



Merri-bek
City Council

Councillor Code of Conduct

Adopted: 20 June 2023

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1 INTRODUCTION

The Merri-bek City Council (Council) consists of the Councillors who are elected by in accordance with the *Local Government Act 2020*(the Act).

The Councillors recognise the importance of conducting themselves in a way that:

- reflects the leadership role they hold; and
- will underpin their collective commitment to achieve the best outcomes for the local community, now and into the future.

The Merri-bek community expects Councillors to listen and be informed to participate in Council decision making. The community expects individual Councillors to always act with integrity and in the best interests of Merri-bek. To assist in meeting these expectations section 139 of the Act requires Councils to adopt a code of conduct to be observed by Councillors.

In accordance with Council's Public Transparency Policy, a copy of this Code (as amended from time to time) will be:

- given to each Councillor;
- available for inspection at the Council offices and Customer Service Centres; and
- published on the Council's website.

1.1 Purpose and Commitment

This Code:

- sets out the roles and standards of conduct expected of Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification;
- underpins good working relations between Councillors to enable Councillors to work constructively together in the best interests of the local community; and
- mandates Councillor conduct designed to build public confidence in the integrity of local government.
- articulates Councillors' obligations and commitments to specific governance and integrity matters including adherence to Council policies, Child Safe legislation, personal dealings with Council and communications (including social media) protocols.
- provides a dispute resolution process.

2 COUNCILLOR COMMITMENT TO THE CODE OF CONDUCT

As an elected representative of the community charged with decision making for the City of Merri-bek, I am committed to undertaking the duties and responsibilities of my office by working together with my fellow Councillors in a respectful and constructive manner to achieve the goals and vision for our city.

I recognise the importance of acting in accordance with the highest standards of governance, and that this is essential to honest, accountable and effective government. My behaviour towards my colleagues, the employees of Council and the community is critical to the teamwork required to be a successful and highly functioning public authority.

This Code of Conduct sets out my commitment to my fellow Councillors and the community to governing the municipality and the City effectively and observe the principles of good governance and integrity that the Merri-bek community expects and deserves.

I declare I have read the Councillor Code of Conduct and agree to abide to this Code of Conduct and act in accordance with the principles of good governance and respectful conduct.

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Cr Sue Bolton

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr Annalivia Carli Hannan

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr James Conlan

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr Helen Davidson

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr Monica Harte

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr Angelica Panopoulos

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr Helen Pavlidis

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr Adam Pulford

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr Mark Riley

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr Lambros Tapinos

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

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Cr Oscar Yildiz JP

Dated:

Witness:

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Cathy Henderson
Chief Executive Officer

3 STANDARDS OF CONDUCT

The Act requires the Councillor Code of Conduct to include the standards of conduct prescribed by the regulations. The *Local Government (Governance and Integrity) Regulations 2020* provide the Standards of Conduct expected to be observed by a Councillor as:

1 Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor—

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*; and
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- (d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

Councillor Statements

We will not accept or ignore behaviours that are racist, sexist, bullying or homophobic or in any way degrade or vilify someone.

We will seek to understand others' points of view and communicate respectfully.

We will be honest with each other and with our community.

We understand there will be differences and disagreements and commit to working together and with the community.

2 Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor—

- (a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- (b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- (c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

Councillor Statements

We will consider the views of the whole community and the effect of decisions made by Council on different groups and individuals.

We make sure we use all the resources and information available to be the most effective Councillors we can be, including attending Councillor workshops and briefings arranged by the CEO and reading agendas and reports.

We will be realistic about what Council has the resources to achieve and will not promise things that can't be delivered.

3 Compliance with good governance measures

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following—

- (a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- (b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- (c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- (d) any directions of the Minister issued under section 175 of the Act.

Councillor Statements

We will do the right thing, including complying with policies, protocols and legislation.

We will be careful in using Council resources, including the support and expense resources available to us.

4 Councillor must not discredit or mislead Council or public

- (1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.
- (2) In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

Councillor Statements

We will accurately represent Council's adopted position when communicating with the community.

We will publicly respect the decisions of the Council, even if we express personal disagreement.

We will support the implementation of Council decisions.

5 Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

Councillor Statements

Our political differences will not interfere with how we work together.

When we debate or discuss ideas and issues we will 'play the ball' not the person.

4 ROLES AND RESPONSIBILITIES

4.1.1 Role of Councillors

Councillors participate in the decision making of the Council, representing the interests of the Merri-bek community in that decision making and contributing to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

Councillors will respect and abide by the policies, practices and protocols related to their role, including those defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

As determined by the Mayor, Councillors may represent the Mayor at functions and meetings where the Mayor and Deputy Mayor are unavailable. The Mayor will consider ward representation, 'Councillor Responsible for' appointments and committee memberships when determining who will attend.

Responsibilities

In accordance with the Act, every Councillor will:

1. *consider the diversity of interests and needs of the municipal community; and*
2. *support the role of the Council; and*
3. *acknowledge and support the role of the Mayor; and*
4. *act lawfully and in accordance with the oath or affirmation of office; and*
5. *act in accordance with the standards of conduct; and*
6. *comply with Council procedures required for good governance.*

4.1.2 Role of the Mayor

The Mayor will lead the Council in its decision making, represent the views of Council as its key spokesperson and perform civic and ceremonial duties on behalf of the Council.

The Mayor is also the leader of the Councillors through promoting behaviour that meets the standards of conduct set out in this Code of Conduct and assisting Councillors to understand their role.

