

COUNCIL POLICY



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Councillor Code of Conduct

This Code of Conduct, which incorporates the Standards of Conduct as outlined in the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations), has been developed in accordance with Section 139(1) of the *Local Government Act 2020* (the Act), and was adopted by formal resolution of the Glenelg Shire Council at the Council meeting conducted on 23 February 2021 and passed by at least two-thirds of the total number of Councillors elected to Council.

1. Introduction

The *Local Government Act 2020* requires a Council to develop and adopt a Councillor Code of Conduct, which is required to be reviewed within the period of four months after a general election.

This Code:

- Outlines the roles of Council, the Mayor and Councillors;
- Includes 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; and
- Sets out the resolution procedures for dealing with any alleged contraventions of the Code.

A copy of this Code of Conduct is:

- provided to each councillor;
- available for inspection at the Council office and any district offices; and
- published on the Council's internet website.

2. The Role of a Council

The *Local Government Act 2020* states that the role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. Good governance is fundamental to a Council being able to perform its purpose. Good governance relies on good working relations between Councillors, and between Councillors and the Chief Executive Officer.

Council's commitment to working together constructively will enable it to achieve Council's strategic objectives, commitments and performance indicators contained in the Council Plan and supporting documents in a manner that is consistent with the organisational values of accountability, quality engagement, teamwork and progress.

A Council provides good governance if it performs its role in accordance with the overarching and supporting principles contained in the Act (and set out below). To achieve that, Councillors need to understand their roles, and perform those roles in accordance with this Code of Conduct and the Council Governance Rules.

Overarching Governance Principles

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

Supporting Principles

A Council must take into account the following supporting principles which are detailed in the respective Council policies and documents and in the Act.

- a. the community engagement principles (section 56 of the Act);
- b. the public transparency principles (section 58 of the Act);
- c. the strategic planning principles (section 89 of the Act);
- d. the financial management principles; (section 101 of the Act); and
- e. the service performance principles (section 106 of the Act).

3. The Role of a Mayor

The role and functions of the Mayor include:

- a. chairing Council meetings; and
- b. being the principal spokesperson for the Council; and
- c. leading engagement with the municipal community on the development of the Council Plan; and
- d. reporting to the municipal community, at least once each year, on the implementation of the Council Plan; and
- e. promoting behaviour among Councillors that meets the standards of conduct set out in this Councillor Code of Conduct; and
- f. assisting Councillors to understand their role; and
- g. taking a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and
- h. providing advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
- i. performing civic and ceremonial duties on behalf of the Council.

The Mayor also has the following specific powers—

- a. to appoint a Councillor to be the chair of a delegated committee;
- b. to 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;
- c. to require the Chief Executive Officer to report to the Council on the implementation of a Council decision.

4. The Role of a Councillor

The role of a Councillor is:

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

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 the Council; and
- c. acknowledge and support the role of the Mayor; and
- d. act lawfully and in accordance with the oath or affirmation of office; and
- e. act in accordance with the standards of conduct set out in this Code 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.

5. The role of the Chief Executive Officer

It is critical that all Councillors commit to building and maintaining a positive, strong and respectful relationship with the CEO to ensure the good governance of the Council. It is also important that all Councillors understand the role and functions of the CEO.

Under Section 46 of the Act, the Chief Executive Officer is responsible for:

- 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 the decisions of the Council are implemented without undue delay;
- d. ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;
- e. supporting the Mayor in the performance of the Mayor's role as Mayor;
- f. setting the agenda for Council meetings after consulting the Mayor;
- g. when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
- h. carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Workplace Injury Rehabilitation and Compensation Act 2013.
- i. establishing and maintaining an organisational structure for the Council;
- j. being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff;
- k. managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of Council staff and Councillors are developed and implemented;
- l. performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

6. Councillor Conduct Obligations

The Act places obligations on Councillors in relation to way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions.

All Councillors of the Glenelg Shire Council have sworn the following Oath or Affirmation of Office:

"I will undertake the duties of the office of Councillor in the best interests of the municipal community.

I will abide by the Councillor Code of Conduct and uphold the standards of conduct set out in the Councillor Code of Conduct.

I will faithfully and impartially carry out and exercise the functions, powers, authorities and discretions vested in me under the Local Government Act 2020 and any other Act to the best of my skill and judgement."

