

Breach of Code of Conduct – Elected Members

Policy No. 1051.100.E.R

1 Purpose

This policy sets out how Council will manage a complaint in relation to an Elected Member breach of the Code of Conduct.

2 Scope

This policy applies to complaints of breach of Code of Conduct by a member of an audit committee, a council committee and the Council and is to be used to guide complaints made by Elected Members, City of Darwin staff and members of the public regarding Elected Member Code of Conduct as outlined in Schedule 1 of the Local Government Act 2019 (NT) (the Act).

Complaints lodged with and managed by the Secretariat are outside the scope of Council's policy.

This policy can be applied in conjunction with processes under other legislation such as the *Independent Commissioner Against Corruption Act 2017* (NT) or the *Criminal Code Act 1983* (NT).

3 Policy statement

3.1 Policy principles

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

- promote behaviour among all Elected Members that meets the standards set out in the Code of Conduct, with a restorative approach that seeks to focus on constructive outcomes
- promote principles of natural justice and due process
- emphasise a preference that disputes and allegations be identified and resolved before they escalate to the stage of a formal complaint
- recognise the leadership role of the Lord Mayor and the responsibility of all Elected Members to work together collaboratively pursuant to their corporate responsibilities.

3.2 Promoting appropriate behaviour

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

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

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

3.3 Confidentiality

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

Complaints will only be formally discussed by the Council during confidential sessions. Minutes kept by the Council are confidential information in accordance with regulation 51(1)(f) of the *Local Government (General) Regulations 2021* (NT).

3.4 Complaint requirements

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

- be in the approved form (available on the council website); and
- accompanied by a statutory declaration made by the Complainant verifying the information provided in the form; and
- be made within six months after the last facts related to the alleged misconduct occurred.

3.5 Lodging a complaint

A Complainant may lodge a complaint with the CEO or the Secretariat.

Lodgement with the Secretariat should occur if:

- the complaint involves more than one Elected Member or the Lord Mayor or Deputy Mayor; or
- the complaint alleges serious misconduct or gross misconduct.

Any complaint lodged with the CEO that meets the requirements must be

- referred to the Council for consideration or;
- if the CEO considers the alleged misconduct would be more appropriately investigated and resolved by an Independent Assessor; referred to an Independent Assessor by notifying the Secretariat within 5 days of making the decision.

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A Complainant may withdraw a complaint at any time before a determination or decision is made about whether misconduct occurred. Withdrawal must be in writing to the CEO or the Secretariat as appropriate (section 132D of the Act). Withdrawal of a complaint does not affect any separate mandatory reporting obligations to ICAC or NT Police that may arise from the conduct alleged.

3.6 Conflict of Interest Management

For the breach of Code of Conduct process to be valid and trusted, involved parties must act fairly and be seen to be free from conflicts of interest. A conflict of interest occurs when an involved party has a personal, professional, financial or other interest that could influence, or be seen to influence, how they manage a complaint.

Any person involved in receiving, assessing, investigating, advising on or determining a Code of Conduct complaint, including the Chief Executive Officer and Elected Members, must disclose any actual, perceived or potential conflict of interest as soon as it becomes known in writing through the Conflict-of-Interest Declaration Form.

Once a conflict is disclosed, the person must not continue to be involved in the complaint. A written record of the conflict and how it was managed must be kept on the complaint file.

3.7 Initial consideration by Council

If the CEO has referred the complaint to the Council for initial consideration, a report detailing the complaint will be presented in the confidential or restricted confidential section of the next Council meeting. The chair of the meeting will address conflict of interest issues prior to receiving the report at the meeting.

The Council will determine:

- whether the complaint is frivolous or vexatious,
- whether misconduct occurred;
- the seriousness of the complaint,
- whether the complaint requires further investigation by the Council or a third party,
- whether the complaint should be referred to an Independent Assessor.

The Council may dismiss a complaint if it determines that:

- misconduct did not occur; or
- the misconduct to which the complaint relates occurred at a Council or committee meeting and either:
 - the misconduct was dealt with by the presiding chair; or
 - the Respondent took remedial action in accordance with Council's meeting procedures; or the complaint is frivolous or vexatious.

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The Council must refer a complaint to an Independent Assessor if the Council determines that the alleged misconduct would be more appropriately investigated and resolved by an Independent Assessor. The Council may refer a complaint to an Independent Assessor if it appears to the Council to be frivolous or vexatious.

3.8 Further investigation and resolution by Council

Third party investigation

Council may conduct a further investigation or alternative resolution of the complaint with the assistance of a third party chosen by Council if:

- the complaint involves the Lord Mayor or Deputy Lord Mayor; or
- Council considers the alleged misconduct is more than trivial but is not serious misconduct or gross misconduct; or
- the complaint alleges misconduct that caused psychological harm.

