

Councillor Code of Conduct

February 14

2017

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

Section 76C of
the Local
Government
Act 1989



Table of Content

	Page
Purpose of the Councillor Code of Conduct	4
Background.....	4
Statement of Commitment	5
Definitions	6-7
Councillor Conduct Principles	8
Councillor Values and Behaviours	9
Roles and Responsibilities	10
The Role of a Councillor	10
The functions of the Mayor	10-11
Functions of the Chief Executive Officer.....	11
Use of Council Resources	12
Gifts and benefits	12
Communication	12
Personal dealings with Council	13
Prohibited Conduct	13
Misuse of position.....	13
Improper direction and improper influence	14
Confidential information.....	14
Conflict of interest.....	14-15
Other legislative requirements.....	15
Internal Resolution Procedure of Council.....	16
Internal Resolution Procedure for Councillor Disagreements	17
Internal Resolution Procedure for a Breach of the Councillor Code of Conduct ...	17-18
Failure of the Councillor to comply	18
Councillors Conduct Panel.....	19
Procedures - Breach of this Code	19
Alleged Breaches	19
Complaint resolution process involving a Councillor and a member of staff	19
Councillor v member of staff.....	19
Member of Staff v Councillor	19

Complaint resolution process involving the Chief Executive Officer and a Councillor 20

Complaint resolution process involving a Councillor and member of public..... 20

Complaint resolution process involving the Chief Executive Officer..... 20

 Definitions..... 21

 Complaint process..... 21

Councillor Misconduct and Serious misconduct..... 22

Jurisdiction of VCAT 22

Guidance and advice 22

Code monitoring and compliance responsibilities 23

Endorsement 23

Councillor Code of Conduct

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 1989* 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. Good governance relies on good working relations between councillors.

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; and
- mandates councillor conduct designed to build public confidence in the integrity of local government.

Background

A Council must, within 4 months after a general election (Section 76C):

- (a) call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- (b) at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.

A Councillor Code of Conduct must include an internal resolution procedure for dealing with any alleged contraventions of the Code. A Council can apply sanctions to a Councillor who has been found to have contravened the Councillor Code of Conduct.

Failure by a Councillor to comply with the Council's internal resolution procedure or to comply with a written direction given by the Council under section 81AB of the Act (sanctions for contravention of the Code) constitutes misconduct by a Councillor.

If a Councillor Conduct Panel makes a finding of misconduct against a Councillor, the Panel may apply further sanctions against that Councillor.

A copy of this Code of Conduct (as amended from time to time) must be:

- given to each councillor
- available for inspection at the council office and any district offices
- published on the Council's internet website

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 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.

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.

As Councillors of Bayside City Council, we undertaken to comply with the various provisions of the Local Government Act 1989 and with this Councillor Code of Conduct.

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

14 February 2017

Definitions

The following definitions are listed to assist with the reading of the document:

Word	Definition
Act	means the Local Government Act 1989 (as Amended) and sections made under it.
Bullying	means the Councillor repeatedly behaves unreasonably towards another Councillor(s) or member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor(s) or member of Council staff.
Council	means Bayside City Council, being a body corporate constituted as a municipal Council under the Local Government Act 1989.
Councillor Conduct Panel (CCP)	means a panel of 2 people selected by the Principal Councillor Conduct Registrar under section 81V of the Act.
Councillors	means the individuals holding the office of a member of Bayside City Council.
Council Officers	means the Chief Executive Officer (CEO) and staff of Council appointed by the CEO.
Community	means the whole of the Bayside community.
Complaint	means a grievance concerning the conduct of a Councillor or a member of the organisation.
Dispute	means a circumstance in which 2 or more Councillors are unable to resolve an interpersonal conflict amongst themselves.
Gross misconduct	means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor.
IBAC	means the Independent Broad-based Anti-corruption Commission established under section 12 of the Independent Broad-based Anti-corruption Commission Act 2011.
Internal resolution procedure	means the procedure specified in the Councillor Code of Conduct and developed and maintained Council in accordance with section 81AA of the Act.
Misconduct	means any of the following: <ul style="list-style-type: none"> • Failure by a Councillor to comply with the Council's internal resolution procedure; or • Failure by a Councillor to comply with a written direction given by the Council under section 81AB of the Act; or repeated contravention of any of the Councillor Conduct principles.

