

# COUNCILLOR CODE OF CONDUCT

Adopted 16 February 2021

This Councillor Code of Conduct has been developed in accordance with the *Local Government Act 2020* and the *Local Government (Governance and Integrity) Regulations 2020*.

All Councillors have been actively involved in its development and have signed the declaration to pledge they will abide by this Code as per the Affirmation of Office Councillors took on 17 November 2020.

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# 1. INTRODUCTION

This Councillor Code of Conduct has been developed in accordance with section 139 of the *Local Government Act 2020* (the Act).

The Code forms the foundation for Council's firm commitment to good governance as it discharges the duty of a council prescribed by section 8 of the Act, which is to govern for the benefit and wellbeing of the whole Strathbogie Shire community; that is those who live here, our ratepayers, visitors, traditional owners of the land and those who conduct businesses or activities across our diverse shire.

Our values and the behaviours we will demonstrate to uphold them are outlined in this Code.

Informal internal resolution processes that may be enacted should disagreements arise between Councillors or if a complaint is received about Councillor conduct not being in line with this Code. There is an emphasis on addressing any issues or tensions that may arise from time to time quickly, in a respectful manner and with the objective of developing a mutual understanding of the impact the alleged behaviour has had on others.

A more formal internal arbitration process is also detailed when a party seeks a finding of misconduct through the appointment of an internal arbiter by the Principal Councillor Conduct Officer, which is one of the mandatory requirements for this Code prescribed by the Act.

# 2. POLICY POSITION

This Code of Conduct replaces that adopted by the former Council in 2017 and applies to all Councillors of the Strathbogie Shire Council in undertaking their duties and being a representative of the Council.

As Councillors, we recognise that disputes will arise from time to time given that people will hold, and express, different and opposing views.

Being a Councillor requires considering and balancing many objectives, wants and viewpoints on a matter to achieve the greatest community benefit.

We acknowledge that this may sometimes lead to tensions within Council but we will strive to respectfully discuss our views and endeavour to deal quickly and constructively with any disputes or conflicts that might arise between us.

All Councillors understand that failure to comply with this Councillor Code of Conduct and its conduct standards may be defined as misconduct under section 3 of the Act.

Any allegation of a breach of this Code will be taken seriously, with a timely and thorough investigation undertaken to identify what (if any) action is required under the informal and formal internal arbitration processes set out in this Code.

Council will review this Code annually. This will ensure its ongoing relevance in relation to legislative change and to enable the Code to respond to any other matter(s) that may arise during the term of this Council.

This Code must be read alongside other Council documents that form the Shire's governance framework including the Council Plan, Council policies, procedures and Governance Rules.

### 3. DEFINITIONS

CEO	means the Chief Executive Officer of Strathbogie Shire Council.
Chief Municipal Inspector	<p>means the Chief Municipal Inspector is responsible for investigating and, if required, prosecuting:</p> <ul style="list-style-type: none"><li>• possible breaches and offences under the <i>Local Government Act 2020</i></li><li>• investigating allegations of Councillor misconduct, serious misconduct and gross misconduct</li><li>• making an application for a Councillor Conduct Panel to consider serious misconduct allegations</li><li>• making an application to the Victorian Civil and Administrative Tribunal (VCAT) to consider gross misconduct allegations.</li></ul>
Conflict of Interest	<p>means a general conflict of interest as defined by section 127 of the <i>Local Government Act</i> or a material conflict of interest as defined by section 128 of that same Act.</p> <p>A Councillor has:</p> <ul style="list-style-type: none"><li>• a general conflict of interest in a matter if an impartial, fair minded person would consider that the Councillor's private interests could result in them acting in a manner contrary to their public duty</li><li>• a material conflict of interest in a matter if the Council would gain a benefit or suffer a loss depending on the outcome.</li></ul>
Conduct Standards	means the Standards of Conduct relating to regulation 12 of the <i>Local Government (Governance and Integrity) Regulations 2020</i> outlined in Schedule 1 of those Regulations.
Councillor	means a Councillor who has taken the Oath or Affirmation of Office under section 5 of the <i>Local Government Act 2020</i> after being duly elected as a Councillor, including the Mayor and Deputy Mayor.
Councillor Conduct Officer	means the person appointed by the Chief Executive Officer of Strathbogie Shire Council under section 150 of the <i>Local Government Act 2020</i> to assist Council with the implementation of this Code and its internal resolution procedures, along with assisting the Principal Councillor Conduct Registrar under section 149 of the Act.
Councillor Conduct Panel	means a panel established by the Principal Councillor Conduct Registrar under section 156 of the <i>Local Government Act 2020</i> to hear applications for alleged misconduct or serious misconduct by a Councillor and make findings in relation to such applications.
Employee	means an employee of Council includes all members of staff, contractors and volunteers under the direct control or supervision of the Strathbogie Shire Council.



