



Councillor Code of Conduct

February 2021



Contents

| | |
|---|----|
| Preamble | 3 |
| Councillor Code of Conduct | 5 |
| 1 Performing the Role of the Councillor | 5 |
| 1.1 Role of the Council | 5 |
| 1.2 Role of the Councillors..... | 5 |
| 1.3 Overarching governance principles and supporting principles | 6 |
| 1.4 Role of the Mayor | 6 |
| 1.5 Role of the Deputy Mayor | 7 |
| 1.6 Commitment to fair and transparent Decision Making..... | 8 |
| 2 Treatment of Others | 9 |
| 2.1 General Conduct | 9 |
| 2.2 Fairness and Equity | 9 |
| 2.3 Gender Equality, Diversity and Inclusiveness | 10 |
| 2.4 Traditional Owners..... | 10 |
| 2.5 Interacting with Children and Young People | 10 |
| 2.6 Caring for the Environment | 10 |
| 2.7 Promoting Health, Safety and Wellbeing in the Workplace | 11 |
| 3 Compliance with Good Governance Measures..... | 12 |
| 3.1 Organisational Relationship | 12 |
| 3.2 Councillor Support, Expenses and Information | 13 |
| 3.3 Conflict of Interest Procedures..... | 13 |
| 3.4 Gifts and Bribery | 14 |
| 3.5 Fraud and Corruption..... | 14 |
| 3.6 Elections (Council, State & Federal elections) | 14 |
| 4 Councillor must not discredit or mislead Council or Public..... | 15 |
| 4.1 Interaction with the community..... | 15 |
| 4.2 Communications, Media and Social Media | 15 |
| 5 Improper Conduct..... | 16 |
| 5.1 Misuse of Position..... | 16 |
| 5.2 Directing a member of Council Staff | 16 |
| 5.3 Disclosure of Confidential Information..... | 16 |
| 6 Misconduct, Serious Misconduct and Gross Misconduct | 17 |
| 6.1 Misconduct | 17 |
| 6.2 Serious Misconduct | 17 |
| 6.3 Gross Misconduct | 17 |
| 7 Maintaining the Integrity of this Code..... | 18 |
| 7.1 Dispute Resolution..... | 18 |
| 7.2 Breaches of the Prescribed Standards of Conduct | 20 |

Preamble

What is a Code of Conduct?

The *Local Government Act 2020* (the *Act*) and the Local Government (Governance and Integrity) Regulations 2020 set the required standards for the conduct of Councillors. This Code of Conduct has been developed by Council as a declaration of how each Councillor will carry out his or her role in accordance with the requirements under each of the Standards. It details the ethical conduct required of Councillors, it outlines the legislated requirements that must be adhered to and the dispute resolution procedure for dealing with conflict and breaches of this Code of Conduct.

Our Commitment to the Code of Conduct

As the seven Councillors democratically elected to represent the community as the Murrindindi Shire Council, we are committed to working together in the best interests of the people who live in, conduct business in or visit our municipality.

This Code of Conduct is a key part of our commitment to governing the Murrindindi Shire effectively and adhering to the principles of good governance. By formally agreeing to abide by this Code we are committing to carrying out our roles to the highest standard of conduct and behaviour and to represent the Murrindindi Shire community to the best of our abilities.

Implicit in the Code of Conduct are the following values, to which we commit in carrying out our roles as Councillors:

Integrity

We will always act with honesty and integrity and demonstrate high standards of professionalism. We will:

- a) be open and honest in all dealings with the community, other Councillors and with Council staff
- b) follow through on commitments
- c) represent our views truthfully
- d) support one another and staff if treated unfairly or without respect
- e) be open to constructive feedback
- f) accept responsibility for mistakes, treating them as a learning opportunity.

Respect

We will act in ways which support individual contribution and worth and strive to achieve healthy working relationships. We will:

- a) respect the views, contributions, feelings, wishes and rights of others
- b) actively seek to understand others' experiences, ideas and perspectives
- c) embrace and appreciate diversity of origin, viewpoint, experience and lifestyle
- d) recognise the achievements of others.

Inclusion

We will value the contribution and individuality of others and commit to develop open and positive working relationships. We will:

- a) foster community cohesion and encourage active participation within the community
- b) embrace each other's differences, values, culture and perspectives
- c) commit to early advice and "no surprises"
- d) freely share information and knowledge with one another
- e) cooperate, collaborate with and encourage others
- f) be objective and flexible and willing to compromise
- g) ensure Council decisions are focussed on the best outcomes for the entire municipality.

