

# Councillor Code of Conduct

14<sup>th</sup> Edition, 8 February 2021

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# Greater Dandenong City Council Councillor Code of Conduct 14<sup>th</sup> Edition, 8 February 2021

This Councillor Code of Conduct, which incorporates the statutory requirements specified for a Code of Conduct under section 139 of the *Local Government Act 2020*, was unanimously adopted by resolution of the Greater Dandenong City Council on 8 February 2021.

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## 1. INTRODUCTION

Greater Dandenong City Council is constituted under the *Local Government Act 1989* and the *Local Government Act 2020*. The purpose of local government is to provide a system under which councils perform the functions and exercise the powers conferred by or under the *Local Government Act 1989* and the *Local Government Act 2020* and any other Act for the peace, order and good governance of their municipal districts. Good governance is fundamental to a Council being able to perform its purpose and it relies on good working relationships between Councillors.

Council, as an elected body, is accountable to the residents of Greater Dandenong and the Victorian Government through Local Government Victoria. Council can also be accountable to the Victorian Local Government Inspectorate and the Victorian Ombudsman.

The community expects local government to provide fair, accurate and unbiased advice, to act promptly and effectively and to manage community assets efficiently. To assist in meeting these expectations, section 139 of the *Local Government Act 2020* requires councils to adopt a code of conduct to be observed by Councillors.

This Code of Conduct clearly outlines the responsibilities and behaviours that are expected in keeping good faith and trust of fellow Councillors, staff and the Greater Dandenong community and it is crucial and also a legislative obligation that all Councillors understand and comply with this Code.

## 2. SCOPE, PURPOSE AND COMMITMENT

Under section 139(1) of the *Local Government Act 2020* (the Act), a Council must develop a Councillor Code of Conduct. Under section 139(4) a Council must adopt the Councillor Code of Conduct within the period of four months after a general election. Under section 139(5), the Councillor Code of Conduct must be adopted by formal Council resolution by at least two-thirds of the total number of Councillors elected.

Under section 139(2) the Act, 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. This Councillor Code of Conduct applies to all Councillors of Greater Dandenong City Council.

Under section 139(3) of the Act, this Code of Conduct:

- (a) must include the standards of conduct prescribed by the regulations expected to be observed by Councillors; and
- (b) must include any provisions prescribed by the regulations for the purpose of this section; and
- (c) must include provisions addressing any matters prescribed by the regulations for the purpose of this section; and
- (d) may include any other matters which the Council considers appropriate, other than any other standards of conduct.

In addition, this Code of Conduct:

- (a) endeavours to foster good working relations between councillors to enable Councillors to work constructively together in the best interests of the local community; and
- (b) mandates councillor conduct designed to build public confidence in the integrity of local government.

At Greater Dandenong City Council, elected Councillors are committed to working together in the best interests of the people within the Greater Dandenong municipality, to discharge their responsibilities to the best of their skill and judgement and to apply the highest standards of behaviour to their roles.

On 19 November 2020, Greater Dandenong Councillors took their oath or affirmation of office and made a declaration stating they will abide by the Councillor Code of Conduct and uphold the standards set out in the Councillor Code of Conduct. Under the Act, the declaration made on 19 November 2020 to abide by the Councillor Code of Conduct covers all iterations of the Councillor Code of Conduct during this Councillor term and the beginning of the next Councillor term. A commitment to working together constructively is consistent with Greater Dandenong's core values and will assist in ensuring that public confidence in Council is maintained.

### 3. KEY ROLES AND RESPONSIBILITIES

An understanding and agreement of the different roles within Council assists in achieving good governance. The key roles are outlined below.

#### 3.1 ROLE OF COUNCIL

In line with section 8 of the *Local Government Act 2020* (the Act), the role of Council is to provide good governance in Greater Dandenong for the benefit and wellbeing of its community. Good governance is achieved if that role is performed in accordance with section 9 of the Act and the Councillors perform their roles in accordance with section 28 of the Act.

Section 9 of the Act states that Council must perform its role giving effect to the overarching governance principles. These are:

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

In giving effect to the overarching governance principles, Council must also 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.

So Council, as a whole, has a statutory responsibility to represent all people that live, participate in and invest within the municipality. It must take into account the diverse needs of the local community in decision-making. It must provide leadership by establishing strategic objectives and monitor its achievements. It must maintain the viability of the organisation by ensuring that resources are managed in a responsible and accountable manner. It must advocate for the interests of the local community to other communities and governments and foster community cohesion while encouraging active participation in civic life. Above all, Council must make all decisions impartially and in the best interests of the whole community.

Under the Act, Council also appoints the Chief Executive Officer of the organisation, determines and endorses Council policies and sets the strategic direction of the organisation.

## 3.2 ROLE OF A COUNCILLOR

Greater Dandenong City Council comprises 11 Councillors who are democratically elected by the community in accordance with the Act. Section 28 of the Act states that:

- (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.

