

## POLICY

<b>TITLE:</b>	Breach of Code of Conduct Policy (Members & Local Authority)		
<b>DIRECTORATE:</b>	Council		
<b>ADOPTED BY:</b>	Council Resolution: OMC-24/350		
<b>DATE OF ADOPTION:</b>	29 November 2024	<b>DATE OF REVIEW:</b>	29 November 2026
<b>POLICY NUMBER:</b>	102		
<b>LEGISLATIVE REF:</b>	<i>Local Government Act 2019; Section 121, Part 7 (the Act)</i>		

### 1. INTRODUCTION

#### 1.1. Purpose

The purpose of this Policy is to set out how the Council will manage a complaint in relation to a breach of the *Code of Conduct (Members & Local Authorities)*.

#### 1.2. Scope

Council's *Code of Conduct (Members & Local Authorities)* governs the conduct of by Elected Members, an Audit Committee, the Council, A Council Committee or a Local Authority.

Any person may make a complaint of a breach to the above Code of Conduct in accordance with the requirements of this Policy.

#### 1.3. Definitions

**Code of Conduct** means Council's *Code of Conduct (Members & Local Authorities)*.

**Complainant** means the person who lodges a Code of Conduct complaint against an elected member, an audit committee or its members, the council itself, a council committee or its members or a Local Authority of the Council.

**Respondent** means the member who is alleged to have breached the Code of Conduct.

#### 1.4. Responsibilities

All persons within scope of this Policy are required to adhere to this Policy and its associated procedures.

The CEO is accountable for the overall management of this Policy.

#### 1.5. Policy Objectives

- 1) To clearly outline how complaints of breaches of the *Code of Conduct (Members & Local Authorities)* can be made and how they will be responded to in line with the relevant legislation.

### 2. GUIDING PRINCIPLES

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

- a) Promote behaviour among all members that meets the standards set out in the Code of Conduct, with a restorative approach that seeks to focus on constructive outcomes;
- b) Emphasises a preference that disputes and allegations be identified and resolved before they escalate to the stage of a formal complaint; and

### 3. PROMOTING APPROPRIATE BEHAVIOUR

The Mayor is to promote behaviour amongst all Council and Committee members that meets the standards set out in the Code of Conduct.

Any Member aggrieved in relation to a potential Code of Conduct breach, 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.

In response to a potential 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.

### 4. CONFIDENTIALITY

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

Complaints will only be formally discussed by the Council or Council Panel during confidential sessions. Minutes kept by the Council or a Council Panel are confidential information in accordance with requirements of the Regulations, and as outlined within relevant Council policies.

### 5. COMPLAINT REQUIREMENTS

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.

A Code of Conduct complaint must be lodged with the CEO, who will assess whether or not the complaint complies with the above requirements.

If it appears that a complaint does not comply with the above requirements, the CEO will notify the complainant of the issues as soon as practicable and allow the complainant the opportunity to lodge a revised complaint.

### 6. NOTIFICATION TO PARTIES

When a complaint is received, the CEO will provide notifications to the complainant and the respondent.

The CEO carries out the role of Secretariat in relation to a complaint and communicates with the complainant, respondent and any relevant witnesses on behalf of the Council or a Council Panel.

### 7. REFERRAL TO LGANT

The CEO will refer the matter to the Local Government Association Northern Territory (LGANT) if a complainant or respondent has elected to refer the complaint to LGANT under section 124(3) of the Act.

*Note: A complainant who is not a council member does not have the option to request referral to LGANT.*

### 8. INITIAL CONSIDERATION BY COUNCIL

The CEO will refer the complaint to the Council for consideration in confidential session in the next Council meeting, unless the complaint has been referred to LGANT in accordance with the above clause.

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 (if Council decides to refer the matter).

The CEO will provide a copy of the complaint and any response from the respondent, the list of suitable third parties and the draft terms of reference for Council's consideration.

The complainant, respondent and any 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.

