



**Councillor Code of Conduct  
2021**

**Councillor  
Code of  
Conduct**

November 23

**2021**

As Councillors, we commit to providing the City with the highest standards of governance.

Section 139 of  
the Local  
Government  
Act 2020



## Table of Content

	<b>Page</b>
1. Purpose of the Councillor Code of Conduct .....	5
2. Statement of Commitment.....	5
3. Key Roles and Responsibilities .....	6-9
3.1 Roles .....	6
3.2 Councillor / organisation relationship.....	7
3.3 Role of a Councillors .....	7
3.4 Role of the Mayor .....	8
3.5 Role of the Deputy Mayor.....	9
3.6 Role of the Chief Executive Officer.....	9
4. Councillor Values and Behaviours .....	10 - 11
5. Councillor Standards of Conduct.....	11-12
5.1 Treatment of others .....	11
5.2 Performing the role of Councillor.....	11
5.3 Compliance with good governance measures.....	12
5.4 Councillor must not discredit or mislead Council or public .....	12
5.5 Standards do not limit robust political debate .....	12
6. Specific Councillor Conduct Obligations.....	13-16
6.1 Communications and Decision making.....	13
6.2 Gifts, Benefits or hospitality .....	13
6.3 Conflicts of interest .....	14
6.4 Use of Council resources .....	14
6.5 Council's Statutory Planning Process.....	14
6.6 Interacting with Children and Young People.....	15
6.7 Elections.....	20
6.8 Reporting unethical behaviour .....	20
6.9 Personal dealings with Council.....	20
7. Improper Conduct.....	21-22
7.1 Misuse of position.....	21
7.2 Directing a member of Council staff.....	21
7.3 Confidential information.....	22
8. Dispute resolution .....	22-24
8.1 Self resolution.....	22
8.2 Mayoral negotiation .....	23
8.3 External mediation.....	23

9.	Breaches of the Prescribed Standards of Conduct.....	25-28
9.1	Internal Arbitration Process .....	25
9.2	No application during Election Period.....	25
9.3	Request for Councillor Conduct Panel.....	25
10.	Procedures - Breach of this Code .....	28
	Alleged Breaches .....	28
11.	Complaint resolution process involving a Councillor and a member of staff.....	29
	Councillor v member of staff.....	29
	Member of Staff v Councillor .....	29
12.	Complaint resolution process involving the Chief Executive Officer & a Councillor ...	29
13.	Complaint resolution process involving a Councillor and member of public .....	29
14.	Additional Conduct Provisions.....	30
15.	Guidance and advice.....	30
16.	Code Monitoring and Compliance Responsibilities .....	31
17.	Endorsement.....	31

# Councillor Code of Conduct

<b>Document Title</b>	Councillor Code of Conduct
<b>Date of Adoption</b>	Date approved by Council on 23 November 2021
<b>Responsible Department</b>	Governance Department
<b>Legislative Context</b>	<p>Section 139 of the Local Government Act 2020 requires a council to develop a Councillor Code of Conduct.</p> <ol style="list-style-type: none"> <li>(1) A Council must develop a Councillor Code of Conduct.</li> <li>(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.</li> <li>(3) A Councillor Code of Conduct—             <ol style="list-style-type: none"> <li>(a) must include the standards of conduct prescribed by the regulations expected to be observed by Councillors; and</li> <li>(b) must include any provisions prescribed by the regulations for the purpose of this section; and</li> <li>(c) must include provisions addressing any matters prescribed by the regulations for the purpose of this section; and</li> <li>(d) may include any other matters which the Council considers appropriate, other than any other standards of conduct.</li> </ol> </li> <li>(4) A Council must review and adopt the Councillor Code of Conduct within the period of 4 months after a general election.</li> <li>(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.</li> <li>(6) Until a Council adopts a Councillor Code of Conduct under subsection (4), the Councillors must comply with the existing Councillor Code of Conduct.</li> <li>(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.</li> </ol>
<b>Victorian Charter of Human Rights and Responsibilities Act</b>	<p>In developing this procedure, the subject matter has been considered to determine if it raises any human rights issues. In particular, whether the scope of any human right established under the Victorian Charter of Human Rights and Responsibilities Act 2006 is in any way limited, restricted or interfered with by the contents of this policy.</p> <p>It is considered that the Councillor Code of Conduct is consistent with the rights outlined in the Charter. The human rights most relevant to these procedures are the rights to:</p> <ul style="list-style-type: none"> <li>• Recognition and equality before the law (section 8)</li> <li>• Right to life (section 9)</li> <li>• Protection of privacy and reputation (section 13)</li> <li>• Your right to freedom of thought, conscience, religion and belief (section 14)</li> <li>• Your right to freedom of expression (section 15)</li> <li>• Right to protection of families and children (section 17)</li> </ul>
<b>Related Policies</b>	<ul style="list-style-type: none"> <li>• Council Expense Policy</li> <li>• Councillor and Staff Interaction Protocols</li> </ul>
<b>References</b>	<ul style="list-style-type: none"> <li>• Model Code of Conduct NSW and LGV suggested index and topics</li> </ul>

## 1. Purpose of the Councillor Code of Conduct

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 2020* and any other Act for the peace, order and good government of their municipal districts. Good governance is fundamental to a Council being able to perform its purpose.

This Code:

- sets out the Standards of Conduct expected of elected representatives;
- endeavours to foster good working relations between councillors to enable Councillors to work constructively together in the best interests of the local community;
- mandates councillor conduct designed to build public confidence in the integrity of local government; and
- articulates the dispute resolution processes.

