



Colac Otway
SHIRE

COUNCILLOR CODE OF CONDUCT

Adopted by Council: 27 April 2022





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1. Introduction

The Councillor Code of Conduct (Code) forms part of Colac Otway Shire’s Governance Framework, which is set out in the *Local Government Act 2020* (the Act). The primary objective for the Colac Otway Shire Council (Council) is to endeavour to achieve the best outcomes for the local community having regard to the long term cumulative effect of its decisions.

This Code is a public declaration that Councillors of the Council are committed to governing the municipality effectively and will observe the principles of good governance and integrity.

The Code was adopted by Council on 24 February 2021 and is required to be reviewed within four months of a general election.

Any review of this Code will include a community consultation process.

2. First Nations Acknowledgment

Council proudly acknowledges the Gulidjan (Goole-ee-jan) and Gadubanud (Gad-a-ban-nood) peoples as the traditional custodians of the Colac Otway Region. We acknowledge that the Council is located on and conducts business upon lands of the Gulidjan and Gadubanud people.

We will observe the appropriate protocols for acknowledgement of the original inhabitants of this land. The following Acknowledgement of Council is read by the Mayor (or Chief Executive, as appropriate) at all formal Council meetings and civic receptions prior to commencement of any formal proceedings:

“Colac Otway Shire acknowledges the original custodians and law makers of this land, their elders past, present and emerging and welcomes any descendants here today.”

3. Purpose

The purpose of the Code is to set out the standards of conduct expected to be observed by Councillors in the course of their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

4. Scope

This Code applies to the Councillors of the Colac Otway Shire Council.

5. Legislative context

The *Local Government Act 2020* requires Council to develop and maintain a Councillor Code of Conduct that includes the standards of conduct expected to be observed by Councillors prescribed in the *Local Government (Governance and Integrity) Regulations 2020*. A Councillor Code of Conduct may also include any other matters which the Council considers appropriate.

6. Councillor Standards of Conduct

Councillors must comply with the prescribed Standards of Conduct in Schedule 1 to the *Local Government (Governance and Integrity) Regulations 2020*.

A breach of the conduct standards constitutes *misconduct* as defined under the Act.



6.1. Standard 1 – Treatment of others

In performing the role of a Councillor, we will treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that we:

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

6.2. Standard 2 – Performing the role of Councillor

In performing the role of a Councillor, we will do everything reasonably necessary to ensure that we perform the role of a Councillor effectively and responsibly, including by ensuring that we:

- undertake any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor
- diligently use Council processes to become informed about matters which are subject to Council decisions
- are fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity
- represent the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

6.3. Standard 3 – Compliance with Good Governance Measures

In performing the role of a Councillor, to ensure the good governance of Council, we will diligently and properly comply with the following:

- any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors
- the Council Expenses Policy adopted and maintained by the Council under section 41 of the Act
- the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act
- any directions of the Minister issued under section 175 of the Act.



6.4. Standard 4 – Councillor Must Not Discredit or Mislead Council or Public

In performing the role of a Councillor, we will:

- ensure that our behaviour does not bring discredit upon Council
- not deliberately mislead Council or the public about any matter related to the performance of our public duties.

6.5. Standard 5 – Standards do not Limit Robust Political Debate

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

7. Roles and Responsibilities

7.1. Role of Council

The primary role of Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. Council must perform its role in accordance with the Overarching Governance Principles (refer Appendix 2).

7.2. Role of Councillor

The role of every Councillor is to:

- participate in the decision making of the Council
- represent the interests of the municipal 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.

In performing the role of Councillor, each Councillor will:

- consider the diversity of interests and needs of the municipal community
- support the role of the Council
- acknowledge and support the role of the Mayor
- act lawfully and in accordance with the oath or affirmation of office
- act in accordance with the standards of conduct
- comply with Council procedures required for good governance.

7.3. Role of the Mayor

The role of the Mayor is to:

- chair Council meetings and be the principal spokesperson for the Council
- lead engagement with the municipal community on the development of the Council Plan
- report to the municipal community, at least once each year, on the implementation of the Council Plan
- promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct
- assist Councillors to understand their role



- take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer
- provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings
- perform civic and ceremonial duties on behalf of the Council.