The Mayor will lead the community engagement to develop the Council Plan and report to the community at least once each year on the implementation of that plan.

4.1.3 Role of the Deputy Mayor

The Deputy Mayor has a leadership and representational role in conjunction with the Mayor, particularly when the Mayor is not available.

The Deputy Mayor will perform the role of the Mayor at Council meetings if the Mayor is unable to attend. The Deputy Mayor also takes on the powers and duties of the Mayor if the office of Mayor becomes vacant or the Mayor is on leave.

4.1.4 Functions of the Chief Executive Officer

The Chief Executive Officer is appointed by Council to lead the operations and staff.

The Chief Executive Officer will support the Mayor and Councillors in the performance of their roles and ensure the decisions of the Council are implemented efficiently.

To support the Council, the Chief Executive Officer will ensure Council receives timely and reliable advice about its obligations under any legislation.

After consultation with the Mayor the Chief Executive Officer will set the agenda for Council meetings. Upon request from the Mayor they will report to the Council on implementation of any decisions.

The Chief Executive Officer will establish and maintain a working structure for the Council administration to work within. This includes being responsible for all staffing matters including directing, managing and dismissals.

The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors. The Chief Executive Officer has approved the Councillor and Council Staff Interaction Protocol.

5 SPECIFIC CONDUCT OBLIGATIONS

Councillors understand there are specific policies, protocols and procedures that apply to Councillors and commit to complying with them along with any legislative obligations.

The following section sets out some specific conduct obligations for Councillors. A breach of the conduct obligations under this part might also constitute a breach of the standards of conduct.

5.1 Decision making

Councillors are committed to participating in Council decisions impartially and in the best interests of the community. Councillors will actively participate in the decision-making process and appropriately inform themselves of the matter at hand, including by taking into account community views and professional and legal advice provided by Council staff.

Collaborative discussion and planning are essential to the effective governance of the City, and Councillors will attend and participate in briefing sessions and workshops organised by the Chief Executive Officer to inform Council decision making.

There may be times when individual Councillors disagree with a majority decision of Council. Individual Councillors are entitled to express their own independent views, however, this will not be done in a way that reflects negatively on other individual Councillors or the Council as a whole.

5.2 Use of Council Resources

Council resources include equipment, information and images, staff resources, property and any assets (including mobile phones and computers) that are provided or allocated to Councillors for the purposes of their duties as a Councillor.

All Councillors commit to using Council resources effectively and economically by:

- maintaining adequate security over Council property, facilities and resources provided;
- ensuring any expense claims submitted are in compliance with the relevant legislative provisions and Council policy;
- not using Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- not use public funds or resources in a manner that is improper or unauthorised.

Councillors commit to complying with the Council Support Expenses and Resources Policy.

5.3 Gifts and Benefits

Councillors recognise that accepting gifts, benefits and hospitality may create the appearance that a person or body is attempting to gain favourable treatment from a Councillor or Council and will abide by the Gifts, Benefits and Hospitality Policy for Councillors and any other legislative requirements.

Councillors must take all reasonable steps to ensure that our immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Councillors Gifts Register with a notation that it is the property of the Council.

Councillors recognise that acceptance of gifts over the disclosable gift threshold as defined by the Act may give rise to a conflict of interest and will endeavour to avoid such conflicts. Any conflicts of interest that do arise as a result of acceptance of gifts and hospitality will be disclosed in accordance with the Governance Rules.

5.4 Communications and media

As representatives of the local community, Councillors will be responsive to community views and to adequately communicate the position and decisions of Council.

Councillors will comply with the Media Protocol and respect the functions of the Mayor and Chief Executive Officer to be the spokespersons for the Council in accordance with our protocols.

Individual Councillors are entitled to express their personal opinions through the media. Where Councillors choose to do so, they will make it clear that such comment is a personal view and does not represent the position of Council. Councillors undertake to ensure that any such comment is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person.

5.4.1 Councillors' own Social Media

Councillors will ensure that the use of social media minimises exposure of Council and Councillors to any legal and reputational risk.

When using social media, Councillors will meet their commitments to this Code of Conduct. The Code of Conduct applies to online activity in the same way it does to other written or verbal communications. Councillors will be respectful, fair and open minded and accurate in their social media interactions.

5.5 Child Safety and Wellbeing

The Child Safe Standards are a compulsory framework that supports organisations to promote the safety and wellbeing of children and young people, by requiring the organisation to implement policies to prevent, respond to and report allegations of child abuse and harm.

At Council we are committed to being a Child Safe organisation, and we have zero tolerance for child abuse.

All Councillors are required to adhere to Council's Child Safety and Wellbeing Policy and expectations for appropriate behaviour towards and in the company of children and young people, as set out below.

Expected Standards of Behaviour

All Councillors will:

- Adhere to Council's Child Safety and Wellbeing Policies and Procedures at all times.
- Report all child safe incidents, including any allegations of child abuse or harm, in accordance with Council's reporting procedures; ensuring if a child or young person is at immediate risk the incident is reported to the police immediately.
- Treat all children and young people with respect, equity and dignity.
- Take all reasonable steps to protect children and young people from child abuse and harm.

