

GOV02	Breach of Code of Conduct (Elected Member, Local Authority and Council Committee) Policy
Approval Date:	17/03/2022
Council Decision Reference:	
Policy Type:	Governance
Policy Custodian:	Chief People and Strategy Officer
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Purpose

The conduct of Elected, Local Authority and Council Committee Members including the Audit and Risk Management Committee (Members), is governed by the *Code of Conduct* (the Code) set out in Schedule 1 to the *Local Government Act 2019* (the Act).

This policy provides Members with guidance for interpreting, using, and applying the Code. The policy also sets out how Council will manage a complaint in relation to a breach of the Code by an Elected Member, in accordance with Section 121 of the Act.

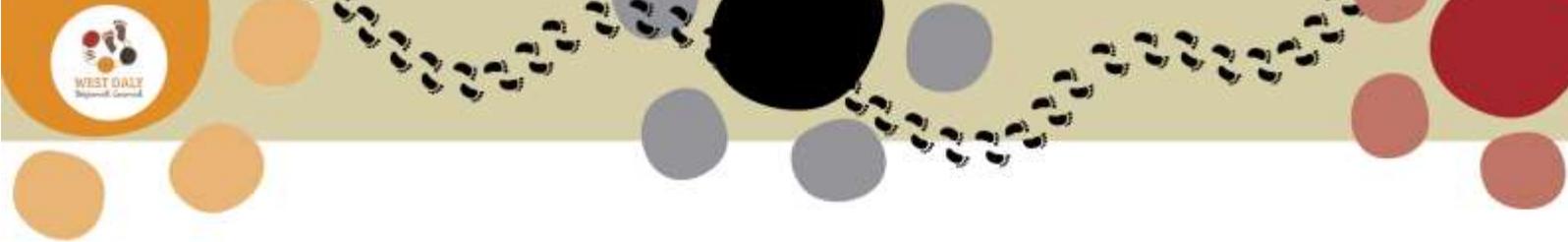
Scope

This policy applies to Members of West Daly Regional Council, and to Council staff with responsibility for implementing the policy.

Policy Statement

1. Policy Principles

- 1.1. Members are required to abide by the Code of Conduct set out in Schedule 1 to the *Local Government Act 2019*.
- 1.2. Council recognises that it is part of the Mayor’s role to promote behaviour among all Council Members that meets the standards of ethical and professional behaviour set out in the Code.
- 1.3. Council will provide training and support to all Members to assist them to understand, apply and abide by the Code of Conduct, including as part of their induction training.
- 1.4. In managing complaints and breaches of the Code of Conduct, Council’s guiding principles are to:
 - a) Promote behaviour amongst 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) 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 Mayor and the responsibility of all Members to work together collaboratively pursuant to their corporate responsibilities.