Gross misconduct	means behaviour defined under section 3 of the <i>Local Government Act 2020</i> that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.
Improper conduct	means a failure to disclose a conflict of interest, a breach of confidentiality, the improper direction or influence of staff, the improper use of Council resources, or a breach of Council policy under the Code of Conduct by a Councillor.
Misconduct	means any breach by a Councillor of the prescribed conduct standards included in this Councillor Code of Conduct.
Municipal community	means those who live in the Shire of Strathbogie, people who are ratepayers, traditional owners of the land and people and bodies who conduct activities in this Shire.
Principal Councillor Conduct Registrar	means the person appointed by the Secretary under Section 148 of the <i>Local Government Act 2020</i> to receive applications for the appointment of an arbiter for the purpose of an internal arbitration process or to form Councillor Conduct Panels.
Secretary	means the Secretary to the Department of Environment, Land, Water and Planning.
Serious misconduct	means the following as defined by section 3 of the <i>Local Government Act 2020</i> : <ul style="list-style-type: none"> <li>• failure by a Councillor to comply with the Council's internal arbitration process</li> <li>• failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147</li> <li>• the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor</li> <li>• failure of a Councillor to comply with a direction of a Councillor Conduct Panel</li> <li>• continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b) of the <i>Local Government Act 2020</i></li> <li>• bullying by a Councillor of another Councillor or a member of Council staff</li> <li>• conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or member of Council staff</li> <li>• the disclosure by a Councillor of information the Councillor knows or should reasonably know, is confidential information</li> <li>• conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff</li> <li>• the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision-making process when required to do so in accordance with the <i>Local Government Act 2020</i>.</li> </ul>
The Act	means the <i>Local Government Act 2020</i> .

## **4. EXTERNAL REFERENCES**

*Local Government Act 2020*

*Local Government (Governance and Integrity Regulations) 2020*

*Child Wellbeing and Safety Act 2005*

*Equal Opportunity Act 2010*

*Occupational Health and Safety Act 2004*

*Privacy and Data Protection Act 2014*

*Public Interest Disclosures Act 2020*

*Sex Discrimination Act 1984*

*Victorian Charter of Human Rights and Responsibilities Act 2006*

## **5. RELATED COUNCIL DOCUMENTS**

Fraud and Corruption Policy 2018

Council Expenses Policy 2020

Councillor/Staff Interaction Policy 2017

Gender Equity Policy 2019

Gifts, Benefits and Hospitality Policy 2019

Governance Rules 2020

Information Security Policy 2019

Privacy and Data Protection Policy 2018

Public Interest Disclosure Policy 2020

Public Transparency Policy 2020

## **6. OBJECTIVES**

The objectives of this Code of Conduct are to:

- outline the Standards of Conduct that Councillors will observe at all times when performing their duties, including prohibiting discrimination, harassment and vilification
- identify the values that drive this Council and its pursuit of the highest levels of integrity and good governance, which are:
  - Integrity
  - Respect
  - Impartiality and objectivity
  - Courage and bravery
  - Listening to all viewpoints
- describe the behaviours that will support the achievement of the Standards of Conduct prescribed by the Act and our values
- set out the informal and formal internal arbitration processes that may be enacted should disputes arise involving a Councillor(s) or an accusation of a breach of this Code or the Standards of Conduct be made.



