



Policy Name	Code of Conduct (Elected, Local Authority and Council Committee Members)	
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## 1. PURPOSE

As determined by the *Local Government Act* (the Act), the Code of Conduct (the Code) set out in Schedule 1 governs the conduct of members of an audit committee, a council, a council committee and a local authority.

The purpose of this policy is to provide context and guidance to Elected Members of the West Arnhem Regional Council, Local Authority Members and Council Committee Members, to help them to interpret, use and apply the Code.

The policy also sets out how Council will manage a complaint in relation to a breach of the Code by an Elected Member, in accordance with Section 121 of the Act.

## 2. SCOPE

This policy applies to all Elected Members, Local Authority Members, and Council Committee Members. The policy also applies to those members of Council staff with responsibility for processes relating to this Code.

## 3. DEFINITIONS

In the context of this policy the following definitions apply:

**The Act** means the *Local Government Act 2019 (NT)*.

**Breach** means an act of breaking or failing to observe a law, agreement, or code of conduct.

**The Code** means the Code of Conduct stipulated in Schedule 1 of the Act.

**Complainant** means the person who lodges a Code of Conduct complaint against a Council member (this person can be a Council member or a member of the public).

**Council Committee** includes a Committee established by resolution of the Council, including the Audit Committee.



**Executive Team** means the Chief Executive Officer, Chief Corporate Officer, Chief Operating Officer, Manager People & Learning and Executive Manager Office of the CEO.

**Respondent** means the Council Member who is alleged to have breached the Code of Conduct.

#### 4. POLICY STATEMENT

Elected, Local Authority, and Council Committee Members are required to abide by the Code of Conduct stipulated in Schedule 1 to the *Local Government Act*. They have a responsibility to uphold and encourage a safe, supportive, productive governance structure, and through good governance meet their responsibilities to the West Arnhem Region.

This policy is intended to provide Elected, Local Authority and Council Committee Members with guidance for interpreting, using and applying the Code.

The policy also sets out how Council will manage a complaint in relation to a breach of the Code, in accordance with Section 121 of the Act.

##### **Purpose of the Code**

The Code provides Elected, Local Authority and Council Committee Members with an ethical framework for acceptable behaviour and decision-making, and to direct their conduct in relation to the people of the Council constituency, the public at large, to fellow Elected Members, and to Council staff.

The Code details the ethical responsibilities of Elected, Local Authority and Council Committee Members and encourages a high level of accountability and transparency in Local Government. It also encourages them to commit to the expected standard of ethical and professional behaviour, that reflects community trust in them as individuals and supports the role and public perception of local government.

##### **Application of the Code**

The Code places an obligation on all Elected, Local Authority and Council Committee Members to take responsibility at all times for their performance and behaviour (conduct).

The Code sets out standards of behaviour and a framework to inform decisions about appropriate conduct and must be applied in conjunction with relevant legislation (including the *Local Government Act*) and Council's policies and procedures, not as a replacement for them.

1. If the application of the Code could or will result in a breach of the law, the law takes precedence. Any inconsistency or issue with the Code should be brought to the attention of the Executive Manager Office of the CEO, for urgent attention.
2. If the application of the Code could or will result in a breach of the Council's policy or procedure, the Code takes precedence, but the specific issue should be notified to the Policy Custodian for urgent attention.
3. If the application of the Code could result in both positive and negative outcomes, the relative importance and impact of each should be carefully considered and the advice of the Mayor, Deputy Mayor, other Members and/or the Chief Executive Officer (CEO) sought (as appropriate).

If there is any doubt as to how the Code is to be applied or what course of action to take in specific circumstances, Members should consult with their peers (e.g. the Mayor and other Members). Where appropriate, Members can also seek support from the CEO and other members of Council's Executive Team.

Members can also refer to Council's *Guide to Assist Elected Members in Their Decision Making*.