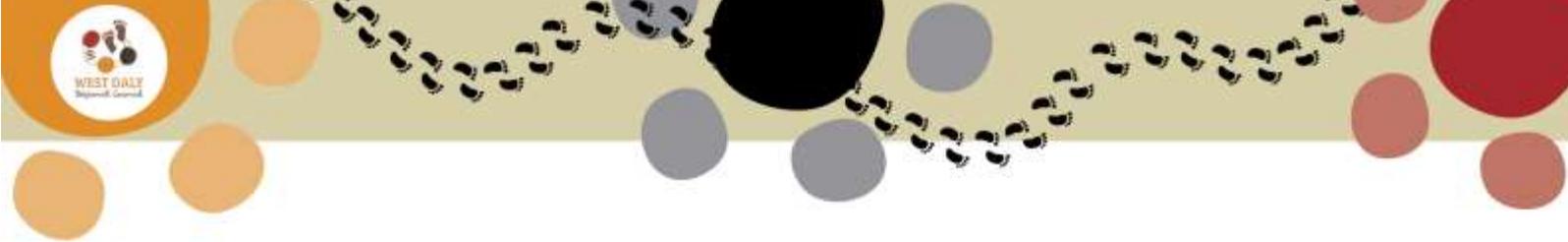


2. Application of the Code

- 2.1. The Code places an obligation on all Members to take responsibility at all times for their performance and behaviour (conduct).
- 2.2. The Code sets out standards of behaviour and a framework to inform decisions about appropriate conduct which must be applied in conjunction with relevant legislation (including the *Local Government Act 2019*) and Council's policies and procedures. It is not a replacement for them.
- 2.3. If the application of the Code could or will result in a breach of the law, the law takes precedence. Any inconsistency or issue with the Code should be brought to the attention of the Chief Executive Officer (CEO), for urgent attention.
- 2.4. If the application of the Code could or will result in a breach of the Council's policy or procedure, the Code takes precedence, but the specific issue should be notified to the Policy custodian for urgent attention.
- 2.5. If the application of the Code could result in both positive and negative outcomes, the relative importance and impact of each should be carefully considered and the advice of the Mayor, Deputy Mayor, other Members and/or the CEO sought (as appropriate).
- 2.6. If there is any doubt as to how the Code is to be applied or what course of action to take in specific circumstances, Members should consult with their peers (e.g. the Mayor and other Members). Where appropriate, Members can also seek support from the CEO.
- 2.7. To support the implementation and application of the Code, it should be:
 - a) Included in the orientation and induction training of Council members.
 - b) Made available on the Council website and promoted to our communities.
 - c) Referenced in any Local Authority and Council Committee Terms of Reference and included in the orientation of any new member.
 - d) Used to inform the performance and professional development review of Council's governing structures.

3. Breaches of the Code of Conduct

- 3.1. Breaching the Code of Conduct is a serious issue.
- 3.2. Any alleged or suspected breaches of the Code will be managed in accordance with the policy provisions outlined below, as well as any applicable laws and regulations.
- 3.3. Alleged or suspected breaches of the Code of Conduct by an Elected Member, will be managed in accordance with the policy provisions outlined in clauses 4 - 16 below.
- 3.4. Alleged or suspected breaches of the Code of Conduct by a Council Committee Member who is a Council employee and to whom the *Code of Conduct (Council Staff)* also applies, will be managed under Council's *Discipline Policy* if the grievance is substantiated.
- 3.5. Alleged or suspected breaches of the Code of Conduct by a Local Authority Member will be managed in a manner consistent with the principles outlined in Council's *Discipline*



Policy, and may result in the Council dismissing the Local Authority Member if the grievance is substantiated.

- 3.6. A proven breach of the Code of Conduct may lead to further action including the relinquishment of membership of Council, Local Authority or Committee.
- 3.7. If it is determined that the offence committed is more serious, Council has the authority to refer the matter to the Police for action.

4. Management of a Complaint in Relation to a Breach of Code of Conduct by an Elected Member

- 4.1. Wherever possible, Council's preference is that any disputes and allegations be identified and resolved before they escalate to a formal complaint. Council recognises and promotes the leadership role of the Mayor in working collaboratively with all Members.
- 4.2. A Council 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.
- 4.3. In response to a potential Code of Conduct complaint matter, the Mayor, Deputy Mayor or CEO will engage in informal discussions with the affected parties, as appropriate, to seek to resolve the matter.

