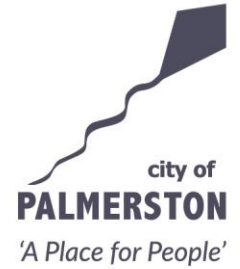


BREACH OF CODE OF CONDUCT BY ELECTED MEMBER



COUNCIL POLICY

PURPOSE

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

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;
- (b) Take a restorative approach to alleged and founded breaches that seeks the resolution to focus on constructive and collaborative outcomes;
- (c) Emphasis on a preference that disputes and allegations be identified and resolved before they escalate to the stage of a formal complaint; and
- (d) Recognise the leadership role of the Mayor and the responsibility of all Elected Members to work together collaboratively pursuant to their corporate responsibilities.

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 2019</i> (NT) (the Act).
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).
Council	Elected Members representing Palmerston.
Elected Member	means an elected member of Council.
Respondent	means the Elected Member who is alleged to have breached the Code of Conduct.

TERM	DEFINITION
Conflict of Interest	means if a person has a personal or financial interest in a matter, either actual or perceived.
LGANT	means the Local Government Association of the Northern Territory.

POLICY STATEMENT

1. Promoting appropriate behaviour

- 1.1. All Elected Members are to promote appropriate behaviour that meets the standards set out in the Code of Conduct.
- 1.2. An Elected Member aggrieved in relation to a potential breach of the Code of Conduct should raise the grievance with the Mayor in the first instance. If the grievance is in relation to the Mayor, the grievance should be raised with the Deputy Mayor.
In response to a potential breach of the Code of Conduct complaint, the Mayor or Deputy Mayor will engage in informal discussions with the affected parties, as appropriate, to seek to resolve the matter.

2. Confidentiality

- 2.1. Information regarding a complaint is confidential, including the complaint form, statements from any parties, and any reports provided by the Chief Executive Officer (CEO) regarding the status of a complaint.
- 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 51(1)(f) of the *Local Government (General) Regulations 2021* (the Regulations).

3. Notification to parties

- 3.1. When a complaint (aside from complaints made by Elected Members, which is dealt with in clause 4.5.2 below) which meets the requirements of clause 4.3 of this Policy is received the CEO will provide written notice of the complaint to the Respondent within 5 days and a copy of the complaint.
- 3.2. The notice to the Respondent must specify that the Respondent may:
 - (a) request that the complaint be referred to a third party or that the complaint be referred to the LGANT (see clause 4.5 below); and
 - (b) provide a written response to the complaint in the form of a statutory declaration to the CEO within 14 days of the date of receipt of the notice.
- 3.3. The CEO carries out the role of secretariat in relation to a complaint and communicates with the Complainant, Respondent and any relevant witness on behalf of the Council

4. Referral to Local Government Association of the NT (LGANT)

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



- 4.2. The Elected Member Complainant or the Respondent may refer the complaint to LGANT under section 124(3) of the Act before the council has taken an action under section 122(2) of the Act, action taken in Clause 4.5 above.
- 4.3. If an Elected Member specifies that they want the complaint referred to the LGANT, provided it meets the requirements of clauses 4.3.1 and 4.3.2 of this policy, the CEO must:
 - (a) give written notice of the complaint to the Respondent within 5 days of receipt of the complaint;
 - (b) provide a copy of the complaint to the Respondent; and
 - (c) specify in a written notice that:
 - (d) the Complainant has referred the complaint to the LGANT; and
 - (e) the Respondent may provide a written response to the complaint in the form of a statutory declaration to the CEO within 14 days of the date of receipt of the notice.

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

5. Initial consideration by Council

- 5.1. The CEO will refer the complaint to the Council for consideration in a confidential session at the next available Council meeting unless the complaint has been referred to LGANT in accordance with clause 4.6.
- 5.2. The CEO will also establish a suitable third party who does not have a Conflict of Interest and is willing to accept a referral of the matter, in accordance with clause 4.7 including a draft terms of reference.
- 5.3. The CEO will provide a copy of the complaint, any response from the Respondent and the draft terms of reference for Council's consideration.
- 5.4. 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.