7. Standards of Councillor Conduct

The following are the prescribed standards of conduct in accordance with Section 139 of the Act.

Treatment of others

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

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

Performing the role of Councillor

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

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

Compliance with good governance measures

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

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

Councillor must not discredit or mislead Council or public

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

Standards do not limit robust political debate

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

8. Integrity and Confidentiality

All Councillors are subject to the requirements of the Governance Rules adopted under section 60 of the *Local Government Act 2020*. These Governance Rules outline the requirements around misuse of position, confidentiality and the process for Conflict of Interest declarations.

Misuse of Position

Councillors must not directly or indirectly disclose or make available to any person any information relating to the work or discussions of a Council Meeting or Delegated Committee Meeting except in accordance with such terms and in such a manner as approved by the Council.

A person who is, or has been, a Councillor are subject to the provisions of the Act. This section places responsibilities on Councillors with the access to information, in particular around its use and misuse. An offence under the Act is an indictable offence.

A person who is, or has been, a Councillor or a member of a Delegated Committee must not intentionally misuse their position to:

- gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- cause, or attempt to cause, detriment to the Council or another person.

To clarify, this includes:

- making improper use of information acquired as a result of the position the person held or holds;
- disclosing information that is confidential information;
- directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff;
- exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform;
- using public funds or resources in a manner that is improper or unauthorised; or
- participate in a decision on a matter in which the person has a conflict of interest.

Directing a member of Council staff

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

- in the exercise of a delegated power, or the performance of a delegated duty or function, of the Council;
- 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 the Act or any other Act;
- in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under the Act or any other Act; or
- in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

Confidential information

A person who is, or has been, a Councillor, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

This provision does not apply if the information that is disclosed is information that the Council has determined should be publicly available or is exempt in accordance with the Act.

Conflict of interest

Councillors are required to:

- Avoid situations that may give rise to conflicts of interest, where practicable;
- Identify any conflicts of interest; and
- Disclose or declare conflicts of interest.

Councillors must not participate in discussion or decision making on a matter in which they have a conflict of interest. Councillors must disclose the conflict of interest in writing and in the form determined by the Chief Executive Officer and when disclosing a conflict of interest, Councillors must clearly state their connection to the matter.

All disclosures of conflicts of interest will be recorded in the minutes of a Council Meeting and Council will maintain a Conflict of Interest Register that will be made available on Council's website.

9. Council Policies

Councillors are required to abide by a number of Council policies including but not limited to:

- Mayor and Councillor Entitlements Policy (CPO-CEO-CS-003) – ensuring that claims for out of pocket expenses are accurate and relate strictly to Council business.
- Gifts Benefits and Hospitality Policy (CPO-CEO-CS-007), relating to processes regarding receipt of gifts, benefits and hospitality either in the role as Councillor, or where it could be perceived to influence the role as a Councillor or cause a Councillor to have a conflict of interest as defined in the Act
- Organisational Media Policy (OPO-CEO-MD-001), which deals with appropriate communications with the community and media. The Mayor is the primary Council contact for the media.
- Council Election Period Policy (CPO-CORPS-GE-008), which explains to the community how Council will conduct business immediately prior to an election to ensure transparency and probity.
- Procurement Policy (CPO-CORPS-CP-001) which provides guidance to allow consistency and control over the procuring and contracting of goods, services and works on behalf of Council.
- Equal Opportunity, Anti-Discrimination & Anti-Bullying Policy (OPO-CEO-HR-001), which prohibits unlawful discrimination, harassment, bullying, and victimisation.

10. Electoral Conduct

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions 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.

Such allegations are not to be dealt with by the Council using the internal resolution procedures in this Code of Conduct.

11. Commitment to Child Safe Standards

Glenelg Shire Council is committed to a whole of organisational approach to the creation of safe environments for children and young people.