7.4. Role and Powers of the Deputy Mayor

Where the Mayor is not present but his or her attendance is required to carry out the Mayoral functions or duties, the Deputy Mayor will perform the role of the Mayor and may exercise any of the powers of the Mayor.

7.5. Role of the Chief Executive Officer

The role of the Chief Executive Officer is prescribed in section 46 of the Act, but in general terms the Chief Executive Officer is responsible for supporting the Mayor and Councillors in the performance of their roles and ensuring the effective and efficient management of the day to day operations of the Council.

8. Specific Councillor Conduct Obligations

The following section sets out specific conduct obligations that are agreed by all Councillors.

8.1. Councillor Values and Behaviours

In undertaking our role as Councillors we will uphold the following agreed values of being:

- Community focussed
- Fair and inclusive
- Respectful
- Transparent and open
- Collaborative
- Prepared, efficient and productive
- Strategic, with a view to the future
- Respectful of diversity of opinions and differences
- Supportive of an open and safe environment in which to have robust discussions
- Accountable for delivering results.

In undertaking our roles as Councillors we agree that the following behaviours underpin these values:

- Listening actively and showing respect for one another and our roles
- Greeting each other courteously
- Being prepared when coming together to discuss Council business and engaging with an empathetic approach towards each other's viewpoints
- Maintaining an approach to things with an optimistic perspective
- Acknowledging good work



- Moving on and letting go of things to move forward together.

A list of behaviours we do not want see are included at Appendix 3.

8.2. Council Decision Making

In performing the role of Councillor, we commit to making all decisions impartially and in the best interests of the community. We will actively participate in the decision-making process and appropriately inform ourselves of the matter at hand. We will abide by the Governance Rules, which govern the conduct of Council meetings. Once a decision has been made, we will respect the making of that decision.

We will observe due regard to procedural fairness, the absence of bias in decision-making and will conform with relevant legislation and policies in the consideration of matters, including conflict of interest provisions, and the Councillor Interaction with Council Staff Protocol.

We understand that Council is bound by the decisions made at Council meetings, and that while we may not agree with all decisions made, it is our collective responsibility to ensure the stability of governance in our Shire.

8.3. Conflict of Interest

Each Councillor is required to identify, manage and disclose any conflicts of interest they may have in accordance with sections 126 to 131 of the Act, and Chapter 5 of the Governance Rules.

We acknowledge that we have read and understand these provisions and will abide by them. In the event that we consider that we have an actual or perceived conflict of interest in relation to a matter, we will declare and identify this at the commencement of any discussion on the matter. We will seek advice from the Chief Executive Officer or other appropriate person if we need assistance on interpretation of the legislative provisions.

We understand that the declaration must be in writing, and must be made at any Council meeting, delegated committee meeting or meeting conducted under the auspices of Council, at which the matter is to be discussed. Failure to comply with these provisions may constitute *serious misconduct*.

8.4. Use of Council resources

We commit to using Council resources effectively and economically and in accordance with all Council policies. In particular, we will:

- use Council resources, which may include equipment, information, staff resources, property of any kind and other assets, which have been provided to us only for the purposes of our duties as a Councillor and not for private purposes unless properly authorised to do so
- maintain adequate security over Council property, facilities and resources in our possession or control
- ensure that any claim for expenses that we may make will be in accordance with all legislative obligations and Council policies
- not use public funds or resources in a manner that is improper or unauthorised.



8.5. Councillor and Staff Interactions

The Chief Executive Officer is responsible for managing interactions between Councillors and Council Staff and ensuring the appropriate policy, protocols and practices are in place. Councillors acknowledge that the relationship between Councillors and Council Officers must be one of mutual cooperation and support.

Interactions are guided by the *Council and Staff Interactions – Chief Executive Officer Protocol*.

