

A Proud Community Growing Together



Melton City Council Councillor Code of Conduct 2017

Adopted: 20 February 2017

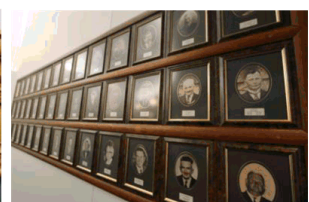
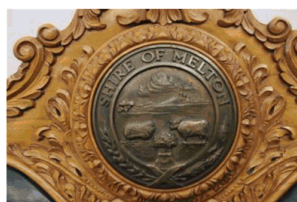


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1. GOOD GOVERNANCE AND OPERATION OF THIS CODE

The Councillor Code of Conduct is just one element of good governance.

Council's approach to governance is set out in its Governance Charter which is available on its website.

All Victorian Councils are required by the *Local Government Act* 1989 (the Act) to adopt a Councillor Code of Conduct, which includes certain prescribed information.

A person elected to be a Councillor is not capable of acting as a Councillor until that person has read the Councillor Code of Conduct and made a declaration stating that they will abide by it.

This Councillor Code of Conduct seeks to build on the information required by the Act and to set out the standard of behaviour expected by Councillors at the City of Melton.

Where this Councillor Code of Conduct is inconsistent with the Act, the Act will prevail.

A reference in this document to a 'section' including the abbreviation of 's' is a reference to a section of the Act. A reference in this document to a 'clause' or the abbreviation of 'cl' is to a clause in this Councillor Code of Conduct.

2. ROLE OF COUNCIL

The Council comprises nine Councillors who are democratically elected by the community in accordance with the Act.

The primary role of the Council is to provide leadership for the good governance of the City of Melton (s3D(1)).

This includes:

- acting as a representative government by taking into account the diverse needs of the local community in decision-making;
- providing leadership by establishing strategic objectives and monitoring their achievement;
- maintaining the viability of the council by ensuring that resources are managed in a responsible and accountable manner;
- advocating the interests of the local community to other communities and governments;
- acting as a responsible partner in government by taking into account the needs of other communities;
- fostering community cohesion and encouraging active participation in civic life; and
- overall, making all decisions impartially and in the best interests of the whole community.

Council has a statutory responsibility to represent all people that live, participate in and invest within the municipality.

The elected Council appoint and review the performance of the Chief Executive Officer of the organisation, determine Council policies and set the strategic direction of the organisation.

3. ROLE OF A COUNCILLOR

A Councillor's role is set out in section 65 of the Act. It is to participate in the decision-making of the Council, represent the local community in that decision-making and contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

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

- consider the diversity of interests and needs of the local community;
- observe principles of good governance and act with integrity;
- provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts;
- participate in the responsible allocation of the resources of Council through the annual budget; and
- facilitate effective communication between the Council and the community.

4. ROLE OF THE MAYOR

The Mayor is the elected leader of the Council and is the key formal representative of Council.

The Mayor, or a Councillor acting in the position, takes precedence at all municipal meetings and must take the chair at all meetings of the Council at which he/she is present.

The Mayor, or Councillor acting in the position, has a key role to facilitate good relationships between Councillors, and between Councillors and the Chief Executive Officer and Executive Management Group. In addition to his/her role as a Councillor, the functions of the Mayor are set out in section 73AA of the Act to:

- provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 (referred to above), and the observation of the Councillor Conduct Principles (ss76B and 76BA) and this Councillor Code of Conduct ;
- acting as the principal spokesperson for the Council;
- supporting good working relations between Councillors;
- carrying out the civic and ceremonial duties of the office of Mayor.

The Mayor should also:

- establish partnerships and networks and actively promoting Council's interests;
- create and maintain political stability within the Council;

- have a close working relationship with the Chief Executive Officer, thereby creating and ensuring positive relationships with the organisation, leading to good planning, identification and resolution of issues;
- foster positive relationships with various stakeholders, including government agencies and peak bodies;
- promote a positive image of Council and a positive organisational culture.

