



## **COUNCILLOR CODE OF CONDUCT**

**Adopted January 2021**

## Contents

1. INTRODUCTION.....	4
2. AUTHORISATION PROVISION .....	4
3. DEFINITIONS .....	4
4. QUALIFICATION.....	4
5. COMMENCEMENT DATE.....	5
6. ACCESS.....	5
7. OBJECTIVE .....	5
8. PURPOSE.....	5
9. APPLICATION.....	6
10. LEGISLATIVE CONTEXT.....	6
10.1 GENERAL .....	6
10.2 OVERARCHING GOVERNANCE AND SUPPORTING PRINCIPLES .....	7
10.3 ROLES AND RESPONSIBILITIES.....	7
10.3.1 Role of the Mayor .....	7
10.3.2 Specific powers of the Mayor .....	8
10.3.3 Role of the Councillors .....	8
10.3.4 Role of the CEO .....	9
11 LEGISLATED STANDARDS OF CONDUCT.....	9
11.1 TREATMENT OF OTHERS .....	9
11.2 PERFORMING THE ROLE OF COUNCILLOR.....	9
11.3 COMPLIANCE WITH GOOD GOVERNANCE MEASURES .....	10
11.4 REPUTATION OF THE COUNCIL.....	10
12 COUNCIL'S STANDARDS OF CONDUCT.....	11
12.1 GENERAL .....	11
12.2 INDIVIDUAL OPINION AND DEBATE .....	12
12.3 CRITICISM .....	12
12.4 COUNCILLOR BRIEFINGS .....	12
12.5 STATUTORY DECISION-MAKING AND ENFORCEMENT RESPONSIBILITIES. 12	
12.6 USE OF COUNCIL RESOURCES.....	14
12.7 COMMUNICATIONS WITH THE MEDIA .....	14
12.8 SOCIAL MEDIA .....	14
12.9 INFORMATION REQUESTS .....	14
12.10 FRAUD AND CORRUPTION .....	14

12.11	CONDUCT DURING THE ELECTION PERIOD.....	15
12.12	CONFIDENTIAL INFORMATION.....	15
12.13	CONFLICT OF INTEREST .....	15
13	PROHIBITED CONDUCT .....	15
13.1	GENERAL .....	15
13.2	IMPROPER CONDUCT .....	16
13.2.1	Misuse of Position .....	16
13.2.2	Directing a member of Council staff .....	16
14	RECEIPT OF GIFTS, BENEFITS AND HOSPITALITY .....	16
15	COMPLAINTS.....	17
16	COUNCILLOR DISPUTES – RESOLVING CONDUCT RELATED MATTERS .....	17
16.1	OPTION 1 – SELF RESOLUTION .....	18
16.2	OPTION 2 – EXTERNAL MEDIATION.....	19
16.3	OPTION 3 – INTERNAL ARBITRATION PROCESS.....	20
16.3.1	Arbiter’s fees .....	20
16.3.2	Legal representation costs.....	21
16.4	OPTION 4 - COUNCILLOR CONDUCT PANEL .....	21
16.5	THE VICTORIAN CIVIL AND ADMINSTRATIVE TRIBUNAL INVOLVEMENT.....	21
17	PENALTIES.....	22
18	DISQUALIFICATION TO BE A COUNCILLOR .....	22
19	REVIEW OF THE CODE .....	22
20	AMENDMENTS TO THE CODE.....	22
	ATTACHMENTS.....	23
	ATTACHMENT 1 - DEFINITIONS .....	24
	ATTACHMENT 2 - RELATED DOCUMENTS.....	28
	ATTACHMENT 3 - LEGISLATIVE PROVISIONS .....	31
	ATTACHMENT 4 - COUNCILLOR BRIEFINGS CHARTER.....	39

## **1. INTRODUCTION**

This Code is a public declaration that the Councillors of the Macedon Ranges Shire Council (Council) are committed to:

- a) the principles of good governance;
- b) being honest and accountable leaders;
- c) working together in the best interests of the municipality;
- d) managing resources responsibly;
- e) making decisions which consider the diverse needs of the municipality;
- f) representing and advocating for the needs and interests of the municipality; and
- g) encouraging active participation in civic life.

The Code seeks to foster good working relationships between Councillors and to enable them to work constructively together in the best interests of the local community.

Council's previous Councillor Code of Conduct (Code) was adopted on 25 September 2019 and met the requirements of section 76C of the *Local Government Act 1989* (the LGA 1989).

A new local government act, the *Local Government Act 2020* (LGA 2020), was passed in 2020. Section 139 of the LGA 2020 provides that every Council must adopt a Councillor Code of Conduct (Code) within four months of each Council election which includes matters prescribed by the *Local Government (Governance & Integrity) Regulations 2020* (the Regulations). A Councillor Code of Conduct may include other matters which the Council considers appropriate.

## **2. AUTHORISATION PROVISION**

This Code was adopted by Council on 27 January 2021 and replaces the previous Code.

## **3. DEFINITIONS**

Specific terms used in this Code are shown in the LGA 2020, extracts of which are included as Attachment 1.

## **4. QUALIFICATION**

While this Code is a legislative requirement, it is not the only source of standards of Councillor conduct.

Councillors have a responsibility to be familiar with and comply with relevant legislation and Council policies and guidelines (including those listed in Attachment 2 — Related Documents) adopted from time to time:

- a) by resolution of the Council; or
- b) approved by the Chief Executive Officer (CEO) whether in accordance with their statutory responsibilities as a Councillor or under delegated authority.

