



# Councillor Code of Conduct

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Director Corporate Services		

## Statement and Purpose

This policy supports councillors in effectively performing their role as councillors by setting clear standards of conduct as required by section 139 of the Act.

The councillor code of conduct also provides guidance on the other matters considered appropriate for inclusion. They include, for the sake of completeness, provisions of the Act and other Acts relevant to a councillors role as well as protocols essential to achieving good governance and effective teamwork.

## Scope

The policy applies to councillors.

The standards of conduct included in the councillor code of conduct are not intended to limit, restrict or detract from robust public debate in a democracy.

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## Treatment of others

### 1. Standard

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. Promoting wellbeing in the workplace

- (1) In line with occupational health and safety, human rights and equal opportunity legislation, Council is committed to protecting the health, safety and well-being of all councillors and members of staff and will provide, as far as practicable, a safe Council working environment that is free from bullying and violent behaviour.
- (2) Councillors are expected to promote an environment of wellbeing in the workplace.
- (3) Councillors are expected to ensure all people in the workplace are treated with respect.
- (4) Councillors are expected to report any acts or suspected acts of bullying and violence to the Chief Executive Officer.
- (5) Councillors will treat all people with courtesy and respect recognising there are legitimate differences in opinions, race, culture, religion, language, gender and abilities.

### 3. Using information

#### 3.1 Information in general

Councillors must not use information gained by virtue of being a councillor for any purpose other than to perform their role as a councillor and in particular not to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person or to cause, or attempt to cause, detriment to the Council or another person.

### 3.2 Confidential information

- (1) Councillors must not intentionally or recklessly disclose information that the councillor knows, or should reasonably know, is confidential information except for the reasons provided by section 125 of the Act.
- (2) Confidential information means the following information:
  - (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
  - (b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
  - (c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
  - (d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
  - (e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
  - (f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
  - (g) private commercial information, being information provided by a business, commercial or financial undertaking that:  
relates to trade secrets; or  
if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
  - (h) confidential meeting information, being the records of meetings closed to the public under section 66 of the Act;
  - (i) internal arbitration information, being information specified in section 145 of the Act;
  - (j) Councillor Conduct Panel confidential information, being information specified in section 169 of the Act;
  - (k) information prescribed by the regulations to be confidential information for the purposes of the Act;
  - (l) information that was confidential information for the purposes of section 77 of the *Local Government Act 1989*

### 3.3 Personal and health information

- (1) Councillors may be required to handle personal information and health information in performing their role as a councillor.
- (2) Personal information is defined in the *Privacy and Data Protection Act 2014* as information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is

apparent, or can reasonably be ascertained, from the information or opinion unless certain exemptions apply.

- (3) Health information is defined in the *Health Records Act 2001* and includes:
- (a) information or an opinion, that is also personal information, about:
    - i. the physical, mental or psychological health (at any time) of an individual; or
    - ii. a disability (at any time) of an individual; or
    - iii. an individual's expressed wishes about the future provision of health services to him or her; or
    - iv. a health service provided, or to be provided, to an individual
  - (b) other personal information collected to provide, or in providing, a health service
- (4) Councillors must comply with Council's obligations under the *Privacy and Data Protection Act 2014*, the *Health Records Act 2001*, associated regulations and related Council policies and procedures in respect of personal information and health information collected, held, managed, used, disclosed or transferred by Council, including that councillors:
- (a) must not do an act, or engage in a practice, that contravenes an Information Privacy Principle in respect of personal information collected, held, managed, used, disclosed or transferred by Council
  - (b) must not do an act, or engage in a practice, that is an interference with the privacy of an individual if the act or practice breaches a Health Privacy Principle in relation to health information that relates to the individual.

#### **4. Councillor relationships with members of staff**

- (1) The Council appoints and reviews the performance of the Chief Executive Officer.
- (2) The Act establishes that all members of staff are accountable to the Chief Executive Officer who is responsible for appointing, directing or terminating members of staff.
- (3) To perform its role, Council must work as a team with the Chief Executive Officer and members of staff.
- (4) Councillors must:
  - (a) act in accordance with the Councillor Interaction with Members of Staff Policy set by the Chief Executive Officer;
  - (b) accept that their role is one of strategy and policy development and leadership, not management or administration;
  - (c) acknowledge that they do not have a role to instruct or direct or admonish members of staff on any matters pertaining to the performance of their duties.
  - (d) acknowledge that they are not responsible for implementing Council actions;
  - (e) acknowledge that they have no capacity to individually direct members of staff to perform or not perform particular functions;

- (f) not use their position to improperly influence members of staff in their duties or functions to gain advantage for themselves or others or to cause detriment to others;
- (g) respect the role of members of staff and treat them in a way that engenders mutual respect at all times;
- (h) acknowledge the professional obligation members of staff have to give advice based on their knowledge and experience and to write reports and recommendations in a professional, objective and unbiased way;
- (i) act with courtesy towards members of staff and avoid intimidatory behaviour;
- (j) refrain from publicly criticising members of staff in a way that casts doubt on their professional competency or credibility. Councillors should advise the CEO in a timely fashion of any concerns that they may have with any member of staff.

## **5. Unlawful conduct**

- (1) Councillors have individual legal obligations and can be held accountable as individuals by external courts and tribunals, for conduct that compromises the rights of other councillors, members of staff and community members.
- (2) Councillors must ensure that they do not allow, permit, aid, foster, encourage, reward, incite or instruct any form of unlawful conduct, nor engage in a manner that condones unlawful conduct.
- (3) Unlawful conduct includes direct, indirect and systemic discrimination, harassment, sexual harassment, victimisation, vilification, bullying and violence towards another councillor, Council committee member, member of staff or community member.

### **5.1 Discrimination**

- (1) Legal obligations regarding discrimination are established under the *Equal Opportunity Act 2010*.
- (2) In addition to a general prohibition on discrimination, a councillor must not, in the performance of his or her public functions, discriminate against another councillor of the Council or against a member of a committee of the Council who is not a councillor of the Council except on the basis of political belief or activity. Political belief or activity means holding or not holding a lawful political belief or view or engaging in, not engaging in or refusing to engage in a lawful political activity.
- (3) Direct discrimination is unfavourable treatment due to a personal characteristic protected by law.
- (4) Indirect discrimination occurs when an unreasonable requirement, condition or practice is imposed resulting in disadvantage for a person or group because of a personal characteristic protected by law.
- (5) Systemic discrimination relates to behaviour and action that affects a person or group with personal characteristics protected by law, and the outcomes of the behaviour and action have become entrenched or part of the culture and are reinforced by policies or procedures.

