

# COUNCILLOR CODE OF CONDUCT

## COUNCIL POLICY NO. 078

### 1. INTRODUCTION

As Gannawarra Shire Councillors we are committed to working together in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.

We recognise and respect that everyone has the same human rights entitlement to allow them to participate in, and contribute to, society and our community. We also recognise that all persons have equal rights in the provision of, and access to, Council services and facilities.

Our commitment to working together constructively will enable us to achieve the intended outcomes of the Council Plan in a manner that is consistent with our values.

The primary role of Council is to provide good governance in the Gannawarra Shire for the benefit and wellbeing of the community. A Council provides good governance if it performs its role in accordance with the overarching governance principals and supporting principles and the Councillors of the Council perform their roles in accordance with section 28 of the *Local Government Act 2020* (the Act).

### 2. STANDARDS OF CONDUCT

We undertake to comply with the following:

#### 2.1 TREATMENT OF OTHERS

##### STANDARD OF CONDUCT

**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.**

##### GENERAL CONDUCT

In performing the role of Councillor, we will not conduct ourselves in a manner that:

- a) is likely to bring the council or other council officials into disrepute;
- b) is contrary to statutory requirements or Council's administrative requirements or policies;
- c) is improper or unethical;
- d) is an abuse of power;
- e) causes, comprises or involves intimidation or verbal abuse;
- f) involves the misuse of our position to obtain a private benefit;
- g) constitutes harassment or bullying behaviour under this code, or is unlawfully discriminatory.

## FAIRNESS AND EQUITY

- a) We will consider issues consistently, promptly and fairly, and deal with matters in accordance with established procedures, in a non-discriminatory manner.
- b) We will take all relevant facts known to us, or that we should be reasonably aware of, into consideration and have regard to the particular merits of each case. We will not take irrelevant matters or circumstances into consideration when making decisions.
- c) An act or omission in good faith, whether or not it involves error, will not constitute a breach of clauses b) and c) above.

## HARASSMENT AND DISCRIMINATION

We will take positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*.

Specifically, we will not harass or unlawfully discriminate against others, or support others who harass or unlawfully discriminate against others, on the grounds of age, disability, race (including colour, national or ethnic origin or immigrant status), sex, pregnancy, marital or relationship status, family responsibilities or breastfeeding, sexual orientation, gender identity or intersex status or political, religious or other affiliation.

For the purpose of this Code, 'harassment' is any form of behaviour towards a person that is not wanted by the person; offends, humiliates or intimidates the person; and creates a hostile environment.

## BULLYING

We will not engage in bullying behaviour towards others.

For the purposes of this Code, 'bullying behaviour' by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff.

## WORK HEALTH AND SAFETY

We will comply with our duties under health and safety legislation and any relevant policies or procedures adopted by Council to ensure workplace health and safety. Specifically, we will:

- a) Take reasonable care for our own health and safety
- b) Take reasonable care that our acts or omissions do not adversely affect the health and safety of other persons
- c) Comply, so far as we are reasonably able, with any reasonable instruction that is given to ensure compliance with the Occupational Health and Safety Act 2004 and any policies or procedures adopted by Council to ensure workplace health and safety
- d) Cooperate with any reasonable policy or procedure of Council relating to workplace health or safety
- e) Report accidents, incidents and near misses to the Mayor, and take part in any incident investigations if required
- f) So far as is reasonably practicable, consult, cooperate and coordinate with all others who have a duty under the Occupational Health and Safety Act in relation to the same matter.

## GENDER EQUALITY, DIVERSITY AND INCLUSIVENESS

We acknowledge and commit to Council's obligation to achieve and promote gender equality.

We will support and encourage diversity in the community; provide adequate, equitable and appropriate services and facilities to the community taking into account their diverse needs and community cohesion; and encourage active participation in public and civic life.

## CULTURAL AWARENESS

We acknowledge and respect the Traditional Owners of our land, in particular the Barapa Barapa, Wamba Wamba and Yorta Yorta people.

In considering the diversity of interests and needs of the Gannawarra community, we will treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.

## FOSTERING GOOD WORKING RELATIONSHIPS

We undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols established by him or her that define appropriate arrangements for interaction between Council staff and Councillors.

