



# Councillor Code of Conduct

**Adopted by Council 4 July 2016**  
[www.warrnambool.vic.gov.au](http://www.warrnambool.vic.gov.au)

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## PREAMBLE

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This Code of Conduct is for Warrnambool City Councillors and forms part of Warrnambool City Council's Governance Framework.

The Local Government Act 1989 (*the Act*) requires a Council to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct (*the Code*) is required to be periodically reviewed.

Section 76C of the Act requires councils to develop and approve a Councillor Code of Conduct that is taken to include the Councillor Conduct principles. A Councillor Code of Conduct may also include any other matters relating to the conduct of Councillors the Council considers appropriate.

This Code sets out the standards of conduct for Warrnambool City Councillors and provides specific arrangements to deal with disputes and misconduct.

The Code 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.

While the Act prescribes that Council develop a code of conduct, in all instances, this Code of Conduct is subordinate to all other legislation relating to local government councillors and must not act inconsistently with any other Act or regulation.

The Act requires a person elected to be a Councillor to make a written declaration they will abide by a Code, within three (3) months of being declared elected and within one (1) month of any amendments to a Code being approved. A Code must also be reviewed and adopted within four (4) months of a municipal general election, at a Special Council Meeting.

Overviews to parts and sections, and boxed extracts from *the Act* and associated guides (such as Local Government Victoria's Reforms Arising from the Local Government Amendment (Improved Governance) Act 2015 – A guide for councils (LGV Guide for councils)), are explanatory notes and do not form part of this Code of Conduct. They are provided to assist understanding and outline statutory obligations. These may be updated from time to time to reflect legislative changes.

## SECTION 1 – COMMITMENT, VALUES AND PRINCIPLES

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**Overview:** This section sets out the underpinning values that drive the way Councillors act and interact. The Statement of Commitment is a high level promise by each Councillor as a member of Council they will govern responsibly and uphold the trust placed in them by the Warrnambool community.

### 1.1 Introduction

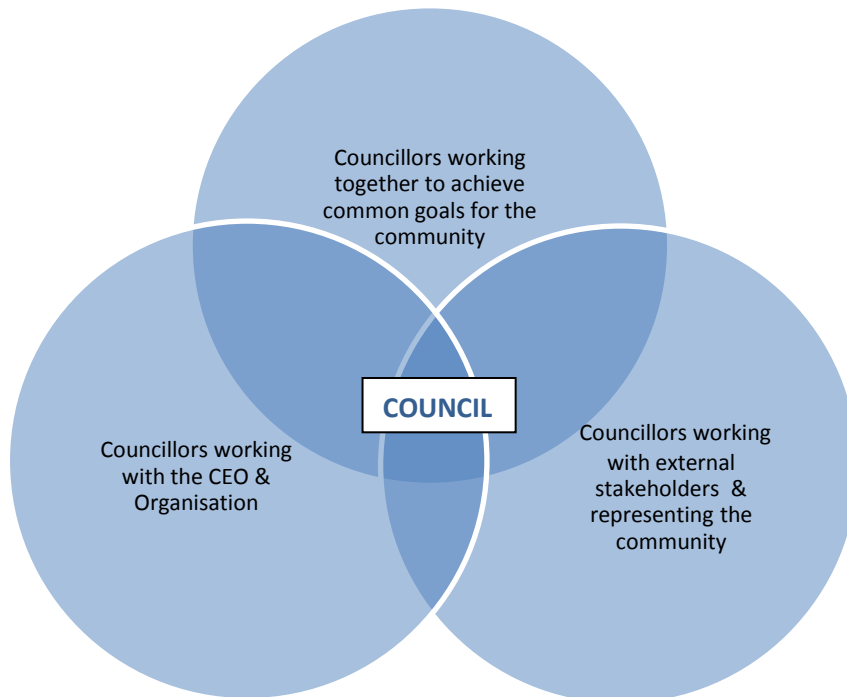
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Warrnambool City Councillors are committed to working together constructively as a team, to achieve the vision for the Warrnambool City.

This Code of Conduct is a commitment to governing the Warrnambool City Council effectively, and adhering to high standards of behaviour and the principles of good governance.

This Code of Conduct sets out how Councillors will behave and work together with each other, the Organisation (the Chief Executive & Council Officers) and the community.

### *Working for Warrnambool*



### 1.2 Our Mission, Vision & Values

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By acknowledging and demonstrating behaviours consistent with Council's Vision, Mission and Values Councillors will demonstrate high standards of conduct in providing representative governance for the benefit of the Warrnambool community:

## Our Vision

For Warrnambool to be a thriving, culturally rich and inclusive leading regional city

## Our Mission

We will work in collaboration with the community to:

- Be a financially sustainable organisation
- Make Warrnambool a great place for people to live, work and visit
- Support and encourage creativity and innovation
- Create safe, connected and resilient communities that respect cultural diversity
- Strengthen community health and wellbeing
- Improve our environmental sustainability
- Maintain our strong sense of community pride
- Encourage and promote economic development

## Our Values

- **Good Governance:** We will have open, accessible and accountable governance in touch with the existing and changing needs of our community. Key decisions will be based on engaging with our community, with decisions made in a transparent and accountable manner. Council will set clear goals and measure results to achieve innovation and improvement.
- **Fairness, Equity and Respect:** We will ensure that all people are treated with dignity, fairness and respect, and that people's different perspectives are acknowledged. We will ensure all people in our community have equal access to services, facilities and involvement in decision making.
- **Communication and Engagement:** We will deliver accurate, timely and relevant information involving the open exchange of ideas and information with the community.
- **Innovation and Quality:** New and emerging ideas and technologies will be at the forefront of Council thinking to improve our services and facilities, and the health and wellbeing of our community. We will strive for excellence in all that we do and continuously improve our performance and our services to achieve outstanding results.
- **Sustainability:** Environmental and financial sustainability will underpin all that we do to maximise opportunities for all people and future generations.
- **Vibrant democracy:** People's different perspectives will be respected and vigorous debate encouraged to improve our decision making.

### 1.3 Councillor Conduct Principles

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Councillors acknowledge and will abide by the following 10 (ten) Councillor Conduct Principles as specified in *the Act*.

#### Primary Principle of Councillors Conduct

Section 76B of the Act sets the Primary Principle of Conduct, that in performing the role of a Councillor, the Councillor will:

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

#### General Principles of Councillor Conduct

Section 76BA of the Act requires a Councillor to also:

- Avoid conflicts between their public duties as a Councillor and their 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 officers and other persons
- Exercise reasonable care and diligence and submit themselves to the lawful scrutiny that is appropriate to their 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 them as a Councillor
- 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.

The LGV Guide for Councils states: ‘Councillors are expected to observe the principles of **integrity** and **good governance**. This must be done in all facets of the role – including decision-making, representing the community and in dealing with constituents.

Central to integrity and good governance are the principles of transparency and accountability. **Transparency** is achieved through following proper processes that are open to public scrutiny. **Accountability** is achieved through being accessible and responsive to the local community.’

### 1.4 Statement of Commitment

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The conduct and behaviour of each Councillor reflects on the reputation of the Council as a whole. Councillors have an obligation to take responsibility for their own actions, recognising their conduct will have an impact on the ability of the Council and the Organisation to function properly.

***By adopting this Code:-***

A **Councillor** commits to:

- transparent and accountable governance
- honest, fair and respectful dealings with the organisation and the wider community
- work with fellow Councillors to achieve the best outcomes in the interests of the whole of the community
- respect for the democratic process
- compliance with legislation, local laws, policies and procedure.

**Councillors** will be honest, act with integrity, impartially, and in ways that build and maintain trust, including embracing a ‘no surprises’ approach in their interactions with each other and the organisation.

