolution. The complainant should provide the CEO with the name of the member alleged to have committed the contravention and give particulars of the alleged contravention. In response to a potential Code of Conduct complaint matter, the CEO will engage in informal discussions with the affected parties, as appropriate, to seek to resolve the matter.

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3.3 Confidentiality

Information regarding a complaint is confidential, including the complaint form, statements from any parties, and reports provided by the CEO regarding the status of a complaint.

Complaints will only be formally discussed by the Council or Council panel during confidential sessions. Minutes kept by the Council or Council panel are confidential information in accordance with the Regulations.

3.4 Complaint requirements

The Act requires that a complaint alleging a breach of a Code of Conduct must:

- (a) be in the approved form (available on the Council website); and
- (b) include a statutory declaration, made by the complainant, verifying the allegations of fact made against the respondent; and
- (c) be made within three (3) months after the date of the alleged breach.

A Code of Conduct complaint must be lodged with the CEO, who will assess whether or not the complaint complies with the above requirements. If it appears that a complaint does not comply with the above requirements, the CEO will notify the complainant of the issues with the form of the complaint as soon as practicable and allow the complainant the opportunity to lodge a revised complaint.

A flowchart is provided at Appendix A.

3.5 Notification to parties

When a complaint is received or if the complainant refers the complaint to LGANT, the CEO must give the respondent, within five (5) days of receiving the complaint:

- (a) written notice of the complaint; and
- (b) a copy of the complaint; and
- (c) written notice specifying:
 - (i) that the respondent may request the council refer the complaint to a third party or LGANT; and
 - (ii) that the respondent may provide a written response in a statutory declaration in relation to the complaint within fourteen (14) days of the respondent receiving the notice.

The CEO must also give written notice of any request or referral by the respondent and any written response from the respondent to the complainant as soon as practicable.

Any response from the respondent must also be provided to the Council, Council panel or LGANT as soon as practicable.

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The CEO carries out the role of secretariat in relation to a complaint and communicates with complainant, respondent and any relevant witnesses on behalf of Council or Council panel.

3.6 Referral to Council

As soon as practicable after receiving the complaint, the CEO must refer the complaint to the Council.

Before the Council meeting, the CEO will establish a list of suitable third parties who do not have a conflict of interest and are willing to accept a referral of the matter (if the Council decides to refer the matter).

The CEO will provide a copy of the complaint and any response from the respondent, the list of suitable third parties and a draft terms of reference for Council's consideration.

The complainant, respondent and any Council member with a conflict of interest in relation to the complaint are required to leave the meeting room during any discussion, consideration or decision relating to the complaint.

3.7 Council requirements once complaint received

After receiving a complaint from the CEO, the Council must:

- (a) decide the complaint; or
- (b) refer the complaint to a Council panel to decide the complaint; or
- (c) refer the complaint to a third party.

3.8 Referral to Council panel

Council may decide to refer the complaint to a Council panel for decision, in which case, Council will establish a panel for the complaint.

The Council panel may only be constituted by Council members.

3.9 Consideration and decision by Council or Council panel

If the Council or Council panel decides the complaint, the Council or Council panel must decide, in accordance with its policy, that:

- (a) no action is to be taken; or
- (b) the respondent did not contravene the Code of Conduct; or
- (c) the respondent contravened the Code of Conduct.

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If the Council or Council panel decide that no action is to be taken, they are not required to decide whether the respondent contravened the Code of Conduct.

If the Council or Council panel decide that the respondent contravened the Code of Conduct, they must decide the following:

- (a) to take no action;
- (b) either or both of the following:
 - (i) issue the respondent with a reprimand;
 - (ii) recommend that the complainant, respondent or any other person attend training, mediation or counselling by a specified date.

3.10 Referral to LGANT

The complainant (if they are a member of the Council) or the respondent can refer the complaint to the prescribed corporation, which is LGANT, before the Council has taken any action.

The CEO must give LGANT written notice of the complaint, a copy of the complaint and the written notice sent to the respondent as soon as practicable.

If the complainant refers the complaint to LGANT, the CEO must, within five (5) days of receiving the complaint give the respondent:

- (a) written notice of the complaint;
- (b) a copy of the complaint; and
- (c) written notice specifying that:
 - (i) the complainant has referred the complaint to LGANT; and
 - (ii) the respondent may provide a written response in a statutory declaration to the CEO in relation to the complaint within fourteen (14) days of receiving the notice.