The Mayor will take a leadership role in consultation, advice and mediation as required in accordance with Council's agreed dispute and conflict resolution process.

5. PROHIBITED CONDUCT

Certain conduct is expressly prohibited or expressly proscribed by the Act. This conduct relates to:

- Misuse of position (section 76D)
- Improper direction and improper influence (section 76E)
- Confidential information (section 77 and 80A)
- Disclosure of Conflict of interest (section 79)
- Electoral conduct (including sub-section 24C, 27, 52, 53, 54, 55, 55A, 55C and 56)
- Register of Interests (section 81).

Alleged breach of these matters should more properly be the subject of an application to a Councillor Conduct Panel for a finding of serious misconduct or a complaint to the Local Government Inspectorate or the Independent Broad-based Anti-corruption Commission depending on the nature of the allegation.

The provisions in the Act in relation to these prohibitions/proscriptions contain penalties. Penalties may also apply in relation to an investigation itself (section 223C).

6. PRIMARY AND GENERAL COUNCILLOR CONDUCT PRINCIPLES

The Primary and General Councillor Conduct Principles are set out in sections 76B and 76BA of the Act.

Pursuant to the Primary Principle of Conduct a Councillor must:

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

Pursuant to the General Principles of Conduct a Councillor must:

- (a) avoid conflicts between his/her public duties and persons interests and obligations;
- (b) act honestly and avoid statements (oral or in writing) or actions that will or are likely to mislead or deceive a person;

- (c) treat all persons (including Councillors and Council staff) with respect and have due regard to the opinions, beliefs, rights and responsibilities of those 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;
- (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.

The Primary Principle and the General Principles are reflected in the Councillor Code of Conduct by further clauses and specific examples set out in clauses 7 to 14 inclusive.

7. GOOD CONDUCT

Councillors should act with integrity and impartiality. They should be honest and diligent, avoid conflicts of interest, treat people and fellow Councillors with respect, act lawfully and show leadership.

As a consequence of public office, Councillors are held to a higher standard of conduct and behaviour than non-office bearing members of the community. Council therefore affirms the following principles and behaviours to secure and preserve public confidence in the office of Councillor:

COURTESY AND RESPECT

Councillors will treat all people with due consideration, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities.

This includes:

- treating members of the community with dignity and ensuring that neither offence nor embarrassment are caused
- treating fellow Councillors with respect, even when disagreeing with their views or decisions
- debating contentious issues without resorting to personal acrimony or insult
- committing to attend all Ordinary and Special meetings of Council
- ensuring punctual attendance at Council and Committee meetings
- acting with courtesy towards Council staff and avoiding intimidatory behaviour
- limiting the use of mobile telephones in the Council Chamber.

INTEGRITY AND HONESTY

Acting transparently, applying high ethical and moral standards, Councillors must use their position of elected authority for the good governance and leadership of the City of Melton.

This includes:

- being honest in all dealings with the community, with other Councillors and with Council staff, avoiding actions that may mislead a person, or be considered defamatory or injurious¹
- always acting with impartiality and in the best interests of the community as a whole
- approach issues and items for consideration with an open mind, determining outcomes based on merit, not preconceived notions²
- not acting in ways that may damage the Council or its ability to exercise good government
- exercising reasonable care and diligence in performing their functions as Councillors
- not exercising or performing a power, duty or function that a Councillor is not authorised to exercise or perform
- not commit fraud by inducing a course of action by deceit or other dishonest conduct, involving acts or omissions or the making of false statements, orally or in writing, with the object of obtaining money or other benefit, from, or evading a liability to, the Council³
- complying with all relevant laws, be they Federal, State or Local Laws.

TRUST AND RESPONSIBILITY

Recognising that they hold a position of trust, Councillors will not abuse the responsibility granted by the community and will not misuse or derive undue benefit from their positions.

