



Frankston City Council

# **Councillor Code of Conduct 2018**

*Adopted at Special Meeting SP2  
on 13 June 2018.*

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## 1. PURPOSE AND COMMITMENT

1.1 The performance of the Council and the wellbeing of the Frankston community are directly affected by the conduct of the City's elected Councillors; accordingly, the community is entitled to expect that:

- a) the business of the Council is conducted with efficiency, impartiality and integrity;
- b) Councillors obey the spirit and letter of the law, and in particular, the provisions of relevant statutes, regulations, local laws and other instruments; and
- c) responsibility to the community is always given absolute priority over the private interests of Councillors.

The important leadership role of Councillors is recognised in, the *Local Government Act 1989* (the Act), which describes how the Council is to be accountable in the performance of its functions, the exercise of powers and the use of resources. The Act specifies the role, function and objectives of Council, Councillors and the Chief Executive Officer.

1.2 This Councillor Code of Conduct has been adopted in satisfaction of the requirements of the Act and is binding on all Councillors to:

- a) specify the standard of conduct expected of Frankston City Council's elected representatives;
- b) foster constructive working relationships between Councillors, to enable Councillors to work together in the best interests of the community; and
- c) mandate legal, ethical and appropriate Councillor conduct that will build public confidence in the integrity of local government.

1.3 The Mayor, Deputy Mayor and Councillors commit to carrying out their role to the highest standards of conduct and behaviour. As part of this commitment, all Councillors will adhere to the conduct principles, values and processes outlined in the Councillor Code of Conduct. This will attract the highest level of confidence from Council's community and stakeholders, assist Councillors to carry out their role, and provide a means for dealing with a range of situations which may occur.

1.4 References:

- *Local Government Act 1989* ("Act")
- *Privacy and Data Protection Act 2014*
- *Health Records Act 2001*
- *Protected Disclosure Act 2012*
- *Freedom of Information Act 1982*
- *Independent Broad-based Anti-corruption Commission Act 2011*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Winky Pop v Hobsons Bay City Council* (Victorian Supreme Court, 2007)
- relevant policy documents adopted by Council, eg. Election Period Policy, Councillor Entitlements and Expenses Policy, Communications Policy.

## **2. OBJECTIVES, ROLES AND RESPONSIBILITIES OF THE COUNCIL**

- 2.1 Frankston City is governed by nine Councillors who are democratically elected in accordance with the Act. Collectively, they constitute the Council. The primary objective and role of Council is established in sections 3C and 3D of the Act. Councillors commit to work collaboratively by:
- a) respecting the right of each Councillor to speak and represent their views on the needs of members of the community;
  - b) speaking well of each other and the Council in public, including in social media;
  - c) demonstrating commitment to consult with other Councillors, within the decision making framework and with no surprises;
  - d) respecting the diverse needs, views and nature of the greater Frankston community;
  - e) supporting and having regard for the role of local government as an important level of government within Australia;
  - f) ensuring a consultative approach to solving problems, developing effective decisions and communicating outcomes that build teamwork and cooperation;
  - g) demonstrating leadership by focusing on issues and refraining from personalising matters particularly in relation to making personal remarks regarding other Councillors; and
  - h) respecting each Councillor's right to hold different views and engage in constructive debate on matters of difference, while being united in representing Council decisions.
- 2.2 The role of Councillors is to set the vision for the City which requires a focus on strategy and policy development. The role of the Chief Executive Officer is to implement the decisions and ultimately the vision of Council.

## **3. ROLE OF THE MAYOR**

- 3.1 Section 73AA of the Act describes the functions of the Mayor as including:
- a) providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C;
  - b) acting as the principal spokesperson for the Council;
  - c) supporting good working relations between Councillors; and
  - d) carrying out the civic and ceremonial duties of the office of Mayor.
- 3.2 The governance of the Council is the responsibility of the Councillors collectively. The Mayor is "first-among-equals". While the Mayor does not have executive authority, Councillors acknowledge and respect that the Mayor has been elected by Councillors to lead the Councillor group and represent the Council. Accordingly Councillors agree to co-operate with the Mayor of the day in the fulfilment of the Mayoral leadership role.

- 3.3 The Mayor is responsible for chairing Council meetings, and in doing so will:
- a) retain control of the meeting at all times;
  - b) be impartial;
  - c) preserve order; and
  - d) ensure that the business of the meeting is conducted in a proper and efficient manner, and in accordance with any applicable Local Law.
- 3.4 Accordingly the Mayor:
- a) will first and foremost at all times reflect the will of the Council while in the chair and performing all other official duties;
  - b) may only debate a motion by speaking immediately after the mover and seconder of the motion have been given the opportunity to speak to the motion. Where the Mayor wishes to move or second a motion, he or she must vacate the chair;
  - c) is the official spokesperson for the Council regarding decisions made by the Council and advocacy with government.
- 3.5 The Mayor will liaise with Councillors about items to be listed on the Councillor Briefing Schedule. Councillors may also raise items for briefing directly with the Chief Executive Officer or the Director Corporate Development.

#### **4. ROLE OF THE DEPUTY MAYOR**

Where the Mayor is absent or otherwise unable to fulfil their duties, the Deputy Mayor will perform the duties ascribed to the Mayor, unless the Deputy Mayor has a conflict of interest or is unavailable.

