

Councillor Code of Conduct



Civic Centre
Cnr Lyttleton and Lloyd St, Castlemaine
P.O Box 185 Castlemaine VIC 3450

t (03) 5471 1700

e info@mountalexander.vic.gov.au

w www.mountalexander.vic.gov.au

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1. Purpose

The Councillor Code of Conduct sets out the principles and standards of behaviour expected of Councillors and Mayors when carrying out their roles, responsibilities and obligations as elected representatives for their communities. By adhering to the behaviours set out below, Councillors will increase public confidence in local government and Council decisions.

Under section 139(1) of the Local Government Act 2020 (the Act) Council must review and adopt a Councillor Code of Conduct within four months of the general election. In the interim, Councillors must comply with the existing Councillor Code of Conduct, pursuant to the provisions of section 76C of the Local Government Act 1989.

Section 139(2) states "The purpose of the Councillor Code of Conduct is to include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification".

Section 140 of the Act states:

- (1) *A Council may review or amend the Councillor Code of Conduct at any time.*
- (2) *A Council can only amend the Councillor Code of Conduct by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council.*

2. Commitment

Mount Alexander Shire Councillors are committed to work together in the best interests of the people of the municipality to the highest standard of behaviour and to discharge their responsibilities to the best of their skill and judgement.

Councillors commit to the Standards of Conduct, as prescribed by the LGA, values and behaviours outlined in the Councillor Code of Conduct and acknowledge a commitment to working together constructively will enable the achievement of Council's vision.

This Code must be read alongside other Council documents, including the Council Plan, Council policies, protocols and Council's local laws, as applicable, which all form part of Council's governance framework.

In support of their commitment, all Councillors have signed this Code of Conduct.

3. Roles and responsibilities

Role of the Council

The primary role of the Council is to provide good governance to its municipal district for the benefit and wellbeing of the municipal community.

Section 8 of the Act outlines the role of Council, which is:

- (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 section 9¹;*
 - (b) *the Councillors of the Council perform their roles in accordance with section 28².*
- (3) *In performing its role, a Council may—*
 - (a) *perform any duties or functions or exercise any powers conferred on a Council by or under this Act or any other Act; and*
 - (b) *perform any other functions that the Council determines are necessary to enable the Council to perform its role.*
- (4) *If it is necessary to do so for the purpose of performing its role, a Council may perform a function outside its municipal district.*

Role of a Councillor

A Councillor's role is to represent their community and advocate on their behalf. They are a valuable link between the community and Council and are key to facilitating communication with the community and encouraging engagement with the activities of Council.

There is an expectation that Councillors will make decisions that will benefit and be in the best long term interest of the whole community. Council has a statutory responsibility to represent all people who live, participate and invest within the municipality.

Councillors are responsible for establishing and maintaining the good governance of the Council. Councillors determine Council policies and set the strategic direction of the Council. Councillors have a key advocacy and leadership role. Councillors appoint, manage and support the Chief Executive Officer of the organisation to deliver the strategic objectives of the Council.

Section 28 of the Act outlines the role of a Councillor, as follows:

- (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*

¹ Overarching governance principles and supporting principles

² Role of a Councillor

(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.

Role of Mayor

The Mayor is the elected leader of the Council. The role of the Mayor is outlined in Section 18 of the Act as follows:

(1) 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.*

Section 19(1) of the Act documents the Mayor's specific powers, which are:

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

Role of Deputy Mayor

The Deputy Mayor supports the Mayor as required. Section 21 of the Act outlines the role and powers of the Deputy Mayor as follows:

The Deputy Mayor must perform the role of the Mayor and may exercise any of the powers of the Mayor if—

- (a) *the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or*
- (b) *the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or*
- (c) *the office of Mayor is vacant.*

Role of Chief Executive Officer

The Chief Executive Officer (CEO) has a number of statutory responsibilities and is accountable to the Mayor and Councillors for delivering Council's strategies and services. The CEO is responsible for the operations of Council, to provide professional, relevant and timely information and support to the Council.

The CEO is responsible for management and administration. The organisation is responsible for the implementation of Council policy and decisions, service delivery and providing professional advice to Councillors.

Section 46 of the Act outlines the role of the Chief Executive Officer, as follows:

(1) *A 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) *Without limiting the generality of subsection (1)(a), this responsibility 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 this 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. (Note See clause 15 of Schedule 1 to the Workplace Injury Rehabilitation and Compensation Act 2013.)*

(3) *Without limiting the generality of subsection (1)(b), this responsibility 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 Council staff;*
- (c) managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between members of Council staff and Councillors are developed and implemented;*
- (d) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.*

(4) For the purposes of subsection (3)(a), a Chief Executive Officer must—

- (a) develop and maintain a workforce plan that—*
 - (i.) describes the organisational structure of the Council; and*
 - (ii.) specifies the projected staffing requirements for a period of at least 4 years; and*
 - (iii.) sets out measures to seek to ensure gender equality, diversity and inclusiveness; and*
- (b) inform the Council before implementing an organisational restructure that will affect the capacity of the Council to deliver the Council Plan; and*
- (c) consult members of Council staff affected by a proposed organisational restructure, before implementing the organisational restructure.*
- (d) A Council and the Chief Executive Officer must, in giving effect to gender equality, diversity and inclusiveness, comply with any processes and requirements prescribed by the regulations for the purposes of this section.*
- (e) A Chief Executive Officer must ensure that the Mayor, Deputy Mayor, Councillors and members of Council staff have access to the workforce plan.*
- (f) A Chief Executive Officer must develop the first workforce plan under this section within 6 months of the commencement of this section.*

Councillor relationship with staff

The relationship between Councillors and the organisation is primarily with the Chief Executive Officer (CEO). The Council is the employer of the CEO, and the CEO is the employer of all other staff.