This includes:

- avoiding conflicts of interest and complying with the relevant provisions of the Act⁴
- not making improper use of their position to advantage or disadvantage any person or organisation
- not exercising undue influence on other Councillors, members of Council staff or the public to gain or attempt to gain an advantage for themselves
- observing the relevant provisions of the Act and this Councillor Code of Conduct relating to acceptance and declaration of gifts⁵.

¹ Councillors, unlike state and federal members of parliament, do not have parliamentary privilege and are therefore liable to civil and criminal action including, but limited to, defamation

² *Ensuring Unbiased Democratic Council Decision Making – Principle to Guide Good Practice*, DPCD, 2008; *Winky Pop Pty Ltd & Anor v Hobsons Bay City Council* [2007] VSC 468

³ As defined in Council's 'Fraud Control Policy'.

⁴ Also see clause 10 Conflict of Interest.

⁵ Also see clause 9 Acceptance of Gifts.

STEWARDSHIP

Councillors will exercise careful, prudent and responsible management of Council and community resources entrusted to their care, or to which are entitled access.

This includes:

- maintaining appropriate separation between their personal property and Council property in the care of the Council
- not using Council resources, including staff, equipment and intellectual property for electoral or other personal purposes
- ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided
- ensuring that Council resources are not used in a way that creates an impression of Council endorsement
- ensuring that claims for out of pocket expenses are accurate and relate strictly to Council business
- fulfilling obligations to transparently and honestly report the use of Council funds, resources and assets.

CONFIDENTIALITY, DISCRETION AND PRIVACY AND DATA PROTECTION

Councillors must deal sensitively and discretely with all information made privy, regardless of nature or form, observing strict confidentiality where it declared or where may reasonably be expected or inferred.

This includes:

- not using information gained by virtue of being a Councillor for any purpose other than to exercise their role as a Councillor
- respecting the Council's policies in relation to public comments and communications with the media⁶
- not releasing information that the Councillor knows or ought to know is 'confidential (s77) of the Act
- recognising the requirements of the *Privacy and Data Protection Act* 2014 regarding the access, use and release of personal information
- assuming information disclosed in non-public meetings and in personal correspondence is confidential in nature unless otherwise agreed or obviously for wider distribution
- requesting Council information, briefings or files through the office of the Chief Executive Officer.

⁶ Also see clause 13 Engaging Media

COOPERATION

To achieve Council's and the community's vision, it is vital that the Council works as an effective and cohesive team.

This includes:

- sharing work load, public profile, rewards and acknowledgments
- being strategic in its thinking and planning
- working together in a spirit of cooperation and goodwill
- 'agreeing to disagree' without recourse or acrimony
- accepting majority decisions, respected by those for and against the argument
- supporting consensus positions as being in the best interests of the community and not reserving the right to speak against it or attack it after the formal decision has been made
- respecting and being seen to respect the opinions and view of Councillors, officers and the community equally and fairly
- 'playing fair' at all times, working on a level playing field without any games, tricks or surprises.

8. COUNCIL DECISION MAKING

The Act states that a Council decision may only be made at a properly constituted Council meeting or under Council delegation. Neither the Mayor nor an individual Councillor has the legal authority to act or make a decision on behalf of the Council.

Councillors must make decisions in an equitable and impartial manner on behalf of their communities, representing their current and future best interests.

Accordingly, Councillors:

- will actively and openly participate in the decision making process striving to be informed to achieve the best outcome for the community
- will respect the views of the individual in debate, however, also accept that decisions are to be based on a majority vote
- accept that no Councillor can direct another Councillor on how to vote on any decision.

9. ACCEPTANCE OF GIFTS

Receiving a gift (or gifts) exceeding \$500⁷ in value (over five years) from a single source is known as an 'applicable gift'⁸. An applicable gift triggers one of the indirect conflict of interest provisions with the Act.