To support the implementation and application of the Code, it should be:

- Included in the orientation of Council members.
- Made available on the Council website and promoted to our communities.
- Referenced in any Local Authority and Council Committee terms of reference and included in the orientation of any new member.
- Used to inform the performance and professional development review of Council's governing structures.

### Content of the Code

As stipulated in Schedule 1 of the Act, the Code of Conduct for Members is as follows:

1. *Honesty and Integrity:* A member must act honestly and with integrity in performing official functions.
2. *Care and diligence:* A member must act with reasonable care and diligence in performing official functions.
3. *Courtesy:* A member must act with courtesy towards other members, council staff, electors and members of the public.
4. *Prohibition on bullying:* A member must not bully another person in the course of performing official functions.
5. *Conduct towards Council staff:* A member must not direct, reprimand, or interfere in the management of, council staff.
6. *Respect for cultural diversity and culture:* A member must respect cultural diversity and must not therefore discriminate against others, or the opinions of others, on the ground of their cultural background.

A member must act with respect for cultural beliefs and practices in relation to other members, council staff, electors and members of the public.

7. *Conflict of interest:* A member must avoid any conflict of interest, whether actual or perceived, when undertaking official functions and responsibilities.

If a conflict of interest exists, the member must comply with any statutory obligations of disclosure.

8. *Respect for confidences:* A member must respect the confidentiality of information obtained in confidence in the member's official capacity.

A member must not make improper use of confidential information obtained in an official capacity to gain a private benefit or to cause harm to another.

9. *Gifts:* Members must not solicit, encourage or accept gifts or private benefits from any person who might have an interest in obtaining a benefit from the council.

A member must not accept a gift from a person that is given in relation to the person's interest in obtaining a benefit from the council.'

10. *Accountability:* A member must be prepared at all times to account for the member's performance as a member and the member's use of council resources.

11. *Interests of municipality, region or shire to be paramount:* A member must act in what the member genuinely believes to be the best interests of the municipality, region or shire.



In particular, a member must seek to ensure that the member's decisions and actions are based on an honest, reasonable and properly informed judgment about what best advances the best interests of the municipality, region or shire.

12. *Training*: A member must undertake relevant training in good faith.

### **Breaches of the Code of Conduct**

Breaching the Code of Conduct is a serious issue. Any alleged or suspected breaches of the Code will be managed in accordance with the policy provisions outlined below, as well as any applicable laws and regulations.

- Alleged or suspected breaches of the Code of Conduct by an Elected Member, will be managed in accordance with the policy provisions outlined below.
- Alleged or suspected breaches of the Code of Conduct by a member of a Council Committee who is a Council employee and to whom the Code of Conduct (employees) also applies, will be managed under Council's *Performance Management Policy*.
- Alleged or suspected breaches of the Code of Conduct by a Local Authority Member will be managed in a manner consistent with the principles outlined in Council's *Performance Management Policy*, and may result in the Council dismissing the Local Authority Member.

A proven breach of the Code of Conduct may lead to prosecution due to an offence being committed under the *Local Government Act* and/or other relevant legislation.

### **Management of a Complaint in Relation to a Breach of the Code of Conduct by an Elected Member**

In managing complaints and breaches of the Code of Conduct, 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.

#### *Promoting Appropriate Behaviour*

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

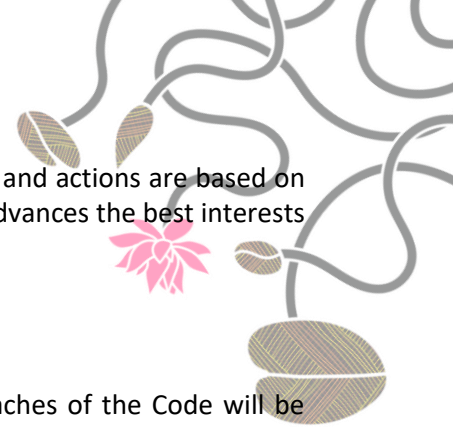
Any Council Member aggrieved in relation to a potential Code of Conduct matter should raise the grievance in the first instance with the Mayor to seek a resolution. If the grievance is in relation to the Mayor, the grievance should be raised with the Deputy Mayor.

