

# Determination Form

## When to use this form

This form is used by a council, an independent assessor, or a Code of Conduct panel to record a determination, decision or action made under Part 7.4 of the Act.

The form must be completed. A copy must be provided to the secretariat.

**The complainant and a person to whom a complaint relates must be given written notice of a decision made in relation to the complaint and the reasons for the decision (Act, s 131(3)).**

Decisions, determinations and actions must be made and taken expeditiously (Act, s 132(1)).

*Important: The grounds on which a complaint may be dismissed differ depending on the decision-maker.*

*The council may dismiss a complaint where:*

- *it determines that misconduct did not occur.*
- *the misconduct occurred at a council or committee meeting and was dealt with by the presiding person or remedied under meeting procedures (Act, s 132E(2)(a)-(b)).*
- *the complaint is frivolous or vexatious (Act, s 132E(2)(c)).*

*The independent assessor may dismiss a complaint where:*

- *it determines that misconduct did not occur.*
- *the complaint is frivolous or vexatious or not made in good faith (Act, s 132J(2)(b)).*
- *the complaint is trivial (Act, s 132J(2)(c)).*

*The Code of Conduct panel has the same dismissal grounds as the independent assessor (Act, s 132M(4)).*

*Where more than one ground is engaged, address each separately.*

### **Definitions**

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

**CEO** means the council's chief executive officer as appointed under section 165(1) of the Act, who is in charge of day-to-day operations of the council.

**Code of Conduct** means the Code of Conduct prescribed under section 120 of the Act and included in Schedule 1A of the Regulations.

**Code of Conduct panel** means a panel established under Part 7.4 by the Secretariat in accordance with section 132K of the Act.

**Complainant** means a person who makes a complaint under section 132A or 132B of the Act.

**Council** means the local government council constituted under section 14(b) of the Act.

**Decision-maker** means the person making a decision regarding the complaint and may include the council, an independent assessor, or a Code of Conduct panel and its members.

**Dismissal of complaint** means dismissal on the grounds that misconduct did not occur or on the grounds of the complaint being frivolous, vexatious, trivial or not made in good faith.

**Gross misconduct** means conduct by a member that breaches the Code of Conduct and consists of any of the following:

- (a) corruption;
- (b) a criminal offence;
- (c) repeated serious misconduct; or
- (d) behaviour demonstrating the member’s unfitness for office.

**Independent assessor** means a member of the pool of persons appointed under section 121 of the Act.

**Member** means (according to context) a member of an audit committee, a council, a council committee or a local authority (Act, s 7, definition of member).

**Misconduct** means conduct by a member that breaches the Code of Conduct.

**Regulations** means the Local Government (General) Regulations 2021 (NT).

**Sanction** means any action taken by a council, an independent assessor or a Code of Conduct panel to resolve a complaint, other than to take no further action. A decision to take no further action is not a sanction and cannot be the ground for a subsequent non-compliance referral under section 132T of the Act.

**Secretariat** means the Secretariat mentioned in section 126(1) of the Act.

**Serious misconduct** means conduct by a member that breaches the Code of Conduct if the conduct:

- (a) causes a serious and imminent risk to the reputation, viability or resources of a council; or
- (b) consists of bullying, intimidation, sexual harassment, assault or physical or verbal abuse; or
- (c) consists of theft or fraud; or
- (d) consists of being impaired by alcohol or illicit drugs while exercising the powers or performing the duties of the member; or
- (e) consists of refusing to carry out a reasonable direction of a council consistent with the member's duties under this Act; or
- (f) consists of non-compliance with a sanction imposed by an independent assessor or a Code of Conduct panel.

## Section 1 – Decision-maker and complaint identification and jurisdiction check

<b>Decision-maker (Select one)</b>	<input type="checkbox"/> Council <input type="checkbox"/> Independent assessor <input type="checkbox"/> Code of Conduct panel
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<b>Citation / file reference</b>	
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<b>Council (where applicable)</b>	
<b>Independent assessor (name)</b>	
<b>Code of Conduct panel members and Chair</b>	
<b>Complainant(s)</b>	
<b>Member who is the subject of the complaint</b>	
<b>Date of decision</b>	
<b>Checks</b>	<p><b>Confirm jurisdictional checks (Select each):</b></p> <p><input type="checkbox"/> The person against whom the complaint is made is a member subject to the Code of Conduct.</p> <p><input type="checkbox"/> The complaint was made within the 6-month limitation period under section 132C of the Act.</p> <p><input type="checkbox"/> The complaint was made in the approved form (Code of Conduct Complaint Form) and accompanied by a statutory declaration (Act, s 132A(2) or s 132B(2)).</p>

## 1. Dismissal grounds

Select the applicable ground(s) below. If more than one ground applies, address each separately. The available grounds depend on the decision-maker.