## 2. Statement of Commitment

As Bayside City Councillors we are committed to working together in the best interests of the people within our municipality and in discharging our responsibilities to the best of our skill and judgement.

Our commitment to working together constructively will enable us to work with and empower the community by taking a strategic and forward thinking approach to our future. One that is mindful of our heritage, enhances our environment, creates economic growth and fosters a strong community spirit.

This Code of Conduct is part of Council's commitment to governing our City effectively and adhering to the principles of good governance. This Code must be read in conjunction with the Safeguarding Children and Young People Policy, Safeguarding Code of Conduct and Reporting Policy.

Good governance is the combination of well-established processes, protocols and behaviours which lead to good decisions.

Good decisions are those which are informed by evidence and good advice, contributed to and understood by communities, underpinned by integrity and make sense in the long term interests of the community.

We also recognise that good governance means ensuring that the diversity of views and opinions in our community are given proper weight in the decision making process. However, good governance is also about accountable leadership. When we meet as a Council and take decisions, those decisions must be made in the long term best interests of the whole municipality.

Bayside Councillors are committed to the Standards of Conduct outlined in this Code.

As Councillors of Bayside City Council, we undertake to comply with the various provisions of the Local Government Act 2020 and more specifically the Standards of Conduct.

This Code of Conduct does not apply to Council staff. Council staff are bound by the Staff Code of Conduct.

### 3. Key Roles and Responsibilities

#### 3.1 Roles

An understanding and agreement of the different roles within Council helps achieve good governance. The key roles are outlined below.

The primary role of the Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. Council must perform its role in accordance with the Overarching Governance Principles.

#### Overarching governance principles and supporting principles

(1) A Council must in the performance of its role give effect to the overarching governance principles.

(2) The following are the overarching governance principles—

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

(3) In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—

- (j) the community engagement principles;
- (k) the public transparency principles;
- (l) the strategic planning principles;
- (m) the financial management principles;
- (n) the service performance principles.

### 3.2 Councillor / Organisation Relationship

The Council of the City of Bayside consists of democratically elected Councillors (the electoral arm) and the organisation/staff (the operational arm).

Good governance is dependent on how well the relationship between the elected members and the organisation works, as well as mutual respect and understanding between Councillors and Officers in relation to their respective roles, functions and responsibilities.

Councillors need to be aware of the requirements of section 124 of The Act and must not intentionally direct, or seek to direct, a member of Council staff in the exercise of their duties. This provision also applies in respect of Officer reports presented to Council and on directing staff under delegation or as an Authorised Officer. It is important to note that section 124 applies to Councillors even when acting in a group outside formal Council or delegated committee meetings such as at Councillor Briefings (Assemblies of Councillors).

To achieve good governance, clear and effective communication protocols for Councillors and Council staff are essential. In accordance with the Bayside Councillor and Staff Interaction Protocols, the following applies to Councillor/Staff relationships:

- Acknowledgement that the CEO is responsible for all administrative and staff matters and that all staff are answerable to the CEO, therefore Councillors' primary point of communication should be with the CEO.
- Councillors will refrain from using their position to improperly influence members of staff in their duties or functions, or to gain an advantage for themselves or others.
- Councillors will treat staff in a professional and respectful manner at all times.
- Provide and maintain a working and physical environment that is safe and without risks to health and safety.
- Maintain an environment that is safe for all, and take appropriate measures to eliminate discrimination, sexual harassment or victimisation so far as is reasonably practicable.
- Councillors seeking information on a specific matter should do so via the CEO or the relevant Director in accordance with the Councillor/Staff Interactions Protocols
- Contact with Managers is appropriate where Councillors are seeking clarification or further specific information on a particular matter.
- Councillors are to lodge resident or Councillor requests with the Executive Assistant to the Mayor or the Director's Personal Assistant for logging into the Customer Request Management (CRM) system.

### 3.3 Role of a Councillor

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

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

Councillors are responsible in establishing and maintaining the good governance of the Council.

Councillors determine Council policies and set the strategic direction of the Council. Councillors have a key advocacy and leadership role. Councillors appoint, manage and support the Chief Executive Officer of the organisation to deliver the strategic objectives of the Council. The CEO is responsible for management and administration. The organisation is responsible for the implementation of Council policy and decisions, service delivery and providing professional advice to Councillors.

Councillors collectively as a Council, have responsibility for:

- a) determining high level strategic directions, policy and service delivery programs;
- b) facilitating and encouraging the planning and development of the City;
- c) advocating on behalf of the local community to various stakeholders and governments;
- d) representing all citizens and creating a viable and sustainable future; and
- e) undertaking duties and responsibilities as authorised under The Act.

Councillors should not be involved in the operational decisions of the organisation or its services and, in adherence to The Act will not misuse their position to direct staff.

The Mayor is the leader who is required to provide guidance to Councillors in establishing and promoting appropriate standards of conduct

#### **LGA 2020 - Section 28 Role of a Councillor**

- (1) The role of every Councillor is—
  - (a) to participate in the decision making of the Council; and
  - (b) to represent the interests of the municipal community in that decision making; and
  - (c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.
- (2) In performing the role of a Councillor, a Councillor must—
  - (a) consider the diversity of interests and needs of the municipal community; and
  - (b) support the role of the Council; and
  - (c) acknowledge and support the role of the Mayor; and
  - (d) act lawfully and in accordance with the oath or affirmation of office; and
  - (e) act in accordance with the standards of conduct; and
  - (f) comply with Council procedures required for good governance.
- (3) The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

### **3.4 Role of the Mayor**

The Mayor is the elected leader of the Council. A key role of the Mayor is to facilitate good relationships between Councillors, Councilors and the Chief Executive Officer and Executive Team. The Mayor sets the tone and style of behaviour expected of Council and works with the team of councillors in supporting them.

