

# Model Councillor Code of Conduct

## SCHEDULE 1 OF THE LOCAL GOVERNMENT (GOVERNANCE AND INTEGRITY) AMENDMENT REGULATIONS 2024

### DEFINITIONS

In this Schedule –

**Discrimination** means unfair or unfavourable treatment of a person on the grounds of an attribute specified in section 6 of the **Equal Opportunity Act 2010**.

### STANDARDS OF CONDUCT

#### 1. Performing the role of a Councillor

A Councillor must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by –

- (a) Representing the interests of the municipal community by considering and being responsive to the diversity of interests and needs of the municipal community; and
- (b) Being fit to perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (c) Diligently using Council processes to become informed about matters which are subject to Council decisions; and
- (d) Not performing or purporting to perform any responsibilities or functions of the Chief Executive Officer; and
- (e) Acknowledging and supporting the Mayor in the performance of the role of the Mayor, including by –
  - (i) Respecting and complying with a ruling of the Mayor as the chair of Council meetings (unless dissenting from the ruling in accordance with the Council's Governance Rules); and
  - (ii) Refraining from making public comment, including to the media, that could reasonably be perceived to be an official comment on behalf of the Council where the Councillor has not been authorised by the Mayor to make such a comment.

#### 2. Behaviours

- (1) A councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect, including by –
  - (a) Not engaging in demeaning, abusive, obscene or threatening behaviour, including where the behaviour is of a sexual nature; and
  - (b) Not engaging in behaviour that intentionally causes or perpetuates stigma, stereotyping, prejudice or aggression against a person or a class of persons; and
  - (c) Not engaging in discrimination or vilification; and
  - (d) Supporting the Council, when applying the Council's community engagement policy, to develop respectful relationships and partnerships with Traditional Owners, Aboriginal community controlled organisations and the Aboriginal community; and
  - (e) Supporting the Council in fulfilling its obligation under the Act or any other Act (including the **Gender Equality Act 2020**) to achieve and promote gender equality; and

- (f) Ensuring their behaviours and interactions with children are in line with the Council’s policies and procedures as a child safe organisation and obligations under the **Child Wellbeing and Safety Act 2005** to the extent that they apply to Councillors.
- (2) A Councillor, as an individual at the workplace must take responsible care for their own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons by –
  - (a) Adhering to applicable systems and policies put in place by the Chief Executive Officer to manage risks to health and safety in the workplace; and
  - (b) Complying, so far as the Councillor is reasonably able, with any reasonable instruction that is given by the Chief Executive Officer to a manage risk to health and safety.

### 3. Good Governance

A Councillor must comply with the following Council policies and procedures required for delivering good governance for the benefit and wellbeing of the municipal community –

- (a) The Council’s expenses policy adopted and maintained under section 41 of the Act;
- (b) The Council’s Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act, including in relation to –
  - (i) Conduct in Council meetings or meetings of delegated committees; and
  - (ii) Requesting and approval of attendance at Council meetings and meets of delegated committees by electronic means of communication; and
  - (iii) The Council’s election period policy included in the Council’s Governance Rules under section 69 of the Act, including in ensuring that Council resources are not used in a way that is intended to influence, or is likely to influence, voting at a general election or by-election;
- (c) The Council’s Councillor gift policy adopted under section 138 of the Act;
- (d) Any direction of the Minister given under section 175 of the Act.

### 4. Integrity

- (1) A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by—
  - (a) ensuring that their behaviour does not bring discredit upon the Council; and
  - (b) not deliberately misleading the Council or the public about any matter related to the performance of their public duties; and
  - (c) not making Council information publicly available where public availability of the information would be contrary to the public interest.

#### Note

See the public transparency principles set out in section 58 of the Act.

- (2) A Councillor must not, in their personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), expressly or impliedly request preferential treatment for themselves or a related person or entity.

### 5. The Model Councillor Code of Conduct does not limit robust public debate

Nothing in the Model Councillor Code of Conduct is intended to limit, restrict or detract from robust public debate of issues in a democracy.

## RELATED REVIEW

Formerly, Council Policy 078 Councillor Code of Conduct.

Effective from 26 October 2024, all Councillors are required to observe the Model Code of Conduct which is prescribed in Schedule 1 to the Regulations.

# Guidance on the Model Councillor Code of Conduct

OCTOBER 2024

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## KEY TERMS

CMI	The Chief Municipal Inspector (the head of the Local Government Inspectorate)
Internal arbitration process	Means the internal arbitration process under section 141 of the Act
Internal resolution procedure	Means the Council's internal resolution procedure implemented and adopted by the Council in accordance with section 140 of the Act and Schedule 1A to the Local Government (Governance and Integrity) Regulations 2020
Misconduct	Means any breach by a Councillor of the Model Councillor Code of Conduct
Model Code of Conduct	Refers to the Model Councillor Code of Conduct prescribed in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020
Standards of Conduct	Refers to the standards of conduct contained in the Model Councillor Code of Conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors
The Act	Refers to the standards of conduct contained in the Model Councillor Code of Conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors
The Regulations	Local Government (Governance and Integrity) Regulations 2020
VCAT	Victorian Civil and Administrative Tribunal

# INTRODUCTION

## OVERVIEW

Local Government plays a crucial role in Victoria, serving as the level of government closest to the community. It delivers key local services, supports local economies, and provides a democratic platform for communities to influence decisions that shape their local areas.

Councillors occupy a unique position as elected representatives, entrusted with participating, and representing the interests of the municipal community, in the decision making of the Council, and setting the strategic objectives of the Council and the Council's vision for the municipality. As such, the community is entitled to expect the highest standards of governance, integrity and ethical conduct from their local Councillors.

Effective from 26 October 2024, all Councillors are required to observe the Model Code of Conduct which is prescribed in Schedule 1 to the Regulations.

The Model Code of Conduct replaces the previous statutory requirement for each Council to develop its own Councillor Code of Conduct.

The Model Code of Conduct establishes clear standards for the behaviour and responsibilities of Councillors. Its purpose is to ensure that Councillors can effectively perform their duties and functions, supporting the Council in its overriding role to provide good governance for the benefit and wellbeing of the municipal community. By setting these expectations, Councillors are better equipped to perform their duties in a manner that reflects the values of integrity, transparency, respect and accountability.

The Model Code of Conduct is also designed to foster a spirit of cooperation and constructive collaboration among Councillors and the Council administration. The Model Code of Conduct supports open and respectful debate, enabling Councillors to express their views freely, while maintaining civility and mutual respect. By working together effectively, Councillors can make decisions that serve the best interests of the municipality as a whole, ensuring the community benefits from good governance and effective civic leadership.

Furthermore, the Model Code of Conduct serves to strengthen public confidence and trust in local government. By adhering to high ethical standards and demonstrating a commitment to serving the public interest, Councillors contribute to a positive and transparent relationship between the Council and the community it serves.

## PURPOSE OF THESE GUIDELINES

These guidelines have been developed by Local Government Victoria to support Councillors in performing their role in a manner consistent with the Model Code of Conduct.

Councillors are encouraged to familiarise themselves with these guidelines and must ensure they have read and understood the Model Code of Conduct itself as set out in the Regulations, accessible via the Victorian Legislation website.

This document includes information and illustrative examples (some of which are based on published internal arbitration decisions, councillor conduct panel decisions and integrity reports) to aid Councillors in interpreting and understanding the requirements of the Model Code of Conduct, including in relation to issues commonly raised in relation to the standards of conduct.

Further information about the Councillor Conduct Framework and published decisions are available on the Local Government Victoria website.

Councillor Conduct Framework processes established under the Act including processes for making a complaint about an alleged breach of the Model Code of Conduct, the internal arbitration process and the possible sanctions are covered in separate guidance.

Councillors should note that this document is intended as general guidance only and that the information and examples provided are not exhaustive of all possible scenarios or determinative to their own individual situation or circumstances.

It is important to note that this document does not provide legal advice. Councillors should obtain their own independent legal advice if they have legal questions concerning the requirements or operation of the Model Code of Conduct.

## PURPOSE AND SCOPE OF THE MODEL CODE OF CONDUCT

The Model Code of Conduct sets out the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions.

