



## **Councillor Code of Conduct**

### **Melton City Council**

**Adopted 8 February 2021**

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## **PART 1 INTRODUCTION**

This Councillor Code of Conduct is made under section 139 of the *Local Government Act 2020* (“the Act”).

This Councillor Code of Conduct includes the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification (s139(2)).

Section 139 of the Act requires every council to review and adopt a Councillor Code of Conduct which includes:

- the standards of conduct prescribed by the regulations;
- any provisions prescribed by the regulations;
- provisions addressing any matters prescribed by the regulations;
- any other matters which the Council considers appropriate, other than any other standards of conduct

within 4 months of a general election (s139(2),(3)).

Outside of an election, a Council may review and amend its Councillor Code of Conduct at any time (s140(1)).

A Councillor Code of Conduct must be made or amended by a formal resolution of Council at a meeting by at least two thirds of the total number of Councillors elected to the Council (s139(5)). For Melton City Council this means that at least 6 Councillors must vote in favour of the motion to adopt or amend the Councillor Code of Conduct regardless of how many Councillors are present at that meeting.

Failure by a Councillor to comply with the standards of conduct prescribed under this Councillor Code of Conduct constitutes misconduct for the purposes of the Act. The Act provides for a range of sanctions that may be imposed by an arbiter upon Councillors for misconduct.

Failure to comply with the Council’s internal arbitration process or failure to comply with a sanction directed by an arbiter amounts to serious misconduct.

Continued or repeated misconduct after an initial finding will also amount to serious misconduct.

This Councillor Code of Conduct is made by Council and relates only to complaints by Council or Councillors against another or other Councillors(s).

A complaint made by a member of the public in relation to a breach of this Councillor Code of Conduct has no effect unless the matter is ‘taken up’ by the Council or a Councillor or group of Councillors on behalf of the complainant.

A complaint by a member of the public can otherwise be made to the Minister for Local Government or the Chief Municipal Inspector.

Nothing in this Councillor Code of Conduct prevents an individual Councillor with a specific issue or dispute from pursuing other avenues available to them under the law.

## PART 2 DEFINITIONS

In this Councillor Code of Conduct the following terms have the following meanings:

Act	means the <i>Local Government Act 2020</i> .
confidential information	has the same meaning as set out in section 3 of the Act.
Council	means Melton City Council.
Council (role of)	the role of a Council is as set out in the Act and as reproduced in this Councillor Code of Conduct.
Councillor	means a Councillor of the Council. The role of a Councillor is as set out in the Act and as reproduced in this Councillor Code of Conduct.
Councillor Conduct Officer	has the same meaning as set out in section 3 of the Act.
good governance	means, at a minimum, complying with the Overarching Governance Principles set out in the Act and any Ministerial Guidelines or good practice guidelines issued by the Minister pursuant to section 87 of the Act.
good practice guidelines	has the same meaning as set out in section 87 of the Act.
Mayor	means the Mayor of the Council. The role of the Mayor is as set out in the Act and as reproduced in this Councillor Code of Conduct.
member of Council staff	has the same meaning as set out in section 3 of the Act and for the purposes of this Councillor Code of Conduct, except PART 7 additionally includes volunteers, contractors, temporary staff, work experience students and any person acting for or on behalf of the Council.
municipal community	has the same meaning as set out in section 3 of the Act and as reproduced in this Councillor Code of Conduct.
overarching governance principles	has the same meaning as set out in section 3 and section 9(2) of the Act and as reproduced in this Councillor Code of Conduct.
Principal Councillor Conduct Registrar	has the same meaning as set out in section 3 of the Act.
Regulations	unless otherwise specified, mean the <i>Local Government (Governance and Integrity) Regulations 2020</i> .

## **PART 3 KEY STATUTORY PROVISIONS**

The following key statutory definitions and provisions from the Act assist in the reading of this Councillor Code of Conduct.

### **3.1 The Municipal Community**

The following non-exhaustive definition of 'municipal community' is set out in section 3 of the Act.

*municipal community includes—*

- (a) people who live in the municipal district of the Council; and*
- (b) people and bodies who are ratepayers of the Council; and*
- (c) traditional owners of land in the municipal district of the Council; and*
- (d) people and bodies who conduct activities in the municipal district of the Council.*

### **3.2 Overarching Governance Principles**

A Council must in the performance of its role give effect to the overarching governance principles.

The overarching governance principles are set out in section 9(2) of the Act.

- (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.*

### **3.3 Role of Council**

The role of a Council, which is set out in section 8 of the Act.

- (1) The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.*
- (2) A Council provides good governance if—*
  - (a) it performs its role in accordance with section 9;*

- (b) *the Councillors of the Council perform their roles in accordance with section 28.*
- (3) *In performing its role, a Council may—*
  - (a) *perform any duties or functions or exercise any powers conferred on a Council by or under this Act or any other Act; and*
  - (b) *perform any other functions that the Council determines are necessary to enable the Council to perform its role.*
- (4) *If it is necessary to do so for the purpose of performing its role, a Council may perform a function outside its municipal district.*

### **3.4 Role of a Councillor**

The role of a Councillor is set out in section 28 of the Act.

