

Name:	Breach of Code of Conduct by Elected Member		
Type:	Council Policy		
Owner:	Chief Executive Officer		
Responsible Officer:	Governance Lead		
Approval Date:	1/07/2021	Next Review Date:	1/07/2025
Records Number:	466084	Council Decision:	9/1539

## 1 PURPOSE

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

## 2 PRINCIPLES

In managing complaints, Council's guiding principles are to:

- (a) Promote behaviour amongst 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;
- (b) Emphasis a preference that disputes, and allegations be identified and resolved before they escalate to the stage of a formal complaint; and
- (c) Recognise the leadership role of the Mayor and the responsibility of all members to work together collaboratively pursuant to their corporate responsibilities.

## 3 DEFINITIONS

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

Term	Definition
Code of Conduct	means the Code of Conduct set out in Schedule 1 of the <i>Local Government Act (the Act)</i> .
Complainant	means the person who lodges a Code of Conduct complaint against an Elected Member (this person can be an Elected Member or member of the public).
Respondent	means the Elected Member who is alleged to have breached the Code of Conduct
Conflict of Interest	means if a person has a personal or financial interest in a matter, either actual or perceived.

## 4 POLICY STATEMENT

### 4.1 Promoting appropriate behaviour

- 4.1.1 All Elected Members are to promote appropriate behaviour that meets the standards set out in the Code of Conduct.
- 4.1.2 Any Elected 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.
- 4.1.3 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.

## 4.2 Confidentiality

- 4.2.1 Information regarding a complaint is confidential, including the complaint form, statements from any parties, and reports provided by the Chief Executive Officer (CEO) regarding the status of a complaint.
- 4.2.2 Complaints will only be formally discussed by the Council during confidential sessions. Minutes kept by the Council are confidential in accordance with regulation 50(1)(f) of the *Local Government (General) Regulations 2021*.

## 4.3 Complaint requirements

- 4.3.1 The Act requires that a complaint alleging a breach of a Code of Conduct must:
  - (a) Be submitted on the Breach of Code of Conduct by Elected Member Complaint Form (available on the Council website) and;
  - (b) Be submitted within three months of the alleged breach of the Code of Conduct.
- 4.3.2 A Code of Conduct complaint must be lodged with the CEO, who will assess whether the complaint complies with Section 4.3.1. If it appears that a complaint does not comply, the CEO will notify the complainant of the issues with the form as soon as practicable and allow the complainant the opportunity to lodge a revised complaint.

## 4.4 Notifications to Parties

- 4.4.1 When a complaint is received, the CEO will provide notification to the complainant and the respondent, in accordance with the requirements of *the Act* and *Local Government (General) Regulations 2021*.
- 4.4.2 The CEO carries out the role of secretariat in relation to a complaint and communicates with complainant, respondent and any relevant witness on behalf of the Council.

## 4.5 Referral to Local Government Association of the NT (LGANT)

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

*Note: A complainant who is not an Elected Member does not have the option to request referral to LGANT.*

## 4.6 Initial consideration by Council

- 4.6.1 The CEO will refer the complaint to the Council for consideration in a confidential session in the next available Council Meeting unless the complaint has been referred to LGANT in accordance with section 4.5.
- 4.6.2 Before the Council Meeting, the CEO will establish a suitable third party who does not have a conflict of interest and is willing to accept a referral of the matter.
- 4.6.3 The CEO will provide a copy of the complaint, any response from the respondent and a draft term of reference for Council's consideration.
- 4.6.4 The complainant, respondent, and any Elected Member with a conflict of interest in relation to the complaint are required to leave the meeting during any discussion, consideration or decision relating to the complaint.
- 4.6.5 Council will determine by resolution whether the matter will be considered by Council or a panel of selected Elected Members (Council Panel).
- 4.6.6 The composition of the Council Panel will be a minimum of three Elected Members, one of which nominated as Chairperson.
- 4.6.7 In the instance where a minimum of three Elected Members can not be formed due to conflict of interest or absenteeism, Council will consider alternative options.
- 4.6.8 Should a conflict of interest arise throughout the investigation process, a further report will be provided to Council.

## 4.7 Referral to third party

- 4.7.1 Council will refer all complaints to an independent third party for advice and recommendation.
- 4.7.2 Examples of a third party are:
- a dispute practitioner
  - a mediator
  - a person experienced in local government matters
  - a person experienced in conflict resolution
- 4.7.3 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 witness willing to assist 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;
    - (iv) Provide a draft decision notice that may be used if Council decide to adopt the recommendation.
- 4.7.4 Any requests for information from Council employees will be appropriately directed and facilitated through the CEO.

## 4.8 Process

- 4.8.1 Upon receiving the advice and any recommendations from the third party, provided the Council/Council Panel 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.
- 4.8.2 The Council/Council Panel is not bound by any advice or recommendation received from the third party.

## 4.9 Decision

- 4.9.1 The Council/Council Panel will decide the complaint after the following steps have been completed:
- (a) The Members have considered the written complaint;
  - (b) The Members have considered all written submissions and statement; and
  - (c) The members have read and considered the report from the third party.
- 4.9.2 The Council/Council Panel 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.
- 4.9.3 If the complainant is found by the Council/Council Panel to have breached the Code of Conduct, the Council/Council Panel may decide to:
- (a) 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
  - (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.