### Council (s 132E(2)) – available grounds:

- Misconduct did not occur (Act, s 132E(2)(a))
- The misconduct occurred at a council or committee meeting and either (i) was dealt with by the person presiding, or (ii) the responsible person took remedial action under the council's meeting procedures (Act, s 132E(2)(b))
- The complaint is frivolous or vexatious (Act, s 132E(2)(c))

### Independent assessor (s 132J(2)) – available grounds:

- Misconduct did not occur (Act, s 132J(2)(a))
- The complaint is frivolous, vexatious, or not made in good faith (Act, s 132J(2)(b))
- The complaint is trivial (Act, s 132J(2)(c))

### Code of Conduct panel (s 132M(4)) – available grounds:

- Misconduct did not occur (Act, s 132M(4)(a))

- The complaint is frivolous, vexatious, or not made in good faith (Act, s 132M(4)(b))
- The complaint is trivial (Act, s 132M(4)(c))

**Reasons for dismissal (address each engaged ground separately):**

## 2. Scope assessment

Refer to the Ministerial Guideline for assessment.

**Indicators (Select all that apply):**

- The member was acting in their capacity as a council member at the time of the conduct.
- The member identified themselves as a council member, or was readily identifiable as one, in the context of the conduct.
- The conduct concerned a matter that is or will be before the council.
- Council resources, property, email accounts or premises were used in connection with the conduct.
- The conduct was directed at a council employee in the context of their employment, another member, or at the council.
- The conduct occurred at a council or council endorsed event.
- Other \_\_\_\_\_(specify)

**Scope conclusion (Select one):**

- Within scope – the conduct engages the Code of Conduct. Proceed to Section B.
- Outside scope – the conduct does not engage the Code of Conduct. The complaint must be dismissed on the ground that misconduct did not occur (Act, s 132E(2)(a) for council; s 132J(2)(a) for independent assessor; s 132M(4)(a) for Panel). **Proceed to Section 6.**
- Mixed – part of the conduct is within scope and part is not. Identify which part(s) are within scope below and proceed.

**Reasons for scope conclusion (refer to specific facts and indicators above):**

## Section 2 – Procedural history

Set out the procedural history of the complaint from receipt to determination. Identify each step and the date on which it occurred.

<b>Date complaint received</b>	
<b>Pathway: lodged with CEO (Act, s 132A) or secretariat (Act, s 132B)</b>	
<b>Date and basis of any referral (with section reference)</b>	
<b>Third-party investigation under section 132F (council pathway only) – yes/no, terms of reference</b>	
<b>Conflict of interest assessed (proceed, if yes or assess if not assessed)</b>	

## Section 3 – Procedural fairness record (s 131)

Procedural fairness is a statutory obligation under section 131 of the Act. The decision-maker must give the member to whom the complaint relates a reasonable opportunity to be heard before making a decision (Act, s 131(2)). The complainant and that member must be given written notice of the decision and reasons (Act, s 131(3)). Failure to comply may invalidate the decision and gives a ground of review under section 132P of the Act.

**Confirm each of the following procedural fairness steps:**

- The substance of the allegations was particularised to the subject member in writing.
- The Code of Conduct clauses and statutory provisions said to be engaged were identified.
- The possible outcomes were identified to the subject member.
- The credible, relevant and significant adverse material relied on was disclosed to the subject member, subject to any lawful redaction.
- A reasonable period was given for response, having regard to the complexity of the matter.
- Any request for an extension was considered and dealt with on its merits.
- The decision-maker considered any response received before making the decision.
- Decision-maker impartiality has been confirmed, and all conflicts have been disclosed and managed.
- Where required, an interpreter or other reasonable accommodation was arranged.

Particulars of procedural fairness steps (date allegations notice issued; period given for response; date and form of any response; extensions granted or refused with reasons):

**Section 4 – Findings of fact**

State the findings of fact made by the decision-maker. For each finding, identify the evidence relied on, any conflicting evidence, and the reasons for preferring the evidence accepted.

The standard of proof is the balance of probabilities (Act, s 130(2)). Decision-makers are not bound by the rules of evidence (Act, s 130(1)).

**Findings of fact and evidence relied on:**

**Conflicting evidence and reasons for preference:**

**Matters not decided because not necessary to the determination:**

**Section 5 – Application of the Code of Conduct and the Act**

Identify each Code of Conduct clause and each statutory provision that applies.