A key part of Councillors knowing and understanding their responsibilities is their participation in Councillor induction training. Shortly following the commencement of the 2020-2024 Council term, Councillor induction training was conducted which included presentations by Council staff and external presenters. Councillors were also provided with a Councillor Resource Kit which included comprehensive information in relation to Councillor conduct. Similar Councillor induction training will be conducted at the start of each new Council term. Given the information already provided as part of the Councillor induction training and in Council's *Governance Rules* and policies, this Code complements, rather than duplicates, those documents. Councillors will continue to be provided with opportunities for professional development.

If in any doubt about their obligations, Councillors should seek advice from the CEO or senior staff.

## **5. COMMENCEMENT DATE**

The Code is effective from 28 January 2021 and remains in force until the Council adopts a new Councillor Code of Conduct.

## **6. ACCESS**

A copy of the Code will be:

- a) given to each Councillor;
- b) available for inspection at the Council offices; and
- c) published on the Council's website.

## **7. OBJECTIVE**

The LGA 2020 provides that the role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.

In undertaking its role, Council performs the functions and exercises the powers conferred by around 150 Acts and Regulations for the peace, order and good government of the municipal district. Good governance is fundamental to a Council being able to perform its purpose and relies on good working relations between Councillors.

## **8. PURPOSE**

Section 139 of the LGA 2020 provides that:

*“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.*”

## **9. APPLICATION**

This Code applies, but is not limited to:

- a) Councillors when attending:
  - i. Council meetings;
  - ii. committee meetings;
  - iii. meetings conducted under the auspices of the Council (formerly referred to as Assemblies of Councillors);
  - iv. ward meetings;
  - v. conferences, seminars, professional development activities and the like;
  - vi. community consultation meetings;
  - vii. public functions; and
- b) Councillors in their role as delegates to external organisations.

## **10. LEGISLATIVE CONTEXT**

### **10.1 GENERAL**

The LGA 2020 requires the adoption of a Councillor Code of Conduct including the matters prescribed in the Regulations to:

- a) within four months of each Council election; and
- b) by a resolution of the Council passed by at least two-thirds of the total number of Councillors.

If a new code is not adopted, the current Code of Conduct continues to operate.

The relevant statutory provisions are set out in Attachment 3.

## **10.2 OVERARCHING GOVERNANCE AND SUPPORTING PRINCIPLES**

The LGA 2020 provides that a Council, must in the performance of its role, give effect to the overarching governance principles, namely:

- a) Council decisions must 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, 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; and
- 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.

## **10.3 ROLES AND RESPONSIBILITIES**

### **10.3.1 Role of the Mayor**

The LGA 2020 provides that the role of the Mayor is to:

- a) chair Council meetings;
- b) be the principal spokesperson for the Council;

- c) lead engagement with 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 CEO;
- h) provide advice to the CEO when the CEO is setting the agenda for Council meetings; and
- i) perform civic and ceremonial duties on behalf of the Council.

### **10.3.2 Specific powers of the Mayor**

The Mayor may:

- a) appoint a Councillor to be the chair of a delegated committee;
- b) direct a Councillor, subject to any procedures or limitations specified in the *Governance Rules*, to leave a Council meeting if the behaviour of the Councillor is preventing the Council from conducting its business; and
- c) require the CEO to report to the Council on the implementation of a Council decision.

### **10.3.3 Role of the Councillors**

The LGA 2020 provides that the role of Councillors is to:

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

In performing their role as Councillor, Councillors must:

- a) consider the diversity of interests and needs of the municipal community;
- b) support the role of the Council;
- c) acknowledge and support the role of the Mayor;
- d) act lawfully and in accordance with the oath or affirmation of office;



- e) act in accordance with the standards of conduct; and
- f) comply with Council procedures required for good governance.

#### **10.3.4 Role of the CEO**

The functions of the CEO include:

- a) supporting the Mayor and the Councillors in the performance of their roles;
- b) managing interactions between members of Council staff and Councillors; and
- c) ensuring that Council policies, practices and protocols are developed and maintained to support arrangements for interaction between members of Council staff and Councillors.

## **11 LEGISLATED STANDARDS OF CONDUCT**

The Regulations provide standards of conduct under four headings as follows.

### **11.1 TREATMENT OF OTHERS**

Councillors must treat fellow Councillors, Council staff, the municipal community and members of the public with dignity, courtesy and respect, including by:

- a) taking positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*;
- b) supporting the Council in fulfilling its obligation to achieve and promote gender equality;
- c) not engaging 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, treating all persons with respect and with due regard for their opinions, beliefs, rights and responsibilities.

### **11.2 PERFORMING THE ROLE OF COUNCILLOR**

Councillors must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by:

- a) undertaking any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to perform the role of Councillor;
- b) diligently using Council processes to inform themselves about matters which are subject to Council decisions;
- c) ensuring that they are fit to conscientiously perform the role of Councillor when acting in that capacity or purporting to act in that capacity; and

- d) representing the interests of the municipal community in performing the role of Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

### **11.3 COMPLIANCE WITH GOOD GOVERNANCE MEASURES**

Councillors must diligently and properly comply with the following Council procedures, policies and practices established for the good governance of the Council:

- a) policies, practices and protocols established by the CEO in accordance with section 46 of the LGA 2020 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 LGA 2020;
- c) the *Governance Rules* developed, adopted and kept in force by Council under section 60 of the LGA 2020;
- d) ministerial directions issued under section 175 of the LGA 2020.
- e) all other Council policies and procedures in force from time to time including those in relation to:
  - i. community engagement;
  - ii. complaints handling;
  - iii. receiving gifts and hospitality;
  - iv. media;
  - v. public transparency;
  - vi. child safety
  - vii. social media; and
  - viii. webcasting of Council meetings;

Council's policies and procedures are available on Council's intranet.