- (6) The personal characteristics that are protected by the *Equal Opportunity Act 2010* include:
- (a) age
  - (b) parent and carer status
  - (c) disability
  - (d) employment activity
  - (e) expunged homosexual conviction
  - (f) gender identity
  - (g) industrial activity
  - (h) lawful sexual activity
  - (i) marital status
  - (j) physical features
  - (k) political belief or activity
  - (l) pregnancy and breastfeeding
  - (m) race
  - (n) religious belief or activity
  - (o) sex
  - (p) sex
  - (q) personal association with someone who has, or is assumed to have, one of these personal characteristics
- (7) The *Australian Human Rights Commission Act 1986* provides guidance in relation to the inappropriate nature of discrimination on the basis of irrelevant criminal record, irrelevant medical record and social origin. These characteristics are adopted by the Council and are deemed protected personal characteristics under this code and shall be adhered to in the same manner as all other protected personal characteristics identified under the *Equal Opportunity Act 2010*. It is noted that under this code 'social origin' is used by Council to refer to place of origin, place of residency and presumed social status.

## 5.2 Harassment

- (1) Legal obligations regarding harassment are established under the *Equal Opportunity Act 2010*.
- (2) Harassment is a form of discrimination that is unwelcome conduct that offends, humiliates or intimidates on the basis of a personal characteristic protected by law. Intent or motive is irrelevant as it is the nature and the impact of the behaviour that is assessed. A single incident can amount to harassment.

## 5.3 Sexual harassment

- (1) Legal obligations regarding sexual harassment are established under the *Equal Opportunity Act 2010*.

- (2) Sexual harassment is unwelcome behaviour of a sexual nature that offends, intimidates or humiliates. It can be physical, verbal, written or online conduct. Sexual harassment is unlawful and can also be criminal. Intent or motive is irrelevant as it is the nature and impact of the behaviour that is assessed. A single incident can amount to sexual harassment.

#### **5.4 Victimisation**

- (1) Legal obligations regarding victimisation are established under the *Equal Opportunity Act 2010*.
- (2) Victimisation is subjecting, or threatening to subject, someone to reprisal or detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else to make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation.

#### **5.5 Vilification**

- (1) The *Racial and Religious Tolerance Act 2001* prohibits certain conduct involving the vilification of persons on the ground of race or religious belief or activity.
- (2) Vilification is behaviour that incites physical harm or hatred, serious contempt, revulsion or severe ridicule of a person or group because of their race or religion.
- (3) Race includes:
  - (a) colour;
  - (b) descent or ancestry;
  - (c) nationality or national origin;
  - (d) ethnicity or ethnic origin;
- (4) Religious belief or activity means:
  - (a) holding or not holding a lawful religious belief or view;
  - (b) engaging in, not engaging in or refusing to engage in a lawful religious activity;

#### **5.6 Bullying**

- (1) Since 1 January 2014, if a member of staff is being bullied at work, he or she has been able to apply to the Fair Work Commission for an 'order' to stop that bullying under the *Fair Work Act 2009*. The Commission must respond to such an application two weeks after it is received. Orders may direct the bullying behaviour to stop. If the person who is the bully does not follow the orders, they may be subject to very significant fines.
- (2) Sometimes bullying is also a form of discrimination. When that is the case, the *Equal Opportunity Act 2010* applies.
- (3) Legal obligations regarding all forms of serious bullying are also established under the *Crimes Act 1958*.

- (4) Under the *Occupational Health and Safety Act 2004*, the Chief Executive Officer has a general duty care to provide and maintain for members of staff, as far as practicable, a working environment that is safe and without risks to health, including psychological health. This means that the Chief Executive Officer must address workplace hazards such as bullying, which is an acknowledged, and serious, hazard.
- (5) Bullying is repeated, unreasonable behaviour, directed towards an individual or a group of people, that creates a risk to health and safety. It includes both physical and mental risks and abuse.
- (6) Repeated behaviour refers to the persistent or systematic nature of the behaviour or pattern of behaviours, over a period of time.
- (7) Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would expect to intimidate, humiliate, undermine, frighten or threaten.
- (8) Stalking can constitute bullying. It is wilful, repeated behaviour (or obsessive attention) that arouses apprehension and fear placing physical or mental health and safety at risk. Stalking involves intent and is often calculated behaviour, be it in person, or via other intrusive means such as surveillance, interfering with property, or the repeated delivery of messages, items or gifts.
- (9) Cyber-bullying utilises technology and operates via online, internet platforms and applications. It is wilful, repeated behaviour (or obsessive attention) that humiliates, intimidates and causes anxiety and fear, placing physical or mental health and safety at risk. Abusive text messages, malicious rumours or inappropriate images posted on-line and establishing false internet profiles are examples of cyber-bullying.

## 5.7 Violence

- (1) Depending on the severity of an incident, the *Summary Offences Act 1966* or *Crimes Act 1958* may apply.
- (2) Violence refers to any incident where a person is physically attacked, threatened, or subjected to significant aggression. It can be a single incident where a person is abused or assaulted. It covers abusive and aggressive behaviours that place physical or mental health and safety at risk, including verbal threats to harm, maim or kill, physical assault, the dangerous application of force to the body or clothing of a person, holding a person against their will or attacking a person with a weapon or makeshift weapon.

## Performing the role of councillor

### 6. Standard

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.

## **7. Values**

- (1) The 4 values of Council provide a clear framework for councillors when performing their role as a councillor. They are:
  - (a) Leadership - Council will exercise diligence in decision-making and good governance and accept responsibility for the consequences of those actions taken with appropriate accountability
  - (b) Engagement - Council will actively and openly participate in consultation and strive to achieve effective governance and the best outcome for the community
  - (c) Respect - Council will value the contribution and individuality of others and aim to achieve an honest and healthy working relationship with all citizens
  - (d) Progression - Council will achieve continuous improvement in performance and the highest standards and outcomes for the community and municipality
- (2) Councillors are required to actively model and foster the values in their role as a councillor.
- (3) The values reinforce that councillor behaviour must always be appropriate, positive and productive when councillors are, or are reasonably assumed to be, acting in connection with the Council.

## **8. Role of a councillor**

- (1) The role of every 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.
- (2) 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; and
  - (f) comply with Council procedures required for good governance.
- (3) The role of a councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

## **9. Role of council**

- (1) The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.
- (2) A Council provides good governance if:
- (a) it performs its role in accordance with the overarching governance principles; and
  - (b) the councillors of the Council perform their roles in accordance with section 28 of the Act.
- (3) A Council must in the performance of its role give effect to the overarching governance principles.

### **9.1 Overarching governance principles**

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

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

## **9.2 Community engagement principles**

The following are the community engagement principles:

- (a) a community engagement process must have a clearly defined objective and scope;
- (b) participants in community engagement must have access to objective, relevant and timely information to inform their participation;
- (c) participants in community engagement must be representative of the persons and groups affected by the matter that is the subject of the community engagement;
- (d) participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement;
- (e) participants in community engagement are informed of the ways in which the community engagement process will influence Council decision making.

## **9.3 Public transparency principles**

The following are the public transparency principles:

- (a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;
- (b) Council information must be publicly available unless:
  - the information is confidential by virtue of this Act or any other Act; or
  - public availability of the information would be contrary to the public interest;
- (c) Council information must be understandable and accessible to members of the municipal community;
- (d) public awareness of the availability of Council information must be facilitated.