State, for each, whether the decision-maker is satisfied that the clause of Code of Conduct has been breached on the facts found, and the reasons. Address each clause separately.

Code of Conduct clause breached	Proven	Reasons
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	
	<input type="checkbox"/> Yes <input type="checkbox"/> No	

**Where misconduct is found, identify the category (s 119):**

- Misconduct (Act, s 119, definition of "misconduct")
- Serious misconduct (Act, s 119, definition of "serious misconduct", paragraph (\_\_\_) – specify which paragraph (a) to (f))
- Gross misconduct (Act, s 119, definition of "gross misconduct", paragraph (\_\_\_) – specify which paragraph (a) to (d))

**Reasons for the categorisation (with reference to facts found):**

## Section 6 – Outcome

### 6.1 Outcome (Select one)

- Complaint dismissed (skip 6.2 and proceed to Section 10)
- Misconduct found and action taken (complete 6.2)

### 6.2 Action taken (where misconduct found)

Identify each action taken and the statutory provision under which it is taken. The actions available depend on the decision-maker. More than one action may be taken.

**Council action (Act, s 132G) – available actions:**

- Take no further action (Act, s 132G(1)(a))
- Reprimand the member (Act, s 132G(1)(b))
- Require the member to issue a public apology (Act, s 132G(1)(c))
- Require the member to attend mediation with the complainant (Act, s 132G(1)(d))
- Prepare and implement a behaviour plan, in consultation with the member (Act, s 132G(1)(e), (2), (3))
- Refer the complaint to an independent assessor (Act, s 132G(1)(f)) – secretariat to be notified within 5 days (Act, s 132G(4))
- Report corrupt or criminal conduct to the ICAC or the police (Act, s 132G(1)(g))

**Independent assessor action (Act, s 132J(3)) – available actions:**

- Refer the complaint back to the relevant council under section 132J(3)(a) (where the complaint was made under section 132B of the Act)
- Refer the complaint back to the relevant council under section 132J(3)(b) (where the complaint was referred to the assessor under sections 132A(3)(b), 132E(3) or 132G(1)(f) of the Act)
- Take any action a council may take under section 132G (Act, s 132J(3)(c)) – specify which section 132G(1) action(s) below
- Impose a monetary penalty not exceeding 20 penalty units (Act, s 132J(3)(d)) – specify amount below
- Refer the complaint to a Code of Conduct panel for serious misconduct or gross misconduct (Act, s 132J(3)(e))

**Code of Conduct panel (Act, s 132N) – available actions:**

- Refer back to the independent assessor (Act, s 132N(a))
- Take no further action (Act, s 132N(b))
- Take any action a council may take under s 132G (Act, s 132N(c)) – specify which section 132G(1) action(s) below
- Impose a monetary penalty not exceeding 50 penalty units (Act, s 132N(d)) – specify amount below
- Dismiss a non-elected principal or deputy principal member from that role and disqualify them from holding that role for up to 12 months (Act, s 132N(e)) – specify period
- Suspend the member for up to 12 months (Act, s 132N(f)) – specify period
- Order that the member's allowance be withheld until compliance with a sanction (Act, s 132N(g))
- Where gross misconduct is established – recommend that the Minister suspend or dismiss the member under section 132U (Act, s 132N(h))

**Particulars of action(s) taken (specify amounts, periods, behaviour plan terms, and any other particulars):**

### Section 7 – Proportionality assessment

The Act does not prescribe fixed outcomes. The decision-maker has a discretion that must be exercised purposively and proportionately. The decision-maker must address each of the proportionality factors below and explain its weight in the particular case. Reasons must be detailed enough to support the action selected.

Factor	Effect	Reasons
<b>Seriousness of conduct</b>	<input type="checkbox"/> Aggravating <input type="checkbox"/> Mitigating <input type="checkbox"/> Neutral	
<b>Harm caused or risked</b>	<input type="checkbox"/> Aggravating <input type="checkbox"/> Mitigating <input type="checkbox"/> Neutral	
<b>Intent (deliberate, reckless, inadvertent)</b>	<input type="checkbox"/> Aggravating <input type="checkbox"/> Mitigating <input type="checkbox"/> Neutral	
<b>Prior conduct or disciplinary history</b>	<input type="checkbox"/> Aggravating <input type="checkbox"/> Mitigating <input type="checkbox"/> Neutral	
<b>Willingness to remedy</b>	<input type="checkbox"/> Aggravating <input type="checkbox"/> Mitigating <input type="checkbox"/> Neutral	

Factor	Effect	Reasons
Repetition or pattern	<input type="checkbox"/> Aggravating <input type="checkbox"/> Mitigating <input type="checkbox"/> Neutral	
Risk to council's operations or reputation	<input type="checkbox"/> Aggravating <input type="checkbox"/> Mitigating <input type="checkbox"/> Neutral	

Overall reasoning on proportionality:

### Section 8 – Compliance terms (where action taken)

State the precise terms of any sanction or required action. The member must comply with the sanction (Act, s132R). Non-compliance is itself serious misconduct under section 119, see definition of serious misconduct, and may be referred to a Code of Conduct panel under section 132T of the Act.