- Listen and respond to the views and concerns of children and young people, particularly if it relates to their safety and wellbeing or that of another child or young person.
- Ensure children and young people are aware of their rights and have access to information about this.
- Empower children and young people to speak up if they have concerns about their or another child or young person's safety or wellbeing.
- Actively promote the:
 - cultural safety, participation and empowerment of Aboriginal and Torres Strait Islander children and young people and children and young people from culturally and/or linguistically diverse backgrounds
 - safety, participation and empowerment of children and young people with a disability, those that are unable to live at home and/or LGBTQIA+ children and young people.
- Demonstrate zero tolerance to racism and other forms of discrimination and act on any incidents of this by children, young people and/or adults.
- Create safe physical and online environments and ensure appropriate supervision when delivering programs to children and young people.
- Maintain professional boundaries with children and young people and work with them in an open and transparent manner.
- Support children and young people to create appropriate boundaries for their personal safety needs while participating in programs.
- Empower children and young people to actively participate in relevant organisational activities and consultations where appropriate and possible, especially in relation to matters that are important to them.
- Ensure that if required when performing the role of a Councillor, that a current Working with Children Clearance is held.

Unaccepted Behaviours

The following outlines behaviours that are not acceptable by Councillors in person on the telephone or online with children and/or young people. Reports of these behaviours will be investigated in accordance with this code of conduct.

Councillors will not:

- Put a child or young person at risk of child abuse or harm or ignore or disregard any suspected or disclosed child abuse or harm.
- Engage in any illegal, unsafe or abusive behaviour towards children and young people. This includes physical, sexual or emotional/psychological abuse, neglect or grooming.
- Discriminate against a child or young person on the basis of their gender, race, culture, religion, disability, sexuality or any other protected attribute or express personal views on such attributes when speaking with or in the presence of a child or young person.
- Use offensive, angry or aggressive language with or in the presence of children or young people. Examples of this include swearing, yelling, physical or psychological threats or racial, cultural, homophobic or sexist slurs.
- Engage children or young people in discussions or expose them to materials of a mature or adult nature. Examples of this include discussions of a sexual nature, telling adult jokes or showing them images or websites of an adult nature.
- Be alone with a child or young person when there is no professional reason to do so.
- Exchange personal contact details with a child or young person such as phone number, social media sites or email address.
- Have unauthorised contact with a children or young people outside of their role within Council, including face to face, online, social media and via phone.

- Take, use and/or publish photos or recordings of a child or young person where they are the primary subject of the image/recording:
 - without authorisation of the child or young person and their parent or guardian;
 - on personal devices owned by the Councillor.
- Provide or administer to children or young people alcohol and/or drugs. The exception being the provision of approved and authorised medication/s in relevant programs, services or activities.
- Develop a special relationship with and/or show favouritism to a child or young person over other children and young people. Examples of this are offering gifts, money or special treatment or spending more time with a particular child or young person (outside what is required to support their inclusion within the program, activity or service).
- Do things of a personal nature, for example toileting or changing clothes, that a child or young person could reasonably be expected to do for themselves. When personal care duties are part of a person's role this should be clearly defined and communicated with the child or young person when occurring, including seeking permission from the child or young person.
- Engage in behaviour that would be considered unnecessarily physical or inappropriate to a child or young person's stage of development.

5.6 Personal Dealings with Council

When dealing with the Council in a private capacity (e.g. as a resident, ratepayer, recipient of a Council service or applicant for a permit), Councillors do not expect nor request preferential treatment in relation to any such private matter. Councillors will avoid any action that could lead Council staff or members of the public believing that they are seeking preferential treatment or hurting the reputation of Council.

5.7 Conflicts of interest

The Governance Rules require Councillors to identify, manage and disclose any conflicts of interest they may have. Councillors have read and understand these provisions and will abide by them.

If possible, Councillors will avoid situations that might give rise to a conflict of interest, including by not accepting gifts, benefits and hospitality in accordance with the policy.

At Council meetings, Councillors will describe their connection to the matter and why they consider they have a conflict of interest in the decision to be made before removing themselves from the meeting. Councillors will also disclose the existence of conflicts of interest in all other forums and the records of these meetings and disclosures will be made public.

5.8 Access to and use of Council information

In the course of conducting Council business, information of a confidential nature may be brought to the attention of Councillors. There will be occasions, where due to factors such as timing and sensitivity of a matter, information provided to Councillors may not be able to be shared more broadly by Councillors.

Councillors commit to not prematurely releasing any information that will prejudice the decision making of Council or Council officers.

Councillors are also sometimes provided with information which is 'confidential information' within the meaning of sections 3 and 125 of the Act, and will not release or disclose that information except in certain specified circumstances, outlined in section 2.15.3

Information provided to Councillors may also be subject to other legislation including the *Health Records Act 2001* and the *Privacy and Data Protection Act 2014* and will hold and use that information only in accordance with the Information Privacy and Health Records Policy.

5.8.1 Sharing Information

Written information provided to one Councillor by any member of Council staff will be made available to all Councillors to ensure everyone has access to the same information.

The Mayor and Councillors will share any information that will support informed decision making, including:

- background information received from outside the organisation;
- proposed motions and amendments and the reasons for the motions and amendments;
- general Mayoral correspondence in relation to a past or proposed Council decision or position. General Mayoral correspondence is correspondence where the Mayor is writing on behalf of Council either communicating Council's position or seeking support for Council's position. It may include seeking information to assist Council to form a position.

5.9 Human rights and equal opportunity

In performing their role Councillors must take positive action to eliminate discrimination in accordance with the *Equal Opportunity Act 2010* and support Council in fulfilling its obligation to achieve and promote gender equality.

Councillors acknowledge the human rights that are protected under the *Victorian Charter of Human Rights and Responsibilities Act 2006* and undertake to exercise duties in a manner that is compatible with the rights set out in the Charter.