In conjunction with the Executive Management Team, Councillors may engage (which includes, but is not limited to, communication and discussion via email or telephone) with officers on operational matters of, or services provided by, the organisation however, in adherence with section 123 of the Act, Councillors must not intentionally misuse their position to direct staff and must interact with staff in accordance with the *Greater Dandenong City Council Councillors and Staff Interaction Protocol*.

## 3.3 ROLE OF THE MAYOR

The Mayor is the elected leader of the Council and is the key formal representative of Council. Section 18 of the *Local Government Act 2020* (the Act) states that 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.



The Mayor also has the following specific powers:

- (a) to appoint a Councillor to be the chair of a delegated committee (an appointment under this section prevails over any appointment of a chair of a delegated committee by the Council);
- (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.

### 3.4 ROLE OF THE DEPUTY MAYOR

Under section 21 of the Act, 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 office of Mayor for any reason; or
- (c) the office of Mayor is vacant.

### 3.5 ROLE OF THE CHIEF EXECUTIVE OFFICER

The Chief Executive Officer (CEO) has a number of statutory responsibilities and is accountable to the elected Council for delivering Council's strategies and services. Section 46 of the *Local Government Act 2020* (the Act) states the following:

- (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.
- (5) 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.
- (6) A Chief Executive Officer must ensure that the Mayor, Deputy Mayor, Councillors and members of Council staff have access to the workforce plan.
- (7) A Chief Executive Officer must develop the first workforce plan under this section within 6 months of the commencement of this section.

### 3.6 COUNCILLOR RELATIONSHIPS WITH COUNCIL STAFF

As detailed in Section 46 of the *Local Government Act 2020*, the CEO is responsible for the staff of Council which includes appointing, directing and dismissing staff. Councillors have no right to individually direct staff to carry out particular functions. Councillors may advise the CEO if they have concerns that staff have taken action contrary to a formal policy or decision of Council. Council, and specifically individual Councillors, may not involve themselves in any personnel matter relating to staff, except for the Chief Executive Officer. The information provided to one Councillor should be equally available to all Councillors and no treatment that is unequal should be sought from any staff member. Councillors must respect the role of Council officers and employees and treat them in a way that engenders mutual respect at all times. Councillors will act with courtesy towards Council staff and avoid intimidating behaviour.

Councillors will act in accordance with the *Greater Dandenong City Council Councillor and Staff Interaction Protocol* at all times unless otherwise advised to do so.

## 4. USE OF COUNCIL RESOURCES

At Greater Dandenong City Council, Councillors will exercise appropriate prudence and care in the use of Council resources and ensure they are used solely in the public interest. This includes:

- (a) maintaining appropriate care and security for Council property, facilities and resources provided to assist them in performing their role;
- (b) adhering to any guidelines or policies that have been established for the use of Councillor resources and facilities (see Council Expenses, Support and Accountability Policy);
- (c) not using public funds or resources in a manner that is improper or unauthorised;
- (d) not using Council resources, including staff, equipment and/or intellectual property for electoral or other purposes; and
- (e) ensuring that all expense claims are timely and accurate, are supported by the relevant documentation and strictly relate to Council business.

## 5. CONDUCT OF COUNCILLORS

### 5.1 PRESCRIBED STANDARDS OF CONDUCT

Under section 139(3) of the *Local Government Act 2020* (the Act), this Councillor Code of Conduct must include the standards of conduct and provisions prescribed by the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations) expected to be observed by Councillors. The Standards of Conduct prescribed in Schedule 1 of the Regulations 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 and respectful public debate in a democracy.

### **5.2 PROMOTING WELLBEING IN THE WORKPLACE**

In line with Occupational Health and Safety, Human Rights, Gender Equality and Equal Opportunity legislation, Council is committed to protecting the health, safety and well-being of all Councillors and staff and will provide, as far as it possibly can, a safe Council working environment that is free from bullying, discrimination and violent behaviour.

As leaders, Councillors are expected to promote an environment of wellbeing in the workplace and ensure all people in the workplace, including Councillors, staff, visitors and customers, are treated with respect and dignity and report any acts or suspected acts of bullying, harassment, discrimination and/or violence immediately to the Chief Executive Officer. Councillors themselves will treat all people with courtesy and respect and recognise there are legitimate differences in opinions, race, culture, religion, language, gender and abilities.

In addition to the above, a Meeting Etiquette Guide may be provided at Council Meetings, Councillor Briefing Sessions and other meetings to guide behaviour that is consistent with this Councillor Code of Conduct and general Councillor conduct principles required under the Act.

### **5.3 VALUES AND BEHAVIOURS**

Greater Dandenong City Council strives to be an organisation of exceptional character. As community and civic leaders, Councillors commit to lead by example and promote the highest standard in the way that Council business is conducted.

The organisation has its own corporate values and, as an extension to those, has developed a set of principles that define who we are, how we interact with each other and the community and how each of us, both staff and Councillors, aim to operate in the workplace regardless of the role we hold.