### **11.4 REPUTATION OF THE COUNCIL**

In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.

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.

## **12 COUNCIL'S STANDARDS OF CONDUCT**

### **12.1 GENERAL**

Elected representation requires public trust to make decisions and to represent the best interests of the community. Good government is not necessarily making a popular, easy or unified decision. Good government is making decisions which best align with the adopted Council Plan.

Good government is robust, responsible and open to scrutiny. Debate and dissent are a natural part of the decision-making process. Debate should at all times be guided by the values of trust, integrity, innovation and respect.

Councillors will abide by the following principles of behaviour:

- a) treat all people equally and with courtesy and respect;
- b) act with integrity and honesty;
- c) promote trust in Council; and
- d) abide by all relevant Council policies.

In abiding by these principles and values, Councillors will:

- a) treat members of the community with dignity and make every effort to ensure that neither offence nor embarrassment are caused;
- b) treat other Councillors with respect, even when disagreeing with their views or decisions;
- c) debate contentious issues without resorting to personal acrimony or insult;
- d) ensure punctual attendance at Council and committee meetings;
- e) act with courtesy towards Council staff and avoiding intimidatory behaviour;
- f) support the Mayor in the performance of their duties;
- g) act honestly in all dealings with the community, with other Councillors and with Council staff;
- h) always act with impartiality and in the best interests of the community as a whole;
- i) not act in ways that may damage the Council or its ability to exercise good government;
- j) exercise reasonable care and diligence in performing their functions as Councillors; and
- k) comply with all relevant federal, state or local laws.

A key part of succeeding as an elected representative is listening to, and engaging with, the local community. Councillors are committed to seeking the views of all community members and taking those views into account in their decision-making.

## **12.2 INDIVIDUAL OPINION AND DEBATE**

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

There may be times when a Councillor as an individual disagrees with a majority decision of the Council and wants the community to know. The most appropriate time and place for communicating diverging views is when an item is being debated in the Council Chamber. Councillors can then encourage community members or members of the media to watch the recording of the meeting to hear their view. This provides the best opportunity for informed decision-making and for both the community and the media to better understand the diversity of Councillor views and perspectives in context.

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

## **12.3 CRITICISM**

Although Council supports transparency and accountability in decision-making, free speech and the use of appropriate robust processes to debate policy, pursue political objectives and resolve differences, it does not and will not condone personal and public criticisms of Councillors, staff and the organisation. Any Councillor who engages in such conduct will be in breach of this Code. Council meetings, unlike state and federal parliamentary proceedings, do not afford parliamentary privilege as a legal protection against liability for defamation. Councillors can be individually liable for defamation.

## **12.4 COUNCILLOR BRIEFINGS**

Councillor briefings are held on a regular basis, the purpose being to enable senior staff to brief Councillors on strategic matters and future Council agendas. Briefings provide an opportunity for Councillors to be informed, to discuss, challenge, question and clarify matters of Council business and up-coming meeting agendas. They also provide the opportunity for Councillors to discuss policy formulation and direction. Briefings are chaired by the Mayor. They are not a decision-making forum and are not open to the public.

Although briefings are “informal”, many of the provisions of the LGA 2020 and Council’s *Governance Rules* apply, including those relating to conflicts of interest, confidentiality, directing staff and misuse of position.

Attachment 4 is Council’s Councillor Briefing Charter.

## **12.5 STATUTORY DECISION-MAKING AND ENFORCEMENT RESPONSIBILITIES**

Councillors may have to deal with 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.

Councillors may become involved in local cases as a ward representative, or more actively involved in decision-making as a member of a committee or at meetings of the Council which deal with these applications. If so, Councillors must ensure that Council's statutory decisions are properly taken and that parties involved in the development process are dealt with fairly.

To reduce the risk of decisions being legally challenged, in dealing 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 committee that deals with applications, or 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, that Councillor 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.

Councillors proposing to take part in the consideration of applications at a meeting of a committee or of the Council, must not give grounds to doubt their ability to remain impartial and must 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. A Councillor should exclude themselves from any involvement, both formal and informal, in relation to any application if a fair-minded and reasonably informed observer might reasonably apprehend that they might not bring an open mind to the matter.

A Councillor must not declare their voting intention before the meeting. Anyone who may be seeking to influence a Councillor must be advised that the Councillor will not formulate an opinion on a particular proposal until all available information is given and has been duly considered at the relevant meeting.

Any Councillor with an interest, whether financial, non-financial, or personal, in the outcome of a decision on an application, or an agreement, or on taking enforcement action, must declare that interest and refrain from taking part in the consideration of the application.

Councillors will make decisions which are:

- a) in the best interests of the community; and
- b) free from fraud and corruption;

and will not:

- a) participate in a decision when there is a conflict of interest;
- b) allow private interests to affect their public duty; or
- c) use their position for personal benefit.

## **12.6 USE OF COUNCIL RESOURCES**

The details of support provided to enable Councillors to perform their role are set out in the *Council's Council Support and Expenses Policy*.

## **12.7 COMMUNICATIONS WITH THE MEDIA**

Councillors will comply with Council's *Media Policy* and respect the functions of the Mayor and CEO as the spokespersons for Council.