Councillors are committed to treating all people with dignity and respect and recognise there is no place for unlawful discrimination, harassment (sexual or otherwise), racial and religious vilification and victimisation of any individual.

5.10 Sexual harassment

Sexual harassment is against the law and will not be tolerated under any circumstances. In performing their role Councillors must take positive action to eliminate sexual harassment in accordance with the *Equal Opportunity Act 2010*. This includes not walking past any behaviour that is, or could be considered to be, sexual harassment.

Councillors will not engage in any unwelcome conduct of a sexual nature towards another individual where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the individual harassed would be offended, humiliated or intimidated.

5.11 Bullying, vilification and victimisation

Council is committed to maintaining a workplace that is free from bullying, vilification and victimisation, where all people are treated with dignity and respect. In performing their role Councillors will uphold Council's obligations to support a safe workplace, and will not engage in repeated unreasonable behaviour toward another Councillor or member of Council staff that creates a risk to the health and safety of that other Councillor or member of Council staff. Councillors will call out any examples of bullying, vilification or victimisation they witness and ensuring action is taken.

5.12 Occupational health and safety

Council is committed to providing and maintaining a safe workplace for all and recognises the provisions of the *Occupational Health and Safety Act 2004* apply to Council and Councillors. The Chief Executive Officer has a clear accountability for OHS matters, given their mandate under the Act, and will put policies in place from time to time to ensure a safe workplace for Councillors to carry out their civic duties.

Councillors will adhere to Council's Occupational Health and Safety Policy.

5.13 Reporting fraud and corruption

Ethical behaviour is an integral part of responsible, effective and accountable government. Councillors will immediately report to the Public Interest Disclosures Coordinator or appropriate integrity agency any suspected, potential or actual fraudulent, criminal, unethical, corrupt that comes to their knowledge. Councillors will participate as required in any investigation whether undertaken internally or externally.

If Councillors see something, they will say something.

5.14 Statutory Decision Making and Enforcement Responsibilities

Councillors may have to vote on applications for permits pursuant to various legislation including the *Planning and Environment Act 1987*, the *Building Act 1993*, the *Public Health and Wellbeing Act 2008* and Council's local laws.

To reduce the risk of decisions being legally challenged, in dealings with permit applications, Councillors must not only avoid impropriety, but must at all times avoid any occasion for suspicion and any appearance of improper conduct.

Councillors making an application for their own property, must not take any further part in the statutory process following submission of the application and must never seek to pressure or influence Council officers to provide a particular recommendation on any application, agreement or in taking enforcement action.

Councillors may receive representations from interested parties in relation to applications. If a Councillor is a member of a Delegated Committee which deals with applications, or who is able to attend a meeting of the Council to consider applications, and wishes to respond to lobbying by constituents or others by openly advocating a particular course of action prior to the meeting, must declare an interest and not take part in any consideration of the application in question and must leave the meeting room until consideration of the matter is concluded.

A Councillor proposing to take part in the consideration of applications at a meeting of a Delegated committee or of the Council, will not give grounds to doubt his or her impartiality and will not be seen to be prejudging a decision which will be made at the meeting where all the information required to make a decision will be available. Councillors will advise anyone who may be seeking to influence a Councillor that the Councillor will not formulate a set opinion on a particular proposal until all available information is given and has been duly considered at the relevant meeting.

5.15 Improper Conduct

The Act has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

- misuse of position;
- directing a member of Council staff;
- improper release of confidential information.

These matters are set out below in order to provide a complete picture of the obligations on Councillors. While these matters are not of a nature to be addressed as a contravention of the Code, all Councillors must comply with the prohibitions on Councillor conduct set out in the Act.

5.15.1 Misuse of Position

Section 123 of the Act provides:

- (1) *A person who is, or has been, a Councillor or member of a delegated committee must not intentionally misuse their position—*
 - (a) *to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or*
 - (b) *to cause, or attempt to cause, detriment to the Council or another person.*
- (2) *An offence against section 123(1) is an indictable offence.*
- (3) *Circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a delegated committee include—*
 - (a) *making improper use of information acquired as a result of the position the person held or holds; or*
 - (b) *disclosing information that is confidential information; or*
 - (c) *directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or*
 - (d) *exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or*
 - (e) *using public funds or resources in a manner that is improper or unauthorised; or*
 - (f) *participating in a decision on a matter in which the person has a conflict of interest.*
- (4) *This section—*
 - (a) *has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of delegated committees; and*
 - (b) *does not prevent the institution of any criminal or civil proceedings in respect of that liability.*

5.15.2 Directing a Member of Council staff

Section 124 of the Act provides

A Councillor must not intentionally direct, or seek to direct, a member of Council staff:

- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council;
- (b) in the exercise of a power or the performance of a duty or function exercise or performed by the member as an authorised officer under the Act or any other Act;
- (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
- (d) in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

This is an important rule that follows from the nature of local government. A broad range of powers are given to Councils under many Acts. These powers are given to the Council as a whole and an individual Councillor only exercises powers when he or she votes in a Council or delegated Committee Meeting. An individual Councillor does not have the legal authority to instruct a member of Council staff or to direct the Council administration.

5.15.3 Confidential Information

A Councillor must not disclose information that they know, or should reasonably know, is confidential information.

A Councillor may disclose information that they know is confidential information in the following circumstances:

- Council has determined the information should be publicly available
- for the purposes of any legal proceedings arising out of the Act;
- to a court or tribunal in the course of legal proceedings;
- pursuant to an order of a court or tribunal;
- to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- to a municipal monitor to the extent reasonably required by the municipal monitor; and
- to the extent reasonably required for any other law enforcement purposes.