## 2.2 PERFORMING THE ROLE OF COUNCILLOR

### STANDARD OF CONDUCT

**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.**

### VALUES

As Councillors, we acknowledge and endorse Gannawarra Shire Council's values and how they relate to our roles as Councillors:

- We will work closely with our community using our collective skills and knowledge to build a positive future. Together with our partners we will deliver great things for our community.
- We will be resourceful and resilient, employing creative problem solving to our challenges. We will plan and be prepared for when opportunities present.
- We will embrace new ideas and technology to deliver quality services to our community at a lower cost. We will make time to consider the big issues and actively seek creative solutions.
- We will listen to our community and use our collective knowledge and sound judgement to respond and close the loop.

### COMMITMENT TO FAIR AND TRANSPARENT DECISION MAKING

We will undertake due diligence by properly examining and considering all information provided to us, and when necessary seeking further information, relating to matters that we are required to make a decision on.

We will at all times adhere to the Gannawarra Shire Council Governance Rules including provisions regarding the conduct of meetings.

We will not participate in binding caucus votes<sup>1</sup> in relation to matters to be considered at a Council meeting. This does not prohibit us from discussing a matter in question at a Council meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.

### RELATIONSHIP WITH THE COMMUNITY

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 commit to comply with Council's Media policy and respect the functions of the Mayor and Chief Executive Officer to be the spokesperson for Council.

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<sup>1</sup> A binding caucus vote is a process whereby a group of councilors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before Council, irrespective of the personal views of individual members of the group on the merits of the matter before Council.

We undertake that, where we choose to express a personal opinion through the media, we will make it clear that it is a personal view and does not represent the position of Council. We further undertake to ensure that any such comment is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person.

We also undertake that we will not quote or divulge to any third parties, including social media forums, any comments made by Councillors at Councillor briefings (assemblies of Councillors) or Councillor-only meetings or sessions. This provision does not apply to a complaint made by a Councillor to the Principal Conduct Officer alleging a contravention of the Councillor Code of Conduct relating to a Councillor's conduct at a Councillor briefing or Councillor-only meeting or session.

We commit to comply with Council's Community Engagement Policy to gain a better understanding of local issues and needs, particularly relating to decisions before Council.

#### SUPPORT AND RESOURCES FOR COUNCILLORS IN DELIVERY OF THEIR ROLE

The Chief Executive Officer is responsible for ensuring Councillors have access to information necessary for the performance of their official functions.

Any information provided to a particular councillor in the performance of their official functions will also be made available to all other councillors, either routinely or by request.

Councillors who have a private interest only in Council information have the same rights of access as any member of the public.

Councillors who are precluded from participating in the consideration of a matter because they have a conflict of interest in the matter are not entitled to request access to Council information in relation to the matter unless the information is otherwise available to members of the public, or Council has determined to make the information available.

A decision to refuse a request by a Councillor to access information must take into account whether or not the information requested is necessary for the councillor to perform their official functions and whether they have disclosed a conflict of interest in the matter the information relates to that would preclude their participation in consideration of the matter. The reasons for a decision to refuse access will be provided to the Councillor requesting it.

#### CONFIDENTIAL AND RESTRICTED INFORMATION

Information obtained by Councillors in their capacity as a Council official must:

- a) not be used for private purposes
- b) not be used to seek or obtain, either directly or indirectly, any financial benefit or other improper advantage for the Councillor, or any other person or body
- c) only be disclosed in accordance section 125(3) of the Act.

#### USE AND SECURITY OF CONFIDENTIAL INFORMATION

Councillors must maintain the integrity and security of confidential information in their possession, or for which they are responsible.

In addition to the general obligations of Councillors relating to the use of Council information, Councillors must:

- Only access confidential information that they have been authorised to access and only do so for the purposes of exercising their official functions.
- Protect confidential information.
- Only disclose confidential information if they have authority to do so.
- Only use confidential information for the purpose for which it is intended to be used.
- Not use confidential information gained through the official position of Councillor for the purpose of securing a private benefit for themselves or any other person.
- Not use confidential information with the intention to cause harm or detriment to the Council or any other person or body.
- Not disclose any confidential information discussed during a confidential session of a Council meeting or any other confidential forum.