#### **5. ROLE OF COUNCILLORS**

- 5.1 Section 65 of the Act provides that the role of a Councillor is:
- a) to participate in the decision-making of the Council;
  - b) to represent the local community in that decision-making; and
  - c) 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.
- 5.2 In performing the role of a Councillor, a Councillor must:
- a) consider the diversity of interests and needs of the local community;
  - b) observe principles of good governance and act with integrity;
  - c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the Act and other Acts;
  - d) participate in the responsible allocation of the resources of the Council through the annual budget; and

- e) facilitate effective communication between the Council and the community.
- 5.3 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.
- 5.4 The role of a Councillor does not include the performance of functions that are the responsibility of the Council administration. Councillors perform a vital role through their participation in Council's decision-making functions; in a properly constituted Council meeting, Councillors approve the Council's procurement policy and make decisions about the awarding of significant contracts. However, Councillors do not have a role in the day to day administration of the procurement policy and must not attempt to influence the procurement process. Councillors must not perform project management or contract management duties, or become involved in operational tasks.
- 5.5 Councillors must respect the Chair at all times during a meeting (including an Assembly of Councillors), and must observe any lawful direction given by the Mayor.
- 5.6 If the Mayor calls a meeting at an agreed time for the purpose of providing guidance to a Councillor or Councillors (in accordance with the functions of the Mayor described in section 73AA of the Act), the Councillor or Councillors must attend the meeting.

## **6. FUNCTIONS OF THE CHIEF EXECUTIVE OFFICER**

- 6.1 The functions of the Chief Executive Officer are specified in section 94 of the Act. The Chief Executive Officer is responsible for—
- a) establishing and maintaining an appropriate organisational structure for the Council;
  - b) ensuring that the decisions of the Council are implemented without undue delay
  - c) the day to day management of the Council's operations in accordance with the Council Plan;
  - d) developing, adopting and disseminating a code of conduct for Council staff
  - e) providing timely advice to the Council;
  - f) ensuring that the Council receives timely and reliable advice about its legal obligations under the Act and any other Act;
  - g) supporting the Mayor in the performance of the Mayor's role as Mayor;
  - h) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and
  - i) performing any other function or duty of the Chief Executive Officer specified in the Act or any other Act.
- 6.2 Within the budget parameters set by the Council, the Chief Executive Officer may appoint as many members of Council staff as are required to perform the functions

of the Council under the Act and any other Act, and to enable the Chief Executive Officer to carry out her or his functions.

- 6.3 The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff.
- 6.4 The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.
- 6.5 Good governance depends upon a clear understanding and agreement about the different roles and responsibilities within a council. Councillors acknowledge that those who govern and those who manage must work together in order to produce the best outcomes for the community over the long term.
- 6.6 Councillors undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols defining appropriate arrangements for interaction between Council staff and Councillors that are put in place by the Chief Executive Officer.
- 6.7 The Chief Executive Officer is the official spokesperson for the Council regarding operational matters.

## **7. COUNCILLOR CONDUCT PRINCIPLES**

Councillors will observe and demonstrate the standards of conduct that the community has a right to expect of them. These standards are the 'Councillor Conduct Principles' which are described in the Act and include the following 'Primary Principle' and seven 'General Principles'.

### **7.1 Primary principle**

Section 76B of the Act sets out the primary principle of Councillor conduct that in performing the role of a Councillor, a Councillor must –

- a) act with integrity;
- b) impartially exercise his or her responsibilities in the interests of the local community; and
- c) not improperly seek to confer an advantage or disadvantage on any person.

### **7.2 General principles**

Section 76BA of the Act specifies that in addition to acting in accordance with the primary principle of Councillor Conduct specified in section 76B, in performing the role of a Councillor, a Councillor must:

- a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;

- d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- f) act lawfully and in accordance with the trust placed in him or her as an elected representative; and
- g) 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.

### **7.3 Frankston-specific Councillor conduct principles**

As community and civic leaders with responsibility for the Council's decision-making structure, Councillors will lead by example and promote the highest standards in the way Council business is conducted.

In carrying out their role, Councillors will embrace and demonstrate Council's values which foster a spirit of working together for Frankston. In challenging and inspiring each other to realise their vision for the City, Councillors will demonstrate and commit to the following additional (Frankston-specific) Councillor Conduct Principles.

#### **7.3.1 Objectivity and transparency**

Councillors will conduct themselves in all decisions and actions professionally and ethically and will take responsibility for actions in an honest and transparent way. Councillors will:

- a) make all decisions solely on merit; and
- b) be as transparent as possible about their decisions and actions, giving reasons for their decisions, only restricting information as required by law or where the wider public interest requires such restriction.

#### **7.3.2 Teamwork**

There are nine members of the Council, who are democratically elected representatives of the Frankston community. Councillors will:

- a) acknowledge and embrace political, social, cultural and personal diversity. Nothing within the Code of Conduct will in any way impinge on the individual's right to express themselves in keeping with their own personal political, social or cultural beliefs and customs, provided that such expression of individualist belief and actions is at all times consistent with the expectations of a Councillor's behaviour, as stipulated in the Code of Conduct;
- b) contribute towards the Councillor group working its way towards a collective decision;
- c) make decisions in Council meetings, recognising that in discussions leading up to such decisions, for example in Assemblies of Councillors not open to the public, Councillors may explore a range of positions and express a range of views;
- d) not report the views expressed by fellow Councillors in meetings closed to the public, outside of those meetings. To do so would discourage full discussion of developing issues and the ability for



Councillors to firm up their views as questions are answered and information provided;

- e) be accountable for their vote and statements in support of their vote at the time that the matter is decided in the Council meeting; and
- f) encourage and permit all Councillors to develop and grow their personal attributes, skills and expertise in the role of Councillor.

### **7.3.3 Meetings with applicants for proposed developments**

Councillors will ensure that all communications and conversations (including, but not limited to, meetings, emails and telephone calls) with the developer / applicant / consultant for any development proposed within the Frankston municipality, regarding the proposed development, will occur in the presence of at least two members of Council staff.

For the purposes of this clause, “developer / applicant / consultant” means a party with a town planning application under consideration in the Frankston municipality, where the total sum of works exceeds \$100,000.