5.16 Other Legislative Requirements

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

5.17 Candidature at State or Federal Elections

A Councillor that has publicly announced their intention to run as a candidate in a State or Federal Election, will be deemed a Prospective Candidate (a Councillor will also be considered a Prospective Candidate if they have been endorsed by a political party and/or are starting to campaign, such as distributing flyers and door knocking etc).

When a Councillor has formally nominated, they are a Nominated Candidate. A Councillor can only become a Nominated Candidate in the weeks prior to the election date.

Regardless of whether a Councillor is a Prospective Candidate or a Nominated Candidate, a Councillor will act in accordance with the Election Period Policy (incorporated in the Governance Rules) including:

- Ensure there is appropriate separation between their role as a Councillor and their activities whilst campaigning, and that there is a demonstrable distinction between obligations to Council and their personal interests as a candidate (or member of a political party). For example, a Councillor cannot tell residents or imply, that they will address Council issues in return for their vote.
- Not improperly use Council resources (phones, emails, business cards, Council photos, staff support, logos) that are provided for Councillor roles. Photographs and images paid for by Council or taken by Council officers are Council resources and cannot not be used in electoral material for any candidate. A Councillor must not use Council equipment and facilities in relation to their candidacy, or use Council resources in a manner that could be perceived as supporting or being connected with a candidate's election campaign.
- Make sure their communications (verbal or written) make it clear that this is the communication of a candidate and not a position of the Council (however a Councillor may refer to themselves as a Councillor in their communications because that is factually true). For example, a Councillor cannot

promise Council support to something (whether it is to an issue or a promise of funding) unless that is the resolved position of Council.

- Not use their position of Councillor to influence Council officers, or access Council resources or information, in support of any election campaign or candidacy. This also includes expecting the organisation to give preference to issues raised by the Councillor whilst they are campaigning. The Councillor should continue to direct their requests through to the relevant Director) rather than engaging officers directly.
- Not use Council activities, including committee meetings and Council-related external activities in relation to their candidacy.
- Act in accordance with the Standards of Conduct, such as acting honestly and respectfully.

A Councillor that becomes a Prospective Candidate in a State or Federal election, will provide written advice to the Chief Executive Officer, as soon as practicable after they have decided to run. The Chief Executive Officer will then advise all Councillors. The Prospective Candidates must then declare their intended candidacy at a Council meeting as soon as practicable after notifying the Chief Executive Officer.

A Councillor that becomes a Nominated Candidate must, apply for leave of absence from the Council and this leave of absence should commence no later than the date of their nomination as a candidate with the electoral commission and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence should not attend meetings of the Council or otherwise act as a Councillor.

Council should approve any application for Leave of Absence. If the timing of the close of nominations does not align with Councils meeting schedule, a leave of absence may be approved retrospectively at the next available Council meeting.

6 DISPUTE RESOLUTION

Councillors recognise they may have and express different and sometimes opposing viewpoints.

As described in the Conduct sections of this Code, Councillors will share those views in a way that is positive and considered and seek to understand the views of others in a constructive and respectful way.

Although all Councillors strive to engage in positive, constructive and respectful interactions, conflict and/or disputes may arise.

Councillors recognise that they hold an individual and collective responsibility to resolve disputes in a proactive, positive and courteous manner before they are escalated, to avoid such disputes threatening the effective operation of Council.

The Mayor will, consistent with their role, provide guidance to Councillors in the performance of their roles and functions and compliance with the Code, including by assisting in the resolution of disputes arising under the Code. Councillors agree to be guided by the Mayor in their behaviour and in the resolution of disputes arising under the Code.

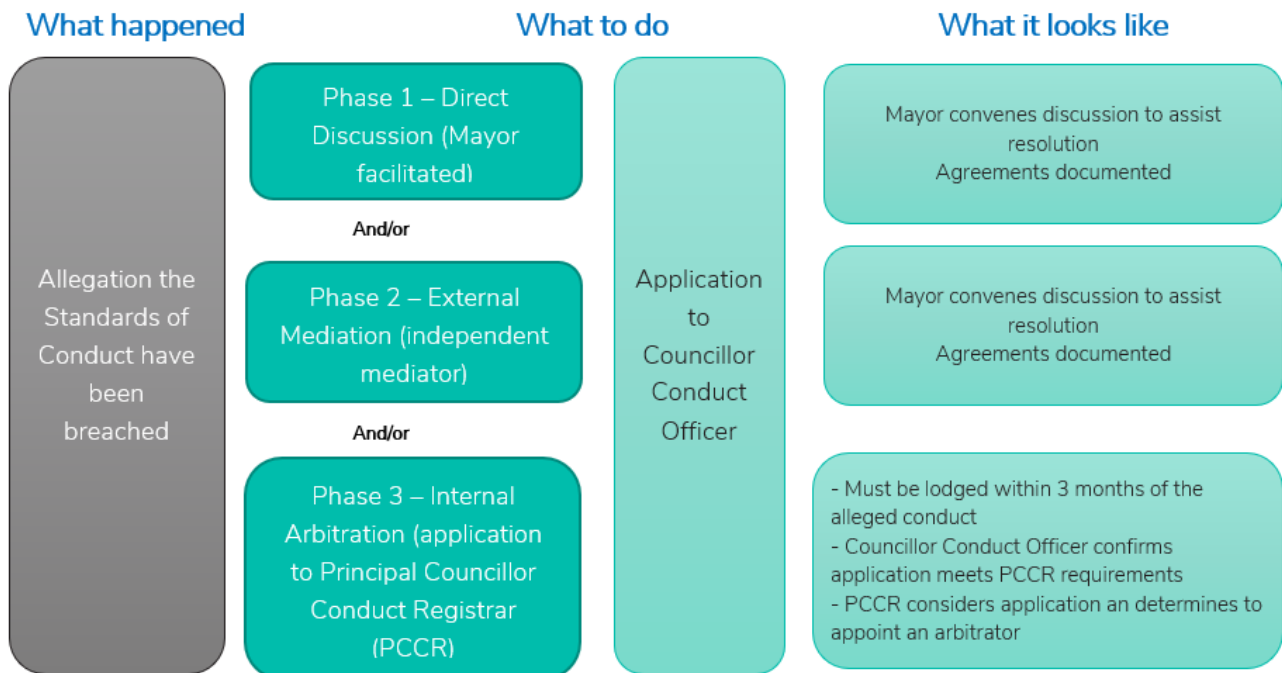
The internal resolution procedures provide Councillors with support and mechanisms to resolve conflicts and disputes and enable them to move forward and establish and maintain effective working relationships. The procedures also provide avenues and guidance for escalating more serious issues and allegations where required.