Principal Conduct Officer	means the person appointed in writing by the Chief Executive Officer to be the Principal Conduct Officer for the Council under Section 81Y of the Act. For this purpose the Director Corporate Services has been appointed to this role.
Principal Councillor Conduct Registrar	means the person appointed by the Secretary to be the Principal Councillor Conduct Registrar under Section 81S of the Act.
Serious misconduct	<p>means:</p> <ul style="list-style-type: none"> • The failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or • The failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or • The failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or • Continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or • Bullying of another Councillor or member of Council staff by a Councillor; or Conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or the release of confidential information by a Councillor in contravention of section 77 of the Act.

Councillor Conduct Principles

As Councillors of Bayside City Council we endorse, as is specified in **Section 76B** of the *Local Government Act 1989*, that it is a primary principle of councillor conduct that, in performing the role of a councillor, we as councillors must:

- Act with integrity;
- Impartially exercise our responsibilities in the interests of the local community; and
- Not improperly seek to confer an advantage or disadvantage on any person.

In addition, in performing our role as councillors we will:

- Avoid conflicts between our public duties as a councillor and our personal interests and obligations;
- Act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other councillors, council staff and other persons;
- Exercise reasonable care and diligence and submit ourselves to the lawful scrutiny that is appropriate to our office;
- Endeavour to ensure that public resources are used prudently and solely in the public interest;
- Act lawfully and in accordance with the trust placed in each of us as elected representatives; and
- Support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

As Councillors, we undertake to conduct ourselves in observance of the primary principle and general principles as set out in the *Local Government Act 1989*.

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;*
 - *Communicating openly, honestly and being open-minded to new ideas and consider change;*
 - *Actively listen to each other, and ask questions to understand the different views;*
 - *Respecting confidentiality of Councillor discussions at Assemblies of Councillors; and*
 - *Where possible provide no surprises to each other in the public domain.*

- 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, and responsive and professional at all times;*
 - *Treating fellow councillors with respect and when disagreeing with opinions and views, challenge in a constructive manner;*
 - *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.*

- Appreciating our **differences and diversity**. This will be achieved by:
 - *Accepting and respecting differences in diversity including, age, culture and religion: and*
 - *Respecting differences in opinions, abilities and skills during debate but 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;*
 - *Always acting with impartiality and in the best interest of the community as a whole; and*
 - *Avoid situations that might create a conflict between public duties of a councillor and personal interests and obligations.*

Roles and Responsibilities

The Role of a Councillor

We acknowledge the role of a Councillor as specified in Section 65 of the Act which articulates the role is to:

- Participate in the decision-making of the Council;
- Represent the local community in that decision-making; and
- Contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

In performing our role as a Councillor, we acknowledge that we must: -

- Consider the diversity of interests and needs of the local community;
- Observe the principles of good governance and act with integrity;
- Provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the Act and other Acts;
- Participate in the responsible allocation of the resource of Council through the annual budget; and
- Facilitate effective communication between the Council and the community.

We also acknowledge our obligation under the Local Government Act 1989 and endeavour to ensure our interactions with members of Council staff do not, and are not perceived to improperly direct or influence members of Council staff in the exercise of their duties, or in their professional advice to Council.

We acknowledge that the administrative management of the Council is the responsibility of the Chief Executive Officer, and Councillors have no authority to give directions to Council staff.

Accordingly, our interactions with the administration will be through the Chief Executive Officer, Directors and Managers in accordance with a Councillor and Staff Interactions Protocols as required by the *Local Government Act 1989*.

