



Councillor Code of Conduct



ADOPTED 27 FEBRUARY 2019

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1. WORKING TOGETHER

Councillors of Colac Otway Shire Council are committed to working together in the best interests of the people within our community and to discharging their responsibilities to the best of their skill and judgement. They are strongly committed to working together constructively as a team to achieve positive and future-focused outcomes for the benefit of their community.

1.1. OUR VISION

A sustainable community with a vibrant future.

1.2. OUR MISSION

Council will work with our community and partners to provide:

- Innovative leadership, good governance and financial accountability;
- Value for money, accessible and appropriately targeted services; and
- A strong advocacy and engagement approach to achieve a truly liveable community.

1.3. OUR VALUES

Council will achieve its Vision and Mission by acting with:

- Respect
- Integrity
- Goodwill
- Honesty
- Trust

1.4. OBJECTIVES OF A COUNCIL:

The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions. In seeking to achieve its primary objective, a Council must have regard to facilitating objectives. These are set out in section 3C of the *Local Government Act 1989*.

1.5. THE ROLE OF A COUNCIL:

Council is elected to provide leadership for the good governance of the Colac Otway Shire. The role of Council is more fully set out in section 3D of the *Local Government Act 1989*.

1.6. FUNCTIONS OF A MAYOR:

The functions of the Mayor of a Council include:

- Providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the *Act*, and abiding by the Councillor Conduct Principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; of the *Local Government Act 1989*;
- 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;
- Chairing meetings of Council at which the Mayor is present;
- Having a casting vote where necessary at meetings of Council; and
- Taking precedence at all municipal proceedings.

Sections 73AA, 73 (2), 90 (1) (e) and 73 (1) of the *Local Government Act 1989*

1.7. THE ROLE OF A COUNCILLOR:

The role of a Councillor is:

- To participate in the decision-making of the Council; and
- To represent the local community in that decision-making; and
- To contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

In performing the role of a Councillor, a Councillor must:

- Consider the diversity of interests and needs of the local community; and
- Observe principles of good governance and act with integrity; and
- Provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the *Local Government Act 1989* and other Acts; and
- Participate in the responsible allocation of the resources of Council through the annual budget; and
- Facilitate effective communication between the Council and the community.

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 of the *Local Government Act 1989*.

S.65 of the Local Government Act 1989

1.8. COUNCILLOR CONDUCT PRINCIPLES

Councillors acknowledge and strongly support and endorse the following Councillor Conduct Principles as specified within the *Local Government Act 1989*:

1.8.1. PRIMARY PRINCIPLE OF COUNCILLOR CONDUCT

It is a primary principle of Councillor Conduct that, in performing the role of a Councillor, a Councillor must:

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

1.8.2. GENERAL COUNCILLOR CONDUCT PRINCIPLES

In addition to acting in accordance with the principles specified above, Councillors in the performance of their roles must:

- Avoid conflicts between their public duties as a Councillor and their personal interests and obligations;
- Act honestly and avoid statements (oral or in writing) or actions that will or are likely to mislead or deceive any person;
- Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- Exercise reasonable care and diligence and submit 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 an elected representative; and
- Support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

Section 76B & 76BA of the Local Government Act

1.9. ADHERENCE TO THE CODE OF CONDUCT

Councillors recognise that the conduct and behaviour of an individual Councillor reflects on Council as a whole and that, as community leaders, they should be role models, setting the standard for other people to follow.

This Code of Conduct places an obligation on all Councillors to take responsibility for their own conduct. They accept that it is critical that their individual and collective conduct must be exemplary at all times to ensure that Council functions properly.

All Councillors commit to building and maintaining a strong and respectful relationship to ensure the good governance of the Colac Otway Shire.

All Councillors commit to working collaboratively and professionally with each other, the organisation and the community in a manner that is always consistent with the principles set out elsewhere in this Code of Conduct.

This Code binds Councillors irrespective of whether they have signed it or declared that they will abide by it.