Issues arising during Council meetings that are addressed by the Chairperson during the meeting by way of seeking an apology or retraction from a Councillor/s will be considered resolved and will not be a dispute that may be considered further as part of these Dispute Resolution Procedures, unless pursued as a breach of the Standards of Conduct.

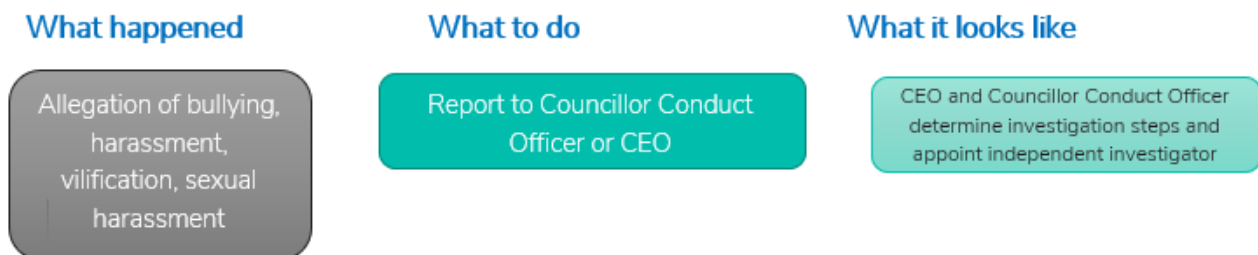
An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

6.1 Overview of processes





An allegation of bullying, harassment, vilification, sexual harassment that is substantiated through an independent investigation will be reported to Council with a recommendation Council resolves to make an application the Principal Councillor Conduct Registrar for a Councillor Conduct Panel to make a finding of serious misconduct.



6.2 Definitions provided by the Act

Section 3 of the Act provides definitions of misconduct, serious misconduct and gross misconduct:

Misconduct by a Councillor means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct;

Serious misconduct

Serious misconduct by a Councillors means any of:

- the failure by a Councillor to comply with the Council's internal arbitration process;
- the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;
- the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
- the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;
- continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);

- (f) bullying by a Councillor of another Councillor or a member of Council staff;
- (g) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
- (h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- (i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;
- (j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act;

Gross Misconduct by a Councillor means behaviour that demonstrates that a Councillor:

- (a) is not of good character; or
- (b) is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.

Serious matters should more properly be the subject of an application to a Councillor Conduct Panel (CCP) for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission for allegations of gross misconduct.

6.3 Informal Resolution

Disputes and alleged breaches of provisions of this Code that are not breaches of the Standards of Conduct, may arise from time to time. Councillors will try to resolve any interpersonal differences, disagreements or disputes of this nature with a view to maintaining effective working relationships.

Where, the matter cannot be resolved between the Councillors involved in that way, the parties may use phases 1 or 2 of the dispute resolution process.

6.4 Allegations of bullying, harassment, vilification or sexual harassment

An allegation of bullying, harassment, vilification or sexual harassment will be reported to the CEO or Councillor Conduct Officer. The CEO and Councillor Conduct officer will determine the appropriate steps to investigate the allegation, ensuring support for all parties and an impartial investigation. On completion of the investigation, the Chief Executive Officer will make a report to a Council meeting with a recommendation regarding whether an application should be made for Councillor Conduct Panel to make a finding of serious misconduct.

6.5 Allegations of Standards of Conduct Breaches

An allegation that the Standards of Conduct or another part of this Code have been breached by a Councillor can be made by:

1. Council, by resolution;
2. A Councillor; or
3. A group of Councillors.

Where an allegation is made by Council or by a group of Councillors, a single Councillor must be nominated to act as the representative of Council or the group of Councillors (as the case may be) in the internal resolution process. Only that Councillor will be entitled to participate in the internal resolution process.

The Council's three phase dispute resolution process involves:

- direct discussion between the parties in dispute, with the Mayor in attendance to provide guidance;
- external mediation by an independent mediator engaged by the Chief Executive Officer; and
- an internal Arbitration Process.

6.5.1 Phase 1 – Direct discussion

Where Councillors who are in dispute have not been able to resolve the dispute between them, either (or both) party (parties) may request the Mayor to convene a meeting of the parties.