The Functions of the Mayor

The Mayor is elected by Council to represent the views and directions of Council and the functions of the Mayor include:

- Providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act and the observation of the Councillor Conduct Principles and the Councillor Code of Conduct by Councillors under section 76B, 76BA and 76C;
- Acting as the principal spokesperson of the Council;
- Supporting good working relations between Councillors; and
- Carrying out the civic and ceremonial duties of the Mayor.

The Act also includes other functions of the Mayor which differentiate the role of mayor from other Councillors. These include:

- Being chairperson of meetings of Council at which the Mayor is present;
- Having the cast vote where necessary; and
- Taking precedence at all municipal proceedings.

That Act also expands the function of the Chief Executive Officer to specifically include the responsibility of the CEO to support the Mayor in the performance of his or her role. This also includes managing the interactions between Councillors and staff.

Functions of the Chief Executive Officer

Under Section 94A, of the Local Government Act 1989, the Chief Executive Officer is responsible for:

- (a) establishing and maintaining an appropriate organisational structure for the Council; and
- (b) ensuring that the decisions of the Council are implemented without undue delay; and
- (c) the day to day management of the Council's operations in accordance with the Council Plan; and
- (d) developing, adopting and disseminating a code of conduct for Council staff; and
- (e) providing timely advice to the Council; and
- (f) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;
- (g) supporting the Mayor in the performance of the Mayor's role as Mayor;
- (h) 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 Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and
- (i) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

As Councillors we undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.

Use of Council resources

We commit to using Council resources effectively and economically. We will:

- maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role and will comply with any Council policies applying to their use;
- ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council policy;
- not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- not use public funds or resources in a manner that is improper or unauthorised.

Gifts and benefits

We will scrupulously 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.

We will take all reasonable steps to ensure that our family members (as per the definition in Section 78) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

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.

We will record all campaign donations in our “campaign donation return”.

Communication

We recognise that as representatives of the local community, we have a primary responsibility to be responsive to community views and to accurately communicate the position and decisions of Council.

We undertake to comply with the Council’s media policy and respect the functions of the Mayor and Chief Executive Officer to be the spokespersons for the Council in accordance with our policy.

We acknowledge that individual Councillors are entitled to express their personal opinions through the media. Where we choose to do so, we will make it clear that such comment is a personal view and does not represent the position of Council. We undertake to ensure that any such comment is devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person.

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.

Prohibited Conduct

The Local Government Act 1989 has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

- Misuse of position
- Improper direction and improper influence
- Confidential information
- Conflict of interest
- Electoral conduct

These matters are set out below in order to provide a complete picture of the obligations on Councillors. While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake to comply with the prohibitions on Councillor conduct set out below. These matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission depending on the nature of the allegation.

Misuse of position (Section 76D)

A Councillor must not misuse his or her position:

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

Circumstances involving the misuse of position by a Councillor include:

- (a) making improper use of information acquired as a result of the position he or she held or holds; or
- (b) disclosing information that is confidential information within the meaning of section 77(2); or
- (c) directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) failing to disclose a conflict of interest as required under this Division.

Improper direction and improper influence (Section 76E)

A Councillor must not 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 exercise 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 special committee, including advice in a report to the Council or special committee.

Confidential information (Section 77)

A Councillor must not disclose information that the he or she knows, or should reasonably know, is confidential information.

A Councillor may disclose information that the he or she knows is confidential information in the following circumstances:

- (a) for the purposes of any legal proceedings arising out of this Act;
- (b) to a court or tribunal in the course of legal proceedings;
- (c) pursuant to an order of a court or tribunal;
- (d) to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- (e) to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing;
- (f) to a municipal monitor to the extent reasonably required by the municipal monitor;
- (g) to the extent reasonably required for any other law enforcement purposes.

Conflict of interest (Division 1A)

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or special committee, an assembly of councillors, an audit committee or a section 223 committee, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).

A Councillor has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly altered if the matter is decided in a particular way. This includes where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the Councillor, or together with a member or members of the person's family have a controlling interest in a company or other body that has a direct interest in the matter.