Councillors will support this commitment by:

- observing child safe principles consistent with the Child Safe Standards and the Glenelg Shire Council Child Safe Policy, and Council's statement of commitment to child safety;
- ensuring appropriate behaviour towards and in the company of children and young people;
- taking all reasonable steps to protect children and young people from abuse and reportable conduct;
- treating children and young people with respect;
- encouraging children and young people to 'have a say' and participate in all relevant organisational activities where possible, especially on issues that are important to them;
- listening and responding to the views and concerns of children and young people, particularly if they are saying that they or another child or young person has been abused and/or they are worried about their safety or the safety of another;
- promoting the cultural safety, participation and empowerment of Aboriginal and Torres Strait Islander children (for example, by never questioning an Aboriginal child's self-identification);
- promoting the cultural safety, participation and empowerment of children with culturally and/or linguistically diverse backgrounds (for example, by having a zero tolerance for unlawful discrimination);
- promoting the safety, participation and empowerment of children with a disability (for example, during personal care activities);
- reporting concerns about child safety to the Child Safety Officer, or the Chief Executive Officer;
- promoting compliance with Council's child safe principles, statement of commitment to child safety, and related codes of conduct, policies and procedures;
- calling Victoria Police immediately on 000 if you have immediate concerns for a child or young person's safety.

If an allegation of child abuse or reportable conduct is made to a Councillor, they should ensure as quickly as possible that the relevant child(ren) are safe.

Councillors must not:

- engage in any form of inappropriate behaviour towards children or young people (including by engaging in bullying, discrimination, grooming, neglect, sexual harassment, sexual misconduct, sexual offences, physical violence, reportable conduct or victimisation), or expose children or young people to such behaviour;
- cross professional boundaries with children and young people, including by developing any 'special' relationship with a child not a member of the Councillor's family; and
 - engaging in inappropriate or unnecessary physical contact or behaviours (including doing things of a personal nature that a child or young person can do for themselves, such as toileting or changing clothes);
 - providing or offering gifts, or special treatment;
 - showing favouritism; or
 - asking the child to keep secrets.
- place a child or young person at risk of abuse (for example, by locking doors);
- engage in open discussions of a mature or adult nature in the presence of children without a valid professional context;
- use inappropriate language in the presence of children;
- promote personal views on culture, disability, ethnicity, race, religion, gender or sexuality in the presence of children; and
- engage in any behaviour that has the potential to cause a child serious or significant emotional or psychological harm.

Glenelg Shire Council recognises that many Councillors have children of their own, and in any case will socialise with other adults who have children. While this Code is not intended to interfere with a Councillor's right to a private life, being involved with Glenelg Shire Council requires a serious commitment to child safety. Accordingly, in all aspects Councillors are expected to conduct themselves in a way consistent with this Code, including by avoiding in private situations (including online) which could be perceived as contrary to this Code or involving a risk to child safety.

Any concerns relating to a Councillor's conduct with children shall be forwarded to the Mayor for consideration. Where the concern relates to the Mayor, it should be forwarded to the Chief Executive Officer.

12. Councillor Conduct Officer

In accordance with the Act the Chief Executive Officer must appoint a Councillor Conduct Officer and notify in writing the Principal Councillor Conduct Registrar of the appointment.

The CEO has appointed the Director of Corporate Services as the Glenelg Shire Council Councillor Conduct Officer in accordance with S150 of the Act.

The role of the Councillor Conduct Officer is to assist the Council in the implementation of, and conduct of, the internal arbitration process of a Council; and to assist the Principal Councillor Conduct Registrar to perform the functions under the Act. The CEO is not permitted to perform the functions of the Councillor Conduct Officer.

13. Definitions

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

Serious misconduct by a Councillor means any of the following:

- the failure by a Councillor to comply with the Council's internal arbitration process;
- the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147 of the Act;
- the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
- the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;
- continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b) of the Act;
- bullying by a Councillor of another Councillor or a member of Council staff;
- conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
- the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff; and
- 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 Act.

Gross misconduct by a Councillor means behaviour that demonstrates that a Councillor—

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

14. Internal Dispute Resolution Process

The purpose of this Code of Conduct is to set out the internal resolution procedures for dealing with interpersonal conflicts amongst Councillors or any alleged contraventions of this Code of Conduct.

This process does not apply to an allegation from a member of the public or staff where options exist to report specific matters direct to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission (IBAC).