The standards of conduct cover expected conduct across four key areas identified as being critical to ensuring that Councillors discharge their duties and functions, as a Councillor appropriately and in accordance with their statutory obligations:

- (1) Performing the role of a Councillor
- (2) Behaviours
- (3) Good Governance
- (4) Integrity

The standards of conduct also allow for robust public debate, acknowledging the democratic nature of the role of Councillors, while ensuring that Councillors conduct themselves in a manner consistent with the overall standards of conduct. In this regard, the Model Code of Conduct does not prevent Councillors from expressing their personal views but provides a framework to ensure that those views are expressed in a civil and respectful way.

It is important for Councillors to be aware of how the Model Code of Conduct fits within the broader Councillor Conduct Framework ([external link](#)) established under the Act.

Failure by a Councillor to comply with the Model Code of Conduct constitutes misconduct under the Act which may be addressed through the Council's own internal resolution procedure and/or through the internal arbitration process under section 141 of the Act.

The Model Code of Conduct operates alongside provisions of the Act that address the following more serious conduct issues:

- **Serious misconduct** is defined in section 3(1) of the Act and includes bullying, disclosing confidential information or failing to disclose a conflict of interest, which is dealt with by a Councillor Conduct Panel.
- **Gross misconduct** is defined in section 3(1) of the Act and refers to behaviour demonstrating a Councillor is not of good character or is otherwise unfit for office, which may be brought before VCAT by the CMI.

- Breaches of specific offences under the Act, which may result in criminal prosecution and conviction.

This means that the standards of conduct set out in the Model Code of Conduct do not provide an exhaustive list of Councillors' statutory obligations.

While serious misconduct, gross misconduct and criminal offences are not addressed by the Model Code of Conduct, these guidelines include general information on these requirements below to provide a complete overview of the conduct expected of Councillors.

## RESPONSIBILITIES OF COUNCILLORS

### **RESPONSIBILITIES IN RELATION TO THE MODEL CODE OF CONDUCT**

Before assuming office, Councillors must take an oath or affirmation of office, declaring that they will abide by the Model Code of Conduct and uphold the standards of conduct set out in the Model Code of Conduct.

It is the personal responsibility of every Councillor to comply with the Model Code of Conduct in the performance of their role. Councillors must also uphold the standards of conduct contained in the Model Code of Conduct by promoting and supporting the Model Code of Conduct at all times and encouraging others to follow their example in doing so.

Councils may also put in place their own policies, procedures and protocols that are required for good governance. The policies, procedures, and protocols of the Council are important tools to support Councillors to observe the principles of good governance and complying with the Model Code of Conduct. Councillors should familiarise themselves and act in accordance with any such policies, procedures, and protocols.

Councillors are also required to attend mandatory induction and professional development training relating to conduct and integrity, to (among other things) ensure they are familiar with, and understand, their statutory obligations and the provisions of the Model Code of Conduct.

### **UPHOLDING THE MODEL CODE OF CONDUCT**

While the majority of Councillors discharge their duties and functions in accordance with their statutory responsibilities, when misconduct occurs, it can have serious consequences for:

- Councillors – both the Councillor alleged to have engaged in the misconduct and their fellow Councillors
- Members of Council staff
- The Councils they serve
- The sector as a whole
- The Community

The misconduct can be disruptive to council business and the effective delivery of key services to the local community, cause significant reputational harm and erode public trust in the system of local government, and result in costly intervention for the Council.

Failure by a Councillor to comply with the Model Code of Conduct constitutes misconduct under the Act. It is essential that Councillors understand that they have a key role in promoting and upholding the Model Code of Conduct by holding each other to account for their behaviour.

Councillors must be mindful of how the Model Code of Conduct fits within the broader Councillor Conduct

Framework (external link) established under the Act. They must also be mindful of the different avenues available to address Councillor conduct issues under the Act and other legislation, including options to refer complaints to relevant integrity bodies where appropriate.

## ADDRESSING CONDUCT ISSUES

The Councillor Conduct Framework established under the Act provides a multilayered framework for managing councillor behaviour and addressing conduct issue. The framework provides various mechanisms for dealing with complaints, based on the seriousness of the alleged conduct and the severity of the disciplinary action required.

These processes are not intended to address or resolve differences in council policy or decision making. These are matters to be discussed and voted on in a council meeting so that Councillor Conduct Framework processes are not misused by Councillors for political gain.

Further guidance about the Councillor Conduct Framework process is available on the Local Government Victoria website.

### **INTERNAL RESOLUTION PROCEDURES**

Councillors are encouraged to attempt to resolve any disputes, including disputes concerning alleged breaches of the Model Code of Conduct, through the Council's own internal resolution procedure in the first instance.

Where a complaint has been made or dispute has arisen concerning an alleged breach of the Model Code of Conduct, the Councillors involved in the matter should, in accordance with the Council's internal resolution procedure, use their best endeavours to resolve the matter in a courteous and respectful manner with a view to maintaining effective working relationships. These processes may also provide an effective avenue to address other types of complaints or disputes that may arise, including interpersonal disputes or complaints about serious misconduct.

The internal resolution procedures of Councils are complementary to the formal Councillor Conduct Framework process and are a matter for each Council and the Councillors involved.

### **INTERNAL ARBITRATION PROCESS**

Where a matter concerning an alleged breach of the Model Code of Conduct cannot be resolved internally, despite attempts to do so or where use of the Council's internal resolution procedure is not appropriate, a Council, Councillor or group of Councillors can apply for an independent arbiter to be appointed to conduct an internal arbitration process under section 141 of the Act.

An arbiter has the power to discipline a Councillor for misconduct if they consider that there has been a breach of the Model Code of Conduct. Sanctions that may be imposed by an arbiter for misconduct include:

- Suspension of the Councillor from their office for up to three months
- A formal apology made by the Councillor
- That the Councillor is not to attend or participate in a Council meeting specified by the arbiter
- Removal of the Councillor from a role where they represent Council
- Removal of the Councillor as chair of a delegated committee
- Training or counselling



- That the Councillor is ineligible to hold the office of Mayor or Deputy Mayor for a period specified by the arbiter, not exceeding 12 months.

### **COUNCILLOR CONDUCT PANELS**

A Council, Councillor, group of Councillors or the CMI can apply for a Councillor Conduct Panel to be formed to hear allegations of serious misconduct under section 154 of the Act. If a Councillor Conduct Panel makes a finding of serious misconduct it may impose more serious sanctions on a Councillor, including suspending the Councillor for up to 12 months.

### **VCAT**

If a Councillor has acted in a way (including in their personal capacity) that demonstrates that they are not of good character or are otherwise not a fit and proper person to hold office as a Councillor, the CMI may apply to VCAT for a finding of gross misconduct. This can result in a Councillor being disqualified from being a Councillor for a period of up to 8 years.

### **REFERRING MATTERS TO INTEGRITY BODIES**

Complaints about Councillor conduct or administrative actions or decisions of Councils may also be referred to an integrity body.

If Councillors, members of Council staff or community members become aware of or suspect, fraudulent, criminal, unethical or corrupt behaviour or behaviour that constitutes serious misconduct, gross misconduct or a breach of the Act – this behaviour should be reported, as soon as practicable to the appropriate integrity body (set out in **Appendix A**)

Protections are available under the **Public Interest Disclosures Act 2012** to ensure that people who report improper conduct and corruption to an integrity body can do so in the knowledge that they will be protected. These protections include keeping the identity of the person reporting improper conduct confidential and protecting them from reprisals including bullying, harassment or legal action.

Information about how to make a Public Interest Disclosure complaint is available on the Independent Broad-based Anti-corruption Commission's (IBAC) website here:

<https://www.ibac.vic.gov.au/what-public-interest-disclosure>

Other types of complaints from community members should be directed to the Council in the first instance in accordance with the Council's complaints policy.

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

- Brief statement about the issue
- Brief history of the case, including important dates or events
- Decision or action/inaction taken by the Council
- Preferred outcome for this case going forward
- Copies of all correspondence to and from the Council any other material that records the contact made between parties involved that are relevant to the complaint

# THE MODEL CODE EXPLAINED

## WHEN DOES THE MODEL OF CONDUCT APPLY?

The Model Code of Conduct applies to Councillors in the performance of their role.