### **7.3.4 Ethical decision-making**

If Councillors are unsure about the ethical issues involving an action or decision, consideration should be given to the following:

- a) Is the decision or conduct lawful?
- b) Is the decision or conduct consistent with the Council’s policies and objectives, and with this Code of Conduct?
- c) What will the outcome be for the community, the Council, a Councillor(s) and any other parties?
- d) Do these outcomes raise a conflict of interest or lead to private gain or loss at public expense?
- e) Can the decision or conduct be justified in terms of the public interest and would it withstand public scrutiny?
- f) In the event of any uncertainty about the ethical nature of any action or decision, Councillors should seek advice in the first instance from the Mayor and/or the Chief Executive Officer, the Chair of the Audit and Risk Management Committee, the Victorian Local Governance Association or Local Government Victoria.

## **8. INTERACTIONS WITH COUNCIL STAFF**

8.1 Councillors acknowledge that section 95 of the Act requires Council staff to:

- a) act impartially;
- b) act with integrity including avoiding conflicts of interest;
- c) accept accountability for results; and
- d) provide responsive service.

8.2 When interacting with Council staff, Councillors will:

- a) recognise that all staff members are accountable to the Chief Executive Officer;
- b) respect that, pursuant to section 94A of the Act, the Chief Executive Officer is responsible for appointing, directing, managing and dismissing all Council staff, and for all other issues that relate to Council staff;
- c) recognise that a professional and well-managed team of managers and staff is essential to the wellbeing of the community;
- d) not direct, or seek to direct or influence a member of Council staff in the exercise or in the performance of a delegated duty or function, in an office or position the staff member holds, or in relation to advice provided to Council;
- e) interact with staff in a respectful, courteous manner that is not (or not likely to be) intimidatory;
- f) not impede the ability of Council staff to give independent professional advice to Council;
- g) recognise that a resolution of the Council is the appropriate mechanism to establish or amend Council policy. In the case of routine enquiries, however, a relevant member of the Executive Team (or the appropriate Executive Assistant) may be contacted for clarification;
- h) adhere to any adopted Council policy or agreed protocols regarding interactions between staff and Councillors;
- i) direct any concerns about the performance of any staff member or service unit to the Chief Executive Officer; and
- j) agree that workplace bullying can and should be prevented. As a collective, Council will collaborate with staff and unions to institute and uphold policies to facilitate an environment free from physical and psychological violence.

## **9. OTHER OBLIGATIONS**

### **9.1 Use of Council resources**

Councillors undertake to use Council resources effectively and economically, and in accordance with any adopted policy or agreed protocols. Councillors will:

- a) maintain adequate security over Council property, facilities and resources provided to assist in the performance of Councillors' roles, and will comply with any Council policies applying to their use;
- b) declare that any expense claims submitted (including for out of pocket expenses or reimbursement for vehicle use) are accurate and relate strictly to Council business and activities, and comply with the relevant legislative provisions and Council policy;
- c) not use Council resources, including images and services of Council staff, for private or political purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- d) not use public funds or resources in a manner that is improper or unauthorised.

## 9.2 Gifts and hospitality

Notwithstanding any other policy, Councillors will scrupulously avoid situations giving rise to the perception that a person or body, through the provision of gifts or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from the Council.

A **gift** means any disposition of property, other than by a will, made by a person to a Councillor without consideration in money or money's worth or with inadequate consideration, including:

- a) the provision of a service (other than volunteer labour);
- b) the payment of an amount in respect of a guarantee; and
- c) the making of a payment or contribution at a fundraising function.

The **gift disclosure threshold** in the Act, currently \$500, applies to a gift or gifts given to a Councillor by any person, company or body but does not include reasonable hospitality received by the Councillor at an event or function attended by the Councillor in an official capacity.

Councillors will:

- (a) where a gift is accepted with a value equal to or above \$150, be mindful of the potential for a gift to give rise to the perception of being an attempt to gain favourable treatment, and ensure for transparency and accountability purposes that the gift is recorded in Council's Gifts Register noting whether the gift was retained or handed to the Council;
- (b) take all reasonable steps to ensure that their immediate family members (parents, spouse, children and siblings) do not receive gifts or benefits that give rise to the perception of being an attempt to gain favourable treatment;
- (c) recognise that a gift or gifts equal to or above the statutory gift disclosure threshold (currently \$500) received during the period described in section 78C(1) of the Act from a person, company or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of the applicable gift or gifts; and
- (d) record all election campaign donations in their campaign donation return.

Where a gift is received on behalf of the Council, the gift becomes the property of the Council. For transparency and accountability purposes, any such gift will be recorded in Council's Gifts Register with a notation that it is the property of the Council.

## 9.3 Communication

- a) Councillors recognise their responsibility, as representatives of the local community, to be responsive to community views and to adequately communicate the position and decisions of the Council.
- b) Councillors undertake to comply with the Council's communications policy and to respect the roles of the Mayor and Chief Executive Officer as the official spokespersons of the Council.

- c) Although any Councillor is entitled to communicate his or her views to the media, constituents and others, they should not in doing so:
  - (i) criticise or actively seek to undermine any decision or position already taken by the Council;
  - (ii) bring the Council into disrepute; or
  - (iii) purport to speak on behalf of the Council, without authority.
  
- d) Where an individual Councillor chooses to express a personal opinion through the media, they will:
  - (i) make it clear that any such comment is a personal view and does not represent the position of Council; and
  - (ii) ensure that any such comment could not reasonably be construed as being derogatory, offensive or insulting to any person.

#### **9.4 Use of social media**

In addition to the Communication provisions above, the following provisions apply to the use of all forms of social media.

When using social media, Councillors will endeavour to maintain an appropriate separation between their role and duties as a Councillor and their life as a private citizen.

On any social media account on which a Councillor may discuss matters relevant to Council, the Councillor will include in the header of the account a statement that they are providing their own individual comment and are not speaking for or on behalf of Frankston City Council.