The primary roles and responsibilities of the Mayor include: (section 18 LGA).

#### **Section 18 Role of Mayor**

1. The role of the Mayor is to—
  - (a) chair Council meetings;
  - (b) be the principal spokesperson for the Council;
  - (c) lead engagement with the municipal community on the development of the Council Plan;
  - (d) report to the municipal community, at least once each year, on the implementation of the Council Plan;
  - (e) promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct;
  - (f) assist Councillors to understand their role;
  - (g) take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer;
  - (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.



### 3.5 Role of the Deputy Mayor

The role of the Deputy Mayor is to give effective support to the Mayor and Councillors during the day-to-day function of Council.

The Deputy Mayor must undertake the role of the Mayor if:

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

The Deputy Mayor will take responsibility for the internal resolution process when the matter relates to the Mayor.

### 3.6 Role of the Chief Executive Officer

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

**The Act** (section 46) identifies the functions of the Chief Executive Officer.

- (1) supporting the Mayor and the Councillors in the performance of their roles; and
- (2) ensuring the effective and efficient management of the day to day operations of the Council.

this responsibility includes the following—

- ensuring that the decisions of the Council are implemented without undue delay;
- ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;
- supporting the Mayor in the performance of the Mayor's role as Mayor;
- setting the agenda for Council meetings after consulting the Mayor
- when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
- 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.

## 4. Councillor values and behaviours

As Councillors we will aspire to demonstrate the following values and behaviours towards each other, our staff and our community:

- Working together **constructively**. This will be achieved by:
  - *Keeping each other in the loop on important issues and proactively sharing information and knowledge with one another;*
  - *Communicating openly, honestly and being open-minded to new ideas and consider change;*
  - *Actively listening to each other, and asking questions to understand the different views;*
  - *Respecting confidentiality of Councillor discussions at briefings and information sessions and email exchange between councillors;*
  - *Where possible providing no surprises to each other in the public domain; and*
  - *Maintaining a sense of humour and collegiality where possible.*
  
- Treating all people with **courtesy, respect and professionalism**. This will be achieved by:
  - *Treating members of the community with dignity and positive intention to be heard;*
  - *Being approachable, responsive and professional at all times;*
  - *Treating fellow councillors with respect and when disagreeing with opinions and views, challenging in a constructive manner;*
  - *In the event of strong disagreement in the Chamber remaining professional and seeking to resolve any dispute in a constructive manner and move forward*
  - *Debating contentious issues without resorting to personal acrimony or insult; and acting with courtesy towards Council staff; and*
  - *Fostering an environment where frank advice is offered without fear or favour by the organisation and received respectfully;*
  - *Adopting a professional approach at meetings, being punctual, prepared and attentive;*
  
- Appreciating our **differences and diversity**. This will be achieved by:
  - *Accepting and respecting differences in diversity including, age, culture and religion;*
  - *Respecting differences in opinions, abilities and skills during debate;*
  - *Being objective and flexible and willing to compromise; and*
  - *Respecting Council's decision even when in disagreement.*

- Always acting with **integrity and honesty**: This will be achieved by:
  - *Being honest in all dealings with the community, with other councillors and with Council staff;*
  - *Abiding by the governing Council policies and the local government sector legislation;*
  - *Being prudent in the use of information that has been acquired in the role as Councillor;*
  - *Always acting with impartiality and in the best interest of the community as a whole; and*
  - *Avoiding situations that might create a conflict between public duties of a councillor and personal interests and obligations.*

## 5. Councillor Standards of Conduct

The Act places obligations on Councillors in relation to way they should conduct themselves. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions.

Section 139 of the Local Government Act 2020 requires a Councillor code of conduct to include the standards of conduct prescribed by the regulations expected to be observed by Councillors.

### 5.1 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.
- (e) Promotes the Safeguarding of Children and Young People by maintaining a zero tolerance for child abuse in all Bayside City Council physical and online environments and in all its forms including physical, sexual, psychological, emotional abuse and neglect and/or allowing children to experience or witness family violence.

### 5.2 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.

### **5.3 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.

### **5.4 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.

### **5.5 Standards do not limit robust political debate**

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

## 6. Specific Councillor Conduct Obligations

### 6.1 Communication and Decision Making

As representatives of the community, Councillors have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.

There may be times when individual Councillors disagree with a majority decision of Council. Individual Councillors are entitled to express their own independent views, however, this should not be done in a way that reflects negatively on other individual Councillors or the Council as a whole.

Council will be open and transparent in its decision making and encourage community participation in Council Meetings.

To ensure constructive decision-making and communication of Council decisions, Councillors will:

- Commit to making all decisions impartially and in the best interests of the community
- Make fair and unbiased decisions by adhering to the principles of natural justice.
- Consider a person's interests which may be affected by a Council decision.
- Regularly attend meetings of Council, actively and openly participating in the decision-making process, striving to achieve the best outcome for the community.
- Seek approval of Council for leave of absence from Council Meetings.
- Respect the views of the individual in debate, however, also accept that decisions are to be based on a majority vote.
- Not make allegations which are personally offensive, derogatory or defamatory.
- Treat all matters on individual merit and base decision making on facts.
- Comply with Council's Media Policy.

#### Social media

Councillors need to ensure that the use of social media minimises exposure of Council and Councillors to legal and reputational risk.