The role of a Councillor as detailed in section 28 of the Act includes the following duties and functions:

- To participate in the decision making of the Council
- To represent the interests of the municipal community in that decision making
- 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.

Councillors also do and are expected to do any manner of things in their capacity as a Councillor that are not specifically listed in the Act, but which are intrinsic to the performance of their role. These include representing the Council at events, participating in debates and discussions on matters at council briefings that may come before the Council for decision and responding to the municipal community.

This means that the Model Code of Conduct is not limited to behaviour that occurs in the course of formal Council business or on Council premises such as at council meetings. The Model Code of Conduct also applies to the conduct of Councillors in various other contexts and settings when interacting with fellow Councillors, members of Council staff and the public, and across all forms of communication including:

- In-person, electronic or hybrid meetings, including briefings and meetings with stakeholders or members of the community
- Written, verbal or non-verbal communication
- Electronic and social media communication

## **BEHAVIOUR AS A PRIVATE INDIVIDUAL**

The model Code of Conduct does not apply to the behaviour of Councillors that occurs when they are acting solely in their private or personal capacity.

### **EXAMPLE**

*A Councillor gets into a heated discussion with a local shop owner about a personal matter regarding the quality of service at the shop. The shop owner, aware of the Councillor's position, files a complaint with the Council claiming that the Councillor was rude and aggressive. With no connection to Council duties or functions or the role of a Councillor, the Model Code of Conduct is not intended to apply.*

While the Model Code of Conduct does not apply to conduct that occurs in a private or personal capacity, it will apply when a Councillor holds themselves out to be a Councillor or where a Councillor's actions might reasonably give the impression that they are acting in an official capacity, for example, when discussing Council matters with members of the community.

In this respect, Councillors should be mindful of their standing in the community and appreciate that in some private or personal settings, others may not be aware or recognise that a Councillor is acting in a private or personal capacity and is not performing a council function or acting in an official capacity. This is particularly the case where a Councillor is well known and automatically recognised as a Councillor, for example, in small communities.

#### EXAMPLE

*A Councillor mentioned their role as an elected member during a parking dispute with a neighbour and indicated they would report the neighbour to the Council. The Model Code would apply because the Councillor had identified themselves as such during the conversation in question.*

#### EXAMPLE

*A Councillor attended a Council organised event in the park with their family after reading about the event in the local newspaper. Although the Councillor had no official role or responsibilities at the event, they gave the impression that they were there in their capacity as a Councillor by introducing themselves as a Councillor and by wearing attire with the Council logo.*

Factors that may be indicative as to whether or not a Councillor was acting in a private or personal capacity include:

- Whether the Councillor was present in an official capacity or at a Council event (for example, they have been invited to attend an event because they are a Councillor)
- Whether the Councillor has described themselves as a Councillor or have otherwise held themselves out or been identified as a Councillor (for example, in a social media account or in the sign-off correspondence or in an outside bodies event description/agenda)
- Whether the Councillor was using or present on Council property at the time the alleged conduct took place (for example, using their Council email account or council provided phone)
- Whether the Councillor is commenting on matters that may come before Council for decision or that fall within the scope of the Council's function

## APPLICATION OF THE MODEL CODE OF CONDUCT TO SOCIAL MEDIA

It is important for Councillors to understand that the standards of conduct set out in the Model Code of Conduct apply equally when using social media.

Social media refers to digital platforms or services that are used to share content, information and opinions. These can include but are not limited to social networking sites (such as Facebook, LinkedIn), microblogging sites (such as X, Reddit), video and photo sharing sites (such as Instagram, TikTok).

Where a Councillor describes themselves as a Councillor in a social media post or at the top of their page or in their username or profile it is reasonable for members of the public to assume that Councillor's activities are being carried out in the performance of their role and that the post is covered by the Model Code of Conduct.

#### EXAMPLE

*A Councillor made inappropriate comments about a media article shared on Facebook concerning an AFL footballer's alleged off-field behaviour. When a comment from a member of the public noted that they were a Councillor, the Councillor responded with a further inappropriate comment that was found to be abusive. Although the comments were made on a matter unrelated to Council business, the Councillor's Facebook account described themselves as a Councillor, and therefore their initial comment would be considered to be made in their role as a Councillor.*

*It was also observed that having been identified as a Councillor by a member of the public following the initial comment, further postings by the Councillor could have reasonably been interpreted as one being made in their role as a Councillor.*

In various circumstances, a Councillor's conduct will fall within the scope of the Model Code of Conduct when using social media, even if they have not described themselves as a Councillor. This includes where a Councillor makes social media posts or comments relating to council business.

#### **EXAMPLE**

*A resident created a post on a local community Facebook group concerning a particular Councillor, alleging, among other things, that the Councillor had a conflict of interest and shouldn't have participated in a decision relating to a proposed Council infrastructure project. The Councillor responded to the resident's post and its comments, using their personal Facebook account. The Councillor's response included comments directed at the resident that were found to be abusive.*

*The Councillor was considered to be performing the role of a Councillor as the Councillor was communicating with the resident about matters for decision before the Council.*

Councillors should note that 'liking' or 'sharing' a post without rejection or denunciation of its contents can be perceived by others as an implicit endorsement or approval of its contents.

Similarly, a Councillor who administers a social media page that allows comments or third-party posts may be perceived as having published or endorsed those comments.

#### **EXAMPLE**

*A Councillor created a public X account describing themselves as a Councillor and re-shared a number of offensive posts concerning a specific community group in a manner that suggested they endorsed the content. The Councillor later changed their account name and included a statement on their account that their views were personal and made further offensive comments. Although the Councillor later changed the name of their account, all the posts were shared from the same account and could therefore be reasonably interpreted as being made by the Councillor in their role.*

### **MANAGING SOCIAL MEDIA USE RESPONSIBLY**

The appropriate use of social media is recognised as a valuable and important means for Councillors to engage with the community.

It is each Councillor's responsibility to manage any social media accounts they hold, including when creating and sharing content and when monitoring comments, in a manner that is consistent with the Model Code of Conduct.

To avoid breaching the Model Code of Conduct, Councillors should act consistently with any social media or communications policies or protocols that their own Council has developed to guide the responsible use of social media by Councillors.

Some good practices that Councillors have adopted when using social media include:

- when using social media, identify expressions of personal opinions so as to make it clear that they are not speaking for or on behalf of Council
- have a dedicated Councillor account separate to any other personal or business accounts and not place Council related opinion or matter on any personal profiles
- ensure they have appropriate privacy settings applied to all personal social media sites, bearing in mind that all social media posts will be public to some degree.

# STANDARD 1: PERFORMING THE ROLE OF A COUNCILLOR

## 1. Performing the role of a Councillor

A Councillor must do everything reasonably necessary to ensure that they perform the role and responsibilities of a Councillor effectively and responsibly, including by –

- (a) Representing the interests of the municipal community by considering and being responsive to the diversity of interests and needs of the municipal community; and
- (b) Being fit to perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (c) Diligently using Council processes to become informed about matters which are subject to Council decisions; and
- (d) Not performing or purporting to perform any responsibilities or functions of the Chief Executive Officer; and
- (e) Acknowledging and supporting the Mayor in the performance of the role of the Mayor,

including by –

- (i) Respecting and complying with a ruling of the Mayor as the chair of Council meetings (unless dissenting from the ruling in accordance with the Council's Governance Rules); and
- (ii) Refraining from making public comment, including to the media, that could reasonably be perceived to be an official comment on behalf of the Council where the Councillor has not been authorised by the Mayor to make such a comment.

Standard 1 requires Councillors to do everything necessary to ensure that they perform the role of a Councillor effectively and responsibly. Paragraphs (a) to (e) of Standard 1 provide a non-exhaustive list of types of conduct addressed by this standard.

### **REPRESENTING THE INTERESTS OF THE WHOLE MUNICIPAL COMMUNITY**

Councillors have a responsibility to represent all people who live, pay rates and conduct activities within the municipal district of the Council, including traditional owners of land in the municipal district of the Council.