Interaction between Councillors and staff other than the CEO includes:

- The Councillors have regular interaction with the two Directors who attend all Councillor Briefings and Council Meetings, and are generally the first point of contact for specific queries.
- The Governance Team is represented at the majority of the Councillor Briefings and Council meetings to provide secretarial support and governance advice.
- The Development Services Team is represented at the Planning Applicant / Objector Meetings which deal with town planning permit applications.
- Relevant managers and coordinators attend Councillor Briefings to present their particular bodies of work to the Councillors for consideration.

The CEO promotes an open relationship between the Councillors and the staff who are subject matter experts in their field, however, unless otherwise agreed by the CEO or

Directors, Councillors will limit their contact to members of the Executive and Management teams.

4. Values and Behaviours

The Councillors are committed to working together in the best interests of the Mount Alexander Shire Council community. As part of this commitment, all Councillors have identified the values and behaviours that they believe are important in working together to govern effectively.

The Councillors believe working productively right across the organisation will lead to positive outcomes for the community and will build a supportive and collegial environment in the organisation.

Councillors:

- Will let people have their say.
- Are open, fair and respectful.
- Will listen to each other.
- Will value other perspectives.
- Are accountable for their decisions.
- Will always consider the environment.
- Will always consider financial sustainability.
- Will always consider the social impacts.
- Will foster inclusivity, diversity and equity.
- Will ask clarifying questions and give constructive feedback on the information provided.
- Will work together towards common goals.

This Code of Conduct sets out the standards of behaviour applying to all Councillors. The behavioural standards relate to, and are consistent with, the local government principles and their associated values.

The standards of behaviour are summarised as the three Rs, being:

Responsibilities
Respect
Reputation.

Each standard of behaviour includes, but is not limited to, several examples to guide Councillors in complying with the Code of Conduct when carrying out their role as elected officials. Councillors are to understand and comply with the following standards of behaviour as set out in the Code of Conduct listed below.

1. Carry out Responsibilities conscientiously and in the best interests of the Council and the community.

For example, Councillors will, at a minimum, have the following responsibilities:

- 1.1. Attend and participate meaningfully in all Council meetings, committee meetings, informal meetings, briefings, relevant workshops and training opportunities to assist them in fulfilling their roles other than in exceptional circumstances and/or where prior leave is given
- 1.2. Respect and comply with all policies, procedures and resolutions of Council

- 1.3. Use only official Council electronic communication accounts (e.g. email accounts) when conducting Council business
 - 1.4. Report any suspected wrongdoing to the appropriate entity in a timely manner
 - 1.5. Ensure that their behaviour or capacity to perform their responsibilities as a Councillor is not impaired by the use of substances that may put them or others at risk while performing their duties (for example, alcohol, illegal drugs or prescribed/non-prescribed and/or restricted substances)
 - 1.6. Cooperate with any investigation being undertaken by the local government or other entity
2. Treat people in a reasonable, just, respectful and non-discriminatory way.

For example, Councillors will, at a minimum, act in the following ways:

- 2.1. Treat fellow Councillors, Council employees and members of the public with courtesy, honesty and fairness
 - 2.2. Not use abusive, obscene or threatening language (either oral or written) or behaviour towards other Councillors, Council employees or members of the public
 - 2.3. Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare.
3. Ensure conduct does not reflect adversely on the Reputation of Council.

For example, Councillors will, at a minimum, conduct themselves in the following manner:

- 3.1. When expressing an opinion dissenting with the majority decision of Council; respect the democratic process by acknowledging that the Council decision represents the majority view of the Council
- 3.2. When making public comment, clearly state whether they are speaking on behalf of Council or expressing their personal views
- 3.3. At all times strive to maintain and strengthen the public's trust and confidence in the integrity of Council and avoid any action which may diminish its standing, authority or dignity

Bullying, harassment and discrimination

The Standards of Conduct state "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— takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010".

Council's *Discrimination Bullying and Harassment Policy* outlines Council's commitment "to a work environment that is free of bullying, harassment or associated victimisation as far as reasonably practicable."

5. Standards of conduct

A Councillor is expected to abide by a minimum standard of conduct. The Local Government Act 2020 states that the Standards of Conduct as prescribed in Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 must be included in the Councillor Code of Conduct. The Standards of Conduct are as follows:

1 Treatment of others

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

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

2 Performing the role of Councillor

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

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

3 Compliance with good governance measures

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

- (a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;*
- (b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;*

- (c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- (d) any directions of the Minister issued under section 175 of the Act.

4 Councillor must not discredit or mislead Council or public

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

5 Standards do not limit robust political debate

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

6. Specific Councillor conduct obligations

In addition to adhering to the Standards of Conduct, Councillors are required to adhere to personal and organisational obligations, which include the following:

Managing personal dealings with Council³

Councillors may have reason to deal with the Council in their personal capacity (for example, as a ratepayer, recipient of a Council service or applicant for a development consent granted by Council).

Councillors must not expect or request preferential treatment in relation to any matter in which they have a private interest because of their position. They must avoid any action that could lead members of the public to believe that they are seeking preferential treatment.

Conflicts of interest

Council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

Councillors will comply with all the provisions of the Act in regard to Conflicts of Interest and processes as specified in the Governance Rules adopted by Council at its meeting on 1 September 2020.