**Councillors** acknowledge the value of teamwork and will commit to:

- Working together in a constructive and professional manner to achieve the vision for the Warrnambool municipality
- Fostering and establishing strong working relationships between the Mayor and each other
- Listening and communicating respectfully, acknowledging each other’s perspectives, and engaging in discussion on issues.
- Treating others with courtesy, dignity and respect at all times
- Not being critical of each other, the Organisation, or Council staff in any public forum.

**Councillors** will be responsive to the community, attend meetings and events, and be gracious to others in all their interactions.

**Councillors** will recognise that collaborative discussion and planning is essential to the effective governance of the Warrnambool City Council, and will attend and participate in planning sessions and workshops organised by the Chief Executive Officer for the purpose of strategy and budget development including:

- Ordinary & Special Council Meetings
- Briefings and workshops
- External & Advisory Committee meetings (where appointed as the Council delegate)

**Councillors**, in good faith, will undertake to comply with the various provisions of the Act and this Code of Conduct.



## SECTION 2 - ROLES AND RELATIONSHIPS

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**Overview:** This section describes the statutory roles of Council, Councillors and the Chief Executive Officer as defined under the Act. It details and establishes the working relationship between Councillors and the organisation. Warrnambool City Council consists of the Council (the representative arm of seven Councillors) and the organisation (the operational arm made up of the Chief Executive Officer & staff). Good governance is dependent on effective, trusting relationships between the Councillors and the organisation, and an understanding of the distinction between the roles and responsibilities of Council and the organisation.

### 2.1 Role of Council

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Section 3D of the Act states that the role of a Council includes:

- Acting as a representative government by taking into account the diverse needs of the local community in decision making
- Providing leadership by establishing strategic objectives and monitoring their achievement
- Maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner
- Advocating the interests of the local community to other communities and governments
- Acting as a responsible partner in government by taking into account the needs of other communities
- Fostering community cohesion and encouraging active participation in civic life.

The Council is responsible for setting the vision and strategic direction for the Warrnambool City Council, determining strategic policy and appointing the Chief Executive Officer of the Organisation.

Councillors must understand that acting together they constitute ‘the Council’ and acknowledge that, as individuals, they cannot bind the Council to any actions or decisions.

Councillors will act to ensure decision making responsibilities are only exercised in Council Meetings.

### 2.2 Role of a Councillor

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Section 65 of the Act states the role of a Councillor is to:

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

And in performing the role of a Councillor, a Councillor must:

- Consider the diversity of interests and needs of the local community
- Observe 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 this Act and other Acts
- Participate in the responsible allocation of the resources of Council through the annual budget
- Facilitate effective communication between the Council and the community.

The Act also states the role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A.

The role of a Councillor is to act for the community and advocate on their behalf. A Councillor plays a key role in facilitating communication with the community and encouraging public participation and community engagement with the activities of Council.

Councillors collectively constitute the 'Council'. As an individual, a Councillor cannot direct or bind the Organisation to any actions or decisions.

Councillors should not be involved in the operational decisions of the Organisation and in adherence to the Act will not misuse their position to direct staff.

The Chief Executive Officer is responsible for developing, implementing and enforcing policies and protocols to manage interactions between councillors and staff. Councillors will act in accordance with the Councillor and Council officer interaction protocols set by the Chief Executive Officer.

In their decision-making roles, Councillors will consider the diversity of the community, the strategic direction set by the Council, and responsible resource allocation, demonstrating civic leadership and good governance.

Councillors will advocate for the needs of their constituents, but will make all decisions to benefit, and be in the best long-term interests of, the whole of the Warrnambool city.

### **2.2.1 Political Affiliations**

To ensure Councillors maintain a clear and primary duty to the Warrnambool community, rather than a political body or other jurisdiction, Councillors will avoid conflicts of interest, or the appearance of conflicts of interest, that affiliation with political parties may create.

This will underpin the impartiality and ability of Councillors to act in the best interests of the local community. Councillors will not use Council resources (for example, technology, communications channels, events) to prepare or promote a political body or other jurisdiction.

## **2.3 Role of the Mayor**

Section 73 of the Act sets precedence for the Mayor:

- The Mayor of a Council takes precedence at all municipal proceedings within the municipal district.
- The Mayor must take the chair at all meetings of the Council at which he or she is present.

- If there is a vacancy in the office of Mayor or the Mayor is absent, incapable of acting or refusing to act, the Council must appoint one of the Councillors to be the acting Mayor.
- An acting Mayor may perform any function or exercise any power conferred on the Mayor.

Section 73AA of the Act sets out the functions of the Mayor of a Council to include:

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

While having no additional statutory power, other than as specified in the Act, the Mayor is the 'leader' of the Council.

The role and responsibilities of the Mayor include:

- Being a leader and advocating for the community and principal Council spokesperson
- Chairing Council Meetings and ensuring and encouraging participation of Councillors in the decision-making process
- Maintaining a close working relationship with the Chief Executive Officer
- Leading and providing guidance to Councillors in relation to their role, conduct and working relationships, with this agreed Code as the basis for discussions
- Sustaining partnerships and advocating for Council's interests, and pursuing opportunities for the City in line with adopted policies, strategies and plans
- Representing the Council at civic functions and forums.

Pursuant to Council's Governance (Meeting Procedures) Local Law No.1, the Council may, by resolution, appoint a Councillor as an Acting Mayor, if the Mayor is absent or unable to act.

Councillors will respect and recognise the role of the Mayor and will work co-operatively with the Mayor in the performance of their role.

## **2.4 Role of the Chief Executive Officer**

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Section 94A of the Act identifies the Chief Executive Officer as being responsible for:

- Establishing and maintaining an appropriate organisational structure for the Council
- Ensuring that the decisions of the Council are implemented without undue delay
- The day to day management of the Council's operations in accordance with the Council Plan
- Developing, adopting and disseminating a code of conduct for Council officers

- Providing timely advice to the Council
- Ensuring that the Council receives timely and reliable advice about its legal obligations under the Act and any other Act
- Supporting the Mayor in the performance of the Mayor's role as Mayor
- Performing any other function or duty of the Chief Executive Officer specified in the Act or any other Act
- 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
- Appointing as many Council officers as are required to enable the functions of the Council under the Act or any other Act to be carried out and to enable the Chief Executive Officer to carry out their functions
- Appointing, directing, managing and dismissing Council officers and for all other issues that relate to Council officers.
- Managing interactions between Council officers and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council officers and Councillors.

The Chief Executive Officer is the head of the organisation. The organisation is responsible for the implementation of Council policy and decisions, operational policy and procedures, service delivery and providing professional advice to Council.

The Chief Executive Officer ensures professional, relevant and timely information is provided to the Council and support to the role of Mayor and Councillors through the provision of governance and administrative support services.

Councillors will respect the functions of the Chief Executive Officer and undertake to comply with the policies, practices and protocols defining the arrangements for interaction between the Councillors, the Organisation and Council officers (staff).

## **2.5 Relationship between Councillors and the Organisation**

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Councillors will act in accordance with the Councillor and Council Officer interaction protocols set by the Chief Executive Officer.

Councillors will:

- Work cooperatively with the Chief Executive Officer and Council officers
- Communicate courteously and respectfully, and expect the same behaviour in return
- Only contact the designated Council officer for each matter, as set by the Chief Executive Officer's protocols.
- Recognise the role of Council officers to provide professional 'best' advice to Council.

- Not direct, or seek to direct, Council officers (including in the preparation of Council reports and recommendations)
- Not undermine or denigrate Council officers, including in Council Meetings, discussions with community members, or communication exchanges

Councillors will commit to providing feedback and raising issues of concern directly with the Chief Executive Officer and not with Council officers (staff) or via the media (including social media). Issues of concern may include but are not limited:

- Conduct or actions of Council officers (staff)
- Reports and publications prepared by the organisation
- Service delivery standards; and
- Activities and directions of the organisation

## **2.6 Role of a Delegate or Council Representative on Committees**

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The participation on a range of committees established by Council, peak body/sector associations, and local and regional forums is an essential part of Council's representative role. Council nominates or appoints Councillor representatives and delegates to these committees annually, or as needed.