6. Referral to third party

- 6.1. Council will refer complaints to a third party for advice or recommendations in accordance with section 122(2)(c) and 124(2) of the Act.
- 6.2. Examples of a third party may include:
 - (a) a dispute resolution practitioner;
 - (b) a mediator;
 - (c) a person experienced in Local Government matters; or
 - (d) a person experienced in conflict resolution.
- 6.3. The terms of reference will set out the process the third party must follow to resolve the complaint including:
 - (a) consider the complaint and discuss with each of the parties;
 - (b) explore outcomes for resolution between the parties;
 - (c) if resolution is not achievable, then the third party will:
 - (d) ensure natural justice is provided to both parties;
 - (e) interview any willing witnesses to assist in forming a view;



- (f) provide a written report to Council by a specified date summarising the process, a summary of evidence, attempts made to resolve and recommendation;
 - (g) provide a draft decision notice that may be used if Council decide to adopt the recommendation.
- 6.4. Any requests for information from Council employees will be appropriately directed and facilitated through the CEO.

7. Third party recommendation

- 7.1. After receiving the advice or recommendations from the third party and providing Council is satisfied that each party has had an opportunity to state their case and respond to any allegations, the Council will then make a decision about the complaint.
- 7.2. The Council is not bound by any advice or recommendations received from the third party.

8. Decision

- 8.1. The Council will decide the complaint after considering:
- (a) the written complaint;
 - (b) all written submissions and statements from both the Complainant, Respondent and any witnesses; and
 - (c) the report from the third party, if applicable.
- 8.2. 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) the Respondent did not breach the Code of Conduct; or
 - (c) the Respondent breached the Code of Conduct.
- 8.3. If the Respondent is found by the Council to have breached the Code of Conduct, the Council 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:
 - (c) issue a reprimand to the Respondent (for example, a reprimand may be a formal expression of disapproval in writing in the decision notice);
 - (d) recommend that the Complainant, Respondent or any other person attend training, mediation or counselling by a specified date.
- 8.4. In making a decision, preference will be given to the option that the Council/ considers most likely to result in a constructive and collaborative outcome.
- 8.5. 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.

9. Decision notice

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

- 9.2. the Council's decision and the reasons for it; and
- 9.3. any right the person to whom the notice is to be given has, under the Act or other legislation, to apply for a review of the decision, to apply for a consideration of the matter or to appeal the decision.
- 9.4. The draft decision notice is to be electronically provided via email to the Chair of the Council whom decided the complaint. The decision notice is to be authorised by the Chair in writing by return email.
- 9.5. Within 90 days of receipt of the complaint initially received by the CEO, the Council will provide the authorised decision notice to the Complainant and the Respondent.
- 9.6. 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.

10. Summary of decision

- 10.1. 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.
- 10.2. If no parties have applied to LGANT for consideration of the complaint, Council will prepare a draft summary of the decision to be reviewed by the Council in a confidential session of the next meeting of Council.
- 10.3. The summary of the decision is to set out the following information:
 - (a) the names of the Complainant and Respondent;
 - (b) the names of the council members or panel members, including the chairperson;
 - (c) the date of the decision;
 - (d) a concise description of the conduct alleged to have been a breach of the Code of Conduct;
 - (e) identification of the clauses of the Code of Conduct that were alleged to have been contravened;
 - (f) the decision made.
- 10.4. The Council will provide the finalised summary of the decision to CEO.
- 10.5. The CEO must table the approved summary of the decision in the open section of the next ordinary Council meeting as part of Council's public business papers.