Division 2 Conflict of Interest (Sections 126 to 131) of the Local Government Act 2020 includes definitions and procedures for declaring interests.

A conflict of interest is considered to exist where a person has a general conflict of interest or a material conflict of interest. A Councillor does not need to obtain a benefit or advantage in order to have a conflict of interest.

³ Department of Planning, Industry and Environment 2020, *Model Code of Conduct for Local Councils in NSW 2020*, p26

Section 127 of the Act outlines a general conflict of interest exists. Section 128 of the Act outlines a material conflict of interest.

Conflict of interest must be disclosed in accordance with the Governance Rules (refer to Section 130(2)(a) of the LG Act). A Councillor who declares a conflict of interest cannot participate in the discussion of the matter and must leave the meeting for the entire debate and not vote. (Refer to Section 130(2)(b) of the LG Act).

Disclosure of conflicts of interest are also required in Community Asset Committees, delegated committees⁴ and Councillor Briefings, regardless of whether they will be present at the meeting or not (Refer to Sections 130(1) and 131(1) of the LG Act).

Some clear exemptions that are necessary for the practical operation of Council exist, such as the ability of Councillors to vote on certain matters affecting themselves, such as the election of the Mayor, Councillor appointments to external organisations, Councillor allowances and applications for Councillor Conduct Panels. (Refer to Section 129 of the LG Act).

Division 2—Conflict of interest (of the Local Government Act 2020)

126 Definitions

(1) *In this Division—*

family member means—

- (1) *a spouse or domestic partner of the relevant person; or*
- (2) *a parent, grandparent, sibling, child, grandchild, step-parent, step-sibling or step-child of the relevant person or of their spouse or domestic partner; or*
- (3) *any other relative that regularly resides with the relevant person;*

matter means a matter with which a Council, delegated committee, community asset committee or a member of Council staff is concerned and that will require—

- (a) *a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council, delegated committee or community asset committee in respect of the matter; or*
- (b) *a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of Council staff in respect of the matter;*

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;*

relevant person means a person who is a—

- (a) *Councillor; or*
- (b) *member of a delegated committee who is not a Councillor; or*

⁴ At the time of preparing this Councillor Code of Conduct the Council did not have any delegated committees

(c) *member of Council staff.*

(2) *For the purposes of this Division, a relevant person has a conflict of interest if the relevant person has—*

(a) *a general conflict of interest within the meaning of section 127; or*

(b) *a material conflict of interest within the meaning of section 128.*

127 General conflict of interest

(1) *Subject to section 129, a relevant person has a general conflict of interest in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.*

(2) *For the purposes of subsection (1)—*

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;

public duty means the responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person.

128 Material conflict of interest

(1) *Subject to section 129, a relevant person has a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.*

(2) *The benefit may arise or the loss incurred—*

(a) *directly or indirectly; or*

(b) *in a pecuniary or non-pecuniary form.*

(3) *For the purposes of this section, any of the following is an affected person—*

(a) *the relevant person;*

(b) *a family member of the relevant person;*

(c) *a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body;*

(d) *an employer of the relevant person, unless the employer is a public body;*

(e) *a business partner of the relevant person;*

(f) *a person for whom the relevant person is a consultant, contractor or agent;*

(g) *a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;*

(h) *a person from whom the relevant person has received a disclosable gift.*

(4) *For the purposes of subsection (3)(h), disclosable gift means one or more gifts with a total value of, or more than, \$500 or if an amount is prescribed for the purposes of this subsection, the prescribed amount, received from a person in the 5 years preceding the decision on the matter—*

(a) *if the relevant person held the office of Councillor, was a member of Council staff or was a member of a delegated committee at the time the gift was received; or*

- (b) *if the gift was, or gifts were, or will be, required to be disclosed as an election campaign donation—*

but does not include the value of any reasonable hospitality received by the relevant person at an event or function that the relevant person attended in an official capacity as a Councillor, member of Council staff or member of a delegated committee.

129 Exemptions

A conflict of interest does not arise if any of the following applies—

- (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 relevant person 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 relevant person 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 relevant person is the representative of the Council on a not-for-profit organisation that has an interest in the matter and the relevant person receives no personal advantage from the not-for-profit organisation;*
- (e) *the interest only arises because a family member of the relevant person is a member but not an office-holder of a not-for-profit organisation;*
- (f) *the interest only arises because the relevant person 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.*

130 Disclosure of conflict of interest

(1) *This section applies in respect of a conflict of interest in respect of a matter—*

- (a) *to be considered at a Council meeting; or*
- (b) *to be considered at a meeting of a delegated committee; or*
- (c) *to be considered at a meeting of a community asset committee; or*
- (d) *that arises in the course of the exercise of a power of delegation by a member of Council staff; or*
- (e) *that arises in the course of the exercise of a statutory function under this Act or any other Act.*

(2) *A relevant person who has a conflict of interest in respect of a matter must—*

- (a) *disclose the conflict of interest in the manner required by the Council's 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.*

- (3) *A relevant person must not fail to comply with subsection (2) in respect of a conflict of interest that is a material conflict of interest.*

Penalty: 120 penalty units.

- (4) *If a relevant person who fails to comply with subsection (2) in respect of a conflict of interest that is a general conflict of interest is a Councillor who has been previously—*

- (a) found guilty by a court of a conflict of interest offence against this Act; or*
- (b) subject to a finding of serious misconduct by a Councillor Conduct Panel for a conflict of interest breach—*

the relevant person commits an offence against this Act and is liable to a fine not exceeding 120 penalty units.