A Councillor appointed as a delegate or representative to a committee will represent the position of Council, and report back to Council on the issues or progress of the committee, and any recommendations made by the committee for Council to consider.

## SECTION 3 – SPECIFIC COUNCILLOR CONDUCT REQUIREMENTS

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**Overview:** This section sets out the statutory provisions and protocols for the way Councillors conduct themselves and make decisions. It also sets out how they may make use of information and the support of the organisation to fulfil their duties as a Councillor.

### 3.1 Statutory Councillor Conduct Requirements

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There are four (4) key conduct matters governed by the Act, where a breach can result in significant consequences:

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

#### 3.1.1 Misuse of Position

Section 76D of the Act, a person who is or has been a Councillor or a member of a special committee must not misuse their position:

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

Misuse of position includes:

- Making improper use of information acquired as a result of the position they hold/held
- Disclosing information that is confidential
- Directing or improperly influence a Council officer (or seeking to)
- Exercising or performing, or purporting to, a power, duty or function that they are not authorised to perform
- Using public funds or resources in a manner that is improper or unauthorised
- Failing to disclose a conflict of interest.

Penalty: 600 penalty units or imprisonment for 5 years or both.

Councillors will not use their position, or knowledge gained in their role, to disadvantage Council or someone else, or advantage themselves or someone else.

#### 3.1.2 Improper Direction

Under Section 76E of the Act, a Councillor must not:

Direct, or seek to direct a member of Council staff:

- a) In the exercise of a delegated power, duty or function
- b) In the exercise of a power, duty or function as an authorised officer

- c) In the exercise of a power, duty or function the officers exercise under the Act or any other Act
- d) In relation to advice provided to the Council or a special committee, including advice in a report to Council or a special committee.

Penalty: 120 penalty units.

Councillors will not use their position to direct or influence Council officers in any of their powers, duties or functions.

### 3.1.3 Breach of Confidentiality

Section 77 of the Act states a person who is, or has been, a Councillor must not disclose information that the person knows, or should reasonably know, is confidential information.

Penalty: 120 penalty units.

Information is confidential information if:

- 77(2)(a) The information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential, or
- 77(2)(b) The information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential, or
- 77(2)(c) The information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.

Section 89 (2) of the Act sets out grounds for designating information as confidential:

- (a) personnel matters
- (b) the personal hardship of any resident or ratepayer
- (c) industrial matters
- (d) contractual matters
- (e) proposed developments
- (f) legal advice
- (g) matters affecting the security of Council property
- (h) any other matter which the Council or special committee considers would prejudice the Council or any person
- (i) a resolution to close the meeting to members of the public.

Councillors must observe the confidentiality of the information they receive in the course of performing their duties and responsibilities, and must not convey (electronically, verbally, or in writing) information they know, or should reasonably know, is confidential.

Councillors will treat Council information appropriately by:

- Not using information gained by virtue of being an elected representative for any purpose other than to exercise their role as a Councillor.
- Adhering to Council’s Media Policy and Section 4 of this Code in relation to public comments and communication with the media.
- Not releasing information deemed ‘Confidential Information’.
- Recognising the requirements of the Privacy and Data Protection Act 2014 and Council’s Privacy Policy regarding the access, use and release of personal information.
- Adhering to this Code of Conduct and councillor information request protocols as set by the Chief Executive Officer when seeking to access Council information.

#### 3.1.4 Conflict of Interest

Sections 77A to 80A of the Act covers conflicts of interest.

The Act defines two types of interest – direct and indirect – that must be declared as conflicts of interest. The Act also sets out exemptions to conflicts of interest.

A Councillor has a direct conflict of interest in a matter if there is a reasonable likelihood that their benefits, obligations, opportunities or circumstances would be directly altered if the matter is decided in a particular way, including where they are likely to directly gain or lose financially.

A conflict of interest also exists where a Councillor has one or more of six (6) types of indirect interest:

1. An indirect interest because of a close association when a family member, relative or housemate has a direct interest
2. An indirect financial interest, including holding shares above a certain value in a company with a direct interest
3. A conflict of duty arising from having particular responsibility to a person or organisation with a direct interest
4. Having received an applicable gift (including hospitality) or gifts with a total value of more than \$500 within the five years preceding, from a person or organisation with a direct interest
5. Being a party to the matter by having become a party to civil proceedings in relation to the matter
6. Where there is a reasonable likelihood that their residential amenity will be altered if the matter is decided in a particular way.

Section 79B of the Act addresses conflicts relating to Personal Interest (such as close connections to a matter or a person involved in the matter, that is not captured by direct or indirect interests).

A Councillor who fails to disclose a conflict of interest is guilty of an offence.

Penalty: 120 penalty units.



Councillors will comply with all provisions of the Act in regard to interests and conflicts of interest.

Councillors will be aware and mindful of actual and possible perceptions of, conflicts of interest.

Councillors must disclose any conflicts of interest in accordance with the Act in:

- Council Meetings and Special Committee meetings
- Audit and Risk Management Committee meetings, Committees set up for the purposes of hearing Section 223 submissions and
- Meetings classified as an Assembly of Councillors.

In all cases, a Councillor will make the disclosure before any discussion or consideration of the matter and leave the meeting.

The legal onus and decision about whether a conflict of interest exists rests entirely with each individual Councillor. Councillors should refer to the State Government's Conflict of Interest - A Guide for Councillors (2012) for further guidance, and seek their own legal advice if required, in relation to their individual conflicts of interest.

### 3.2 Assembly of Councillors

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Section 3 of the Act includes the definition of an Assembly of Councillors. An Assembly of Council is a planned or scheduled meeting comprising at least half of the Councillors and one Council officer, or an advisory committee with at least one Councillor present that discusses or considers matters that are likely to be:

- a) The subject of a Council decision, or
- b) Subject to the exercise of a power or duty under delegation by a person (including Council officers) or committee.

Section 80A(4) of the Act requires a Councillor attending an Assembly of Council to:

- Disclose the conflict of interest and leave the assembly while the matter is being discussed and considered
- Disclose the conflict of interest either before the matter is considered, or when a Councillor becomes aware they have conflict of interest.

In accordance with the Act, a written record of an Assembly of Council will be reported to the next practicable Council Meeting and recorded in the minutes.

### 3.3 Register of Interests

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In accordance with Section 81 of the Act, Councillors must lodge a primary return within seven (7) days of taking office, and an ordinary return every six (6) months while in office.

Councillors will comply with the requirements of the Act in relation to the submission of register of Interests Returns.

### **3.4 Compliance with Legislation & Council Policies**

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Councillors will comply with all relevant laws and regulations and adhere to Council's confidentiality, legal and privacy requirements.

Councillors will ensure they follow the:

- Equal Opportunity Act 1995 - by refraining from discriminating, harassing or bullying other people or using offensive language in their capacity as a Councillor
- The Charter of Human Rights and Responsibilities 2006 - by giving proper consideration and taking human rights into account in Council decisions.
- Occupational Health and Safety Act 2004 - by having regard for their own safety, that of others and by contributing to a healthy and safe work environment.
- Privacy & Data Protection Act 2014 - by recognising the privacy principles and requirements of access, use and release of personal information applies to Councillors as individuals.