These principles are encapsulated by the acronym REACH which stands for Respectful, Engaged, Accountable, Creative and Honest. Councillors agree that they will collectively aspire to the values, characters and behaviours represented below:

R	<p><b>RESPECT AND RESPONSIBILITY</b></p> <p>We respect and care about our community, each other and ourselves.  We act with integrity at all times and in all matters.  We take time to listen, to seek and to understand the other point of view.  We strive to understand and respect the diversity of our community.  We understand our role in the community and respect the responsibility that comes with it.  We respect and work towards harmonious working relationships with others.  We support one another and staff if they are treated unfairly or without respect.</p>
E	<p><b>ENGAGED</b></p> <p>We listen to our community and respond.  We work together with our community and each other, to achieve the best outcomes.  We have the confidence to challenge the status quo, to reach for better outcomes.  We are action-oriented in identifying and responding to new challenges.  We are responsive to the needs of our community.  We encourage active community participation in civic life.  We welcome the opinions of the community and respect their right to be heard.</p>
A	<p><b>ACCOUNTABLE</b></p> <p>We are proud of our city, our community and our achievements.  We spend our time and effort on solutions rather than looking for someone to blame.  We take responsibility for our decisions and actions and we act and work in an open and transparent manner.  We abide by all the governing Council policies and the local government sector legislation.  We ensure the best use of Council resources.</p>
C	<p><b>CREATIVE/COURAGE</b></p> <p>We care about getting the best outcomes.  We constantly ask, "What's the future and what's possible?"  We have the courage to try new ideas.  We strive for excellence in everything we do.  We have the courage to take on big projects and to look at the big picture.  We have the courage to make sound judgements based on evidence and research to make good decisions at the right time.  We have the perseverance and commitment to accomplish goals in the best interests of the city.</p>
H	<p><b>HONESTY</b></p> <p>We tell the truth, even when we know people may not want to hear it.  We form our opinions and give advice from sound, evidenced-based research.  We act with humility and apply the highest standards of ethical behaviour to everything we do.  We accept responsibility for mistakes and see them as opportunities for continuous improvement and growth.</p>

## 6. LEGISLATIVE AND CORPORATE OBLIGATIONS

There are specific types of conduct that are expressly prohibited by the *Local Government Act 2020* (the Act) and other legislation. Councillors acknowledge that, in many cases, a breach of a specific provision of the Act or other legislation may be subject to prosecution in court.

### 6.1 MISUSE OF POSITION

Councillors acknowledge that they must comply with section 123 of the Act which states that a person who is, or has been, a Councillor or a 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.

Circumstances involving the misuse of a position by a person who is, or has been, a Councillor or a member of a delegated committee are described in section 123 of the Act. These 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.

### 6.2 DIRECTING A MEMBER OF COUNCIL STAFF

Councillors acknowledge that they must comply with section 124 of the Act which states the following:

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.

## 6.3 HANDLING AND USE OF CONFIDENTIAL AND PERSONAL INFORMATION

Councillors acknowledge that they must comply with section 125 of the Act which states the following:

- (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.
- (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.

Councillors who handle personal information, especially information falling within the scope of the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*, must ensure they fully understand the requirements regarding the handling and use of personal information set out under those Acts, associated regulations and Council policies and procedures. "Personal information" includes any information that can identify an individual.

Councillors must understand that they are subject to Information and Health Privacy Principles both as members of Council and as individual public officials.

## 6.4 CONFLICTS OF INTEREST

Councillors are committed to making all decisions impartially and in the best interests of the public. Council recognises the importance of fully observing the requirements of the *Local Government Act 2020* (the Act) relating to the disclosure of conflicts of interest. Councillors will comply with all sections (126 to 134) of the Act in relation to conflicts of interest and upon identifying an interest, Councillors will follow the procedures as set out in the Greater Dandenong City Council Governance Rules.

## 6.5 GIFTS AND BRIBERY

Councillors acknowledge that they must not seek or accept gifts in their roles as Councillors or where it could be perceived to influence them, unless it is in strict accordance with the *Local Government Act 2020* (the Act) and the *Greater Dandenong City Council Councillor Gift Policy* established under the Act.

All gifts received by Councillors must be reported to and recorded by the Governance Business Unit.



Councillors acknowledge that they must comply with section 137 of the Act which states the following:

### **137 Anonymous Gift Not to be Accepted**

- (1) Subject to subsection (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:
    - (i) the Councillor is given the name and address of the person making the gift; and
    - (ii) the Councillor reasonably believes that the name and address so given are the true name and address of the person making the gift.
- (2) 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 of subsection (1) if the Councillor disposes of the gift to the Council within 30 days of the gift being received.
- (3) In addition to the penalty specified in subsection (1), a Councillor who is found guilty of a breach of that subsection must pay to the Council the amount or value of the gift accepted in contravention of that subsection.

## **6.6 MISCONDUCT**

Under the *Local Government Act 2020* (the Act), **misconduct** by a Councillor means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct (section 5.1).

Under the Act **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(1)(b) of the Act;
- (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;

Under the Act, **gross misconduct** by a Councillor means behaviour that demonstrates that a Councillor:

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

## 6.7 FRAUD AND CORRUPTION

Councillors acknowledge that the Greater Dandenong City Council is committed to preventing fraud in the council workplace and that Council functions under the guidelines, protocols, procedures or policies that have been established in relation to fraud prevention and control and public interest disclosures.