- (5) *If a relevant person who fails to comply with subsection (2) in respect of a conflict of interest that is a material conflict of interest or a general conflict of interest is a Councillor, an application may be made under section 154 to a Councillor Conduct Panel alleging serious misconduct.*
- (6) *If a relevant person who fails to comply with subsection (2) is the Chief Executive Officer, the Mayor must notify the Chief Municipal Inspector as soon as practicable after the Mayor becomes aware that the Chief Executive Officer has failed to comply with subsection (2).*
- (7) *If a relevant person who fails to comply with subsection (2) is a member of Council staff other than the Chief Executive Officer, the Chief Executive Officer—*
- (a) must notify the Chief Municipal Inspector as soon as practicable after the Chief Executive Officer becomes aware that the member of Council staff has failed to comply with subsection (2); and*
 - (b) must deal with the failure to comply with subsection (2) in accordance with the code of conduct for members of Council staff.*
- (8) *If a relevant person who fails to comply with subsection (2) is a person other than a Councillor or a member of Council staff, the Chief Executive Officer must notify the Council and make a recommendation to the Council as to the action that is to be taken.*

131 Disclosure of conflict of interest at other meetings

- (1) *This section applies in respect of a conflict of interest in respect of a matter at a meeting conducted under the auspices of the Council that is not a meeting specified in section 130(1)(a), (b) or (c).*
- (2) *A Councillor who has a conflict of interest in respect of a matter must—*
- (a) disclose the conflict of interest in the manner required by the Council's Governance Rules; and*
 - (b) comply with the procedures specified in the Council's Governance Rules for the purposes of this section.*
- (3) *If a Councillor fails to comply with subsection (2), an application may be made under section 154 to a Councillor Conduct Panel alleging serious misconduct.*

Gifts and hospitality

Councillors must avoid situations that would give rise to the appearance that a person or body is attempting to secure favourable treatment from that Councillor or from the Council, through the provision of gifts, benefits or hospitality of any kind to a Councillor or someone personally associated with a Councillor.

A gift or benefit is deemed to have been accepted by a Councillor for the purposes of this Code of Conduct where it is received by that Councillor or someone personally associated with that Councillor.

For the purposes of this Code, a gift or a benefit is something offered to or received by a Council official or someone personally associated with them for their personal use and enjoyment.

The *Gifts Policy* provides further guidance on Gifts.

Promoting fraud and corruption prevention

Council has a zero tolerance for fraud and/or corruption. Council's *Fraud and Corruption Prevention Policy* states that Council will:

- not tolerate any form of fraud or corruption from members of the organisation
- will implement controls to prevent fraud and corruption occurring by external parties.

Council has a current Fraud and Corruption Control Plan with a framework that applies Prevention, Detection, and Response as a three tier approach to managing fraud or corruption in the organisation.

Councillors must be aware of the Fraud and Corruption Prevention Policy and promote adherence to the policy.

Complaint handling

A complaint is an expression of dissatisfaction made to or about Council, its services, staff or the handling of an issue where a response or resolution is expected or legally required.

Council's *Complaints Policy* sets out the key principles and concepts of complaint management to ensure any person who wishes to make a complaint has the matter dealt with in an approved and consistent manner, and that the complaint is handled fairly, efficiently, and effectively.

Councillors must follow the Complaints Policy if they become aware of a complaint about Council.

Confidential and personal information

Confidential information

Councillors have access to Council information necessary for them to carry out their roles properly. However, a Councillor must remain impartial and must not use Council information to gain advantage for themselves or any other person. Information is 'confidential' for the purposes of the Act if it is:

- provided for a closed Council or delegated committee meeting;
- designated confidential by resolution of a Council or delegated committee; and
- designated confidential by the CEO.

Information discussed at a closed meeting or briefing is confidential. Unless the information is already publicly available, Councillors must not talk about anything discussed at the meeting or briefing with people who were not present, except as otherwise agreed by the CEO.

Section 125 of the Act states:

(1) Unless subsection (2) or (3) applies, a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

(2) Subsection (1) does not apply if the information that is disclosed is information that the Council has determined should be publicly available.

(3) A person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, may disclose information that the person knows, or should reasonably know, is confidential information in the following circumstances—

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

Personal information

Councillors must be aware of the content of Council's *Privacy and Data Protection Policy* which documents our commitment to responsible handling of personal information and protecting an individual's right to privacy. The policy covers all personal information held by the Council including information collected about a person through their interaction with the Council, regardless of how it is collected, whether on forms, in person, via correspondence over the telephone or via the web.

Adhering to Council's record keeping requirements

Records created in the course of Council business are subject to the Public Records Act 1973 and the Public Records Office of Victoria Standards. This includes records created by Councillors and provided to Councillors directly.

Incoming Correspondence

All correspondence received by Mount Alexander Shire Council at any of its premises is deemed Council correspondence and will be opened by the Records Management Unit and registered, unless:

- It is addressed to a Councillor or Mayor without reference to their official title.
- Is marked Private and Confidential.
- It has no reference to Mount Alexander Shire Council as part of the addressee or address.

Correspondence that is not related to Council business is not registered but is forwarded directly to the relevant Councillor. If Councillors receive any Council related correspondence directly, they must forward it to the Records Unit to be registered.

Council Letterhead

Council letterhead must only to be used by Councillors for correspondence that relates to Council business. Correspondence between Council and other organisations is usually signed by the Mayor or Chief Executive Officer.