8.6. Political Activity

We are committed to ensuring that elections conducted by the Colac Otway Shire Council are done so fairly and democratically and in accordance with the highest standards of governance. Where we are a sitting Councillor during an election period we will abide by the requirements of the applicable legislation and the Council-endorsed Election Period Policy (which forms part of the Council's adopted Governance Rules) and, whether or not we are standing for re-election, we will at all times act respectfully towards all candidates for the election.

8.7. Bullying, vilification and victimisation

Council is committed to maintaining a workplace that is free from bullying, vilification and victimisation, where all people are treated with dignity and respect. In performing our role as Councillors, we must take positive action to eliminate victimisation in accordance with the *Equal Opportunity Act 2010*.

We will uphold Council's obligations to support a safe workplace, and will not engage in repeated unreasonable behaviour toward another Councillor or member of Council staff that creates a risk to the health and safety of that other Councillor or member of Council staff.

We will take all reasonable steps to eliminate bullying, vilification and victimisation at Council.

8.8. Human rights and equal opportunity

In performing our role as Councillors we must take positive action to eliminate discrimination in accordance with the *Equal Opportunity Act 2010* and support Council in fulfilling its obligation to achieve and promote gender equality.

We acknowledge the human rights that are protected under the *Victorian Charter of Human Rights and Responsibilities Act 2006* and undertake to exercise our duties in a manner that is compatible with the rights set out in the Charter.

We acknowledge this undertaking extends to all our relationships as a Councillor, including with other Councillors, the Chief Executive Officer and Council employees, as well as any member of the public with whom we may have contact, and any decisions we participate in as a Councillor.

We are committed to treating all people with dignity and respect and recognise that there is no place for unlawful discrimination, harassment (sexual or otherwise), racial and religious vilification and victimisation of any individual. We will:

- take all reasonable steps to eliminate all forms of discrimination at Council
- support Council to fulfil its obligation to achieve and promote gender equality.



8.9. Occupational health and safety

Council is committed to providing and maintaining a safe workplace for all and recognises the provisions of the *Occupational Health and Safety Act 2004* (OHS) apply to Council and Councillors. The Chief Executive Officer has a clear accountability for OHS matters, given their mandate under the Act, and will put policies in place from time to time to ensure a safe workplace for Councillors to carry out their civic duties.

As Councillors, we understand that occupational health and safety is a shared responsibility. Accordingly, we will:

- take reasonable care to protect our own health and safety as well as the health and safety of others in the workplace
- take reasonable care to make sure Council carries out, through the Chief Executive Officer, its general duties to ensure a safe workplace that is without risks to health by ensuring appropriate systems and policies are in place to manage those risks and consider any health and safety implications of Council decisions.

8.10. Sexual Harassment

Sexual harassment is against the law and will not be tolerated under any circumstances. In performing our role as Councillors, we must take positive action to eliminate sexual harassment in accordance with the *Equal Opportunity Act 2010*.

We will not engage in any unwelcome conduct of a sexual nature towards another individual where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the individual harassed would be offended, humiliated or intimidated. We will take all reasonable steps to eliminate sexual harassment at Council.

8.11. Interacting with children and young people

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Victorian Child Safe Standards and related legislation which governs the protection of children and young people and deals with the failure to report harm, failure to protect and grooming offenses.

Accordingly, we undertake to:

- maintain the highest standards of professional conduct in our attitude, behaviour and interactions with children and young people
- support and maintain Council's commitment to the safety and wellbeing of children and young people and including through any decision we participate in as a Councillor
- take all reasonable steps to protect children and young people from harm, including complying with Council's obligations under State and Federal child protection legislation and the Victorian Child Safe Standards.



8.12. Personal Dealings with Council

When dealing with Council in a personal capacity (for example, as a ratepayer, recipient of a Council service or applicant for a permit), we will not expect or request preferential treatment.

To ensure transparency and fairness, complaints received by Councillors should be treated the same way as ones made to Council officers. We must not seek to direct or influence the complaint handling process.

We are aware the same service standards apply to a Councillor request, as a request for service from a community member.