## **9.4 Strategic planning principles**

The following are the strategic planning principles:

- (a) an integrated approach to planning, monitoring and performance reporting is to be adopted;
- (b) strategic planning must address the Community Vision;
- (c) strategic planning must take into account the resources needed for effective implementation;
- (d) strategic planning must identify and address the risks to effective implementation;

- (e) strategic planning must provide for ongoing monitoring of progress and regular reviews to identify and address changing circumstances.

### **9.5 Financial management principles**

(1) The following are the financial management principles:

- (a) revenue, expenses, assets, liabilities, investments and financial transactions must be managed in accordance with a Council's financial policies and strategic plans;
- (b) financial risks must be monitored and managed prudently having regard to economic circumstances;
- (c) financial policies and strategic plans, including the Revenue and Rating Plan, must seek to provide stability and predictability in the financial impact on the municipal community;
- (d) accounts and records that explain the financial operations and financial position of the Council must be kept.

(2) Financial risk includes any risk relating to the following:

- (a) the financial viability of the Council;
- (b) the management of current and future liabilities of the Council;
- (c) the beneficial enterprises of the Council.

### **9.6 Service performance principles**

The following are the service performance principles:

- (a) services should be provided in an equitable manner and be responsive to the diverse needs of the municipal community;
- (b) services should be accessible to the members of the municipal community for whom the services are intended;
- (c) quality and costs standards for services set by the Council should provide good value to the municipal community;
- (d) a Council should seek to continuously improve service delivery to the municipal community in response to performance monitoring;
- (e) service delivery must include a fair and effective process for considering and responding to complaints about service provision.

## **10. Role of the Mayor**

The role of the Mayor is to:

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

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

#### **10.1 Mayoral robe and chain protocol**

- (1) The Mayoral robe and chain must only to be worn by the Mayor.
- (2) The Mayoral robe and chain must not be worn by other councillors, members of staff or community members, with the exception of the Deputy Mayor or an Acting Mayor if and when they perform the role of the Mayor.
- (3) The Mayor may decide whether to wear or not to wear the Mayoral robe and chain during their term of office, subject to the Mayoral robe and chain only being worn:
  - (a) at official swearing in of the Mayor ceremony;
  - (b) at Council's citizenship ceremonies;
  - (c) at Australia Day Civic ceremonies and presentation of Order of Australia awards;
  - (d) at Remembrance Day memorial services;
  - (e) as a representative of the Council at graduation and dedication ceremonies held by universities and education institutions;
  - (f) for the purposes of official Council portraits;
  - (g) in advertising materials which signify official capacity;
  - (h) on occasions when the Mayor represents or is asked to officially represent the Council as the Mayor at events, functions and delegations where the objective is to showcase the Council's profile; and
  - (i) as otherwise agreed from time to time with the Chief Executive Officer to the benefit, official promotion and credit of the Council.
- (4) The Mayoral robe and chain will be stored securely and appropriately maintained at the direction of, and as determined solely by, the Chief Executive Officer.

#### **11. Role of the Chief Executive Officer**

- (1) The Chief Executive Officer is responsible for:

- (a) supporting the Mayor and the councillors in the performance of their roles; and
  - (b) ensuring the effective and efficient management of the day to day operations of the Council.
- (2) The responsibility for supporting the Mayor and the councillors in the performance of their roles includes the following:
- (a) ensuring that the decisions of the Council are implemented without undue delay;
  - (b) ensuring that the Council receives timely and reliable advice about its obligations under the Act or any other Act;
  - (c) supporting the Mayor in the performance of the Mayor's role as Mayor;
  - (d) setting the agenda for Council meetings after consulting the Mayor;
  - (e) when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
  - (f) 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*.
- (3) The responsibility for ensuring the effective and efficient management of the day to day operations of the Council includes the following:
- (a) establishing and maintaining an organisational structure for the Council;
  - (b) being responsible for all staffing matters, including appointing, directing, managing and dismissing members of members of staff;
  - (c) managing interactions between members of staff and councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of staff and councillors are developed and implemented;
  - (d) performing any other function or duty of the Chief Executive Officer specified in the Act or any other Act.

## 12. Other councillor role obligations

### 12.1 Fairness and equity

- (1) Councillors must consider issues consistently, promptly and fairly.
- (2) Councillors must deal with matters in accordance with established procedures, in a non-discriminatory manner.
- (3) Councillors must take all relevant facts known to them, or that they should be reasonably aware of, into consideration and have regard to the particular merits of each case. councillors must not take irrelevant matters or circumstances into consideration when making decisions.

## 12.2 Unbiased administrative decision-making

- (1) Councillors must, when considering matters that may adversely affect others' rights, interests or legitimate expectations, bring an open mind to those matters free from the apprehension of bias, and such that they are open to persuasion notwithstanding their previously held and expressed views on the subject.
- (2) Councillors must be scrupulous in the way they make decisions in a way that ensures public confidence that our laws are not only administered justly but that their administration is seen to be just by:
  - (a) Acting impartially, reasonably, fairly and in good faith;
  - (b) Listening to both sides of any argument;
  - (c) Applying the principle of natural justice; and
  - (d) Ensuring procedural fairness applies.

## 12.3 Binding caucus votes

- (1) Councillors must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.
- (2) A binding caucus vote is a process whereby a group of councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the Council or committee, irrespective of the personal views of individual members of the group on the merits of the matter before the council or committee.
- (3) The prohibition on binding caucus votes does not prohibit councillors from discussing a matter before the Council or committee prior to considering the matter in question at a Council or committee meeting, or from voluntarily holding a shared view with other councillors on the merits of a matter.
- (4) The prohibition on binding caucus votes does not apply to a decision to elect the mayor or deputy mayor, or to nominate a person to be a member of a council committee or a representative of the council on an external body.

## 12.4 Obligations in relation to meetings

- (1) Councillors must comply with rulings by the chair at Council and committee meetings or other proceedings of the Council unless a motion dissenting from the ruling is passed.
- (2) Councillors must not engage in conduct that disrupts Council or committee meetings or other proceedings of the Council (such as, but not limited to, workshops and briefing sessions), or that would otherwise be inconsistent with the orderly conduct of meetings.
- (3) Councillors must not engage in any acts of disorder or other conduct that is intended to prevent the proper or effective functioning of the council, or of a committee of the council, such as:
  - (a) leaving a meeting of the council or a committee for the purposes of depriving the meeting of a quorum; or

- (b) submitting a rescission motion with respect to a decision for the purposes of voting against it to prevent another councillor from submitting a rescission motion with respect to the same decision; or
- (c) deliberately seeking to impede the consideration of business at a meeting.

### **13. Support for councillors**

The Mayor and councillors are supported by making available to them the resources and facilities reasonably necessary to enable them to effectively perform their role. These arrangements are set out in the Councillor Support Policy.

## **Compliance with good governance measures**

### **14. Standard**

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.

### **15. Councillor interaction with members of staff**

Councillors must comply with the Councillor Interaction with Members of Staff Policy established by the Chief Executive Officer under section 46 of the Act.