Councillors will comply with all Council's local laws, policies & procedures, in particular:

- Governance (Meeting Procedures) Local Law
- Audio Recording of Meeting Policy
- Caretaker (Elections) Policy
- Councillors IT Equipment – Conductions of Use Policy
- Fraud and Corruption Control Policy
- Gifts and Benefits Policy
- Media Policy
- Privacy Policy
- Protected Disclosure Procedure
- Provision of Support & Resources to Councillors

### **3.5 Appropriate Use of Council Resources**

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Councillors are entitled to resources and facilities to support them in fulfilling their Council role as detailed in Council policies and procedures, in particularly the 'Provision of Support and Resources to Councillors' Policy.

Councillors must only use Council resources for their Council duties in accordance with this Code of Conduct, Council policies and procedures.

### **3.6 Access to Information**

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Councillors will be provided with relevant information to help them make informed decisions and fulfil their duties. This information may be publicly available, or in some instances, restricted or confidential.

A Councillor will only request information in order to gain a broader understanding of an issue that falls under their role and responsibilities (for example, as a committee delegate), or if it relates to a matter currently before - or expected to come before – Council for a decision.

In general, Councillor requests for information should be made at Councillor briefings and workshops and so as Councillors as a group can properly understand the nature of the request, any implications such as resource and timelines issues. Outside of these forums, unless otherwise advised Councillor information requests should be directed to the Chief Executive Officer

Requested information will be provided to all Councillors, unless the Chief Executive Officer determines that providing the information is likely to be a breach of privacy, prejudice Council or any person, would undermine legal privilege or would be otherwise inappropriate.

The Chief Executive Officer will provide all Councillors with information on any declined requests for information, including the reason the information was not able to be provided.

### **3.7 Confidentiality and Privacy**

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A Councillor's access to information does not allow them to disclose any information or document to another person, unless that information is already publicly available.

Councillors must not release information they know, or should reasonably know is confidential information and will only use confidential information provided to them, for the purpose the information was provided for e.g. informing their decision making.

Council's Privacy Policy outlines the appropriate use of personal information collected by Council, and places restrictions on what information can be accessed, disclosed or used by another person, including Councillors.

Release or disclosure of confidential information is specified as misuse of position in the Act and significant penalties may apply (see clause 3.1.3).

Confidential Council reports distributed to Councillors shall be watermarked and include a covering memo from Chief Executive Officer stating under which provisions of the Act the information is deemed confidential.

Confidential information provided to Councillors in hard copy must be stored securely by them, and disposed of appropriately (by either shredding or returning to the Governance manager). Confidential electronic information sent to Councillors must be stored securely and deleted when appropriate.

Councillor Briefing papers (including specific reports and attachments) may or may not be designated confidential. In keeping with the principle of 'working together' and to ensure Councillors continue to receive full and frank advice on issues facing Council, Councillors will be mindful of how they disseminate Councillor briefing information in the public domain. Councillors also will respect and abide by external parties requests for confidentiality and or communication embargoes. (also see clause 4.5.3 Ministerial events)

### 3.8 Requests for Service/Complaints

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The Victorian Ombudsman good practice guide for local government advises that “To ensure transparency and fairness, complaints received by Councillors should be treated the same way as ones made to Council officers... [A Councillor] must not seek to direct or influence the complaint handling process.”

A Councillor request for service is a request made by a Councillor on their own behalf, or on behalf of a community member. The same service standards will apply to a Councillor request for service, as a request for service from a community member.

All service requests must be directed to City Assist and entered into Council’s customer request system, and sent to the appropriate Council department for actioning. A Councillor may contact the relevant department Director about the progress of the complaint, but must not direct or influence the process. Investigations and actions will be recorded and monitored, and status reports will be provided regularly to Councillors.

Councillors will promptly pass on to the Chief Executive Officer any and all correspondence, information, enquiries, requests for information, requests for service, complaints and acknowledgements provided to a Councillor relative to any activity of Council (irrespective of the format or nature of receipt) so these can be acknowledged and actioned by the Organisation in a timely manner.

### 3.9 Conduct at Council Meetings

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Council’s Governance (Meeting Procedures) Local Law No. 1 governs the conduct of Council Meetings and Special Committee meetings, and sets the general standards expected of Councillors.

The Chair plays a crucial role in facilitating an orderly, respectful, transparent and constructive meeting by ensuring all Councillors have equal opportunity to be heard, matters are adequately discussed, meeting procedures are followed and statutory requirements are met.

Councillors will comply with the Governance (Meeting Procedures) Local Law and this Code of Conduct when participating in Council Meetings and Special Committee meetings.

Councillors will act respectfully towards the Chair, their fellow Councillors, Council officers, guests and any community members or media attending the meeting.

### 3.10 Decision Making in the ‘Whole of Community’ Interest

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Councillors are required to make decisions in the best interests of the Warrnambool community.

Councillors agree to act fairly and without bias when making decisions that affect the rights and interests of others.

Councillors agree to remaining open to listening to all arguments and changing their mind in light of all the information presented and considered at Council Meetings.

### 3.11 Community Consultations and Forums

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Community consultations and forums are convened from time to time to enable members of the public to express their views in relation to a specific matter.

Councillors invited or appointed to hear from the community may ask questions to clarify issues raised.

Councillors must not behave or comment in a way that may be perceived as predetermining their own, or Councils position in relation to a matter, or direct or interfere with a Council officer responses.

Community Consultations and Forums include:

- Planning Forums – coordinated by the City Planning team. The purpose of these forums is for applicants and objectors to speak about their support/concerns regarding a planning application
- Single issue consultation forums – arranged as required and coordinated by the relevant Council department responsible for a proposal or responding to specific matter.
- Councillor Briefings – where community members/business representatives request a hearing with Council or are invited by the Chief Executive Officer to present on a specific matter of interest.

Whether formal or informal in nature, comprising some or all Councillors, these community consultation/forums are not statutory meetings of the Council and therefore have no decision making authority.

### 3.12 Gifts and Benefits

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#### 3.12.1 Acceptance and Declaration of Gifts and Benefits

Receipt of a gift from a person or organisation can result in a conflict of interest (as an applicable gift) under the Act, including monetary or in-kind gifts, and campaign donations and it is illegal for a Councillor to accept an anonymous gift valued at \$500 or more.

A Councillor may be offered gifts or other benefits e.g. hospitality from members of the public or other organisations. While these offers are usually genuine in nature, they can give rise to perceived inappropriate relationships and potential conflicts of interest (and possible breaches of the Act).

Offers of gifts can include free or discounted goods, property, money (including loans), free or discounted services (memberships, accommodation, travel, entertainment, sporting events etc.). Hospitality can include invitations to hosted events and functions, including corporate boxes and ticketed events.

Councillors will comply with Council's Gifts & Benefits Policy and disclose to (for recording in Council's gift register) receipt of any gifts and hospitality.

Councillors will not accept a gift or hospitality if it could be perceived as intended to, or likely to, influence them in the fair, impartial and efficient discharge of their duties. Councillors will not solicit gifts or hospitality, and will not accept any offers of money.

If a Councillor receives a gift for Council, for example, an artwork, from an external organisation, delegation or person, the Councillor must submit it to the Chief Executive Officer for retention by Council. The Chief Executive Officer in consultation with the Mayor shall then determine whether the item should be presented to Council at the next Ordinary Council Meeting.

Purchasing or contributions by a Councillor (on behalf of Council) at any auction, community fundraising event or similar, is not permitted without Council resolution.

### **3.12.2 Giving Civic Gifts**

A civic gift is a gift given on behalf of the Council. The purchase or giving of civic gifts must be authorised and arranged by the Chief Executive Officer.

### **3.12.3 Reporting Inappropriate Offers**

A Councillor must notify the Chief Executive Officer of any inappropriate offer of a gift or hospitality. The Chief Executive Officer will determine an appropriate course of action, including possible investigation and/or referral to a relevant external authority.

## **3.13 Conduct during Caretaker (Election) Periods**

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Under Section 93B of the Act, a council must prepare, adopt and maintain a caretaker (election) period policy in relation to procedures to be applied by Council during the election period for a general election.