When considering a Code of Conduct complaint, Council has the following three options:

- a. refer the complaint to a third party for advice – with Council to decide the complaint; or
- b. refer the complaint to a Council Panel, for the panel to decide the complaint; or
- c. decide the matter as the Council.

## 9. REFERRAL TO THIRD PARTY

Council may decide to refer the complaint to an independent third party for advice and recommendations by taking into the consideration the following:

- (a) whether the complainant or respondent requested the involvement of a third party;
- (b) the costs, if any, of referring the matter to a third party;
- (c) whether the advice of a third party is reasonably expected to assist in achieving constructive outcomes for the parties involved;
- (d) whether advice of a third party is reasonably expected to be received and able to be considered by the Council prior to the expiry of the 90 day period.

Council will not refer the matter to a third party unless satisfied of (c) and (d).

Examples of a third party are: an alternative dispute practitioner; a mediator; a person experienced in local government matters; and a person experienced in conflict resolution.

Where the matter is referred to a third party, the terms of reference will require the third party to:

- (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;
  - (iv) provide a draft decision notice that may be used if Council decides to adopt the recommendation.

Upon receiving the advice and any recommendations from the third party, provided that 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. The Council is not bound by any advice or recommendations received from the third party.

Once the written report and draft decision notice is provided to the third party, the Council must decide the complaint in accordance with this Policy.

## 10. REFERRAL TO COUNCIL PANEL

Council may decide to refer the complaint to a council panel for decision.

In order to fulfil the Secretariat role in managing the Code of Conduct complaints process, the CEO will be in attendance at Council Panel meetings.

If Council decides to refer the complaint to a Council Panel, Council will establish the Panel.

The composition of the Council Panel will be the following:

- (a) the Mayor (as Chairperson) – unless the Mayor is the complainant, respondent or has a conflict of interest;
- (b) if the Mayor is the complainant, respondent or has a conflict of interest – the Deputy *[Mayor/President]* will be the chairperson.
- (c) if neither the *[Mayor/President]* or Deputy Mayor meet the requirements, the Council will choose a Council member who is not the complainant or respondent and does not have a conflict of interest to chair the Panel;
- (d) two other Council members who are not the complainant or respondent and do not have a conflict of interest.

## 11. COUNCIL OR COUNCIL PANEL PROCESS

The Council or the council panel will consider the complainant's written complaint and, if received, the respondent's written response to the complaint. In keeping with natural justice principles, the CEO will ensure that each party has a fair opportunity to provide comments on submissions from the other party.

## 12. REQUESTS FOR INFORMATION

If the Council or delegated Panel requires further information to determine whether a breach of the Code of Conduct has occurred, the Council or Panel may request information from the complainant, respondent, or any relevant witnesses. The request for information will specify:

- a. the information that is being sought;
- b. that the information is to be provided as a written statement (including a statutory declaration); and
- c. a reasonable timeframe to receive the statement (between 3 and 14 days).

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

The Council or Panel will not make direct requests of a Council employee.

## 13. DECISION

The Council or 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 statements; and
- c. the members have read and considered the report from the third party (if applicable).

The Council or Panel can make the following decisions:

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

If the complainant is found to have breached the Code of Conduct, the Council or 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:
  - a. issue a reprimand to the respondent (for example, a reprimand may be a formal expression of disapproval in writing in the decision notice);
  - b. recommend that the complainant, respondent or any other person attend training, mediation or counselling by a specified date.

In choosing from the above options, preference will be given to the option that the Council or Panel considers most likely to result in a constructive outcome.

If training, mediation or counselling is recommended to a member, the member may use their professional development allowance, if available, towards the cost of the training, mediation or counselling.

### 13.1. Decision Notice

After the Council or 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 or 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 Act or another Act, to apply for a review of the decision, to apply for a consideration of the matter or to appeal the decision.

The draft decision notice is to be electronically provided to the member who chaired the meeting in which the Council or Panel decided the complaint. The Decision Notice is to be authorised by the Chairperson of the relevant Council or Panel, and may be authorised remotely, if this is more practicable.