### **16. Community expectations**

- (1) Councillors recognise the community's high expectations of councillors as their representatives, who they have elected to a position of public trust.
- (2) Councillors will regularly report back to the community on Council's obligations.
- (3) Councillors are expected to observe the principles of good governance and integrity achieved through:
  - (a) transparency by following proper processes that are open to public scrutiny; and
  - (b) accountability by being accessible and responsive to the needs of the whole municipal community.

## 17. Elections

### 17.1 Separation of roles

- (1) Councillors must continue to fulfil their Council duties during an election period unless they are granted a leave of absence.
- (2) Councillors must maintain a clear separation between their obligations as councillors and their personal interests as a candidate, or member of a political party, in an election period prior to any election.

### 17.2 Council elections

Councillors must comply with the council Election Period Policy.

### 17.3 State and Federal elections

- (1) A councillor who becomes an endorsed candidate of a registered political party or otherwise publicly expresses an intention to run as a candidate in a state or federal election, is a prospective candidate.
- (2) Prospective candidates will disclose their candidacy in written advice to the Chief Executive Officer as soon as practicable after becoming a prospective candidate.
- (3) The Chief Executive Officer will advise all councillors of a prospective candidate's candidacy as soon as practicable after receiving a councillor's prospective candidate disclosure.
- (4) A councillor who is a prospective candidate should declare their intended candidacy at a meeting of Council as soon as practicable after notifying the Chief Executive Officer.
- (5) Councillor who nominates as a candidate for a state or federal election is a nominated candidate.
- (6) Nominated candidates should apply for leave of absence from their Council duties for at least the period from the date of their nomination as a candidate and conclude no earlier than the close of voting for the respective election. During this leave of absence, the councillor who is on the leave of absence should not attend meetings of Council or otherwise act as a councillor.
- (7) Council will approve all requests for leave of absence by a prospective candidate or nominated candidate.
- (8) A councillor who is a prospective candidate or a nominated candidate:
  - (a) must observe the provisions of Council's Election Period Policy as if that policy has effect the state or federal election for the period that commences on the day that they declare themselves to be a prospective candidate or become a nominated candidate, as the case may be, and concludes on the day of the close of voting for the respective state or federal election;

- (b) must not use Council resources in connection with any state or federal election campaign;
- (c) must not seek media advice or assistance from Council staff or contractors in relation to election issues or in regard to publicity involving their candidacy in a state or federal election;
- (d) must not be referred to in their capacity as a prospective candidate or a nominated candidate in any Council media releases;
- (e) is not eligible to be Council's official spokesperson;
- (f) must differentiate between their role as a state or federal election candidate and their role as a councillor when making public comment; and
- (g) must not use council activities, including Council meetings, committee meetings and any other council-related events, for any purpose related to their candidacy for a state or federal election.

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

### **18. Standard**

- (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.

### **19. Prohibited conduct**

- (1) Councillors have legal obligations under the Act with offences established for conduct that includes:
  - (a) misuse of position
  - (b) directing a member of Council staff
  - (c) disclosing confidential information
  - (d) failure to disclose a conflict of interest
  - (e) failure to lodge initial or biannual personal interests returns
  - (f) intentionally or recklessly lodging initial or biannual personal interests returns that contain any false or incomplete information
  - (g) accepting, directly or indirectly, an anonymous gift
  - (h) acting as a councillor when not qualified or ceasing to hold office
- (2) These matters are set out below in order to provide a complete picture of councillor obligations because, by their nature, such actions will tend to discredit council or mislead council or the public.
- (3) Councillors must ensure that they do not act in any way that constitutes prohibited conduct.

## 20. Misuse of position

- (1) Legal obligations regarding misuse of position are established under section 123 of the Act.
- (2) A councillor 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 to cause, or attempt to cause, detriment to the Council or another person.
- (3) Circumstances involving the misuse of a position by a councillor include:
  - (a) making improper use of information acquired as a result of the position the person held or holds; or
  - (b) disclosing information that is confidential information; or
  - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
  - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; 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 the person has a conflict of interest.

## 21. Directing a member of Council staff

- (1) Legal obligations regarding directing a member of Council staff are established under section 124 of the Act.
- (2) A councillor must not intentionally direct, or seek to direct, a member of Council staff:
  - (a) in the exercise of a delegated power, or the performance of a delegated duty or function, of the Council; or
  - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
  - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under this Act or any other Act; or
  - (d) in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

## 22. Confidential information

- (1) Legal obligations regarding confidential information are established under section 125 of the Act.
- (2) A councillor must not intentionally or recklessly disclose information that they know, or should reasonably know, is confidential information other than in the following circumstances where information may be disclosed:
  - (a) if it is information that the Council has determined should be publicly available;

- (b) for the purposes of any legal proceedings arising out of the Act;
- (c) to a court or tribunal in the course of legal proceedings;
- (d) pursuant to an order of a court or tribunal;
- (e) in the course of an internal arbitration and for the purposes of the internal arbitration process;
- (f) in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
- (g) to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;
- (h) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- (i) to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry;
- (j) to the extent reasonably required by a law enforcement agency.

## **23. Conflict of interest**

### **23.1 Legal basis**

- (1) Legal obligations regarding conflict of interest are established under Division 2 of Part 6 of the Act.
- (2) A councillor has a conflict of interest if the councillor has general conflict of interest or a material conflict of interest.
- (3) Family member means:
  - (a) a spouse or domestic partner of the councillor; or
  - (b) a parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the councillor or of their spouse or domestic partner; or
  - (c) any other relative that regularly resides with the councillor.
- (4) Matter means a matter with which a Council or a delegated committee of which the councillor is a member is concerned and that will require a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or the delegated committee in respect of the matter
- (5) Not-for-profit organisation means a body that:
  - (a) operates exclusively for charitable, civil, sporting or other social purposes; and
  - (b) does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation.

### 23.2 Disclosure of a conflict of interest

- (1) A councillor who has a conflict of interest in respect of a matter to be considered at a Council meeting or to be considered at a meeting of a delegated committee of which the councillor is a member or at a meeting of a community asset committee of which the councillor is a member or that arises in the course of the exercise of a statutory function under this Act or any other Act must:
  - (a) disclose the conflict of interest in the manner required by the Governance Rules; and
  - (b) exclude themselves from the decision-making process in relation to that matter, including any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter.
- (1) If a councillor fails to comply with subclause (1) above in respect of a conflict of interest that is a material conflict of interest or a general conflict of interest, an application may be made to a Councillor Conduct Panel alleging serious misconduct.

### 23.3 Disclosure of conflict of interest at other meetings

- (1) A councillor who has a conflict of interest in respect of a matter at a meeting conducted under the auspices of the Council that is not a Council meeting, delegated committee meeting or community asset committee meeting must:
  - (a) disclose the conflict of interest in the manner required by the Governance Rules; and
  - (b) comply with the procedures specified in the Governance Rules or the purposes of this disclosure obligation.
- (2) If a councillor fails to comply with subclause (1) above an application may be made to a Councillor Conduct Panel alleging serious misconduct.