When using social media councillors need to have at the forefront of their minds their obligations under the Code of Conduct. The Code of Conduct applies to online activity in the same way it does to other written or verbal communications. This means three key things:

1. Be respectful
2. Be fair and open minded
3. Be accurate

### 6.2 Gifts, Benefits or Hospitality

Councillors should avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council.

Councillors must be aware of their responsibilities relating to Gifts, Hospitality & Donations. The Councillor Gifts Policy provides further guidance on Gifts including prohibited gifts.

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

We recognise that gifts equal to or above the gift disclosure threshold from a person or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of an applicable gift.

### 6.3 Conflict of Interest

Each Councillor is required to identify, manage and disclose any conflicts of interest they may have. Councillors therefore recognise the importance of fully observing the requirements of *the Act* in regard to the disclosure of conflicts of interest and will comply with requirements of *The Act* in regard to conflicts of interest. Upon identifying a conflict of interest, Councillors will follow the procedures as set out in *The Act*.

In addition to the requirements of *The Act*, Councillors will:

- a) give early consideration and notify the Mayor as well as the Chief Executive Officer on whether a conflict of interest exists on any matter to be considered at a Council meeting/briefing, Delegated Committee or advisory committee of which the Councillor is a member.
- b) recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual Councillor and the Council Officers cannot offer any advice in relation to potential conflicts. If a Councillor cannot confidently say that he or she does not have a conflict of interest, the Councillor will declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest;
- c) notify, as soon as possible, the Mayor or the Committee Chair if they consider that they are unable to vote on a matter because of a conflict of interest depending on whether the matter is to be considered by the Council or a delegated committee,

Councillors should refer to the Governance Rules in relation to the process for declaring an interest at meetings.

### 6.4 Use of Council Resources

At Bayside, Councillors recognise the need to exercise appropriate prudence in the use of Council resources and that they are used solely in the public interest. This includes:

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

The Council Expense Policy provides further guidance on the use of council resources.

### 6.5 Council's Planning Process

Councillors must ensure that land use planning, development assessment and other regulatory decisions are properly made, and that all parties are dealt with fairly. Councillors must avoid any occasion or situation where there may be a suspicion or perception of improper conduct in the exercise of land use planning, development assessment and other regulatory functions (including infringement notices).

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

When proposing to meet with a planning permit applicant, Councillors should seek a meeting via the Planning Manager/Co-ordinator to ensure a Council planning officer is present.

## 6.6 Interacting with Children and Young People

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. We recognise that it is our legal and moral responsibility to keep our children and young people safe from harm and always promote their best interest. Council adheres to the Victorian Child Safe Standards and related legislation.

Councillors must maintain the highest standards of professional conduct in their attitude, behaviour and interactions with children and young people. Councillors will uphold the rights and best interests of the child in all decision making, supporting the safety, participation, wellbeing, and empowerment of children.

Councillors must be aware of their responsibilities outlined in Council's Safeguard Children and Young People Policy and be clear about processes for reporting and acting on concerns or reports of abuse or neglect of a child. Councillors must be fully aware of their responsibilities contained within the Safeguard Children and Young People Code of Conduct (SCYPCoC) adopted by Council in September 2021.

This Code applies in all operational environments (physical and online), and wherever children and young people are participating in Council's activities, programs, services and/or facilities. In addition, this Code also considers the external environment, whereby Councillors are alert to incidents of child abuse and neglect occurring outside the scope of our operations and services.

This code applies to Safeguarding children and young people from all forms of Child abuse and neglect including physical, sexual, psychological, emotional harm, and experiencing or witnessing family violence.

The definition of a child refers to a person who is under the age of 18. Councillors must adhere to the Victorian Child Safe Standards, the National Principles for Child Safe Organisations and legislation including our obligations relating to a Failure to Disclose, Failure to Protect and Grooming offences.

At all times Councillors must act to safeguard children and young people from such harm by:

- adopting appropriate safeguarding practices and behaviours set within the (SCYPCoC), when carrying out their role, and
- reporting any abuse and neglect of which they become aware to our management and/or to external authorities responsible for safeguarding children or to police, regardless of whether that abuse is being perpetrated by staff within the organisation, or by those outside the organisation including those from the child's family, extended family, their family's extended network or strangers.

Councillors are to promote equity and respect diversity by:

- actively anticipating children and young people's diverse circumstances and responding effectively to those with additional vulnerabilities.
- informing children and young people of their rights and giving all children and young people access to information, support, and complaints processes.
- respecting the rights of children and young people to participate in decision making, paying appropriate attention to the needs of the following groups:
  - Aboriginal and Torres Strait Islanders
  - Children and young people with a disability
  - Children and young people from culturally and linguistically diverse backgrounds
  - LGBTQI+ (Lesbian, gay, bisexual, transgender, queer, and intersex)
  - Children and young people who are unable to live at home

What we will do

- We will act to safeguard children and young people from harm by adopting the appropriate safeguarding behaviours set within the (SCYPCoC) Code.
- We adhere to the professional boundaries of the role of Councillor and will not act outside of these boundaries.
- We understand and adhere to Council's Safeguarding Children and Young People policies and procedures, including our legal obligations to report any incidents or allegations.
- We acknowledge we have a responsibility for avoiding the appearance of impropriety in dealings with children and young people.
- Councillors are required to have the appropriate and up to date 'Working with Children Check'.
- If a child or young person requires assistance that is beyond the confines of a Councillors' role, they should at the earliest opportunity, seek advice from the CEO, Directors or Manager Governance.