## USE OF RESOURCES

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

- maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role and comply with any Council policies applying to their use;
- ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council policy;
- 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
- not use public funds or resources in a manner that is improper or unauthorised.

## COUNCIL RECORD KEEPING

All information created, sent and received in your official capacity is a Council record and must be managed in accordance with the requirements of the Public Records Act 1973 and Council's approved records management policies and practices.

All information stored in either soft or hard copy on Council supplied resources (including technology devices and email accounts) is deemed to be related to the business of Council and will be treated as Council records, regardless of whether the original intention was to create the information for personal purposes.

You must not destroy, alter, or dispose of Council information or records unless authorised to do so. If you need to alter or dispose of Council information or records, you must do so in consultation with the Council's Governance staff.

## COUNCILLOR ACCESS TO COUNCIL BUILDINGS

Councillors are entitled to have access to the Council Chamber and Councillor lounge (subject to availability), and public areas of Council's buildings during normal business hours and for meetings. Councillors needing access to these facilities at other times must obtain authority from the Chief Executive Officer.

Councillors must not enter staff-only areas of Council buildings without the approval of the Chief Executive Officer (or their delegate) or as provided for in any protocols governing the interaction of Councillors and Council staff.

Councillors must ensure that when they are within a staff only area they refrain from conduct that could be perceived to improperly influence Council staff decisions.

## COUNCILLOR MISCONDUCT

We will not make or threaten to make a complaint or cause a complaint to be made alleging a breach of this Code for an improper purpose.

A complaint is made for an improper purpose where it is trivial, frivolous, vexatious or not made in good faith, or where it otherwise lacks merit and has been made substantially for one or more of the following purposes:

- To bully, intimidate or harass another Council official
- To damage another Council official's reputation
- To obtain a political advantage
- To influence a Council official in the exercise of their official functions or to prevent or disrupt the exercise of those functions
- To influence the council in the exercise of its functions or to prevent or disrupt the exercise of those functions
- To avoid disciplinary action under established procedures
- To take reprisal action against a person for making a complaint alleging a breach of this Code
- To take reprisal action against a person for exercising a function prescribed under established procedures
- To prevent or disrupt the effective administration of this Code under established procedures.

## 2.3 COMPLIANCE WITH GOOD GOVERNANCE MEASURES

### STANDARD OF CONDUCT

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.

### PERSONAL INTERESTS DECLARATIONS

We will disclose any information, whether of a pecuniary nature or not, of which we are aware and consider might appear to raise a conflict between our private interest and our public duty as a Councillor.

### COUNCIL EXPENSES

We will abide by Council Policy No. 092 – Councillor Allowances and Support including processes for claiming reimbursement of out-of-pocket expenses and use of Council vehicles, equipment and technology.

### GOVERNANCE RULES

We will comply with the Gannawarra Shire Governance Rules.

### GIFTS AND HOSPITALITY

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 the 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 being an attempt to gain favourable treatment.

A gift can be accepted where the gift would generally be regarded as having a token value and could not be perceived to influence our actions as a Councillor.

It is appropriate to accept a gift where refusal may cause offence or embarrassment, in which case we will accept the gift on behalf of Council.

Where a gift is received on behalf of the Council with a value greater than \$30, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Gifts Register with a notation that it is the property of the Council.

We recognise that one or more gifts with a total value of, or more than, \$500 (or another amount prescribed under section 128(4) of the Act), received by a person in the office of Councillor in the 5 years preceding a decision on a matter, that were or will be required to be disclosed as an election campaign donation, may give rise to a material conflict of interest in respect of that matter.

We will record all campaign donations in our “Campaign Donation Return”.

### LAND USE PLANNING, DEVELOPMENT ASSESSMENT AND OTHER REGULATORY FUNCTIONS

We will ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. We will avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions.

In exercising land use planning, development assessment and other regulatory functions, we will ensure that no action, statement or communication between ourselves and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

## 2.4 COUNCILLORS MUST NOT DISCREDIT OR MISLEAD COUNCIL OR PUBLIC

### STANDARD OF CONDUCT

- (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.**

### MISUSE OF POSITION

We will not intentionally misuse our position to gain or attempt to gain, directly or indirectly, an advantage for ourselves or for any other person or to cause, or attempt to cause, detriment to Council or another person.