The position of Director Corporate Services is the appointed Public Interest Disclosure Coordinator (PID). If improper conduct is suspected, Council's PID Coordinator can be contacted as follows:

Public Interest Disclosure Coordinator:

Director Corporate Services

Email: pid@glenelg.vic.gov.au (dedicated public interest disclosure email address)

Notwithstanding the above, the Mayor may determine that it is appropriate to instigate and engage an external independent consultant to investigate circumstances in response to an allegation by a third party about a breach of the Code. Where the allegations involve the Mayor, the CEO may instigate such an investigation.

Investigations relating to third-party complaints may not be pursued if a complainant does not participate in the investigation process.

The Council's dispute resolution process involves three options:

Option 1. Informal dispute resolution directly between the parties;

Option 2. Mediated discussion;

Option 3. Determination by an independent arbiter or referral to a Councillor Conduct Panel.

Councillors are encouraged to start with internal resolution where possible and only progress to later stages if resolution is unsuccessful. Options 1 & 2 require mutual consent from both parties for participation.

It is also noted there are some circumstances in which it would be more appropriate to refer the matter direct to the Independent Arbiter or Councillor Conduct Panel

There is no requirement under the Act to consider options 1 and 2 prior to lodging the matter with the Independent Arbiter. Any party to the process may elect not to participate in the first two options of the dispute resolution process, and either may elect that the allegation be addressed under option 3.

Option 1 – Informal dispute resolution directly between the parties

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are encouraged to use their best endeavours to resolve the matter informally in a courteous and respectful manner between themselves. If the parties consider it appropriate, they may agree to involve the Mayor or the Deputy Mayor to participate in the informal dispute resolution conversation.

If the Councillors are unable to resolve the dispute through informal discussions, either Councillor may seek to resolve the dispute through the remaining options.

Option 2 – Mediation or facilitated discussion

A Councillor who is a party to a dispute may make a written application to Council's Councillor Conduct Officer for a mediation or a facilitated discussion. A mediation is an opportunity for the parties to attempt to resolve their dispute in discussions before a mediator. This discussion is a meeting convened by the mediator in which the parties can discuss the allegations and/or the dispute.

As soon as practicable after receiving an application, the Councillor Conduct Officer must provide the respondent with a copy of the application. The Councillor Conduct Officer will then ascertain whether the respondent is prepared to participate in the proposed mediation. If the respondent is not prepared to participate, the Councillor Conduct Officer must advise the applicant. No further action is required of the Councillor Conduct Officer. If the respondent consents to participate, the Councillor Conduct Officer must notify the applicant, the Mayor (if not involved), and the Chief Executive Officer.

Appointment of mediator

If the applicant has elected mediation, the Chief Executive Officer, through the Councillor Conduct Officer will engage a mediator to conduct the facilitated discussion as soon as practicable.

The Councillor Conduct Officer will arrange a mediator as soon as practicable in consultation with the parties. The mediator may be one of the following options:

- the Mayor; unless the Mayor is involved in the dispute or one of the parties to the dispute objects; or
- the Deputy Mayor; unless the Deputy Mayor is involved in the dispute or one of the parties to the dispute objects; or
- an external facilitator appointed by the Chief Executive Officer after consultation with the parties.

The role of the mediator is to attempt to resolve the dispute between the parties through discussions. The terms of engagement of the mediator must require the mediator to document any agreement reached at the meeting and provide copies of the agreement to both parties. A mediator does not have the authority to impose an outcome or resolution to the matter.

Conclusion of process

If the parties resolve their dispute, the mediator must document any agreement reached at the meeting and provide copies to both parties. If the parties are satisfied that the document reflects what was agreed, both parties must sign and date the agreement.

If the matter does not relate to an alleged contravention of the Code of Conduct, and the parties cannot resolve the dispute through mediation, the Principal Conduct Officer must notify the parties that the internal dispute resolution process is terminated at that point.

If the matter relates to an alleged contravention of the Code, and the parties cannot resolve the dispute through mediation or facilitated discussion, or a party is refusing to comply with an agreement reached through this process, either party may apply for a determination by an independent arbiter.

Option 3 - Determination by an independent arbiter (misconduct) or referral to a Councillor Conduct Panel (serious misconduct).

The *Local Government Act 2020*, prescribes the uniform process for determining allegations of breaches against the prescribed standards of Councillor conduct.