### 23.4 General conflict of interest

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

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

### 23.5 Material conflict of interest

Unless an exemption applies, a councillor has a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

- (a) The benefit may arise or the loss incurred directly or indirectly or in a pecuniary or non-pecuniary form.
- (b) Any of the following is an affected person:
  - i. the councillor;
  - ii. a family member of the councillor ();
  - iii. a body corporate of which the councillor or their spouse or domestic partner is a director or a member of the governing body;
  - iv. an employer of the councillor, unless the employer is a public body;
  - v. a business partner of the councillor;
  - vi. a person for whom the councillor is a consultant, contractor or agent;
  - vii. a beneficiary under a trust or an object of a discretionary trust of which the councillor is a trustee;
  - viii. a person from whom the councillor has received a disclosable gift (one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed, the prescribed amount, received from a person in the 5 years preceding the decision on the matter if the councillor held the office of councillor at the time the gift was received or if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation).

### 23.6 Exemptions

- (3) A conflict of interest does not arise if any of the following exemptions apply:
  - (a) the conflict of interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the councillor in relation to the matter;
  - (b) the interest that would give rise to a conflict of interest is held in common with a substantial proportion of the residents, ratepayers or electors of the municipal district and does not exceed the interest held by the other residents, ratepayers or electors;
  - (c) the councillor does not know the circumstances that give rise to the conflict of interest, and could not be reasonably expected to know those circumstances;
  - (d) the interest only arises because the councillor is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the councillor receives no personal advantage from the not-for-profit organisation;
  - (e) the interest only arises because a family member of the councillor is a member but not an office-holder of a not-for-profit organisation;
  - (f) the interest only arises because the councillor is a member of a not-for-profit organisation that has expressed an opinion or advocated for an outcome in regard to the matter;
  - (g) the interest arises in relation to a decision by a councillor on a matter or in a circumstance that is prescribed to be exempt by the regulations;

- (h) a disclosable gift does not include the value of any reasonable hospitality received by the councillor at an event or function that the councillor attended in an official capacity as a councillor
- (4) The following matters are prescribed to be exempt:
- (a) the nomination or appointment by the Council of a councillor to a position for which the councillor will not be remunerated;
  - (b) the nomination or appointment by the Council of a councillor to a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;
  - (c) a submission by the Council to an electoral structure review under section 16 of the Act or a ward boundary review under section 17 of the Act;
  - (d) the nomination of a councillor for election to the office of mayor or deputy mayor;
  - (e) the election of a councillor to the office of mayor or deputy mayor under section 25 or 27 of the Act;
  - (f) the appointment of a councillor to the office of acting mayor under section 20B of the Act;
  - (g) the payment of allowances to the mayor, deputy mayor or councillors as provided for under section 39(6) of the Act;
  - (h) the adoption of an expenses policy by the Council under section 41 of the Act;
  - (i) a decision by the Council to deal with a matter in an alternative manner under section 67 of the Act;
  - (j) the establishment of a delegated committee under section 67 of the Act (Council decision making where quorum cannot be maintained);
  - (k) the appointment of a councillor as a member or chairperson of a delegated committee;
  - (l) the adoption, review or amendment of a councillor code of conduct under section 139 or 140 of the Act;
  - (m) an application for an internal arbitration process under section 143 of the Act;
  - (n) an application to a Councillor Conduct Panel under section 154 of the Act;
  - (o) an application to VCAT for a review of a Councillor Conduct Panel decision under section 170 of the Act;
  - (p) a resolution by the Council related to a declaration under section 158(1) of the Local Government Act 1989 (declaring rates and charges);
  - (q) a resolution by the Council that has the effect of making the councillors eligible or ineligible for the superannuation guarantee under any taxation legislation;
  - (r) a matter related to preparing or adopting a budget or a revised budget under Part 4 of the Act if:
    - i. the budget or revised budget includes funding for that matter; and

- ii. the Council previously approved that matter and the proposed funding for that matter; and
    - iii. a councillor who had a conflict of interest in respect of that matter disclosed the conflict when the Council previously considered and made the decision in respect of that matter and approved the proposed funding for that matter;
  - (s) a matter related to preparing or adopting a Community Vision, Council Plan, Financial Plan, Asset Plan or Revenue and Rating Plan (a relevant document) under Part 4 of the Act if
    - i. the relevant document includes that matter; and
    - ii. the Council previously approved that matter for inclusion in a relevant document; and
    - iii. a councillor who had a conflict of interest in respect of that matter disclosed the conflict when the Council previously considered and made any decisions in respect of the matter;
  - (t) a matter for which
    - i. a decision by the Council has been made under section 67 of the Act (Council decision making where quorum cannot be maintained); and
    - ii. any component part of the matter in which a councillor had a conflict of interest has been resolved; and
    - iii. the councillor disclosed the conflict of interest when the Council previously considered that component part of the matter.
- (5) The circumstances in which a councillor carries out a function in any of the following positions are prescribed to be exempt:
- (a) as a representative of the Council to a Local Government Waste Forum established under the *Environment Protection Act 1970*;
  - (b) as a director of a Waste and Resource Recovery Group established under the *Environment Protection Act 1970*;
  - (c) as a member of the Country Fire Authority appointed under section 7 of the *Country Fire Authority Act 1958*;
  - (d) as a member of the governing body of a referral authority considering an application under section 56 of the Planning and Environment Act 1987;
  - (e) as a representative of the Council, or Councils, to the Municipal Association of Victoria or in another body that has a purpose of representing the interests of a Council or Councils;
  - (f) as an employee of the Crown or of a body established by or under any Act for a public purpose, if the councillor has no current or expected future responsibilities as that employee that relate to a matter;
  - (g) as a representative of the Council (with the Council's approval) to an organisation, if the councillor receives no remuneration as that representative;

- (h) as a member of a Planning Application Committee established under the *Planning and Environment Act 1987* or as a member or co-opted member of a subcommittee of that Committee.

#### **24. Personal interests returns**

- (1) Legal obligations regarding personal interests returns are established under Division 3 of Part 6 of the Act.
- (2) A councillor must lodge an initial personal interests return with the Chief Executive Officer containing the matters prescribed by the regulations within 30 days of taking the oath or affirmation of office of a Councillor.
- (3) A councillor must not intentionally or recklessly lodge an initial personal interests return that contains any false or incomplete information.
- (4) If a person is re-elected upon completion of their term of office as a councillor, the Councillor does not have to submit a new initial personal interests return.
- (5) A councillor must lodge a biannual personal interests return with the Chief Executive Officer containing the matters prescribed by the regulations twice yearly by the end of each prescribed period. the prescribed periods are:
  - (a) the period from 1 March to 31 March; and
  - (b) the period from 1 September to 30 September.
- (6) A councillor must not intentionally or recklessly lodge a biannual personal interests return that contains any false or incomplete information.

#### **25. Anonymous gifts**

- (1) Legal obligations regarding anonymous gifts are established under Division 4 of Part 6 of the Act.
- (2) A councillor must not accept, directly or indirectly, a gift for the benefit of the councillor the amount or value of which is equal to or exceeds the gift disclosure threshold unless:
  - (a) the name and address of the person making the gift are known to the councillor; or
  - (b) at the time when the gift is made, the councillor is given the name and address of the person making the gift and the councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.
- (3) If the name and address of the person making the gift are not known to the councillor for whose benefit the gift is intended, the councillor is not in breach if the councillor disposes of the gift to the Council within 30 days of the gift being received.