An election period policy must include:

- Procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election
- Limits on public consultation and the scheduling of Council events
- Procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

Inappropriate decisions made by a Council during an election period includes:

- Decisions that would affect voting in an election
- Decisions that could reasonably be made after the election.

Section 55 of the Act imposes limitations on Council publications during a local government general election period (prohibiting 'electoral matter' which is intended or likely to affect voting in an election).

A council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election

period unless it has been certified, in writing, by the Chief Executive Officer, that it does not contain 'electoral matter'.

Section 93A of the Act sets out major policy decisions that must not be made during a general election period:

- The employment, remuneration or termination of the Chief Executive Officer
- Contracts exceeding specified values (\$150,000 for goods and services, and \$200,000 for works contracts, or one per cent of the Council's revenue – whichever is higher)
- Entrepreneurial ventures exceeding specified values (\$100,000, or one per cent of the Council's revenue, whichever is higher).

A Councillor must comply with Council's Caretaker (Elections) Policy and must not use Council resources for candidacy, or any purpose that may be perceived as being used for candidacy in a Council election. Such use would constitute misuse of the position by a Councillor.

The above principle applies to a Councillor standing in a state or federal government election. It also applies for any other elected positions, for example, positions on government boards.

If Council resolves to support a Councillor on a board or other (non-government) elected position, Council will, at the same time, also resolve the level of Council resources that may be used to support the candidacy. Resources will only include administrative support (correspondence, application forms etc.), telephone and data allowance and payment of travel costs.

Council cannot resolve to support a Councillor as a candidate in a State or Federation election.

During a municipal election period (commencing 32 days before the election day) Councillors:

- Councillors will continue to fulfil their duties during an election period (unless they are granted a leave of absence).
- must comply with the Act, and
- must not use their position to influence Council officers, or access Council resources or information, in support of any election campaign or candidacy.

In accordance with the Council's Caretaker (Election) Policy Council will not consider or make any decisions during an election period that would, or could be perceived to, affect voting in an election, or unfairly commit the incoming Council to a major course of action, or could reasonably be made after the election. This includes delegated decisions.

Existing Council programs and services for the community will continue as business as usual during the election period. Policies and procedures for use of Council resources, and Councillor-issued communications continue to apply during election periods.

The Chief Executive Officer will be the primary spokesperson for all Council communications during the Caretaker (Election) period.

The organisation will respond to all requests for Council information – including projects, programs or services - by candidates (including Councillors) in a business as usual manner.

In accordance with the Council’s Caretaker (Election) Policy, Councillor candidates will be treated the same as other candidates in relation to access to Council information. Councillors may continue to access Council information and public documents during the election period, but only as it is necessary for them to perform their current role and functions.

### **3.14 Councillor Eligibility**

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Section 28 - 29 of the Act describes the qualifications for eligibility to hold the office of a Councillor. It also describes the circumstances in which a Councillor may become ineligible or disqualified from holding office.

Under Section 29 of the Act, a person is not capable of becoming or continuing to be a Councillor or nominating as a candidate in an election if they have not taken the oath of the Councillor within 3 months after being declared elected or have failed to make a declaration stating they will abide by the Councillor Code of Conduct (in accordance with Section 76C).

A Councillor must notify the Chief Executive Officer in writing as soon as practicable of any change in circumstance that affects their right or eligibility to hold office as a Councillor.



## SECTION 4 – CIVIC REPRESENTATION PROTOCOLS

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**Overview:** This section sets out the protocols relating to civic representation, communication and events. It provides clarity around the separation of a Councillor’s individual communications and the expression of Council’s official position. The civic leadership role of the Mayor is enshrined in this section.

### 4.1 Representations by Members of Parliament

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Councillors have a legitimate role in advocating on behalf of their communities. At times, this may include the receiving of representations by a Member of State or Federal Parliament, to Council or Councillors.

Councillors must declare to the Mayor and or Chief Executive Officer any representations made to a Councillor (including correspondence or a verbal request) by a Member of Parliament (or their staff).

Councillors must advise Members of Parliament making representations to Council that their representation will be reported to Council.

### 4.2 Media Relations

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Councillors will endeavour to ensure the messages communicated through the media are clear, honest and consistent, and positively portray the Council as a responsible governing body.

#### 4.2.1 Council Media Relations

All *official* Council media relations will be organised through the Communications unit. Councillors will comply with the Warrnambool City Council’s Media Policy.

The Mayor is the official media spokesperson on behalf of Council where the Council has an official position on the matter and where the matter is of a political, controversial or sensitive nature. These include:

- Issues relating to the strategic direction of Council and Warrnambool
- Issues relating to Council policy and decisions
- State or Federal political issues affecting local government
- Local issues that impact the community that do not relate directly to Council services and functions.

If the Mayor is unavailable as spokesperson, the Acting Mayor (if any) will become the primary spokesperson. If they are not available, the Mayor in consultation with the Chief Executive Officer will delegate the role to either the Chief Executive Officer or an appropriate Councillor.

The Chief Executive Officer is the official spokesperson for all operational matters relating to the organisation, including:

- Staffing and structure of the organisation
- Corporate issues relating to Council services, service provision or the day-to-day business of Council.

The Chief Executive Officer may delegate their media authority to a Council officer.

#### Media Releases, Responses and Interviews

Media releases, responses and interviews will only quote the Mayor, unless otherwise agreed by the Mayor in consultation with the Chief Executive Officer.

Photo opportunities may be arranged by the Communication unit in conjunction with a media release. Photo opportunities will usually only involve the Mayor, however where practicable all Councillors may be invited to appear in a photo opportunity. If a Councillor wishes to be involved they must advise the Communication unit. If unable to attend at the designated time, photo opportunities will not be re-scheduled to suit the availability of individual Councillors.

#### Media Briefings

A media briefing provides detailed information on a specific issue or project. Media briefings will be arranged on an as needs basis, as determined by the Chief Executive Officer or Communications manager.

In most instances the Mayor and or the Chief Executive Officer shall be the primary spokesperson/s. However, Councillor delegate/s and key experts, may be asked to attend.

All information disclosed during a media briefing is public record and can be used by a journalist.

#### **4.2.2 Councillor's Own Media Relations**

Councillors can express their independent views through the media; however, they must make it clear any comment is their personal view, and does not represent the position of Council. Councillors must not pre-empt a Council scheduled media opportunities.

As soon as reasonably practicable, after a Councillor undertakes a media opportunity, they will notify Council's Communications manager. Any individual media opportunities must not contain Warrnambool City Council material or branding.

### **4.3 Social Media**

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**Overview: Social media offers opportunities for dialogue between Councillors and the community, and can lead to more effective communication and access to services. However, there are also significant confidentiality, governance, legal, privacy and regulatory risks relating to the use of social media.**

#### **4.3.1 Council's Social Media**

Council's social media sites are managed by the Communications unit.

Responses to any questions asked to Council via social media will be coordinated through the Communications unit. Where appropriate, responses will come directly from either the Mayor or Chief Executive Officer and Communications unit will post the approved comment on their behalf.

Councillors engaging the community on Council's social media will ensure their contribution is accurate, appropriate, helpful and informative. They will correct any identified errors immediately. If asked to remove materials pertaining to another person for privacy reasons, a Councillor will immediately do so.

#### **4.3.2 Councillor's Own Social Media**

If a Councillor has their own personal 'Councillor' social media site/s, they will include a prominent disclaimer that states the views are their own, and do not represent the position of Council.

Councillor own social media sites must comply with all relevant laws and regulations (especially those relating to identity and representation), respect competitors and detractors and adhere to Council's confidentiality, legal and privacy guidelines. Councillors will be clear about their identity and any vested interests. Only publicly available information will be disclosed.