5. Confidentiality

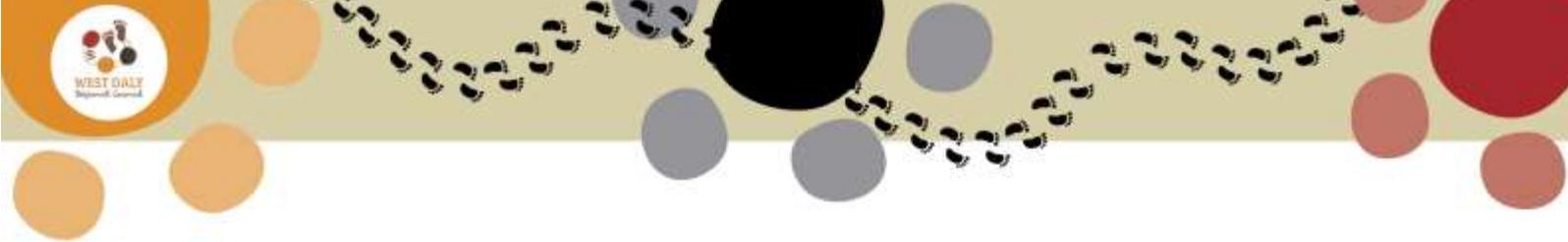
- 5.1. Information regarding a complaint is confidential, including the complaint form, statements from any parties, and reports provided by the CEO to the Council regarding the status of a complaint.
- 5.2. Complaints will only be formally discussed by the Council or Council panel during confidential sessions. Minutes kept by the Council or a Council panel are confidential information in accordance with regulation 49(f) of the *Local Government (General) Regulations 2021*.

6. Complaint Requirements

- 6.1. 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);
 - b) Must include a statutory declaration verifying the allegations of fact and
 - c) Be made within three (3) months of the alleged breach of the Code of Conduct.
- 6.2. A Code of Conduct complaint may be lodged with the CEO, who will assess whether or not the complaint meets the legislative requirements.
- 6.3. If it appears that a complaint does not comply with the above requirements, the CEO will notify the complainant within five (5) days of receiving the complaint providing the appropriate method of grievance reporting.

7. Notifications to Parties

- 7.1. 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 Council panel.



8. Referral to the Local Government Association of the Northern Territory (LGANT)

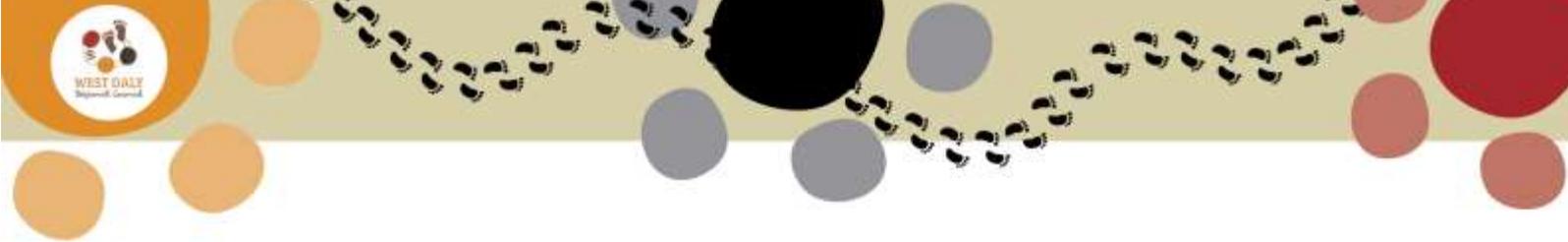
- 8.1. The CEO may refer the matter to LGANT if a complainant Council Member or respondent has elected to refer the complaint to a third party such as LGANT under section 124(3) of the Act.
- 8.2. A complainant who is not a Council member does not have the option to request referral to LGANT.

9. Initial Consideration by Council

- 9.1. Before referring to Council, 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 grievance (in preparation should Council decide to refer the matter).
- 9.2. The CEO will provide a copy of the complaint and a list of suitable third parties, including a draft terms of reference to Council for consideration.
- 9.3. The CEO will refer the complaint to the Council for consideration in a confidential session at the next Council meeting unless the complainant is another Member and has requested the Council refer to a third party or referred to LGANT (see above).
- 9.4. 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 deliberation relating to the complaint.
- 9.5. 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 10); or
 - b) Refer the complaint to a Council panel – for the panel to decide the complaint (see clause 11); or
 - c) Decide the matter as the Council (see clause 12).