A third-party assisting Council must provide Council with their findings and recommendations, including as to the resolution of the complaint and any sanctions. After the investigation is completed, Council must determine whether misconduct occurred.

Evidence

The Council is not bound by the rules of evidence; and may inform themselves in any manner they consider appropriate; and may do whatever they consider necessary or expedient for the fair and expeditious investigation, determination and resolution of a complaint.

If the Council requires further information to determine whether a breach of the Code of Conduct occurred, the Council 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 City of Darwin staff will be appropriately directed and facilitated through the Chief Executive Officer. The Council will not make direct requests to a City of Darwin staff member.

Procedural Fairness and timeliness

A person exercising a power or performing a function under this policy must comply with the principles of Procedural Fairness. A Respondent must be given a reasonable opportunity to be heard before a decision or determination is made. The Complainant and the Respondent must be given written notice of a decision and the reasons for it.

Determinations, decisions and actions under this policy must be made and taken expeditiously.

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Council Decision

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

- the Elected Members have considered the written complaint
- the Elected Members have considered all written submissions and statements, and
- the Elected Members have read and considered the report from the third party (if applicable).

A decision that alleged misconduct occurred must be based on evidence from which it may be concluded that it is more likely that the misconduct occurred than that it did not occur.

Council decisions on breach of Code of Conduct will occur in a Restricted Confidential Council Meeting. As they are conflicted, the Complainant and the Respondent, as well as others that have declared a conflict of interest, will not be provided with copies of the Council Report, Minutes, Third Party report and other materials, excepting the original complaint.

The Council can make the following decisions:

- that the Respondent did not breach the Code of Conduct, or
- that the Respondent breached the Code of Conduct.

If the Respondent is found by the Council to have breached the Code of Conduct, the Council 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 have been resolved between the affected parties, or
- issue a reprimand to the Respondent. For example, a reprimand may be a formal expression of disapproval in writing in the decision notice.
- Require the Respondent to attend mediation with the Complainant;
- Prepare and implement a plan to address the behaviour of the Respondent to whom the complaint relates in consultation with the Respondent. A plan may include to do one or more of the following: attend mediation, undertake counselling, undertake training or take other specified action the Council considers appropriate. If a plan to address the behaviour is recommended, any costs incurred will be funded from the Respondent's professional development allowance if there are funds available.
- Refer the complaint to an Independent Assessor.
- Refer the complaint to the ICAC or the police in the case of corrupt or criminal conduct.

In choosing from the above options, preference will be given to the option that the Council considers most likely to result in a constructive outcome and Principles of Proportionality should be applied.

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Decision notice

After the Council decides the complaint, the Chief Executive Officer must, as soon as practicable, draft a written decision notice in the approved Determination Form.

The Determination Form is to be prepared in consultation with the Elected Member who chaired the Council Meeting.

A decision notice will set out the decision and the reasons for the decision and must be issued to the Complainant and Respondent. It will also state that within 14 days of receiving the notice, either party may request a Code of Conduct Panel to review the determination.

Reviews by Code of Conduct Panel

A Complainant or the Respondent may request a Code of Conduct Panel to review a determination or decision of Council on the grounds that it was not made in conformity with the principles of Procedural Fairness. The request must be lodged with the Secretariat within 14 days after the person received notice of the decision, must be in the approved form and signed, and must include the requester's name and contact details, the grounds for the request and a summary of the relevant facts.

On receiving a request, the Secretariat must establish a Code of Conduct Panel to deal with the review. The Code of Conduct Panel may stay the determination or decision pending its review. After reviewing the determination or decision, the Code of Conduct Panel may: affirm it; dismiss the request; set it aside and return the matter to the original decision-maker with directions for a new determination or decision; or set it aside and substitute its own decision or sanction.

Summary of decision

After the expiry of the 14-day request to review period, the Chief Executive Officer will seek advice from the Secretariat as to whether any of the parties have requested a review of determination under section 132P of the Act.

If no parties have requested a review of the determination, the Chief Executive Officer will prepare a summary of the decision as a Council Report.

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, and
- any actions or recommendations made by the Council.

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

3.9 Complaints managed by the Secretariat

A person may lodge a complaint directly with the Secretariat, instead of the Chief Executive Officer, if:

- the complaint involves more than one Elected Member or the Lord Mayor or Deputy Lord Mayor, or
- the complaint alleges serious misconduct or gross misconduct.

Independent Assessor

The Secretariat will assign an Independent Assessor from the pool of persons appointed by the Minister under section 121 of the Act and provide the Independent Assessor with the complaint and relevant materials.