Collaboration

We will:

- a) operate cohesively
- b) work together with the community through accessible and inclusive engagement
- c) strive to build effective working relationships.

Leadership

We will strongly represent and advocate on behalf of the community and exercise courage in our leadership and decision-making. We will:

- a) welcome the opinions of the community and respect their right to be heard
- b) champion issues on behalf of the community in a constructive and timely manner
- c) advocate the interests of the local community to other communities and governments
- d) take pride in representing the community and the municipality
- e) make decisions based on the perceived best interests of the entire municipality
- f) present Council as a cohesive and effective working unit
- g) act without fear or favour.

Accountability & Honesty

We will:

- a) make decisions openly and publicly whenever possible
- b) take responsibility for our actions and decisions
- c) honour commitments
- d) act with integrity and honesty in all dealings
- e) openly report our performance and acknowledge our mistakes.

Initiative

We aim to achieve continuous improvement in performance and the highest standards and outcomes for the Murrindindi Shire. In doing so we will:

- a) question the way things have been done in the past
- b) always look for better ways to work together and to achieve outcomes on behalf of the community
- c) be result and outcome focused at all times
- d) encourage a positive culture focused on results and high-quality customer service
- e) strive to exceed community expectations
- f) adopt straightforward and realistic approaches
- g) acknowledge good results to staff when noticed.

Councillor Code of Conduct

1 Performing the Role of the Councillor

The Standards of Conduct state that “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.”

1.1 Role of the Council

The primary role of the Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. Council must perform its role in accordance with the Overarching Governance Principles (see section 1.3).

1.2 Role of the Councillors

A Councillor’s role is to represent, and advocate for, their community. They are a valuable link between the community and Council and are key to facilitating communication with the community and encouraging engagement with the activities of Council.

The *Act* defines the role of every Councillor being:

- a) to participate in the decision making of the Council; and
- b) to represent the interests of the municipal community in that decision making; and
- c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

Councillors in undertaking their role must:

- a) consider the diversity of interests and needs of the municipal community; and
- b) support the role of the Council; and
- c) acknowledge and support the role of the Mayor; and
- d) act lawfully and in accordance with the oath or affirmation of office; and
- e) act in accordance with the standards of conduct; and
- f) comply with Council procedures required for good governance.

1.3 Overarching governance principles and supporting principles

A Council must in the performance of its role give effect to the overarching governance principles.

The following are the overarching governance principles—

- a) Council decisions are to be made and actions taken in accordance with the relevant law;
- b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- d) the municipal community is to be engaged in strategic planning and strategic decision making;
- e) innovation and continuous improvement is to be pursued;
- f) collaboration with other Councils and Governments and statutory bodies is to be sought;
- g) the ongoing financial viability of the Council is to be ensured;
- h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
- i) the transparency of Council decisions, actions and information is to be ensured.

In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—

- a) the community engagement principles;
- b) the public transparency principles;
- c) the strategic planning principles;
- d) the financial management principles;
- e) the service performance principles.

1.4 Role of the Mayor

The Mayor is the leader of the Council and has a number of roles which are both legislative and functional. Section 18 of the Local Government Act 2020 sets role of the Mayor as being:

- a) to chair Council meetings
- b) be the principal spokesperson for the Council
- c) lead engagement in the municipal community on the development of the Council Plan
- d) report to the municipal community, at least once each year, on the implementation of the Council Plan
- e) promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct
- f) assist Councillors to understand their role
- g) take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer
- h) provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings
- i) perform civic and ceremonial duties on behalf of the Council.

The Mayor is the elected leader of the Council. A key role of the Mayor is to facilitate good relationships between Councillors, Councillors and the Chief Executive Officer and Executive

Management Team. The Mayor sets the tone and style of behaviour, practice and projection of the Council working with, supporting and coordinating the team of Councillors.

Functional Powers of the Mayor

Apart from the roles stated in the legislation, the Mayor is usually the Council spokesperson and has a significant ceremonial role at particular events, including citizenship ceremonies.

The Mayor is also an important community leader and is often the spokesperson for the community on economic issues (such as commenting on the impact of jobs lost or gained in the municipality) or when the community is put under stress (such as disaster management and socio-economic issues).