10. Referral to a Third Party

- 10.1. Council may decide to refer the complaint to an independent third party for advice and recommendations by taking into 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 in order to give a decision notice to the complainant and the respondent.
- 10.2. Council will not refer the matter to a third party unless satisfied of subclauses 10.1 c) and 10.1 d) above or if the complaint is vexatious or frivolous in nature.



10.3. 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.

10.4. 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;

If resolution is not achievable, then the third party is to:

- c) Ensure natural justice and procedural fairness is provided to both parties;
- d) Interview any witnesses if necessary to ascertain the facts;
- e) Provide a written report to Council by a specified date covering the process, summary of evidence, attempts to resolve and recommendation;
- f) Provide a draft decision notice that may be used if Council decide to adopt the recommendation.

10.5. 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.

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

10.7. Once the written report and draft decision notice is provided by the third party, the Council must decide the action to take in regards to the complaint.

11. Referral to Council Panel

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

11.2. 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.

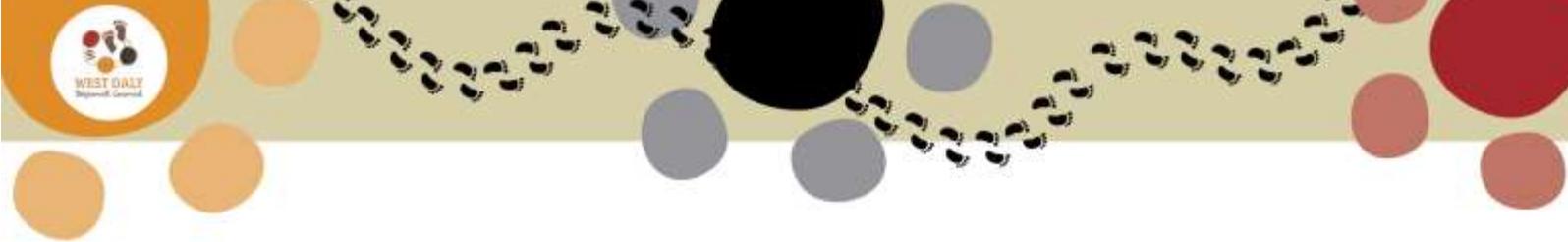
11.3. If the Council decides to refer the complaint to a Council panel, the Council will establish a Council panel for the complaint consisting of at least 3 members of the Council.

11.4. The composition of the council panel will be the following:

- a) The Mayor (as chair of the Council panel) – 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 will be the chair of the Council panel.
- c) If neither the Mayor or Deputy Mayor can be appointed – 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 will also be on the Council panel.

12. Council or Council Panel Process

12.1. The Council will consider the complainant's written complaint and must decide whether to proceed with the grievance process.



- 12.2. The Council if necessary, will refer the complaint to a Council panel for their decision on the complaint.
- 12.3. If the nature of the complaint is a conflict of interest for Council, they must refer the matter to a third party.
- 12.4. In keeping with natural justice and procedural fairness principles, the Council or Council panel will ensure that each party has a fair opportunity to provide comment and response to the grievance issue without prejudice.

13. Requests for Information

- 13.1. 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.
- 13.2. The request for information will specify:
 - a) The facts concerning the alleged contravention that is to be investigated ;
 - b) That a written statement or statutory declaration may be required; and
 - c) A timeframe to receive the information given between 3 to 14 days for a response.
- 13.3. 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.

14. Decision

- 14.1. 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 witness reports, written submissions or statements; and
 - c) The Members have read and considered the report from the third party (if applicable).
- 14.2. 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.
- 14.3. If the respondent 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 issue has been resolved between the affected parties);Or either or both of the following:
 - b) Issue a reprimand to the respondent (for example, a reprimand may be a formal expression of disapproval in writing in the decision notice);



- c) Recommend that the complainant, respondent or any other person attend training, mediation or counselling by a specified date.

14.4. 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 beneficial outcome.