- (1) *The role of every Councillor is—*
  - (a) *to participate in the decision making of the Council; and*
  - (b) *to represent the interests of the municipal 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.*
- (2) *In performing the role of a Councillor, a Councillor must—*
  - (a) *consider the diversity of interests and needs of the municipal community; and*
  - (b) *support the role of the Council; and*
  - (c) *acknowledge and support the role of the Mayor; and*
  - (d) *act lawfully and in accordance with the oath or affirmation of office; and*
  - (e) *act in accordance with the standards of conduct; and*
  - (f) *comply with Council procedures required for good governance.*
- (3) *The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.*

### **3.5 Role of the Mayor**

The role of the Mayor is set out in section 18 of the Act.

- (1) *The role of the Mayor is to—*
  - (a) *chair Council meetings; and*
  - (b) *be the principal spokesperson for the Council; and*
  - (c) *lead engagement with the municipal community on the development of the Council Plan; and*
  - (d) *report to the municipal community, at least once each year, on the implementation of the Council Plan; and*
  - (e) *promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct; and*
  - (f) *assist Councillors to understand their role; and*

- (g) *take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and*
  - (h) *provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and*
  - (i) *perform civic and ceremonial duties on behalf of the Council.*
- (2) *The Mayor is not eligible to be elected to the office of Deputy Mayor.*

## **PART 4      STANDARDS OF CONDUCT**

The following standards of conduct are as set out in Schedule 1 of the Regulations.

### **1.      Treatment of others**

*A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor—*

- (a) *takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the **Equal Opportunity Act 2010**; and*
- (b) *supports the Council in fulfilling its obligation to achieve and promote gender equality; and*
- (c) *does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and*
- (d) *in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.*

### **2.      Performing the role of Councillor**

*A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor—*

- (a) *undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and*
- (b) *diligently uses Council processes to become informed about matters which are subject to Council decisions; and*
- (c) *is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and*
- (d) *represents 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.*

### **3.      Compliance with good governance measures**

*A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following—*

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

#### **4. Councillor must not discredit or mislead Council or public**

- (1) *In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.*
- (2) *In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.*

#### **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.*

## **PART 5 BREACHES OF PRESCRIBED STANDARDS OF CONDUCT**

### **5.1 Internal Arbitration process**

5.1.1 The Act provides that an internal arbitration process applies to any breach of the prescribed standards of conduct. Sections 141-147 of the Act and the Regulations apply to this process, which is summarised in this Councillor Code of Conduct.

5.1.2 The arbiter must ensure that:

- (a) any process or requirement set out in the Regulations is followed;
- (b) parties involved in internal arbitration process are given an opportunity to be heard by the arbiter;
- (c) a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly.

### **5.2 Making an Application**

5.2.1 An application for an internal arbitration process to make a finding of misconduct against a Councillor is made pursuant to section 143 of the Act and may be made by—

- (a) the Council following a resolution of the Council; or
- (b) a Councillor; or
- (c) a group of Councillors.

5.2.2 An application under section 143 of the Act must be made within 3 months of the alleged misconduct occurring.



5.2.3 An application under section 143 must 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.

5.2.4 The prescribed process for an application for internal arbitration are that:

- (a) an application for an internal arbitration process must specify—
  - (i) the name of the Councillor alleged to have breached the standards of conduct; and
  - (ii) the clause of the standards of conduct that the Councillor is alleged to have breached; and
  - (iii) the misconduct that the Councillor is alleged to have engaged in that resulted in the breach; and
- (b) after receiving an application under section 143 of the Act, the Councillor Conduct Officer provides the application to the Councillor who is the subject of the application.

5.2.5 An arbiter appointed to hear a matter subject to an application must:

- (a) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- (b) ensure that the hearing is not open to the public.

5.2.6 An arbiter—

- (a) may hear each party to the matter in person or solely by written or electronic means of communication; and
- (b) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit; and
- (c) may at any time discontinue the hearing if the arbiter considers that:
  - (i) the application is vexatious, misconceived, frivolous or lacking in substance; or
  - (ii) the applicant has not responded, or has responded inadequately, to a request for further information.

### **5.3 Principal Councillor Conduct Registrar must examine application**

5.3.1 The Principal Councillor Conduct Registrar, after examining an application under section 143, must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is satisfied that—

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

- 5.3.2 The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under (a) or (b) above (sections 144(1)(a) or 144(1)(b) of the Act).
- 5.3.3 The rejection of an application by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 143 in respect of the same conduct by a Councillor that was the subject of the rejected application.
- 5.3.4 Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information and must be treated as such.

#### **5.4 Arbiter must refer certain applications**

- 5.4.1 If, at any time before, during or after the hearing of an application for an internal arbitration process, 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 under section 154, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.
- 5.4.2 If the Principal Councillor Conduct Registrar receives such a referral, the Principal Councillor Conduct Registrar must notify the parties to the application for an internal arbitration process that the matter has been referred by the arbiter.