15. Independent arbiter

Application Process

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

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

An application for internal arbitration must be made within 3 months of the alleged misconduct occurring and must be provided to the Principal Councillor Conduct Registrar in the manner specified in the Act and the Regulations. The Councillor Conduct officer will assist in the facilitation of this process.

An application for an internal arbitration process requires the following information:

- the name of the Councillor alleged to have breached the standards of conduct; and
- the clause of the standards of conduct that the Councillor is alleged to have breached; and

- the misconduct that the Councillor is alleged to have engaged in that resulted in the breach;

The template for the arbitration process is provided in Appendix 2 - Application For An Internal Arbitration Process.

After receiving an application, the Councillor Conduct Officer will ensure that a copy of the application is provided to the Councillor who is the subject of the application.

Assessment

The Principal Councillor Conduct Registrar must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is satisfied that the application is not frivolous, vexatious, misconceived or lacking in substance; and that there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.

The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied that the above application has met the required evidence threshold. The rejection of an application does not prevent a further application being made in respect of the same conduct by a Councillor that was the subject of the rejected application.

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

Hearing

An arbiter appointed to hear a matter subject to an application must conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and ensure that the hearing is not open to the public.

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

An arbiter may at any time discontinue the hearing if the arbiter considers that the application is vexatious, misconceived, frivolous or lacking in substance; or if the applicant has not responded, or has responded inadequately, to a request for further information.

The arbiter must ensure that parties involved in internal arbitration process are given an opportunity to be heard by the arbiter, and that the arbitration is procedurally fair. 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.

Serious misconduct referral

If, at any time before, during or after the hearing of an application for an internal arbitration process, the arbiter believes that the conduct appears to involve serious misconduct the arbiter will refer the matter in writing to the Principal Councillor Conduct Registrar for consideration by a Councillor Conduct Panel. The Principal Councillor Conduct Registrar must notify the parties to the application where a matter has been referred in such circumstances.

Determinations

Where an arbiter has determined that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor and may do any one or more of the following:

- direct the Councillor to make an apology in a form or manner specified by the arbiter;
- suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
- direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
- direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
- direct a Councillor to attend or undergo training or counselling specified by the arbiter.

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.

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. If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted.

16. Councillor Conduct Panel

A Councillor Conduct Panel may hear an application that alleges **serious misconduct** by a Councillor.

Application Process

An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by:

- a. the Council following a resolution of the Council;
- b. a Councillor or a group of Councillors; or
- c. the Chief Municipal Inspector.

However, if the allegations relate to a failure to disclose a conflict of interest, the application can only be made by the Chief Municipal Inspector.

An application must be made within 12 months of the alleged serious misconduct occurring, and must be given to the Principal Councillor Conduct Registrar in the manner specified by the Act. The Councillor Conduct officer will assist in the facilitation of this process.

An application must specify

- the grounds for the application;
- the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting serious misconduct;
- the particulars of any evidence of those circumstances, actions or inactions;
- any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; and
- if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter.

If an application is made by the Council or a group of Councillors, the application must state the name and address of the Councillor whom the Council or the group of Councillors has appointed as representative of the Council or the group of Councillors.

Assessment

The Principal Councillor Conduct Registrar, after examining an application, must form a Councillor Conduct Panel to hear the matter if the Principal Councillor Conduct Registrar is satisfied that the application is not frivolous, vexatious, misconceived or lacking in substance; and that there is sufficient evidence to support an allegation of serious misconduct as specified in the application; and that the Council has taken sufficient or appropriate steps to resolve the matter and the matter remains unresolved. All three of those requirements must be met.

The Principal Councillor Conduct Registrar may reject an application, or refer a matter the subject of an application back to the Council, if the Principal Councillor Conduct Registrar is not satisfied that the above application has met the above requirements, or forms the view that the matter has been, or is being, dealt with, by the Council or another body.

The rejection of an application, or the referral of a matter the subject of an application back to the Council, does not prevent a further application being made in respect of the same conduct by a Councillor that was the subject of the rejected or referred application.

The Principal Councillor Conduct Registrar must form a Councillor Conduct Panel to hear the matter if the application is made by the Chief Municipal Inspector for a finding of serious misconduct.

A Councillor Conduct Panel must be established without delay and will include 2 people from the panel list established under the Act.