## 7. ADDITIONAL CONDUCT PROVISIONS

Further to the above obligations and statutory requirements, Councillors will obey the law, relevant regulations and Council policies, procedures and protocols including, but not limited to, the following:

### **Legislation**

- *Equal Opportunity Act 1995*
- *Freedom of Information Act 1982*
- *Gender Equality Act 2020*
- *Health Records Act 2001*
- *Local Government Act 1989*
- *Local Government Act 2020*
- *Local Government (Governance and Integrity) Regulations 2020*
- *Occupational Health and Safety Act 2004*
- *Privacy and Data Protection Act 2014*
- *Public Interest Disclosures Act 2012*
- *Victorian Charter of Human Rights and Responsibilities 2006*

### **Greater Dandenong City Council Policies, Strategies, Protocols, Codes, Local Laws and Rules**

- Appropriate Workplace Behaviours Policy
- Catering and Civic Support Policy
- Child Safe Code of Conduct
- Child Safe Standards Policy
- Climate Change Emergency Strategy
- Community Engagement Policy
- Conflicts of Interest Policy
- Council Expenses, Support and Accountability Policy
- Councillor Gift Policy
- Council Meeting Structure Policy
- Disclosures under the Public Interest Disclosures Act 2012 Policy
- Diversity, Access and Equity Policy
- Freedom of Information Policy
- Fraud and Corruption Prevention and Control Policy
- Governance Local Law 1, 2021
- Governance Rules (includes Election Period (Caretaker) Policy
- Information Security Policy
- Media Policy
- Mobile Device Policy
- Occupational Health and Safety Policy
- Privacy and Personal Information Policy
- Procurement Policy
- Public Transparency Policy
- Purchasing Card Policy
- Records Management Policy
- Social Media Policy
- Staff and Councillor Interaction Protocol 2021
- Travel Policy
- Use of Electronic Media Policy
- Workplace Behavioural Concerns Resolution Policy
- Workplace Equal Opportunity Policy

## 8. DISPUTE RESOLUTION

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.

While all Councillors will endeavour to foster and encourage positive and productive interactions at all times, conflict and/or disputes may emerge when the differences between Councillors become personal or the behaviour of Councillors towards each other is of a nature that threatens the effective operation of Council's decision-making process.

### 8.1 IN-HOUSE RESOLUTION PROCESS

Before commencing any internal arbitration process required under the *Local Government Act 2020* (the Act), Councillors who are parties to any disagreement have an individual and collective responsibility to try every avenue possible to resolve such conflict or disputes in-house in a courteous and respectful manner to prevent them from further escalating. At all times, Councillors must recognise that they have been elected to represent the best interests of the community and disagreements and/or personal disputes only detract from this objective. The following steps may be taken to resolve disputes of conflicts in-house.

#### 8.1.1 Informal Facilitation

Councillors will take personal responsibility for their actions and endeavour to resolve their differences in an informal but courteous and respectful manner, recognising that they have been elected to represent the best interests of the community. Either party may ask the Mayor, as the leader of Council, to "*informally*" facilitate any discussions.

#### 8.1.2 Formal Facilitation and Mediation

If the informal facilitation process between Councillors is unsuccessful or not implemented, a formal request for internal mediation can be made to the Mayor who will become involved as soon as practically possible. As the leader of Council, the Mayor will facilitate "*formal*" discussions between the parties in dispute. The Mayor will ensure the CEO is advised of the situation.

This request must be made in writing, indicating the type of procedure requested, the reason for the dispute, the names of those involved, any evidence to support allegations and the name of the Councillor representative if the request is being made by a group of Councillors.

The Mayor will convene a meeting at the earliest available opportunity and will provide guidance during that meeting as to what is expected of a Councillor under the Act in relation to roles, responsibilities and conduct. The Mayor will document any outcomes and will provide copies to all parties.

In the event where one party does not comply with the agreed outcomes, the other party has the option for further action as described under the internal arbitration process (section 8.2) of this Code. If the Mayor considers that there has been a breach of the prescribed standards of conduct, the Mayor shall then refer the complainant to the internal arbitration process (see Section 8.2).

In the event that a conflict or dispute involves the Mayor, the Deputy Mayor shall perform the role of the Mayor in facilitating discussion between the parties in dispute and liaise with the CEO.

## 8.2 INTERNAL ARBITRATION PROCESS

In the event where Councillors have been unable to resolve a conflict or dispute amongst themselves or others and in-house resolution has not been successful or where the situation is unduly affecting the operation of the Council, the internal arbitration process as prescribed by the *Local Government Act 2020* (the Act) applies to any breach of the prescribed standards of conduct.

The manner in which an internal arbitration process is undertaken is clearly prescribed in sections 141-147 of the Act (see Appendix 1).