1.9.1. WORKING TOGETHER

Good governance in local government is underpinned by visionary leadership, teamwork, collaborative decision-making and a shared commitment to plan, work and advocate for and achieve the best possible outcomes for the entire community. To this end each Councillor will when performing their role as a Councillor:

- foster and establish strong, respectful and professional working relationships between each other to perform their duties as a Councillor in the best interests of the Colac Otway Shire community.
- work constructively with the Mayor, aimed at establishing and maintaining a strong, courteous and positive working relationship.
- treat fellow Councillors courteously and with dignity and respect and not be unduly critical of each other or the organisation in any public forum.
- not harm or attempt to harm, maliciously or recklessly, directly or indirectly, the reputations of others (including those of fellow Councillors and Council staff).
- raise any issues of concern related to the conduct or actions of a fellow Councillor directly with the Mayor and not with any member of Council staff or via the media (including social media).
- raise any issues of concern related to the conduct or actions of the Mayor directly with the CEO or via the dispute resolution process and not with any other member of Council staff or via the media (including social media).

1.9.2. COURTESY AND RESPECT

Each Councillor will, when performing their role as a Councillor, treat all people with courtesy and respect, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. Councillors will ensure that neither offence nor embarrassment is caused even when disagreeing with the views or decisions of others.

1.9.3. INTEGRITY AND HONESTY

Further, each Councillor will, when performing their role as a Councillor:

- always act with integrity and honesty;
- exercise good judgement in decision-making, always acting ethically, impartially and in the best interests of the community as a whole; and
- pursue and maintain high standards of personal and professional conduct.

1.9.4. POSITION OF TRUST

Recognising that they hold a position of trust, Councillors will not misuse or derive undue benefit from their positions. Each Councillor will, when performing their role as a Councillor, avoid conflicts of interest and ensuring compliance with the relevant provisions of the *Act* and this Code of Conduct relating to interests and conflicts of interest.

1.9.5. ACTING LAWFULLY

Councillors recognise that they are subject to various legislative obligations. They must fully comply with all such obligations.

Among these obligations are obligations imposed by the *Equal Opportunity Act 2010*. In general, this legislation prohibits and makes unlawful discrimination on the basis of age, breastfeeding, career status, disability/impairment, gender identity, industrial activity, lawful sexual activity, marital status, parental status, physical features, political belief, pregnancy, race, religious belief, sex, sexual preference or personal association with someone who has one of these characteristics.

It also prohibits sexual harassment. This is behaviour of a sexual nature that is unwelcome, unsolicited and unreciprocated.

1.10. COUNCIL BRIEFINGS, MEETINGS AND PUBLIC EVENTS

Councillors are committed to good governance and making high quality, transparent decisions impartially and in the best interests of the whole community.

They recognise that, as elected representatives of the community, they have an obligation to understand the legal framework established under the provisions of the *Local Government Act 1989* and, in doing so, acknowledge that effective decision-making is vital to the democratic process and an essential component of good governance.

If a Councillor will be absent from any Meeting, Briefing or Workshop, he/she should inform the Mayor or relevant member of Council staff as soon as possible prior to the absence, unless the absence is due to an emergency or unforeseen circumstances, in which case the Mayor or relevant member of Council staff must be informed as soon as possible following the absence.

Councillors commit to regularly attend Councillor Briefings in accordance with good governance and community expectations to enable informed and considered decision-making in the best interests of the community.

Local Law 4 regulates the proceedings at Council Meetings, Special Committee Meetings, Advisory Committee Meetings and other meetings conducted by the Council. Local Law 4 provides a mechanism for good governance of the Council through its meeting procedure to ensure effective and efficient decision-making by Council. All Councillors must adhere to the requirements of Local Law 4 at all times.

In this context, each Councillor:

- acknowledges that Workshops and Briefings are not forums for debate or for Councillors to take a collective position on an issue;
- will accept and respect the decision made by the majority of Councillors through the democratic process, without compromising his or her right to maintain their opposition to a Council decision;
- will fully participate in meetings, briefings and forums by listening while others are speaking, avoiding interrupting, and using reasonable, polite and temperate language in debates (irrespective of the issue);
- will show respect and observing all rulings of the Chairperson without comment; and
- will not make assertions of improper motives or personal reflections on Councillors, Council staff or members of the public.