A conflict of interest also exists where a Councillor has any of the six types of indirect interest. These indirect interests are

- Close association - an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest
- Indirect financial interest - an indirect financial interest, including holding shares above a certain value in a company with a direct interest
- Conflicting duty - a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest
- Applicable gift - receipt of an applicable gift or gifts from a person or organisation with a direct interest
- Interested party - a party to the matter by having become involved in civil proceedings in relation to the matter
- Residential amenity – this occurs where there is a reasonable likelihood that the person’s residential amenity will be altered if the matter is decided in a particular way.

Other legislative requirements

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code of Conduct.

Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

We undertake to comply with the various provisions relating to these matters.

Internal Resolution Procedure of Council

NB: *This internal resolution procedure of Council 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 following table summarises the authority responsible for addressing a breach of misconduct, serious misconduct and gross misconduct as defined within the Act:

Degree of seriousness	Definition	Responsible Authority
<i>Disagreement between two or Councillors</i>	<i>Disagreement amongst two or more Councillors that does not constitute a breach of the Code of Conduct</i>	<i>Mayor or Deputy Mayor</i>
<i>Conduct inconsistent with standards Council has set itself through the Councillor Code of Conduct</i>	<i>Breach of Councillor Code of Conduct</i>	<i>Council</i>
<i>Misconduct</i>	<i>Failing to comply with Council's internal resolution procedure, including failure to abide by any decision of Council in relation to a breach of the Code and repeated breaches of Councillor Conduct Principles</i>	<i>Councillor Conduct Panel</i>
<i>Serious misconduct</i>	<i>Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct</i>	<i>Councillor Conduct Panel</i>
<i>Gross misconduct</i>	<i>Behaviour that demonstrates lack of character to be councillor</i>	<i>VCAT</i>

Internal Resolution Procedure for Councillor Disagreements

1. Before commencing any formal internal resolution procedure, the Councillors who are parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.
2. Councillors have a responsibility to try every avenue possible to resolve such disputes. The Mayor should be involved as soon as practically possible after a Councillor is aware that he or she is in dispute with another Councillor. As leader of the Council team, the Mayor should facilitate discussion between the parties in dispute.
3. In the event a dispute is with the Mayor, the Deputy Mayor should be involved as soon as practicable. Should a dispute exist between the Mayor and the Deputy Mayor, the Chief Executive Officer should be involved as soon as practicable and if required refer the matter to Council for determination.
4. If reconciliation of the dispute is not possible after Mayoral intervention, it is the responsibility of the Mayor / Deputy Mayor to seek assistance from an Independent Arbiter to resolve the dispute, preferably with the active support of parties to the dispute, who must be informed of such a decision in any circumstance.

The Mayor may request the Chief Executive Officer to provide or arrange for the appointment of an Independent Arbiter, to consider the matters in dispute of the Code of Conduct and make a final determination on them fairly and without bias. A Councillor involved in the dispute shall be given the opportunity to be heard by the Independent Arbiter. The final decision of the Independent Arbiter must be supported by written reasons.

The Chief Executive Officer or his delegate shall appoint an independent and suitably qualified Arbiter who is acceptable to the councillors who are parties to the dispute. In selecting the Independent Arbiter, the Chief Executive Officer may seek advice from the Principal Councillor Conduct Registrar

Internal Resolution Procedure for a Breach of the Councillor Code of Conduct

1. In the event the dispute between two Councillors is an alleged breach of the Councillor Code of Conduct the Mayor should be advised immediately. If the Mayor is a party to the dispute the Deputy Mayor should be involved as soon as practicable. Should a dispute exist between the Mayor and the Deputy Mayor, the Chief Executive Officer should be involved as soon as practicable.
2. If reconciliation of the breach of the Code of Conduct is not possible after Mayoral intervention, it is the responsibility of the Mayor / Deputy Mayor to seek assistance from an Independent Arbiter to resolve the dispute, preferably with the active support of parties to the dispute, who must be informed of such a decision in any circumstance.