## 7. COUNCILLOR COMMITMENT TO THE CODE OF CONDUCT

I, as an elected representative of the Strathbogie Shire community, am committed to undertaking the duties and responsibilities of the office of Councillor with integrity, courage and impartiality.

I will achieve the highest standards of conduct and good governance by being honest, fair and respectful of others, even if their views differ from mine.

I will serve and represent our diverse community to the best of my ability at all times.

I will consider each and every issue with an open mind and will always listen to and consider the views of others.

I will work constructively as a member of a team with my fellow Councillors.

I will consult and engage with Council employees and our municipal community to achieve the best possible outcome and community benefit through our decision making.

As a collective, we will be bold and courageous when faced with tough decisions and when setting our strategic direction.

I acknowledge that developing trust with our community, the Shire administration and all stakeholders is integral to achieving good governance. This will be developed and nurtured by adhering to the Standards of Conduct, values and behaviours set out in this Code. Trust will also be built by listening to others, being inclusive and empowering stakeholders to be involved in decision making and helping set our long-term goals.

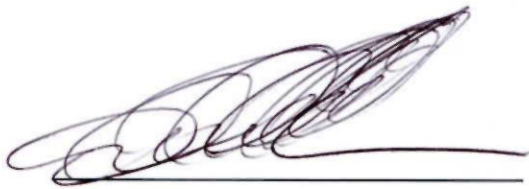
I will analyse information, ask questions, probe issues and recognise that being a Councillor involves ongoing learning. There is often a wide raft of legislation, regulation and processes that need to be considered and adhered to.

I will abide by all Council policies and procedures, adhering to all aspects of the *Local Government Act 2020* and any legislation or regulations. Further, I will be diligent in declaring conflict of interests, excluding myself from the decision making and implementation process. I will ensure that my personal interest declarations are accurate and submitted in accordance with the timelines set by the Act.

I will use my best endeavours to informally resolve any disputes that may arise in an effort to avoid the issue escalating and undermining the effective operation of the Council.

Should I be involved in a complaint made about a breach of this Code I will fully cooperate with any investigation and any arbitration process. I will also maintain confidentiality regarding complaints or resolution processes that I am party to or witness to.

By signing this Code, I declare to my fellow Councillors, to Council employees and to the municipal community that I have read, understood and will abide by this Code of Conduct at all times.



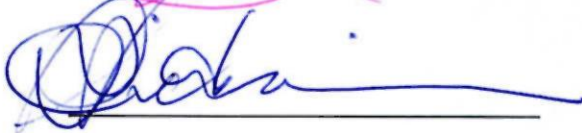
Mayor, Chris Raeburn



Deputy Mayor, Melanie Likos



Councillor Laura Binks



Councillor Reg Dickinson



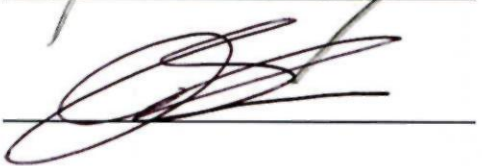
Councillor Sally Hayes-Burke



Councillor Kristy Hourigan



Councillor Paul Murray



Witnessed by Chief Executive Officer  
Julie Salomon

Date: 23-2-2021



## **8. STANDARDS OF CONDUCT**

### **8.1. Prescribed Standard of Conduct 1 – Treatment of others**

I acknowledge that I 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 I:

- take positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010; and
- support the Council in fulfilling its obligation to achieve and promote gender equality; and
- do not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- in considering the diversity of interests and needs of the municipal community, treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.

To fulfill this standard of conduct when performing my role, I will:

- be empathetic
- be inclusive of and actively engage with the municipal community, ensuring that I gain input from a broad cross section of people, groups and bodies
- call out any behaviour that may be considered to be discriminatory, harassment, bullying or victimisation based on age, ability, race, religion, sexual orientation, gender, marital status, political beliefs or any other affiliation or characteristic
- always treat others with respect and dignity
- listen to what others have to say without making judgement or interrupting them
- ensure I contribute to a safe and healthy workplace
- remember that I must be mindful of my behaviour even when not conducting official Council business.