Hearing

A Councillor Conduct Panel will fix a time and a place for the hearing to be conducted; and serve by post a notice of the time and place of the hearing on the applicant, the respondent and the Council.

A Councillor Conduct Panel may do any or all of the following—

- request a person to attend a hearing and answer questions;
- request information from the applicant, the respondent, or the Council, including confidential information held by the Council; and
- direct a Councillor to attend a hearing or provide information, including confidential information held by the Councillor.

Council must provide all reasonable assistance to the Councillor Conduct Panel which is necessary to enable the Councillor Conduct Panel to conduct the hearing and make a determination. Members of a Councillor Conduct Panel that are provided with confidential information must ensure that the information is not released to the public.

The proceedings of a Councillor Conduct Panel must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit. There is no right to representation at the hearing except if the Councillor Conduct Panel considers that a party requires representation to ensure that the hearing is conducted fairly. The proceedings must not be open to the public.

If the hearing is based on an application made by a Council or a group of Councillors, the appointed representative must represent the Council or group of Councillors at the hearing.

The Panel is not bound by rules of evidence but may inform itself in any way it thinks fit but is bound by the rules of natural justice and must provide the respondent with an opportunity to be heard.

Chief Municipal Inspector referral

A Councillor Conduct Panel must by notice in writing notify the Chief Municipal Inspector that a Councillor appears to have committed an offence under the Act as soon as the Councillor Conduct Panel becomes aware of the apparent offence.

Determinations

A Councillor Conduct Panel may make a finding against a Councillor

- of serious misconduct;
- of misconduct;
- dismiss the application.

If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the Council's term unless the Councillor Conduct Panel directs otherwise. The Panel may also do any one or more of the following:

- reprimand the Councillor;
- direct the Councillor to make an apology in a form or manner determined by the Councillor Conduct Panel;
- suspend the Councillor from office for a period specified by the Councillor Conduct Panel not exceeding 12 months;
- direct that the Councillor is ineligible to chair a delegated committee of the Council for a period specified by the Councillor Conduct Panel not exceeding the remainder of the Council's term.

If a Councillor Conduct Panel makes a finding of misconduct against a Councillor, the Panel may do any one or more of the following:

- direct the Councillor to make an apology in a form or manner specified by the Councillor Conduct Panel;
- suspend the Councillor from the office of Councillor for a period specified by the Councillor Conduct Panel not exceeding one month;
- direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the Councillor Conduct Panel;
- direct that the Councillor be removed from being the chair of a delegated committee for the period determined by the Councillor Conduct Panel;

If a Councillor Conduct Panel determines that remedial action is required, it may also direct the Councillor who is the subject of the application to attend one or more of the following—

- mediation;
- training;
- counselling.

A Councillor Conduct Panel may also direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue.

Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.

Should a Councillor be the subject of 2 or more findings of serious misconduct by a Councillor conduct panel within 8 years, they will not be qualified to remain a Councillor.

The Councillor Conduct Panel must give a copy of the decision to the following—

- the Council;
- the parties to the matter;
- the Minister; and
- the Principal Councillor Conduct Registrar.

A copy of the decision given to the Council must be tabled at the next Council meeting and recorded in the minutes of that meeting. Unless otherwise determined by a Councillor Conduct Panel, information pertaining to the formation and hearing of the Councillor Conduct Panel remains confidential

A person who is affected by the decision made by a Councillor Conduct Panel under this Division may be able to apply to VCAT for review of the decision unless the reason to dismiss the application was because it is frivolous, vexatious, misconceived or lacking in substance.

17. Suspension of matters during election period

Applications and proceedings made and conducted under this Code of Conduct must be suspended during the election period for a general election.

Any internal resolution procedure that is in progress must be suspended during the election period for a general election.

If an application is made to a Councillor Conduct Panel for a finding of serious misconduct against a person who is a Councillor before a general election, and that person is not returned to the office of Councillor as a result of the general election, the application made against that person lapses.

If that person is returned to the office of Councillor as a result of the general election, the application made against the Councillor may resume, whether or not any applicant was returned to the office of Councillor as a result of the general election.

An application to VCAT on the grounds of gross misconduct made by the Chief Municipal Inspector against a person who is a Councillor before a general election must resume after the general election is held whether or not the person is returned to the office of Councillor.