8.13. Councillor and officer engagement

We have read and understood the requirements of Section 124 of the Act and will not seek to improperly direct or influence members of Council staff in the exercise of their duties. We will follow all procedures and protocols which set out interaction between Councillors and the Chief Executive Officer, senior management and other employees.

8.14. Gifts, Benefits or Hospitality

Councillors should avoid situations that give rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment.

We will comply with Council's Gifts, Benefits and Hospitality Policy and other applicable legislation.

8.15. Community Diversity

Council is committed to providing a welcoming and positive experience for all, regardless of background, culture, nationality, sexual orientation, gender identity or accessibility needs.

8.16. Reporting Unethical Behaviour

Ethical behaviour is an integral part of responsible, effective and accountable government. We acknowledge Council's obligations under the *Public Interest Disclosures Act 2012* to facilitate the making of disclosures of improper conduct by public officers and public bodies, including Council, its employees and Councillors.

We will immediately report to the Chief Executive Officer and/or appropriate integrity body, in line with the Council's Public Interest Disclosures Procedures, any suspected, potential or actual fraudulent, criminal, unethical, corrupt or other unacceptable behaviour that comes to our knowledge. We will participate as required to the best of our ability in any subsequent investigation whether undertaken internally or externally.

8.17. Media and Communications

Councillors have an obligation to effectively and satisfactorily communicate the decisions of Council and to respond to the community as required. To ensure that clear and consistent messages are communicated, the Council's Communications Policy sets out the management of media enquiries, release of information and nominated spokespersons.

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 (made in open session) and the reasons, each Councillor agrees that this is to be done in a manner which is respectful of Council.



We will:

- respect the roles of Council's official spokespersons
- respect Council's decisions by not actively undermining any decisions which have been made
- not bring Council into disrepute through any of our words or actions
- not speak on behalf of Council without authority
- ensure any personal opinions or views we express publicly are identified as our own and not those of Council
- ensure any communications we make are not offensive, derogatory, insulting or otherwise damage the reputation of Council.

8.18. Use of Council Information

We acknowledge that information which is 'confidential information' within the meaning of section 3 and section 125 of the Act, and Chapter 6 of the Governance Rules may not be disclosed by us except in certain specified circumstances (refer Appendix 1).

We understand that Council information may also be subject to other legislation including the *Health Records Act 2001*, *Privacy and Data Protection Act 2014* and *Freedom of Information Act 1982*. We understand that all briefing material provided to Councillors shall be considered confidential unless that information is otherwise made publicly available by resolution of Council or the Chief Executive Officer.

We will comply with any legislative provisions and Council policies concerning our access to, use of, or disclosure of Council information, whether confidential or otherwise.

8.19. Land Use Planning, Development Assessment and Other Regulatory Functions

The safety and integrity of Council and Councillors in performance of their duty is of primary importance.

We recognise the separation of our roles and responsibilities from those of the Chief Executive Officer and Council officers and as such will abstain from involvement in functions such as the issuing of permits (unless referred to Council for a formal resolution), the consideration of fines, prosecutions and other similar regulatory functions of the Council.

When proposing to meet with a planning permit applicant, either for the purpose of discussing the application or where the application is likely to become controversial, we will seek a meeting via the Planning Manager to ensure a Council planning officer is present.

9. Dispute Resolution Process

9.1. Purpose

This part describes the processes for Councillors who wish to report and resolve a dispute with another Councillor under the Code. Councillors recognise that the democratic process of local government involves holding, and expressing, different and sometimes opposing viewpoints. It is a normal, and vital, function of this process that these different views are shared in a considered and informed way. Although all Councillors strive to engage in positive, constructive and respectful interactions, conflict and/or disputes may arise.



All Councillors recognise that they hold an individual and collective responsibility to resolve disputes in a proactive, positive and courteous manner before they are escalated, to avoid such disputes threatening the effective operation of Council.

The primary purpose of an internal resolution procedure is to provide Councillors with support and mechanisms to resolve conflicts and disputes in a manner that enables them to move forward and establish and maintain effective working relationships. The procedure also provides avenues and guidance for escalating more serious issues and allegations where required.