In doing so, it is important that Councillors consider all of the different impacts of a decision on the entire municipal community – whether this be the adoption of a particular policy, strategic objective or standalone proposal. This means they cannot limit their consideration to the interests and needs of those in their particular ward or those with whom they share particular interests.

### **FITNESS TO PERFORM THE ROLE**

There is an expectation that Councillors have the ability or capacity to fulfill the duties and functions reasonably required of them.

Councillors must also ensure that their capacity to perform their role is not impaired by the use of substances (for example, alcohol or illicit substances)

## **DILIGENTLY USING COUNCIL PROCESSES**

Councillors have an overriding duty to participate and represent the interests of the municipal community in the decision making of the Council.

Councillors need to ensure that they are coming to Council meetings well prepared and understand the decisions they are required to participate in.

Councillors can ensure that they are diligently using Council processes by attending and participating in councillor briefings, workshops and training sessions provided or arranged by the Chief Executive Officer (CEO) in relation to the performance of their Councillor role and reading the agenda papers provided in relation to Council and committee meetings in advance of those meetings.

### **EXAMPLE**

*A Municipal Monitor found that Councillors were consistently failing to read briefing materials. Councillors were provided access to a portal where relevant documents could be downloaded. An examination of access logs showed that several Councillors consistently did not open briefing papers and Council meeting agendas, including occasions where Councillors viewed agenda papers for the first time during the particular Council meeting to which the papers relate.*

*The Municipal Monitor observed that a failure to read these documents to inform their decision-making meant that critical oversight by Councillors of officer reports was not occurring.*

## **THE FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER**

The role of a Councillor does not include the performance of any responsibilities or functions of the CEO.

Section 46 of the Act provides that the CEO is responsible for ensuring the effective and efficient management of the day-to-day operations of the Council. Among other things, this includes being responsible for all staffing matters, the implementation of Council policies and decisions, service delivery and providing professional advice to Councillors.

This means that Councillors are not responsible for implementing Council decisions. They also have no authority to give directions to Council staff.

Councillors must recognise that all communication with Council staff must be in line with the policies and protocols put in place by the CEO. Standard 2(3) provides that a Councillor must act in accordance with any policies, practices and protocols developed and implemented by the CEO under section 46 of the Act that support arrangements for interactions between members of Council staff and Councillors.

Councillors who intentionally direct, or seek to direct, a member of Council staff will be in breach of sections 123 and 124 of the Act (which relate to the misuse of position and directing Council staff in the exercise of a delegated or statutory power).

## **SUPPORTING THE ROLE OF THE MAYOR**

The role of the Mayor is set out in section 18 of the Act.

The Mayor is regarded as the leader of the Council in a broad range of activities: in particular as the chair of Council meetings, and as the principal spokesperson and advocate for the Council on any matter.

The role of the Mayor in chairing of Council meetings is to ensure the orderly and timely conduct of the meeting in accordance with the Council's Governance Rules. During the course of a meeting the Mayor has the responsibility to rule on points of order raised by Councillors and take appropriate action as necessary in accordance with the Council's Governance Rules. This is to ensure the effective and orderly conduct of

council business, including that those participating conduct themselves in a civil and respectful manner and can include requesting the withdrawal of a remark, the ejection of a Councillor from a meeting for failing to comply with a ruling or any other action necessary to allow the meeting to proceed properly. The role of the Mayor in reaching judgements about how the meeting is to be conducted must be supported and respected.

#### EXAMPLE

*During a debate at Council Meeting a Councillor repeatedly used a phrase despite being asked by the Mayor to withdraw the statement following a point of order. The Councillor twice asked the Mayor to clarify what they needed to withdraw, forcing the Mayor to repeat the phrase, which the Mayor found uncomfortable. Following a failed dissent motion, the debate resumed, and the Councillor continued to reference the phrase indirectly, prompting the Mayor to remind the Councillor that explanations or conditions on a withdrawal were not permitted under the Governance Rules.*

*Despite the Councillor's claim of confusion, the arbiter accepted that the Councillor understood that they were to withdraw the phrase (having twice sought clarification that that was what the Councillor was being asked to withdraw) and not to say it again.*

*The arbiter found that the Councillor's argumentative response to the withdrawal request, along with the repetition of the phrase, contributed to disorder in the meeting and showed a lack of respect to the Mayor as a colleague and to the Mayor's authority as the chair of the meeting.*

Mayors are seen in the community as representing the Council as a whole. They are charged with being the principal spokesperson on behalf of the Council both in the media and at public events. Mayors also have a leadership role in liaising with a broad range of government and non-government stakeholders to promote the interests of the Council and their local community.

This means that official statements of the Council should be made by the Mayor unless the Mayor has authorised another person to speak on behalf of the Council.

While Councillors are entitled to express their personal views including views that differ from the position adopted by the Council, Councillors must make it clear that they are expressing their own opinions and are not speaking for or on behalf of Council.

Mayors, by virtue of their position, are also expected to foster positive relationships between Councillors and promote behaviour that meets the Model Code of Conduct.

Promoting good relations between Councillors before contentious issues arise is a way of ensuring issues can be dealt with effectively and in a timely manner, and without becoming divisive and doing long term damage to the Council.

It is therefore important that Councillors support the Mayor including in the Mayor's role in conciliating disputes under the Council's internal resolution procedure.



## STANDARD 2: BEHAVIOURS

### 2. Behaviours

- (1) A Councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect, including by –
  - (a) Not engaging in demeaning, abusive, obscene or threatening behaviour, including where the behaviour is of a sexual nature; and
  - (b) Not engaging in behaviour that intentionally causes or perpetuates stigma, stereotyping, prejudice or aggression against a person or a class of persons; and
  - (c) Not engaging in discrimination or vilification; and
  - (d) supporting the Council when applying the Council’s community engagement policy to develop respectful relationships and partnerships with Traditional Owners, Aboriginal community controlled organisations, and the Aboriginal community; and
  - (e) supporting the Council in fulfilling its obligation under the Act or any other Act (including the **Gender Equality Act 2020**) to achieve and promote gender equality; and
  - (f) ensuring their behaviours and interactions with children are in line with the Council’s policies and procedures as a child safe organisation and obligations under the **Child Wellbeing and Safety Act 2005** to the extent that they apply to Councillors.
  
- (2) A Councillor, as an individual at the workplace, must take reasonable care for their own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons by—
  - (a) adhering to applicable systems and policies put in place by the Chief Executive Officer to manage risks to health and safety in the workplace; and
  - (b) complying, so far as the Councillor is reasonably able, with any reasonable instruction that is given by the Chief Executive Officer to manage risks to health and safety.
  
- (3) A Councillor must act in accordance with any policies, practices and protocols developed and implemented by the Chief Executive Officer under section 46 of the Act that support arrangements for interactions between members of Council staff and Councillors.

### TREATMENT OF OTHERS

The Model Code of Conduct requires Councillors to treat others with dignity, fairness, objectivity, courtesy and respect. This is not limited to fellow Councillors and members of Council staff and applies to anyone a Councillor comes into contact with when they are performing the role of a Councillor.

Paragraphs (a) to (e) of standard 2(1) provide a non-exhaustive list of the type of conduct addressed by this standard of conduct.

On being elected, a Councillor should put aside personal interests and differences and focus on working constructively with fellow Councillors, the CEO, and other Council staff, to serve the overall public interest of that municipal community. This requires Councillors to treat and engage with their fellow Councillors, the CEO, other Council staff and members of the public in a mature and respectful manner.



Disrespectful behaviour can take many different forms ranging from overt acts of abuse and disruptive or bad behaviour to unreasonable and demeaning treatment of others. Examples of disrespect in a local government context might include rude or angry outbursts in meetings, use of inappropriate language in meetings or written communication, attempts to shame or humiliate others in public, the use of inappropriate sarcasm in communications and the sharing of malicious gossip or rumours.

While Councillors have the right to express their opinions and disagree with others, it is essential they do so respectfully. Councillors are generally advised to focus on discussing the issue at hand without making personal remarks about individuals.

Councillors should be mindful of how their actions might be perceived by others. Even if it isn't their intention to be disrespectful, their conduct could still be interpreted that way and an objective evaluation of the behaviour in question will always be made.