Circumstances involving the misuse of position:

- a) making improper use of information acquired as a result of the position we hold; 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 we are 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 we have a conflict of interest.

### IMPROPER DIRECTION AND IMPROPER INFLUENCE

We will not intentionally direct, or seek to direct, a member of Council staff:

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

### CONFLICT OF INTEREST PROCEDURES

Council is committed to making all decisions impartially and in the best interests of the whole community. We therefore recognise the importance of fully observing the requirements of the Act and Council's Governance rules in regard to the disclosure of conflicts of interest.

For the purpose of this Code, "general conflict of interest" and "material conflict of interest", have the meanings specified in sections 127 and 128 of the Act.

We will comply with all the provisions of the Act and Governance Rules in regard to Conflicts of Interest.

In addition to the requirements of the Act and Governance Rules:

- We will give early consideration to each matter to be considered by Council or Councillor Briefing, to ascertain if we have a conflict of interest; and
- We recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each of us as individual Councillors and that Council officers can only offer limited advice in relation to potential conflicts. If we cannot confidently say that we do not have a conflict of interest, we will declare a conflict of interest and comply with the relevant requirements as if we had a conflict of interest; and
- If we consider that we may be unable to vote on a matter because of a conflict of interest, we will notify, as soon as possible, the Mayor and the Chief Executive Officer.

## FRAUD AND CORRUPTION

We acknowledge our obligation to report observed breaches of the prescribed standards of conduct set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020 and described in this Code of Conduct.

We acknowledge that complaints concerning alleged corrupt conduct, conduct involving a substantial mismanagement of public resources, or conduct involving substantial risk to public health and safety or the environment may be referred to external agencies for investigation and such complaints may be actioned through Council Policy 107 – Public Interest Disclosure and/or referred to the Independent Broad-based Anti-corruption Commission Victoria.

## ELECTIONS

We will take leave of absence from Council if we nominate as a State or Federal election candidate and undertake to not use Council resources for electioneering.

## COMPLAINT HANDLING

We will refer complaints received by us to Customer Service or the Chief Executive Officer in accordance with Council Policy No. 117 – Complaint Handling.

We acknowledge the guiding principles that form the basis of Council’s complaint handling – commitment, accessibility, transparency, objectivity and fairness, confidentiality, accountability and continuous improvement.

## PERSONAL DEALINGS WITH COUNCIL AND RELATIONSHIP BETWEEN COUNCIL OFFICIALS

When we deal with Council in a private capacity (eg as a ratepayer, recipient of a 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.

We will undertake any personal dealings we have with Council in a manner that is consistent with the way other members of the community deal with Council. We will ensure that we disclose and appropriately manage and conflict of interest we may have in any matter in accordance with the requirements of this Code.

## 2.5 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.**

## 3. RELEVANT SECTIONS OF THE LOCAL GOVERNMENT ACT 2020

3	Definitions	125	Confidential information
8	Role of a Council	127	General conflict of interest
10	Powers of Council	128	Material conflict of interest
18	Role of the Mayor	132	Personal Interests Returns
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## 4. RELATED COUNCIL POLICIES

Policy No. 074 – Information Privacy and Health Records  
Policy No. 083 – Email, Intranet and Internet  
Policy No. 100 – Fraud and Corruption  
Policy No. 101 – Media  
Policy No. 107 – Public Interest Disclosure  
Policy No. 117 – Complaint Handling  
Policy No. 118 – Election Period – incorporated into Council’s Governance Rules  
Policy No. 129 - Diversity

## 5. POLICY REVIEW

In accordance with the Act, Council must review this policy within four months after a general election of the Council. At the time of review, this policy was compliant with the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

## 6. FURTHER INFORMATION

Members of the public may inspect all Council policies at Gannawarra Shire Council’s Kerang and Cohuna office or online at [www.gannawarra.vic.gov.au](http://www.gannawarra.vic.gov.au).

Any enquiries in relation to this policy should be directed to the Chief Executive Officer on (03) 5450 9333.