It is the responsibility of the Mayor to foster positive relationships between the various elements of the Council by setting a good example. This includes relationships between the Mayor, Council and the administration, and the Mayor and Chief Executive Officer.

As the leader of Council, the Mayor has an important formal role to play in promoting good conduct and managing poor conduct. The Mayor has a pivotal role in any dispute resolution processes, as per the Councillor Code of Conduct. In those cases, the Mayor must oversee the internal processes which deal with any alleged misbehaviour, as well as be involved in recommending referrals to external bodies when necessary.

It is critical that the Mayor's role in these proceedings is characterised by fairness, an appreciation of natural justice, and the awareness of being the leader of all Councillors, not just those who are supporters.

1.5 Role of the Deputy Mayor

The role of the Deputy Mayor is to give effective support to the Mayor and Councillors during the day-to-day function of Council.

The Deputy Mayor must undertake the role of the Mayor if:

- a) the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or
- b) the Mayor is incapable of performing the duties of the office of the Mayor for any reason, including illness; or
- c) the office of the Mayor is vacant.

The Deputy Mayor will take responsibility for the internal resolution process when the matter relates to the Mayor.

1.6 Commitment to fair and transparent Decision Making

Councillors are ultimately responsible in establishing and maintaining the good governance of the Council and ensuring the Council decision making process is open and transparent.

Councillors must adhere to the requirements of the Governance Rules 2020 and the *Local Government Act 2020*. Councillors will enter into decisions with an open mind and not a pre-determined view.

Councillors will make fair and unbiased decisions adhering to the principles of natural justice, whilst considering how a person's interest may be affected by a Council decision.

2 Treatment of Others

The Standards of Conduct states “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.

2.1 General Conduct

Councillors commit to treating all people with courtesy and respect recognising there are legitimate difference in opinions, race, culture, religion, language gender and abilities.

Councillors will lead by example within the community by celebrating diversity, promoting equity and inclusion, combatting discrimination and victimisation and demonstrating respect for each other.

2.2 Fairness and Equity

Victorian and Commonwealth Equal Opportunity and anti-discrimination legislation protects people from being treated unfavourably because of a characteristic protected by law.

These characteristics include: age; carer or parental status; disability; employment activity; gender identity, lawful sexual activity and sexual orientation; industrial activity; marital status; physical features; political belief of activity; pregnancy or breastfeeding; race; religious belief or activity; sex; expunged homosexual conviction. Personal association with someone who has, or is assumed to have, one of these personal characteristics is also a protected characteristic.

The *Victorian Charter of Human Rights and Responsibilities Act 2006* protects people’s human rights, including their civil and political rights. The purpose of the Charter is to build a culture of respect and openness towards others’ human rights that goes beyond mere compliance.

Councillors recognise their obligations under relevant legislation and are committed to building a workplace free of either direct or indirect discrimination or victimisation where everyone has equitable access to the same rights and opportunities.

2.3 Gender Equality, Diversity and Inclusiveness

An inclusive workplace, organisation or community is achieved when diversity (age, cultural backgrounds, genders, perspectives) is encouraged, individuals feel respected and equal access to opportunities and resources is a priority.

Council is required to build inclusive workforces through the *Local Government Act 2020*, the *Gender Equality Act 2020*, as well as human rights, equal opportunity and anti-discrimination legislation.

Councillors are committed to building and supporting an inclusive work environment in which everyone is treated fairly, and with respect and dignity. Councillors will promote an inclusive environment that embraces all that makes us different, and articulate the benefits that these differences bring to our organisation and community.

2.4 Traditional Owners

Council recognises it has a pivotal role in supporting the achievement of equity and opportunity for Aboriginal communities.

Councillors are committed to recognising, celebrating and respecting indigenous culture and strengthening relationships with relevant Registered Aboriginal Parties such as the Taungurung Land and Waters Council Aboriginal Corporation and the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation.

2.5 Interacting with Children and Young People

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Victorian Child Safe Standards and related legislation.

Councillors must be aware of their responsibilities outlined in Council's Child Safe Policy and be clear about processes for reporting and acting on concerns or reports of abuse or neglect of a child.

Councillors will respect, listen to and promote the rights of children and ensure behaviour and interactions with children are age appropriate, respectful and adhere to the behavioural expectations outlined in the Child Safe standards.