If Councillors say something in the heat of the moment that they later regret, they may wish to consider retracting the statement and/or offering an apology immediately.

This standard is not intended to limit how a Councillor votes on any matter requiring a decision of the Council.

#### EXAMPLE

*A Councillor responded to the CEO's email, cc'd to all Councillors, which provided information to all Councillors to assist them in the decision-making process about whether a deputy mayor role was required. The Councillor's email response concluded with the following "So please keep your snout out of the trough and concentrate on fixing customer service." The statement was considered to be derogatory and disrespectful and amounted to a failure to treat the CEO with courtesy and respect.*

#### EXAMPLE

*A Councillor made comments on a local newspaper's Facebook page concerning the Council's decision to change the Council's rating system and associated budget. The comment indicated how certain Councillor's had voted on the matter and was critical of the Council's decision. The comment also included a statement that "...I wasn't surprised as one Councillor has been rocking up to meetings in a bathrobe of late."*

*Councillors' votes on specific decisions are recorded in the Council minutes and made publicly available. Drawing attention to how Councillors have voted recently or historically on the matter was not considered to amount to a breach of the standards.*

*The statement regarding the bathrobe was, however found to be a breach of the standard as it was highly personal, without context and was designed to belittle, embarrass or possibly humiliate the Councillor by implying that the Councillor was not placing sufficient importance on the manner of attending Council meetings.*

#### EXAMPLE

*A Councillor had previously been the subject of a complaint by a member of Council staff. As part of the resolution, the Councillor agreed not to approach the member of staff directly without one of the staff member's managers being present. Additionally, the Councillor had agreed to provide a written apology in response to the complaint, as the staff member had made it clear that they were not willing to accept a verbal apology.*

*Despite this agreement, the Councillor later approached the staff member in person to offer a verbal apology, believing it would help resolve the situation. However, by doing so, the Councillor was found to have lacked objectivity and to have disrespected the staff member's specific request that any interactions be mediated and that they were not prepared to accept a verbal apology.*

### EXAMPLE

*During a Council Planning Committee meeting, a Councillor accused three other Councillors of coming into the meeting with predetermined views on a planning application being considered by the Committee. The comments were made publicly in the Council chamber during debate on a motion to accept the Council officers' recommendation to approve the planning application.*

*The arbiter found that the Councillor's comments regarding the three other Councillors having a preconceived view of the outcome, made in a public meeting without providing any evidence, were disrespectful and discourteous.*

### **DEMEANING, ABUSIVE, OBSCENE OR THREATENING BEHAVIOUR OR COMMUNICATIONS**

Councillors must not engage in verbal abuse and use words that name call, demean, frighten, intimidate, or attempt to control another person. This can include yelling, screaming, or swearing at another person.

Differences of opinion are expected to arise from time to time but are no excuse for demeaning, abusive, obscene, or threatening behaviour towards persons that a Councillor disagrees with.

### **BEHAVIOUR THAT IS INTENDED TO CAUSE OR PERPETUATE STIGMA, STEREOTYPING, PREJUDICE OR AGGRESSION**

Councillors must not engage in behaviour that intentionally causes or perpetuates stigma, stereotypes, prejudice or aggression towards a person or class of persons.

These behaviours often target a characteristic of a person's social identity, such as Aboriginality, age, disability, ethnicity, sexuality, gender identity, race, socioeconomic status, immigration status, language, nationality, or religion.

This standard is intended to ensure that Councillors do not engage in behaviour that is intended to cause harm against vulnerable members of the community. This is especially true where the expression of these opinions or views is not relevant to the performance of the role of Councillor or the role and functions of the Council.

### **DISCRIMINATION AND VILIFICATION**

The Model Code of Conduct provides that a Councillor must not discriminate against a person on the grounds of an attribute specified in section 6 of the **Equal Opportunity Act 2010**. Discrimination happens when someone is treated unfairly or unfavourably on the grounds of the following attributes:

- Age
- Disability
- Employment activity
- Gender identity
- Industrial activity
- Lawful sexual activity
- Marital status
- Parent and carer status
- Race
- Religious belief or activity
- Sex
- Sex characteristics
- Sexual orientation
- Expunged homosexual conviction
- Spent conviction
- Personal association with someone who has, or is assumed to have, one of these

- Physical features personal characteristics
- Political belief or activity
- Pregnancy and breastfeeding
- Profession, trade, or occupation

A person is being vilified if they are being subjected to behaviour that incites hatred, serious contempt, revulsion or severe ridicule towards them or a group they belong to, because of their race or religion.

Note that Councillors also have obligations under the **Equal Opportunity Act 2010**, including positive duties to eliminate discrimination, sexual harassment, and victimisation as far as possible.

**RESPECTFUL RELATIONSHIPS AND PARTNERSHIPS WITH TRADITIONAL OWNERS, ABORIGINAL COMMUNITY CONTROLLED ORGANISATIONS, AND THE ABORIGINAL COMMUNITY**

Traditional Owners, Aboriginal community-controlled organisations and members of the Aboriginal community should feel culturally safe, and have their rights respected when partnering and engaging with local Councils. Councillors play an important role in achieving this.

The Model Code of Conduct requires Councillors to support the Council when applying the Council’s community engagement policy to develop respectful relationships and partnerships with Traditional Owners, Aboriginal community-controlled organisations, and the Aboriginal community.

**EXAMPLE**

A Councillor repeatedly questioned the consultation process undertaken by the Council’s Aboriginal Advisory Committee (the Committee) regarding its recommendations to Council on the Voice to Parliament. The Committee advice was that Council take a neutral stance on the referendum, provide support to the Aboriginal and Torres Strait Islander community, and encourage public education on the issue.

It was observed that the Councillor pursued their line of questioning without reasonable care for the cultural safety of those in the Chamber and watching online. In doing so, the Councillor disrespected the consultation that the Committee had undertaken, its self-determination in deciding how that consultation would appropriately be undertaken and the matters it had considered prior to forming its recommendations to Council. The Councillor put or supported a series of motions that effectively supplanted the consultation process with another which the Councillor decided was preferable. Further, the Councillor invited Aboriginal Elders to the meeting to deliberately speak against the Committee’s advice, thereby creating (or at least contributing greatly to) a charged or heightened atmosphere in the Chamber that ultimately led to a lack of cultural safety.

The Victorian Aboriginal and Local Government Strategy is an important resource for Councils. It serves as a practical guide for Councils across Victoria and will help embed the voices and priorities of Aboriginal communities at a local government level.

The Strategy recommends actions for Councils, the Victorian Government and Aboriginal communities that progress Aboriginal self-determination and reconciliation.

A Ministerial Good Practice Guideline (external link) has also been issued to assist Councils when engaging with Traditional Owners, Aboriginal Organisations and Community as required under the Act by providing a step-by-step guide for Councils on how to identify, engage and build connections and develop mutually beneficial relationships.

## **GENDER EQUALITY**

Gender equality will be achieved when women, men, and gender diverse people can access and enjoy equal resources and opportunities regardless of gender.

The **Gender Equality Act 2020** (GE Act) requires Councils to complete 5 key tasks to meet their obligations under the GE Act:

- Promote gender equality
- Conduct gender impact assessments
- Undertake a workplace gender audit
- Create and implement a Gender Equality Action Plan
- Report on progress

Councillors need to consider, promote and take positive action towards supporting Council fulfilling its obligations under the GE Act.

## **CHILD SAFE ORGANISATIONS**

Children who come into contact with Councils, receive council services or participate in council programs or consultations have the right to feel safe and be safe from harm.

Councils must comply with all aspects of the 11 Child Safe Standards under the *Child Wellbeing and Safety Act 2005*. The Child Safe Standards were developed in response to the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations and the Royal Commission into Institutional Responses to Child Sexual Abuse and are aimed at reducing the risk of child abuse and harm for children in organisations.

As child safe organisations, Councils are required to have in place policies and procedures that promote the safety and wellbeing of children. It is important that these policies and procedures provide a consistent approach to child safety at all levels, including by Councillors.

### **EXAMPLE**

A Councillor started a messenger group chat with several members of the Council's Youth Council where discussions of a personal nature occurred between the Councillor and the Youth Council members in the group chat.