### **8.2. Prescribed Standard of Conduct 2 – Performing the role of Councillor**

As a Councillor I must, in performing the role of a Councillor, do everything reasonably necessary to ensure that I perform the role of a Councillor effectively and responsibly, including by ensuring that I:

- undertake 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
- diligently use Council processes to become informed about matters which are subject to Council decisions; and
- am fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- represent 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.

To fulfill this standard of conduct when performing my role, I will:

- be honest and transparent
- ensure that I am informed
- ensure I both listen and communicate effectively
- act as an advocate for the community
- put aside any self-interest
- have courage in making tough decisions that are in the best interests of the municipal community and in setting Council's strategic agenda
- recognise that not everyone will agree with or accept the decisions Council makes but that I have contributed to making the best decision for the municipal community by taking into account all of the information presented to me and listening to all viewpoints
- recognise and respect the roles and duties of the Mayor and Deputy Mayor as set out in the Act and in our Governance Rules.

### **8.3. Prescribed Standard of Conduct 3 – Compliance with good governance measures**

I will, in performing the role of a Councillor, ensure the good governance of the Council and must diligently and properly comply with the following:

- 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; and
- the Council expenses policy adopted and maintained by the Council under section 41 of the Act; and
- the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act; and
- any directions of the Minister issued under section 175 of the Act.

To fulfill this standard of conduct when performing my role, I will:

- understand, act in accordance and comply with the requirements of our policies and procedures
- actively and constructively contribute to Council decision making and our strategic, medium-long term agenda
- understand and learn from the raft of legislation, regulations, policies and procedures I am bound to comply with and consider when making decisions and setting our strategic direction
- acknowledge that I must not undermine a collective decision once it is made by Council even if I voted against that decision or did not participate in the decision making process for reason of absence or conflict of interest.



#### **8.4. Prescribed Standard of Conduct 4 – Councillor must not discredit or mislead Council or public**

In performing the role of a Councillor, I must:

- ensure that my behaviour does not bring discredit upon the Council; and
- not deliberately mislead the Council or the public about any matter related to the performance of my public duty.

To fulfill this standard of conduct when performing my role, I will:

- act with integrity at all times
- be open and honest
- not make improper use of information acquired as a result of my position
- not disclose confidential information
- not direct or improperly influence a member of Council staff
- not exercise or perform a power, duty or function that I am not authorised to do
- not use public funds or resources in a manner that is improper or unauthorised
- not participate in a decision on a matter in which I have a conflict of interest
- understand that when I deal with Council in a private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) I will not expect, request or behave in a way that would indicate that I want preferential treatment in relation to any such matter.

#### **8.5. Prescribed Standard of Conduct 5 – Standards do not limit robust political debate**

I acknowledge that nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

To fulfill this standard of conduct when performing my role, I will:

- actively listen to and understand that others have different points of view
- give a person a chance to explain and voice their views
- make every effort to gain a consensus
- be willing to change my view in the course of hearing other viewpoints and considering all the information presented to me
- if required, seek more information to ensure I have a representative view on the matter.

## 9. INFORMAL INTERNAL DISPUTE RESOLUTION AND INTERNAL ARBITRATION PROCESSES

The Act requires internal arbitration processes to be set out in this Code that describe how a Councillor(s) can report and resolve a dispute arising from what they consider to be a possible breach of this Code.

Our informal internal dispute resolution and the more formal internal arbitration procedures respect the roles of Mayor and Deputy Mayor, as outlined in the Act, as well as that of the Councillor Conduct Officer appointed by the Chief Executive Officer under section 150 of the Act.

Councillors will be supported in their pursuit of resolving conflicts and disputes in a way that maintains respectful and constructive working relationships with their fellow Councillors.

The informal internal dispute resolution processes and the more formal internal arbitration procedures outlined in this clause must be read in conjunction with the *Local Government Act 2020* and the definitions of section 3 of the Act in relation to Councillor misconduct, serious misconduct or gross misconduct.