Posts by Councillors on their own social media sites shall be consistent with the principles detailed in this Code having due regard for other Councillors and Council officers.

Councillors will redirect enquiries for Council services through Council's customer request system, and must not commit Council officers to actions or undertakings.

#### **4.4 Council Publications and Advertising**

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All official Council publications and advertising will be coordinated and approved by the Communications unit, who retain editorial control (content and design). Councillors will not seek to direct officers in relation to the design, content or distribution of Council publications.

##### Warrnambool C2C

A quarterly Mayoral column will be prepared by the Communications unit, and approved by the Mayor for the Warrnambool C2C.

## **4.5 Council and Community Events**

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### **4.5.1 Event Roles**

The Mayor is the primary Council representative for events. If the Mayor is unavailable, the Acting Mayor (if any) will become the primary representative or the Mayor will delegate the role to a Councillor.

Where there is a significant link to a Councillor as a committee representative or delegate, the Mayor may choose to delegate their role to the appropriate Councillor. Councillor delegates to committees will be notified of relevant events.

### **4.5.2 Council Civic Events**

Council event protocols are overseen by the Chief Executive's office. The Mayor will undertake any official role, and the Chief Executive Officer or delegate will act as master of ceremonies (MC) if required.

Invitations for Council events will be issued from the Mayor. All Councillors will receive an invitation to Council organised or sponsored events.

Wording for plaques commemorating the opening of Council facilities will be approved by the Chief Executive Officer.

### **4.5.3 Ministerial Events**

If Council has received significant State or Federal funding for a project, event or facility, the responsible Minister will be invited by the Mayor to officially launch the project. The letter of invitation to the Minister from the Mayor will be issued through the Chief Executive's office. The Mayor will host the visiting Minister, including the official welcome, and appropriate acknowledgements.

If a Minister advises Council of their intention to visit the municipality or host a media opportunity, the Chief Executive Officer will advise Councillors (in accordance with the Minister's embargo protocols).

### **4.5.4 Community/External Events**

Councillors may receive invitations to speak at or attend external events.

Participation and any cost/reimbursement will be assessed in accordance with this Code of Conduct and 'Provision of Support & Resources to Councillor' Policy. The Chief Executive's office will coordinate event arrangements for Councillors.

A Councillor must not accept a speaking role at an event without notifying the Mayor. A Councillor must not offer Council resources (including advertising) to a community member, group or organisation.

#### **4.5.5 Official Speeches**

Speeches will be prepared by the Communications unit for the official Council role at civic and external events. Speeches will reflect Council's position and not include individual points of view.

If a Councillor speaking on behalf of the Council wants a speech to be altered, they will discuss changes with the Communications manager and a revised speech will be provided. Any inclusions must be consistent with Council's adopted position on a matter.

#### **4.5.6 Councillor's Own Events**

Councillors are able to conduct their own events, but should make it clear the event is not a Council endorsed or organised event. No Council resources will be used in the promotion or conduct of such event.

A Councillor will notify their fellow Councillors and the Chief Executive Officer if they are planning an event or meeting.

#### **4.5.7 Mayoral Chain**

The Mayoral chain signifies the office of the Mayor. The Mayor may choose to wear it at official functions of the Council. The Chief Executive Officer will act as custodian of the chain and ensure its security.

Given the significant value, the chain is only to be worn at functions held at the Warrnambool City Council offices, Citizenship ceremonies, or where appropriate security measures are in place.

## SECTION 5 – DISPUTE RESOLUTION

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**Overview: This section sets out the statutory requirements and internal resolution procedures for addressing any alleged contraventions of the Councillor Code of Conduct.**

Under Section 76C and Division 1AB of the Act, a Councillor Code of Conduct must include the internal resolution procedure for dealing with an alleged contravention of the Code.

The internal resolution procedure must:

- Be specified in the Councillor Code of Conduct
- Incorporate any prescribed processes including any application process
- Provide for the selection of an arbiter who is suitably independent and able to carry out the role of an arbiter fairly
- Specify the role an arbiter is expected to undertake in the conduct of any internal resolution procedure, including that the arbiter must consider applications alleging a contravention of the Code by a Councillor and make findings in relation to any application alleging a contravention of the Code, which the arbiter must give to the Council
- Provide processes to ensure that parties affected by an application alleging a contravention of the Councillor Code of Conduct are given the opportunity to be heard by the arbiter
- Specify that the Council and the Councillor the subject of any application made alleging a contravention of the Councillor Code of Conduct are to be given written reasons for any findings made by an arbiter.

Section 3(1) of the Act provides definitions for misconduct, serious misconduct and gross misconduct by a Councillor.

**Misconduct** by a Councillor means any of the following:

- Failure by a Councillor to comply with the Council’s internal resolution procedure
- Failure by a Councillor to comply with a written direction given by the Council
- Repeated contravention of any of the Councillor Conduct Principles.

**Serious misconduct** by a Councillor means:

- Failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor, or
- Failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give, or
- 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 Council officer by a Councillor, or
- Conduct by a Councillor in respect of a Council officer, in contravention of Section 76E (improper direction/ influence), or
- The release of confidential information by a Councillor in contravention of Section 77.

**Gross misconduct** by a Councillor 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.

**Bullying** by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or Council officer, and that behaviour creates a risk to the health and safety of that other Councillor or Council officer.

The table below outlines the hierarchy of management and consequences of Councillor conduct matters.

The Local Government Victoria’s Guide for councils states: ‘The hierarchy for management of Councillor conduct issues is designed to:

- Reinforce the responsibility and authority of councils to manage breaches of agreed conduct through a mandatory internal resolution procedure
- Only escalate management of Councillor misconduct and serious misconduct to panels when councils cannot resolve the matter internally
- Give panels greater powers to manage and resolve misconduct and serious misconduct
- Retain the capacity to manage gross misconduct through VCAT.

Degree of Seriousness	Definition	Responsible Authority	Consequence
Conduct inconsistent with the standard council has set itself	Contraventions of the Councillor Code of Conduct	Council	<ul style="list-style-type: none"> <li>• Mediation, training and/or counselling</li> <li>• Requiring an apology</li> <li>• Suspension from up to two Council meetings</li> <li>• Direction not to attend or chair an advisory or special meeting (Max. 2 months)</li> <li>• Direction to be removed from a position representing Council (Max. 2 months)</li> </ul>
Misconduct	Failing to comply with a 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	Councillor Conduct Panel	<p><u>Remedial action:</u></p> <ul style="list-style-type: none"> <li>• Mediation, training and/or counselling.</li> </ul> <p><u>Finding of Misconduct:</u></p> <ul style="list-style-type: none"> <li>• Reprimand</li> <li>• Requiring an apology</li> <li>• Leave of absence (Max. 2 months) Ineligible to be Mayor (Max. 4 years)</li> </ul>
Serious Misconduct	Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct	Councillor Conduct Panel	<p><u>Remedial action:</u></p> <ul style="list-style-type: none"> <li>• Mediation, training and/or counselling.</li> </ul> <p><u>Finding of Serious Misconduct:</u></p> <ul style="list-style-type: none"> <li>• Reprimand</li> <li>• Requiring an apology</li> </ul>

			<ul style="list-style-type: none"> <li>• Leave of absence (Max. 2 months) Ineligible to be Mayor (Max. 4 years) Suspension (Max. 6 months)</li> <li>• Ineligible to chair special committee (Max. 4 years)</li> </ul>
Gross Misconduct	Behaviour that demonstrates lack of character to be a Councillor	VCAT	<u>Finding of Gross Misconduct:</u> <ul style="list-style-type: none"> <li>• Disqualification (Max. 8 years)</li> <li>• Ineligible to be a candidate (Max. 8 years)</li> </ul>

Councillors are accountable for their own conduct and will act in accordance with this Code of Conduct. Councillors will follow the internal dispute resolution procedures (Clause 5.1) for addressing disputes and alleged contraventions of this Code of Conduct by a Councillor.