The Council's child safety and wellbeing policy stated that Councillors and staff must maintain professional boundaries with children and young people participating in Council services or programs and not exchange personal contact details with a child or young person, including via social media.

The Councillor's behaviour was at odds with the Council's policy that was established to reduce risks to children and is in breach of the standard of conduct.

The Model Code of Conduct requires Councillors to uphold child safety and ensure that their interactions with children are in line with these Council policies and procedures, to reduce risk, encourage reporting, and keep children safe.

## **RISKS TO HEALTH AND SAFETY**

Councils have primary obligations as an employer under the **Occupational Health and Safety Act 2004** (OHS Act) to provide a safe workplace. Secondary obligations are owed by CEOs as persons who manage and control workplaces and because of their status as 'officers' of Councils.

In order to discharge their obligations under the OHS Act, CEOs must implement measures to minimise any risks to health (includes psychological health) and safety that may arise at Council premises. This includes risks that relate to inappropriate behaviour by Councillors.

The Model Code of Conduct requires Councillors to take reasonable care to protect the health and safety of others by adhering to these measures implemented by CEOs.

## **INTERACTIONS BETWEEN MEMBERS OF COUNCIL STAFF AND COUNCILLORS**

Under section 46 of the Act, the CEO is responsible for all staffing matters, including appointing, directing, and managing members of Council staff. Further, a CEO is responsible for 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.

The Model Code of Conduct requires Councillors to act in accordance with these policies, practices, or protocols in order to ensure that interactions with members of Council staff are appropriate and professional.

## STANDARD 3: GOOD GOVERNANCE

### 3. Good Governance

A Councillor must comply with the following Council policies and procedures required for delivering good governance for the benefit and wellbeing of the municipal community—

- (a) the Council’s Council expenses policy adopted and maintained under section 41 of the Act;
- (b) the Council’s Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act, including in relation to—
  - (i) Conduct in Council meetings or meetings of delegated committees; and
  - (ii) Requesting and approval of attendance at Council meetings and meetings of delegated committees by electronic means of communication; and
  - (iii) The Council’s election period policy made under section 69 of the Act, including ensuring that Council resources are not used in a way that is intended to influence, or is likely to influence, voting at a general election or by-election
- (c) The Council’s Councillor gift policy adopted under section 138 of the Act;
- (d) Any direction of the Minister given under section 175 of the Act

Councils are required under section 8 of the Act to provide good governance in their municipal districts for the benefit and wellbeing of the municipal community.

A Council provides good governance if it is performing its role in accordance with overarching governance principles and supporting principles in section 9 of the Act. Further, a Councillor in performing the role of a Councillor under section 28 of the Act, must support the role of a Council and comply with Council procedures required for good governance.

Councils must ensure that good governance underpins all of their activities. Good governance focuses on, among other things, effective and lawful decision-making and achieving the best outcomes for the municipal community.

In giving effect to the overarching governance principles, a Council must take into account supporting principles by adopting and maintaining policies and plans related directly to these supporting principles.

To facilitate good governance for the municipal community by the Council, the Model Code of Conduct requires that Councillors adhere to and comply with the following Council policies – the Council Expenses Policy, Governance Rules including the Election Period Policy, the Councillor Gift Policy, and any Ministerial direction issued under section 175 of the Act.

Failure to provide good governance may result in government intervention. Intervention at a Council level is reserved for circumstances where there is a clear risk to good governance which impacts the Council’s ability to perform its functions. The government has intervened in cases where there is evidence of:

- Failures to give effect to the overarching governance principles in section 9(2) of the Act
- Failures to take into account the supporting principles in section 9(3) of the Act
- Failures by Councillors to perform their role in accordance with section 28 of the Act

The Good Governance Guide is a practical resource that Councillors can use to build their knowledge on governance issues and help them understand their legislative obligations.

### **Governance Rules**

Councils are required under section 60 of the Act to develop, adopt, and keep in force Governance Rules that set out Council meeting procedures and protocols. The Model Code of Conduct requires Councillors to adhere to these Governance Rules including in relation to the following:

- conduct in Council meetings or delegated committee meetings
- requesting and approval of attendance at Council meetings and meetings of delegated committees by electronic means of communication
- the Council's Election Period Policy made under section 69 of the Act and ensuring that Council resources, equipment, facilities, and information are not misused for electoral purposes.

### **COUNCILLOR GIFT POLICY**

Councils are required under section 138 of the Act to adopt a Councillor gift policy that provides for gifts to be registered. If a Councillor fails to act in accordance with this policy they will have breached the Model Code of Conduct.

### **EXPENSES POLICY**

Councils are required under section 41 of the Act to adopt and maintain an expenses policy in relation to the reimbursement of out-of-pocket expenses for Councillors. If a Councillor fails to act in accordance with this policy they will have breached the Model Code of Conduct.

### **MINISTERIAL DIRECTIONS**

Under section 175 of the Act, the Minister for Local Government may issue a governance direction, directing a Council to amend, discontinue, replace, or report on its governance processes and policies. These directions are issued based on the advice of a municipal monitor, the CMI, a Commission or Inquiry, the Victorian Ombudsman or IBAC.

A direction from the Minister may direct that the Council adopt a good practice guideline issued under section 87 of the Act, adopt a recommendation, provide financial information, or not employ a new CEO or re-employ the current CEO.

Any governance direction issued to a Council must be complied with by the Council. If an individual Councillor does not comply with the governance direction then they will have breached the Model Code of Conduct.

## STANDARD 4: INTEGRITY

### 4. Integrity

- (1) A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by –
  - (a) Ensuring that their behaviour does not bring discredit upon the Council; and
  - (b) Not deliberately misleading the Council or the public about any matter related to the performance of their public duties; and
  - (c) Not making Council information publicly available where public availability of the information would be contrary to the public interest.

#### Note

See the public transparency principles set out in section 58 of the Act.

- (2) A Councillor must not, in their personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), expressly or impliedly request preferential treatment for themselves or a related person or entity.

Councillors are elected to public office to represent the interests of the municipal community, and the community rightly expects that Councillors will perform their roles professionally and with integrity. It is important that Councillors do not engage in conduct that would erode public trust and confidence in local government.

#### **BEHAVIOUR THAT DISCREDITS THE COUNCIL OR IS DELIBERATELY MISLEADING**

Councillors must be aware that their actions might have an adverse impact on the Council and may lower the public's trust in Council's ability to discharge its functions. Conduct of a Councillor which could reasonably be regarded as diminishing public trust and confidence could involve, for example, making demonstrably dishonest social media posts about the Council publicly or making false criticisms of the Council.

Further, a Councillor must not deliberately mislead Council or the public about any matter related to the role of the Council or the performance of their public duties.

This standard is not intended to prevent Councillors from being critical of other Councillors or the Council. Such commentary, however, must be done in a manner that is not disrespectful, unfair, false, or misleading.

#### **EXAMPLE**

A Council took steps to internally address a Councillor's conduct concerning their dealings with Councillors and Council staff, and members of the public on social media, through external mediation and the imposition of a Council staff interaction protocol. The Councillor made public statements that the CEO imposed the protocol because of the Councillor's opposing views relating to a Council decision. The Councillor was found to have brought discredit on the Council and failed to treat the CEO and Mayor with dignity by their public suggestions that they were being unjustly punished for holding an unpopular opinion regarding that decision.



### EXAMPLE

A Councillor made a Facebook post that compared the rates paid by their Council with those paid in other Councils. The post did not have regard to the average value of rateable properties and gave the impression that the Council rates were unusually high by comparison with other Councils, without providing context. The Councillor's post was found to have brought discredit upon the Council.

### EXAMPLE

A Councillor made sweeping statements on social media, implying Council tolerates and ignores inappropriate behaviours experienced by Councillors, when, by their own admission, they chose not to raise their concerns through the processes available to them and stated on social media that Council ran a "fake process" for the mayoral election.

## **COUNCIL INFORMATION**

Under the Public Transparency Principles set out in section 58 of the Act, Council information must be publicly available unless the information is confidential information, or the public availability of the information would be contrary to the public interest.