### **AltusECM Folder: 3.000518**

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# Internal Resolution Procedure

## 1. PURPOSE

This section describes the processes for Councillors who wish to report and resolve a dispute with another Councillor under the Code. Councillors recognise that the democratic process of local government involves holding, and expressing, different and sometimes opposing viewpoints. It is a normal, and vital, function of this process that these different views are shared in a considered and informed way. Although all Councillors strive to engage in positive, constructive and respectful interactions, conflict and/or disputes may arise.

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

The primary purpose of an internal resolution procedure is to provide Councillors with support and mechanisms to resolve conflicts and disputes in a manner that enables them to move forward and establish and maintain effective working relationships. The procedure also provides avenues and guidance for escalating more serious issues and allegations where required.

This procedure:

- is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in council and committee meetings
- does not include a complaint made against a Councillor or Councillors by a member or members of Council staff, or by any other person, or a “disclosure” under the Public Interest Disclosures Act 2012 .

## 2. SCOPE

This procedure operates alongside, and does not displace, any external avenues provided for by legislation for the reporting and resolution of issues and disputes. It should be read in conjunction with the Act which sets out avenues for reporting matters of Councillor misconduct and establishes external authorities to hear, investigate, prosecute and make findings of Councillor misconduct, serious misconduct and gross misconduct.

For the purposes of this section:

- 'Councillor Conduct Officer' refers to an appointee of the Chief Executive Officer who must—
  - (a) assist the Council in the implementation of, and conduct of, the internal arbitration process of a Council; and
  - (b) assist the Principal Councillor Conduct Registrar to perform the functions specified in section 149(1); and
  - (c) assist the Principal Councillor Conduct Registrar in relation to any request for information under section 149(3).
- This procedure does not deal with allegations of criminal misconduct as they are envisaged to be raised with Victoria Police or other relevant mechanisms.
- Nothing in this procedure prevents an individual Councillor with a specific issue or dispute from pursuing other avenues available to them under the law.

For the avoidance of doubt, a Councillor or member of the public may raise a formal complaint through any available channel external to Council as provided by law.

In particular, some allegations of Councillor misconduct under this Code may also constitute serious misconduct under the Act. In these instances, it is open to Council, a Councillor, or a group of Councillors, to make an application for a Councillor Conduct Panel. For allegations of gross misconduct, Council, a Councillor(s) or members of the public can raise complaints to the Local Government Inspectorate.

## 3. INFORMAL RESOLUTION BETWEEN PARTIES TO A DISPUTE

Before commencing a formal dispute resolution process, the Councillors who are parties to a dispute are encouraged to use their best endeavours to resolve their issue or dispute in a courteous and respectful manner between themselves, stop any behaviour that is causing issues, and to avoid the issue escalating and threatening the effective operation of Council.

Where the issue or dispute remains unresolved or where the circumstances make informal resolution inappropriate, the parties may resort to Council's formal dispute resolution processes set out below.

## 4. FORMAL DISPUTE RESOLUTION AND REPORTING

### 4.1 INTERPERSONAL DISPUTE

Interpersonal disputes between Councillors involve conflict where there may be a breakdown in communication, a misunderstanding, a disagreement between Councillors, or strained working relationships.

To report an allegation that a Councillor has breached the Code in relation to an interpersonal dispute, a Councillor(s) must prepare a written application (the application) to the Mayor, or where not appropriate (including where the Mayor is involved in the allegation) the Deputy Mayor or the Councillor Conduct Officer (where there is a request for mediation), requesting that the matter be dealt with under the formal dispute resolution procedure. Such written application should include the name of the other Councillor and the details of the issue or dispute.

The Mayor (or Deputy Mayor or Councillor Conduct Officer, where relevant), will notify the other Councillor(s) of the application, and provide them with a written copy of the request.

#### **Approach to resolution**

Where there is an interpersonal dispute between Councillors, they have the option of requesting:

- Resolution discussion - with the Mayor or Deputy Mayor in attendance and facilitating the meeting (see section 5.1 for detailed information)
- Mediation - with an external mediator, via an application to the Councillor Conduct Officer (see section 5.2 for detailed information)
- Arbitration - with an independent arbiter, via an application to the Principal Councillor Conduct Registrar (see section 5.3 for detailed information).

