

26.1 ALLEGED ELECTED MEMBER CODE OF CONDUCT BREACH**Author:** Executive Manager Corporate and Customer Services**Authoriser:** Manager Office of Council and CEO**Attachments:** 1. Third Party Report
2. Summary of Legal Advice

Section under the Act	The grounds on which part of the Council or Committee may be closed to the public are listed in Section 99(2) of the <i>Local Government Act 2019</i> and Regulation 51 of the Local Government (General) Regulations 2021.
Sub-clause and Reason:	51(f) - subject to subregulation 51(2) – information in relation to a complaint of a contravention of the code of conduct.

RECOMMENDATIONS

1. THAT the report entitled Alleged Elected Member Code of Conduct Breach be received and noted.
2. THAT Council decides: (select one)
 - In accordance with section 123(1)(a) of the *Local Government Act 2019* (NT) no action is to be taken.
 - In accordance with section 123(1)(b) of the *Local Government Act 2019* (NT) that Councillor Amye Un did not contravene the Elected Member Code of Conduct.
 - In accordance with section 123(1)(c) of the *Local Government Act 2019* (NT) that Councillor Amye Un did contravene the Elected Member Code of Conduct.
3. If Council makes a finding under section 123(1)(c) of the *Local Government Act 2019* (NT) THAT Council decides: (select one)
 - In accordance with section 123(3)(a) of the *Local Government Act 2019* (NT) no action is to be taken.
 - In accordance with section 123(3)(b)(i) of the *Local Government Act 2019* (NT) a reprimand is issued to Councillor Amye Un.
 - In accordance with section 123(3)(b)(ii) of the *Local Government Act 2019* (NT) Councillor Amye Un, Mr Paul Arnold and / or others attend training, mediation, or counselling by (date).
 - In accordance with section 123(3)(b) of the *Local Government Act 2019* (NT) a reprimand is issued to Councillor Amye Un, and Councillor Amye Un, Mr Paul Arnold and / or others attend training, mediation or counselling by (date).
4. THAT any attachments be deemed confidential documents and be treated as such in accordance with Section 293 (1) of the *Local Government Act 2019*.
5. THAT this report and that this decision be moved into Open once the complainant and the respondent are duly notified.

PURPOSE

The purpose of this report is to provide Elected Members with the details of the Third Party advice and recommendations in relation to the complaint of an alleged breach of the Elected Member Code of Conduct and to seek decisions on this matter.

KEY ISSUES

- City of Darwin received a complaint from Mr Paul Arnold alleging breaches of the Code of Conduct by Councillor Amye Un.
- Council referred the complaint to a third party for advice and recommendations.
- The Third Party has concluded their work and has referred the matter back to Council for a decision.

DISCUSSION

On August 18, City of Darwin received a complaint from Mr Paul Arnold alleging breaches of the Code of Conduct by Councillor Amye Un. This complaint was compliant with s 120(2) of the *Local Government Act 2019* (NT) (the Act). The complaint alleges breaches of the following clauses of the Code of Conduct:

1. Honesty and integrity
2. Care and diligence
3. Courtesy
4. Prohibition on bullying
5. Conduct towards Council staff
7. Conflict of interest
11. Interests of the municipality, region or shire to be paramount
12. A member must undertake training in good faith.

The complaint was referred to Council in accordance with s 122 of the Act. In response, Council resolved at Ordinary Meeting of August 29 to refer this matter to a third party for investigation and advice, which would then be provided to Council to assist it to decide. Council is required to make a decision by November 16.

Warton Strategic were appointed as the third party. In accordance with s 125(2) of the Act, Warton Strategic have considered the complaint and referred it back to Council with advice at **Attachment 1**.

Under s 125(4) of the Act, Council is now required to make a decision on the Code of Conduct matter, taking into account the advice provided by Warton Strategic, though it is not bound to follow it.

The advice from Warton Strategic is that it is their view that there is insufficient evidence for Council to find that Councillor Amye Un has breached the following clauses of the Code of Conduct:

1. Honesty and integrity
2. Care and diligence
4. Prohibition on bullying
5. Conduct towards Council staff

<p>7. Conflict of interest</p> <p>11. Interests of the municipality, region or shire to be paramount</p> <p>12. A member must undertake training in good faith.</p> <p>However, the advice is that there may be sufficient evidence to support a finding that Clause 3 relating to Courtesy may have been breached. Further commentary and a summary of legal advice is at Attachment 2.</p> <p>Therefore, in accordance with s 123(1) of the Act, Council must decide the following</p> <ul style="list-style-type: none"> a) That no action is to be taken; or b) That Councillor Amye Un did not contravene the Council's Code of Conduct; or c) That Councillor Amye Un did contravene Council's Code of Conduct. <p>Should Council decide that Councillor Amye Un contravened Council's Code of Conduct, then under s 123(3) of the Act Council is required to decide whether to:</p> <ul style="list-style-type: none"> a) Take no action; b) Do either one or both of the following: <ul style="list-style-type: none"> i. Issue a reprimand ii. To recommend that Councillor Amye Un, Mr Paul Arnold or any other person attend training, mediation our counselling by a specified date. <p>Draft resolutions anticipating all potential options have been provided.</p> <p>Following the decision, Councillor Amye Un and Mr Paul Arnold will be issued with a Decision Notice. Section 126(3) gives both Councillor Amye Un and Mr Paul Arnold 28 days from the date of the Decision Notice to apply to the Local Government Association of the Northern Territory for consideration of the complaint by the prescribed panel.</p>	
<p>PREVIOUS COUNCIL RESOLUTION</p> <p>At the 29 August meeting Council resolved:</p> <ol style="list-style-type: none"> 1. THAT the report entitled Alleged Elected Member Code of Conduct Breach be received and noted. 2. THAT Council <ul style="list-style-type: none"> • In accordance with Section 122(2)(c) of the <i>Local Government Act 2019</i> (NT) refers the complaint to a third party. 3. THAT this report and any attachments be deemed confidential documents and be treated as such in accordance with Section 293 (1) of the <i>Local Government Act 2019</i>. 4. THAT the documents remain confidential and decision be moved to open once the complainant and respondent has been notified. 	
<p>STRATEGIC PLAN ALIGNMENT</p>	<p>6 Governance Framework</p> <p>6.4 Accountability</p>
<p>BUDGET / FINANCIAL / RESOURCE IMPLICATIONS</p>	<p>N/A</p>
<p>LEGISLATION / POLICY CONTROLS OR IMPACTS</p>	<p>N/A</p>

CONSULTATION, ENGAGEMENT & COMMUNICATION	Engagement Level: Involve
DECLARATION OF INTEREST	The report author does not have a conflict of interest in relation to this matter. The report authoriser does not have a conflict of interest in relation to this matter. If a conflict of interest exists, staff will not act in the matter, except as authorised by the CEO or Council (as the case requires).