## **12.8 SOCIAL MEDIA**

Councillors recognise that a social media presence can blur the lines between personal and professional lives. Councillors should always:

- a) assume that anything said can be read by anyone, anywhere, at any time;
- b) remember that information online is retained;
- c) note that Council records may be accessible in the form of public documents or through the freedom of information process;
- d) exercise good judgement;
- e) be aware that inappropriate conduct can negatively affect Council and Councillors; and
- f) apply the following test: 'would my fellow councillors, constituents or peers be happy to see this content published?'

## **12.9 INFORMATION REQUESTS**

Unless the matter is urgent, when there is a need for a Councillor to raise a matter with management, Councillors are encouraged to use the Councillor Portal in the first instance, as this enables issues to be recorded centrally, referred to the appropriate staff member and monitored to ensure a response is provided.

## **12.10 FRAUD AND CORRUPTION**

Ethical behaviour is an integral part of responsible, effective and accountable government. Councillors will act in accordance with Council's obligations under the *Public Interest Disclosure Act 2012* to facilitate the making of disclosures of improper conduct by public officers and public bodies, including the Council, its employees and Councillors.

Councillors will immediately report to the CEO and/or the appropriate integrity body, in line with Council's *Public Interest Disclosure Policy* any suspected, potential or actual fraudulent, criminal, unethical, corrupt or other unacceptable behaviour. Councillors will participate to the best of their ability in any subsequent investigation, whether undertaken internally or externally.

The LGA 2020 provides that:

- a) if a Municipal Monitor considers at any time that any matter referred to the Municipal Monitor by the IBAC under section 73 of the *Independent Broad-based Anti-corruption Commission Act 2011* appears to involve conduct that is corrupt conduct, the Municipal Monitor must inform the IBAC; and
- b) if the Chief Municipal Inspector (CMI) considers at any time that any matter referred to the CMI by the IBAC under section 73 of the *Independent Broad-based Anti-corruption Commission Act 2011* appears to involve conduct that is corrupt conduct, the CMI must inform the IBAC.

Additionally, the CEO is required by law to report suspected corrupt conduct to IBAC pursuant to section 57(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*.

### **12.11 CONDUCT DURING THE ELECTION PERIOD**

Councillors will comply with Council's *Election Period Policy*.

### **12.12 CONFIDENTIAL INFORMATION**

Councillors will comply with the relevant provisions of the LGA 2020 (see Attachment 3).

### **12.13 CONFLICT OF INTEREST**

Councillors will comply with the relevant provisions of the LGA 2020 (see Attachment 3) and the *Conflicts of Interest Guide* developed by Local Government Victoria. A copy of the guide will be provided to Councillors on request.

Conflict of interest requirements ensure government is transparent and accountable.

Councillors must ensure that their private interests do not affect their public duties as a Councillor and that they do not use their position for personal benefit.

## **13 PROHIBITED CONDUCT**

### **13.1 GENERAL**

The LGA 2020 has specific provisions that prohibit Councillors from engaging in certain conduct including conduct relating to the following matters:

- a) acceptance or refusal of gifts, benefits and hospitality;
- b) conduct during the election period;
- c) confidential information;
- d) conflict of interest;
- e) improper conduct;
- f) meeting procedures;
- g) misuse of position; and

- h) personal interest returns.

## **13.2 IMPROPER CONDUCT**

Councillors will comply with the relevant provisions of the LGA 2020 (see Attachment 3).

### **13.2.1 Misuse of Position**

The relevant provisions of the LGA 2020 are set out in Attachment 3.

### **13.2.2 Directing a member of Council staff**

The relevant provisions of the LGA 2020 are set out in Attachment 3.

## **14 RECEIPT OF GIFTS, BENEFITS AND HOSPITALITY**

The receipt of gifts, benefits or hospitality can create a real or perceived conflict of interest, raise the subject of bias and give the impression of using position for personal gain. It is important that the implications of receiving gifts and hospitality are carefully considered by Councillors.

Gifts include, but are not limited to:

- a) goods and services of a commercial value;
- b) property (real or otherwise);
- c) transfers of money;
- d) loans of money or property;
- e) free services (such as accommodation, travel, entertainment and invitations to sporting events); and
- f) goods and services made available at heavily discounted prices.

Councillors will comply with:

- a) section 137 of the LGA 2020 (see Attachment 3) which includes reference to:
  - i. anonymous gifts
  - ii. the legislated “gifts disclosure threshold”, currently \$500.00;
- b) the provisions of the Regulations which include gift declarations in the biannual personal interest return; and
- c) Council’s policy in relation to the acceptance (or refusal) of gifts, benefits and hospitality;



Section 138 of the LGA 2020 also requires Council to adopt a gift policy and maintain a gift register. Councillors are required to comply with Council's gift policy as in force from time to time. A copy of the current Councillor Gifts and Hospitality Form will be provided to Councillors on request to the Governance Unit.

## **15 COMPLAINTS**

In addition to standard complaints, such as customer service complaints, Council may receive complaints about very serious matters, such as corruption. The LGA 2020 refers to these as "public interest complaints" (see the definition in Attachment 3).

Public interest complaints include improper conduct, including, but not limited to:

- a) corruption;
- b) serious professional misconduct;
- c) dishonest performance of public functions;
- d) an intentional or reckless breach of public trust;
- e) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the public officer or public body;
- f) a substantial mismanagement of public resources;
- g) a substantial risk to the health or safety of one or more persons; and
- h) a substantial risk to the environment.

Depending on the nature of the complaints, public interest complaints may be investigated by the:

- a) IBAC;
- b) Victoria Police;
- c) Ombudsman;
- d) Victorian Inspectorate;
- e) CMI; or
- f) Office of the Victorian Information Commissioner.