The Mayor may request the Chief Executive Officer to provide or arrange for the appointment of an Independent Arbiter, to consider the alleged violations of the Code of Conduct and make a final determination on them fairly and without bias. A Councillor subject to allegations shall be given the opportunity to be heard by the Independent Arbiter. The final decision of the Independent Arbiter must be supported by written reasons.

The Chief Executive Officer or his delegate shall appoint an independent and suitably qualified Arbiter who is acceptable to the Councillors who are parties to the dispute. In selecting the Independent Arbiter, the Chief Executive Officer may seek advice from the Principal Councillor Conduct Registrar

The role of the arbiter is to:

- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor;
 - make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council;
 - give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council;
 - recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.
3. If the Independent Arbiter determines a breach of the Code of Conduct has occurred, Council may impose one or a combination of the following sanctions
- Requiring an apology;
 - Suspension from up to two Council meetings;
 - Direction that they not attend or chair an advisory or Special Committee for up to two months; or
 - Direction that they be removed from a position where they present Council for up to two months.

The sanction/s applying to the Councillors in breach of the Code of Conduct must be voted upon by Council as a whole at a meeting of Council.

It is the role of Council's Principal Conduct Officer to assist the Council in the implementation of, and conduct of, the internal resolution procedure of a Council.

Failure of the Councillor to comply

In the event a Councillor fails to comply with Council's Internal Resolution Procedure, or with a written direction given by Council at the conclusion of the internal resolution process, this will constitute misconduct under the Act, and therefore will be dealt with by a Councillor Conduct Panel

Councillor Conduct Panel

The Council notes that in relation to a formal dispute resolution process, Division 1B of the Act provides for the establishment of Councillor Conduct Panels to hear disputes between Councillors and allegations of misconduct and serious misconduct by Councillors.

In this context, section 81B (1) provides that an application for a panel hearing may be made by:

- a) the Council, following a resolution of the Council to make an application to a Councillor Conduct Panel under this section in respect of a Councillor's misconduct or serious misconduct; or
- b) a Councillor; or
- c) a group of Councillors.

The Principal Conduct Officer will assist the Principal Councillor Conduct Registrar to perform the functions as required by section 81T of the Act specifically relating to the Councillor Conduct Panel.

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 this occasion.

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

Complaint resolution process involving a Councillor and a member of staff

Councillor v 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. It will remain the discretion of the Chief Executive Officer as to what, if any action is undertaken.

Member of staff v Councillor

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

Complaint resolution process involving the Chief Executive Officer and a Councillor

Chief Executive Officer v 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 may refer the matter to a confidential meeting of the Council to determine as to what, if any action is undertaken.

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.

Complaint resolution process involving the Chief Executive Officer

The purpose of this section is to ensure proper oversight of processes used by a Council in dealing with a complaint about the conduct of the Chief Executive Officer as prescribed in Division 4 of the Local Government Act 1989.

For the purpose of this section the following definitions apply:

Definitions

Complaint	<p>Means –</p> <ul style="list-style-type: none"> a) A written complaint by the complainant to the Council about the conduct of the Chief Executive Officer; or b) A written complaint by the complainant about the conduct of the Chief Executive Officer to a person or body authorised under the Act to consider conduct of that kind; or c) An application to a court or tribunal by the complainant to initiate any proceedings in respect of the conduct of the Chief Executive Officer – <p>But does not include a written complaint that is frivolous or vexatious.</p>
Conduct	<p>Means any action or behaviour of the Chief Executive Officer of a Council involving bullying, victimisation or harassment, including sexual harassment or –</p> <ul style="list-style-type: none"> a) A Councillor of the Council; or b) A member of Council staff of that Council; or c) Any other person in the course of the Chief Executive Officer performing his or her role as the Chief Executive of that Council.

