



CITY OF  
MONASH

# COUNCILLOR CODE OF CONDUCT

**[23 FEBRUARY 2021]**

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# COUNCILLOR CODE OF CONDUCT

## 1. INTRODUCTION

The *Local Government Act 2020 (Act)* requires a council to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct is required to be periodically reviewed. This Councillor Code of Conduct has been adopted by Council to comply with the requirements of the Act.

A Councillor Code of Conduct:

- (a) must include the Standards of Conduct prescribed by the *Local Government (Governance and Integrity) Regulations 2020 (Regulations)* expected to be observed by Councillors; and
- (b) must include any provisions prescribed by the Regulations; and
- (c) must include provisions addressing any matters prescribed by the Regulations; and
- (d) may include any other matters which Council considers appropriate, other than any other Standards of Conduct.

The Standards of Conduct with which Councillors are required to comply are specified in Schedule 1 to the Regulations.

Failure by a Councillor to comply with the Standards of Conduct constitutes misconduct under the Act. Allegations of misconduct may be referred to the statutory internal arbitration process.

If, after completing the internal arbitration process, the arbiter makes a finding of misconduct against the Councillor, the arbiter may impose sanctions on the Councillor.

## 2. PURPOSE AND OPERATION OF THE COUNCILLOR CODE OF CONDUCT

The role of Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. This extends to Council performing its functions and exercising its powers as conferred by or under the Act, the *Local Government Act 1989* and any other Act.

Good governance is fundamental to Council being able to perform its role. Good governance relies on, among other things, good working relationships between Councillors.

This Code sets out the Standards of Conduct with which Councillors must comply and:

- endeavours to foster good working relationships between Councillors to enable Councillors to work constructively together in the best interests of the municipal community;

- seeks to lift the standard of behaviour of Councillors during Council meetings, Councillor briefings and any other meetings which Councillors participate in from time to time; and
- sets out Councillor conduct, in addition to the Standards of Conduct, that is designed to build constructive and respectful relationships between Councillors and public confidence in the integrity of local government.

Councillors acknowledge that the internal arbitration procedure set out in part 8.3 of this Code only applies to, and can only be pursued in respect of, alleged contraventions of the Standards of Conduct set out in part 4 of this Code.

### **3. BACKGROUND**

A council must, within four months after a general election, review and adopt the Councillor Code of Conduct by a formal resolution passed by at least two-thirds of the total number of Councillors elected to the Council.

A person elected to be a Councillor is not capable of acting as a Councillor until the person has made a declaration stating that they will abide by the Councillor Code of Conduct and uphold the Standards of Conduct set out in the Councillor Code of Conduct.

It is the personal responsibility of Councillors to ensure that they are conversant with, and comply with, the provisions of this Code.

#### **3.1 Role of Mayor and Councillors**

Section 28 of the Act provides that the role of a Councillor is:

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

In performing the role of a Councillor, a Councillor must:

- (a) consider the diversity of interests and needs of the municipal community; and
- (b) support the role of 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.

The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

Section 18 of the Act provides that the role of the Mayor is to:

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

#### **4. STANDARDS OF CONDUCT**

Below are the Standards of Conduct prescribed by the Regulations that Councillors are expected to observe.

Failure to comply with any of the Standards of Conducts constitutes 'misconduct' under the Act. Allegations of misconduct will, if they cannot be resolved informally, be determined by an arbiter and may result in the imposition of sanctions.

##### **4.1 Treatment of others**

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

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*; and
- (b) supports 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.

#### **4.2 Performing the role of Councillor**

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

- (a) undertakes any training or professional development activities that 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.

#### **4.3 Compliance with good governance measures**

A Councillor, in performing the role of a Councillor, to ensure the good governance of 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 s 46 of the Act for managing interactions between members of Council staff and Councillors; and

- (b) the Council expenses policy adopted and maintained by Council under s 41 of the Act; and
- (c) the Governance Rules developed, adopted and kept in force by Council under s 60 of the Act; and
- (d) any directions of the Minister for Local Government issued under s 175 of the Act (governance directions).