18. Review of the Councillor Code of Conduct

In accordance with Section 139 (4) of the Act:

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

19. Records Management

All Council records created and managed as a result of implementing this policy will be managed in accordance with the Council's Records Management Policy.

The Records Management Policy assigns responsibilities for records management to employees, supervisors, volunteers and other specific positions.

No Council records are to be destroyed without consideration of the requirements of the Act(s) that govern the functions relevant to this policy. Prior to destruction, advice must be sought from the Records Management Unit, with consideration to the requirements of the appropriate Retention and Disposal Authority (RDA).

20. Victorian State Legislation Copyright Acknowledgement

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APPENDIX 1

Finding	Who can make a complaint	Who can make findings	Potential penalties
Misconduct	A councillor, groups of councillors or the entire council. They must make the complaint within three months of the alleged misconduct.	<ul style="list-style-type: none"> An internal arbiter, appointed by the Principal Councillor Conduct Registrar (the Registrar). The Registrar administers councillor conduct issues across the state under the <i>Local Government Act 2020</i>. A Councillor Conduct Panel, appointed by the Registrar. The Panel is made up of two people, one of whom must be legal practitioner. 	<ul style="list-style-type: none"> directed to apologise suspended for up to a month removed from positions representing the council and chairs of council-delegated committees. directed to attend training or counselling
Serious misconduct	<p>A councillor, groups of councillors or the entire council. They must make the complaint within 12 months of the alleged misconduct.</p> <p>The Chief Municipal Inspector can also initiate the complaint. Their role is to investigate councils, council electoral matters, and possible breaches of the <i>Local Government Act 2020</i>.</p>	A Councillor Conduct Panel, appointed by the Registrar.	<ul style="list-style-type: none"> reprimanded directed to apologise suspended for up to 12 months made ineligible to be chair of council-delegated committees until the end of council's term barred from mayor or deputy mayor positions for the rest of council term (minimum penalty if finding of serious misconduct made)
Gross misconduct	Chief Municipal Inspector	Victorian Civil and Administrative Tribunal	<ul style="list-style-type: none"> disqualified from being a councillor for up to 8 years removed from council

APPENDIX 2 – Available from Councils Record Management (DocSet: 2783350)

APPLICATION FOR AN INTERNAL ARBITRATION PROCESS
under section 143 Local Government Act 2020

To: Principal Councillor Conduct Registrar

The Applicant makes application under section 143 of the *Local Government Act 2020* (the Act) for an internal arbitration process to make a finding of misconduct against the Respondent Councillor in relation to the matters set out in this application.

Name of Council	
------------------------	--

Section A - Parties

Applicant details	
Name(s) <i>(Council, councillor or councillors)</i>	
Appointed representative <i>(if application is made by Council or a group of councillors)</i>	
Email	
Telephone number	

Respondent details	
Name	
Email	
Telephone number	

Section B - Details of Misconduct alleged

Section B - Details of Misconduct alleged	
<p>Note: The prescribed requirements for an application for an internal arbitration process are set out in regulation 11 of the Local Government (Governance and Integrity) Regulations 2020 (the Regulations).</p> <p>The standards of conduct are set out in Schedule 1 to the Regulations, and are listed in the instructions on the last page of this form.</p>	
1. Clause(s) of the standards of conduct the respondent is alleged to have breached <i>(regulation 11(1)(a)(ii))</i>	

<p>2. Date of the alleged breach <i>(section 143(3) requires application to be made within 3 months of alleged misconduct occurring)</i></p>	
<p>3. Misconduct the respondent is alleged to have engaged in that resulted in the breach <i>(regulation 11(1)(a)(iii))</i></p>	

Section C - Declaration

Privacy collection statement

The Principal Councillor Conduct Registrar is an officer of the Department of Jobs, Precincts and Regions. The Department is committed to protecting personal information provided by you in accordance with the principles of the Victorian privacy laws.