Probity	Means the integrity of processes used by the Council in dealing with a complaint, including processes to ensure that so far as it is reasonably practicable and within the responsibility of the Council – <ul style="list-style-type: none"> a) Any relevant statutory procedures have been complied with; b) Any order made by a court or tribunal in any proceedings relating to the complaint has been given effect to; c) Natural justice has been afforded; d) The privacy of personal information has been protected; e) Confidentiality under section 77 has been maintained.
Probity Auditor	Means a person appointed by the Secretary under section 107 of the Act.
Secretary	Means Secretary to the Department.

Complaint process

Where a complaint is lodged about the Chief Executive Officer, the Chief Executive Officer must immediately advise the Mayor about the complaint.

In the event a complaint is received about the Chief Executive Officer specifically relating to the conduct of the Chief Executive Officer, the Chief Executive Officer must immediately advise the Mayor about the complaint, and at the next meeting of the Council, advise the Council about the complaint when the meeting is closed to members of the public.

After the advice has been given the Council, the Chief Executive Officer may, at any time after request the Secretary to appoint a probity auditor in relation to the complaint.

If the Chief Executive Officer makes a request to appoint a probity auditor the Chief Executive Officer must immediately advise the Mayor that he or she has done so.

In the event the Mayor has not received advice from the Chief Executive Officer concerning the appointment of a probity auditor, the Mayor may request the Secretary to appoint a probity auditor in relation to the complaint.

Once a probity auditor has been appointed, the Chief Executive Officer or the Mayor must at the next meeting of the Council, advise the Council about the appointment when the meeting is closed to members of the public.

The appointed probity auditor will prepare a final report and must provide a copy of the report to Council, the Mayor, the Chief Executive Officer and the Secretary.

Councillor misconduct and serious misconduct

Section 81B of the Act provides for the application for a Councillor Conduct Panel (CCP) to investigate alleged Councillor Misconduct and serious misconduct.

Misconduct by a Councillor is specified by the Act and means:

- (a) Failure by a Councillor to comply with the internal resolution procedure; or
- (b) Failure by a Councillor to comply with a written direction given by the Council under Section 81AB of the Act; or
- (c) Repeated contraventions of any of the Councillor conduct principles.

Serious misconduct is also specified in the Act and means:

- (a) The failure of a Councillor to attend a (CCP) hearing formed to make a finding in respect of that Councillor; or
- (b) The failure of a Councillor to give a (CCP) any information the (CCP) has requested the Councillor to give; or
- (c) The failure of a Councillor to comply with a direction of a (CCP); or
- (d) Continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a (CCP); or
- (e) Bullying of another Council or member of Council staff by a Councillor; or
- (f) Conduct by a Councillor in respect of a member of Council staff in contravention of Section 76E of the Act; or
- (g) The release of confidential information by a Councillor in contravention of Section 77 of the Act.

If a CCP makes a finding of misconduct against a Councillor, then the Councillor may be reprimanded or directed to make a formal apology or take leave of absence for a specified period. A CCP may also direct that the Councillor attends mediation, training or counselling and direct that Council amends its Code of Conduct.

Jurisdiction of VCAT

VCAT will hear allegations of gross misconduct. The Chief Municipal Inspector will be responsible for making applications to VCAT for findings of gross misconduct against councillors.

If VCAT makes a finding of gross misconduct then a Councillor may be disqualified from office for a maximum of 8 years. Councillors may also be ineligible to hold the office of Mayor for a maximum period of 8 years.

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.

Code Monitoring and Compliance Responsibilities

The Mayor and Councillors.

Endorsement

It is acknowledged that in accordance with the Local Government Act 1989, this Code of Conduct addresses the statutory requirements set out in section 76C and 81AA of the Act namely it:

- Includes Councillor conduct principles; and
- Includes an internal resolution procedure of Council.

This Code of Conduct was adopted by Bayside City Council on 14 February 2017 and was signed by each of the Council members.



Cr Sonia Castelli – Central Ward



Cr James Long BM JP – Central Ward



Cr Rob Grinter – Central Ward



Cr Alex del Porto – Northern Ward



Cr Michael Heffernan – Northern Ward



Cr Laurence Evans – Southern Ward



Cr Clarke Martin – Southern Ward