#### **4.4 Councillor must not discredit or mislead Council or public**

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

In performing the role of a Councillor, a Councillor must not deliberately mislead Council or the public about any matter related to the performance of their public duties.

#### **4.5 Standards do not limit robust political debate**

Nothing in the Standards of Conduct is intended to limit, restrict or detract from robust public debate in a democracy. So, while Councillors must always meet these Standards of Conduct, participation in vigorous debate of matters before Council for decision should not be viewed as being inconsistent with them.

### **5. OTHER CATEGORIES OF MISCONDUCT**

We acknowledge that the Act creates two other categories of misconduct, being ‘serious misconduct’ and ‘gross misconduct’. In the case of allegations of conduct constituting:

- (a) ‘serious misconduct’, application can be made to convene a Councillor Conduct Panel to hear the allegation by a Councillor, a group of Councillors, a Council resolution or the Chief Municipal Inspector; and
- (b) ‘gross misconduct’, application can be made to the Victorian Civil and Administrative Tribunal by the Chief Municipal Inspector.

Although allegations of conduct constituting ‘serious misconduct’ and ‘gross misconduct’ might not be addressed as a contravention of this Code, we recognise that a Councillor who feels that they have been subject of conduct that might form the basis of allegations of ‘serious misconduct’ and ‘gross misconduct’ and, in particular, conduct that might constitute bullying or sexual harassment, may:

- (a) access Council’s Employee Assistance Program for confidential support, with contact details available from the Councillor Conduct Officer;
- (b) make an allegation of ‘serious misconduct’ by way of an application to convene a Councillor Conduct Panel in accordance with the Act, with details of that process available from the Councillor Conduct Officer; and/or

- (c) make a complaint to an appropriate external body, such as the Local Government Inspectorate, the Victorian Equal Opportunity and Human Rights Commission and Victoria Police.

We also acknowledge that a Councillor who feels that they have been subjected to conduct that might constitute bullying or sexual harassment by another Councillor may not be comfortable pursuing any of the informal or internal dispute resolution procedures set out in this Code. Those informal and internal dispute resolution procedures are not compulsory in the case of alleged 'serious misconduct' or 'gross misconduct' and there is no expectation that they will be followed in those circumstances.

## **6. GOOD GOVERNANCE**

Nothing in this section of the Code is intended to impose a binding Standard of Conduct on Councillors. These matters are expressed as operating in addition to the Standards of Conduct. Further, nothing in this section of the Code is intended to modify or derogate from the Standards of Conduct.

This section of the Code sets out conduct that the Councillors agree will contribute to the good governance, integrity and responsible operation of Council.

Where an allegation is made that a Councillor has contravened anything in this Part 6 of the Code, Councillors will attempt to resolve the allegation between themselves. Councillors may utilise the dispute resolution procedures set out in Parts 8.1 and 8.2 of this Code in respect of such a contravention, noting that it will not trigger the internal arbitration process set out in part 8.3.

### **6.1 Overarching governance principles**

We will support the role of Council by ensuring that Council gives effect to the overarching governance principles.

The overarching governance principles are:

- (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.

## **6.2 Respecting the functions of the Chief Executive Officer**

Section 94A of the *Local Government Act 1989* sets out the functions of the Chief Executive Officer, which include:

- (a) establishing and maintaining an appropriate organisational structure for Council;
- (b) ensuring Council decisions are implemented without undue delay;
- (c) day to day management of Council's operations in accordance with the Council Plan;
- (d) developing, adopting and disseminating a Staff Code of Conduct;
- (e) providing timely advice to Council;
- (f) ensuring that Council receives timely and reliable advice about its legal obligations;
- (g) supporting the Mayor in the performance of the Mayor's role; and
- (h) carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation.

From 1 July 2021, s 94A of the *Local Government Act 1989* will be replaced by s 46 of the Act. The Chief Executive Officer's functions will then include:

- (a) supporting the Mayor and the Councillors in the performance of their roles;
- (b) ensuring the effective and efficient management of the day to day operations of the Council;

- (c) ensuring that Council receives timely and reliable advice about its legal obligations;
- (d) supporting the Mayor in the performance of the Mayor's role;
- (e) setting the agenda for Council meetings after consulting the Mayor;
- (f) when requested by the Mayor, reporting to Council in respect of the implementation of a Council decision;
- (g) carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation;
- (h) establishing and maintaining an organisational structure for Council;
- (i) being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff; and
- (j) managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between Council staff and Councillors are developed and implemented.