2.6 Caring for the Environment

Council recognises its responsibility under the Governance Principles to promote environmental sustainability and are committed to planning for climate change risks.

2.7 Promoting Health, Safety and Wellbeing in the Workplace

In line with Occupational Health and Safety, Human Rights and Equal Opportunity legislation, Council is committed to protecting the health, safety and well-being of all. Councillors acknowledge the responsibility to provide, as far as practicable, a safe Council working environment that is free from bullying and violent behaviour.

Councillors are expected to promote an environment of well-being in the workplace and ensure all people in the workplace, which includes fellow Councillors, staff, visitors, contractors and community, are treated with respect and report any acts or suspected acts of bullying and violence to the Chief Executive Officer.

Ensuring a Safe Workplace

Council's priority is to ensure a safe workplace for all Councillors, staff and visitors. The use of alcohol and drugs contributes to accidents, injury and illness in the workforce. As part of our commitment to the health, safety and wellbeing of our staff the following applies:

Consumption of alcohol is not permitted, including:

- consumption at Council premises at all times, and
- consumption at any other venues during working hours (e.g. restaurant).

Councillors must not be under the influence of alcohol, drugs or other substances while attending Council meetings or Briefings and comply with the legal alcohol blood levels when operating a Council vehicle or travelling to and from a Council engagement.

Possession, use or trafficking of illegal drugs is not permitted. This would be considered serious misconduct and managed accordingly.

The Chief Executive Officer in limited circumstances may approve the provision or consumption of alcohol at a Council work site or Council event. Such event must always comply with the following:

- be supervised by a certified RSA person to ensure responsible service of alcohol,
- provide food to reduce the effects of alcohol, and
- provide and promote the consumption of water and non-alcoholic drinks.

Under the *Occupational Health and Safety Act 2004*, Council must provide a workplace free from risks to health and safety, including exposure to environmental tobacco smoke.

Councillors who choose to smoke must comply with Council's Smoke Free Workplace Policy.

This means:

- Smoking is not allowed in any Council building, within the grounds of Council's workplace or in any Council-owned and operated vehicle.
- Smoking is not allowed while working or liaising with members of the public. This includes smoking at a client's home while conducting Council business.
- Smoking is only allowed more than 5 meters away from the entrance and exits of all buildings and any outside communal area (including public toilets, BBQ areas)
- Smoking is only allowed during allocated breaks.

3 Compliance with Good Governance Measures

The Standards of Conduct states “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.

3.1 Organisational Relationship

Good governance is dependent on how well the relationship between the elected members and the organisation works, as well as mutual respect and understanding between Councillors and Officers in relation to their respective roles, functions and responsibilities.

Councillors need to be aware of the requirements of *section 124* of *The Act* and must not intentionally direct, or seek to direct, a member of Council staff in the exercise of their duties. This provision also applies in respect of Officer reports presented to Council and on directing staff under delegation or as an Authorised Officer. It is important to note that section 124 applies to Councillors even when acting in a group outside formal Council or delegated committee meetings such as at Councillor Briefings (Assemblies of Councillors).

To achieve good governance, clear and effective communication protocols for Councillors and Council staff are essential. The following applies to Councillor/Staff relationships, Councillors:

- accept that the role of Council is one of advocacy, strategic direction and leadership rather than operational management and administration
- will refrain from using their position to improperly influence members of staff in their duties or functions, or to gain an advantage for themselves or others
- will respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining arrangements between Council staff and Councillors that are adopted by the Chief Executive Officer
- will respect the roles and responsibilities of all Council Officers
- in seeking information on a specific matter, will do so via the Chief Executive Officer or the relevant Director
- acknowledge that contact with Managers is appropriate where Councillors are seeking clarification or further specific information on a particular matter
- will communicate courteously and respectfully with others including Council Officers and expect the same behaviour in return
- will not denigrate or undermine Council Officers, including in Council meetings, discussions with community members or communication exchanges
- are to lodge resident or Councillor requests with the Executive Assistant or directly via Councils website.

Personal Interactions with Council Officers

When dealing with Council in a private capacity (i.e. as a ratepayer, recipient of a council service or applicant for a permit) Councillors will not seek any preferential treatment. The same service standards as any member of the public should be expected and respect for the process will be shown.