When using any social media which enables them to be identified as a Councillor of the Council, a Councillor will not:

- a) imply that they are authorised to speak on behalf of the Council, or give the impression that their expressed views are those of the Council;
- b) post, make comment or endorse (for example 'like') material that is offensive, obscene, defamatory, damaging, deceptive, threatening, harassing, bullying, discriminatory, hateful, racist, sexist, that infringes copyright or privacy, that constitutes a contempt of court, that breaches a court suppression order or is otherwise unlawful;
- c) use or disclose confidential information obtained in their capacity as a Councillor; or
- d) make any comment, post or endorse any material that might otherwise cause damage to the Council's reputation or bring it into disrepute.

Where a Councillor has a social media account that refers to them as a Councillor, in accordance with Council's Election Period Policy this account must be deactivated and may only be reactivated upon the individual being officially sworn in as a Councillor of Frankston City Council.

#### **9.5 Personal dealings with Council**

When Councillors deal with the Council in their private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) they will not expect, nor will they request, preferential treatment in relation to any such private matter.

Councillors will avoid any action that could lead Council staff or members of the public to believe that they are seeking preferential treatment.

#### **9.6 Charter of Human Rights**

Councillors acknowledge the human rights that are protected under the Victorian *Charter of Human Rights and Responsibilities Act 2006* ("the Charter"), and undertake to exercise their duties, so far as is possible, in a manner that is compatible with these human rights.

#### **9.7 Privacy and the handling of personal and health information**

Councillors acknowledge that the requirements of the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001* apply to handling personal information and health related information about residents, staff and Councillors.

#### **9.8 Freedom of Information**

Councillors will fully cooperate with the Council's administration to ensure that the Council can meet its legislative obligations in relation to any request made under the *Freedom of Information Act 1982*.

#### **9.9 Candidature of Councillors in State or Federal elections**

In order to avoid community perception of the politicisation of local government resulting from Councillors running for office in State or Federal Parliament, Councillors will adhere to the provisions set out below:

- a) Councillors note that section 28A of the Act disqualifies an individual from being a Councillor if they are employed as a Ministerial officer, a Parliamentary adviser or an electorate officer by a member of the Parliament of Victoria or in a corresponding position (however designated) by or for a member of the Parliament of the Commonwealth of Australia or of another State or Territory of the Commonwealth.
- b) A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as a candidate for a State or Federal election ('a prospective candidate') will provide written advice to the Mayor, Councillors and Chief Executive Officer, as soon as practicable after the endorsement or expression of intention.
- c) A Councillor who is a prospective candidate will declare his or her intended candidacy at a meeting of the Council as soon as practicable after forming the intention to nominate and will then notify the Mayor, Councillors and Chief Executive Officer.
- d) A Councillor who nominates as a candidate for a State or Federal election ('a nominated candidate') will apply for leave of absence from the Council. This leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election ('the nomination date') and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on leave of absence will not attend meetings of the Council or otherwise act as a Councillor. If a Councillor

who is on leave of absence is invited to attend a private function due to their position as a Councillor, they will not use the function in relation to his or her candidacy.

- e) Council, upon receiving an application for a leave of absence from a Councillor who is a nominated candidate or who intends to become a nominated candidate, will approve that application.
- f) A Councillor who is a prospective candidate or a nominated candidate must take care when making public comment to differentiate between his or her role as a State or Federal election candidate and their role as a Councillor.
- g) A Councillor who is a nominated candidate will observe the requirements of the Council's most recent election period policy, from the nomination date until the close of voting for the State or Federal election in which they are running.
- h) A Councillor who is a prospective candidate or a nominated candidate will not use Council resources, including Council equipment and facilities, in relation to his or her candidacy.
- i) A Councillor who is a prospective candidate or a nominated candidate must not use Council activities, including committee meetings and Council-related external activities, in relation to his or her candidacy.

#### **9.10 Compliance with Election (Caretaker) Period Policy**

Councillors are committed to upholding the highest standards of governance during election periods, and therefore agree to abide by the requirements of the Frankston City Council Election Period Policy, as adopted by Council in accordance with section 93B of the Act.

Notwithstanding the above, Councillors acknowledge that an alleged contravention of the provisions in the Act relating to Councillor eligibility, electoral conduct and the election caretaker period would not be dealt with by Council using the Dispute Resolution Procedure in this Councillor Code of Conduct. Such an allegation would instead need to be referred to the Victorian Electoral Commission or the Local Government Investigations and Compliance Inspectorate (depending on the nature of the allegation) for investigation and any consequent action.

#### **9.11 Access to documents and information**

Councillors are entitled to request documents and information relevant to an issue before, or concerning, Council. Such documents and information will be supplied in a manner that complies with Council's privacy obligations. A Councillor's request for access to Council documents will be made to the CEO or relevant Director. A Councillor will not access Council files or documents outside the formal process.

#### **9.12 Access to Council offices**

Councillors are entitled to access all civic areas, the Councillors' office and Councillors' lounge area, the Mayor's office, the common areas adjoining the offices of the Mayor and CEO, the Council Chamber and all meeting rooms, in the performance of their official duties and functions. However, a Councillor must not access a staff member's office or work station unless in the presence of the staff member.

Councillors who are not undertaking official duties and functions have the same rights of access to Council buildings and premises as any other member of the public.

## 10. PROHIBITED CONDUCT

Councillors acknowledge that the Act specifies some types of conduct that is expressly prohibited. They relate to specific actions and are unlike the 'Principles', which describe how Councillors should conduct themselves in more general terms. These matters can be particularly relevant to considerations of misconduct or serious misconduct by a Councillor Conduct Panel or gross misconduct by the Victorian Civil and Administrative Tribunal. Councillors also acknowledge that, in many cases, a breach of a specific provision in the Act may be subject to prosecution in a Court.