A dispute referred for direct discussion may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of this Code of Conduct, that does not constitute serious misconduct under the Act.

The party requesting the direct discussion meeting is to provide the Councillor Conduct Officer or Chief Executive Officer with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a 'direct discussion' dispute resolution process. Where the request relates to an alleged contravention of the Code, the request must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- details of any attempt to resolve the matter directly;
- name the Councillor appointed to be their representative where the request is made by a group of councillors; and
- be signed and dated by the applicant or the applicant's representative.

The Councillor Conduct Officer will confirm all details have been provided. If the matters specified above have not been provided, they will request the applicant to update the details.

The Councillor Conduct Officer will provide the Mayor and the Chief Executive Officer with the details of the request.

The applicant is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Councillor Conduct Officer or Chief Executive Officer or as soon as practicable thereafter.

The Mayor is to ascertain if the other party is prepared to attend a 'direct discussion meeting.

If the other party is not prepared to attend a meeting, the Mayor is to advise the applicant as soon as possible. No further action is required of the Mayor.

If the other party declines to participate in a meeting, this does not constitute a contravention of this Code.

If the other party consents to a meeting, the Mayor is to convene a confidential meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within five working days of receiving the consent of the other party.

The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under the Act, and the standards of conduct and other requirements of the Code of Conduct.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties and to the Councillor Conduct Officer. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal arbitration procedure where the matter relates to an alleged contravention of the Code.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal arbitration procedure where the matter relates to an alleged contravention of the Code.

Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor (if any) or if the Deputy Mayor is also a party to the dispute, the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

In a situation where the Mayor believes they are not the appropriate person to facilitate the direct discussion, they may seek the Deputy Mayor to convene the meeting or recommend to the parties to participate in external mediation.

6.5.2 Phase 2 – External mediation

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for 'direct negotiation'.

An application made for a dispute to be referred for external mediation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of this Code of Conduct, that does not constitute serious misconduct or gross misconduct under the Act.

The applicant is to submit a written application to the Councillor Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an 'external mediation'. Where the application relates to an alleged contravention of the Code, the application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- details of any attempt to resolve the matter directly;
- name the Councillor appointed to be their representative where the application is made by a group of Councillors; and
- be signed and dated by the applicant or the applicant's representative.

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time it is submitted to the CCO or as soon as practical thereafter.

The CCO is to ascertain (in writing) whether the other party is prepared to attend an 'external mediation'. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the CCO. These reasons may be taken into account if the matter is, subsequently, the subject of an application for an Internal Arbitration process.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Code.

If the other party agrees to participate in an external mediation, the CCO is to advise the applicant, the Mayor and Chief Executive Officer as soon as possible.

The Chief Executive Officer or Councillor Conduct Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties and the Councillor Conduct Officer. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Code.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal arbitration procedure where the matter relates to an alleged contravention of the Code.

6.5.3 Phase 3 - Internal arbitration procedure

Internal Arbitration involves a request to the Principal Councillor Conduct Registrar to appoint an Arbiter to make findings in the relation to allegations of misconduct as defined by the Act.

A Councillor or a group of councillors may make an application alleging misconduct by a Councillor. The application must:

- be made within 3 months of the alleged misconduct occurring;
- specify the name of the Councillor alleged to have contravened the standards of conduct included in this Code;
- specify the provision(s) of the Code alleged to have been contravened;
- specify the misconduct the Councillor is alleged to have engaged in that resulted in the breach;
- include any evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of councillors;
- be signed and dated by the applicant or the applicant's representative; and
- be submitted to the Councillor Conduct Officer.

The Councillor Conduct Officer will assess the application and, if the application:

- (a) does not comply with the requirements, return the application to the Councillor submitting it:
 - advising of the manner in which it does not comply; and
 - providing an opportunity for the Councillor to resubmit a compliant application, provided that the Councillor submits the revised application no later than 3 months after the alleged breach of the Standards of Conduct occurred (see section 143(3) of the Act); or
- (b) complies with the requirements above:
 - refer it to the Principal Councillor Registrar;
 - notify the Councillor/s involved in the application of the referral;
 - provide a copy of the application to the Councillor/s the subject of the application;
 - notify the CEO of the referral (for the CEO's information only);
 - await advice from the Principal Councillor Conduct Registrar about the application; and

- take such steps as are necessary to give effect to the Principal Councillor Conduct Registrar's advice, in accordance with any instructions received.

The Principal Councillor Conduct Registrar must appoint an arbiter to hear the matter if satisfied that:

- (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- (b) there is sufficient evidence to support an allegation of a breach of the Standards of Conduct as specified in the application.

The Principal Councillor Conduct Registrar must reject an application if not satisfied

- (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- (b) there is sufficient evidence to support an allegation of a breach of the Standards of Conduct as specified in the application.

The rejection of an application by the Principal Councillor Registrar does not prevent a further application being made in respect of the same conduct by a Councillor, provided that the revised application is submitted to the Councillor Conduct Officer no later than 3 months after the alleged breach of the Standards of Conduct occurred (see section 143(3) of the Act).

An arbiter appointed to hear a complaint:

- (a) must ensure that the parties involved are given an opportunity to be heard;
- (b) must ensure that a Councillor who is a party does not have a right to representation, unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
- (c) must conduct the hearing with as little formality and technicality as the proper consideration of the application permits;
- (d) must ensure that the hearing is not open to the public;
- (e) may hear from the parties to the application in person or by written or electronic means; and
- (f) is not bound by the rules of evidence and may inform themselves in any manner they see fit.