This procedure:

- is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in council and committee meetings
- does not include a complaint made against a Councillor or Councillors by a member or members of Council staff, or by any other person, or a “disclosure” under the *Public Interest Disclosures Act 2012*.

9.2. Scope

This procedure operates alongside, and does not displace, any external avenues provided for by legislation for the reporting and resolution of issues and disputes.

For the purposes of this part:

- This procedure does not deal with allegations of criminal misconduct as they are envisaged to be raised with Victoria Police or other relevant mechanisms.
- Nothing in this procedure prevents an individual Councillor with a specific issue or dispute from pursuing other avenues available to them under the law.

Where members of the public would like to raise a complaint against a Councillor for a possible breach or offence under the Act or this Code, this may be directed to the Local Government Inspectorate or the Colac Otway Shire Councillor Conduct Officer. For the avoidance of doubt, a member of the public may raise a formal complaint through any available channel external to Council as provided by law.

In particular, some allegations of Councillor *misconduct* under this Code may also constitute *serious misconduct* under the Act. In these instances, it is open to Council, a Councillor, or a group of Councillors, to make an application for a Councillor Conduct Panel. For allegations of gross misconduct, Council, a Councillor(s) or members of the public can raise complaints to the Local Government Inspectorate.

9.3. Responsibilities

9.3.1. Mayor and Deputy Mayor

The Mayor and Deputy Mayor have a responsibility to:

- establish and promote appropriate standards of conduct
- support good working relations between Councillors
- support Councillors in dispute resolution.



9.3.2. *Councillor Conduct Officer*

The Councillor Conduct Officer has a responsibility to:

- assist Council in the implementation and conduct of the internal resolution procedure
- assist the Principal Councillor Conduct Registrar to perform the functions specified in section 149 of the Act.

9.3.3. *Chief Executive Officer*

The Chief Executive Officer has a responsibility to:

- ensure that support and assistance is available to all Councillors where it is required
- take all reasonable steps to ensure the consistent and accountable application of this policy across Council
- comply with all relevant legislation as the senior officer within Council administration.

9.3.4. *Councillors*

Councillors as defined in this section have a responsibility to:

- co-operate with any investigation into, or arbitration of, a complaint made under this procedure
- maintain confidentiality regarding any complaint.

9.4. *Informal Internal Resolution Between Parties to a Dispute*

9.4.1. *Discussion*

Before commencing a formal dispute resolution process, the Councillors who are parties to a dispute are encouraged to use their best endeavours to resolve their issue or dispute in a courteous and respectful manner between themselves, stop any behaviour that is causing issues, and to avoid the issue escalating and threatening the effective operation of Council.

Where the issue or dispute remains unresolved or where the circumstances make informal resolution inappropriate, the parties may resort to Council's internal dispute resolution processes set out below.

9.5. *Formal Internal Resolution Between Parties to a Dispute*

9.5.1. *Interpersonal Disputes and Alleged Contravention of the Councillor Code of Conduct*

Interpersonal disputes between Councillors involve conflict where there may be a breakdown in communication, a misunderstanding, a disagreement between Councillors, or strained working relationships. Disputes may also relate to an alleged contravention of the Code.

Interpersonal disputes between Councillors or alleged contraventions of the Code may be managed via:

- a resolution discussion (facilitated by the Mayor or Deputy Mayor)
- mediation with an external mediator (via application to the Councillor Conduct Officer)

9.5.1.1. *Internal Resolution Discussion*

Where Councillors who are in dispute have not been able to resolve their dispute informally between themselves, a party may request in writing that the Mayor or Deputy Mayor (the 'Convenor') convene a confidential meeting of the parties to discuss the dispute. The Councillor



requesting the meeting is to provide the Convenor with the name of the other Councillor and the details of the dispute in writing. They should also notify the other Councillor of the request and provide a copy of the written request to them.

The Convenor or the Councillor Conduct Officer is to ascertain whether or not the other party is prepared to attend the meeting. If the other Councillor is not prepared to attend the meeting, the Convenor is to advise the party seeking the meeting. No further action is required of the Convenor.