Application for internal arbitration may be made by Council resolution, a Councillor or a group of Councillors within three months of the alleged misconduct. Application must be made to the Principal Councillor Conduct Registrar who is appointed by the Secretary of the Department of Environment, Land, Water and Planning (DELWP) (the Secretary) and an arbiter will be selected from a panel list kept by the Secretary. If an arbiter makes a finding of misconduct against a Councillor, the arbiter may do any one or more of the following:

- (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.

## 8.3 COUNCILLOR CONDUCT PANELS

Application for a Councillor Conduct Panel may be made under section 154 of the *Local Government Act 2020* (the Act) for allegations of serious misconduct (only). Applications may be made by Council following a resolution to make an application, by a Councillor, a group of Councillors or the Chief Municipal Inspector within 12 months of the alleged serious misconduct. The Councillor Conduct Panel can make a finding of serious misconduct or misconduct (if the finding is made within three months of the alleged misconduct).

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

An application made under this section of the Act must be made in accordance with all the requirements of the Act (see Appendix 1).

### 167 Determination by a Councillor Conduct Panel

- (1) After a Councillor Conduct Panel has conducted a hearing, the Councillor Conduct Panel may:
  - (a) make a finding of serious misconduct against a Councillor; or
  - (b) if it is satisfied that a Councillor has breached one or more of the prescribed standards of conduct and the application for a finding of serious misconduct was made to the Councillor Conduct Panel within the period of 3 months after the breach occurred, make a finding of misconduct against a Councillor; or

- (c) whether or not a finding of misconduct or serious misconduct against a Councillor has been made, make a finding that remedial action is required; or
  - (d) dismiss the application.
- (2) If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the Council's term unless the Councillor Conduct Panel directs otherwise.
- (3) 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.
- (4) If a Councillor Conduct Panel makes a finding of misconduct against a Councillor as specified in subsection (1)(b), the Councillor Conduct Panel may do any one or more of the following:
- (a) direct the Councillor to make an apology in a form or manner specified by the Councillor Conduct Panel;
  - (b) suspend the Councillor from the office of Councillor for a period specified by the Councillor Conduct Panel 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 Councillor Conduct Panel;
  - (d) direct that the Councillor be removed from being the chair of a delegated committee for the period determined by the Councillor Conduct Panel.
- (5) For the purposes of subsection (3) or (4), any period of suspension of a Councillor from the office of Councillor is to be reduced by any period during which the Councillor was stood down under Division 6 of Part 7 in relation to the relevant conduct.
- (6) If a Councillor Conduct Panel makes a finding that remedial action is required, the Councillor Conduct Panel may direct the Councillor who is the subject of the application to attend one or more of the following:
- (a) mediation;
  - (b) training;
  - (c) counselling.
- (7) For the purposes of subsection (6), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.
- (8) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.

- (9) In addition to any findings made under subsection (1)(a), (b) or (c), a Councillor Conduct Panel may direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue.
- (10) A Council must comply with a direction under subsection (9) within the period of 3 months after the direction is given.

Under section 224 of the Act, the Minister has the power to stand down an individual Councillor if they have reason to believe that the Councillor is creating a serious risk to the health and safety of Councillors, Council staff or other persons or is preventing Council from performing its functions and:

- (a) an application to a Councillor Conduct Panel to make a finding of serious misconduct against the Councillor has been made;
- (b) an application to VCAT alleging gross misconduct by the Councillor has been made;
- (c) (iii) the Minister has, by instrument, appointed a Commission of Inquiry into the Council of the Councillor;
- (d) (iv) an application has been made to the Supreme Court for the ouster from the office of Councillor of the Councillor.

#### 8.4 COUNCILLOR CONDUCT OFFICER

Under section 150 of the *Local Government Act 2020* (the Act), a Councillor Conduct Officer, who may be a member of Council staff, must be appointed by the Chief Executive Officer to:

- (a) assist the Council in the implementation of, and conduct of, the internal arbitration process of a Council; and
- (b) assist the Principal Councillor Conduct Registrar to perform the functions specified in section 149(1) of the Act; and
- (c) assist the Principal Councillor Conduct Registrar in relation to any request for information under section 149(3) of the Act.

#### 8.5 DISPUTES BETWEEN MEMBERS OF THE PUBLIC AND COUNCILLORS

Where a complaint is received from the public in respect of a Councillor, the matter will be referred to the Mayor for consideration. Where the Mayor determines there has been a breach of the prescribed standards of conduct required under the Councillor Code of Conduct, the Mayor will refer the complaint immediately and directly to the Municipal Inspector for further investigation. The Mayor may also progress the matter in accordance with the internal arbitration process outlined in Section 8.1 of this Code. Where the Mayor determines that the breach of the prescribed standards of conduct is *serious or gross misconduct*, the complaint will be referred immediately and directly to the Municipal Inspector for further investigation.

Where the complaint involves the Mayor, the Deputy Mayor will refer the complaint immediately and directly to the Municipal Inspector for further investigation. The Mayor may also progress the matter in accordance with the internal arbitration process outlined in Section 8.1 of this Code. Where the Mayor determines that the breach of the prescribed standards of conduct is *serious or gross misconduct*, the complaint will be referred immediately and directly to the Municipal Inspector for further investigation.