### 4.2 ALLEGATION OF CONDUCT IN BREACH OF CODE

An allegation that a Councillor has contravened the Code may include a failure to disclose a conflict of interest, breach of confidentiality, improper direction of staff, improper use of Council resources, or a breach of Council policy. Such conduct may constitute serious misconduct or misconduct under the Act.

To report an allegation that a Councillor engaged in conduct in breach of the Code, a Councillor(s) must submit an application to the Principal Councillor Conduct Registrar. The application must:

- specify the name of the Councillor who is the subject of the allegation or complaint
- specify the provision(s) of the Code and/or relevant Council policy or protocol that the allegation relates to
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the application is made by a group of Councillors
- be signed and dated by the Applicant or the Applicant's representative.

## 5. DISPUTE RESOLUTION OPTIONS

### 5.1 RESOLUTION DISCUSSION

Where Councillors who are in dispute have not been able to resolve their dispute informally between themselves, a party may request in writing that the Mayor or Deputy Mayor (the 'Convenor') convene a confidential meeting of the parties to discuss the dispute.

The Councillor requesting the meeting is to provide the Convenor with the name of the other Councillor and the details of the dispute in writing. They should also notify the other Councillor of the request and provide a copy of the written request to them.

The Convenor is to ascertain whether or not the other party is prepared to attend the meeting.

If the other Councillor is not prepared to attend the meeting, the Convenor is to advise the party seeking the meeting. No further action is required of the Convenor.

If the other Councillor consents to a meeting, the Convenor is to hold a confidential meeting of the parties.

Unless one or both parties are unavailable, this should be arranged within ten working days of receipt of the meeting request.

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

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened.

The role of the Convenor at the meeting is to assist the parties to resolve the dispute. In the process of doing this they may provide guidance about what is expected of a Councillor including in relation to the role of a Councillor under section 28 of the Act and the Code.

The Convenor is to document any agreement reached at the meeting and provide copies of the agreement to both parties.

Where the dispute remains unresolved, a party may request mediation or arbitration.

## 5.2 MEDIATION

A Councillor or a group of Councillors may request that their dispute be referred to mediation. The mediation would be conducted by an external accredited mediator.

The party seeking the mediation is to notify the other party of the request and details of the dispute in writing at the same time that it is submitted to the Councillor Conduct Officer.

The Councillor Conduct Officer is to ascertain (in writing) whether or not the other Councillor is prepared to participate in the mediation. If the Councillor declines to participate in the mediation, they are to provide their reasons for not doing so in writing to the Councillor Conduct Officer. These reasons may be taken into account if the matter is subsequently the subject of an application for a Councillor Conduct Panel.

If the other party agrees to participate in mediation, the Councillor Conduct Officer is to advise the party seeking the mediation, the Mayor and CEO.

The Councillor Conduct Officer will engage the services of an external mediator to conduct the mediation at the earliest opportunity.

All parties will cooperate with the dispute resolution process and provide reasonable assistance to the external mediator and the Councillor Conduct Officer.

If the parties cannot resolve the dispute at the mediation meeting, a further meeting may be convened with the consent of both parties.

The mediator is to document any agreement reached. Copies of the agreement are to be provided to both parties.

Where the dispute remains unresolved, a Councillor may request the appointment of an arbiter.

## 5.3 INTERNAL ARBITRATION PROCESS

Internal arbitration involves a party (the Applicant) to a dispute requesting the Principal Councillor Conduct Registrar to appoint an impartial third party (the Arbiter) to make findings in relation to allegations concerning another Councillor(s) (the Respondent) and whether they have engaged in misconduct under the Act.

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

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

The application must:

- specify the name of the Councillor alleged to have breached the conduct standards
- specify the clause of the conduct standards in the Local Government (Governance and Integrity) Regulations 2020 that the Councillor is alleged to have breached
- specify the misconduct that the Councillor is alleged to have engaged in that resulted in the breach of the conduct standards
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the application is made by a group of Councillors

- be signed and dated by the Applicant or the Applicant's representative
- be made within three months of the alleged misconduct occurring
- be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c) of the Act.

After receiving an application the Principal Councillor Conduct Registrar will provide the application to the Councillor who is the subject of the application.