If the other Councillor consents to a meeting, the Convenor is to hold a confidential meeting of the parties.

Unless one or both parties are unavailable, this should be arranged within ten working days of receipt of the meeting request.

The Convenor may provide the parties with guidelines in advance of the meeting or at the meeting, to help facilitate the meeting. If the parties cannot resolve the dispute at the meeting, a further meeting may be convened.

The role of the Convenor at the meeting is to assist the parties to resolve the dispute. In the process of doing this they may provide guidance about what is expected of a Councillor including in relation to the role of a Councillor under section 28 of the Act and the Code. The Convenor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties and a copy kept by the Councillor Conduct Officer. Where the dispute remains unresolved, a party may request mediation, or make an application for arbitration (where alleged contravention of the Councillor Conduct Standards apply).

9.5.1.2. Internal Independent Mediation

A Councillor or a group of Councillors may request that their dispute be referred to mediation.

The mediation would be conducted by an external accredited mediator.

The party seeking the mediation is to notify the other party of the request and details of the dispute in writing at the same time that it is submitted to the Councillor Conduct Officer. The Councillor Conduct Officer is to ascertain (in writing) whether or not the other Councillor is prepared to participate in the mediation.

If the Councillor declines to participate in the mediation, they are to provide their reasons for not doing so in writing to the Councillor Conduct Officer. These reasons may be taken into account if the matter is subsequently the subject of an application for a Councillor Conduct Panel.

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

The Councillor Conduct Officer will engage the services of an external mediator to conduct the mediation at the earliest opportunity. All parties will cooperate with the dispute resolution process and provide reasonable assistance to the external mediator and the Councillor Conduct Officer.

If the parties cannot resolve the dispute at the mediation meeting, a further meeting may be convened with the consent of both parties. The mediator is to document any agreement reached. Copies of the agreement are to be provided to both parties and the Councillor Conduct Officer.



9.5.2. *Internal Arbitration Process for Breaches of the Prescribed Standards of Conduct*

The internal arbitration process applies to any breach by a Councillor of the prescribed standards of conduct.

An internal arbitration involves a party (the Applicant) to a dispute requesting the Principal Councillor Conduct Registrar to appoint an impartial third party (the Arbiter) to make findings in the relation to allegations concerning another Councillor(s) (the Respondent) and whether they have engaged in misconduct under the Act.

An application for an internal arbitration process to make a finding of *misconduct* against a Councillor can be made by:

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

The application must:

- specify the name of the Councillor alleged to have breached the conduct standards
- specify the clause of the conduct standards in the *Local Government (Governance and Integrity) Regulations 2020* that the Councillor is alleged to have breached
- specify the misconduct that the Councillor is alleged to have engaged in that resulted in the breach of the conduct standards
- 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
- be signed and dated by the Applicant or the Applicant's representative
- be made within three months of the alleged misconduct occurring
- be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c) of the Act.

After receiving an application, the Councillor Conduct Officer will provide the application to the Councillor who is the subject of the application.

On receiving an application, the Principal Councillor Conduct Registrar will:

- advise the Chief Executive Officer (and the Mayor as appropriate) of the application without undue delay
- identify an Arbiter to hear the application
- obtain from the Arbiter written advice that they have no conflict of interest in relation to the Councillors involved
- notify the parties of the name of the proposed Arbiter and provide them with the opportunity (two 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
- attend the hearing(s) and assist the Arbiter in the administration of the process.



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

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

In identifying an Arbiter to hear the application, the Principal Councillor Conduct Registrar will select an Arbiter who is suitably independent and able to carry out the role fairly.

The Arbiter must be selected from a panel of eligible persons established by the Secretary to conduct an internal arbitration process.

The role of the Arbiter includes:

- consider an application alleging a contravention of the prescribed standards of conduct
- make findings in relation to the application
- provide a written statement of reasons supporting the findings to the parties at the same time as providing the findings to Council
- recommend an appropriate sanction or sanctions where the Arbiter makes a finding of misconduct against a Councillor.