⁷ Disclosure threshold as defined in Part 1, s3(1), *Local Government Act 1989*

⁸ Part 4, s78C, *Local Government Act 1989*

As such:

- Councillors will not accept gifts in their roles as a Councillor or where it could be perceived to influence the Councillor in the fair, impartial and efficient discharge of their duties of Councillor, except:
 - i) where the gift is only of token value and could not be perceived to influence the Councillor's actions; and/or
 - ii) where refusal of the gift may cause offence or embarrassment, in which case the gift may be accepted on behalf of the Council and becomes the property of the Council.

All gifts received, regardless of value, must be declared and recorded on Council's Gift Register.

10. CONFLICT OF INTEREST

Conflict of interest is underpinned by the principle of transparency. Councillors must make it clear that private interests are not affecting public duties and that position of office is not being used for personal benefit⁹.

Sections 77AA to 79 of the Act define the specific circumstances that lead a Councillor to a conflict of interest and describe what Councillors must do if they believe there is a conflict. There are two broad types of conflicts of interest, direct and indirect. There are six types of indirect conflicts of interest.

Consequently:

- Councillors must identify and disclose conflicts of interest when required to do so. If unclear, assistance should be sought or an interest disclosed to avoid the risk of committing an offence
- Councillors acknowledge the responsibility to disclose conflict of interests overrides any other obligations as a decision maker.

11. CARETAKER ARRANGEMENTS

Council must comply with special arrangements during Council elections to ensure the probity of the election process and to safeguard the authority of the incoming Council.

These arrangements, limitations and prohibitions are known as caretaker arrangements.

The Act prohibits Council decisions in relation to Chief Executive Officer's employment and certain decision in relation to contracts and entrepreneurial or investment ventures exceeding a threshold amount.

In addition, limitations are placed on Council publications to ensure that public funds are not used to produce material that may influence, or be seen to influence, people's voting intentions. Relevant Council publications must be certified by the Chief Executive Officer as not containing electoral material before they may be distributed.

Finally, Council resources must not be used for private purposes, including electioneering.

⁹ *Conflict of Interest - A Guide for Councillors*, DPCD, Oct 2012

Accordingly:

- Councillors will conform with all applicable legislative requirements and the Council's Election Period Policy
- Councillors will apply a conservative interpretation of the applicable legislation and Council's Election Period Policy
- Councillors will respect the conservative interpretation of the applicable legislation and Council's Election Period Policy by Staff, with particular reference to communication requests.

12. WORKING RELATIONSHIPS

Strong and respectful working relationships are essential for Council to achieve its vision. Effective working relationships promote a positive culture and provide the organisation with the freedom to focus on opportunities and delivering great outcomes, rather than spending effort overcoming problems associated with negative relationships.

The key working relationships at the City of Melton are between the:

- Mayor and Councillors
- Mayor and CEO
- Mayor and General Managers
- Councillors and CEO
- Councillors and General Managers
- CEO and General Managers
- General Managers and officers

Many Council officers hold positions that require specialised knowledge and skills and are required to provide information, advice and recommendations to the best of their professional ability. Sharing this knowledge with Councillors is a key part of ensuring that Council has the information it needs to make informed decisions.

It is important to note that Councillors cannot direct or improperly influence, or attempt to direct or improperly influence, the functions, duties, actions, recommendations or advice provided by Council officers. Improper direction and improper influence are covered under section 76E of the Act.

To facilitate the efficient functioning of Council, and ensure timely responses, the CEO has put in place a protocol which requires Councillors to direct all their enquiries to the CEO, the appropriate General Manager or Manager or specified support staff. Failure to follow this protocol is a breach of this Councillor Code of Conduct.

13. ENGAGING MEDIA

Council's media policy clearly establishes the position of Council in engaging or responding to media.

The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature, and is the default Council spokesperson unless exceptional circumstances apply.

The Chief Executive Officer is the official spokesperson for all operational matters pertaining to the Melton City Council as an organisation. The Chief Executive Officer may nominate a Council officer spokesperson if appropriate.