## **16 COUNCILLOR DISPUTES – RESOLVING CONDUCT RELATED MATTERS**

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted, the matter still remains unresolved, the parties should consider using Council's dispute resolution processes as set out below.

Council adopts the following options in dealing with conduct complaints:

### **16.1 OPTION 1 – SELF RESOLUTION**

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 negotiation may relate to:

- a) an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- b) an alleged contravention of this Code.

The party requesting the self-resolution meeting is to provide the Mayor with the name of the other Councillor(s) and written details of the dispute. The written request is to indicate that it is for a self-resolution process.

Where the request relates to an alleged contravention of this Code, the applicant must:

- a) specify the name of the Councillor alleged to have contravened the Code;
- b) specify the provision(s) of the Code that allegedly has/have been contravened;
- c) include evidence in support of the allegation;
- d) name the Councillor appointed to be their representative where the request has been made by a group of Councillors; and
- e) be signed and dated.

The applicant must notify the other party of the request and provide them with a copy of the written request at the same time as when provided to the Mayor, or as soon as practicable thereafter.

The Mayor is to ascertain whether or not the other party is willing to attend the meeting. If the other party is not willing to attend a meeting, the Mayor is to advise the applicant immediately. No further action is required of the Mayor. Declining to participate in a meeting does not constitute a contravention of this Code.

If the other party consents to a meeting, the Mayor is to convene a 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. If the parties cannot resolve the dispute at the initial meeting, a further meeting or meetings may be convened with the consent of both parties.

The role of the Mayor is to promote behaviour among Councillors that meets the standards of conduct set out in the Code (see section 18(1)(e) of the LGA 2020).

The Mayor will document any proposed agreement reached at the meeting. Where the parties are in agreement, the agreement is to be signed by the parties and witnessed by the Mayor.

Copies of the agreement are to be provided to both parties. Where no agreement is reached, the parties may wish to proceed with external mediation or internal arbitration. .

Where the Mayor is a party to the dispute, role of the Mayor in this dispute resolution process is to be undertaken by:

- a) in the first instance, the Deputy Mayor (if possible); or
- b) in the event that (a) is not possible, and only with the agreement of the parties to the dispute, the immediate past Mayor if still a current Councillor or another current Councillor agreed between the parties (if possible); or
- c) a person nominated by the Institute of Arbitrators and Mediators Australia.

The Deputy Mayor, immediate past Mayor or person appointed by the Institute of Arbitrators and Mediators Australia will perform the functions as outlined as if they were the Mayor.

If the parties are in dispute about the conduct of self-resolution, the applicant has the options of:

- a) external mediation;
- b) internal arbitration; and
- c) an application to a Councillor Conduct Panel (CCP) in relation to serious misconduct.

## **16.2 OPTION 2 – EXTERNAL MEDIATION**

A Councillor or a group of Councillors may make an application for a dispute to be referred to external mediation, whether or not the dispute has been the subject of an application for self-resolution.

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

- a) an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- b) an alleged contravention of the Code.

The applicant is to submit a written application to the Councillor Conduct Officer (CCO) setting out the name of the Councillor who is the subject of the allegation and the details of the dispute. The application is to indicate that the dispute/issue is to be referred for external mediation.

Where the request relates to an alleged contravention of the Code, the request must:

- a) specify the name of the Councillor alleged to have contravened the Code;
- b) specify the provision(s) of the Code that allegedly has been contravened;
- c) include evidence in support of the allegation;
- d) name the Councillor appointed to be their representative where the request has been made by a group of Councillors; and

- e) be signed and dated by the applicant or the applicant's representative.

The applicant must notify the other party of the request and provide them with a copy of the application at the same time as it is submitted to the CCO, or as soon as practicable thereafter.

The CCO is to ascertain (in writing) whether or not the other party is willing to attend external mediation. If the other party declines to participate, they are to provide (in writing) their reasons for doing so to the CCO. These reasons may be taken into account if the matter is subsequently the subject of an application for a CCP. Declining to participate in an external mediation does not constitute a contravention of this Code.

If the other party agrees to external mediation, the CCO will promptly advise the applicant, the Mayor and the CEO and the CEO will then arrange for an independent, external mediator to be appointed by the Institute of Arbitrators and Mediators Australia.

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

### **16.3 OPTION 3 – INTERNAL ARBITRATION PROCESS**

The LGA 2020 provides for an internal arbitration process in relation to allegations of misconduct by Councillors. This is an internal process in the sense that is managed internally, but unlike the other dispute resolution options in this Code, it is covered by provisions in the LGA 2020. The relevant legislative provisions are in Attachment 3.

The key provisions provide for:

- a) involvement of an arbiter selected from a panel of arbiters established by the Secretary to the Department of Jobs, Precincts and Regions;
- b) an application for an internal arbitration process to make a finding of misconduct against a Councillor may be made by the Council, a Councillor or a group of Councillors;
- c) an application under this section must be made within three months of the alleged misconduct occurring;
- d) the arbiter is appointed by the Principal Councillor Conduct Registrar (PCCR);
- e) the arbiter may make a finding of misconduct and impose sanctions on the Councillor; and
- f) the arbiter's findings must be tabled at the next Council meeting.

#### **16.3.1 Arbiter's fees**

Section 149 of the LGA 2020 provides that:

- a) the PCCR determines the fees payable to the arbiter; and
- b) Council is responsible for the payment of the fees.