The table below provides guidance about various types of prohibited conduct, and the entities that would be responsible for investigating such allegations against a Councillor:

<b>Allegation</b>	<b>Definition</b>	<b>Who Can Apply / Report</b>	<b>Responsible Entity</b>
Misconduct	Failure to comply with the Council's internal resolution procedure; or Failure to comply with a written direction given by the Council under section 81AB; or Repeated contravention of any of the Councillor conduct principles.	Council (with Council resolution) A Councillor A group of Councillors	Councillor Conduct Panel
Serious misconduct	Failure to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or Failure to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or Failure to comply with a direction of a Councillor Conduct Panel; or Continued or repeated misconduct after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or Bullying of another Councillor or member of Council staff; or Conduct in respect of a member of Council staff in contravention of section 76E; or The release of confidential information in contravention of section 77.	Council (with Council resolution) A Councillor A group of Councillors Chief Municipal Inspector	Councillor Conduct Panel
Gross	Behaviour that demonstrates that	Chief Municipal	VCAT

misconduct	a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor.	Inspector	
Breach of Local Government Act	Conduct including misuse of position; improper direction and improper influence; release or misuse of confidential information; failure to manage a conflict of interest.		Local Government Investigations and Compliance Inspectorate
Corrupt Conduct	Misuse of a person's position or power to obtain personal gain, either for themselves or others.	Any member of the public or the public sector may make a complaint, including as a protected disclosure.	Independent Broad-Based Anti-Corruption Commission (IBAC)
Breach of privacy or data security	Breach of privacy or data security, including inappropriate collection, release or disclosure of information relating to a person.	Any member of the public may make a complaint.	Commissioner for Privacy and Data Protection or the Health Services Commissioner
Criminal conduct	Suspected criminal conduct, including theft and assault.	Any person may make a complaint.	Victoria Police

### 10.1 Misuse of position

Section 76D of the Act creates the offence of misuse of position, and can apply even after a Councillor ceases to hold office. An offence occurs if a Councillor or former Councillor:

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

Circumstances which would involve a misuse of position by a Councillor include:

- a) making improper use of information acquired as a result of the position he or she held or holds;
- b) disclosing information that is confidential within the meaning of section 77 of the Act;
- c) directing or improperly influencing a member of Council staff, or trying to do so, in contravention of section 76E of the Act;
- d) exercising or performing, or trying to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform;
- e) using public funds or resources in a manner that is improper or unauthorised; and
- f) failing to disclose a conflict of interest



## **10.2 Improper direction**

Section 76E of the Act states that a Councillor must not improperly direct a member of Council staff in the exercise of any power or in the performance of any duty or function by that staff member. Nor must they attempt to do so.

It is an offence for a Councillor to direct or seek to direct a staff member:

- a) in the exercise of a delegated power, or the performance of a duty or function;
- b) in the exercise of a power, or performance of a duty or function as an authorised officer under any Act;
- c) in the exercise of any power or performance of a duty or function that the staff member exercises in an office or position held under another Act; or
- d) in relation to advice provided to the Council or a special committee.

This rule follows from the nature of local government and the broad range of powers given to Councils under many Acts. These powers are given to the Council as a whole and an individual Councillor only exercises powers when he or she votes in a Council or special committee meeting. An individual Councillor does not have the legal authority to instruct a member of Council staff or to direct the Council administration.

## **10.3 Confidential information**

Section 77 of the Act provides that a Councillor must not release information that he or she knows, or should reasonably know, is confidential.

The section also sets out the ways in which information is made confidential. This includes where:

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

In accordance with Section 77(1A) a Councillor may disclose information that the he or she knows is confidential information in the following circumstances:

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

- f) to a municipal monitor to the extent reasonably required by the municipal monitor; or
- g) to the extent reasonably required for any other law enforcement purposes.

#### 10.4 Conflict of interest

Sections 77A to 80A of the Act require Councillors to disclose conflicts of interest:

- in Council meetings;
- in meetings of special committees;
- in audit committee and section 223 committee meetings; and
- in meetings that are classified as Assemblies of Councillors.

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

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

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

When declaring a conflict of interest at a meeting of a Committee or the Council, a Councillor must make a declaration immediately the item of business is introduced and identify the type and nature of the conflict.

In addition to the provisions contained in the Act relating to Assemblies of Councillors, Councillors will, when attending a meeting at which a Council staff member is present, disclose any conflicts of interest which, had the meeting been an Assembly of Councillors, they would have been required to disclose.

Councillors will also disclose any conflict of interest relating to any matters discussed at Councillor-only Sessions.

## 11. GRIEVANCE RESOLUTION PROCEDURE

This procedure prescribes the manner of dealing with any grievance\* directed at or relating to a Councillor or Councillors, by another Councillor or Councillors.

The procedure takes into account the following principles:

- a) prior to commencing any formal grievance resolution process, the Councillors who are parties to a grievance will endeavour to resolve the issues at the local level, in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.
- b) the grievance should be dealt with expeditiously so as to avoid the potential for escalation and to maximise control and resolution of the matter at the local level.
- c) the grievance should be dealt with in accordance with the principles of natural justice, in an unbiased and fair manner.
- d) satisfactory resolution of any grievance will principally arise from:
  - (i) establishing timely and effective communication between the parties;
  - (ii) identifying the basis of the concerns which give rise to the grievance, the symptoms, and the most likely causes;
  - (iii) implementing an agreed or a preferred and realistic action plan;
  - (iv) engaging in a genuine attempt at resolution of the grievance raised in accordance with the principles of natural justice, equity and fair treatment for all parties; and
  - (v) the procedure being mutual and that Councillors must make a genuine and constructive attempt at resolution of the particular grievance issue.