Definitions specifically relating to Safeguard Children and Young People

<p><b>Adherence to professional role boundaries</b></p>	<p>Council members should not, of their own volition or at the request of a service user, act outside of their role when helping to deliver our programs and services. Council members must not:</p> <ul style="list-style-type: none"> <li>▪ engage in activities with children or young people who are engaged in our organisation outside authorised activities associated with their role at Council</li> <li>▪ accept an invitation to attend any private social function at the request of a child or young person*</li> <li>▪ initiate contact (in an online or physical environment) with children or young people that is not a specific requirement of their role at Council</li> <li>▪ develop a 'special' relationship with a child to the exclusion of others or show favouritism</li> </ul> <p>*There may be circumstances where a relationship with a child or young person engaged in Council activities and/or their family exists outside of Council. Council members should manage this relationship by upholding the rights and best interest of the child or young person at all times. A declaration to the supervisor should be made to confirm the nature of this relationship (via a declaration form).</p>
<p><b>Sexual Misconduct</b></p>	<p>Under no circumstances is any form of sexual behaviour to occur between, with, or in the presence of children or young people participating in any of our activities, programs, services and / or facilities.</p> <p>Sexual behaviour needs to be interpreted widely, to encompass the entire range of actions that would reasonably be sexual in nature, including but not limited to:</p> <ul style="list-style-type: none"> <li>• contact behaviors - such as sexual intercourse, kissing, fondling, sexual penetration or exploiting a child through prostitution</li> <li>• non-contact behaviors - such as flirting, sexual innuendo, inappropriate text messaging, inappropriate photography or exposure to pornography or nudity</li> </ul>



COUNCILLOR CODE OF CONDUCT

<p><b>Physical contact</b></p>	<ul style="list-style-type: none"> <li>• Any physical contact with children and young people must be appropriate to the delivery of our activities, programs, and services such as administering first aid, giving a ‘high 5’ as a greeting and based on the needs of the child or young person such as to assist or comfort a distressed child rather than on the needs of our Council members.</li> <li>• Our Council members are required to report to management any physical contact initiated by a child or young person that is sexual and/or inappropriate, for example, acts of physical aggression, as soon as possible, to enable the situation to be managed in the interests of the safety of the child or young person, our Council members, and any other participants.</li> </ul> <p>Under no circumstances should any Council members have contact with children or young people participating in our activities, programs, and services that:</p> <ul style="list-style-type: none"> <li>• Involves touching:             <ul style="list-style-type: none"> <li>○ of genitals,</li> <li>○ of buttocks,</li> <li>○ of the breast area (female children and young people).</li> </ul> <p>That is other than as part of delivering medical or allied health services</p> </li> <li>• would appear to a reasonable observer to have a sexual connotation</li> <li>• is intended to cause pain or distress to the child or young person – for example corporal punishment</li> <li>• is overly physical – e.g. wrestling, horseplay, tickling or other roughhousing</li> <li>• is unnecessary – e.g. assisting with toileting when a child does not require assistance</li> <li>• is initiated against the wishes of the child or young person, except if such contact may be necessary to prevent injury to the child/young person or to others, in which case:             <ul style="list-style-type: none"> <li>○ physical restraint should be a last resort</li> <li>○ the level of force used must be appropriate to the specific circumstances.</li> </ul> </li> </ul>
<p><b>Alcohol and/or drugs</b></p>	<ul style="list-style-type: none"> <li>• The possession use or supply of illegal drugs to any person and/or alcohol to a child or young person is strictly prohibited at any Council location in line with the law.</li> <li>• Council members are not permitted to smoke, consume alcohol or illicit drugs, or be substance affected when working with children and young people.</li> </ul>
<p><b>One-to-one supervision</b></p>	<p>Council members are required to avoid one-to-one unsupervised situations (including unsupervised online activities, such as one-to-one online tutorials or meetings) with children and young people to whom we provide services, and (wherever possible) are to conduct all activities and/or discussions with children and young people in view of other Council members.</p>
<p><b>Gift giving</b></p>	<p>Council members are prohibited from providing gifts to a child or group of children which could be demonstrated as showing favouritism or developing a ‘special’ relationship. This does not include gifts that are provided as part of delivering a service or program including recognition of service.</p>

## COUNCILLOR CODE OF CONDUCT

<b>Transporting Children</b>	Children and young people are not to be transported as part of the service at Council. If Council members are seeking to transport children or young people as part of their role at Council, they will need to seek permission from the parent or guardian providing written authorisation for children under the age of 18 years.
<b>Positive Guidance</b>	<ul style="list-style-type: none"> <li>• We strive to ensure that children and young people participating in our activities, programs, services and / or facilities are aware of the acceptable limits of their behaviour so that we can provide a positive experience for all participants.</li> <li>• Under no circumstances are our Council members to take disciplinary action involving physical punishment or any form of treatment that could reasonably be considered as degrading, cruel, frightening, or humiliating.</li> </ul>
<b>Language and Tone of Voice</b>	<p>Language and tone of voice used towards children and young people should provide clear direction, boost their confidence, and be encouraging and affirming.</p> <p>At no time should harmful language be used towards or in the presence of children or young people. This includes language that is:</p> <ul style="list-style-type: none"> <li>• derogatory, belittling, or negative</li> <li>• intended to threaten or frighten</li> <li>• profane or sexual</li> <li>• be of an otherwise mature or adult nature that would not be suitable to discuss in the presence of children.</li> </ul> <p>Council members must not condone or make self-disclosures about past or present participation in illegal or unsafe behaviours when speaking to or in the presence of a child.</p>
<b>Promoting Equity and Diversity</b>	<ul style="list-style-type: none"> <li>• Members must ensure that their approach and interactions with children and young people are sensitive, respectful, and inclusive of all backgrounds and abilities. Council members must actively anticipate children and young people's diverse circumstances and respond effectively to those with additional vulnerabilities.</li> <li>• Where Council is involved with children and young people who are Aboriginal or Torres Strait Islander, from culturally and/or linguistically diverse backgrounds, have a disability, LGBTQI and those who are unable to live at home, members are required to promote their safety (including cultural safety), participation and empowerment.</li> </ul>
<b>Discrimination</b>	There are anti-discrimination, equal opportunity and sexual harassment laws that support fairness, equity, diversity, and inclusion. These laws apply to how we treat other employees and our customers. Council also has policies and procedures to support these principles. All employees are required to be aware of the relevant laws and Council's policies and procedures and comply with them.
<b>Electronic and online communication</b>	<ul style="list-style-type: none"> <li>• We prohibit all online and electronic communication between Council members and children and young people which is not directly related to providing a service or program or related to their role at Council.</li> </ul>