In addition to our obligations under the Standards of Conduct, we undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

### **6.3 Use of Council resources**

We commit to using Council resources effectively and economically. We will:

- (a) maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role and will comply with any Council policies applying to their use;
- (b) ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council policy;
- (c) not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- (d) not use public funds or resources in a manner that is improper or unauthorised.

#### **6.4 Gifts and benefits**

We will scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from Council.

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

We will only accept gifts that exceed the gift disclosure threshold (currently, \$500) if:

- (a) the name and address of the person making the gift are known to us; or
- (b) at the time when the gift is made, we reasonably believe that the name and address given to us are the true name and address of the person making the gift.

Anonymous gifts that exceed the gift disclosure threshold will be disposed of to Council within thirty (30) days of receiving the gift.

We will comply with the Councillor Gift Policy, once adopted.

#### **6.5 Communication**

We recognise that as representatives of the local community, we have a primary responsibility to be responsive to community views and to adequately communicate the position and decisions of Council.

We undertake to respect the function of the Mayor as spokesperson of Council in accordance with the Act. We also undertake to comply with Council's Media Policies, as adopted from time to time, including recognition of and respect for the role of the Chief Executive Officer in communicating with the media on behalf of Council.

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

#### **6.6 Personal dealings with Council**

When we deal with Council in our private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) we do not expect, nor will we request, preferential treatment in relation to any such private matter. We will avoid any action that could lead Council staff or members of the public to believe that we are seeking preferential treatment.

## **6.7 Conduct at Council meetings**

We recognise that as representatives of the local community, we have an important responsibility to act reasonably at Council meetings and in a way which facilitates rather than frustrates the efficient and effective transaction of Council business. Further, we recognise that when a Councillor ignores, disregards, speaks over or denigrates the Mayor or person chairing a meeting, that it sets an unacceptable example of conduct for the community and often encourages poor and disrespectful conduct from persons in the Public Gallery.

When we attend Council meetings and other meetings conducted under the auspices of Council (including briefing meetings, advisory committee meetings and any other meetings convened by Council relating to our role) we will respect the role of the Mayor or person chairing the meeting, as well as each other, and will comply with the following:

- Council's Governance Rules;
- any other applicable meeting procedures adopted by Council;
- all rulings of the Mayor or person chairing the meeting; and
- all requests by the Mayor or person chairing the meeting to resume our seat and cease speaking.

## **6.8 Council decision-making**

We recognise the importance of transparency in Council decision-making.

At the same time, it is expected that Councillors will have informal discussions about matters coming before Council for decision. These discussions may be had privately between Councillors, or in Council briefings.

## **6.9 Other policy requirements**

We recognise that Council has adopted, and will in future adopt, various policies which are designed to ensure that Council conducts itself in accordance with its legal and ethical obligations. These policies include, or will include, Council's:

- Privacy Policy;
- policies relating to access to and use of Council facilities, including mobile phones and internet;
- policies relating to use of social media; and
- policies relating to complaints handling.

We undertake to become familiar with those policies which may apply to Councillors and to act consistently with them.

## **7. PROHIBITED CONDUCT**

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

- misuse of position;
- improper direction and improper influence;
- confidential information;
- conflict of interest; and
- electoral conduct.

These matters are set out below in order to provide a complete picture of the obligations on Councillors.

While these matters are not Standards of Conduct and are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake to comply with the prohibitions on Councillor conduct set out below.

In the case of non-compliance, these matters could be the subject of an application to a Councillor Conduct Panel, or a complaint to the Local Government Inspectorate, the Independent Broad-based Anti-corruption Commission or Victoria Police, depending on the nature of the allegation.

### **7.1 Misuse of position**

A Councillor must not misuse his or her 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.