## 26. Acting as a councillor when not qualified or ceasing to hold office

- (1) Legal obligations regarding acting as a Councillor when not qualified or ceasing to hold office are established under Division 5 of Part 2 of the Act.
- (2) A person must not act as a Councillor if the person knows, or should reasonably know, that they:
  - (a) are not qualified to be a Councillor; or
  - (b) have ceased to hold the office of Councillor.
- (3) If a councillor becomes aware that they have ceased to be qualified to be a councillor of a Council, the councillor must immediately give notice in writing to the Chief Executive Officer of the Council that they have ceased to be qualified to be a councillor of the Council.

### 26.1 Qualification to be a councillor

- (1) A person is qualified to be a councillor of a Council if the person:
  - (a) has attained the age of 18 years; and
  - (b) is an Australian citizen or an eligible British subject referred to in section 48(1)(a) of the *Constitution Act 1975*; and
  - (c) is enrolled on the voters' roll for the Council or would be enrolled on the voters' roll for the Council on a particular day if a voters' roll were to be prepared on that particular day; and
  - (d) is not a person to whom subclause (2) applies.
- (2) A person is not qualified to be a councillor of a Council if the person:
  - (a) is a member of the Parliament of Victoria or of the Parliament of the Commonwealth of Australia or of another State or a Territory of the Commonwealth; or
  - (b) is employed as a Ministerial officer, a Parliamentary adviser or an electorate officer by a member of the Parliament of Victoria or in a corresponding position (however designated) by, or for, a member of the Parliament of the Commonwealth of Australia or of another State or a Territory of the Commonwealth; or
  - (c) is a councillor of another Council constituted under this Act or a member of a corresponding body (however designated) under an Act of another State or a Territory of the Commonwealth; or
  - (d) is a member of Council staff of the Council; or
  - (e) is an undischarged bankrupt; or
  - (f) has property that is subject to control under the law relating to bankruptcy; or
  - (g) has failed to take the oath or affirmation of office of councillor at any Council when required under this Act during the current term of office of that Council; or

- (h) has been disqualified from being a councillor after a finding by VCAT of gross misconduct, for the period that the period of disqualification specified in the order made by VCAT is in force; or
- (i) has been subject to 2 or more findings of serious misconduct by a separate Councillor Conduct Panel under section 167 of the Act in the preceding 8 years and the period during which the person can apply under section 170 of the Act to VCAT for a review of those findings has expired, for the period of 4 years following the second finding of serious misconduct during which the disqualification is in force; or
- (j) has been convicted of the offence of failing to lodge an election campaign donation return in relation to the current term of the Council; or
- (k) has been convicted of an offence against the Act in the preceding 8 years for which the maximum penalty is at least 120 penalty units or a period of imprisonment of at least 12 months; or
- (l) has been convicted of an offence in the preceding 8 years, committed when the person was of or over 18 years of age, which is punishable upon first conviction for a term of imprisonment of 2 years or more under the law of Victoria, or the law of any other State, or a Territory of the Commonwealth, or the law of the Commonwealth; or
- (m) is disqualified from managing corporations under Part 2D.6 of the *Corporations Act*.

## 26.2 Councillor ceasing to hold office

- (1) Councillor ceases to hold the office of councillor and the office of the councillor becomes vacant if the councillor:
  - (a) ceases to be qualified to be a Councillor; or
  - (b) dies; or
  - (c) resigns in writing delivered to the Chief Executive Officer; or
  - (d) is ousted from office; or
  - (e) subject to section 35 of the Act, is absent from Council meetings for a period of 4 consecutive months without leave obtained from the Council.
- (2) A councillor who would cease to have a qualification as an enrolled voter under section 34(1)(c) of the Act on a particular day if a voters' roll for the Council were prepared on that particular day, ceases to hold the office of councillor at the expiration of the period of 50 days after that particular day if the councillor has not obtained another entitlement to be on the voters' roll for the Council.
- (3) A councillor is considered to have ceased to have a qualification as an enrolled voter under section 34(1)(c) of the Act if:
  - (a) their only entitlement to be enrolled on the voters' roll for the Council is as a resident under section 241 of the Act; and
  - (b) their principal place of residence is no longer located within the municipal district of the Council.

- (4) The Council must grant any reasonable request for leave.
- (5) A councillor is not to be taken to be absent from a Council meeting:
  - (a) while any proceeding for ouster from office of the Councillor is pending; or
  - (b) while the Councillor is suspended from office.
- (6) A councillor is not to be taken to be absent from Council meetings during the period of 6 months after the councillor or their spouse or domestic partner:
  - (a) becomes the natural parent of a child; or
  - (b) adopts a child under the age of 16 yearsand the councillor has responsibilities for the care of the child during that period.

### **26.3 Ouster from office**

- (1) The Minister, the Chief Municipal Inspector or a Council of which a particular councillor is a member may apply to the Supreme Court for the ouster from the office of councillor of any person whom the Minister, the Chief Municipal Inspector or the Council believes is declared elected or holds the office of councillor contrary to this Act.
- (2) If an application relates to the election of a councillor, the application must be made during the term for which that person was elected.

### **27. Use of council resources**

- (1) Councillors must use council resources ethically, effectively, efficiently and carefully in performing the role of a councillor, and must not use them for private purposes, unless the use is lawfully authorised and proper payment is made where appropriate.
- (2) Councillors must be scrupulous in their use of council property, including intellectual property, official services, facilities, technology and electronic devices and must not permit their misuse by any other person or body.
- (3) Councillors must avoid any action or situation that could create the appearance that council property, official services or public facilities are being improperly used for their private benefit or for the private benefit of any other person or body.
- (4) Councillors must not use council resources, members of staff, property or facilities for the purpose of assisting their election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- (5) Councillors must comply with policies relevant to the use of council resources.

### **28. Complaints handling**

Councillors must refer any complaint they receive about the quality of an action taken, decision made, or service provided or about a delay or failure in providing a service, taking an action, or

making a decision to Executive Services so that the matter can be resolved according to the Complaints Handling Policy.

## **29. Personal dealings with council**

- (1) Councillors who have a reason to deal with the council in their personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a planning permit granted by council) must not expect or request preferential treatment because they are a councillor.
- (2) Councillors must avoid any action that could lead members of the public to believe that they are seeking preferential treatment.
- (3) Councillors must undertake any personal dealings they have with the council in a manner that is consistent with the way other members of the community deal with the council.