1.11. ACCESS TO AND USE OF CORPORATE INFORMATION

Each Councillor must treat Council information in accordance with their obligations under the *Local Government Act 1989*.

All Councillors recognise that, at times, information provided to Councillors will be of a confidential nature and therefore it is essential that the confidentiality of such information be strictly maintained.

Each Councillor will comply with their obligations under section 77 of the Act in relation to confidential information and recognise that this obligation extends to ensuring the safekeeping of confidential information.

1.12. USE OF COUNCIL RESOURCES – INCLUDING FUNDS/PROPERTY

All Councillors must ensure that they exercise appropriate prudence in the use of Council resources to ensure they are utilised in an effective and economical manner. Each Councillor will, when performing their role as a Councillor:

- maintain appropriate separation between their personal property and Council property in the care of Council;
- not use Council resources, including employees, equipment and intellectual property, for electoral or other personal purposes;
- ensure that Council resources are always used effectively and economically and for the purposes for which they are provided;
- ensure that Council resources are not used in a way that creates an impression of Council endorsement; and
- ensure that claims for out-of-pocket expenses are accurate and relate strictly to Council business.

Councillors acknowledge an obligation to report on their use of all Council funds and property. Councillors are committed to implementing a transparent, thorough and regular system of reporting on their use of Council funds and property during the course of performing their duties.

Councillors must not use public funds or resources in a manner that is improper or unauthorised.

2. WORKING WITH THE ORGANISATION

Governance is the framework of structures, rules and processes by which an organisation is directed and controlled. It is also the way in which organisational objectives are set, decisions are made, powers granted, performances verified and accountability ensured.

Good governance requires strong vision, strategy, leadership, clear and timely decision-making processes and appropriate checks and balances.

A healthy, constructive and respectful relationship with the organisation provides Councillors with the ability to make high-quality decisions and provide good governance of the Colac Otway Shire.

Councillors will support a collective commitment to the organisation with a strong, open and professional partnership relationship between the Council and the Council organisation to assist in achieving Council's strategic objectives.

2.1. WORKING WITH THE CHIEF EXECUTIVE OFFICER (CEO) AND ALL COUNCIL STAFF

It is critical that all Councillors commit to building and maintaining a positive, strong and respectful relationship with the CEO and all Council staff to ensure the good governance of the Colac Otway Shire.

All Councillors commit to demonstrating a public commitment to supporting the CEO and maintaining a professional relationship at all times. They also commit to providing constructive input in the setting of the key performance indicators of the CEO.

Further, each Councillor will:

- make every effort to resolve concerns, complaints or grievances concerning the organisation in good faith through reasonable direct communication and negotiation.
- provide feedback and raise any issues of concern directly with the CEO and not with any member of staff or via the media (including social media). Issues of concern may include but are not restricted to:

- Conduct or actions of Council staff;
- Reports and publications prepared by the Council organisation;
- Service delivery standards; and
- Strategy or direction of the Council organisation.

Councillors commit to behaving courteously and respectfully in their dealings with Council staff, protecting their professional integrity and ensuring that neither offence nor embarrassment is caused when considering advice or recommendations. They will acknowledge and address staff appropriately at all Council meetings and events. Councillors will not be publicly critical of the organisation.

2.2. EMAILS AND TELECOMMUNICATIONS EQUIPMENT

2.2.1. EMAILS AND CALENDARS

Immediately after being elected, all Councillors are issued with a Colac Otway Shire email address (email inbox and calendar).

Councillors are encouraged to use the official email address provided to them by the Shire when conducting their duties as a Councillor. This allows all communication to be documented and stored on the Council electronic document management system should it be required for future use.

Correspondence pertaining to operational matters should be forwarded to governance@colacotway.vic.gov.au at the earliest possible time to allow prompt action by staff.

