

Complaint about the CEO Policy

Council resolution number:	OM-23/87
Date to take effect:	September 2023
Legislative reference:	Section 175(1) of the <i>Local Government Act 2019</i>
Document reference:	CEO code of conduct
Policy review date:	September 2026

1. Scope

This policy applies:

- If there are grounds to suspect that a complaint may involve a breach of the Chief Executive Officer (CEO) code of conduct; and
- To all persons who hold an appointment as the CEO of the Council, whether permanent, short-term or temporary.

2. Purpose

The purpose of this policy is to set out how the Council will deal with a complaint that involves or may involve a breach in the code of conduct of its CEO.

This policy is designed to assist the Council:

1. Comply with s175(1) of the *Local Government Act 2019* (Act);
2. Promote public confidence in the way suspected inappropriate conduct of the Council's CEO is dealt with; and
3. Promote accountability, integrity and transparency in the way the Council deals with a complaint that is suspected to involve, or may involve, inappropriate conduct of the CEO.

3. Complaint handling procedure

3.1 Nominated person(s) to receive and first consider the complaint

The principal member is generally the *nominated person* to receive the complaint about the CEO and to put serious complaint to the Council.

The Council may have more than one elected member to be the *nominated person*.

As soon as possible, the *nominated person* is to consider, or if more than one *nominated person* they are to jointly consider, the complaint received and depending on the seriousness of the complaint either resolve, dismiss or forward the complaint to the Council to confidentially consider at its next ordinary meeting or at a special meeting of Council.

In making a decision on the seriousness of the complaint received the *nominated person(s)* will need to confidentially inform the CEO of the complaint and to ask the CEO to provide their story on the matter.

3.2 Confidentiality

Complaints received are to be treated as confidential.

3.3 A tiered approach to managing a complaint

The *nominated person(s)* are to receive and gather the basic information about the complaint. The aim should be to first promptly resolve the complaint through mutually acceptable solutions, like agreeing to improved communication protocols to remove/reduce future misunderstandings.

Breach of CEO Code of Conduct complaint form

1. Your name: <i>You are the complainant.</i>	
2. Name of the Council:	
3. List the clause number(s) of the Code of Conduct that you allege the CEO has breached:	

Please proceed to the next page.

NOTES:

1. Your complaint should be made within 3 months of the alleged breach.
2. You must give details of the alleged breach (or breaches), explain the basis of your complaint with reference to which clause(s) of the CEO Code of Conduct you allege have been breached, state the evidence on which your complaint relies, and complete the required statutory declaration.
3. If additional pages or documents are to be attached, you must number and identify each extra page as part of your declaration. You must sign and date each page and ensure that it is signed and dated by a witness.
4. If a witness statement is attached, a separate statutory declaration must be provided from that witness.
5. To lodge your complaint – attach this form, any attachments and the statutory declaration to an email and send the email to the **Mayor** of the Council (or otherwise print all documents, address your complaint to the **Mayor** of the Council and post it to the Council). Request acknowledgement of receipt of your complaint.
6. Lodging a complaint does not relieve you from any legal obligations to make other reports (if relevant), including mandatory reporting requirements under legislation.

Your signature *Date:*

Signature of witness *Date:*

4. Details of the respondent's alleged breach (or breaches) of the CEO Code of Conduct:

Detail by completing the below table for each clause of the CEO Code of Conduct that you allege has been breached. Support your claim of each alleged breach with details of what happened.

Code of Conduct clause	Date of alleged breach	Details of what happened
<i>See Appendix below.</i>		

To add more cells to the above table, right click with your mouse and select 'Insert' > 'Insert Rows Below'.

Example of how to fill in the above table

Code of Conduct clause	Date of alleged breach	Details of what happened
<i>See Appendix below.</i>		
<i>3.2(f) – the CEO must ensure that working conditions are safe and healthy</i>	<i>20 July 2023</i>	<i>CEO yelled at me during our weekly meeting, calling me a “stupid idiot”. Everybody at the meeting heard this. I do not feel safe in the office when the CEO is there.</i>

Your signature

Date:

Signature of witness

Date:

STATUTORY DECLARATION

I, _____
(Your full name and address)

solemnly and sincerely declare that _____
(Name of the respondent)

has committed a breach (or breaches) of the CEO Code of Conduct as described in the completed *Breach of CEO Code of Conduct complaint form* and attachments.

I further solemnly and sincerely declare that all of the information attached and provided in relation to this statutory declaration is true.

This declaration is true and I know it is an offence to make a statutory declaration knowing it is false in a material particular.

Declared at the _____ day of _____ 20____
(Place you are making the declaration) (Date) (Month) (Year)

Signed: _____
(Your signature)

Witnessed by: _____
(Signature of the person before whom the declaration is made)

(Full name of witness)

(Contact address or phone number of witness)

NOTES:

- 1. This declaration may be witnessed by any person who is at least 18 years of age.**
- 2. This written statutory declaration must comply with Part 4 of the *Oaths, Affidavits and Declarations Act 2010*.**
- 3. Making a declaration knowing it is false in a material particular is an offence for which you may be fined or imprisoned.**

Appendix – CEO Code of Conduct

3. Code of conduct (extract from CEO code of conduct)

3.1 Support for Council

The CEO must:

- (a) provide full support to Council;
- (b) provide accurate, frank and impartial advice to Council;
- (c) implement council policies and decisions;
- (d) be familiar with and comply with the requirements of the *Local Government Act 2019* and other legislative, industrial or administrative requirements relevant to the CEO's official responsibilities;
- (e) take all reasonable steps to ensure that the information upon which the CEO's decisions or actions are based is factually correct and relevant to the decisions or actions; and
- (f) comply with the council staff code of conduct.