## COUNCILLOR CODE OF CONDUCT

	<ul style="list-style-type: none"> <li>• All communication between Council members in accordance with their duties and children and young people is to occur via Council allocated phones, computers, or other equipment.</li> <li>• Council members are required to ensure appropriate monitoring of children and young people when they use Council's online and electronic communication equipment to prevent exposure to pornographic material and to ensure that they do not inadvertently place themselves at risk of abuse or exploitation via social networking sites, gaming sites or through web searches, or inappropriate phone or email communication.</li> </ul>
<p><b>Photography and Images of Children</b></p>	<ul style="list-style-type: none"> <li>• Council only permits organisational filming and photography by council authorised staff within their role. All filming and photography of a child or young person must be approved by the parent or guardian, providing written authorisation for children under the age of 18 years.</li> <li>• Images of children and young people are not to be distributed (including as an attachment to an email) to anyone outside our organisation other than the child photographed or their parent/care giver without management knowledge and approval.</li> </ul>
<p><b>Bathroom/Change Room Arrangements</b></p>	<ul style="list-style-type: none"> <li>• Supporting children and young people to use a bathroom or change room must only occur as part of Council members conducting their duties as per their employee role description, and always while adhering to child safe practices and procedures.</li> <li>• Council members are required to ensure that any contact they have with a child or young person while using/or working at a Council facility including public bathrooms, playgrounds and during Council events is child safe, age appropriate and adheres to Council Safeguarding Children and Young People policies and procedures.</li> </ul>

### Reporting obligations

Councillors are expected to make a report immediately to the CEO, Director or Manager Governance if:

- they become aware of any allegations of child abuse
- they have a concern for the safety of a child or young person in our services
- they notice any member of Council staff whose practice or behaviour is contrary to the expectations of behaviour set out in this Code.

Councillors will be provided with the organisational *Reporting Policy and Incident Management Procedure* to fully support and guide this process.

### Breaches of this Code

Each Councillors has a personal accountability to:

- Act in accordance with the intent and letter of the Code
- Not condone behaviour that breaches the Code
- Report any breaches of the Code

Councillors are expected to abide by Council's policies and procedures as well as local, state, and federal legislation. Breaking these laws or policies may bring Council into disrepute and be considered a breach of this Code.

A breach of this Code may result action in accordance with Gross Misconduct as defined within the Code of Conduct.

Council members do not need to be directly affected by an issue to raise it.

### Communication and Training

As part of Councillors Induction Training, all Councillors must undertake mandatory training to provide guidance and understand Council's safeguarding children and young people policies, procedures, and practices, and to reinforce Councillors' individual safeguarding responsibilities and provide opportunities to seek clarity in relation to the commitments and behavioural expectations set out in our safeguarding policies.

### Roles and Responsibilities

Councillors acknowledges that protecting children is everyone's responsibility. All employees, volunteer's agency staff and contractors have a role to play and must be clear of their responsibilities in keeping children safe.

## **6.7 Elections**

Councillors are committed to fair and democratic Council elections and therefore endorse the practices and legislative requirements set out in Council's Election Period Policy incorporated in the Bayside Governance Rules and the LGA respectively.

### State and Federal Elections

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

## **6.8 Reporting Unethical Behaviour**

Councillors commit to upholding and promoting the highest standards in their day-to-day interactions. Councillors shall report (to the relevant authority or person) behaviour that violates any law, rule or regulation or represents corrupt conduct, mismanagement of Council resources, misuse of position or is a danger to health, safety or to the environment.

## **6.9 Personal dealings with Council**

When we deal with our Council in our private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) we do not expect nor will we request preferential treatment in relation to any such private matter. We will avoid any action that could lead Council staff or members of the public to believe that we are seeking preferential treatment.

## 7. Improper Conduct

There are specific types of conduct that are expressly prohibited by *The Act*. Councillors acknowledge that, in many cases a breach of a specific provision in *The Act* may be subject to prosecution in a Court.

### 7.1 Misuse of position

Councillors acknowledge and agree to adhere to their responsibilities under **section 123** of *The Act*:

- (1) A person who is, or has been, a councillor or member of a delegated committee must not 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.

An offence against section 123(1) is an indictable offence.

- (2) For the purposes of this section circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a delegated committee include -
- a) making improper use of information acquired as a result of the position the person held or holds; or
  - b) disclosing information that is confidential information; or
  - c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
  - d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or
  - e) using public funds or resources in a manner that is improper or unauthorised; or
  - f) participating in a decision on a matter in which the person has a conflict of interest.

This section:

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

### 7.2 Directing a member of Council staff

Councillors must not use their position to influence Council staff in the performance of their public or professional duties to obtain a private benefit for themselves or for somebody else.