## 8.6 DISPUTES BETWEEN COUNCILLORS AND STAFF

The Chief Executive Officer (CEO) has sole responsibility for the management of Council staff. In the event of a dispute between a Councillor and a member of Council staff, it must be brought to the immediate attention of the Chief Executive Officer. The CEO will investigate the dispute and progress the matter in accordance with the following process:

### 8.6.1 Informal Resolution

The Councillor and CEO 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.

### 8.6.2 Formal Complaint

If the “*informal*” process is unsuccessful and a Councillor wishes to lodge a formal complaint against a member of Council staff, this complaint must be lodged with the CEO. It will remain at the discretion of the CEO as to what, if any, action is undertaken under the Staff Code of Conduct, however, the CEO will report back to the Councillor who made the complaint, once that complaint has been investigated.

In the event that the complaint involves the CEO and informal resolution has been unsuccessful, the complaint must be lodged with the Mayor. It will remain at the discretion of the Mayor as to what, if any, action is undertaken and if the matter is not resolved to the satisfaction of all parties, then it must be raised with all Councillors within the CEO’s ongoing quarterly performance management review process and referred to the CEO Performance Review Committee.

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 CEO who will, if deemed appropriate, discuss the matter with the Mayor. Where the Mayor, in consultation with the CEO, deems that a breach of the prescribed standards of conduct has occurred, the Mayor will progress the matter in accordance with the internal arbitration process outlined in the section 8.1 of this Code. Where the Mayor, in consultation with the CEO, determines that the breach of the prescribed standards of conduct is *serious or gross misconduct*, the complaint will be immediately referred to the Municipal Inspector for further investigation.

In the event that the complaint involves the Mayor, the CEO will discuss the matter with the Deputy Mayor and all Councillors. Where it is deemed that a breach of the prescribed standards of conduct has occurred, the Deputy Mayor, in consultation with the CEO, will progress the matter in accordance with the internal arbitration process outlined in section 8.1 of the Code. Where the Deputy Mayor, in consultation with the CEO, determines that the breach of the prescribed standards of conduct is *serious or gross misconduct*, the complaint will be referred directly to the Municipal Inspector for further investigation.

### 8.6.3 Further Actions

If a Councillor is found to be in breach of any relevant legislation and, under that legislation, the CEO is required to formally investigate a complaint from a staff member, then the CEO will not do so until the above steps have been undertaken in an attempt at resolution and the issue has been discussed with all Councillors.



## 8.7 SUPPORT FOR COUNCILLORS

Support mechanisms for Councillors involved in conflicts and disputes are in place and are prescribed under the *Greater Dandenong City Council Council Expenses, Support and Accountability Policy*. (A listed panel of practitioners who can provide mentor support to Councillors is maintained by the Governance Business Unit as detailed under this policy.)

## 9. ELECTIONS

### 9.1 COUNCIL ELECTIONS

Councillors are committed to fair and democratic Council elections. Council has adopted the practices and legislative requirements set out in *Greater Dandenong City Council's Election Period (Caretaker) Policy* contained within the *Greater Dandenong City Council Governance Rules*, the *Local Government Act 1989* and the *Local Government Act 2020*.

### 9.2 STATE AND FEDERAL ELECTIONS

Councillors endorse and commit to follow the existing Municipal Association of Victoria's Policy position regarding *Candidature of Councillors in State or Federal Elections* (see Appendix 2).

## 10. MONITORING AND REVIEW

Under the *Local Government Act 2020*, Council must review the Councillor Code of Conduct within four months of a general election. Council may also choose to review the Councillor Code of Conduct at any other time within a four year Council term.

## 11. APPENDIX 1 – LEGISLATIVE REQUIREMENTS FOR A COUNCILLOR CODE OF CONDUCT

The *Local Government Act 2020* prescribes the legislative requirements for a Councillor Code of Conduct as follows:

### Section 139 Councillor Code of Conduct

- (1) A Council must develop a Councillor Code of Conduct.
- (2) 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.
- (3) A Councillor Code of Conduct:
  - (a) must include the standards of conduct prescribed by the regulations expected to be observed by Councillors; and
  - (b) must include any provisions prescribed by the regulations for the purpose of this section; and
  - (c) must include provisions addressing any matters prescribed by the regulations for the purpose of this section; and
  - (d) may include any other matters which the Council considers appropriate, other than any other standards of conduct.
- (4) A Council must review and adopt the Councillor Code of Conduct within the period of 4 months after a general election.
- (5) A Council must adopt the Councillor Code of Conduct under subsection (4) 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. Authorised by the Chief Parliamentary Counsel
- (6) Until a Council adopts a Councillor Code of Conduct under subsection (4), the Councillors must comply with the existing Councillor Code of Conduct.
- (7) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act (including the *Charter of Human Rights and Responsibilities Act 2006*) or regulation.

### Section 140 Review or Amendment of Councillor Code of Conduct

- (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.