- 4.9.4 In choosing from the above options, preference will be given to the option that the Council/Council Panel considers most likely to result in a constructive outcome.
- 4.9.5 If training, mediation or counselling is recommended to an Elected Member, the Elected Member may use their Professional Development Allowance, if available, towards the cost of the training, mediation or counselling.

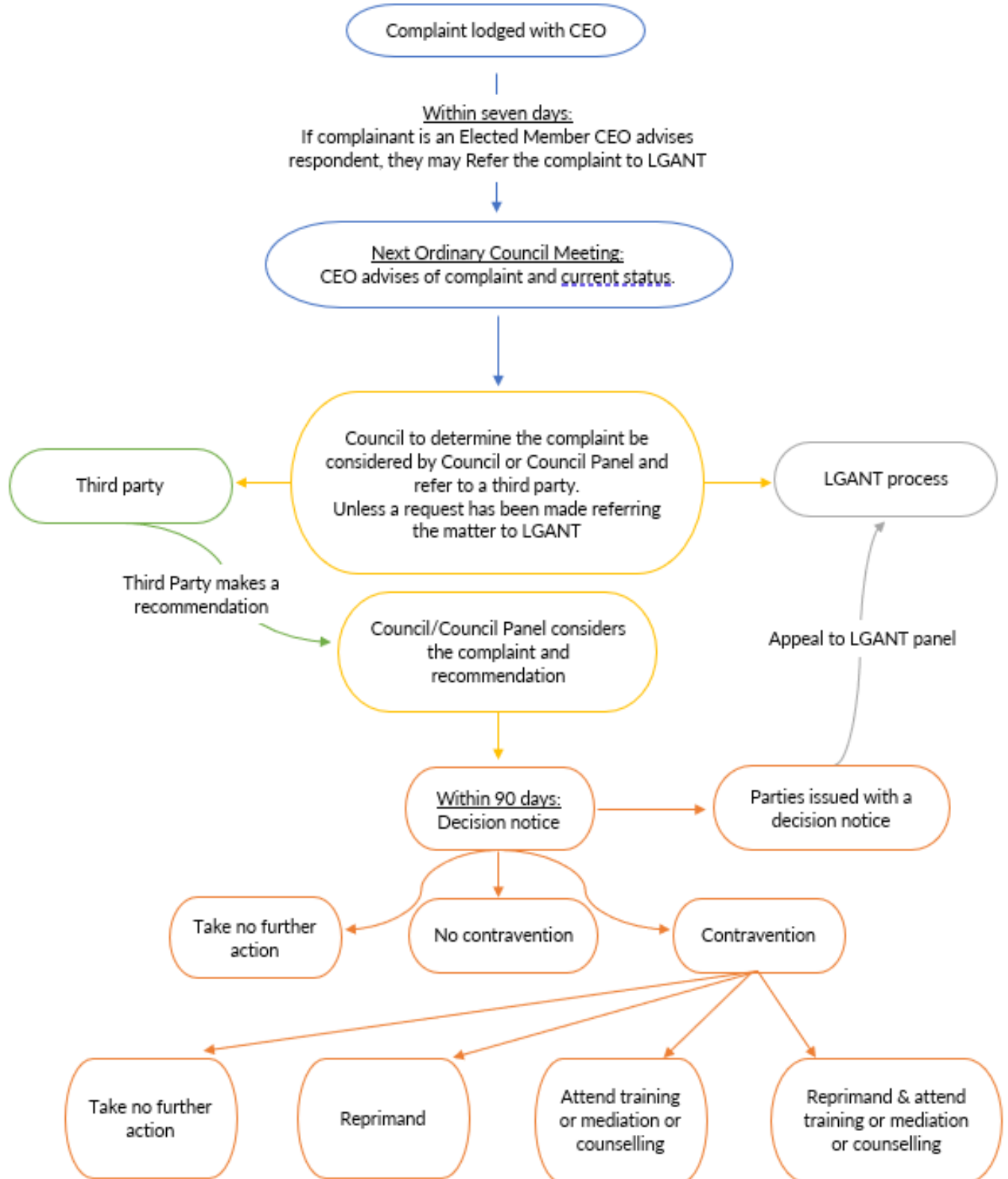
#### 4.10 Decision notice

- 4.10.1 After the Council/Council Panel 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/Council Panel'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.
- 4.10.2 The draft decision notice is to be electronically provided via email to the Chair of the meeting which the Council/Council Panel decided the complaint. The Decision Notice is to be authorised by the Chair in writing by return email.
- 4.10.3 Within 90 days of receipt of the complaint initially received by the CEO, and as soon as practicable after Council's/Council Panel's decision, the CEO will provide the authorised decision notice to the complainant and the respondent.
- 4.10.4 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.

#### 4.11 Summary of decision

- 4.11.1 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.
- 4.11.2 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/Council Panel in the confidential session of the next meeting of Council/Council Panel.
- 4.11.3 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/Council Panel; and
  - (f) any actions or recommendations made by the Council.
- 4.11.4 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.
- 4.11.5 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.

## 5 FLOWCHART



## **6** ASSOCIATED DOCUMENTS

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- 6.1 *Code of Conduct for Elected Members and Committee Members*
- 6.2 *Breach of Code of Conduct by Elected Member Complaint Form*

## **7** REFERENCES AND RELATED LEGISLATION

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- 7.1 *Local Government Act*
- 7.2 *Local Government Regulations*
- 7.3 *Information Act*