



Name	GOV19 Breach of Code of Conduct
Policy Type	Council
Responsible Officer	Chief Executive Officer
Approval Date	19/10/2021
Review Date	18/10/2025

### 1. Purpose

This policy outlines the complaints handling process for alleged breaches of the Code of Conduct by a Council member.

### 2. Scope

This policy applies to all Council members.

### 3. Definitions

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

Code of Conduct	The Code of Conduct set out in Schedule 1 of the Act
Complainant	The person lodging a complaint (this person can be a council member, a council staff member or a member of the public)
Respondent	The council member who is alleged to have breached the Code of Conduct
LGANT	Local Government Association Northern Territory
ICAC	Independent Commission Against Corruption
Act	Northern Territory Local Government Act 2019

### 4. Policy Statement

In accordance with Part 7.4 of the Local Government Act 2019 (Act), Council is required to have a policy in relation to a contravention (breach) of the Code of Conduct.

#### 4.1. Complaint

4.1.1. 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) be made within three (3) months of the alleged breach of the Code of Conduct.

- 4.1.2 A Code of Conduct complaint must be lodged with the CEO, who will assess whether or not the complaint complies with the above requirements.
- 4.1.3 Should the complainant be the CEO, then an alternative Council officer will act on behalf of the CEO to carry out the role in accordance with section 4.2.2 and in accordance with Council's Delegation Manual.
- 4.1.4 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.
- 4.1.3 If the complaint is of a serious nature and requires a referral to another external body, for example Police or ICAC, the CEO will refer the complaint as soon as practical.

#### **4.2. Notifications**

- 4.2.1 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.
- 4.2.2 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 the Council or council panel.

#### **4.3. Referral to LGANT**

- 4.3.1 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.
- 4.3.2 A complainant who is not a council member does not have the option to request referral to LGANT.

#### **4.4. Initial consideration by Council**

- 4.4.1 The CEO will refer the complaint to the Council for consideration in a confidential session in the next council meeting, unless the complaint has been referred to LGANT in accordance with clause 4.3.1 above.
- 4.4.2 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.
- 4.4.3 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.
- 4.4.4 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.

#### **4.5. Referral to third party**

- 4.5.1 Council will refer all complaints to an independent third party for advice and recommendation.

4.5.2 The terms of reference will include that the third party is to do the following:

- (a) consider the complaint and discuss with each of the parties.
- (b) explore and follow up avenues for resolution between the parties.
- (c) if resolution is not achievable, then the third party is to:
  - i. ensure natural justice is provided to both parties;
  - ii. interview any witnesses if necessary to form a view;
  - iii. provide a written report to Council by a specified date covering the process, summary of evidence, attempts to resolve and recommendation; and
  - iv. provide a draft decision notice that may be used if council decide to adopt the recommendation.

4.5.3 Any requests for information from council staff members will be appropriately directed and facilitated through the CEO.

#### **4.6. Council process**

4.6.1 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.

4.6.2 The Council is not bound by any advice or recommendations received from the third party.

#### **4.7. Decision**

4.7.1 Taking into consideration the written complaint, any written submissions and statements, and the report from the third party, the Council will decide the complaint.

4.7.2 The Council can make the following decisions:

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

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

- (a) take no action (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
- (b) either or both of the following:
  - i. issue a reprimand to the respondent (for example, a reprimand may be a formal expression of disapproval in writing in the decision notice);

- ii. recommend that the complainant, respondent or any other person attend training, mediation or counselling by a specified date.

#### **4.8. Decision notice**

- 4.8.1 After the Council decides the complaint, the CEO will, as soon as practicable, draft a written decision notice that sets out the following matters:
  - (a) the Council's decision and the reasons for it; and
  - (b) 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.
- 4.8.2 The draft decision notice is to be electronically provided to all members of the council for approval.
- 4.8.3 Within 90 days of receipt of the complaint by the CEO, and as soon as practicable after a decision has been authorised by the council panel, the CEO will provide the authorised decision notice to the complainant and the respondent.
- 4.8.4 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.

#### **4.9. Summary of decision**

- 4.9.1 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.
- 4.9.2 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 in the confidential session of the next meeting of the Council.
- 4.9.3 The summary of the decision is to set out the following information:
  - (a) the names of the complainant and respondent;
  - (b) the date of the decision;
  - (c) a concise description of the conduct alleged to have been a breach of the Code of Conduct;
  - (d) if a Code of Conduct was found to be breached – the item(s) of the Code of Conduct that the respondent contravened; or
  - (e) if a Code of Conduct was not found to be breached – that no contravention of the Code of Conduct was established by the Council or council panel; and
  - (f) any actions or recommendations made by the Council.

- 4.9.4 The Council will consider the summary of the decision and, subject to the Council's approval of the information that is to be included, finalise the summary.
- 4.9.5 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.

#### **4 Associated Documents**

EM02 Elected Members Code of Conduct

Breach of Code of Conduct by Council Member Complaint Form

Delegation Manual

Breach of Code of Conduct Flowchart

#### **5 References and Legislation**

Local Government Act 2019

Local Government (General) Regulations 2021

#### **6 Review History**

<b>Date Reviewed</b>	<b>Description of changes</b>
19/10/2021	New policy as per the Local Government Act 2019

# GOV19 Breach of Code of Conduct Code of Conduct Complaint Flowchart – Council Process

**Note: All complaints are to be considered by Council in closed session**