### Section 141 Internal Arbitration Process

- (1) The internal arbitration process applies to any breach of the prescribed standards of conduct.
- (2) The following applies to an internal arbitration process:
  - (a) any processes prescribed by the regulations, including any application process;
  - (b) the arbiter must ensure that parties involved in internal arbitration process are given an opportunity to be heard by the arbiter;
  - (c) the arbiter must 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;
  - (d) any requirements prescribed by the regulations.

### Section 142 The Panel List

- (1) The Secretary must establish a panel list of eligible persons from which an arbiter must be selected to conduct an internal arbitration process.
- (2) The Secretary may appoint as many eligible persons to the panel list as the Secretary considers appropriate.
- (3) A person is eligible for appointment to the panel list if the person:

- (a) is an Australian lawyer who has been admitted to the legal profession for at least 5 years; or
  - (b) has any other experience the Secretary considers relevant to the position.
- (4) A member of the panel list may resign by notice in writing to the Secretary.
  - (5) The Secretary may remove a member of the panel list if the Secretary considers that the person is no longer a suitable person to be an arbiter.
  - (6) The Public Administration Act 2004 does not apply to a member of the panel list.

#### **Section 143 Application for an Internal Arbitration Process**

- (1) An arbiter may hear an application that alleges misconduct by a Councillor.
- (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 under this section 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 under section 149(1)(c).

#### **Section 144 Principal Councillor Conduct Registrar Must Examine Application**

- (1) The Principal Councillor Conduct Registrar, after examining an application under section 143, 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.
- (2) The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a) or (b).
- (3) The rejection of an application by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 143 in respect of the same conduct by a Councillor that was the subject of the rejected application.

#### **Section 145 General Provision**

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

#### **Section 146 Arbiter Must Refer Certain Applications**

- (1) If, at any time before, during or after the hearing of an application for an internal arbitration process, 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 under section 154, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.
- (2) If the Principal Councillor Conduct Registrar receives a referral under subsection (1), the Principal Councillor Conduct Registrar must notify the parties to the application for an internal arbitration process that the matter has been referred by the arbiter.

#### **Section 147 Sanctions That May be Imposed by an Arbiter on Finding of Misconduct**

- (1) If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor.
- (2) If an arbiter has made a finding of misconduct against a Councillor, the arbiter may do any one or more of the following—

- (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.
- (3) 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.
- (4) Subject to subsection (5), a copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.
- (5) If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled under subsection (4).

### **Section 148 Appointment of Principal Councillor Conduct Registrar**

The Secretary must appoint a Principal Councillor Conduct Registrar who is employed under Part 3 of the Public Administration Act 2004.

### **Section 149 Functions and Powers of the Principal Councillor Conduct Registrar**

- (1) The Principal Councillor Conduct Registrar has the following functions:
- (a) receive applications for the appointment of an arbiter;
  - (b) appoint an arbiter from the panel list established under section 142;
  - (c) publish any guidelines in relation to processes and procedures relating to internal arbitration process applications that the Principal Councillor Conduct Registrar has determined to be necessary;
  - (d) set and publish a schedule of fees specifying the fees to be paid to arbiters;
  - (e) send a notice to a Council specifying the fees payable by the Council following any internal arbitration process conducted for, or on behalf of, the Council;
  - (f) receive applications for the establishment of Councillor Conduct Panels;
  - (g) form Councillor Conduct Panels by appointing members of the panel list to sit on Councillor Conduct Panels;
  - (h) provide general advice and assistance to members of the Councillor Conduct Panel in relation to their functions;
  - (i) publish any determination made by a Councillor Conduct Panel and any reasons given for that determination;
  - (j) keep copies of all documents requested by, and given to, a Councillor Conduct Panel;
  - (k) comply with any request made by the Chief Municipal Inspector or VCAT for copies of any documents given to, or made by, a Councillor Conduct Panel;
  - (l) set and publish a schedule of fees specifying the fees to be paid to members of a Councillor Conduct Panel;
  - (m) send a notice to a Council specifying the fees payable by the Council following any Councillor Conduct Panel hearing conducted for, or on behalf of, the Council;
  - (n) publish any guidelines in relation to Councillor Conduct Panel procedures and processes that the Principal Councillor Conduct Registrar has determined to be necessary.
- (2) The Principal Councillor Conduct Registrar has the power to do all things necessary or convenient to be done for or in connection with the performance of the Principal Councillor Conduct Registrar's functions under this Act.

- (3) Without limiting the generality of subsection (2), the Principal Councillor Conduct Registrar may request any information from a Council that the Principal Councillor Conduct Registrar considers is necessary to enable the Principal Councillor Conduct Registrar to make a determination under section 155(1)(c).

#### **Section 150 Appointment of Councillor Conduct Officer**

- (1) The Chief Executive Officer must—
  - (a) appoint a person in writing to be the Councillor Conduct Officer; and
  - (b) notify the Principal Councillor Conduct Registrar of the appointment.
- (2) Subject to subsection (3), a person may be appointed to be a Councillor Conduct Officer if:
  - (a) the person is a member of Council staff; or
  - (b) the Council resolves that the person is suitably qualified to perform the functions of the Councillor Conduct Officer.
- (3) The Chief Executive Officer cannot be appointed as a Councillor Conduct Officer.