Internet and social media

The *Internet Use Policy* provides parameters to ensure that the internet is used for business purposes and to ensure that users conduct their online activities in an appropriate, responsible and ethical manner. The *Social Media Policy* outlines requirements for the appropriate use of social media, and compliance in relation to confidentiality, governance, legal, privacy and regulatory parameters.

Councillors must familiarise themselves with the content of these policies.

Acting with fairness and equity⁵

Councillors must consider issues consistently, promptly and fairly. They must deal with matters in accordance with established procedures, in a non-discriminatory manner.

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.

⁵ Department of Planning, Industry and Environment 2020, *Model Code of Conduct for Local Councils in NSW 2020*, p12

Understanding land use planning, development assessment and other regulatory functions

Councillors must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. Councillors must avoid any occasion or situation where there may be a suspicion or perception 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, Councillors must ensure that no action, statement or communication between themselves and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

When meeting with a planning permit applicant or objector, either for the purpose of discussing the application or where the application is likely to become a topic of discussion, Councillors must ensure that they do not give any indication of how they may vote on the matter should it be presented to Council.

Councillors should seek a meeting via the Planning Manager/Coordinator to ensure a Council planning officer is present.

Refer to the *Planning Permit Determinations by Council Policy* for further information.

Complying with obligations in relation to meetings⁶

Councillors must comply with rulings by the Chair (Mayor) at Council and committee meetings or other proceedings of the Council unless a motion dissenting from the ruling is passed.

Refer to the *Governance Rules* for further information.

Avoiding binding caucus votes⁷

Councillors must not participate in binding caucus votes in relation to matters to be considered at a council or committee meeting.

For the purposes of this clause, 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.

This 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.

⁶ Department of Planning, Industry and Environment 2020, *Model Code of Conduct for Local Councils in NSW 2020*, p13

⁷ Department of Planning, Industry and Environment 2020, *Model Code of Conduct for Local Councils in NSW 2020*, p13

It 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.

Use of Council Resources

The following resources are made available to Councillors:

- Mobile phone (Council mobile phone number)
- Laptop
- Business cards
- Council (ward-based) generic email address.

These resources together with Council facilities and any other equipment remain the property of the Council. Councillors must use these resources effectively and economically in the course of public duties and not use them for private purposes unless such use is lawfully authorised.

Claiming expenses for Councillor duties

The Council Expenses Policy is intended to ensure that Councillors and members of delegated committees are supported to perform their duties without disadvantage by ensuring that expenses reasonably incurred in the performance of their role are reimbursed. The policy provides guidance on:

- Entitlements
- Processes for reimbursement
- Reporting requirements.

Councillors must familiarise themselves with the policy and claim expenditure only related to their Councillor role.

Accessing Council buildings

Councillors are provided with an electronic access card which is programmed to enable access to the Civic Centre front door and glass doors through to the Councillors' Lounge and Council Chambers on Monday to Friday from 7.00am to 8.00pm.

Access to all other internal doors is Monday to Friday from 8.30am to 5.00pm. Access on Council Meeting days is until 10.00pm, to enable access to and from Council Meetings.

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 decisions⁸.

⁸ Department of Planning, Industry and Environment 2020, *Model Code of Conduct for Local Councils in NSW 2020*, p40

Operating appropriately during elections (Council, State, and Federal)

Council

The *Election Period Policy* incorporated into the Governance Rules outlines requirements during an election period for Council elections. Councillors must familiarise themselves with the content of the policy in the lead up to an election period to ensure a fair and democratic Council election process.

State and Federal Elections

Councillors are required to follow any guidelines issued in relation to Candidature of Councillors in State or Federal Elections. These include the Municipal Association of Victoria's policy regarding Candidature of Councillors in State or Federal Elections or Local Government Victoria guidelines.

7. Improper conduct

"At every moment the community believes you are a Councillor."-Therefore, Councillors' behaviour and actions can at any time effect Council's reputation with the community, stakeholders and Government. The Act includes specific clauses about improper conduct, which are:

Misuse of position

Section 123 of the Act relates to Misuse of Position and states:

(1) A person who is, or has been, a Councillor or member of a delegated committee must not intentionally misuse their position—

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

Penalty: 600 penalty units or imprisonment for 5 years.

(2) An offence against subsection (1) is an indictable offence.

(3) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a delegated committee include—

- (a) making improper use of information acquired as a result of the position the person held or holds; or*
- (b) disclosing information that is confidential information; or*
- (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or*
- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; 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.*

(4) *This section—*

- (a) *has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of delegated committees; and*
- (b) *does not prevent the institution of any criminal or civil proceedings in respect of that liability.*

Improper direction and improper influence

Section 124 of the Act relates to directing a member of Council staff and states:

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

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

Penalty: 120 penalty units.

Councillor misconduct

Section 3 (Definitions) of the Act identifies **misconduct** by a Councillor, **serious misconduct** by a Councillor, and **gross misconduct** of a Councillor as follows:

Misconduct by a Councillor

Means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct.

Serious misconduct by a Councillor

Means any of the following—

- (a) *the failure by a Councillor to comply with the Council's internal arbitration process;*
- (b) *the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;*
- (c) *the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;*
- (d) *the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;*
- (e) *continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);*
- (f) *bullying by a Councillor of another Councillor or a member of Council staff;*
- (g) *conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;*

- (h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- (i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;
- (j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act;

Gross misconduct by a Councillor

Means behaviour that demonstrates that a Councillor—

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

8. Dispute resolution

Councillors have an individual and collective responsibility to try every avenue possible to resolve disputes in house and prevent them from escalating further.