It is acknowledged that Councillors are also community members and may have interactions with Council Officers in their personal lives, through family, friendship, business and community involvement. In doing so Councillors will maintain boundaries between personal and Council business, and commit to ensuring that the role as a Councillor does not impact on these relationships outside of Council, and that the relationships do not impact upon good judgment when undertaking the role as a Councillor.

3.2 Councillor Support, Expenses and Information

Councillors acknowledge that the resources provided to support them are publicly funded and with that comes a heightened responsibility to ensure they are used effectively and economically for the purposes they were provided.

Councillors must adhere to the requirements and principles of the “Councillor Support and Allowances Policy”.

Councillors will adhere with all Council policies in regard to provided resources, including IT and will not use Council resources including email accounts, phones, laptops or the services of Council officers for private purposes.

Councillors are provided with relevant information to help make informed decisions and fulfil their duties, some of which will be made publicly available, or in some instances, remain confidential. Councillors acknowledge and understand the requirements when dealing with confidential information as deemed by the *Local Government Act 2020*.

Councillors will only use the information gained for the purposes of undertaking the role of a Councillors. The Executive Team or relevant Officers will only be requested to provide information to gain a broader understanding of an issue that falls under Council roles and responsibilities. Information communicated to one Councillor will be communicated to all.

3.3 Conflict of Interest Procedures

Each Councillor is required to identify, manage and disclose any conflicts of interest they may have. Councillors therefore recognise the importance of fully observing the requirements of *the Act* in regard to the disclosure of conflicts of interest and will comply with requirements **of the Local Government Act 2020 and the Governance Rules 2020** in regard to conflicts of interest. Upon identifying a conflict of interest, Councillors will follow the procedures as set out in *The Act*.

In addition to the legislated requirements Councillors will:

- a) give early consideration and notify the Mayor as well as the Chief Executive Officer to whether a conflict of interest exists on any matter to be considered at a Council meeting/briefing, Delegated Committee or advisory committee of which the Councillor

- is a member.
- b) recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual Councillor and the Council Officers cannot offer any advice in relation to potential conflicts. If a Councillor cannot confidently say that he or she does not have a conflict of interest, the Councillor will declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest;
 - c) notify, as soon as possible, the Mayor or the Committee Chair if they consider that they are unable to vote on a matter because of a conflict of interest depending on whether the matter is to be considered by the Council or a delegated committee.

3.4 Gifts and Bribery

Councillors must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from you or from the Council, through the provision of gifts, benefits or hospitality of any kind.

Councillors will abide by the Councillor Gifts and Benefits Policy.

3.5 Fraud and Corruption

Council is committed to building and sustaining an ethical, efficient and effective culture where opportunities for fraud, corruption and maladministration are minimised.

Transparency and accountability in Council's practices is very important and Council has established procedures to support and protect those who may wish to disclose improper or corrupt conduct by Councillors or Council staff.

Councillors are required to comply with legislation, policies and lawful instructions in the performance of your work. Any workplace behaviour that violates any law or regulation or could represent fraud or corrupt conduct, mismanagement of public resource or is a danger to health or safety should be reported to the Chief Executive Officer or the Public Interest Disclosure Coordinator immediately.

3.6 Elections (Council, State & Federal elections)

We will abide by the Election Period Policy contained in Council's Governance Rules 2020, which governs the actions of Murrindindi Shire Council and the Councillors during an election period.

Should a Councillor in their individual capacity choose to nominate as a candidate for a State or Federal Election they will take leave from Council for the election period.

4 Councillor must not discredit or mislead Council or Public

The Standards of Conduct state that:

- 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.

4.1 Interaction with the community

Fostering productive relationships between Council and the community through open communication, collaboration and engagement is imperative in the role of the Councillor.

Councillors must ensure that any communication with the community is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person or which seek to undermine a decision or the decision making process of Council.

Councillors have an obligation to represent the best interests of their community, the Council and the wider municipality. Expectations must be balanced and Councillors must do so in a fair, honest and transparent manner.

4.2 Communications, Media and Social Media

Councillors as representatives of the local community have a primary responsibility to be responsive to the community views and to adequately communicate the position and decisions of Council. The Mayor as the leader of the Councillor group is the primary spokesperson for the Council and the CEO is the spokesperson for the organisation, this will be respected by the Councillors.

Individual Councillors are entitled to express their personal opinions through the media, however it should be made clear that such comment is a personal view and does not represent the position of Council. Councillors must also consider the context of their comments to ensure Council does not suffer disrepute.