### **Legal representation**

The intention of both the informal dispute resolution process and the formal internal arbitration process is to have proceedings undertaken as informally as possible.

Accordingly, legal representation for any party involved in a matter is not permitted at any stage of the informal dispute resolution process. This excludes the Mayor or Councillor Conduct Officer seeking legal advice on procedural or interpretational matters to assist with the application of the Procedures set out under this Code.

An independent arbiter appointed by the Principal Councillor Conduct Registrar may allow legal representation if they believe it is absolutely necessary for the process to be conducted fairly.

### **Types of conduct allegations not covered by this Code**

It is important to note that the Procedures outlined in this clause are not intended to address complaints or disputes:

- that allege serious misconduct as they are to be dealt with by making an application for the appointment of a Councillor Conduct Panel
- relate to potential gross misconduct as they are to be referred directly to the Local Government Inspectorate
- made against a Councillor(s) by a member of Council staff or the public in relation to a disclosure under the *Public Interest Disclosures Act 2012* of suspected fraud or corruption are to be dealt with through the mechanisms outline by our Public Interest Disclosure Policy 2020
- that relate to potential criminal misconduct as these should be raised with Victoria Police or the Independent Broad-based Anti-Corruption Commission to identify the relevant body to investigate the complaint.

Aside from the procedures set out in this Code, a Councillor, Council employee or member of the public may raise a formal complaint through any channel open to them under law.



### **9.1. Making a complaint about an alleged breach of this Code or requesting formal intervention in a dispute**

A Councillor, group of Councillors, Council employee or member of the community may make a complaint about a possible breach of this Code or seek assistance with an unresolved interpersonal dispute.

#### **Concerns raised by a Councillor(s)**

Councillors must refer complaints about matters that have not been resolved through informal Councillor to Councillor discussions to the Mayor and the Councillor Conduct Officer, so that a resolution discussion or independently facilitated mediation process may be instigated in an attempt to resolve the issue.

Councillors seeking the appointment of an independent arbiter by the Principal Councillor Conduct Registrar must forward their request to the Mayor, with a copy to the Councillor Conduct Officer.

#### **Concerns from a member of staff or the community**

Members of staff and members of the community must direct complaints to the Councillor Conduct Officer and the Chief Executive Officer in the first instance, with correspondence being marked as confidential, so that the nature of the complaint can be reviewed and the appropriate authority and mechanism can be identified to deal with the matters raised.

#### **Timely consideration of requests and complaints**

Complaints will be dealt with confidentially and swiftly, with all parties kept informed at all times. The principles of natural justice will be applied throughout the investigation and dispute resolution process.

#### **Timing of complaints**

Complaints alleging misconduct under this Code or raising concerns about behaviour being contrary to this Code, including interpersonal disputes, must be made within three (3) months of the alleged misconduct, behaviour or the conflict occurring.

#### **Withdrawing an application for informal dispute resolution or internal arbitration**

An application for informal dispute resolution or internal arbitration may be withdrawn at any time in writing to the Mayor and Councillor Conduct Officer.

Once an application for any dispute resolution process under this Code has been withdrawn, the same or a similar application relating to the same issues or dispute cannot be resubmitted at a later date.

#### **Information required to accompany any allegation of a breach of this Code**

Any request for an internal resolution process, whether for one of the informal procedures outlined in this Code, or seeking the appointment of an independent arbiter by the Principal Councillor Conduct Registrar, must be accompanied by the following information:

- the name of the Councillor alleged to have breached the standard(s) of conduct
- the clause of the standard(s) of conduct outlined in this Code that the Councillor is alleged to have breached
- the misconduct or behaviour/actions that the Councillor is alleged to have engaged in that resulted in the breach or the nature of the interpersonal dispute
- evidence to support the allegations made
- what, if any, informal dispute resolution measures have been undertaken in an attempt to resolve the matter prior to seeking more formal intervention



- signature of the Applicant and the date.