An Arbiter:

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

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

- Council
- The applicant or applicants
- The Councillor who is the subject of the allegation.
- The Principal Councillor Conduct Registrar.

A copy of the Arbiter's decision and statement of reasons must be tabled at the next Council meeting after Council has received the copy of the Arbiter's decision and statement of reasons and recorded in the minutes of the meeting.

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



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

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

A Councillor will cooperate with the arbitral process and provide reasonable assistance to the Arbiter.

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

9.5.3. Failure to Participate in Internal Arbitration Process

A Councillor who does not participate in the internal arbitration procedure may be guilty of *serious misconduct*.

9.6. Application to Councillor Conduct Panel

Councillor Conduct Panels may hear an application that alleges *serious misconduct* by a Councillor.

An application for a Councillor Conduct Panel to make a finding of *serious misconduct* against a Councillor may be made by:

- The Council following resolution of the Council to do so;
- A Councillor or group of Councillors; or
- The Chief Municipal Inspector.

An application must be made within 12 months of the alleged serious misconduct occurring.

Applications of serious misconduct are reviewed by the Principal Conduct Registrar and are the subject of a Council Conduct Panel (CPP) process of review.



Appendix 1 – Definitions

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| Chief Executive | The Chief Executive Officer of the Colac Otway Shire Council |
| Chief Municipal Inspector | The Chief Municipal Inspector is responsible for investigating and prosecuting possible breaches and offences under the Local Government Act 2020, investigating allegations of Councillor misconduct, serious misconduct and gross misconduct, making an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor and making an application to the Victorian Civil and Administrative Tribunal for a finding of gross misconduct by a Councillor. |
| Conflict of Interest | A Councillor has: <ul style="list-style-type: none"> • a general conflict of interest in a matter if an impartial, fair minded person would consider that the person’s private interests could result in that person acting in a manner that is contrary to their public duty. • a material conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. |
| Conduct Standards | The standards of Councillor conduct prescribed under Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020. |
| Councillor | All references to ‘Councillor’ include the Mayor, Deputy Mayor and elected members of the Colac Otway Shire Council except as expressly provided. |
| Councillor Conduct Panel | A panel established under the Local Government Act 2020 to hear applications and make findings of alleged misconduct or serious misconduct by a Councillor. |
| Employee | An employee of Council includes all members of staff, contractors and volunteers under the direct control or supervision of the Colac Otway Shire Council. |
| Gross Misconduct | ‘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, including behaviour that is sexual harassment and that is of an egregious nature. |
| Improper Conduct | ‘Improper conduct’ includes a failure to disclose a conflict of interest, a breach of confidentiality, the improper direction or influence of staff, the |



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| | improper use of Council resources, or a breach of Council policy under the Code of Conduct by a Councillor. |
| Misconduct | <i>Misconduct</i> by a Councillor means any breach by a Councillor of the prescribed conduct standards included in this Councillor Code of Conduct. |
| Councillor Conduct Officer | A person appointed by the Chief Executive Officer to assist Council in implementing its internal arbitration process. |
| Principal Councillor Conduct Registrar | The Principal Councillor Conduct Registrar receives applications for the establishment of Councillor Conduct Panels under the Local Government Act 2020. |
| Secretary | Secretary to the Department of Environment, Land, Water and Planning |
| Confidential Information | <p>Confidential information is defined under section 3(1) of the Local Government Act 2020.</p> <p>(a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;</p> <p>(b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;</p> <p>(c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;</p> <p>(d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;</p> <p>(e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;</p> <p>(f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;</p> <p>(g) private commercial information, being information provided by a business, commercial or financial undertaking that—</p> <p>(i) relates to trade secrets; or</p> <p>(ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;</p> <p>(h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a);</p> |