2.2.2. TELECOMMUNICATIONS – MOBILE PHONES (SMART PHONES) AND IPADS (TABLET DEVICES)

Immediately after being elected, all Councillors are issued with a Colac Otway Shire mobile phone (smartphone) and iPad (tablet device).

Unless it is impracticable to do so, Councillors are encouraged to use the official Council mobile phone number and iPad (tablet device) provided to them by the Shire when conducting their duties as a Councillor.

2.3. COUNCILLOR REQUESTS FOR INFORMATION

All Councillors commit to promptly recording and submitting all correspondence received which relates to the function/role of Council, as well as any requests received for service, information, comments or enquiries, to the Governance email address governance@colacotway.vic.gov.au for action to be taken as appropriate.

Councillors acknowledge that all requests made by Councillors for briefings from Council officers, access to information on Council files or clarification/explanation of items on a forthcoming Council agenda, should be registered and reported. These types of requests are to be sent to governance@colacotway.vic.gov.au to be actioned by the organisation as soon as possible.

3. COMMUNICATIONS INCLUDING MEDIA AND SOCIAL MEDIA

At all times messages communicated through the media (including social media) must be clear and consistent, and accurately and fairly portray the Council position.

The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature. This includes:

- State-wide political issues affecting Local Government;
- contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community;
- issues pertaining to policy and Council decisions; and
- issues relating to the strategic direction of Council.

Where there has been a prior discussion with and approval by the Mayor, a Councillor may, on Council's behalf and as Council's spokesperson, make comment to the media or on social media on aspects of Council's activities. Every effort will be made to inform all Councillors if this occurs.

This does not restrict Councillors from sharing authorised media releases, newsletters and official publications or event information and updates.

Councillors acknowledge and recognise that as a public official any individual public comment is likely to be interpreted as representing the views and position of Council. Councillors also acknowledge the potential risks and damage to Council that can occur, either directly or indirectly, from personal use of social media. Each Councillor is personally responsible for content published in a personal capacity on any form of social media platform.

Accordingly, each Councillor will, when using social media in connection with their role as a Councillor:

- keep comments polite and professional;
- ensure that content is accurate, is not misleading and complies with relevant policies;
- ensure that comments are respectful of the community and any other potential reader;
- not make personal comments about other elected members, staff and members of the community;
- adhere to Council's policies and codes;
- adhere to copyright, privacy, defamation, contempt of court, discrimination, harassment and other applicable laws; and
- observe the rules governing confidentiality.

Whilst it is understood that it is acceptable for an individual Councillor to publicly state that they did or did not vote in favour of any Council decision and the reasons, each Councillor agrees that this is to be done in a manner which is respectful of Council's decision. Therefore each Councillor will ensure that they do not undermine the authority or public perception and standing of Council or any other Councillor.

The CEO is the official spokesperson for all operational matters pertaining to the Colac Otway Shire as an organisation including:

- staffing and structure of the organisation; and
- legal or operational matters.

The CEO may nominate another Council officer as spokesperson, if appropriate.