### **16.3.2 Legal representation costs**

Where an application to have legal representation is granted by an arbiter, the costs of the party's legal representation are to be borne entirely by that party.

### **16.4 OPTION 4 - COUNCILLOR CONDUCT PANEL**

Allegations of serious misconduct should be made to a CCP. A CCP is established by the Minister, rather than selected by Council staff and is wholly external to Council. The relevant legislative provisions are shown in Attachment 3.

The key provisions provide for:

- a) panels to be established by the Minister;
- b) the proceedings to be conducted with as little formality and technicality as the requirements of the LGA 2020 and the proper consideration of the matter permit;
- c) no right to representation at the hearing except if the CCP considers that a party requires representation to ensure that the hearing is conducted fairly;
- d) the proceedings to be closed to the public;
- e) CCPs to hear applications alleging serious misconduct;
- f) applications to may be made by the Council, a Councillor or group of Councillors or the CMI;
- g) applications for CCPs to be made within twelve months of the alleged serious misconduct occurring;
- h) the CCP making a finding of misconduct or serious misconduct and imposing sanctions on the Councillor including suspending the Councillor for up to 12 months;
- i) the CCP's decision to be tabled at the next Council meeting and recorded in the minutes of the Council meeting;
- j) the costs associated with a CCP being charged to the Council; and
- k) any expenses arising from the CCP's findings, such as expenses for mediation, training or counselling that occurs at the direction of the CCP to be paid by the Council.

### **16.5 THE VICTORIAN CIVIL AND ADMINSTRATIVE TRIBUNAL INVOLVEMENT**

A person who is affected by the decision made by a CCP may apply to the Victorian Civil and Administrative Tribunal for a review of the decision of the CCP's decision. Where a Councillor is alleged to have engaged in gross misconduct, the CMI can make an application to VCAT. If VCAT makes a finding that a Councillor has engaged in conduct that constitutes gross misconduct, VCAT may order that:

- a) the Councillor is disqualified from continuing to be a Councillor for a period specified by VCAT not exceeding eight years; and
- b) the office of the Councillor is vacated, in which case the Victorian Electoral Commission conducts an electronic countback of votes from the previous election to fill the vacancy.

## 17 PENALTIES

Substantial penalties apply for breaches of the LGA 2020. Penalties are expressed in “penalty units”. In 2020/21, a penalty unit is \$165.22. Examples of potential penalties are shown in the table below.

Section	Description	Penalty (Maximum)	\$ amount (up to)
123	Misuse of position	600 penalty units or imprisonment for five years	\$99,132.00
124	Directing a member of Council staff	120 penalty units	\$19,826.40
125	Disclosing confidential information	120 penalty units	\$19,826.40

## 18 DISQUALIFICATION TO BE A COUNCILLOR

Section 34 (2) of the LGA 2020 provides various reasons why a person is not qualified to be a Councillor. The relevant extracts are shown in Attachment 3.

## 19 REVIEW OF THE CODE

This Code will be reviewed within four months of every general election or earlier by resolution of the Council. Amendment of the Code requires at least a two-thirds majority resolution of the Council.

## 20 AMENDMENTS TO THE CODE

The CEO may propose amendments to the Code for reasons including to reflect legislative or organisational changes. The proposed amendments must be referred to Council for consideration.

## **ATTACHMENTS**

## ATTACHMENT 1 - DEFINITIONS

In the LGA 2020, the Regulations and this Code, the terms shown below have the meanings indicated.

- 1) **bullying** by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff;
- 2) **confidential information** means:
  - a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
  - b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
  - c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
  - d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
  - e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
  - f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
  - g) private commercial information, being information provided by a business, commercial or financial undertaking that:
    - i. relates to trade secrets; or
    - ii. if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
  - h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a);
  - i) internal arbitration information, being information specified in section 145;
  - j) Councillor Conduct Panel confidential information, being information specified in section 169;
  - k) information prescribed by the regulations to be confidential information for the purposes of this definition;
  - l) information that was confidential information for the purposes of section 77 of the *Local Government Act 1989*;



- 3) **Councillor Conduct Panel** means a panel formed by the Principal Councillor Conduct Registrar under section 156;
- 4) in relation conflict of interest:
- a) **family member** means:
    - i. a spouse or domestic partner of the relevant person; or
    - ii. a parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or of their spouse or domestic partner; or
    - iii. any other relative that regularly resides with the relevant person;
  - b) **matter** means a matter with which a Council, delegated committee, community asset committee or a member of Council staff is concerned and that will require:
    - i. a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council, delegated committee or community asset committee in respect of the matter; or
    - ii. a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Council staff in respect of the matter;
  - c) **relevant person** means a person who is a:
    - i. Councillor; or
    - ii. member of a delegated committee who is not a Councillor; or
    - iii. member of Council staff;
  - d) a relevant person has a **general conflict of interest** in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty;
  - e) **private interests** means any direct or indirect interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief;
  - f) a relevant person has a **material conflict of interest** in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter;

- 5) **gift** means any disposition of property otherwise than by will made by a person to another person without consideration in money or money's worth or with inadequate consideration, including:
  - a) the provision of a service (other than volunteer labour);
  - b) the payment of an amount in respect of a guarantee; and
  - c) the making of a payment or contribution at a fundraising function;
- 6) **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;
- 7) **misconduct** by a Councillor means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct;
- 8) **Municipal Monitor** means a person appointed to be a Municipal Monitor to a Council under section 179;
- 9) **prescribed** means in accordance with relevant Regulations;
- 10) **Principal Councillor Conduct Registrar** means the person appointed by the Secretary to be the Principal Councillor Conduct Registrar under section 148;
- 11) **public interest complaint** has the same meaning as it has in section 3 of the *Public Interest Disclosures Act 2012*;
- 12) **Secretary** means the Secretary to the Department of Jobs, Precincts and Regions;
- 13) **serious misconduct** by a Councillor means 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 under section 147;
  - 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 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 the LGA 2020;
- 14) **standards of conduct** means the standards of conduct prescribed under section 139(3)(a) to be included in a Councillor Code of Conduct.