An application for a formal internal arbitration process to make a finding of misconduct against a Councillor may be made to the Principal Councillor Conduct Registrar by:

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

## **9.2. Roles and Responsibilities**

### **Mayor**

The Mayor has a responsibility to:

- establish and promote appropriate standards of conduct
- support good working relations between Councillors
- support Councillors in dispute resolution
- provide guidance to Councillors about what is expected in relation to the role of a Councillor as set out by the Act, how to uphold the Standards of Conduct and this Code
- act as an honest broker between parties to a dispute and endeavour to resolve the issue fairly, impartially and confidentially
- request the CEO to appoint an independent mediator to undertake the independently facilitated mediation should this be the best option to resolve the matter
- ensure the Councillor Conduct Officer is updated on the progress of any resolution discussion or independently facilitation mediation
- advise the CEO when informal dispute resolution options have failed and a request needs to be made for the appointment of an internal arbiter by the Principal Councillor Conduct Registrar
- work closely with all parties involved, facilitate the informal resolution process in a timely manner and advise the parties of the options available to them should one or all parties abandon the resolution process once commenced.

If the Mayor is a party to an issue or dispute, the Mayor must remove themselves from facilitating the process and the Deputy Mayor will assume the role of the Mayor. Should both the Mayor and Deputy Mayor be involved in the dispute, the matter shall be referred to the Chief Executive Officer and Councillor Conduct Officer to recommend options as to how to best proceed with the matter.

### **Councillors**

Councillors have a responsibility to:

- make a genuine effort to resolve any interpersonal dispute informally, avoiding the need for formal dispute resolution procedures under this Code
- participate in any resolution discussion, independently facilitated mediation or internal arbitration process in good faith
- cooperate with any informal dispute resolution or internal arbitration process aimed at resolving a complaint made under these procedures
- actively demonstrate and adhere to 'natural justice' and 'procedural fairness' principles throughout any of the procedures outlined in this Code
- maintain confidentiality regarding any complaint and the process taken to resolve the complaint or interpersonal dispute



- seek resolution of a dispute in an expeditious manner, whether as respondent or complainant
- recognise that it is necessary to be open to constructive criticism.

### **Chief Executive Officer**

The Chief Executive Officer has a responsibility to:

- ensure that support and assistance is available to all Councillors and the Mayor as the driver of compliance with this Code and the Standards of Conduct
- respond to requests by the Mayor for the appointment of an independent mediator or when a formal application for internal arbitration is required to be submitted to the Principal Councillor Conduct Registrar
- complete any reporting required in relation to the outcome of processes outlined in these procedures
- support the Councillor Conduct Officer to efficiently and effectively undertake their duties under the Act.

### **Councillor Conduct Officer**

The Councillor Conduct Officer has a responsibility to:

- assist and support the Mayor with the interpretation and implementation of this Code and the Standards of Conduct
- assist the Council in the implementation and conduct of the informal dispute resolution procedures and internal arbitration process set out in this Code
- assist the Principal Councillor Conduct Registrar to perform their functions under section 149 of the Act
- assist the Principal Councillor Conduct Registrar in relation to any request for information made under section 149 of the Act.

## **9.3. Dispute Resolution Options**

There are three methods through which the procedures in this Code aim to resolve matters:

1. Resolution discussion
2. Independently facilitated mediation
3. Formal internal arbitration.

The Resolution Discussion and Independently Facilitated Mediation options are known as our informal dispute resolution options.

The Internal Arbitration option requires the involvement of the Principal Councillor Conduct Registrar and is a requirement of the Act, so is referred to in this Code as a formal internal arbitration process.

The procedures relating to each of these three options is outlined below.

### **9.3.1. Resolution discussion**

Where Councillors involved in a dispute are unable to resolve the matter informally between themselves, any of the involved parties may send a written request to the Mayor and Councillor Conduct Officer to convene a confidential meeting of the parties to discuss the dispute and identify how the matter may be resolved.

The Councillor requesting the meeting is to provide the Mayor with the name of the other Councillor(s) involved and the details of the dispute as per clause 9.1 of this Code. The requesting Councillor must notify the other Councillor(s) involved in the matter of their request and provide a copy of the written request to them.