4. GIFTS AND HOSPITALITY

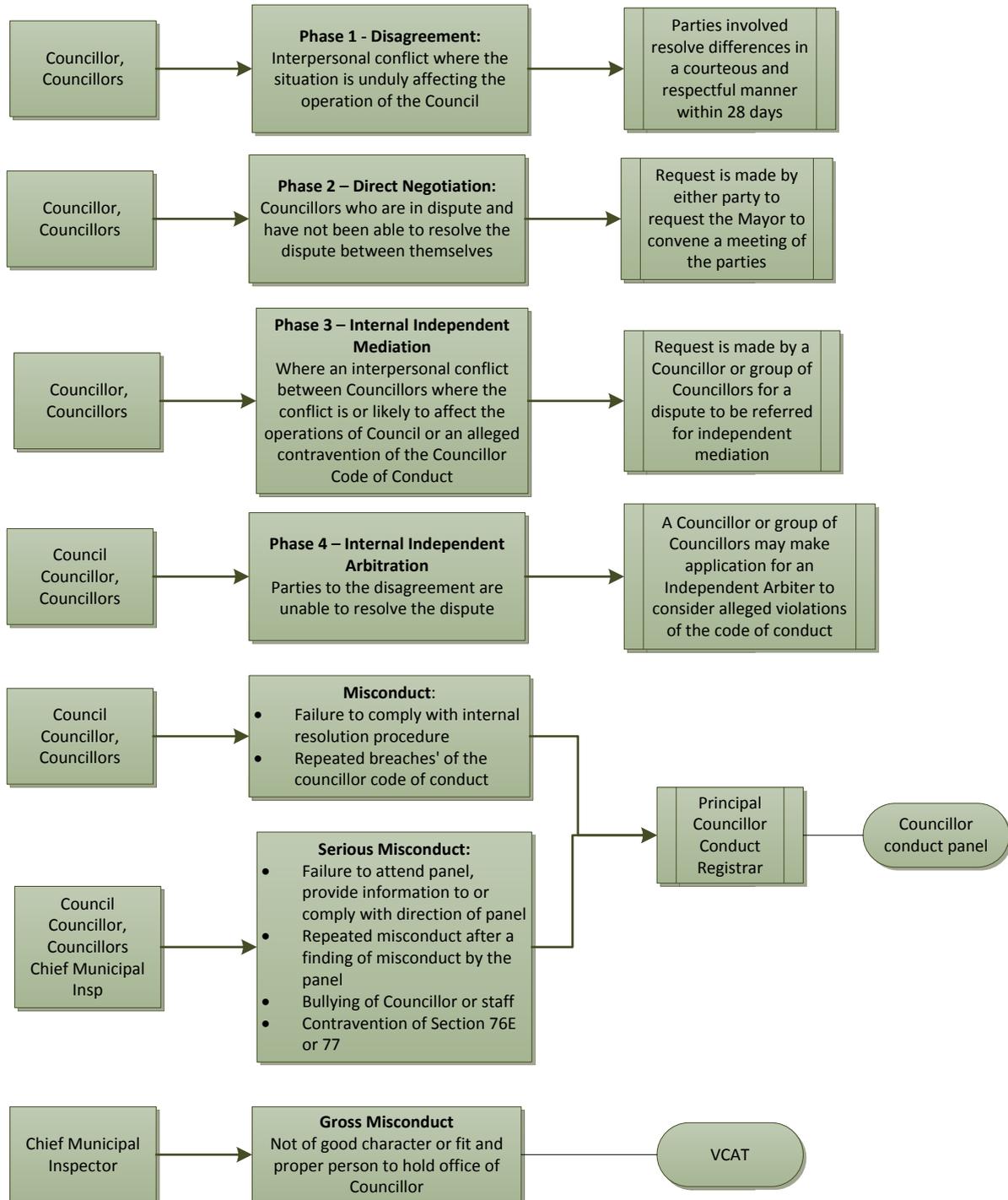
The *Local Government Act 1989* and Victorian Ombudsman recommendations provide a framework for the receipt and treatment of gifts and benefits. A great deal of focus has been placed upon the local government sector regarding gifts and benefits, and conflicts of interest that may potentially be created as a result.

Extreme care and caution is to be exercised by Councillors on the matter of gifts and hospitality. Public perception is a key to if a conflict exists, or if a Councillor has compromised them in any manner.

As a rule of thumb, Councillors should use caution and not accept gifts or offers of hospitality either in their roles as Councillors or where it could be perceived to influence the Councillor. Exceptions to this are:

- Where the gift would generally be regarded as only having a token value and could not be perceived to influence the Councillor's actions; and
- Where refusal of the gift may cause offence or embarrassment.
 - In which case the gift may be accepted on behalf of Council and becomes the property of Council.
 - Such gift is to be declared to the CEO who will make immediate arrangements to have the details of the gift recorded in a register maintained by the Governance Advisor.
 - Advice will be tendered to the provider of the gift that the Councillor was unable to accept it on a personal basis and it is now the property of Council.

