

1.27 Breach of Code of Conduct Policy



Council Resolution:	16/02/2021
Date to take effect:	01/07/2021
Legislative reference:	<i>Local Government (General) Regulations 2021</i> <i>Local Government Act 2019</i>
Review Date:	February 2025

1. Purpose

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

2. Policy Statement

2.1 Guiding principles

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

- a) promote behaviour among all council members that meets the standards set out in the Code of Conduct, with a restorative approach that seeks to focus on constructive outcomes;
- b) emphasise 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 President and the responsibility of all members to work together collaboratively pursuant to their corporate responsibilities.

2.2 Promoting appropriate behaviour

The President is to promote behaviour amongst all council members that meets the standards set out in the Code of Conduct.

Any council member aggrieved in relation to a potential Code of Conduct matter should raise the grievance in the first instance with the President to seek a resolution. If the grievance is in relation to the President, the grievance should be raised with the Vice President.

In response to a potential Code of Conduct complaint matter, the President or Vice President will engage in informal discussions with the affected parties, as appropriate, to seek to resolve the matter.

2.3 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 section 8 of the *Local Government (General) Regulations 2021*.

2.4 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 with the form of the complaint as soon as practicable and allow the complainant the opportunity to lodge a revised complaint.

2.5 Notification to parties

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*.

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.

2.6 Referral to LGANT

The CEO will refer the matter to LGANT if a complainant council member or respondent has elected to refer the complaint to LGANT under The *Local Government Act 2019*.

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

2.7 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 clause 2.6 above.

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 the 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 a draft terms of reference for Council's consideration.

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.

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 (see clause 2.7.1); or
- b) refer the complaint to a council panel – for the panel to decide the complaint (see clause 2.7.2); or
- c) decide the matter as the Council (see clause 2.8).

2.7.1 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 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;
- iv) provide a draft decision notice that may be used if council decide to adopt the recommendation.

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. 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 (see clause 2.8.2).

2.7.2 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 the Council decides to refer the complaint to a council panel, the Council will establish a council panel for the complaint.

The composition of the council panel will be the following:

- a) the President (as chair of the council panel) – unless the President is the complainant, respondent or has a conflict of interest;
- b) if the President is the complainant, respondent or has a conflict of interest – the Vice President will be the chair of the council panel.
- c) if neither the President or Vice President 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 council panel;
- d) two other council members – who are not the complainant or respondent and do not have a conflict of interest.

2.8 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 comment on submissions from the other party.

2.8.1 Requests for information

If the Council or council panel requires further information to determine whether a breach of the Code of Conduct occurred, the Council or council 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 members will be appropriately directed and facilitated through the CEO. The Council or council panel will not make direct requests to a council staff member.

2.8.2 Decision

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

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.

If the complainant is found by the Council or council panel to have breached the Code of Conduct, the Council or 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.

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

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

2.8.3 Decision notice

After the Council or 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 or 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.

The draft decision notice is to be electronically provided to the council member who chaired the meeting in which the Council decided the complaint, or if a council panel decided the complaint, to all members of the council panel. The decision notice is to be authorised by the chair or the council panel and may be authorised remotely, if this is more practicable in the circumstances.

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 chair or council panel, the CEO will provide the authorised decision notice to the complainant and the respondent.

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.

2.8.4 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 *Local Government Act 2019*.

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 council 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 council panel.

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

2.9 FLOWCHART