14.5. 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.

15. Decision Notice

15.1. After the Council or Council panel decides what action to take regarding 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 or apply for further consideration of the matter due to new facts, or may wish to appeal the decision.

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

15.3. Within 90 days of when the complaint was initially received by the CEO, and as soon as practicable after a decision has been authorised by the Mayor or Council panel, the CEO will provide the authorised decision notice to the complainant and the respondent.

15.4. 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.

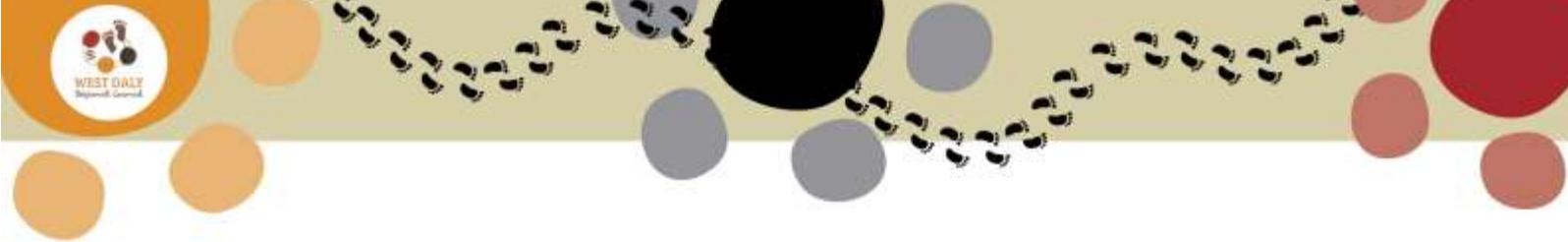
16. Summary of Decision

16.1. 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.

16.2. 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 or Council panel in the confidential session of the next meeting of the Council or Council panel.

16.3. 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 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.

16.4. 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.

16.5. The approved summary is to be tabled in the confidential session of the next ordinary Council meeting.

17. Responsibilities

17.1. The Mayor is responsible for promoting behaviour among Council Members that meets the standards set out in the Code.

17.2. The CEO is responsible for promoting access to and knowledge of the Code in Council and our communities.

17.3. All Members are responsible for familiarising themselves with the Code, and for asking for assistance where needed to understand, interpret, or apply the Code.

17.4. The Code will be read and signed by every Elected Member, Local Authority Member and Council Committee Member upon commencement of their role and following any periodic review of the Code.

17.5. Elected Members, Local Authority Members and Council Committee Members will apply the Code at all times while discharging their duties, and at any time they are representing Council.

17.6. Elected Members and staff with delegation for policy approval shall ensure that Council policies are consistent with the Code.

17.7. The Governance and Quality Assurance Officer will ensure that a copy of the Code, and the *Breach of Code of Conduct Complaint Form*, is available on Council’s website.

References

Local Government Act 2019 (NT) s.121; s.124; s.126; Schedule 1

Local Government (General) Regulations 2021 (NT) Division 7: Procedures for code of conduct complaints; r.49 (f)

Definitions

In the context of this policy the following definitions apply:

The Act means the Local Government Act 2019 (NT).

The Code means the Code of Conduct stipulated in Schedule 1 of the Act.

Complainant means the person who lodges a Code of Conduct complaint against a Council member (this person can be a Council member or a member of the public).

Council refers to the West Daly Regional Council, a regional council that delivers essential local government services to remote communities and supports development opportunities in the region.



Council Committees means a Committee established by resolution of the Council, including the Audit Committee.

Respondent means the Council Member who is alleged to have breached the Code of Conduct.

Related Documents

Code of Conduct (Council Staff) Policy

Induction and Training (Elected Member and Local Authority) Policy

Discipline Policy

Breach of Code of Conduct Complaint Form

For more information, contact the Policy Custodian.

Signature of Endorsement:	
Position:	Chief Executive Officer