### 5.1 Internal Dispute Resolution Procedure

The following procedures are not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion, debate and voting in Council.

Conflict and/or disputes emerge when the differences between Councillors become personal or the behaviour of Councillors towards each other is of a nature that threatens the effective operation of Council’s decision-making process.

A dispute may arise between two individual Councillors, between one Councillor and a group of Councillors or between two or more different groups of Councillors.

**Before commencing any formal dispute resolution process, Councillors (who are parties to any disagreement) have an individual and collective responsibility to try every avenue possible to informally resolve such disputes between themselves in a courteous and respectful manner and in order to prevent them from further escalating.**

The Council’s three phase internal dispute resolution procedures involves:

- 1) Direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance;
- 2) External mediation by an independent mediator; and
- 3) Internal resolution procedure involving an independent arbiter.

The guiding principles of these procedures are:

- Every Councillor has a right to be heard, and treated respectfully
- Councillors are committed to maintaining a positive working relationship with fellow Councillors and Council officers



- Councillors involved in an internal resolution procedure will participate in good faith, recognising their role to represent and act in the best interests of the community.

The specific requirements of each phase of the procedure are detailed in subclauses 5.1.1 to 5.1.5. Also see Appendix 1: Internal Dispute Resolution procedure.

The implementation of the Internal Dispute Resolution procedure will be supported by the Principal Conduct Officer (Governance manager).

### 5.1.1 Phase 1 – Direct Negotiation

Where Councillors who are in dispute have not been able to resolve the dispute between them, either party (or both parties) may request the Mayor to convene a direct negotiation meeting of the parties.

A dispute referred for direct 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 direct 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 “direct 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 or the requestor’s representative.

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

The Mayor is to ascertain whether or not the other party is prepared to attend a “direct negotiation” meeting.

If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.

The requestor may within 7 working days make an application for the dispute to be dealt with in accordance with either Clause 5.1.2 (Phase 2 – Independent Mediation) or Clause 5.1.3 (Phase 3 - Internal Arbitration).

If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 7 working days of receiving the consent of the other party.

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 65 of the Act, and the observation of the councillor conduct principles 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 or the internal arbitration 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, either or both of the parties have recourse to make an application within 7 working days to independent mediation (clause 5.1.2) or the internal arbitration (clause 5.1.3) where the matter relates to an alleged contravention of the Councillor Code of Conduct.

### **5.1.2 Phase 2 – Independent Mediation**

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 “direct negotiation”.

An application made for a dispute to be referred for external mediation 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 applicant is to submit a written application to the Principal Conduct Officer (Governance manager) 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 Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer 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 Principal 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, the applicant may within 7 days working days make an application for the dispute to be dealt with in accordance with clause 5.1.3 (Phase 3 - Internal Arbitration).

If the other party agrees to participate in an independent mediation, the Principal Conduct Officer is to advise the applicant, the Mayor and Chief Executive Officer forthwith.

The Chief Executive Officer is to engage the services of an external mediator 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 resolution procedure 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 make an application within 7 working days for internal arbitration (clause 5.1.3) where the matter relates to an alleged contravention of the Councillor Code of Conduct.

### **5.1.3 Phase 3 - Internal Arbitration**

A councillor or a group of councillors may make an application alleging that a Councillor has contravened this 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 application must be submitted to the Council’s Principal Conduct Officer.

An applicant may withdraw an application for an internal arbitration. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and Chief Executive Officer of the application without undue delay;

- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application;
- 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 the parties of the name of the proposed arbiter and provide them with the opportunity (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;
- 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 the applicant and the respondent of the time and place for the hearing; and
- attend the hearing(s) and assist the arbiter in the administration of the process

In identifying an arbiter who is suitably independent and able to fairly hear the application the Principal Conduct Officer will nominate three external arbiters with the arbiter to be appointed agreed on by all the parties to the dispute or failing agreement, the nominee selected by the Chief Executive Officer. Arbiter nominees will be sourced from either, the Institute of Arbiters and Mediators, the MAV panel of appointed arbiters or another similar body.

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.

In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:

- in consultation with the Principal Conduct Officer, fix a time and place to hear the application;

- authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing;
- hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows;
- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application;
- ensure that the rules of natural justice are observed and applied in the hearing of the application; and
- ensure that the hearings are closed to the public.

Where an application to have legal representation is granted by an arbiter, the costs of the applicant/respondent's legal representation are to be borne by the applicant/respondent in their entirety.

An arbiter:

- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Code;
- may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code;
- will suspend consideration of an internal resolution procedure during the election period for a general election.

The arbiter is to give a copy of his or her findings and the statement of reasons to the Council, the applicant and the respondent. At the same time, the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by the Council.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of the Council for its consideration. If an arbiter has found that a contravention of the Code has occurred, the Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- direct the Councillor to make an apology in a form or manner specified by the Council;
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council);
- direct that, for a period of up to, but not exceeding, 2 months on a date specified by the Council the Councillor:
  - be removed from any position where the Councillor represents the Council; and
  - to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

An application cannot be made for an internal arbitration procedure during the election period for a general election. Any internal arbitration 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 arbitration 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.

A Councillor who does not participate in the internal arbitration procedure may be guilty of misconduct. The Act provides that misconduct by a Councillor means any of the following:

- a) failure by a Councillor to comply with the Council's internal resolution procedure; or
- b) failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
- c) repeated contravention of any of the Councillor conduct principles.

Allegations of misconduct are heard on application by a Councillor Conduct Panel.

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

In the event that the dispute involves the Mayor, the Deputy Mayor (in any) or other Councillor nominated by Council resolution will perform the role of the Mayor in facilitating discussion between the parties in dispute and liaising with the Principal Conduct Officer.

### 5.1.5 Protected Disclosures

If a confidentially-reported contravention of the Councillor Code of Conduct falls under the provisions of the Protected Disclosures Act 2012, the discloser will be advised they must report the matter directly to the Independent Broad based Anti- Corruption Commission (IBAC).

All other matters will be dealt with through the Internal Dispute Resolution Procedures.

## 5.2 Councillor Conduct Panels

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The Act details the provisions for Councillor Conduct Panels and the State-appointed Principal Councillor Conduct Registrar.

A Councillor Conduct Panel may make a finding of misconduct or serious misconduct against a Councillor. The Chief Municipal Inspector will make all applications for cases of alleged gross misconduct to the Victorian Civil and Administrative Tribunal (VCAT) for determination.

In the event that an allegation of a contravention of the Councillor Code of Conduct by a Councillor cannot be resolved by the Internal Resolution Procedure, it will be referred as an application to the Principal Councillor Conduct Registrar to establish a Councillor Conduct Panel.

An application to establish a Councillor Conduct Panel can also be made if a Councillor fails to comply with the Internal Resolution Procedure, repeatedly contravenes the Councillor Conduct Principles, or fails to comply with a written Direction of Council, as these constitute 'misconduct' under the Act.

An application to establish a Councillor Conduct Panel can be made by:

- Council resolution
- A Councillor
- A group of Councillors.

If the application is accepted by the Principal Councillor Conduct Registrar, they will convene a Councillor Conduct Panel formed by two independent members. The Panel will operate in accordance with the Act, and is bound by the rules of natural justice.

As Council will bear the cost of any Councillor Conduct Panel, Councillors will consider this as a final option for resolution. The costs associated with a Councillor Conduct Panel will be reported to a Council Meeting open to the public. The Principal Councillor Conduct Registrar will also publish the Councillor Conduct Panel's findings and decisions.