Councillors need to ensure that the use of social media minimises exposure of Council and Councillors to legal and reputational risk. Councillors must abide by the

When using social media councillors need to have at the forefront of their minds their obligations under the Code of Conduct. The Code of Conduct applies to online activity in the same way it does to other written or verbal communications.

5 Improper Conduct

5.1 Misuse of Position

A Councillor must not intentionally misuse their position to gain or attempt to gain advantage or cause detriment. This includes use of information, disclosure of confidential information, influencing or directing staff, exercising an unauthorised power, misusing public funds or participating in a decision with a conflict of interest which was not declared.

5.2 Directing a member of Council Staff

It is an offence for a Councillor to direct or seek to direct a member of Council staff in the performance of specified types of tasks. This includes:

- in the exercise of a delegated power, performance of a delegated duty or function
- in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act
- 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 this Act or any other Act
- in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

5.3 Disclosure of Confidential Information

A Councillor must not intentionally or recklessly disclose information that the person knows or should reasonably know is confidential information.

6 Misconduct, Serious Misconduct and Gross Misconduct

6.1 Misconduct

Misconduct by a Councillor means any breach of the prescribed standards of conduct as described in this Councillor Code of Conduct.

6.2 Serious Misconduct

Serious Misconduct by a Councillor is defined as being any of the following:

- a) the failure by a Councillor to comply with the Council's internal arbitration process
- b) the failure by a Councillor to comply with a direction given to the Councillor by an arbiter
- c) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor
- d) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel
- e) 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
- 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;

6.3 Gross Misconduct

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

- a) failed to comply with the Council's internal arbitration process
- b) is not of good character or
- c) is otherwise not a fit or proper person to hold the office of Councillor, including behaviour that is sexual harassment and that of an egregious nature.

7 Maintaining the Integrity of this Code

7.1 Dispute Resolution

Councillors have an individual and collective responsibility to try every avenue possible to resolve such disputes in house and from allowing them to escalate further.

This dispute resolution procedure is intended to be used:

1. when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council or
2. to manage complaints or concerns regarding the behaviour of Councillors from the public or Council staff.

It is not intended to resolve differences in policy or decision-making, which are appropriately resolved through discussion and voting in Council and Committee Meetings.

Where the dispute arises from a complaint generated by a member of the public or Council staff, access to the dispute resolution process under this Code is only possible where a Councillor or group of Councillors takes up the complaint about another Councillor on behalf of the complainant.

Step 1. Self –Resolution

Responsible Authority - Councillors

Councillors must take personal responsibility and endeavour to resolve their differences in an informal, but at all times, courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

Councillor Only Time is an opportunity to respectfully and constructively raise issues for discussion by the group.

Mayoral Negotiation

If the informal resolution process between the Councillors is unsuccessful, the Mayor should be involved as soon as practically possible to convene a meeting of the parties.

A dispute referred for Mayoral negotiation 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 the Councillor Code of Conduct.

The party requesting the Mayoral negotiation meeting is to provide the Mayor 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 “Mayoral negotiation” dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, 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;
- 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 requestor or the requestor’s representative.

Within 5 working days of receipt of the complaint, the Mayor will:

- provide written acknowledgment of receipt of the complaint to the Complainant;
- provide a copy of the complaint to the Councillor concerned; and
- attempt to facilitate a resolution and convene a meeting. The Mayor may call upon the Councillor Conduct Officer for advice and guidance at this point in the process.

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 section 28 of the *Local Government Act 2020*, and the observation of the Councillor Standards of Conduct and the Councillor 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. Where one party does not comply with the agreement, the other party has recourse to external mediation.

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 parties should progress to external mediation.

Dispute between Councillors and the Mayor

In the event that the dispute involves the Mayor, the Deputy Mayor or other Councillor nominated by Council resolution will perform the role of the Mayor in facilitating discussions between the parties in dispute and liaising with the CCO.

External Mediation

If reconciliation of the dispute is not possible after Mayoral negotiation, it is the responsibility of the Mayor to seek assistance from an external mediator to resolve the dispute, preferably with the active support of the parties to the dispute, who must be informed of such a decision in any circumstance.

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 “self resolution”.

The applicant is to submit a written application to the CCO 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 Councillor Code of Conduct, 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;
- 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 that it is submitted to the CCO or as soon as practical thereafter.