Circumstances involving the misuse of position by a Councillor include, but are not limited to:

- (a) making improper use of information acquired as a result of the position he or she holds (or held); 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 he or she is not authorised to exercise or perform; or
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) participating in a decision on a matter in which he or she has a conflict of interest.

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

## **7.3 Confidential information**

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

For the purposes of the Act 'confidential information' means the following information:

- (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 the Act;
- (i) internal arbitration information, being information specified in s 145 of the Act;
- (j) Councillor Conduct Panel confidential information, being information specified in s 169 of the Act;
- (k) information prescribed by regulations to be confidential information for the purposes of the Act;
- (l) information that was confidential information for the purposes of s 77 of the *Local Government Act 1989*.

A Councillor may disclose information that would be considered 'confidential information' if the information that is disclosed is information that Council has determined should be publicly available.

Otherwise, a Councillor may disclose information that the he or she knows is confidential information in the following circumstances:

- (a) for the purposes of any legal proceedings arising out of the Act;
- (b) to a court or tribunal in the course of legal proceedings;
- (c) pursuant to an order of a court or tribunal;
- (d) in the course of an internal arbitration and for the purposes of the internal arbitration process;

- (e) in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
- (f) to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;
- (g) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- (h) to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry; and
- (i) to the extent reasonably required for any other law enforcement purposes.

#### **7.4 Conflict of interest**

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of Council or a delegated committee, a meeting of a community asset committee, or any other meeting conducted under the auspices of Council, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the Governance Rules (unless any of the exemptions apply).

A Councillor who has a conflict of interest in a matter being considered at a Council meeting, a delegated committee meeting or a community asset committee meeting at which he or she is present must disclose that conflict of interest by:

- (a) providing to the Chief Executive Officer before the meeting commences a written notice:
  - (i) advising of the conflict of interest; and
  - (ii) explaining the nature of the conflict of interest,

and then immediately before the matter is considered announcing to those present that he or she has a conflict of interest and that a written notice has been given to the Chief Executive Officer under the applicable rule; or

- (b) explaining the nature of the conflict of interest to those present at the meeting immediately before the matter is considered.

A Councillor who has a conflict of interest in a matter being considered at any other meeting conducted under the auspices of Council at which he or she is present must disclose that conflict of interest by:



- (a) explaining the nature of the conflict of interest to those present at the meeting immediately before the matter is considered; and
- (b) providing to the Chief Executive Officer a written notice recording that the disclosure was made and accurately summarising the explanation given.

A Councillor may have a 'general' or a 'material' conflict of interest in a matter.

A Councillor has a 'general' conflict of interest in a matter if an impartial, fair-minded person would consider that the Councillor's private interests could result in the Councillor acting in a manner that is contrary to their public duty.

For the purposes of general conflict of interest:

- (a) 'private interests' means any direct or indirect interest of a Councillor that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief; and
- (b) 'public duty' means the responsibilities and obligations that a Councillor has to members of the public in their role as a relevant person.

A Councillor 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.

The benefit may arise or the loss incurred:

- (a) directly or indirectly; or
- (b) in a pecuniary or non-pecuniary form.

For the purposes of a material conflict of interest, any of the following is an 'affected person':

- (a) the Councillor;
- (b) a family member of the Councillor;
- (c) a body corporate of which the Councillor or their spouse or domestic partner is a Director or a member of the governing body;
- (d) an employer of the Councillor, unless the employer is a public body;
- (e) a business partner of the Councillor;

- (f) a person for whom the Councillor is a consultant, contractor or agent;
- (g) a beneficiary under a trust or an object of a discretionary trust of which the Councillor is a trustee;
- (h) a person from whom the Councillor has received a disclosable gift (i.e. exceeding \$500 in value).

We undertake to be clear about our associations with parties external to Council and to avoid conflicts between those associations and our role as Councillors.

### **7.5 Other legislative requirements**

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period ('caretaker period'). Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

We undertake to comply with the various provisions relating to these matters.

## **8. DISPUTE RESOLUTION**

Before commencing any formal dispute resolution process, the Councillors who are parties to an interpersonal dispute or allegation of a contravention of the Code undertake 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 may resort to any or all of Council's three phase dispute resolution process.