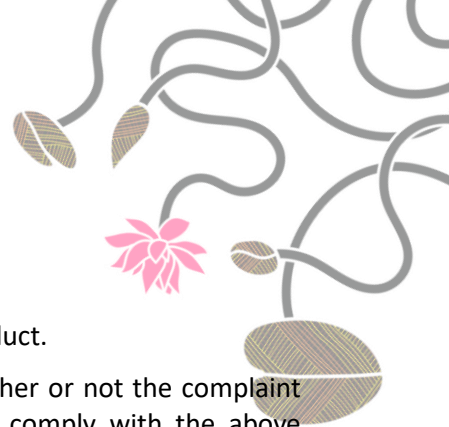
In response to a potential Code of Conduct complaint matter, the Mayor (or Deputy Mayor) will engage in informal discussions with the affected parties, as appropriate, to seek to resolve the matter.

#### *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 a council panel are confidential information in accordance with regulation 49(f) of the *Local Government (General) Regulations 2021*.





### *Complaint Requirements*

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

- Be in the approved form (available on the council website); and
- Be made within three (3) months of the alleged breach of the Code of Conduct.

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.

### *Notifications to Parties*

When a complaint is received, the CEO will provide notifications to the complainant and the respondent, in accordance with the requirements of the Act and *Local Government (General) Regulations 2021*.

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

### *Referral to the Local Government Association of the Northern Territory (LGANT)*

The CEO will refer the matter to LGANT if a complainant Council Member or respondent has elected to refer the complaint to LGANT under section 124(3) of the Act.

Note: A complainant who is not a Council member does not have the option to request referral to LGANT.

### *Initial Consideration by Council*

The CEO will refer the complaint to the Council for consideration in confidential session in the next Council meeting unless the complaint has been referred to LGANT (see above).

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.

When considering a Code of Conduct complaint, Council has the following three options:

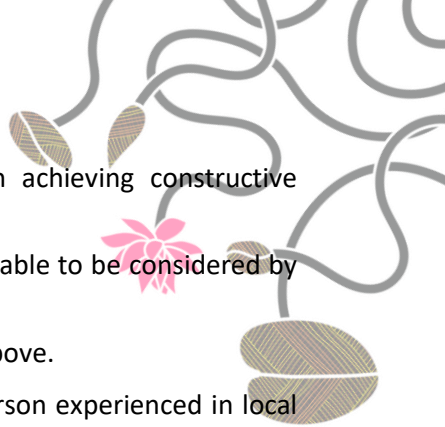
- Refer the complaint to a third party for advice – with Council to decide the complaint; or
- Refer the complaint to a Council panel – for the panel to decide the complaint; or
- Decide the matter as the Council.

### Referral to Third Party

Council may decide to refer the complaint to an independent third party for advice and recommendations by taking into consideration the following:

1. Whether the complainant or respondent requested the involvement of a third party;
2. The costs, if any, of referring the matter to a third party;



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3. Whether the advice of a third party is reasonably expected to assist in achieving constructive outcomes for the parties involved;
  4. 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 90 day period.

Council will not refer the matter to a third party unless satisfied of points 3 and 4 above.

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.

Where the matter is referred to a third party, the terms of reference will include that the third party is to do the following:

- Consider the complaint and discuss with each of the parties;
- Explore and follow up avenues for resolution between the parties;
- If resolution is not achievable, then the third party is to:
  - Ensure natural justice is provided to both parties;
  - Interview any witnesses if necessary to form a view;
  - Provide a written report to Council by a specified date covering the process, summary of evidence, attempts to resolve and recommendation;
  - Provide a draft decision notice that may be used if Council decide to adopt the recommendation.

Upon receiving the advice and any recommendations from the third party, provided the Council is satisfied that each party has been able to put their case and respond to any allegations of the other party, the Council will then decide the complaint. The Council is not bound by any advice or recommendations received from the third party.