Councillors must not take advantage (or seek to take advantage) of their status or position with or of functions they perform for Council in order to obtain a private benefit for themselves or for any other person or body.

Councillors acknowledge and agree to comply with their obligations in regard to improper direction and improper influence section 124 of *The Act*.

#### Section 124 Directing a member of Council staff

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 another Act; or
- (d) in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

Penalty: 120 Penalty units

### 7.3 Confidential information

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

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

Information discussed at a closed meeting is confidential. Unless the information is already publicly available, Councillors must not talk about anything discussed at the meeting with people who were not present. (section 125 of the LGA).

## 8. Dispute Resolution

Councillors have an individual and collective responsibility to try every avenue possible to resolve disputes between Councillors in house to stop the dispute escalating further.

This dispute resolution procedure is intended to be used in the event Councillors have been unable to resolve an interpersonal conflict amongst themselves and where the situation is unduly affecting the operation of the Council or addressing an alleged contravention of this Councillor Code of Conduct by a Councillor.

It is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion, debate and voting in Council and Committee meetings.

The dispute resolution procedure comprises of four components, namely;

- 1) Self Resolution
- 2) Mayoral Negotiation
- 3) External Mediation
- 4) Request for Councillor Conduct Panel

### 8.1 Self Resolution

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

## 8.2 Mayoral Negotiation

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

A dispute referred for Mayoral negotiation may relate to:

- an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- an alleged contravention of the Councillor Code of Conduct.

The party requesting the Mayoral negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a “Mayoral negotiation” dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the request is made by a group of Councillors; and
- be signed and dated by the requestor.

Within 5 working days of receipt of the complaint, the Mayor will:

- provide written acknowledgment of receipt of the complaint to the Complainant;
- provide a copy of the complaint to the Councillor who is the subject of the complaint; and
- attempt to facilitate a resolution and convene a meeting

The Mayor may call upon the Councillor Conduct Officer (CCO) for advice and guidance at this point in the process. The appointed Councillor Conduct Officer is the Director Corporate Services.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 28 of the Act, and the observation of the Councillor Standards of Conduct and the Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the parties should progress to external mediation.

### **Dispute between Councillors and the Mayor**

In the event that the dispute involves the Mayor, the Deputy Mayor will facilitate discussions between the parties in dispute and liaise with the CCO.

### 8.3 External Mediation

If reconciliation of the dispute is not possible after Mayoral negotiation, the Mayor will request the Chief Executive Officer to arrange for the appointment of external mediator, to consider the matters in dispute.

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for “self resolution”.

The applicant is to submit a written application to the CCO setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an “external mediation”. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of Councillors; and
- be signed and dated by the applicant or the applicant’s representative.

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the CCO or as soon as practical thereafter.

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

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

If the other party agrees to participate in an external mediation, the CCO is to advise the applicant, the Mayor and Chief Executive Officer immediately.

The CCO is to engage the services of a suitably qualified external mediator who is acceptable to both parties to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal arbitration process where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal arbitration process where the matter relates to an alleged contravention of the Councillor Code of Conduct.



## 9. Breaches of the Prescribed Standards of Conduct

### 9.1 Internal Arbitration process

#### 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 regulation

#### Making an Application

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

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

An application under section 143 of the Act must be made within 3 months of the alleged misconduct occurring.

An application under section 143 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).

The prescribed process for an application for internal arbitration must include:

- the name of the Councillor alleged to have breached the standards of conduct; and
- the clause of the standards of conduct that the Councillor is alleged to have breached; and
- the misconduct that the Councillor is alleged to have engaged in that resulted in the breach; and
- after receiving an application under section 143 of the Act, the Councillor Conduct Officer provides the application to the Councillor who is the subject of the application.

An arbiter appointed to hear a matter subject to an application must:

- (a) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- (b) ensure that the hearing is not open to the public.

An arbiter—

- (a) may hear each party to the matter in person or solely by written or electronic means of communication; and
- (b) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit; and
- (c) may at any time discontinue the hearing if the arbiter considers that
  - (i) the application is vexatious, misconceived, frivolous or lacking in substance; or
  - (ii) the applicant has not responded, or has responded inadequately, to a request for further information.

**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—
- (2)
  - (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.
- (3) The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a) or (b).
- (4) 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.
- (5) 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.

**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.

**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).

## 9.2 No Applications during Election Period

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

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

## 9.3 Request for Councillor Conduct Panel

The Principal Councillor Conduct Registrar manages the establishment of Councillor Conduct Panels. The Registrar is appointed by the Secretary to the Department.

All applications (supported with evidence) to establish a panel to hear allegations of misconduct or serious misconduct must go to the registrar. The panel must be established if the registrar is satisfied that the application is not frivolous or misconceived or lacking in substance, is supported by evidence and council processes have been fully exhausted or are not appropriate.

**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.

**10. Procedures – Breach of this Code****Alleged Breaches**

Alleged breaches of the Code should be reported to the Mayor and the Chief Executive Officer in writing. The Mayor must implement the actions within this procedure. In the event that the Mayor is alleged to have breached the Code, the Deputy Mayor will fulfil the role of the Mayor on that occasion.

Any alleged crime will be referred to the appropriate authority (e.g. Police, IBAC or Local Government Inspectorate) for investigation.

## **11. Complaint resolution process involving a Councillor and a member of staff**

### **Councillor and a member of staff**

In the event of a Councillor wishing to lodge a complaint against a member of Council staff, this complaint must be lodged with the Chief Executive Officer. Bayside City Council will follow its internal process as set out in the organisation's *Dispute Resolution Procedure*.