ASSOCIATED DOCUMENTS

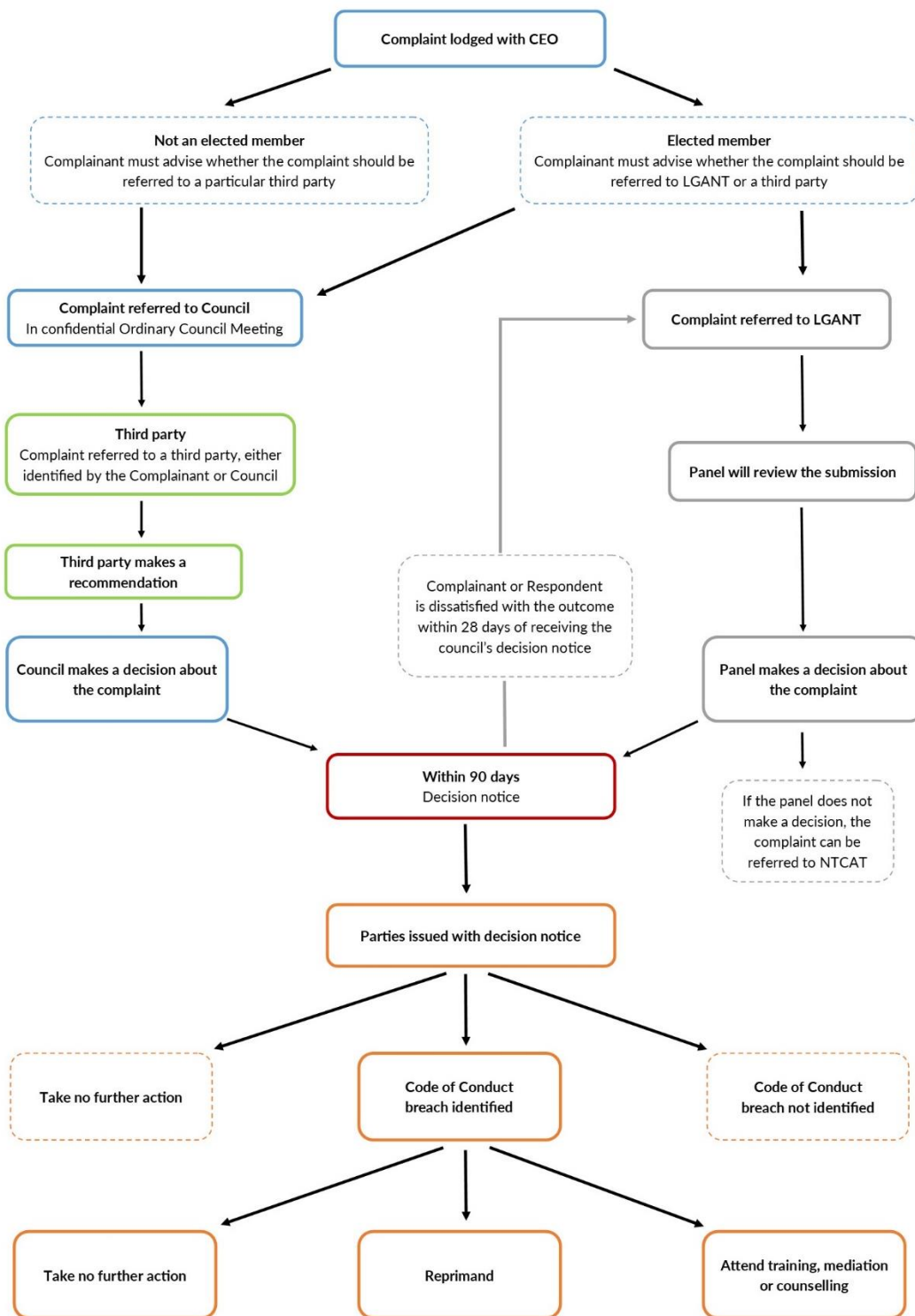
- Code of Conduct for Elected Members and Committee Members
- Breach of Code of Conduct by Elected Member Complaint Form

REFERENCES AND RELATED LEGISLATION

- *Local Government Act 2019 (NT)*
- *Local Government (General) Regulations 2021 (NT)*
- *Information Act 2002 (NT)*



FLOWCHART



POLICY DETAILS

OWNER	CEO	RESPONSIBLE OFFICER	General Manager Finance and Governance
APPROVAL DATE	20 August 2024	NEXT REVIEW DUE	Quarter Three, 2028
RECORDS NUMBER	620544	COUNCIL DECISION	10/1478