An Applicant may withdraw an application for arbitration at any time. Once an application has been withdrawn, the same or a similar application relating to the same issues or dispute in relation to the other Councillor cannot be resubmitted by the Applicant.

On receiving an application, the Principal Councillor Conduct Registrar will:

- advise the CEO (and the Mayor as appropriate) of the application without undue delay
- identify an Arbiter to hear the application
- obtain from the Arbiter written advice that they have no conflict of interest in relation to the Councillors involved
- notify the parties of the name of the proposed Arbiter and provide them with the opportunity (two working days) to object to the person proposed to be the Arbiter
- consider the grounds of any objection and appoint the proposed Arbiter or identify another Arbiter
- provide a copy of the Application to the Arbiter as soon as practicable after the opportunity for the parties to object to an Arbiter has expired
- after consultation with the Arbiter, advise the Applicant and the Respondent of the time and place for the hearing
- attend the hearing(s) and assist the Arbiter in the administration of the process.

The Principal Councillor Conduct Registrar, after examining an application, will appoint an arbiter to Council to hear the matter if satisfied that:

- the application is not frivolous, vexatious, misconceived or lacking in substance
- there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.

In identifying an Arbiter to hear the application, the Principal Councillor Conduct Registrar will select an Arbiter who is suitably independent and able to carry out the role fairly. The arbiter must be selected from a panel of eligible persons established by the Secretary to conduct an internal arbitration process.

The role of the Arbiter includes:

- consider an application alleging a contravention of the Code or breach of Council's policies or procedures
- make findings in relation to the application
- provide a written statement of reasons supporting the findings to the parties at the same time as providing the findings to Council
- recommend an appropriate sanction or sanctions where the Arbiter makes a finding of misconduct against a Councillor.

In considering an application alleging a contravention, an Arbiter will:

- in consultation with the Councillor Conduct Officer, fix a time and place to hear the application
- authorise the Councillor Conduct Officer to formally notify the Applicant and the Respondent of the time and place of the hearing
- hold as many meetings as they consider necessary to properly consider the application. The Arbiter may also hold a directions hearing
- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter
- consider an application by a party to have legal representation at the hearing
- ensure that the rules of natural justice are observed and applied in the hearing of the application
- ensure that the hearings are closed to the public and held in confidence
- ensure that a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly
- conduct the hearings with as little formality and technicality as the proper consideration of the matter permits.

Where an application to have legal representation is granted by an Arbiter, the costs of the Councillor's legal representation are to be borne by the Councillor in their entirety.

An Arbiter:

- may find that a Councillor who is a Respondent to an application has not engaged in misconduct
- may find that a Councillor has engaged in misconduct
- may hear each party to the matter in person or solely by written or electronic means of communication
- is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit
- may at any time discontinue the hearing if the arbiter considers that the application is vexatious, misconceived, frivolous or lacking in substance or the applicant has not responded, or has responded inadequately, to a request for further information
- will suspend the process during the election period for a general election
- must refer the matter in writing to the Principal Councillor Conduct Registrar if the arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct and would more appropriately be dealt with as an application to the Councillor Conduct Panel under section 154 of the Act.

The Arbiter is to provide a copy of his or her findings and the statement of reasons to:

- Council
- The applicant or applicants
- The Councillor who is the subject of the allegation
- The Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after Council has 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 before submission to the Council meeting.

If an arbiter has made a finding of misconduct the arbiter 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 a period determined by the arbiter
- direct a Councillor to attend or undergo training or counselling specified by the arbiter.

A Councillor will cooperate with the arbitral process and provide reasonable assistance to the Arbiter.

An application cannot be made for an internal resolution by arbitration during the election period for a general election.

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

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

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

## 5.4 FAILURE TO PARTICIPATE IN INTERNAL ARBITRATION PROCESS

A Councillor who does not participate in the internal arbitration procedure may be guilty of serious misconduct. The Act provides that serious misconduct by a Councillor means any of the following:

- failure by a Councillor to comply with the Council's internal arbitration process
- failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147
- the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor
- 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 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
- 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.

Allegations of serious misconduct are heard on application to the Principal Councillor Conduct Registrar.