The disclosure of confidential information is prohibited separately under the Act and constitutes both serious misconduct and a criminal offence.

The Model Code of Conduct provides that a Councillor must not make Council information publicly available where public availability of the information would be contrary to the public interest.

Councils are encouraged to develop a policy which sets out a process for designating and managing Council information the release of which would be contrary to the public interest.

Documents where public availability would be contrary to the public interest might include, for example:

- internal working documents such as drafts of officer reports prepared for Council meetings or briefings or meetings of delegated committees, the release of which may be misleading to the public
- documents that are the property of another person or body and the Council is not authorised to release them
- documents that if released would have an adverse effect on the effectiveness of Council's decision-making processes (e.g. where the information is intended to be released to the public at an agreed time).

## **PREFERENTIAL TREATMENT**

A Councillor must not request preferential treatment for themselves or a related person or entity, when acting in their private or personal capacity. This includes when engaging the Council as a ratepayer, as a recipient of a Council service, as an applicant for a permit with respect to any Council services, or in relation to a matter that is being considered by the Council for a decision.

Councillors are to conduct their personal dealings with the Council using the same processes as those that are available to be used by members of the public.

This does not prevent a Councillor from raising issues that have been brought to their attention by a member of the public in their capacity as an elected representative.

## STANDARD 5: ROBUST DEBATE

### 5. The Model Code of Conduct does not limit robust public debate

Nothing in the Model Councillor Code of Conduct is intended to limit, restrict or detract from robust public debate of issues in a democracy.

It is integral to the democratic and political processes by which Councils are elected that Councillors will form views about matters of public policy and issues of concern and interest affecting the municipality. Engaging in open debate is an essential part of Council work, allowing Councillors to present, challenge, critique, and disagree with various ideas, perspectives, policies, or proposals. Healthy discussion and differences of opinion play a vital role in council decision-making.

Councillors will often express strong personal views as to what ought to occur in the community, as to how they wish their community to develop, and the desirability of particular types of developments or other activities proposed within the municipality.

The Model Code of Conduct applies to the conduct and behaviour of Councillors, it does not prevent Councillors from debating issues and expressing their views on issues before the Council, provided they do so in a respectful manner that is compatible with the standards of conduct. In practical terms, this involves using professional and appropriate language, raising issues in the correct way and in the appropriate forum, giving others the opportunity to speak without interruption, and keeping criticism focused on the ideas or issues being discussed, rather than making it personal.

#### EXAMPLE

A Councillor at a Council meeting moved a motion that a business case feasibility study be obtained on the need, benefit, and opportunity for a future First Nations Community Hub in the municipal district. The motion was not carried by the Council at the time, on the basis that the period for Councillor budget submissions had closed.

The Councillor posted comments on their Facebook account stating that “in the same Council meeting, Councillors did manage to bend the rules [with respect to late Councillor budget submissions] for a new trial to recycle coffee cups in the municipal district.”

The arbiter accepted that robust debate allows ‘minority’ Councillors, to complain about the ‘majority’ Councillors, with feelings of exclusion, provided they remain civil. However, it was found that, while accepting the right of the ‘minority’ Councillor to engage in robust discussion, the allegations in the post that a proposal for coffee cup recycling was taken more seriously than a proposal for the establishment of a First Nations Community Hub, were serious and factually inaccurate. As such, a member of the public would be left wondering why this had occurred, and whether the members of Council are, either consciously or unconsciously, making decisions that were motivated by other factors. For this reason, it was found that, despite the right to robust public debate, the Councillor’s comments brought discredit upon the Council and fellow Councillors.

#### EXAMPLE

Councillor sent an email to Councillors and posted on social media objections to Councillors holding a Councillor only meeting to discuss the upcoming election of the Mayor and Deputy Mayor. The Councillor described this meeting as collusive conduct in which the positions were being pre-determined ahead of the Council meeting. The arbiter found that “[a] debate about what is appropriate behaviour around election time very clearly falls within ‘robust political debate’” and that the Councillor was entitled to hold the view that it was inappropriate to hold a Councillor only meeting to discuss the upcoming mayoral elections.

The arbiter concluded however that “engaging in ‘robust political debate’ does not give free rein to breach the other Standards” and found that referring to ‘collusive conduct’ caused reputational damage and was in breach of the need to treat other Councillors with dignity, fairness, objectivity, courtesy, and respect.

## OTHER TYPES OF PROHIBITED CONDUCT UNDER THE ACT

Dependent on the nature and circumstances, conduct by a Councillor may fall within the definition *serious misconduct* or *gross misconduct* or may constitute a breach of an offence provision in the Act.

### SERIOUS MISCONDUCT

A Councillor engages in serious misconduct if they do any of the following:

- Fail to comply with the Council's internal arbitration process
- Fail to comply with a direction given to the Councillor by an arbiter under section 147
- Fail to attend a Councillor Conduct Panel hearing in respect of that Councillor
- Fail to comply with a direction of a Councillor Conduct Panel
- Commit continued or repeated misconduct 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)
- Bully another Councillor or a member of Council staff
- Sexually harass a Councillor or a member of Council staff
- Disclose information the Councillor knows, or should reasonably know, is confidential information
- Contravene the requirement that a Councillor must not direct, or seek to direct, a member of Council staff
- Fail 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.

Serious misconduct matters are heard by a Councillor Conduct Panel. Applications for a Councillor Conduct Panel can only be made by a Council (following a resolution), a Councillor, a group of Councillors or the CMI. An application relating to a failure to disclose a conflict of interest may only be made by the CMI.

If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, then that Councillor cannot hold the role of Mayor or Deputy Mayor for the remainder of the Council term (unless the Councillor Conduct Panel directs otherwise).

The Councillor Conduct Panel also has the power to do one or more of the following:

- Reprimand the Councillor
- Direct the Councillor to make an apology as determined by the Councillor Conduct Panel
- Suspend the Councillor for no more than 12 months
- Direct that the Councillor is ineligible to chair a delegated meeting

## **BULLYING**

Bullying is defined in the Act to mean “the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff”. This is consistent with the definition under the **Fair Work Act 2009** (Cth).

Whether conduct amounts to bullying will depend on the nature of the conduct and the context in which it occurs.

A single occurrence of unreasonable behaviour will not meet this definition. The definition requires more than one occurrence of unreasonable behaviour over time and there must be a link between the offensive behaviour and a risk to health and safety.

Cases heard under the **Fair Work Act 2009** provide examples of repeated unreasonable behaviour that can amount to bullying. Unreasonable behaviour of this kind includes:

- Intimidation
- Coercion
- Threats
- Humiliation
- Shouting
- Singling out
- Physical, verbal, or emotional abused
- Belittling
- Isolation
- Ostracism
- Victim blaming

## **SEXUAL HARASSMENT**

Sexual harassment under the Act has the same meaning given by section 92 of the **Equal Opportunity Act 2010**. The law defines sexual harassment as unwelcome sexual behaviour in relation to another person, in which a reasonable person would have anticipated that the other person would be offended, humiliated, or intimidated.

Sexual harassment includes:

- An unwelcome sexual advance
- An unwelcome request for sexual favours
- Any other welcome conduct of a sexual nature

Sexual harassment can be physical, verbal or written. Examples include:

- Comments about someone’s private life or the way they look
- Sexually suggestive behaviour, such as leering or staring
- Brushing up against someone, touching, fondling or hugging
- Sexually suggestive comments or jokes

- Displaying offensive images or objects
- Repeated requests to go out
- Requests for sex
- Sexually explicit emails, text messages or posts on social media
- Sexual assault
- Suggestive behaviour

### **DIRECTING COUNCIL STAFF**

It is an offence under section 124 of the Act for a Councillor to intentionally direct, or seek to direct, a member of Council staff:

- In the exercise of a delegated power, or the performance of a delegated duty or function, of the Council
- In the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act
- In the exercise of a power, or the performance of a duty or function the member exercises or performs in an office or position the member holds under this Act or any other Act
- In relation to advice provided to the Council or a delegated committee

This reflects that powers are given to the Council as a whole, and that an individual Councillor does not have the legal authority to instruct or direct a member of Council staff or the Council administration.