Council's four step formal grievance resolution process involves:

- |         |   |
|---------|---|
| Step 1: | Negotiation between the parties to the grievance, facilitated by the Mayor.             |
| Step 2: | Mediation between the parties to the grievance, facilitated by an independent mediator. |
| Step 3: | Arbitration involving an independent arbiter.   |

*Note that a grievance which relates to an interpersonal conflict between Councillors, but does not involve an alleged breach of the Councillor Code of Conduct, will not be eligible to proceed to Step 3 – arbitration.*

- |         |   |
|---------|---|
| Step 4: | Referral to an external body, if appropriate. |
|---------|---|

*Note that an application for formation of a Councillor Conduct Panel can only be made in respect of a grievance involving alleged misconduct or serious misconduct, as defined in the Act.*

*The Local Government Investigations and Compliance Inspectorate will only investigate a grievance if it involves an alleged breach of the Act.*

*The Independent Broad-based Anti-corruption Commission will only investigate a grievance if it involves alleged corruption.*

## Definitions

**\*grievance** means a complaint about the conduct of a Councillor or Councillors lodged by another Councillor or Councillors. A grievance may relate to an interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council, or an alleged contravention of the Councillor Code of Conduct.

It 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 *Protected Disclosure Act 2012*.

**dispute** means a grievance which has not been able to be resolved after the conclusion of Steps 1, 2 and 3 (if eligible).

Before commencing any formal grievance resolution process, the Councillors who are parties to a grievance will exhaustively endeavour to resolve the issue in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

This grievance resolution procedure is intended to be used only when Councillors have been unable to resolve a grievance and where the situation is unduly affecting the operation of the Council.

*Note: 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.*

In the event that the Mayor is a party to the grievance, the Deputy Mayor will perform the functions in this procedure ascribed to the Mayor, in the Mayor’s stead. If the Mayor and Deputy Mayor are both parties to the grievance, the most recent past Mayor who is a member of the incumbent Council will perform the functions in this procedure ascribed to the Mayor, in the Mayor’s stead. If there is no such past Mayor available to perform the functions, the most recent past Deputy Mayor who is a member of the incumbent Council will perform the functions. If there is no such past Deputy Mayor available to perform the functions, Council’s Principal Conduct Officer (‘PCO’) will appoint a Councillor of the incumbent Council who is not a party to the grievance, to perform the functions in this procedure ascribed to the Mayor.

All documents produced in connection with a grievance resolution procedure are to be treated as confidential and may not be publically released unless the Mayor, CEO and PCO consider that it is appropriate in the circumstances.

## Step 1 – Facilitated negotiation

### Preparation of grievance statement

a) The Councillor or Councillors raising the matter will prepare a written grievance statement which sets out the circumstances giving rise to the grievance.

The grievance statement will include:

- (i) the name of the Councillor or Councillors who are the subject of the grievance;
- (ii) the allegations made and the provisions of the Code of Conduct that are alleged to have been contravened (if applicable);

- (iii) evidence in support of the allegations;
- (iv) a summary of the endeavours that have been made to resolve the issue; and
- (v) the signature of the Councillor or Councillors raising the grievance, and the date.

It is open to the Councillor or Councillors raising the grievance to seek assistance in preparing the grievance statement, but this assistance cannot be provided by any member of Council staff.

- b) The grievance statement will be provided to the PCO.

#### Notifications by PCO

- c) As soon as practicable (but not more than 3 business days) after receiving a grievance statement, the PCO will:
  - (i) Provide a copy of the grievance statement to the CEO and Mayor;
  - (ii) Provide a copy of the grievance statement to the Councillor or Councillors who are the subject of the grievance; and
  - (iii) Advise the Mayor and the parties to the grievance that they will be required to attend a facilitated negotiation meeting, and seek an indication of availability.

#### Convening of facilitated negotiation meeting by PCO

- d) The Mayor and the parties to the grievance have an opportunity to notify the PCO of any preferences as to the date and time for the facilitated negotiation meeting, within 3 business days of receiving the PCO's advice under clause c) (iii).
- e) Four business days after sending the advice in clause c)(iii), the PCO will determine a suitable date and time for the facilitated negotiation meeting, taking into consideration as far as practicable any preferences that have been expressed by the Mayor and the parties to the grievance.
- f) The PCO will notify the Mayor and the parties to the grievance of the date, time and venue for the facilitated negotiation meeting.

#### Conduct of the facilitated negotiation meeting

- g) The Councillors who are parties to the grievance, and the Mayor and the PCO must attend the facilitated negotiation meeting.
- h) Each party to the grievance is entitled to bring a support person to the meeting. The support person may not speak at or otherwise participate in the meeting, but may request that the meeting be briefly adjourned to enable them to speak to the party they are supporting.
- i) The Mayor will chair the facilitated negotiation meeting, ensuring that all parties to the grievance are given the opportunity to speak.

The Mayor will also provide guidance to the parties 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.

- j) The PCO will create a meeting record of the facilitated negotiation, which will include:

- (i) Meeting date, start and finish time;
  - (ii) The name and title of each attendee, including any support persons;
  - (iii) Any adjournments, including who requested the adjournment, the reason given, and the start and finish time;
  - (iv) Summary of key points discussed; and
  - (v) Details of any resolution, agreement or other outcome achieved at the meeting and whether the grievance is deemed to have been resolved.
- k) The PCO may make an audio recording of the facilitated negotiation meeting, if requested to do so. No other person will be permitted to make a recording of the meeting. Any audio recording made by the PCO will be securely and confidentially stored in Council's corporate records system.
  - l) Within 3 business days of the conclusion of the facilitated negotiation meeting, the PCO will send a copy of the draft meeting record to the CEO, the Mayor and each of the parties to the grievance.
  - m) The Mayor and each of the parties have an opportunity to notify the PCO in writing of any perceived inaccuracies or errors in the draft meeting record, within 3 business days of its receipt. A copy of any such notification must also be provided to the other party or parties to the grievance.
  - n) If no issues are raised, the PCO will finalise the meeting record and send a copy of the final version to the CEO, the Mayor and each of the parties to the grievance.
  - o) If any issues are raised with the draft meeting record, the PCO will decide whether amendments are required. The PCO may listen to the audio recording of the meeting (if made) to assist in making this decision. The PCO will notify the Mayor and each of the parties to the grievance of the decision regarding amendments to the meeting record.
  - p) Due to the substantial time and resources involved, no transcript of the audio recording will be made unless the PCO determines this to be necessary to resolve a dispute regarding the accuracy of the meeting record.
  - q) If the parties cannot resolve the grievance at the meeting, a further meeting may be convened.