Once the written report and draft decision notice is provided by the third party, the Council must decide the complaint.

#### Referral to Council Panel

Council may decide to refer the complaint to a Council panel for decision.

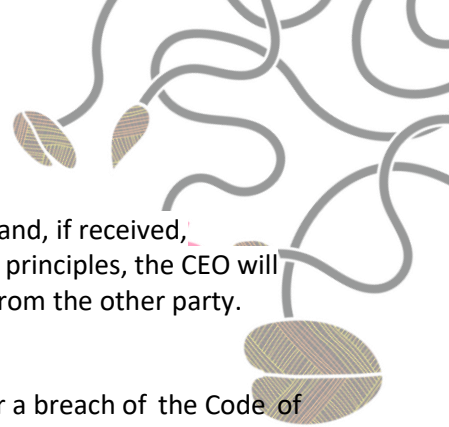
In order to fulfil the secretariat role in managing the Code of Conduct complaints process, the CEO will be in attendance at Council panel meetings.

If the Council decides to refer the complaint to a Council panel, the Council will establish a panel for the complaint. The composition of the Council panel will be the following:

- The Mayor (as chair of the council panel) – unless the Mayor is the complainant, respondent or has a conflict of interest;
- If the Mayor is the complainant, respondent or has a conflict of interest – the Deputy Mayor will be the chair of the Council panel.
- If neither the Mayor or Deputy Mayor meet the requirements – the Council will choose a Council Member who is not the complainant or respondent and does not have a conflict of interest to chair the Council panel;
- Two other Council members – who are not the complainant or respondent and do not have a conflict of interest.







### *Council or Council Panel Process*

The Council or the Council panel will consider the complainant's written complaint and, if received, the respondent's written response to the complaint. In keeping with natural justice principles, the CEO will ensure that each party has a fair opportunity to provide comment on submissions from the other party.

### *Requests for Information*

If the Council or Council panel requires further information to determine whether a breach of the Code of Conduct occurred, the Council or Council panel may request information from the complainant, respondent, or any relevant witnesses. The request for information will specify:

- The information that is being sought;
- That the information is to be provided as a written statement (including a statutory declaration); and
- A reasonable timeframe to receive the statement (between 3 and 14 days).

Any requests for information from Council staff members will be appropriately directed and facilitated through the CEO. The Council or Council panel will not make direct requests to a Council staff member.

### *Decision*

The Council or council panel will decide the complaint after the following steps have been completed:

- The members have considered the written complaint;
- The members have considered all written submissions and statements; and
- The members have read and considered the report from the third party (if applicable).

The Council can make the following decisions:

- To take no action (and not make a decision about whether the respondent breached the Code of Conduct);
- That the respondent did not breach the Code of Conduct; or
- That the respondent breached the Code of Conduct.

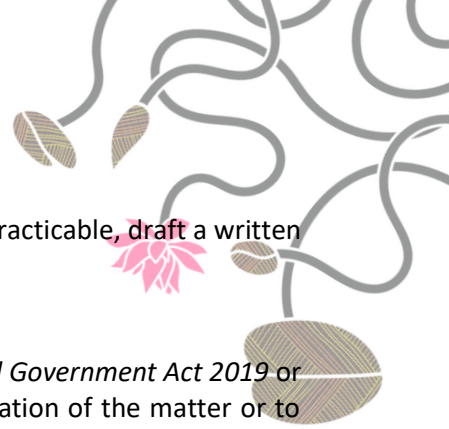
If the complainant is found by the Council or Council panel to have breached the Code of Conduct, the Council or Council panel may decide to:

- Take no action (for example, if it is evident that appropriate steps have already taken place to address the conduct or the issues has been resolved between the affected parties); or
- Either or both of the following:
  - Issue a reprimand to the respondent (for example, a reprimand may be a formal expression of disapproval in writing in the decision notice);
  - Recommend that the complainant, respondent or any other person attend training, mediation or counselling by a specified date.