Councillors must take personal responsibility and endeavour to resolve their differences in an informal, but at all times, courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

This dispute resolution procedure is intended to be used:

1. when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council, or
2. to manage less serious complaints or concerns regarding the behaviour of Councillors from the public or Council staff.

This procedure:

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

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.

This procedure does not deal with allegations of criminal misconduct as they are envisaged to be raised with Victoria Police or other relevant mechanisms.

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.

Council’s dispute resolution procedure comprises four components, namely:

- a. Informal Resolution
- b. Internal Negotiation (facilitated by the Mayor) – “also raised by the community”
- c. External Mediation
- d. Internal Arbitration

a. Informal Resolution

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 Internal Negotiation process.

b. Internal Negotiation

If the informal resolution process between the Councillors is unsuccessful, the Mayor should be involved as soon as practically possible to convene a meeting of the parties.

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 convene a confidential meeting of the parties to discuss the dispute.

The party requesting the meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing and should indicate that it is for an “Internal Negotiation”.

Within five working days of receipt of the complaint, the Mayor will:

- provide written acknowledgment of receipt of the complaint to the Complainant
- provide a copy of the complaint to the Councillor concerned
- attempt to facilitate a resolution and convene a meeting.

The Mayor may call upon the Councillor Conduct Officer (CCO)⁹ for advice, guidance and support.

The role of the Mayor 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.

The Mayor will document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties and a copy kept by the Councillor Conduct Officer.

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

Where the dispute remains unresolved, the parties should progress to external mediation.

⁹ The appointed Councillor Conduct Officer is appointed by the CEO and is the Executive Manager People and Culture. Council must resolve that the appointed officer is suitably qualified to be the Councillor Code of Conduct.

Where one party does not comply with the agreement, the other party may request external mediation or internal arbitration.

Dispute between Councillors and the Mayor

In the event that the dispute involves the Mayor or the Deputy Mayor another Councillor nominated by Council resolution will perform the role of the Mayor in facilitating discussions between the parties in dispute and liaising with the Councillor Conduct Officer.

c. External Mediation

If reconciliation of the dispute is not possible after internal negotiation, it is the responsibility of the Mayor to seek assistance from an external mediator to resolve the dispute, preferably with the active support of the parties to the dispute, who must be informed of such a decision in any circumstance.

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for "Internal Negotiation".

The applicant or Mayor should submit a written application to the Councillor Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an "External Mediation".

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

When the other party declines to participate in an external mediation, this of itself does not constitute a contravention of this Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the Councillor Conduct Officer will advise the applicant, the Mayor and Chief Executive Officer.

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

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

The mediator will document any agreement reached at the meeting. Copies of the agreement will be provided to both parties and the Councillor Conduct Officer.

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

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

d. Internal Arbitration

An 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) 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.

An application for a finding of misconduct must be made within 3 months of the alleged misconduct occurring.

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.

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.

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 the 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

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.

9. Formal Dispute Resolution and Reporting

Interpersonal Disputes

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

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

Internal Negotiation - with the Mayor in attendance and facilitating the meeting:

External Mediation - with an external mediator, via an application to the Councillor Conduct Officer

Internal Arbitration - with an independent arbiter, via an application to the Councillor Conduct Officer

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 under the Code of Conduct. Such conduct may constitute improper conduct or misconduct under the Act.

Where there is an allegation that another Councillor has contravened the Code they have the option of requesting:

Internal Arbitration - with an independent arbiter, via an application to the Councillor Conduct Officer

Allegation of Disrespectful Conduct

An allegation that a Councillor has engaged in disrespectful conduct may involve behaviour such as unlawful discrimination, sexual harassment, harassment, victimisation or bullying, or other breach of the City of Melbourne's policy in regard to respectful conduct.

In order to report an allegation of disrespectful conduct against a Councillor, a Councillor(s) must prepare an application to the Councillor Conduct Officer or the CEO.

Where there is an allegation of disrespectful conduct against another Councillor they have the option of requesting:

External Mediation - with an external mediator, via an application to the Councillor Conduct Officer

Internal Arbitration - with an independent arbiter, via an application to the Councillor Conduct Officer

10. Councillor Conduct Framework

The Local Government Act 2020 establishes a Councillor Conduct Framework that provides a clear hierarchy for the management of councillor conduct issues.

Under the Councillor Conduct Framework:

- complaints of misconduct by a councillor are heard and determined under the council's internal arbitration process by an independent arbiter (this is an internal Council Process described in the previous section)
- complaints of serious misconduct by a councillor are heard and determined by councillor conduct panels
- allegations of gross misconduct are dealt with by VCAT.

The framework is designed to:

- provide for timely intervention in relation to breaches of the prescribed standards of conduct (misconduct) by councillors
- give councillor conduct panels effective powers to manage and resolve serious misconduct by councillors
- retain the capacity for the Chief Municipal Inspector to manage gross misconduct through VCAT.

Councillor Conduct Panels

The independent Councillor Conduct Panel process is designed to deliver a comprehensive and thorough assessment of allegations of serious misconduct.

Under the framework, complaints of serious misconduct by Councillors are heard and determined by Councillor Conduct Panels. The kinds of behaviour that constitute serious misconduct are set out in the definitions provided in section 3 of the Act.