## **Step 2 – Mediation**

- a) If the grievance remains unresolved after the completion of Step 1, or if a grievance was deemed to have been resolved during Step 1 on the basis of an agreement which has subsequently been breached, the grievance may proceed to Step 2 – mediation.
- b) Where a grievance proceeds to mediation, the parties to the grievance must not communicate with the mediator outside the formal mediation process.

### Request for mediation

- c) A party to a grievance which remains unresolved after the completion of Step 1 may make a written request to the PCO for the grievance to proceed to Step 2 – mediation.  
Similarly, a party to a grievance that was deemed to have been resolved during Step 1 on the basis of an agreement which has subsequently been breached, may make a written request to the PCO for the grievance to proceed to Step 2 – mediation.

### Convening of mediation by PCO

- d) As soon as practicable after receiving a written request for mediation, the PCO will identify an independent mediator who is suitably qualified and able to conduct a fair and balanced mediation of the grievance. The PCO will confirm with the mediator that they do not have any known conflict of interest through prior contact with any of the parties to the grievance, and obtain a fee estimate for the mediation process.
- e) The PCO will advise the parties to the grievance of the name of the proposed mediator. The parties to the grievance have an opportunity to notify the PCO of any objection to the proposed mediator, on the basis of an existing relationship or prior contact, within 3 business days of receiving the PCO's advice.
- f) If any objection is made regarding the proposed mediator, the PCO will consider the objection and make any enquiries necessary to determine whether the circumstances warrant nominating a different mediator. If a different mediator is to be nominated, the PCO will recommence the process from Step 2 c).
- g) No sooner than four business days after advising the parties to the grievance of the proposed mediator, if no objections have been received, the PCO will:
  - (i) Formally appoint the mediator in writing, providing a copy of the grievance statement (described in Step 1 – clause a)), the meeting record of the facilitated negotiation (described in Step 1 – clause j)) and any other documents deemed by the PCO to be relevant to the grievance; and
  - (ii) consult with the mediator to determine arrangements for scheduling the mediation; and
  - (iii) advise the parties to the grievance of the time and place for the mediation.

### Conduct of the mediation

- h) The Councillors who are parties to the grievance must attend the mediation.
- i) Each party to the grievance is entitled to bring a support person to the mediation. The support person may not speak at or otherwise participate in the mediation, but may request that the mediator briefly adjourn the mediation to enable them to speak to the party they are supporting.
- j) The mediator will have responsibility for the oversight of a confidential mediation process, and will manage the mediation as they deem appropriate, ensuring that all parties to the grievance are given the opportunity to speak.
- k) The PCO will attend the mediation and assist the mediator in the administration of the process, and keep the Mayor and Chief Executive Officer abreast of the progress of the mediation.
- l) The PCO will create a meeting record of the mediation, which will include:
  - (i) Meeting date, start and finish time;
  - (ii) The name and title of each attendee, including any support persons;
  - (iii) Any adjournments, including who requested the adjournment, the reason given, and the start and finish time;
  - (iv) Summary of key points discussed;
  - (v) Details of any resolution, agreement or other outcome achieved at the mediation and whether the grievance is deemed to have been resolved; and
  - (vi) Any other matters which the mediator requests to be included.

- m) The PCO may make an audio recording of the mediation, if requested by the mediator to do so. Any audio recording made by the PCO will be securely and confidentially stored in Council's corporate records system. No other person may make a recording of the meeting without the express permission of the mediator.
- n) Within 3 business days of the conclusion of the mediation, the PCO will send a copy of the draft meeting record to the mediator and each of the parties to the grievance.
- o) The mediator and each of the parties have an opportunity to notify the PCO in writing of any perceived inaccuracies or errors in the draft meeting record, within 3 business days of its receipt. A copy of any such notification must also be provided to the other party or parties to the grievance.
- p) If no issues are raised, the PCO will finalise the meeting record and send a copy of the final version to the mediator and each of the parties to the grievance.
- q) If any issues are raised with the draft meeting record, the mediator will decide whether amendments are required. The mediator will notify the PCO and the parties to the grievance of the decision regarding amendments to the meeting record.
- r) A transcript of the audio recording will be made if requested by the mediator.
- s) If the parties are able to achieve a resolution to the grievance, whether by means of an apology or any other agreed action, the matter will be deemed to have been addressed and completed.

### **Step 3 – Hearing before arbiter**

- a) A party to a grievance involving an alleged contravention of the Councillor Code of Conduct which remains unresolved after the completion of Step 2 may make an application for the grievance to proceed to Step 3 – arbitration.

Similarly, a party to a grievance involving an alleged contravention of the Councillor Code of Conduct that was deemed to have been resolved during Step 2 on the basis of an agreement which has subsequently been breached, may make an application for the grievance to proceed to Step 3 – arbitration.

*Note that a grievance which relates to an interpersonal conflict between Councillors, but does not involve an alleged breach of the Councillor Code of Conduct, will not be eligible to proceed to Step 3 – arbitration.*

- b) Where a grievance proceeds to arbitration, the parties to the grievance must not communicate with the arbiter outside the formal arbitration process.