In choosing from the above options, preference will be given to the option that the Council or Council panel considers most likely to result in a constructive outcome.

If training, mediation or counselling is recommended to a Council member, the Council member may use their professional development allowance, if available, towards the cost of the training, mediation or counselling.





### *Decision Notice*

After the Council or Council panel decides the complaint, the CEO will, as soon as practicable, draft a written decision notice that sets out the following matters:

- The Council or Council panel's decision and the reasons for it; and
- Any right the person to whom the notice is to be given has, under the *Local Government Act 2019* or another Act, to apply for a review of the decision, to apply for a consideration of the matter or to appeal the decision.

The draft decision notice is to be electronically provided to the Council member who chaired the meeting in which the Council decided the complaint, or if a Council panel decided the complaint, to all members of the Council panel. The decision notice is to be authorised by the chair or the Council panel and may be authorised remotely, if this is more practicable in the circumstances.

Within 90 days of when the complaint was initially received by the CEO, and as soon as practicable after a decision has been authorised by the chair or Council panel, the CEO will provide the authorised decision notice to the complainant and the respondent.

The decision notice will set out the decision and the reasons for the decision. It will also state that within 28 days of receiving the notice, either party may apply to LGANT to reconsider the complaint.

### *Summary of Decision*

After the expiry of the 28 day appeal period, the CEO will seek advice from LGANT as to whether any of the parties have applied to LGANT for consideration of the complaint under section 126(3) of the Act.

If no parties have applied to LGANT for consideration of the complaint, the CEO will prepare a summary of the decision to be reviewed by the Council or Council panel in the confidential session of the next meeting of the Council or Council panel.

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

- The names of the complainant and respondent;
- The date of the decision;
- A concise description of the conduct alleged to have been a breach of the Code of Conduct;
- If a Code of Conduct was found to be breached – the item(s) of the Code of Conduct that the respondent breached; or
- If a Code of Conduct was not found to be breached – that no breach of the Code of Conduct was established by the Council or Council panel; and
- Any actions or recommendations made by the Council or Council panel.

The Council or Council panel will consider the summary of the decision and, subject to the Council's or Council panel's approval of the information that is to be included, finalise the summary.

The approved summary is to be tabled in the open section of the next ordinary Council meeting as part of Council's public business papers.

### **Responsibilities**

- The Mayor's role shall include responsibility for promoting behaviour among Council members that meets the standards set out in the Code.





- The CEO is responsible for promoting access to and knowledge of the Code in Council and our communities.
- The Code will be read and signed by every Council, Local Authority, and Council Committee Member upon commencement of their role and following any periodic review of the Code.
- Elected Members, Local Authority Members and Council Committee Members will apply the Code at all times while discharging their duties, and at any time they are representing Council.
- Council members and staff with delegation for policy approval shall ensure that Council policies are consistent with the Code.
- The CEO (or delegate) will ensure that a copy of the Code, and the *Breach of Code of Conduct Complaint Form*, is available on Council's website.



## 5. Responsibilities

The Chief Executive Officer is the Policy Custodian for this policy and is responsible for reviewing the operation of the policy (every 3 years or more frequently as may be required), and for monitoring continuing relevance, effectiveness, and consistency with related documents and the Law.

Following approval of this policy document, the Chief People and Capability Officer (or a nominated delegate) is also responsible for ensuring that the implementation and communication plan is implemented and that all Council employees have access to the policy.

## 6. Related Documents

### Legislation and References

Local Government Act 2019 (NT)  
Local Government (General) Regulations (NT)

### Policy documents

Performance Management Policy  
Responsibilities, Induction and Support (Elected, Local Authority and Council Committee Members)

### Procedures

Nil

### Instructions, tools, guidelines, forms and templates

Breach of Code of Conduct Complaint Form  
Guide to Assist Elected Members in Their Decision Making