Within 90 days of receipt of the complaint was initially received by the CEO, and as soon as practicable after a decision has been authorised by the Chairperson, the CEO will provide the authorised decision notice to the complainant/s and the respondent/s.

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.

### 13.2. Summary of Decision

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 the Act.

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 or Panel in the confidential session of the next meeting of the Council or Council Panel.

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 breached; or
- e. if a Code of Conduct was not found to be breached – that no breach of the Code of Conduct was established by the Council or council panel; and
- f. any actions or recommendations made by the Council or Panel.

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

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.

### 14. FAILURE TO COMPLY WITH PRESCRIBED CORPORATION PANEL RECOMMENDATION

If a person (respondent) is subject to a recommendation made by the Council, Council Panel or appropriate third party, and does not comply with the recommendation, the complainant or the respondent may apply to the Northern Territory Civil & Administrative Tribunal (NTCAT) to deal with the failure.

NTCAT, after determining the application, may:

- a. order that the complainant, respondent or any other person attend training, mediation or counselling by a specified date; or
- b. if NTCAT finds the respondent contravened the Code of Conduct – order that the respondent not subsequently contravene the Code of Conduct; or
- c. make any other order NTCAT considers appropriate.

### 15. NO DECISION BY COUNCIL, COUNCIL PANEL OR PRESCRIBED CORPORATION PANEL

If the Council or Council Panel does not give a decision notice in accordance with this Policy, the complainant or respondent may refer the complaint to LGANT.

If the prescribed Corporation Panel does not give a decision notice in accordance with section 129 of the Act, the complainant or respondent may refer the complaint to NTCAT or ICAC.

NTCAT must deal with the complaint in accordance with Sections 127 to 129 of the Act, as if it were the prescribed Corporation Panel.

In addition to the powers set out in section 127, NTCAT may:

- a. if NTCAT finds the respondent contravened the code of conduct – order that the respondent not subsequently contravene the code of conduct; or
- b. make any other order NTCAT considers appropriate.

## 16. REMOVAL FROM OFFICE BY NTCAT

If a member of a Council is convicted of an offence under this Act or another Act demonstrating that the member to be unfit to remain in office, a person may apply to NTCAT to determine whether the member, once convicted, is unfit to remain in office.

The Applicant must:

- a. reside in the same local government area as the member; and
- b. be registered to vote in the local government area.

NTCAT must consider the following in determining whether the member is unfit to remain in office:

- a. whether the nature and details of the offence makes the member unfit to remain in office;
- b. the member's role as a community representative;
- c. the member's position of influence and trust;
- d. the member's responsibility for managing public funds.

If NTCAT determines the member has been convicted of an offence that demonstrates that the member is unfit to remain in office, NTCAT may dismiss the member from office.

If NTCAT dismisses the member under subsection (4), NTCAT may disqualify the person from holding office as a council member for a period of up to 5 years.

NTCAT must, in writing, notify the Electoral Commissioner if it decides the following:

- a. dismisses a member under subsection (4);
- b. disqualifies the person from holding office under subsection (5).

## 17. RELEVANT POLICIES

Policies to be read in conjunction with this policy are:

- 1) Code of Conduct (Members & Local Authorities)
- 2) Breach of Code of Conduct Complaint Form
- 3) Any relevant and applicable policies of Council

## 18. IMPLEMENTATION AND REVIEW

### 18.1. Implementation

Relevant personnel will be made aware of this Policy, and it will be published on the Barkly Regional Council website at <https://www.barkly.nt.gov.au/council-documents/policies>.

### 18.2. Review

This policy will be reviewed on or before 29 November 2026.

## 19. VARIATIONS, REVOCATIONS AND/OR CHANGES

Barkly Regional Council reserves the right to revoke and/or amend this policy from time to time as is considered necessary to better manage its business and/or to comply with any legislative requirements. Employees will be given sufficient notice of any such revocations, amendments, or changes.

## 20. APPROVAL

This policy is approved.

Chris Kelly

Chief Executive Officer



Signature

29 Nov 2024

Dated

**END**