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| | <p>(i) internal arbitration information, being information specified in section 145;</p> <p>(j) Councillor Conduct Panel confidential information, being information specified in section 169;</p> <p>(k) information prescribed by the regulations to be confidential information for the purposes of this definition;</p> <p>(l) information that was confidential information for the purposes of section 77 of the <i>Local Government Act 1989</i>.</p> <p>Note: <i>In the interests of transparency, Council may, by resolution, determine to release information to the public even though it is Confidential Information. Refer to Council's Public Transparency Policy for more detail.</i></p> |
| Vilification | <p>Vilification is behaviour that incites physical harm or hatred, serious contempt, revulsion or severe ridicule of a person or group because of their race or religion. It is unlawful conduct</p> |
| Victimisation | <p>Victimisation is subjecting, or threatening to subject, someone to reprisal or detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else to make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation</p> |
| Bullying | <p>For the purposes of this Code, "bullying behaviour" is any behaviour in which:</p> <ul style="list-style-type: none"> • a person or a group of people repeatedly behaves unreasonably towards another person or a group of persons • the behaviour creates a risk to health and safety. <p>Bullying behaviour may involve, but is not limited to, any of the following types of behaviour:</p> <ul style="list-style-type: none"> • aggressive, threatening or intimidating conduct • belittling or humiliating comments • spreading malicious rumours • teasing, practical jokes or 'initiation ceremonies' • exclusion from work-related events • unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level • displaying offensive material • pressure to behave in an inappropriate manner. <p>The following are not bullying behaviours:</p> |



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| | <ul style="list-style-type: none"> • maintaining reasonable workplace goals and standards • legitimately exercising a regulatory function • legitimately implementing a council policy or administrative processes. |
| <p>Serious misconduct</p> | <p><i>Serious misconduct</i> by a Councillor means:</p> <ul style="list-style-type: none"> • failure by a Councillor to comply with the Council's internal arbitration process • failure by a Councillor to comply with a direction given to the Councillor by an Arbiter under section 147 • the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor. • failure of a Councillor to comply with a direction of a Councillor Conduct Panel • continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an Arbiter or by a Councillor Conduct Panel under section 167(1)(b) of the <i>Local Government Act 2020</i> • bullying by a Councillor of another Councillor or a member of Council staff • conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or member of Council staff • the disclosure by a Councillor of information the Councillor knows or should reasonably know, is confidential information • conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff • the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with the <i>Local Government Act 2020</i>. |
| <p>The Act</p> | <p>All references to 'the Act' are to the <i>Local Government Act 2020</i>.</p> |



Appendix 2 - Overarching Governance Principles

A Council must in the performance of its role give effect to the overarching governance principles. (Section 8 & 9 of the Local Government Act 2020).

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

- 2 In giving effect to the overarching governance principles, a Council must take into account the following supporting principles—
 - (a) the community engagement principles;
 - (b) the public transparency principles;
 - (c) the strategic planning principles;
 - (d) the financial management principles;
 - (e) the service performance principals.



Appendix 3 – Undesirable Behaviours

To support and foster good working relationships, Councillors agree they do not want to see the following behaviours:

- Personal vindictiveness
 - Disrespect
 - Hostility
 - Aggression
- Closed mindedness to other people's opinions
- Manipulativeness, game playing and dishonesty
- Rude/abusive behaviour
- Badgering, belittling and put downs
- Being underprepared for meetings.



Appendix 4 - Relevant Legislation

Local Government Act 2020 (Vic)

Local Government (Governance and Integrity) Regulations 2020 (Vic)

Child Wellbeing and Safety Act 2005 (Vic)

Equal Opportunity Act 2010 (Vic)

Occupational Health and Safety Act 2004 (Vic)

Public Interest Disclosures Act 2012 (Vic)

Sex Discrimination Act 1984 (Cth)

Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)



Appendix 5 - Relevant Council Policies

Councillor and Staff Interactions – Chief Executive Officer Protocols

Fraud and Corruption Control Policy

Public Interest Disclosures Procedures

Governance Rules

Election Period Policy (incorporated in the Governance Rules)

Gifts, Benefits and Hospitality Policy

Public Transparency Policy

Council Expenses Policy

Information Privacy Policy

Complaints Policy



Appendix 6 – Dispute resolution flowchart