## **ATTACHMENT 2 - RELATED DOCUMENTS**

### **LEGISLATION**

- *Charter of Human Rights and Responsibilities Act 2006.*
- *Freedom of Information Act 1982.*
- *Local Government Act 1989.*
- *Local Government Act 2020.*
- *Privacy and Data Protection Act 2014.*
- *Local Government (Electoral) Regulations 2020.*
- *Local Government (General) Regulations 2020.*
- *Local Government (Governance & Integrity) Regulations 2020*

### **COUNCIL PLANS AND STRATEGIES**

#### **Statutory**

- Asset Plan.
- Council Plan 2017-2027.
- Disability Action Plan.
- Domestic Animal Management Plan.
- Financial Plan.
- Gender Equality Action Plan.
- Municipal Emergency Management Plan
- Municipal Health and Wellbeing Plan
- Revenue and Rating Plan.
- Road Management Plan.
- Workforce Plan.

#### **Non statutory**

- Climate Change Action Plan.
- Early Years Plan 2016-2020.

- Strategic Resource Plan 2020/21.

## **COUNCIL POLICIES**

### **Statutory**

- Bullying Prevention Policy.
- Community Engagement Policy.<sup>1</sup>
- Complaints Policy.
- Councillor Support and Expenses Policy.
- Councillor Gifts Policy.
- CEO Employment & Remuneration Policy.
- Election Period Policy.
- Financial Policies.
- Public Transparency Policy.
- Procurement Policy.
- Recruitment Policy.

### **Non statutory**

- Community Consultation Framework.<sup>2</sup>
- Customer Service Charter.
- ICT Acceptable Use Policy.
- Live Streaming and Publishing Recording of Meetings Policy.
- Media Policy.
- Privacy Policy.
- Related Party Disclosure Policy.
- Social Media Policy and Guidelines.

## **OTHER COUNCIL DOCUMENTS**

---

<sup>1</sup> The draft Policy has been advertised – submissions closed on 20 December 2020.

<sup>2</sup> To be replaced by the Community Engagement Policy

- Councillor Resource Kit.
- *Governance Rules.*
- *Meeting Procedure Local Law No. 11*

## **ATTACHMENT 3 - LEGISLATIVE PROVISIONS**

### **The LGA 2020**

#### ***Section 34(2) - Disqualification***

A person is not qualified to be a Councillor of a Council if the person:

- a) is a member of the Parliament of Victoria or of the Parliament of the Commonwealth of Australia or of another State or a Territory of the Commonwealth; or
- b) is employed as a Ministerial officer, Parliamentary adviser or an electorate officer by a member of the Parliament of Victoria or in a corresponding position (however designated) by, or for, a member of the Parliament of the Commonwealth of Australia or of another State or a Territory of the Commonwealth; or
- c) is a Councillor of another Council constituted under this Act or a member of a corresponding body (however designated) under an Act of another State or a Territory of the Commonwealth; or
- d) is a member of Council staff of the Council;
- e) is an undischarged bankrupt; or
- f) has property that is subject to control under the law relating to bankruptcy; or
- g) has failed to take the oath or affirmation of office of Councillor at any Council when required under this Act during the current term of office of that Council; or
- h) has been disqualified from being a Councillor after a finding by VCAT of gross misconduct, for the period that the period of disqualification specified in the order made by VCAT is in force; or
- i) has been subject to two or more findings of serious misconduct by a separate Councillor Conduct Panel under section 167 in the preceding 8 years and the period during which the person can apply under section 170 to VCAT for a review of those findings has expired, for the period of four years following the second finding of serious misconduct during which the disqualification is in force; or
- j) has been convicted of the offence of failing to lodge an election campaign donation return in relation to the current term of the Council.

#### ***Section 123 – Misuse of Position***

- 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.

Penalty: 600 penalty units or imprisonment for 5 years.

- 2) An offence against subsection (1) is an indictable offence.<sup>3</sup>
- 3) For the purposes of this section, 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;
  - 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.

#### ***Section 124 – Directing a member of Council staff***

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; or
- b) 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; or
- 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 this Act or any other 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.

Penalty: 120 penalty units.

#### ***Section 137 - Gifts***

- 1) Subject to subsection (2), a Councillor must not accept, directly or indirectly, a gift for the benefit of the Councillor the amount or value of which is equal to or exceeds the gift disclosure threshold unless:

---

<sup>3</sup> Indictable offences are usually the more serious offences where the accused has the right to have the matter determined in a higher court before a judge and/or jury.



- a) the name and address of the person making the gift are known to the Councillor; or
- b) at the time when the gift is made:
  - i. the Councillor is given the name and address of the person making the gift; and
  - ii. the Councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.

Penalty: 60 penalty units.

- 2) If the name and address of the person making the gift are not known to the Councillor for whose benefit the gift is intended, the Councillor is not in breach of subsection (1) if the Councillor disposes of the gift to the Council within 30 days of the gift being received.
- 3) In addition to the penalty specified in subsection (1), a Councillor who is found guilty of a breach of that subsection must pay to the Council the amount or value of the gift accepted in contravention of that subsection.