## **30. Media**

### **30.1 Council spokesperson**

- (1) The Mayor is the principal spokesperson for the Council which is constituted under the Act and consists of its democratically elected councillors.
- (2) The Mayor may request another councillor to make official comment on behalf of the Council, where appropriate.
- (3) A Council spokesperson may comment on matters that:
  - (a) relate to the decision making of the Council
  - (b) concern the diverse interests of the municipal community in Council decision making
  - (c) relate to the strategic direction of the Council, including strategic risks
  - (d) have to do with the development of the key strategic documents of the Council, including plans, strategies, policies
  - (e) involve engagement with the community on the council plan and other strategic decision-making
  - (f) cover advocating for the municipal community on matters that impact the municipal community that are not Council functions
  - (g) involve any other function or duty of the Council specified in the Act or any other Act
- (4) A Council spokesperson must ensure communications are clear, honest and consistent with the facts of the matter and positively portray Council as a decisive and responsible governing body
- (5) The Chief Executive Officer performs the role of principal spokesperson for the Council during an election period.

### 30.2 Organisation spokesperson

- (1) The Chief Executive Officer is the official spokesperson for all operational matters pertaining to Council as an organisation including:
  - (a) day to day operations of the Council including regulatory and enforcement functions
  - (b) implementation of decisions of the Council
  - (c) establishment and maintenance of an organisational structure for the Council
  - (d) all staffing matters, including appointing, directing, managing and dismissing members of staff
  - (e) any other function or duty of the Chief Executive Officer specified in the Act or any other Act
- (2) The Chief Executive Officer may nominate another member of staff as spokesperson for operational matters.

### 30.3 Councillors' own communications

- (1) There may be times when a councillor as an individual disagrees with a majority decision of Council and wants the community to know that. The appropriate time and place for communicating diverging views is when an item is being debated in the Council Chamber. This provides the best opportunity for informed decision-making and for both the community and the media to better understand the diversity of views and perspectives in context.
- (2) Although Council supports transparency and accountability in decision making, including free speech and the use of appropriate robust processes to debate policy, pursue political objectives and resolve differences, Council does not and will not condone personal and public criticism and abuse, harassment, vilification or bullying of councillors, members of staff, the organisation and any other person or organisation. Any councillor who engages in such conduct will be doing so without the sanction and authority of Council.
- (3) Councillors may express their independent views through the media but in doing so must:
  - (a) not pre-empt official Council communications
  - (b) not use Council material or branding
  - (c) make it clear any comment is their own personal view which does not represent the position of Council
  - (d) demonstrate respect for the decision-making processes of Council which are based on a decision of the majority of councillors
  - (e) strive to achieve balance in the matters that are communicated
  - (f) not communicate confidential information
  - (g) not compromise the privacy of individuals by inappropriately communicating personal information or health information

## **31. Events**

### **31.1 Event roles**

- (1) The Mayor is the principal Council representative for events.
- (2) The Mayor may choose to delegate the principal Council representative role to another councillor, as appropriate.
- (3) A councillor must not accept a speaking role at an event without approval from the Mayor.
- (4) Speeches reflecting Council's position will be prepared by the business unit responsible for media relations and communication for the official councillor role at Council and external events.

### **31.2 Council events**

- (1) Council events include those organised by Council or sponsored by Council.
- (2) All councillors will receive an invitation to Council events subject to the agreement of the event organiser
- (3) Invitations for Council events will be issued under the Mayor's authority.
- (4) Wording for plaques commemorating the opening of Council facilities will be approved by the Chief Executive Officer.

### **31.3 Ministerial events**

- (1) If Council has received significant state or federal funding for a project, event or facility, the responsible Minister will be invited by the Mayor to officially launch or open the project, event or facility.
- (2) The Mayor is responsible for hosting visiting Ministers and dignitaries, including conducting the official welcome, and conveying appropriate acknowledgements.
- (3) If a Minister advises Council of their intention to visit the municipality or host a media opportunity, the Chief Executive Officer will notify councillors of the event consistent with any embargo protocols.

### **31.4 Community and external events**

A councillor must not offer Council resources, including advertising, to a community member, group or organisation in relation to any event.

### **31.5 Councillors' own events**

Councillors, in conducting their own events must:

- (a) make it clear to attendees, and otherwise generally, that the event is not a Council endorsed or organised event.

- (b) Not use Council resources in the promotion, preparation or conduct of the event.

## Disputes

### 32. Disputes between councillors

#### 32.1 Productive debate

- (1) Councillors are mindful that having and expressing differing and sometimes opposing viewpoints is a normal function of the process of democratic local government. Sharing and expressing these different views leads to informed and well considered debate. All Councillors have the right to influence the decisions made by Council through this debate.
- (2) Councillors must endeavour to foster and encourage positive and productive interactions at all times.
- (3) Conflict or disputes may emerge if the differences between councillors become personal rather than focussed on facts or ideas.
- (4) A conflict or dispute may arise between two individual councillors, between one councillor and another or a group of councillors or between two or more different groups of councillors. The following dispute resolution procedure will apply regardless of the dynamics and numbers involved.

#### 32.2 Self-resolution

- (1) Before commencing a formal dispute resolution process, councillors who are parties to a disagreement have an individual and collective responsibility to try every avenue possible to resolve the dispute in-house in a courteous and respectful manner to prevent them from further escalating.
- (2) Either party may ask the Mayor to informally facilitate discussions to assist the self-resolution process.

#### 32.3 Mediation

- (1) If self-resolution is unsuccessful or not possible, the use of mediation should be considered to resolve the dispute.
- (2) Mediation is where the parties are assisted to achieve a negotiated resolution by the Mayor, and can be used where:
  - (a) a respectful discussion on the issues is possible
  - (b) the parties feel safe
  - (c) a third person can assist discussions and innovative resolution
  - (d) maintaining control of the outcome is important
  - (e) an ongoing positive relationship is valued

- (3) The Mayor cannot take sides, make decisions, tell the parties what to agree to, decide whether parties are right or wrong, provide legal or financial advice or conduct counselling.
- (4) The Mayor should not mediate disputes where he or she has a conflict of interest in the matter or where it is likely that they might be perceived as being influenced by a personal interest in the matter. Where the Mayor believes that he or she has a conflict of interest, the Deputy Mayor shall be appointed as the mediator. Where the Deputy Mayor has a conflict of interest in a matter to be mediated or where it is likely that they might be perceived as being influenced by a personal interest in the matter, an independent mediator with appropriate skills and qualifications may be appointed by the CEO to mediate the Councillor dispute subject to the agreement of the parties.
- (5) The request for mediation must be made in writing, indicating the reason for the dispute, the names of those involved, provisions of the code that may have been breached and any evidence to support the allegation and the name of the councillor representative if the request is being made by a group of councillors.
- (6) The Mayor will become involved as soon as practically possible by convening a meeting at the earliest available opportunity to commence formal mediation discussions.
- (7) The Mayor will ensure the Chief Executive Officer is advised of the dispute
- (8) The Mayor will document agreed mediation outcomes, if any, and will provide copies to all parties.
- (9) In the event that mediation fails, parties to the mediation may seek to institute an internal arbitration process under Division 5 of Part 6 of the Act.
- (10) In the event that a party does not comply with the agreed mediation outcomes, the other party to the dispute may seek to institute an internal arbitration process under Division 5 of Part 6 of the Act.