### Application for arbitration

- c) An application for arbitration will be provided to the PCO in the first instance, and will include:
  - (i) a copy of the grievance statement (described in Step 1 – clause a));
  - (ii) a copy of the meeting record of the facilitated negotiation (described in Step 1 – clause j));
  - (iii) a copy of the meeting record of the mediation (described in Step 2 – clause k));  
and
  - (iv) a statement as to why arbitration is considered necessary.



### Convening of Arbitration by PCO

- d) The PCO will identify an independent arbiter who is suitably qualified and able to conduct a fair and balanced arbitration of the grievance. The PCO will confirm with the arbiter that they do not have any known conflict of interest through prior contact with any of the parties to the grievance, and obtain a fee estimate for the arbitration process.
- e) The PCO will advise the parties to the grievance of the name of the proposed arbiter. The parties to the grievance have an opportunity to notify the PCO of any objection to the proposed arbiter, on the basis of an existing relationship or prior contact, within 3 business days of receiving the PCO's advice.
- f) If any objection is made regarding the proposed arbiter, the PCO will consider the objection and make any enquiries necessary to determine whether the circumstances warrant nominating a different arbiter. If a different arbiter is to be nominated, the PCO will recommence the process from Step 3 d).
- g) No sooner than four business days after advising the parties to the grievance of the proposed arbiter, if no objections have been received, the PCO will formally appoint the arbiter in writing, providing a copy of application for arbitration (described in Step 3 b)).

### Conduct of the Arbitration

- h) The arbiter will have responsibility for the oversight of a confidential grievance resolution process which will include:
  - (i) consideration of an application alleging a contravention of the Councillor Code of Conduct; and
  - (ii) making findings in relation to any application alleging a contravention of the Councillor Code of Conduct and the submission of those findings in writing to the Council.
- i) In considering an application alleging a contravention of the Councillor Code of Conduct, an arbiter will:
  - (i) in consultation with the PCO, fix a time and place to hear the application;
  - (ii) authorise the PCO to formally notify the parties of the time and place of the hearing;
  - (iii) hold as many hearings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing;
  - (iv) 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;
  - (v) ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter;
  - (vi) ensure that the parties can submit such documents and call such witnesses as are reasonably required for the hearing;
  - (vii) consider an application by a respondent (ie a Councillor who is the subject of the grievance) 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. 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 party in their entirety.

- (viii) ensure that the rules of natural justice are observed and applied in the hearing of the application;
- (ix) ensure that the hearings are closed to the public; and
- (x) discuss with the parties the confidentiality requirements regarding the arbitration process, and any documents produced in connection with the arbitration.

#### Arbiter's findings

- j) An arbiter may find:
  - (i) that the allegation that a Councillor has contravened the Code is frivolous or vexatious;
  - (ii) that a Councillor who is the subject of the grievance has not contravened the Code; or
  - (iii) that a Councillor who is the subject of the grievance has contravened the Code.
- k) The arbiter will give a copy of his or her findings and the statement of reasons to the PCO, for forwarding to the parties.

#### Council consideration of Arbiter's findings

- l) The arbiter's findings will be presented to a formal Closed Council Meeting, so that Council can consider and formally resolve on the issue.
- m) If the arbiter has found that the allegation that a Councillor has contravened the Code is frivolous or vexatious, the Council must require the Councillor who made the allegation to reimburse the Council the expenses it has incurred in connection with the hearing before the arbiter.
- n) If the arbiter has found that a Councillor has contravened the Councillor Code of Conduct, the Council may resolve to:
  - (i) direct the Councillor to make an apology in a form or manner specified by the Council;
  - (ii) direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (beginning with the next scheduled meeting);
  - (iii) direct that, for a period of up to, but not exceeding, 2 months commencing on a date specified by the Council, the Councillor be removed from any position where the Councillor represents the Council and to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.
- o) If the Council determines that the grievance has been resolved, whether by means of an apology or other agreed action, the matter will be deemed to have been addressed and completed.

#### Suspension of arbitration during election period

- p) An application for a Step 3 arbitration cannot be made during the election period for a general Council election. Any Step 3 procedure that is in progress must be suspended during the election period for a general Council election.
- q) If the respondent to an application for a Step 3 arbitration 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:

- (i) the application was made by the Council and the Council so resolves; or
- (ii) 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
- (iii) the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

#### **Step 4 - Referral**

A grievance which remains unresolved after the conclusion of Steps 1, 2 and 3 (if eligible) will be deemed to be a “dispute”.

*Note that:*

- *an interpersonal conflict between Councillors which does not involve an alleged breach of the Councillor Code of Conduct will not be eligible to proceed beyond the conclusion of Step 2 – mediation; and*
  - *a dispute which does not involve alleged misconduct or serious misconduct, an alleged breach of the Act or alleged corruption will not be appropriate for referral to an external body.*
- a) A dispute involving alleged misconduct or serious misconduct, as defined in the Act, may form the basis of an Application for Formation of a Councillor Conduct Panel under section 81B of the Act.
- Such an application may be made by the Council, a Councillor or Councillors and addressed to the Principal Councillor Conduct Registrar (an officer of the State Government Department of Environment, Land, Water and Planning).
- b) A dispute involving an alleged breach of the Act may be referred to the Local Government Investigations and Compliance Inspectorate for investigation.
- c) A dispute involving alleged corruption may be referred to the Independent Broad-based Anti-corruption Commission for investigation.

*Note: Upon referral to an external body, the dispute is effectively out of the control of the Council and Councillors, and becomes subject to the formal processes of the relevant body.*

**12. WRITTEN DECLARATIONS TO ABIDE BY THE COUNCILLOR CODE OF CONDUCT**

At Ordinary Meeting OM8 on 2 July 2018, each Councillor in attendance made a written declaration to abide by the Councillor Code of Conduct 2018. The declarations were witnessed by the Chief Executive Officer.