The CCO is to ascertain (in writing) whether or not 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 Councillor Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

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

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

The CCO 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. 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 Councillor Code of Conduct.

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 resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

7.2 Breaches of the Prescribed Standards of Conduct

Internal Arbitration process

Section 141 of the Local Government Act 2020 prescribes the Internal Arbitration Process:

1. The internal arbitration process applies to any breach of the prescribed standards of conduct.
2. The following applies to an internal arbitration process—
 - a) any processes prescribed by the regulations, including any application process
 - b) the arbiter must ensure that parties involved in internal arbitration process are given an opportunity to be heard by the arbiter
 - c) the arbiter must ensure that a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly
 - d) any requirements prescribed by the regulation

Making an Application

An application for an internal arbitration process to make a finding of misconduct against a Councillor may be made by:

- the Council following a resolution of the Council; or
- a Councillor or a group of Councillors.

An application under section 143 of the *Local Government Act 2020* must be made within 3 months of the alleged misconduct occurring.

An application under section 143 must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c).

The prescribed process for an application for internal arbitration must include:

- the name of the Councillor alleged to have breached the standards of conduct; and
- the clause of the standards of conduct that the Councillor is alleged to have breached; and
- the misconduct that the Councillor is alleged to have engaged in that resulted in the breach; and
- after receiving an application under section 143 of the Act, the Councillor Conduct Officer provides the application to the Councillor who is the subject of the application.

An arbiter appointed to hear a matter subject to an application must:

- a) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- b) ensure that the hearing is not open to the public.

An arbiter—

- a) may hear each party to the matter in person or solely by written or electronic means of communication; and
- b) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit; and
- c) may at any time discontinue the hearing if the arbiter considers that
 - I. the application is vexatious, misconceived, frivolous or lacking in substance; or
 - II. the applicant has not responded, or has responded inadequately, to a request for further information.

Principal Councillor Conduct Registrar must examine application

The Principal Councillor Conduct Registrar, after examining an application under section 143, must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is 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 Councillor Code of Conduct as specified in the application.

The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a) or (b).

The rejection of an application by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 143 in respect of the same conduct by a Councillor that was the subject of the rejected application.

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.

Arbiter must refer certain applications

If, at any time before, during or after the hearing of an application for an internal arbitration process, the arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct and would more

appropriately be dealt with as an application under section 154, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.

If the Principal Councillor Conduct Registrar receives a referral under subsection the above, the Principal Councillor Conduct Registrar must notify the parties to the application for an internal arbitration process that the matter has been referred by the arbiter.

Sanctions that may be imposed by an arbiter on finding of misconduct

1. If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor.
2. 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;
 - e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.
3. The arbiter must provide a written copy of the arbiter's decision and statement of reasons to—
 - a) the Council; and
 - b) the applicant or applicants; and
 - c) the respondent; and
 - d) the Principal Councillor Conduct Registrar.
4. Subject to subsection (5), a copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.
5. If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled under subsection (4).

No Applications during Election Period

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution 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 resolution 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 were 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.

Request for Councillor Conduct Panel

The Principal Councillor Conduct Registrar manages the establishment of Councillor Conduct Panels.

All applications (supported with evidence) to establish a panel to hear allegations of misconduct or serious misconduct must go to the registrar. The panel must be established if the registrar is satisfied that the application is not frivolous or misconceived or lacking in substance, is supported by evidence and council processes have been fully exhausted or are not appropriate.

Notes Section 154 Application to Councillor Conduct Panel

1. A Councillor Conduct Panel may hear an application that alleges serious misconduct by a Councillor.
2. Subject to subsection (4), an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by—
 - a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or
 - b) a Councillor or a group of Councillors; or
 - c) the Chief Municipal Inspector.
3. An application under subsection (2) must be made within 12 months of the alleged serious misconduct occurring.
4. An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor that alleges that the Councillor has failed to disclose a conflict of interest may only be made by the Chief Municipal Inspector.
5. An application made under this section must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(n).
6. An application made under this section must—
 - a) specify the ground or grounds for the application; and
 - b) set out—
 - I. the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting serious misconduct; and
 - II. the particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the serious misconduct; and
 - c) specify—
 - I. any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or
 - II. if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter.
7. If an application is made under this section by the Council or a group of Councillors, the application must state the name and address of the Councillor whom the Council or the group of Councillors has appointed as representative of the Council or the group of Councillors.