The Mayor will acknowledge the receipt of the request in writing to all affected parties within two (2) working days.

The Councillor Conduct Officer will ascertain whether or not the other party(ies) is prepared to attend a resolution discussion.

If the other Councillor(s) is not prepared to attend the meeting, the Mayor is to advise the party seeking resolution of the issue. The Mayor must then discuss with all concerned parties the other options to resolve the matter.

If the other Councillor(s) consents to a meeting, the Mayor is to hold a confidential discussion with all parties, providing equal opportunity for all views to be expressed and considered.

Unless one or both parties are unavailable, the resolution discussion should be arranged within ten (10) working days of receipt of the request.

The Mayor may provide the parties with guidelines to help facilitate the meeting in advance of the meeting or at the commencement of the resolution discussion.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened subject to agreement of all parties.

The role of the Mayor at the meeting is to assist the parties to resolve the dispute. In the process of doing this they may provide guidance about what is expected of a Councillor including in relation to the role of a Councillor under section 28 of the Act and this Code.

The Mayor will document any agreement reached during the reconciliation discussion. Copies of the agreement are to be provided to all parties and a copy kept by the Councillor Conduct Officer.

Where the dispute remains unresolved, a party may request independently facilitated mediation or the appointment of an internal arbiter by the Principal Councillor Conduct Officer.

### **9.3.2. Independently facilitated mediation**

A Councillor or Councillors may request that their dispute be referred to independently facilitated mediation conducted by an external accredited mediator.

The Councillor(s) requesting the meeting is to provide the Mayor and Councillor Conduct Officer with the name of the other Councillor(s) involved and the details of the dispute as per clause 9.1 of this Code. The requesting Councillor must notify the other Councillor(s) involved in the matter of their request and provide a copy of the written request to them.

The Councillor Conduct Officer is to ascertain (in writing) within five (5) working days of the receipt of a mediation request whether or not the other Councillor(s) is prepared to participate in the mediation.



If the Councillor declines to participate, they are to provide their reasons for not 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 for failure to comply with Council's internal arbitration process.

If the other party agrees to participate in mediation, the Councillor Conduct Officer is to advise the party seeking the mediation, the Mayor and CEO.

The Councillor Conduct Officer will then engage the services of an external Mediator to conduct the mediation as soon as possible.

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

The external Mediator is to document any agreement reached. Copies of the agreement are to be provided to both parties and the Councillor Conduct Officer.

Where the dispute remains unresolved, a Councillor may request the appointment of an internal arbiter by the Principal Councillor Conduct Registrar.

### **9.3.3. Internal arbitration**

Internal arbitration involves a Councillor(s), known as the Applicant(s), requesting that the Principal Councillor Conduct Registrar appoint an impartial third party (the Arbiter) to make findings in the relation to allegations concerning another Councillor or Councillors (the Respondent) around whether they have engaged in misconduct under the Act.

The Applicant must provide all of the information set out under clause 9.1 of this Code to the Councillor Conduct Officer and Mayor.

After receiving an application, the Councillor Conduct Officer will provide a copy of the application to the CEO within twenty four (24) hours or receipt and Councillor(s) who is the subject of the application within two (2) working days.

The Councillor Conduct Officer will then ensure that the request is given to the Principal Councillor Conduct Registrar in the manner specified by any regulations under section 141(2)(a) of the Act or any guidelines published under section 149(1)(c) of the Act.

#### **Examination of the application**

The Principal Councillor Conduct Registrar, after examining an application, will appoint an Arbiter to Council to hear the matter if satisfied that:

- the application is not frivolous, vexatious, misconceived or lacking in substance
- there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.