The arbiter may at any time discontinue a hearing if the arbiter considers that the:

- (a) application is vexatious, misconceived, frivolous or lacking in substance; or
- (b) Councillor making the application, or representing the group of Councillors making the application, has not responded, or has responded inadequately, to a request for further information.

Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.

If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the Standards of Conduct, they may make a finding of misconduct against the Councillor.

If an arbiter has made a finding of misconduct against a Councillor, the arbiter may do any one or more of the following:

- (a) direct the Councillor to make an apology in a form or manner specified by the arbiter;
- (b) suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
- (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
- (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter; and

(e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.

The arbiter must provide a written copy of their decision and statement of reasons, including any sanctions imposed, to:

- (a) Council;
- (b) the Councillor/s making the application;
- (c) the Councillor/s the subject of the application; and
- (d) the Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Council Meeting after Council received the copy of the arbiter's decision and statement of reasons and be recorded in the minutes of the meeting. If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled.

After Council has tabled a copy of an arbiter's decision and statement of reasons, Council must ensure that the report, with any required redactions to remove confidential information, is made publicly available.

If, at any time before, during or after the hearing of an application for Internal Arbitration, the arbiter believes that the conduct that is the subject of the application appears to involve serious misconduct and would more appropriately be dealt with as an application for a Councillor Conduct Panel, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.

If the Principal Councillor Conduct Registrar receives a referral from the arbiter, the Principal Councillor Conduct Registrar must notify the parties to the application that the matter has been referred.

Any application submitted to the Principal Councillor Conduct Registrar must be in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c) of the Act.

6.6 Dispute resolution during an election period (moved)

An application cannot be made for an internal arbitration procedure during the election period for a general election. Any internal arbitration procedure that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal arbitration procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

- the application was made by the Council and the Council so resolves; or
- the application was made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

6.7 Complaints or allegations made by people other than Councillors

This procedure does not include a complaint made against a Councillor or Councillors by a member or members of Council staff, or by any other person, or a "disclosure" under the *Public Interest Disclosures Act 2012*. Complaints about a Councillor by a member of the community or member of Council staff will be reported and addressed through the Councillor Complaints Process.

6.8 No Reprisals

A Councillor shall not take detrimental action in reprisal against any person who reports an alleged breach of this Councillor Code of Conduct, or an alleged offence under any legislation, committed by a Councillor. Detrimental action includes:

- intimidation or harassment;
- action causing injury, loss or damage; and
- discrimination, disadvantage or adverse treatment in relation to a person's welfare, employment, profession or business.

In addition, a Councillor will be deemed to have taken detrimental action, without having taken the action itself, if they threaten to take detrimental action.

Further to this, the detrimental action need not necessarily have been taken (or threatened to be taken) against the person making the report, but against any other person connected with the report. Any allegations of a Councillor taking detrimental action in reprisal for a formal report made against them, will be referred to the relevant authority where necessary.

7 MONITORING, EVALUATION AND REVIEW

The Code of will be reviewed within four months of the next general election or earlier as required or requested by Council.

8 ASSOCIATED DOCUMENTS

- Council Support, Expenses and Resources Policy
- Gifts, Benefits and Hospitality Policy for Councillors
- Governance Rules (incorporating the Election Period Policy)
- Media Protocol
- Child Safety and Wellbeing Policy
- Information Privacy and Health Records Policy
- Councillor Staff Interaction Protocol
- Councillor Complaint Process
- Occupational Health and Safety Policy

9 REFERENCES

- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020*
- *Charter of Human Rights and Responsibilities Act 2006*

Title	Councillor Code of Conduct
Date of Adoption	23 February 2021 Amended: 20 June 2023
Responsible Branch	Governance & Strategy
Legislative Context	<p>Section 139 of the <i>Local Government Act 2020</i> requires a council to develop a Councillor Code of Conduct.</p> <ol style="list-style-type: none"> (1) A Council must develop a Councillor Code of Conduct. (2) The purpose of the Councillor Code of Conduct is to include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification. (3) A Councillor Code of Conduct— <ol style="list-style-type: none"> (a) must include the standards of conduct prescribed by the regulations expected to be observed by Councillors; and (b) must include any provisions prescribed by the regulations for the purpose of this section; and (c) must include provisions addressing any matters prescribed by the regulations for the purpose of this section; and (d) may include any other matters which the Council considers appropriate, other than any other standards of conduct. (4) A Council must review and adopt the Councillor Code of Conduct within the period of 4 months after a general election. (5) A Council must adopt the Councillor Code of Conduct under subsection (4) by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council. (6) Until a Council adopts a Councillor Code of Conduct under subsection (4), the Councillors must comply with the existing Councillor Code of Conduct. (7) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act (including the <i>Charter of Human Rights and Responsibilities Act 2006</i>) or regulation.
Victorian Charter of Human Rights and Responsibilities Act	<p>In developing this procedure, the subject matter has been considered to determine if it raises any human rights issues. In particular, whether the scope of any human right established under the <i>Victorian Charter of Human Rights and Responsibilities Act 2006</i> is in any way limited, restricted or interfered with by the contents of this policy.</p> <p>It is considered that the Councillor Code of Conduct is consistent with the rights outlined in the Charter. The human rights most relevant to these procedures are the rights to:</p> <ul style="list-style-type: none"> • Recognition and equality before the law (section 8) • Right to life (section 9) • Protection of privacy and reputation (section 13) • Your right to freedom of thought, conscience, religion and belief (section 14) • Your right to freedom of expression (section 15) • Right to protection of families and children (section 17)