#### **5.5 Sanctions that may be imposed by an arbiter on finding of misconduct**

- 5.5.1 If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor.
- 5.5.2 If an arbiter has made a finding of misconduct against a Councillor, the arbiter may do any one or more of the following—
- (a) direct the Councillor to make an apology in a form or manner specified by the arbiter;
  - (b) suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
  - (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
  - (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
  - (e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.

- 5.5.3 The arbiter must provide a written copy of the arbiter's decision and statement of reasons to—
- (a) the Council; and
  - (b) the applicant or applicants; and
  - (c) the respondent; and
  - (d) the Principal Councillor Conduct Registrar.
- 5.5.4 Subject to 5.5.5, a copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.
- 5.5.5 If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled under 5.5.4.

## **PART 6 COUNCILLOR CONDUCT OUTSIDE OF THE PRESCRIBED STANDARDS OF CONDUCT**

### **6.1 Personal dealings with Council**

- 6.1.1 Councillors may have reason to deal with Council in their personal capacity (for example, as a ratepayer, recipient of a council service or applicant for a permit granted by council). A Councillor must not expect or request preferential treatment in relation to any private matter because of their position. Councillors must avoid any action that could lead members of the public to believe that they are seeking preferential treatment.
- 6.1.2 Councillors must undertake any personal dealings they have with the Council in a manner that is consistent with the way other members of the municipal community deal with the Council. Councillors must also ensure that they disclose and appropriately manage any conflict of interest they may have in any matter in accordance with the requirements of the Act.

### **6.2 Councillor access to information**

- 6.2.1 Councillors must only seek to access information necessary for the performance of their role.
- 6.2.2 Councillors who have a private interest only in council information have the same rights of access as any member of the public.

### **6.3 Use of information**

- 6.3.1 Any information obtained by a Councillor pursuant to their role as a Councillor must not be used for private purposes.
- 6.3.2 All relevant Council policies and legislation must be complied with in relation to the release of any information including but not limited to:
- (a) the Act;
  - (b) Council's Privacy Policy;

- (c) *Health Records Act 2001;*
- (d) *Privacy and Data Protection Act 2014; and*
- (e) *Freedom of Information Act 1982.*

#### **6.4 Internet access**

Councillors must not use council's computer resources or mobile or other devices to search for, access, download or communicate any material of an offensive, obscene, pornographic, threatening, abusive or defamatory nature, or that could otherwise lead to criminal penalty or civil liability and/or damage the council's reputation.

#### **6.5 Working with children**

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Child Safe Standards and related legislation.

Councillors must be aware of their responsibilities outlined in Council's Child Safe Policy and be clear about processes for reporting and acting on concerns or reports of abuse or neglect of a child.

In this spirit, Councillors will obtain and hold a Working with Children Check card.

#### **6.6 Council Policies**

Councillors must abide by all Council adopted policies beyond the policies set out in the prescribed standards of conduct (i.e. policy relating to Councillor and staff interaction and Councillor expenses policy).

### **PART 7 BREACHES OF COUNCILLOR CONDUCT OUTSIDE OF THE PRESCRIBED STANDARDS OF CONDUCT**

7.1 In relation to an alleged breach of Councillor Conduct outside of the prescribed standards, that is, an alleged breach of any of the clauses in PART 6 above, the following avenues for resolution apply:

- (a) Self-Resolution
- (b) Informal Mayoral negotiation
- (c) External Mediation

#### **7.1.1 Self Resolution**

Councillors must take personal responsibility and endeavour to resolve their differences in an informal, but at all times, courteous and respectful manner, recognising that they have been elected to represent the best interests of the community.

#### **7.1.2 Informal Mayoral negotiation**

If the informal resolution process between the Councillors is unsuccessful, the Mayor should be involved as soon as practically possible to convene a meeting of the parties.

The Mayor can be assisted by the Councillor Conduct Officer in this informal meeting.

If the complaint relates to the Mayor then the Deputy Mayor should convene the informal meeting.

If the complaint relates to the Mayor and the Deputy Mayor the Councillor Conduct Officer should convene the informal meeting.

### **7.1.3 External Mediation**

If reconciliation of the dispute is not possible after Mayoral negotiation, it is the responsibility of the Councillor Conduct Officer to seek assistance from an external mediator.

The Councillor Conduct Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity. The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved there is no further avenue unless there is a breach of one of the prescribed standards of conduct.

## **PART 8 ACKNOWLEDGEMENT OF CERTAIN OTHER OBLIGATIONS**

Councillors of the Council note that certain obligations exist in relation to the following matter which, whilst not matters that belong in this Councillor Code of Conduct, are important matters which go to the integrity and good governance of the Council. Some of the matters relate to offences.

- (a) Misuse of position (s123);
- (b) Directing a member of Council staff (s124);
- (c) Disclosure of confidential information (125);
- (d) Conflict of interest (s126 – 131);
- (e) Personal interests returns (s132 – 136); and
- (f) Gifts (s137 – 138);