Council's three phase dispute resolution process involves:

- (a) direct negotiation between the parties to the allegation with the Mayor in attendance to provide guidance;
- (b) external mediation by an independent mediator engaged by the Chief Executive Officer; and
- (c) internal arbitration involving an independent arbiter, subject to approval of the Principal Councillor Conduct Registrar.

The two initial phases are not mandatory and are intended to provide an informal means of resolving interpersonal disputes between Councillors and allegations of contraventions of this Code. A Councillor may decline to participate in either of the two initial phases without consequence.

## **8.1 Phase 1 – Direct negotiation**

Where Councillors who are parties to an interpersonal dispute or allegation of a contravention of this Code have been unable to resolve the matter, either party (or both parties) may request the Mayor to convene a meeting between them.

An allegation referred for direct 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 this Code, including a contravention of the Standards of Conduct.

The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the allegation in writing. The written request is to indicate that it is for a “direct negotiation” process. Where the request relates to an alleged contravention of the Standards of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Standards of Conduct;
- specify the particular Standards of Conduct that are alleged to have been contravened;
- specify the misconduct that is alleged to have resulted in the contravention of the relevant Standards of Conduct
- include evidence in support of the allegation;
- where the request is made by a group of Councillors, name the Councillor appointed to be their representative; and
- be signed and dated (or emailed) by the requestor or the requestors’ representative.

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

The Mayor is to ascertain whether or not the other party is prepared to attend a “direct negotiation” meeting.

If the other party is not prepared to attend a “direct negotiation” meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.

Declining to participate in a “direct negotiation” meeting does not constitute a contravention of this Code. At this stage, either party may have recourse to external mediation or seek to escalate the matter to internal arbitration, if the matter relates to an alleged contravention of the Standards of Conduct.

If the other party consents to a “direct negotiation” 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, or at, the “direct negotiation” meeting, to help facilitate its progress.

The role of the Mayor at the “direct negotiation” meeting is to provide guidance to Councillors about what is expected of a Councillor, including in relation to the role of a Councillor under s 28 of the Act, and the observation of the Standards of Conduct and this Code.

The Mayor is to document any agreement reached at the “direct negotiation” meeting and provide a copy of the agreement to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or internal arbitration where the matter relates to an alleged contravention of the Standards of Conduct and is permitted by the Act.

If the parties cannot resolve the matter at the “direct negotiation” meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or internal arbitration where the matter relates to an alleged contravention of the Standards of Conduct and is permitted by the Act.

Where the Mayor is a party to the matter, the request is to be made to the Deputy Mayor or, where the Mayor and the Deputy Mayor are parties to the matter, the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

## **8.2 Phase 2 – External mediation**

A Councillor or a group of Councillors may request that an interpersonal dispute or allegation of a contravention of this Code be referred for external mediation, whether or not the dispute has been the subject of a “direct negotiation” meeting.

A request for an interpersonal dispute or allegation of a contravention of this Code to be referred for external mediation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of this Code, including a contravention of the Standards of Conduct.

The Councillor is to submit a written request to the Councillor Conduct Officer setting out the name of the Councillor and the details of the allegation. The request is to indicate that it is for an “external mediation”. Where the request relates to an alleged contravention of the Standards of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Standards of Conduct;
- specify the particular Standards of Conduct that are alleged to have been contravened;
- specify the misconduct that is alleged to have resulted in the contravention of the relevant Standards of Conduct
- include evidence in support of the allegation;
- where the request is made by a group of Councillors, name the Councillor appointed to be their representative; and
- be signed and dated (or emailed) by the requestor or the requestors' representative.

The Councillor making the request is to notify the other party of the request and provide him or her with a copy of it either at the same time that it is submitted to the Councillor Conduct Officer or as soon as practicable thereafter.

The Councillor Conduct Officer is to ascertain (in writing) whether the other Councillor 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. If the matter concerns allegations of serious misconduct, these reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

Declining to participate in an external mediation does not constitute a contravention of this Code. At this stage, if the matter relates to an alleged contravention of the Standards of Conduct, the matter may be escalated to internal arbitration, if permitted under the Act.

If the other Councillor agrees to participate in an external mediation, the Councillor Conduct Officer is to advise the Councillor who made the request, the Mayor and Chief Executive Officer forthwith.