### **Section 138 Councillor Gift Policy**

- 1) A Council must adopt a Councillor gift policy within the period of 6 months after this section comes into operation.
- 2) A Councillor gift policy must include:
  - a) procedures for the maintenance of a gift register; and
  - b) any other matters prescribed by the Regulations.
- 3) A Council may review and update the Councillor gift policy.

### **Section 139 – Code of Conduct**

- 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:
  - 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 four 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.

#### **Section 140 – Review of the Code**

- 1) A Council may review or amend the Councillor Code of Conduct at any time.
- 2) A Council can only amend the Councillor Code of Conduct 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.

#### **Section 141 - 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 Regulations.

#### **Section 142 – The panel list**

- 1) The Secretary must establish a panel list of eligible persons from which an arbiter must be selected to conduct an internal arbitration process.
- 2) The Secretary may appoint as many eligible persons to the panel list as the Secretary considers appropriate.
- 3) A person is eligible for appointment to the panel list if the person:
  - a) is an Australian lawyer who has been admitted to the legal profession for at least five years; or

- b) has any other experience the Secretary considers relevant to the position.

**Section 143 – Application for an internal arbitration process**

- 1) An arbiter may hear an application that alleges misconduct by a Councillor.
- 2) An application for an internal arbitration process to make a finding of misconduct against a Councillor may be made by:
  - a) the Council following a resolution of the Council; or
  - b) a Councillor or a group of Councillors.
- 3) An application under this section must be made within three months of the alleged misconduct occurring.

**Section 144 – Principal Councillor Conduct Registrar**

- 1) 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.
- 2) The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a) or (b).
- 3) 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.

**Section 145 – General Provision**

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.

**Section 146 – Arbiter must refer certain applications**

- 1) 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.
- 2) If the Principal Councillor Conduct Registrar receives a referral under subsection (1), 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.

### **Section 147 – Sanctions that may be imposed by an arbiter**

- 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).

### **Section 150 Councillor Conduct Officer**

- 1) The CEO must:
  - a) appoint a person in writing to be the Councillor Conduct Officer; and
  - b) notify the Principal Councillor Conduct Registrar of the appointment.

- 2) Subject to subsection (3), a person may be appointed to be a Councillor Conduct Officer if:
  - a) the person is a member of Council staff; or
  - b) the Council resolves that the person is suitably qualified to perform the functions of the Councillor Conduct Officer.

### **The Regulations**

The internal arbitration process of a Council must incorporate the following:

- a) the complaint must specify
  - i. the name of the Councillor alleged to have breached the standards of conduct;
  - ii. the standard of conduct that is alleged to have been breached; and
  - iii. the behaviour that is alleged to have resulted in the breach;
- b) after receiving a complaint, the Councillor Conduct Officer must provide the complaint to the Principal Councillor Conduct Registrar and the Councillor who is the subject of the application.

An arbiter appointed to hear a complaint must:

- a) consider the evidence and information provided by the parties to the complaint;
- b) ensure that the rules of natural justice are observed and applied in hearing the complaint;
- c) conduct the hearing of the complaint with as little formality and technicality as the proper consideration of the complaint permit;
- d) ensure that the process is not open to the public.

An arbiter appointed to hear a complaint:

- a) may hear the parties to the complaint in person or by written or electronic means; and
- b) is not bound by the rules of evidence and may inform themselves in any manner they see fit.

The arbiter may at any time close the complaint if the arbiter is of the view that:

- a) it is vexatious, misconceived, frivolous or lacking in substance; or
- b) the complainant has not responded, or has responded inadequately, to a request for further information.

A written copy of the decision and statement of reasons provided by the arbiter must include any sanctions imposed.

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

## **ATTACHMENT 4 - COUNCILLOR BRIEFINGS CHARTER**

### **BRIEF DESCRIPTION**

All Councillors are expected to attend briefings. The Chief Executive Officer, senior staff and specialist officers attend as required. Briefings are not open to members of the public and fall within the definition in section 131 of the *Local Government Act 2020* (LGA 2020) as being “a meeting conducted under the auspices of the Act”. They are subject to the compliance requirements of the LGA 2020 and Council’s *Governance Rules*, including in relation to:

- a) confidential information;
- b) conflict of interest.

The *Governance Rules* provide that the Chief Executive Officer (CEO) must ensure that a summary of the matters discussed at the meeting are:

- a) tabled at the next convenient Council meeting; and
- b) recorded in the minutes of that Council meeting.

The Mayor shall chair all briefings and in the absence of the Mayor, the Deputy Mayor will preside or a chairperson shall be elected by a majority of Councillors present at the meeting.

### **PURPOSE**

To advise and inform Councillors of new matters or the progress of existing matters.

To consider agenda items and officer reports for subsequent meetings and other Council business matters.

Reports are not presented:

- a) to allow Councillors to pre-determine issues being put to a subsequent Council or Committee meeting;
- b) for debate on the ultimate officer recommendation being put to Council; or
- c) to invite Councillor/s preapproval of any subsequent recommendation by officer/s.

Councillor Briefings provide the opportunity for Councillors to be informed, to discuss, challenge, question and clarify matters of Council business and meeting agendas. They also provide the opportunity for Councillors to discuss policy formulation and direction.

## **CONFIDENTIALITY OF DISCUSSIONS**

Where a matter is confidential all discussion, comment, opinion, information and material related to that confidential matter will also be deemed to be confidential.

## **REVIEW**

This Charter may be amended from time to time by resolution of Council.