5. DISPUTE RESOLUTION PROCEDURES



5.1 OVERVIEW

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Where, after these endeavours have been exhausted and the matter still remains unresolved, the parties may resort to any or all of the FOUR PHASE dispute resolution process.

The Council's FOUR PHASE dispute resolution process involves:

1. Disagreement where Councillors who are parties to the disagreement will endeavour to resolve their differences in a courteous and respectful manner;
2. Direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance;
3. An internal independent mediation resolution procedure led by someone appointed by the Chief Executive Officer (not necessarily external);
4. An internal independent arbitration resolution procedure.

5.1.1 PHASE 1 – DISAGREEMENT

Before commencing any formal dispute resolution process, the Councillors who are parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community. Councillors may seek assistance in resolving their differences.

This process is to be private and confidential.

5.1.2 PHASE 2 – DIRECT NEGOTIATION

There are several steps in phase two.

Where Councillors who are in dispute have not been able to resolve the dispute between themselves, either (or both) party (parties) may request the Mayor to convene a 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 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 including when and where;
- 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 must 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.

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

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 5 working days of receiving the consent of the other party.

The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

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 internal Independent Mediation or the Internal Independent Arbitration 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, either or both of the parties have recourse to internal independent Mediation or the Internal Independent Arbitration procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

During this phase the Mayor may seek assistance from the CEO, Principal Conduct Officer or other relevant person as deemed necessary.

This process is to be private and confidential.

5.1.3 PHASE 3 – INTERNAL INDEPENDENT MEDIATION

A Councillor or a group of Councillors may make an application for a dispute to be referred for Independent 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 Independent Mediation may relate to:

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

The applicant is to submit a written application to the Principal Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an “Independent 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 “Independent Mediation”. If the other party declines to participate in an Independent 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.

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

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 (or delegate) is to engage the services of an independent 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 Independent Arbitration 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 the Internal Independent Arbitration procedure if the dispute relates to an alleged contravention of the Councillor Code of Conduct.

5.1.4 PHASE 4 - INTERNAL INDEPENDENT ARBITRATION

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

If the respondent to an application for an Internal Independent 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 Council and Council so resolves; or
- the application was 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 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 Council's Principal Conduct Officer.

An applicant may withdraw an application for an Internal Independent Arbitration procedure. 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 for a period of 3 months.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO 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 to hear the application, the Principal Conduct Officer must select an Arbiter who is suitably independent and able to carry out the role of Arbiter fairly.

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 respondent's legal representation are to be borne by the respondent in their entirety.

An Arbiter:

- may find that a Councillor who is a respondent to an Internal Independent Arbitration procedure application has not contravened the Code;
- may find that a Councillor who is a respondent to an Internal Independent Arbitration procedure has contravened the Code;
- will suspend consideration of an Internal Independent Arbitration 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 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 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 Council for its consideration. If an Arbiter has found that a contravention of the Code has occurred, 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 Council;
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Ordinary Council (in respect of the next scheduled meetings of Council);

- direct that, for a period of up to, but not exceeding, 2 months on a date specified by Council, the Councillor:
 - be removed from any position where the Councillor represents 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.

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

- failure by a Councillor to comply with Council’s Internal Independent Arbitration procedure; or
- failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
- repeated contravention of any of the Councillor Conduct Principles.

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

5.2 DEFINITIONS

Degree of Seriousness	Definition	Responsible Authority
Conduct inconsistent with Colac Otway Shire standards	Contravenes the Councillor Code of Conduct	Council
Misconduct	Failing to comply with Colac Otway Shire’s Internal Independent Arbitration procedure, including failure to abide by any decision of Council in relation to a contravention of the Code and repeated contraventions of Councillor Conduct Principles	Panel
Serious misconduct	Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct	Panel
Gross misconduct	Behaviour that demonstrates lack of character to be a Councillor	VCAT

5.3 COUNCILLOR CONDUCT PANELS AND VCAT

Where a matter cannot be resolved internally, an application can be made for a Councillor Conduct Panel to be established.