#### **32.4 Internal resolution process**

- (1) The internal arbitration process established under Division 5 of Part 6 of the Act applies to any breach of the prescribed standards of conduct.
- (2) An application for an internal arbitration process to make a finding of misconduct against a councillor may be made by:
  - (a) the Council following a resolution of the Council; or
  - (b) a councillor or a group of councillors.
- (3) An application must be made within 3 months of the alleged misconduct occurring.

- (4) An application under this section must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published.
- (5) The Principal Councillor Conduct Registrar, after examining an application under section 143 of the Act, must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is satisfied that:
  - (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
  - (b) there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application
- (6) The arbiter must conduct the internal arbitration process so that:
  - (a) any processes prescribed by the regulations, including any application process, are followed
  - (b) the parties involved are given an opportunity to be heard by the arbiter
  - (c) a councillor who is a party does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly
- (7) Sanctions that may be imposed by an arbiter on finding of misconduct include:
  - (a) direct the councillor to make an apology in a form or manner specified by the arbiter;
  - (b) suspend the councillor from the office of councillor for a period specified by the arbiter not exceeding one month;
  - (c) direct that the councillor be removed from any position where the councillor represents the Council for the period determined by the arbiter;
  - (d) direct that the councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
  - (e) direct a councillor to attend or undergo training or counselling specified by the arbiter.
- (8) 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.
- (9) A copy of the arbiter's decision and statement of reasons, with confidential information redacted, 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.

### **33. Disputes between members of the public and councillors**

- (1) Where a complaint is received from the public in respect of a councillor, the matter will be referred to the Mayor for consideration.
- (2) Where the Mayor determines a breach of the Councillor Code of Conduct has occurred, the Mayor will progress the matter in accordance with this dispute resolution process.
- (3) The Mayor should not consider a matter where he or she has a conflict of interest in the matter or where it is likely that they might be perceived as being influenced by a personal interest in the matter. Where the Mayor believes that he or she has a conflict of interest, the Deputy Mayor shall consider the matter. Where the Deputy Mayor has a conflict of interest in the matter or where it is likely that they might be perceived as being influenced by a personal interest in the matter, a councillor independent of the matter may be selected by the CEO to assess the matter.

### **34. Disputes between councillors and staff**

#### **34.1 Raising the issue**

- (1) The Chief Executive Officer has sole responsibility for the management of members of staff.
- (2) In the event of a dispute between a councillor and a member of staff, it must be brought to the immediate attention of the Chief Executive Officer:
  - (a) by the member of staff direct to the Chief Executive Officer who will advise the Mayor, unless the Mayor is the subject of the dispute; or
  - (b) by the councillor to the Mayor who will advise the Chief Executive Officer
- (3) The Chief Executive Officer will investigate the dispute and progress the matter in accordance with the following process.

#### **34.2 Informal resolution**

- (1) The councillor and Chief Executive Officer will attempt to resolve the matter in an “informal” but courteous and respectful manner regardless of whether the dispute was raised by a Councillor or staff member.

#### **34.3 Formal complaint**

- (1) If the informal process is unsuccessful and a councillor wishes to lodge a formal complaint against a member of staff, this complaint must be lodged with the Chief Executive Officer.
- (2) The Chief Executive Officer has the discretion as to what, if any, action is undertaken, however, the Chief Executive Officer will report back to the councillor who made the complaint, once that complaint has been investigated.
- (3) Complaints involving the Chief Executive Officer will be referred to the Mayor who has the discretion as to what, if any, action is undertaken, however, the Chief Executive Officer will report back to the councillor who made the complaint, once that complaint has been

investigated. If the matter remains unresolved, the Mayor will raise the matter with all councillors in the performance review process.

- (4) If the informal process is unsuccessful and a staff member wishes to lodge a formal complaint against a councillor, this complaint must be lodged with the Chief Executive Officer who will, if deemed appropriate, discuss the matter with the Mayor. Where the Mayor deems that a breach of this Code of Conduct has occurred, the Mayor will progress the matter in accordance with the dispute resolution process outlined in clause 32 - Disputes Between Councillors.
- (5) The Mayor should not consider a matter where he or she has a conflict of interest in the matter or where it is likely that they might be perceived as being influenced by a personal interest in the matter. Where the Mayor believes that he or she has a conflict of interest, the Deputy Mayor shall consider the matter. Where the Deputy Mayor has a conflict of interest in the matter or where it is likely that they might be perceived as being influenced by a personal interest in the matter, a councillor independent of the matter may be selected by the CEO to assess the matter.

## Misconduct

### 35. Councillor misconduct

Misconduct by a councillor means any breach by a councillor of the prescribed standards of conduct included in this code.

### 36. Serious misconduct

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

- (j) the failure by a councillor to disclose a conflict of interest and to exclude themselves from the decision-making process when required to do so in accordance with the Act.
- (2) A Councillor Conduct Panel may hear an application that alleges serious misconduct by a councillor.
  - (3) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a councillor may be made by:
    - (a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under subsection 154(2) of the Act in respect of a councillor's conduct; or
    - (b) a councillor or a group of councillors; or
    - (c) the Chief Municipal Inspector. Allegations of a failure to disclose a conflict of interest may only be made by the Chief Municipal Inspector.
  - (4) If a Councillor Conduct Panel makes a finding of serious misconduct against a councillor, the Councillor Conduct Panel may do any one or more of the following:
    - (a) reprimand the councillor;
    - (b) direct the councillor to make an apology in a form or manner determined by the Councillor Conduct Panel;
    - (c) suspend the councillor from office for a period specified by the Councillor Conduct Panel not exceeding 12 months;
    - (d) 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.

## Definitions

Act	<i>Local Government Act 2020</i>
Chief Executive Officer	The person occupying the office of Chief Executive Officer of the Council, and includes a person acting in that office
Organisation	The Wangaratta Rural City Council comprised of elected councillors and led by the Mayor
Council	The Rural City of Wangaratta, led by the Chief Executive Officer

Councillor	A councillor of the Council
Council meeting	A meeting of the Council convened in accordance with the governance rules
Delegate	A member of Rural City staff to whom powers, functions and duties have been delegated by an instrument of delegation
Delegated committee	A committee established by the Council under section 63 of the Act
Members of staff	Employees of Rural City of Wangaratta organisation, including associates

## References

### Legislation

- *Australian Human Rights Commission Act 1986*
- *Crimes Act 1958*
- *Equal Opportunity Act 2010*
- *Fair Work Act 2009*
- *Health Records Act 2001*
- *Local Government (Governance and Integrity) Regulations 2020*
- *Local Government Act 1989*
- *Local Government Act 2020*
- *Occupational Health and Safety Act 2004*
- *Privacy and Data Protection Act 2014*
- *Racial and Religious Tolerance Act 2001*
- *Summary Offences Act 1966*
- *Workplace Injury Rehabilitation and Compensation Act 2013*

**Internal policies**

- Complaints Handling Policy
- Council Expenses Policy
- Councillor Interaction with Members of Staff Policy
- Councillor Support Policy
- Election Period Policy
- Governance Rules

**Review**

The policy may be amended by the Council at any time.

It must be reviewed by the Council, and amended if necessary, within 4 months of a general election.