If the complainant is not a member of the Council, they must, at the time of making the complaint, specify whether the complainant requests the Council refer the complaint to a third party.

3.11 Procedure of LGANT

Upon receipt of a complaint, LGANT will establish a panel to decide the complaint. Like the Council or council panel, LGANT must decide either that no action is to be taken, or that the respondent did/did not contravene the Council's code of conduct.

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If LGANT decides that the respondent has contravened the Council's code of conduct, LGANT can decide to take no action, issue a reprimand to the respondent, recommend training, mediation or counselling, or any other recommendation it considers appropriate. LGANT can summarily reject a complaint or an applicant to consider a complaint.

If LGANT summarily rejects a complaint, it will provide the complainant and respondent with a decision notice. If LGANT decides to consider a complaint, the complainant and respondent will have the opportunity to make representations to the panel. LGANT can obtain information in any way it considers appropriate and is not bound by the rules of evidence, but the rules of natural justice will apply.

A decision notice will be provided to the complainant and respondent within 90 days of LGANT receiving the referral or application.

LGANT's processes are found at sections 127 - 129 of the Act and section 81 of the Regulations.

3.12 Referral to third party

As noted in clause 7 above, the Council may refer the complaint to a third party.

The complainant or respondent may also request the Council refer the complaint to a third party before any action has been taken. The Council can accept or reject such a request.

The Council, when deciding to refer the complaint should take into consideration the following:

- a) whether the complainant or respondent requested involvement of a third party;
- b) the costs, if any, of referring the matter to a third party;
- c) whether the advice of a third party is reasonably expected to be received and able to be considered by the Council prior to the expiry of the thirty (30) day period;
- d) whether advice of a third party is reasonably expected to be received and able to be considered by the Council prior to the expiry of the ninety (90) day period.

Council will not refer the matter to a third party unless satisfied of (c) and (d).

Examples of a third party are: an alternative dispute practitioner, a mediator, a person experienced in local government matters, and a person experienced in conflict resolution.

The third party must consider the complaint and then refer the complaint back to the Council. The third party can give advice to the Council in relation to the complaint.

After receiving a referral from the third party, the Council must:

- (a) take into consideration any advice from the third party; and
- (b) decide the complaint.

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3.13 CEO to update Council of progress

At each ordinary meeting of the Council, the CEO must give the council a confidential report containing the following details:

- a) the procedural progress of each complaint in relation to a Council member;
- b) the item of the code of conduct allegedly contravened by the member

If there are no outstanding complaints at the time of an ordinary meeting of the Council, the CEO does not need to give the Council a confidential report.

3.14 Decision notice

If the Council or Council panel have decided the complaint, it must give a decision notice of the decision to the complainant and respondent within ninety (90) days of the receipt of the complaint by the CEO.

The complainant or respondent can apply to LGANT for consideration of the complaint within 28 days of receiving the decision notice.

3.15 Summary of decision

After the expiry of the twenty eight (28) day appeal period, the Council or Council panel must provide a summary of its decision to the CEO.

The summary of the decision is to set out the following information:

- (a) the names of the complainant and respondent;
- (b) the names of the Council members or Council panel members, including the chairperson;
- (c) the decision made;
- (d) the date of the decision;
- (e) a concise description of the conduct alleged to have been a breach of the Code of Conduct;
- (f) the clauses of the Code of Conduct that were alleged to have been breached.

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If LGANT made a decision on the complaint, it must provide the CEO with a summary of its decision. The summary must include:

- a) the names of the complainant and respondent;
- b) the names of the LGANT panel members, including the chairperson;
- c) a description of the alleged contravention;
- d) identification of the clauses of the Code of Conduct alleged to have been breached;
- e) the decision made;
- f) the date of the decision.

The CEO must table the summary of the decision at the next ordinary meeting of the Council.

4 Related Documents

- *Local Government Act 2019* and Schedule 1 - Code of Conduct
- *Local Government (General) Regulations 2021*
- Breach of Code of Conduct complaint form

5 Version History

Version	Date	Action/Description of changes made	By
1.0	September 2021	New policy adoption	Council

6 Communication and Training

Will this policy be communicated through internal communications?	Yes
Where will this policy be available?	Website
Will training needs arise from this policy? If yes, who will be responsible.	Director Corporate Services

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APPENDIX A – Code of Conduct complaint flowchart