After investigating a complaint, the Independent Assessor must determine whether misconduct occurred. The Independent Assessor may dismiss the complaint if the Independent Assessor determines that misconduct did not occur, the complaint is frivolous, vexatious or not made in good faith, or the complaint is trivial.

If the Independent Assessor determines that misconduct occurred, the Independent Assessor may: refer the complaint to Council for resolution; take any action Council could take; impose a monetary penalty not exceeding 20 penalty units; or, in the case of serious misconduct or gross misconduct, refer the complaint to a Code of Conduct Panel.

Code of Conduct Panel

Where a Code of Conduct Panel is required, the Secretariat will assign three members from the pool of Code of Conduct Panel members appointed by the Minister under section 123 of the Act.

The Code of Conduct Panel must conduct a hearing into any complaint assigned to it and may investigate the complaint before doing so. After investigating and conducting a hearing, the Code of Conduct Panel must determine whether misconduct occurred and may dismiss the complaint if it determines that misconduct did not occur, the complaint is frivolous, vexatious or not made in good faith, or the complaint is trivial.

If the Code of Conduct Panel determines that misconduct occurred, the Code of Conduct Panel may take one or more of the following actions, as it considers appropriate:

- where the complaint does not involve serious misconduct or gross misconduct and is better resolved by the Independent Assessor – refer the complaint back to the Independent Assessor
- take no further action
- take any action Council could take
- impose a monetary penalty not exceeding 50 penalty units
- for the Deputy Lord Mayor – dismiss the Respondent from that position and disqualify them from holding it for up to 12 months

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- suspend the Respondent for up to 12 months
- order that the Respondent's allowance be withheld until compliance with a sanction, or
- in the case of gross misconduct – recommend that the Minister suspend or dismiss the Respondent.

3.10 Code of Conduct Breach Reporting

City of Darwin is accountable to the community in regard to compliance with this Policy and data relating to Code of Conduct complaints will be reported in Council's annual report and will include:

- the number of complaints received and resolved, and
- the nature of the alleged breach of Code of Conduct.

4 Definitions

Code of Conduct means the Code of Conduct set out in Schedule 1 of the *Local Government Act 2019* (NT).

Code of Conduct Panel means a panel established under section 132K of the Act.

Complainant means the person who lodges a Code of Conduct complaint against an Elected Member (this person can be an Elected Member, a City of Darwin staff member or a member of the public).

Elected Member includes, in line with the Member definition of the Act, a member of an audit committee, a council or a council committee.

Gross misconduct means conduct by an Elected Member that breaches the Code of Conduct and consists of any of the following:

- (a) corruption;
- (b) a criminal offence;
- (c) repeated serious misconduct; or
- (d) behaviour demonstrating the Elected Member's unfitness for office.

Independent Assessor means a member of the pool of persons appointed under section 121 of the Act.

Principles of Proportionality as outlined in the Ministerial Guideline Code of Conduct Framework *Local Government Act 2019* (NT).

Procedural Fairness as outlined in section 131 of the Act and the Ministerial Guideline Code of Conduct Framework *Local Government Act 2019* (NT).

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

Secretariat as defined in section 126 the Act, is a public sector employee appointed by the Minister.

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Serious Misconduct means conduct by an Elected Member that breaches the Code of Conduct if the conduct:

- (a) causes a serious and imminent risk to the reputation, viability or resources of a local government council; or
- (b) consists of bullying, intimidation, sexual harassment, assault or physical or verbal abuse; or
- (c) consists of theft or fraud; or
- (d) consists of being impaired by alcohol or illicit drugs while exercising the powers or performing the duties of the Elected Member; or
- (e) consists of refusing to carry out a reasonable direction of a council consistent with the Elected Member's duties under this Act; or
- (f) consists of non-compliance with a sanction imposed by a council, an Independent Assessor or a Code of Conduct Panel.

5 Legislative references

Local Government Act 2019 (NT)

Local Government (General) Regulations 2021 (NT)

Ministerial Guideline – Code of Conduct Framework *Local Government Act 2019* (NT)

6 Procedures / related documents

Breach of Code of Conduct Complaints – Complaints Form

Breach of Code of Conduct Complaints – Conflict of Interest Form

Breach of Code of Conduct Complaints – Determination Form

1053.100.E.R Meetings Policy

7 Responsibility / application

The Lord Mayor and Chief Executive Officer, or delegated authority, are responsible for ensuring these policies are understood and adhered to by City of Darwin Elected Members. If the Lord Mayor and/or the Chief Executive Officer have a conflict of Interest, other Elected Members and City of Darwin staff may act in their stead for the purposes of fulfilling obligations under the policy.

Pursuant to the *Local Government Act 2019* (NT), the Code of Conduct applies to Elected Members and committee members who are not Elected Members.

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