See Appendix 2 for a summary of the Councillor Conduct Panel processes (External Councillor Conduct Framework)

## COUNCIL & COUNCILLOR ADOPTION OF CODE

This Code of Conduct was adopted by resolution of the Warrnambool City Council at a Special Council meeting held on 4 July 2016 and the following Councillor declarations made and witnessed at Council's Ordinary Meeting held on 1 August 2016.

I, *Kylie Gaston* have read and will abide by this Councillor Code of Conduct.

Signed:  Date: 1/08/16<sup>KSG</sup>  
Cr. Kylie Gaston

I, *Robert Askew* have read and will abide by this Councillor Code of Conduct.

Signed:  Date: 1-08-16<sup>RA</sup>  
Cr. Robert Askew

I, *Jacinta Ermacora* have read and will abide by this Councillor Code of Conduct.

Signed:  Date: 1<sup>st</sup> Aug 2016  
Cr. Jacinta Ermacora

I, *Peter Hulin* have read and will abide by this Councillor Code of Conduct.

Signed:  Date: 1 August 2016  
Cr. Peter Hulin

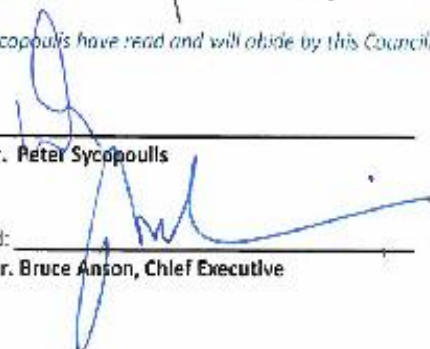
I, *Brian Kelson* have read and will abide by this Councillor Code of Conduct.

Signed:  Date: 1-8-2016  
Cr. Brian Kelson

I, *Michael Neoh* have read and will abide by this Councillor Code of Conduct.

Signed:  Date: 1/8/16  
Cr. Michael Neoh

I, *Peter Sycopoulls* have read and will abide by this Councillor Code of Conduct.

Signed:  Date: 1/8/16  
Cr. Peter Sycopoulls

Witnessed:  Date: 1/8/16  
Mr. Bruce Anson, Chief Executive



## REFERENCES

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### Reference Materials

- Local Government Act 1989
- Reforms Arising from the *Local Government Amendment (Improved Governance) Act 2015* – A Guide for Councils (Victorian State Government)
- Conflict of Interest – A Guide for Councillors 2012 (Victorian State Government)
- Councils and Complaints – A Good Practice Guide 2015 (Victorian Ombudsman)
- [www.goodgovernanceguide.org.au](http://www.goodgovernanceguide.org.au) (MAV, LGV, LGPro, VLGA)
- MAV Model Councillor Code of Conduct
- Principal Councillor Conduct Registrar – Information Bulletin 1 (LGV)
- New Councillor Conduct Framework – John Baring, Acting Principal Councillor Conduct Registrar (presentation May 2016)

## GLOSSARY AND ACRONYMS

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**CEO** Chief Executive officer of Council

**CMI** Chief Municipal Inspector

**Council Plan** means a four-year plan setting out the strategic directions of the Council

**Council officer/s** means a member of Council staff

**Councillor Conduct Panel** means a panel appointed by the Registrar to hear an application that alleges misconduct or serious misconduct by a Councillor.

**LGPro** Local Government Professionals

**LGV** Local Government Victoria

**MAV** Municipal Association of Australia

Official Council media includes but not limited to media events, briefings, releases and responses to media enquiries.

**PCO** Principal Conduct Officer means the officer appointed by the CEO to assist Council with the implementation and conduct of the Council's internal dispute resolution procedure.

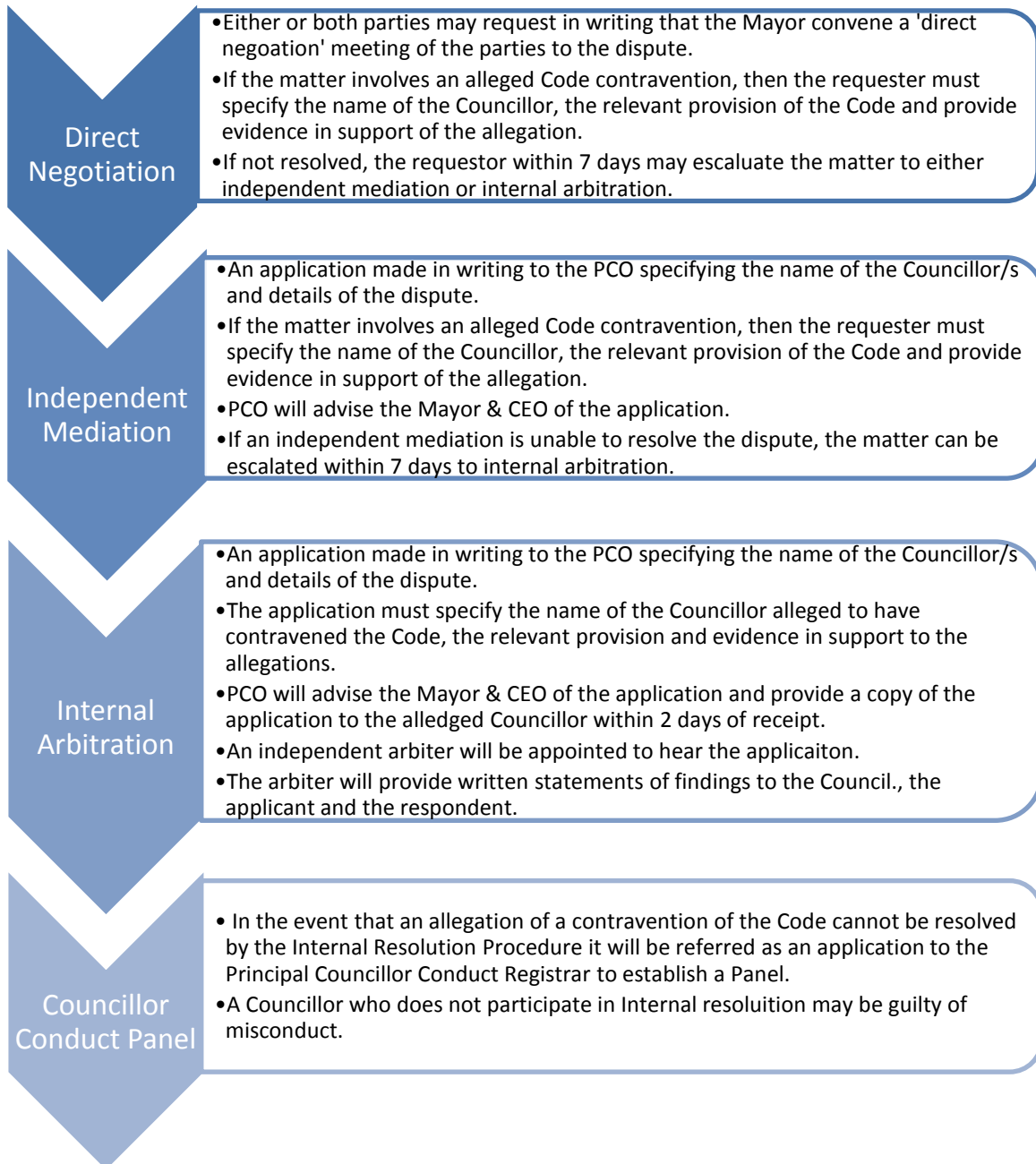
**Principal Councillor Conduct Registrar** means a person appointed by the Secretary of Department of Environment, Land, Water and Planning (DELWP) to receive and

**The Act** means the Local Government Act 1989

**VCAT** Victorian Civil and Administrative Tribunal

## APPENDICES

### Appendix 1 – Internal Dispute Resolution Procedure



Appendix 2 – Flowchart: External Councillor Conduct Framework