The information you provide in this application will be used for the purposes of and in accordance with the provisions of the *Local Government Act 2020* (the Act) relating to the internal arbitration process and related processes, especially Part 6 of that Act. These purposes include (but are not limited to):

- Assessing whether your application meets the criteria set out in section 144 of the Act for the appointment of an arbiter to hear the application. If an arbiter is appointed, the information in the application will be provided to the arbiter for the purposes of hearing the matter.
- In the conduct of an internal arbitration process, copies of the material may be provided to other individuals and organisations who are concerned in the matter.
- If an internal arbitration process proceeds to a final determination, the arbiter's decision and statement of reasons will be tabled at the next Council meeting, and these may include information that you have provided.
- Use by Department of Jobs, Precincts and Regions officers and Local Government Inspectorate officers for related purposes under the Act.
- The exercise of the powers and functions of the Minister for Local Government, such as the establishment of a Commission of Inquiry or the standing down of a councillor.

The information may also be used or disclosed as otherwise required by law, such as pursuant to a court order or under another law that requires the disclosure of the information.

Do you wish this application to be otherwise treated as confidential? Yes / No

C.1 - Declaration where application is made by a single councillor

I declare that the above information is true and correct to the best of my knowledge.

I have read and understand the privacy collection statement above.

I agree that the information I have given in this form and any attached documents may be disclosed to the Respondent Councillor.

I acknowledge that the information I have given in this form and any attached documents may be used and disclosed as outlined in the privacy collection statement above, including (but not limited to) the Council's Councillor Conduct Officer, Department of Jobs, Precincts and Regions officers and Local Government Inspectorate officers, where disclosure is reasonably necessary for purposes under the Act.

Signature of applicant	
Date	

C.2 - Declaration where application is made by the Council

I declare that the above information is true and correct to the best of my knowledge.

I attach a certified copy of the relevant minute of the Council's resolution to make this application and appointing me as the appointed representative.

I have read and understand the privacy collection statement above.

I agree that the information I have given in this form and any attached documents may be disclosed to the Respondent Councillor.

I acknowledge that the information I have given in this form and any attached documents may be used and disclosed as outlined in the privacy collection statement above, including (but not limited to) the Council's Councillor Conduct Officer, Department of Jobs, Precincts and Regions officers and Local Government Inspectorate officers, where disclosure is reasonably necessary for purposes under the Act.

Signature of appointed representative	
Date	

C.3 - Declaration where application is made by a group of councillors

I declare that the above information is true and correct to the best of my knowledge.

I have accepted appointment as the appointed representative for the purposes of this application by the group of councillors listed below.

I have read and understand the privacy collection statement above.

I agree that the information I have given in this form and any attached documents may be disclosed to the Respondent Councillor.

I acknowledge that the information I have given in this form and any attached documents may be used and disclosed as outlined in the privacy collection statement above, including (but not limited to) the Council's Councillor Conduct Officer, Department of Jobs, Precincts and Regions officers and Local

Government Inspectorate officers, where disclosure is reasonably necessary for purposes under the Act.		
Signature of appointed representative		
Date		
<p>I / we declare that the above information is true and correct to the best of my / our knowledge.</p> <p>I / we confirm that I / we have appointed the councillor identified in Section A to be the appointed representative for the purposes of this application.</p> <p>I / we have read and understand the privacy collection statement above.</p> <p>I /we acknowledge that the information I have given in this form and any attached documents may be disclosed to the Respondent Councillor.</p> <p>I /we agree that the information I / we have given in this form and any attached documents may be used and disclosed as outlined in the privacy collection statement above, including (but not limited to) Council’s Councillor Conduct Officer, Department of Jobs, Precincts and Regions officers and Local Government Inspectorate officers, where disclosure is reasonably necessary for purposes under the Act.</p>		
Name of councillor	Signature of councillor	Date

Instructions for completing Form 3

Section B 1. Clause (or clauses) of the standards of conduct alleged to have been breached

The information provided at Section B-1 of the form must specify the clause or clauses of the standards of conduct misconduct alleged to have been breached.

The prescribed standards of conduct set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020 are listed below.

1 Treatment of others

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

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

2 Performing the role of Councillor

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

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

3 Compliance with good governance measures

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

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

4 Councillor must not discredit or mislead Council or public

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

5 Standards do not limit robust political debate

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

Section C.2 Declaration where application is made by the Council

If the application is made by the Council, a certified copy of the relevant minute of the Council's resolution to make the application and appoint the appointed representative must be provided with the application.

If a certified copy of the relevant minute is not provided, the form will be returned as incomplete.