What the member must do	
By when (date or event)	
Form of evidence of compliance required	
Consequences of non-compliance (refer to sections 132R, s 119(f), s 132T of the Act)	
Monetary penalty: amount, payment date (within 28 days unless longer period allowed: section 132S(2) of the Act), method of payment	

### Section 9 – Cross-referrals and notifications

Where a referral is made, the secretariat must be notified within the relevant statutory timeframe, and the relevant materials must be provided.

Referrals made (Select all that apply):

- Referral to the secretariat / independent assessor under sections 132A(4), 132E(4), or 132G(4) (within 5 days)

- Referral to the Code of Conduct panel under section 132J(3)(e) (notify secretariat under section 132J(4) of the Act)
- Referral to the ICAC (notify secretariat where referred by assessor: section 132J(4))
- Referral to the police (notify secretariat where referred by assessor: section 132J(4))
- Recommendation to the Minister under section 132U (Panel only: section 132N(h))
- Non-compliance referral to a Code of Conduct panel under section 132T

<b>Date secretariat notified</b>	
<b>Materials provided to secretariat</b>	
<b>Other agencies notified (with date)</b>	
<b>Section 10 – Review rights notice</b>	

Parties must be advised of their review rights in the written notice of decision. The decision-maker must include the following review rights notice in the notice provided to the parties. Two distinct review pathways are available depending on the decision-maker.

1. If this decision was made by a council or an independent assessor:

*Either the complainant or the subject member may request a Code of Conduct panel to review the decision on the ground that it was not made in conformity with the principles of procedural fairness (Act, s 132P(1)).*

*The request must be lodged with the secretariat within **14 days** after receiving notice of the decision (Act, s 132P(2)). The request must be in the approved form (**Review Request Form**) and must include the information specified in section 132P(3). The panel may stay the decision pending review (Act, s 132Q(2)). After review, the panel may affirm the decision, dismiss the request, set aside and remit, or set aside and substitute its own decision or sanction (Act, s 132Q(3)). A review under section 132P of the Act is not a merits appeal; the only ground is procedural fairness.*

2. If this decision was made by a Code of Conduct panel:

*Section 132P of the Act does not apply to panel decisions.*

*The following Code of Conduct panel decisions are reviewable by NTCAT under section 327 of the Act and Schedule 2 of the Act, on application by the affected person specified:*

- (a) *a determination as to whether misconduct occurred (Act, s 132M(3)) – by the complainant or the subject member;*
- (b) *a decision to dismiss the complaint (Act, s 132M(4)) – by the complainant;*
- (c) *a decision to take action (Act, s 132N) – by the complainant or the subject member;*
- (d) *a decision on review (Act, s 132Q(3)) – by the complainant or the subject member.*

**Section 11 – Decision-maker certification**

I/we certify that the determination set out above has been made in accordance with Part 7.4 of the Act, the principles of procedural fairness, and the Ministerial Guideline issued under section 342 of the Act.

<b>Council</b>	
<b>Signature</b>	
<b>Date</b>	

<b>Decision-maker name</b>	
<b>Title or office</b>	
<b>Signature</b>	
<b>Date</b>	

Where the decision is of a Code of Conduct panel, the chair signs and the names of the other panel members are recorded:

<b>Chair signature and date</b>	
<b>Panel member 2 – name and concurrence</b>	
<b>Panel member 3 – name and concurrence</b>	

## Section 12 – Decision

The complainant and a person to whom a complaint relates must be given written notice of a decision made in relation to the complaint and the reasons for the decision.

<b>Date the written notice is given to the subject member</b>	
<b>Date the written notice is given to the complainant</b>	
<b>Date copy provided to secretariat (where required by the Act)</b>	

*Privacy and information: Personal information collected on this form is handled in accordance with the Information Act 2002 (NT). The information is used for the purposes of administering Part 7.4 of the Act, including making, recording and reviewing decisions about Code of Conduct complaints.*

*Confidentiality: Secretariat officers must keep information received under Part 7.4 of the Act confidential, subject to the limited exceptions in section 126(5) of the Act.*