A Councillor who breaches this section may be prosecuted by the CMI at the Magistrates' Court, or found to have committed serious misconduct by a Councillor Conduct Panel.

If prosecuted at the Magistrates' Court the maximum penalty for directing Council staff is 120 penalty units.

### **BREACH OF CONFIDENTIALITY**

Section 125 prohibits the intentional or reckless disclosure of information that the person knows, or should reasonably know, is confidential information unless an exemption applies.

Exemptions only apply if:

- The Council has determined it is information that should be publicly available
- The information has been disclosed:
  - For the purposes of any legal proceedings arising out of the Act
  - To a court or tribunal in the course of legal proceedings
  - Pursuant to an order of a court or tribunal
  - In the course of an internal arbitration and for the purposes of the internal arbitration process

- In the course of a Councillor Conduct Panel hearing and for the purposes of the hearing
- To a Municipal Monitor to the extent reasonably required by the Municipal Monitor
- To the CMI to the extent reasonably required by the CMI
- To a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry
- To the extent reasonably required by a law enforcement agency.

A Councillor who breaches this section may be prosecuted by the CMI at the Magistrates' Court, or found to have committed serious misconduct by a Councillor Conduct Panel.

If prosecuted at the Magistrates' Court the maximum penalty for a breach of confidentiality is 120 penalty units.

### **FAILURE TO DISCLOSE A CONFLICT OF INTEREST**

Section 130 of the Act requires Councillors to disclose conflicts of interest in the manner required by the Council's Governance Rules and exclude themselves from the decision-making process in relation to that matter. This includes excluding themselves from any discussion or vote on the matter at any Council meeting or delegated committee, and any action in relation to the matter.

A Councillor who breaches this section may be prosecuted by the CMI at the Magistrates' Court. Alternatively, the CMI may bring an application for serious misconduct.

If prosecuted at the Magistrates' Court the maximum penalty for a failure to declare a material conflict of interest or a general conflict of interest if there has been a previous finding of guilt is 120 penalty units.

It is important to understand the provisions relating to what a material and general conflict of interest are. There are covered in a comprehensive Conflict of Interest Guide "In the Public Interest" ([external link](#)) for Councillors, delegated committee members and Council staff, published by Local Government Victoria in October 2020.

### **GROSS MISCONDUCT**

Gross misconduct is the most serious level of misconduct in the Act. It directly reflects on the character of the Councillor and their suitability to hold office. A finding of gross misconduct by VCAT may result in a Councillor being disqualified to hold the office of Councillor for up to eight years.

Gross misconduct is defined in the Act to be behaviour by a Councillor that demonstrates that the Councillor:

- Is not of good character
- 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

Only the CMI may apply to VCAT to hear an application that alleges gross misconduct.

## OFFENCES UNDER THE LOCAL GOVERNEMENT ACT 2020

### **MISUSE OF POSITION**

Section 123 of the Act prohibits the misuse of position by a Councillor or member of a delegated committee. A person may still be prosecuted for misuse of position even after they have ceased to hold office, provided the alleged offence occurred at the time they were a Councillor.

For this provision to apply the misuse of position must be intentional and must be:

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

If this criterion applies conduct that is in breach of another section of the Act (for example failure to declare a conflict of interest or directing council staff) may also constitute misuse of position.

Section 123(3) lists the circumstances in which misuse of position can occur:

- Making improper use of information acquired as a result of the position the person held or holds
- Disclosing information that is confidential information
- Directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff
- Exercising or performing, or purporting to exercise or perform, a power, duty, or function that the person is not authorised to exercise or perform
- Using public funds or resources in a manner that is improper or unauthorised
- Participating in a decision on a matter in which the person has a conflict of interest

The CMI can only prosecute a Councillor for breaching this offence at the Magistrates' Court.

The maximum penalty for misuse of position is 600 penalty units or imprisonment for 5 years.

### **PERSONAL INTEREST RETURNS**

Councillors must lodge an initial personal interests return with the CEO within 30 days of taking the oath or affirmation of office and must lodge a biannual personal interests return twice yearly throughout their term.

The CMI may issue an infringement notice or alternatively prosecute a Councillor for breaching this offence at the Magistrates' Court.

If prosecuted at the Magistrates' Court, the maximum penalty for failing to lodge a personal interests return or intentionally or recklessly providing a return with false or incomplete information is 60 penalty units.

## APPENDIX A: INTEGRITY BODIES

Complaints about Councillor conduct or administrative actions or decisions of Councils may also be referred to the relevant integrity body as detailed below

### VICTORIAN LOCAL GOVERNMENT INSPECTORATE

If Councillors, Council staff or community members have concerns about potential breaches of the Act, they can lodge a complaint with the Local Government Inspectorate.

Led by the CMI, a key role of the Inspectorate is to promote compliance with the requirements of the Act, and encourages best practice, accountability, and transparency in local government.

The Inspectorate has a specific focus on breaches that constitute an offence under the Act, and may investigate:

- Breaches of the Act involving a Councillor, senior Council officer or individual
- With delegated responsibility under the Act
- Any individual subject to the conflict-of-interest provisions within the Act
- Any individual where the matter relates to electoral provisions
- The corporate governance of Victorian Councils.

The Inspectorate may also:

- Monitor the electoral provisions of a Council
- Provide recommendations to Councils for continuous improvement
- Advise the Minister for Local Government where a serious failure of corporate
- Governance has been identified at Council
- Undertake prosecutions for offences under the Act.

You can find out how to make a complaint to the Local Government Inspectorate via their website.

### VICTORIAN OMBUDSMAN

If you think you have been treated unfairly by a Council or as a result of a Council decision, the first step is to try and resolve your problem with the Council, including through the Council's complaints process, or alternatively through the CEO. If that doesn't work, you can contact the Victorian Ombudsman.

Under the **Ombudsman Act 1973**, the Ombudsman can look into complaints about Council services, communications, complaint handling, unreasonable actions or decisions. This is a free and independent service.

The Ombudsman cannot investigate the actions of an individual Councillor, except when investigating a protected disclosure complaint under the *Protected Disclosure Act 2012*.

You can find out more about when the Ombudsman can and cannot help by visiting its website.



## **VICTORIAN INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION (IBAC)**

IBAC is an anti-corruption agency responsible for identifying, investigating, researching, exposing and preventing public sector corruption and police misconduct in Victoria. This includes members of parliament, the judiciary and state and local government.

IBAC has powers to investigate complaints assessed as serious corrupt conduct. You can report corruption to IBAC at any time by making a complaint.

Outcomes of investigations, reviews and corruption prevention efforts are reported to Parliament. You can find more information and contact details on the IBAC website.

## **VICTORIAN EQUAL OPPORTUNITY AND HUMAN RIGHTS COMMISSION**

Councils across Victoria engage with the diverse range of people in their communities. These people include children, families, people with disability, older people, migrants, and refugees. As a result, local Councils play an important role in protecting and promoting human rights.

The Victorian Equal Opportunity and Human Rights Commission (the Commission) helps people resolve complaints of discrimination, sexual harassment and racial and religious vilification.

The **Charter of Human Rights and Responsibilities Act 2006** (the Charter) sets out the basic rights, freedoms, and responsibilities of all Victorians. The Charter protects 20 fundamental human rights, including the right to recognition and equality before the law. These basic rights form the foundation of a democratic and inclusive society that values human dignity, equality, and freedom.

Councillors are a public authority under the Charter, and it is unlawful for a Councillor to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a human right. Councillors should familiarise themselves with the Charter of Human Rights and Responsibilities and seek advice on whether a human right has been engaged if unsure.

The Commission helps people to resolve complaints by mutual agreement. It does not prosecute, make judgements for or against either side, nor can it award compensation. You can read more about local government's obligations under the Charter. For more information and contact details, see the Commissioner's website.

Human rights may also be raised in complaints to other relevant complaint handling bodies. For example, the Disability Services Commissioner, the Health Services Commissioner or the Public Transport Ombudsman.

Complaints made under federal laws such as the **Racial Discrimination Act 1975**, the **Sex Discrimination Act 1984** and the **Disability Discrimination Act 2006** must be lodged with the Australian Human Rights Commission.