### **Member of staff and a Councillor**

Where a staff member has a complaint in respect to a Councillor, the formal complaint is to be made to the Chief Executive Officer who will inform and advise the Mayor. Where the complaint involves the Mayor, the Chief Executive Officer will progress the matter with the Deputy Mayor.

It will remain the discretion of the Mayor as to what, if any action is undertaken.

## **12. Complaint resolution process involving the Chief Executive Officer and a Councillor**

### **Chief Executive Officer and a Councillor**

Where the Chief Executive Officer has a complaint against a Councillor, the complaint must be lodged with the Mayor. Where the complaint involves the Mayor, the Chief Executive Officer will lodge the complaint with the Deputy Mayor. The Mayor or Deputy Mayor will endeavour to resolve the issue in the first instance through mayoral negotiation (refer to page 18). If a resolution cannot be reached the Mayor or Deputy Mayor may refer the matter to a confidential meeting of the Council to determine as to what, if any action is undertaken.

### **Councillor and the Chief Executive Officer**

In the event a Councillor has a complaint against the Chief Executive Officer, the complaint must be lodged with the Mayor. Where the complaint involves the Mayor, the complaint will be lodged with the Deputy Mayor. The Mayor or Deputy Mayor will endeavour to resolve the issue in the first instance through mayoral negotiation (refer to page 18). If the matter is unable to be resolved the matter will be referred to external mediation (refer to page 19) with a view to resolving the issue.

In both instances if the complaint relates to a serious breach of the standards relating to and involving bullying, victimisation or harassment including sexual harassment or any fraudulent activities, the Mayor or Deputy Mayor will instigate an independent investigation prior to reporting the complaint to the appropriate authority (e.g. IBAC or Local Government Inspectorate) for investigation.

## **13. Complaint resolution process involving a Councillor and member of the public**

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 a breach of the Councillor Code of Conduct has occurred, the Mayor will progress the matter in accordance with the internal resolution procedure as outlined in this document. Where the complaint involves the Mayor, the Chief Executive Officer will process the complaint with the Deputy Mayor in accordance with this document.

## 14. Additional Conduct Provisions

Further to the above statutory requirements, Councillors will obey the law, relevant regulations, policies and procedures including the following:

- a) **Equal Opportunity Act 2010** - refrain from discriminating, harassing or bullying other people and using offensive language in their capacity as a Councillor.
- b) The **Charter of Human Rights and Responsibilities 2006** - to act compatibly, give proper consideration and take human rights into account when making decisions
- c) **Occupational Health and Safety Act 2004** - have regard to the principles of health and safety. Councillors have the status of employees under the OH&S Act and should ensure that they contribute to a healthy and safe workplace. Councillors should be particularly mindful of this in their interactions with Council Officers.
- d) **Privacy & Data Protection Act 2014** - recognise the requirements of the regarding access, use and release of personal information which also applies to Councillors as individuals.
- e) **Governance Rules (2020)** (incorporating Election period Policy) – provides guidelines for the election of the Mayor, the role of the Mayor, the procedures governing the conduct of Council Meetings and set the rules of behaviour for those participating in or present at Council Meetings, provides for Conflict of Interest declaration processes and conduct during an election period.
- f) **Councillor and Staff Interaction Protocols** – provides clarity surrounding Councillor and staff obligations and responsibilities in dealings with each other, and supports the Chief Executive Officer in the discharge of obligations and responsibilities pursuant to *Local Government Act 2020*
- g) **Council Expenses, Reimbursement, Support and Accountability Policy** - providing guidelines in respect of administrative procedures and reimbursement of necessary out of pocket expenses incurred while performing duties as a Councillor or delegated committee member.
- h) **Councillor Gift and Hospitality Policy** provides clear guidelines to ensure that Councillors, staff and contractors are not compromised in the performance of their duties by accepting gifts or benefits which may result in a sense of obligation or could be interpreted as an attempt to influence.
- i) **Council's Media Policy** - management of media contact, and to ensure Council's corporate image is maintained and promoted, the Mayor is the principal spokesperson of Council and is given first opportunity to be spokesperson in relation to Council positions, policies and decisions and issues pertaining to municipal wide decisions, initiatives and advocacy.
- j) **Social Media Policy and Guidelines** – provides guidelines of use for the management of social media whilst ensuring Council's corporate brand and reputation is maintained and promoted.

### Charter of Human Rights Assessment

This policy is compatible with the human rights protected by the *Charter of Human Rights and Responsibilities 2006*.

## 15. Guidance and Advice

Councillors are individually responsible for seeking relevant advice from the Chief Executive Officer or Director Corporate Services as to the application of the Code.

## 16. Code Monitoring and Compliance Responsibilities

The Mayor and Councillors.

## 17. Endorsement

It is acknowledged that in accordance with the Local Government Act 2020, this Code of Conduct addresses the statutory requirements set out in section 139 of the Act namely it:

- Includes the Standards of Conduct; and
- Conduct principals as prescribed in regulations.

*This Code of Conduct was adopted by Bayside City Council on 23 November 2021 (Cnl Res: 10.11 – 23/11/2021).*



Cr Sonia Castelli – Ivison Ward



Cr Jo Samuel-King – Castlefield Ward



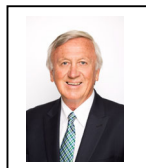
Cr Fiona Stitfold – Boyd Ward



Cr Alex del Porto – Bleazby Ward



Cr Hanna El Moullem – Dendy Ward



Cr Laurence Evans OAM – Ebden Ward



Cr Clarke Martin – Beckett Ward