Serious misconduct includes the failure to comply with the Council's internal arbitration process or with a direction given to the Councillor by an arbiter, and failure to attend a Councillor Conduct panel hearing or to comply with a direction of a panel. It also includes continued or repeated misconduct after a finding against a Councillor by an arbiter or a panel. These provisions reinforce the authority of the Council internal resolution and Councillor Conduct panel processes and determinations.

Bullying another Councillor or a member of Council staff is serious misconduct. Bullying is defined as repeated unreasonable behaviour by a Councillor towards another Councillor or member of Council staff that creates a risk to the health and safety of the Councillor or member of staff.

Sexual harassment of a Councillor or member of Council staff is also serious misconduct.

Other grounds of serious misconduct are attempting to direct Council staff, releasing confidential Council information, or failing to disclose a conflict of interest (and exclude themselves from the decision making) where required to do so.

Where a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor becomes ineligible to hold the office of Mayor (unless the panel directs otherwise), and the panel may:

- reprimand the Councillor
- direct the Councillor to make an apology
- suspend the Councillor from office for a period of up to 12 months
- direct that the Councillor is ineligible to chair a special committee of the Council for a period of up to and including the remainder of the Council's term.

A Councillor Conduct panel also has power to make a finding of misconduct if the panel is satisfied that the Councillor has breached one or more of the prescribed Standards of Conduct and may impose the same penalties as an arbiter.

Regardless of whether or not a finding of misconduct or serious misconduct has been made, a Councillor Conduct panel may also make a finding that remedial action is required and direct the Councillor to attend mediation, training or counselling.

Councillor conduct panel process

If a Council, a Councillor, or a group of Councillors consider that another Councillor's actions or activities amount to misconduct or serious misconduct, they can apply to the Principal Councillor Conduct Registrar for a Councillor Conduct panel to be formed to make a finding in relation to these actions or activities.

An application for a finding of serious misconduct must be made within 12 months of the alleged serious misconduct occurring.

An application for a finding of serious misconduct that alleges that a Councillor has failed to disclose a conflict of interest may only be made by the Chief Municipal Inspector.

11. Complaint resolution bodies

There are a number of independent organisations that can consider complaints relating to a council. In the first instance, complaints should be raised with the relevant council.

As a general rule, a complaint should be in writing and should include the following:

- brief statement about the your issue
- brief history of the case, including important dates or events
- decision or action taken by the council
- preferred outcome for this case going forward
- copies of all correspondence to and from the council or any other material that records the contact made between parties involved.

For further information on complaint resolution involving independent organisations refer to the *Complaints Policy* and the *Public Interest Disclosure Procedure*.

Local Government Inspectorate

In 2009, the Victorian Government established the Local Government Inspectorate as a separate administrative office of the Department of Premier and Cabinet.

The Local Government Inspectorate is responsible for investigating alleged breaches of the Local Government Act ... including failure by a Councillor to declare a conflict of interest, disclosure of confidential information and misuse of position, and administering a Compliance Audit program at councils across Victoria.

The Chief Municipal Inspector, the head of the Local Government Inspectorate, is also responsible for investigating and making applications to VCAT for findings of gross misconduct against Councillors and has power to investigate and initiate applications for Councillor Conduct Panels to be established to determine allegations of serious misconduct by Councillors.

Complaints to the Local Government Inspectorate can be submitted [online](#) or by contacting the office.

Website: <https://www.lgi.vic.gov.au/>

Street address: Local Government Inspectorate, Level 27, 1 Spring Street, Melbourne Victoria 3000

Post address: Local Government Inspectorate, GPO Box 2392, Melbourne Victoria 3001

Complaints hotline: 1800 469 359

Email: inspectorate@lgici.vic.gov.au

The Victorian Ombudsman

The Victorian Ombudsman is an independent officer of the Victorian Parliament responsible for handling complaints concerning the administrative actions of a council and decisions of council officers. The Ombudsman cannot investigate the actions of an individual Councillor, except when investigating a protected disclosure complaint under the Protected Disclosure Act 2012.

Complaints to the Victorian Ombudsman can be submitted [online](#) or by contacting the office.

Website: www.ombudsman.vic.gov.au

Address: Level 2, 570 Bourke Street, Melbourne VIC 3000

Phone: (03) 9613 6222, or toll free (regional areas only) on 1800 806 314

Email: ombudvic@ombudsman.vic.gov.au

Independent Broad-based Anti-corruption Commission (IBAC)

IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. IBAC accepts complaints about suspected corruption and misconduct in the public sector including the local government sector.

Information can be provided or a complaint can be made to IBAC [online](#).