3.2 Management of council staff

In relation to the management of council staff, the CEO must ensure that:

- (a) appropriate documented processes and procedures are in place;
- (b) selection processes for appointment or promotion are fair, equitable and based on merit;
- (c) staff have reasonable access to training and development and opportunities for advancement and promotion;
- (d) staff are treated fairly and consistently and are not be subject to arbitrary or capricious decisions;
- (e) there are suitable processes for dealing with employment-related grievances; and
- (f) working conditions are safe and healthy.

3.3 Use of information

The CEO must not misuse information gained in the CEO's official capacity.

Misuse includes, but is not limited to:

- (a) seeking to gain personal advantage for self, or for another person, on the basis of information held on official records;
- (b) initiating or spreading gossip or rumours on the basis of personal or other information held on official records; and
- (c) providing a person, or appearing to provide a person, with favourable treatment or access to privileged information.

The CEO must take care to maintain the integrity and security of documents and information.

3.4 Use of official facilities, equipment and resources

The CEO must not utilise council equipment, or the skills or working time of council staff members, for personal benefit.

3.5 Disclosure of offences against the law

If the CEO is charged, convicted or acquitted of an offence, the CEO must advise the Council regardless of whether the CEO believes the offence relates directly to the CEO's assigned duties.

3.6 Outside employment

Outside employment for the CEO is not allowed, except in exceptional circumstances and approved by the Council in writing.

When considering an application from the CEO to undertake outside employment, the Council will give approval only if the outside employment:

- (a) could not be perceived by a reasonable person to be a conflict of interest; and
- (b) will not interfere with the performance of the CEO's duties.

Any outside employment or voluntary work must be performed wholly in the CEO's private time.

3.7 Decisions based on statutory power

Where the CEO makes a decision based on a statutory power, the CEO must:

- (a) ensure that the legislation under which the decision is made authorises the making of that decision;
- (b) ensure that the CEO has the authority or the delegation to make the decision;
- (c) ensure that any procedures which are required by law to be complied with in the making of a decision have been observed; and
- (d) ensure that the decision, the evidence upon which it is based, and the reasons for the decision are properly documented.

3.8 Anti-discrimination

The CEO must not discriminate in relation to a person unless such discrimination is allowed by law and council policy (for example, positive discrimination or special measures).

Complaint about the CEO Policy

Where the complaint is not about the CEO code of conduct or it seriously lacks information to support the complaint or the complaint appears to be inappropriate, rude or vexatious the *nominated person(s)* may choose to dismiss the complaint.

If the complaint about the CEO's conduct needs further consideration (i.e. the conduct is without an acceptable explanation; the conduct appears to have been wilfully done or repeatedly without taking due care; the complaint is grievous or the matter is complex) the complaint should then be escalated to the Council. The *nominated person(s)* should forward the complaint, the CEO's story in response to the complaint and any other relevant information to the Council to review and consider.

Depending on the seriousness of the complaint the Council may then engage an advisor to investigate and report back to Council their findings with recommendations. Note, the Council must ensure the CEO is given a right of reply to any allegations and/or adverse findings before a decision is made.

3.4 Managing conflicts of interest

As made clear under section 179 of the Act, the administration handling and review of a complaint is not to involve the CEO as the CEO will have, or will be perceived to have, a conflict of interest about a matter alleged to involve them.

Under section 114 of the Act, an elected member of the Council with a conflict of interest in the complaint is not to participate in considering or making decisions about the complaint. If there is only one *nominated person* that elected member is to bring the complaint to Council (and not decide if the complaint is serious or not); they must disclose their conflict of interest and immediately withdraw from any further participation in the complaint handling process. In this case, the Council then must resolve, dismiss or consider the complaint.

3.5 Administration support to Council

An appropriate council staff member is to provide support to the Council in the absence of the CEO's support, including:

- Organising the confidential meetings necessary (i.e. issuing notices, agendas and reports to comply with the Act);
- Taking confidential minutes to document Council's resolutions regarding the complaint;
- Engaging an external advisor as requested by the Council, or the authorised elected member, to provide advice, guidance or carry out a review into the complaint and to report back to the Council with recommendations; and
- Generally supporting the Council to make a decision as quickly as practicable.

3.6 Expectations

The complaint handling process is to give the people involved an opportunity to be heard and respond in an even-handed way.

The Council's response to a complaint received should be timely and decisions made as soon as practicable without undue delay. This may mean engaging an external advisor and holding special Council meetings to make decisions.

Where a complaint relates to fraud or corruption the principal member is to advise the Independent Commissioner Against Corruption (ICAC) and the Council is to follow ICAC's instructions.

Certain complaints may require the CEO to curtail their intended actions until the Council has made and communicated their decision about the complaint.

The CEO's probation or annual contract review is to be delayed until the complaint about the CEO's conduct is resolved.

Complaint about the CEO Policy

4 Breach of CEO Code of Conduct Complaint form

To submit a complaint the attached form is to be completed and to be emailed to Mayor@barkly.nt.gov.au.

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