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

The mediator is to document any agreement reached at the external mediation. Copies of the agreement are to be provided to both Councillors. Where one Councillor does not comply with the agreement, the other Councillor has recourse to the internal arbitration process where the matter relates to an alleged contravention of the Standards of Conduct and is permitted by the Act.

If the parties cannot resolve the matter at the external mediation, a further meeting with the mediator may be convened with the consent of both parties. Where the matter remains unresolved, the Councillor who made the request has recourse to the internal arbitration process where the matter relates to an alleged contravention of the Standards of Conduct and is permitted by the Act.

### **8.3 Phase 3 - Internal arbitration**

A contravention of the Standards of Conduct constitutes 'misconduct' for the purposes of the Act which may be referred to an arbiter for determination.

The internal arbitration process is a statutory process set out in Part 6 of the Act and r 11 of the Regulations.

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 for the purposes of the Act.

#### **8.3.1 Commencing arbitration**

An application for an internal arbitration process may be made by a resolution of Council, or by one Councillor or a group of Councillors. Applications must be made within three (3) months of the alleged misconduct occurring.

An application for internal arbitration will be given to Council's Councillor Conduct Officer for delivery to the Principal Councillor Conduct Registrar and must specify:

- (a) the name of the Councillor alleged to have breached the Standards of Conduct;
- (b) the clause of the Standards of Conduct that the Councillor is alleged to have breached; and
- (c) the misconduct that the Councillor is alleged to have engaged in that resulted in the breach.

Upon receipt of an application, Council's Councillor Conduct Officer will deliver the application to the Principal Councillor Conduct Registrar and provide a copy of the application to the Councillor who is the subject of the application.

All applications for internal arbitration will be examined by the Principal Councillor Conduct Registrar before the matter can proceed to arbitration. Applications will only be referred to an arbiter 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.

It is the responsibility of the Councillor submitting the application for internal arbitration, or the representative of Council (in the case of a Council resolution) or group of Councillors, to ensure that the application meets the requirements stated above.

### 8.3.2 *Proceeding to arbitration*

If the Principal Councillor Conduct Registrar is satisfied that an application for internal arbitration should be accepted, they will appoint an arbiter from a panel list compiled by the Secretary to the Department of Jobs, Precincts and Regions.

In conducting an arbitration the arbiter must:

- (a) ensure that the parties involved are given an opportunity to be heard;
- (b) ensure that a Councillor who is a party does not have a right to representation, unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
- (c) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- (d) ensure that the hearing is not open to the public.

Additionally, in conducting an arbitration the arbiter:

- (a) may hear each party to the matter in person or solely by written or electronic means of communication;
- (b) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit;
- (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.

### 8.3.3 *Arbiter's decision and available sanctions*

If the arbiter determines that a Councillor has failed to comply with the Standards of Conduct, the arbiter may make a finding of misconduct against the Councillor and impose any one or more of the following sanctions:

- (a) direct the Councillor to make an apology;
- (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 Council for the period determined by the arbiter;
- (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter; and/or
- (e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.

Failure by a Councillor to comply with the internal arbitration process or a direction given to the Councillor by an arbiter is 'serious misconduct' for the purposes of the Act. Allegations of 'serious misconduct' are heard by a Councillor Conduct Panel.

The arbiter must provide a written copy of the arbiter's decision and statement of reasons to:

- (a) Council;
- (b) the applicant(s) and the respondent; and
- (c) the Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the arbiter's decision and statement of reasons are provided. If the arbiter's decision and statement of reasons contain any confidential information, the confidential information must be redacted before it is tabled.

#### **8.4 Responsibility of Councillors**

We understand that responsibility for the dispute resolution processes set out in this Code are our responsibility. While Council staff may provide some administrative support, that support will not extend to assisting Councillors with preparing the substance of an application.

### **9. ADOPTION OF THE COUNCILLOR CODE OF CONDUCT**

This Councillor Code of Conduct was adopted by a resolution of Council made at the Council meeting held on 23 February 2021, with a majority of at least two thirds of all Councillors voting in favour of it.