A Panel has the power to consider both “misconduct” and “serious misconduct” of a Councillor.

- **Misconduct:** Failing to comply with Council’s Internal Independent Arbitration 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.
- **Serious misconduct:** Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct.

5.3.1 APPLICATION FOR A PANEL

An application for a Panel can be made by:-

- Council - *via resolution*;
- A Councillor; or
- A group of Councillors.

Applications are made to the Principal Councillor Conduct Registrar. Council’s Principal Conduct Officer assists the Principal Councillor Conduct Registrar in the conduct of their role, functions and duties. The Principal Councillor Conduct Registrar has the power to reject applications for a panel in prescribed circumstances.

5.3.2 COMPOSITION OF A PANEL

A Councillor Conduct Panel is to comprise a lawyer and a person with relevant expertise.

The relevant expertise is broader of just local government knowledge and may include specialist knowledge in governance, ethics and probity.

A Councillor Conduct Panel may give findings of:

- Remedial action
 - Requiring a Councillor to undertake mediation, training, or counselling.
- Misconduct finding:-
 - Reprimand the Councillor.
 - Direct the Councillor to make an apology.
 - Direct the Councillor take a leave of absence for a period up to 2 months.
 - Direct that a Councillor is ineligible to hold the office of Mayor for a period of up to 4 years (but not exceeding the remainder of the Councillor's term of office).
- Serious Misconduct finding:-
 - Reprimand the Councillor.
 - Direct the Councillor to make an apology.
 - Direct the Councillor take a leave of absence for a period up to 2 months.
 - Direct that a Councillor is ineligible to hold the office of Mayor for a period of up to 4 years (but not exceeding the remainder of the Councillor's term of office).
 - Suspend the Councillor from office for a period not exceeding 6 months.

The Chief Municipal Inspector

- In relation to allegations of serious misconduct against Councillors, has the power to investigate and also initiate applications for a panel to be established.
- Is responsible for making applications to VCAT to consider findings of "gross misconduct" against Councillors.
- Has the power to investigate and prosecute various offences under the Act.

5.3.3 GROSS MISCONDUCT

Gross Misconduct is the most serious type of misconduct behaviour.

It is defined as 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.

The Chief Municipal Inspector makes an application to VCAT for that body to consider such alleged behaviour/s.

Gross Misconduct finding:

- Disqualification of Councillor of up to 8 years.
- Ineligible to be a candidate for a period of up to 8 years.

5.4 INDEPENDENT BROAD BASED ANTI-CORRUPTION COMMISSION - IBAC

Recently established under the Independent Broad-based *Anti-corruption Commission Act 2011*, as part of a new integrity system for Victoria, IBAC has a major role under the provisions of the *Protected Disclosure Act 2012* in investigating any possible improper or corrupt conduct of Councillors.

The *Protected Disclosure Act 2012* provides that any person that has reasonable grounds to believe that improper or corrupt conduct has occurred can make a disclosure.

- Disclosures may relate to both Councillors and officers of Colac Otway Shire.
- Any disclosure regarding a Councillor or Councillors is/are to be made direct to IBAC. Further details are available on the IBAC website www.ibac.vic.gov.au.

6 ELECTION PERIOD (CARETAKER) POLICY

Colac Otway Shire is committed to fair and democratic elections. Council is required to adopt an Election Period (Caretaker) Policy prior to each election that governs the actions of Colac Otway Shire Council and Councillors during the election period. The election period is a 32-day period prior to the Election Day.

It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during an election period. Council therefore commits to the principle that it will make every endeavour to avoid making decisions that inappropriately bind an incoming Council during an election period.

7 DISCLAIMER

Council's Code of Conduct under the Act is intended to ensure all Councillors agree to the standards of conduct and behaviour documented within the Code. Councillors have other legal obligations – under the Act, other legislation and at common law – that are not documented or reported in this Code. The Code should be read in the context of those other obligations.

8 STATUTORY REQUIREMENTS

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

- sets out the Internal Independent Arbitration procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor; and
- includes other provisions addressing matters seen as appropriate by Council.