Website: <https://www.ibac.vic.gov.au>

Postal Address: GPO Box 24234, Melbourne Victoria, 3001

Phone: 1300 735 135

Email: info@ibac.vic.gov.au





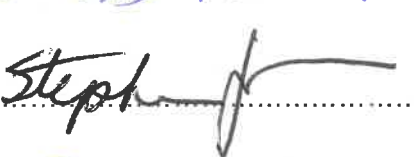

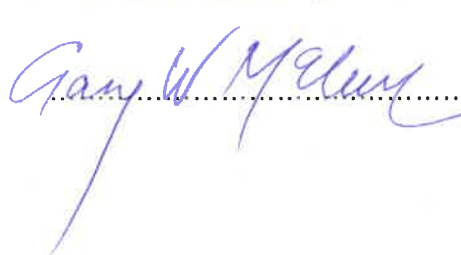
12. Definitions

Term	Definition
Chief Executive Officer	The Chief Executive Officer of Council of the City of Melbourne
Chief Municipal Inspector	The Chief Municipal Inspector is responsible for investigating and prosecuting possible breaches and offences under the <i>Local Government Act 2020</i> , investigating allegations of Councillor misconduct, serious misconduct and gross misconduct, making an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor and making an application to the Victorian Civil and Administrative Tribunal for a finding of gross misconduct by a Councillor.
conflict of interest	A Councillor has; <ul style="list-style-type: none"> • 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 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.
Conduct Standards	The standards of Councillor conduct prescribed under Schedule 1 to the <i>Local Government (Governance and Integrity) Regulations 2020</i> .
Councillor	All references to 'Councillor' include the Mayor, Deputy Mayor and elected members of the Melbourne City Council except as expressly provided.
Councillor Conduct Panel	A panel established under the <i>Local Government Act 2020</i> to hear applications and make findings of alleged misconduct or serious misconduct by a Councillor.
disrespectful conduct	'Disrespectful conduct' includes unlawful discrimination, sexual and other forms of harassment, victimisation, racial and religious vilification, and bullying.
gross misconduct	'Gross misconduct' by a Councillor means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.
improper conduct	'Improper conduct' includes a failure to disclose a conflict of interest, a breach of confidentiality, the improper direction or influence of staff, the improper use of Council resources, or a breach of Council policy under the Code of Conduct by a Councillor.
misconduct	Misconduct by a Councillor means any breach by a Councillor of

Term	Definition
	the prescribed conduct standards included in this Councillor Code of Conduct.
Councillor Conduct Officer	A person appointed by the Chief Executive Officer to assist Council in implementing its internal arbitration process.
Principal Councillor Conduct Registrar	The Principal Councillor Conduct Registrar receives applications for the establishment of Councillor Conduct Panels under the Local Government Act 2020.
serious misconduct	<p>Serious misconduct by a Councillor means:</p> <ul style="list-style-type: none"> • 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 <i>Local Government Act 2020</i> • 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 <i>Local Government Act 2020</i>.
The Act	All references to ‘the Act’ are to the <i>Local Government Act 2020</i>

13. Council adoption

All Councillors have signed the Councillor Code of Conduct to evidence their commitment to the Standards of Conduct, values and behaviours expected of them in their role as Councillors of the Mount Alexander Shire Council.

Cr Tony Cordy, Mayor		Dated: 2 / 3 / 2021
Cr Bill Maltby, Deputy Mayor		Dated: 2 / 3 / 2021
Cr Rosie Annear		Dated: 2 / 3 / 2021
Cr Matthew Driscoll		Dated: 2 / 3 / 2021
Cr Stephen Gardner		Dated: 2 / 3 / 2021
Cr Christine Henderson		Dated: 2 / 3 / 2021
Cr Gary McClure		Dated: 2 / 3 / 2021

Appendix 2 - Councillor Code of Conduct Dispute Resolution by Issue Type

Issue Type	Procedure Type Options
<p>Councillors must take personal responsibility and endeavour to resolve their differences in an informal, but at all times, courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.</p>	<p>Informal Resolution</p>
<p>Interpersonal Disputes</p> <ul style="list-style-type: none"> • breakdown in communication • misunderstandings • disagreements between Councillors • strained working relationships 	<p>Internal Negotiation External Mediation Internal Arbitration</p>
<p>Disrespectful Conduct (Serious Misconduct)</p> <ul style="list-style-type: none"> • unlawful discrimination • sexual harassment • harassment • victimisation or bullying • breach of Council's policy in regard to respectful conduct 	<p>External Mediation Internal Arbitration Councillor Conduct Panel</p>
<p>Conduct in Breach of Code</p> <ul style="list-style-type: none"> • failure to disclose a conflict of interest • breach of confidentiality • improper direction of staff • improper use of Council resources • breach of Council policy under the Code of Conduct (improper conduct or misconduct) 	<p>Internal Arbitration</p>
<p>Serious Misconduct</p> <ul style="list-style-type: none"> • failure to comply with the Council's internal arbitration process or with a direction given to the Councillor by an arbiter • failure to attend a Councillor conduct panel hearing or to comply with a direction of a panel • continued or repeated misconduct 	<p>Councillor Conduct Panel</p>
<p>Misconduct</p> <ul style="list-style-type: none"> • any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct 	<p>Councillor Conduct Panel</p>
<p>Gross misconduct means behaviour that demonstrates that a Councillor—</p> <ul style="list-style-type: none"> • is not of good character; or • is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature 	<p>Chief Municipal Officer / VCAT</p>

14. Appendices

Appendix 1 - Councillor Code of Conduct Dispute Resolution Escalation Process

Informal Resolution	<ul style="list-style-type: none"> • Issue resolved informally between Councillors
Internal Negotiation	<ul style="list-style-type: none"> • Issue managed by Mayor convening meeting(s) between parties
External Mediation	<ul style="list-style-type: none"> • Mayor to seeks assistance from external mediator to conduct meeting(s) for resolution
Internal Arbitration	<ul style="list-style-type: none"> • assessment of allegations of misconduct escalation for an assignment of an arbiter. • Council process prescribed under the Councillor Conduct Framework (LGA 2020)
Councillor Conduct Panel	<ul style="list-style-type: none"> • assessment of allegations of misconduct and serious misconduct conducted by a panel • process prescribed under the Councillor Conduct Framework (LGA 2020)
Chief Municipal Officer / VCAT	<ul style="list-style-type: none"> • management of allegations of gross misconduct