#### **Section 151 Functions of a Councillor Conduct Officer**

A Councillor Conduct Officer must:

- (a) assist the Council in the implementation of, and conduct of, the internal arbitration process of a Council; and
- (b) assist the Principal Councillor Conduct Registrar to perform the functions specified in section 149(1); and
- (c) assist the Principal Councillor Conduct Registrar in relation to any request for information under section 149(3).

#### **Section 152 Council Must Pay Fees**

A Council must pay the fees specified in a notice under section 149(1)(e) or (m).

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Sections 153 – 174 prescribe the legislative obligations and actions of Councillor Conduct Panels, the Principal Councillor Conduct Registrar, the Chief Municipal Inspector and VCAT in relation to Councillor Conduct matters and are generally outside the scope of Council obligations with the exception of the following:

#### **Section 154 Application to Councillor Conduct Panel**

- (1) A Councillor Conduct Panel may hear an application that alleges serious misconduct by a Councillor.
- (2) Subject to subsection (4), 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 this subsection in respect of a Councillor's conduct; or
  - (b) a Councillor or a group of Councillors; or
  - (c) the Chief Municipal Inspector.
- (3) An application under subsection (2) must be made within 12 months of the alleged serious misconduct occurring.
- (4) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor that alleges that the Councillor has failed to disclose a conflict of interest may only be made by the Chief Municipal Inspector.
- (5) An application made 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 under section 149(1)(n).
- (6) An application made under this section must:
  - (a) specify the ground or grounds for the application; and
  - (b) set out:

- (i) the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting serious misconduct; and
  - (ii) the particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the serious misconduct; and
- (c) specify:
  - (i) any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or
  - (ii) if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter.
- (7) If an application is made under this section by the Council or a group of Councillors, the application must state the name and address of the Councillor whom the Council or the group of Councillors has appointed as representative of the Council or the group of Councillors.



## 12. APPENDIX 2



### Candidature of Councillors State or Federal Elections

The perception of the politicisation of local government resulting from councillors running for office in state or federal parliament remains a contentious issue in Victoria.

Councillors are elected to perform their duties in a lawful manner and must comply with relevant provisions of the *Local Government Act 1989 (the Act)* including principles of councillor conduct set out in section 76B of the Act.

These principles of conduct require councillors to act honestly and to exercise reasonable care and diligence in performing the role of a councillor. They also provide that it is an offence if a councillor makes improper use of his/her position or of information acquired because of his/her position to, *inter alia*, gain or attempt to gain, directly or indirectly, an advantage for him/herself or for any other person.

The *Commonwealth Electoral Amendment (Members of Local Government Bodies) Act 2003* provides that any state legislation that discriminates against a councillor on the ground that the councillor has been, or is to be, nominated or declared as a candidate for the House of Representatives or the Senate has no effect.

The commonwealth and state constitutions disqualify a person from holding office who is profiting from the crown or the state.

It may be prudent for a councillor/council to seek legal advice in relation to these issues.

The MAV recommends that councils, at a minimum, adopt the following Guidelines as part of their Councillor Code of Conduct developed under section 76C of the Act or to supplement that Code.

#### Guidelines

1. A councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a state or federal election (a Prospective Candidate), should provide written advice to the CEO, as soon as practicable, who should then advise all councillors.
2. A councillor who is a Prospective Candidate, should declare his/her intended candidacy at a meeting of the council as soon as practicable after notifying the CEO pursuant to Guideline 1.
3. A councillor who nominates as a candidate for a state or federal election (a Nominated Candidate), should apply for leave of absence from the council and this leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a councillor who is on a leave of absence should not attend meetings of the council or otherwise act as a councillor.

4. Any councillor / staff relationship protocol which the council has in place in respect of the caretaker period prior to a council election, should be observed by a Nominated Candidate and this should apply from their Nomination Date until the close of voting for the election.
5. A council, upon receiving an application for a leave of absence from a councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, should approve that application.
6. A councillor who is a Prospective Candidate or a Nominated Candidate, should take care to differentiate between his/her role as a state or federal election candidate and role as a councillor when making public comment.
7. A councillor who is a Prospective Candidate or a Nominated Candidate, should not use council resources, including council equipment and facilities in relation to his/her candidacy.
8. A councillor who is a Prospective Candidate or a Nominated Candidate, should not use council activities, including committee meetings and council-related external activities in relation to his/her candidacy.

**The distinction between Prospective Candidate and Nominated Candidate**

This policy draws a distinction between Prospective Candidates and Nominated Candidates because, as with council elections, candidates for state and federal elections only become actual nominated candidates a few weeks prior to the relevant election date. Accordingly, this policy recommends different treatment for Prospective Candidates and Nominated Candidates on the basis that some requirements are recommended as appropriate for Nominated Candidates during a formal election period which are not considered to be necessary prior to the formal election period.