#### **Decision to appoint an Arbiter**

After having decided that an Arbiter should be appointed, the Principal Councillor Conduct Registrar will:

- advise the CEO, Councillor Conduct Officer and the Mayor without undue delay
- identify an Arbiter to hear the application
- obtain from the Arbiter written advice that they have no conflict of interest in relation to the Councillors involved

- notify all parties of the name of the proposed Arbiter and provide them with the opportunity within two (2) working days to object to the person proposed to be the Arbiter
- consider the grounds of any objection and appoint the proposed Arbiter or identify another Arbiter (if another Arbiter is required the process outlined above will be undertaken again)
- provide a copy of the Application to the Arbiter as soon as practicable after the opportunity for the parties to object to an Arbiter has expired
- after consultation with the Arbiter, advise all parties of the time and place for the hearing
- attend the hearing(s) and assist the Arbiter in the administration of the process.

### **Identifying a suitable Arbiter**

In identifying an Arbiter to hear the application, the Principal Councillor Conduct Registrar will select an Arbiter who is suitably independent and able to carry out the role fairly. The Arbiter must be selected from a panel of eligible persons established by the Secretary to conduct an internal arbitration process as per section 142 of the Act.

### **Role of the Arbiter**

The role of the Arbiter includes:

- considering an application alleging a contravention of the Code or breach of Council's policies or procedures
- making findings in relation to the application
- providing a written statement of reasons supporting the findings to the parties
- providing the findings to Council recommend an appropriate sanction or sanctions where the Arbiter makes a finding of misconduct against a Councillor.

In considering an application alleging a contravention, an Arbiter will:

- ensure that the rules of natural justice are observed and applied in the hearing of the application
- conduct the hearings with as little formality and technicality as the proper consideration of the matter permits
- ensure that the hearings are closed to the public and held in confidence
- in consultation with the Councillor Conduct Officer, fix a time and place to hear the application
- authorise the Councillor Conduct Officer to formally notify the Applicant(s) and the Respondent(s) of the time and place of the hearing
- hold as many meetings as they consider necessary to properly consider the application.
- hold a directions hearing if it is considered useful prior to the commencement of hearings
- ensure that the parties to involved in an application are given an opportunity to be heard
- 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
- consider an application by a party to have legal representation at the hearing.

Where an application to have legal representation is granted by an Arbiter, the costs of the Councillor's legal representation are to be borne by the Councillor in their entirety.



## **Findings by an Arbiter**

An Arbiter:

- may find that a Councillor(s) who is a Respondent to an application has not engaged in misconduct
- may find that a Councillor has engaged in misconduct
- may hear each party to the matter in person or solely by written or electronic means of communication
- is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit
- may, at any, time discontinue the hearing if the Arbiter considers that the application is vexatious, misconceived, frivolous or lacking in substance or the Applicant has not responded, or has responded inadequately, to a request for further information
- will suspend the process during the election period for a general election
- must refer the matter in writing to the Principal Councillor Conduct Registrar if the arbiter believes that the conduct that is the subject internal arbitration process appears to involve serious misconduct and would more appropriately be dealt with as an application to the Councillor Conduct Panel under section 154 of the Act.

If an Arbiter has made a finding of misconduct, he or she may do any one or more of the following:

- direct the Councillor to make an apology in a form or manner specified by the Arbiter
- suspend the Councillor from the office of Councillor for a period specified by the Arbiter not exceeding one month
- direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the Arbiter
- direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the Arbiter
- direct a Councillor to attend or undergo training or counselling specified by the Arbiter.

The Arbiter must provide a copy of his or her findings and the statement of reasons for them to the:

- CEO
- The Mayor
- Applicant(s)
- Councillor(s) who is the subject of the allegation(s) (ie the Respondent)
- Principal Councillor Conduct Registrar.

## **CEO to table findings at Council**

A copy of the Arbiter's decision and statement of reasons must be tabled at the next Council meeting after receiving the Arbiter's decision and statement of reasons.

If the Arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted before submission to the Council meeting.

#### **9.4. Failure to participate in an Internal Arbitration Process**

A Councillor who does not participate in the formal internal arbitration procedure may be guilty of serious misconduct as defined by section 3 of the *Local Government Act 2020*. Applications for the consideration of allegations for serious misconduct must be considered by a Councillor Conduct Panel.