Accordingly:

- Councillors must ensure that any messages communicated through the media are consistent with the official position, policy or Council decision, and positively portray the Council as a decisive and responsible governing body
- Councillors are entitled to express independent comment through the media, but must state that any comment is a personal view, and does not represent an officially adopted position of Council
- Councillors must not make unattributed or anonymous statements to the media, nor pass on information that could reasonably be considered by related parties to be sensitive or confidential.

14. PERSONAL DEALINGS

Where engaging with Council in a private capacity, (e.g. as a ratepayer, recipient of a Council service or applicant for a permit), Councillors must not expect nor request preferential treatment in relation to any such private matter. Councillors should avoid any action that could lead Council staff or members of the public to infer a request for preferential treatment.

15. DISPUTE RESOLUTION PROCEDURES

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

The Council's three phase dispute resolution process involves:

1. direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance
2. external mediation by an independent mediator engaged by the Chief Executive Officer
3. an internal resolution procedure involving an independent arbiter.

PHASE 1 – DIRECT NEGOTIATION

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

A dispute referred for direct negotiation may relate to:

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

The party requesting the direct negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a 'direct negotiation' dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Councillor Code of Conduct
- specify the provision(s) of the Councillor Code of Conduct that is alleged to have been contravened
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the request is made by a group of Councillors
- be signed and dated by the requestor or the requestor's representative.

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

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

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

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

If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 5 working days of receiving the consent of the other party.

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

No legal representation is allowed for the meeting however a support person will be allowed provided that support person provides only personal support and does not give advice during the meeting. Support here is limited to suggesting that a break be taken if one of the parties appears upset but otherwise remaining silent during the meeting.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of

the Act, and the observation of the Councillor Conduct Principles (sections 76B and 76BA) and this Councillor Code of Conduct.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

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

The Mayor, or person performing the functions ascribed to the Mayor pursuant to this Councillor Code of Conduct will be assisted by the Principal Conduct Officer as required.

PHASE 2 – EXTERNAL MEDIATION

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for 'direct negotiation'.

An application made for a dispute to be referred for external mediation may relate to:

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

The applicant is to submit a written application to the Principal Conduct Officer setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an 'external mediation'. Where the application relates to an alleged contravention of the Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Councillor Code of Conduct
- specify the provision(s) of the Councillor Code of Conduct that is alleged to have been contravened
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the application is made by a group of Councillors
- be signed and dated by the applicant or the applicant's representative.

The applicant is to notify the other party of the request and provide him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an 'external mediation'. If the other party declines to participate in an

external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

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

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

The Chief Executive Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity. Each party is entitled to be legally represented however representation will be at the party's own expense unless the Council resolves otherwise. Alternatively, but not in addition, each party is entitled to have with them a support person. That support person provides only personal support and does not give advice during the meeting. Support here is limited to suggesting that a break be taken if one of the parties appears upset but otherwise remaining silent during the meeting.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

PHASE 3 - INTERNAL RESOLUTION PROCEDURE - ARBITER

A Councillor or a group of Councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. The application must:

- specify the name of the Councillor alleged to have contravened the Councillor Code of Conduct
- specify the provision(s) of the Councillor Code of Conduct that is alleged to have been contravened
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the application is made by a group of Councillors
- be signed and dated by the applicant or the applicant's representative.

The application must be submitted to the Council's Principal Conduct Officer.

An applicant may withdraw an application for an internal resolution procedure.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application
- identify an arbiter to hear the application
- obtain from the arbiter written advice that they have no conflict of interest in relation to the Councillors involved
- notify the parties of the name of the proposed arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the arbiter
- consider the grounds of any objection and appoint the proposed arbiter or identify another arbiter
- provide a copy of the application to the arbiter as soon as practicable after the opportunity for the parties to object to an arbiter has expired
- after consultation with the arbiter, advise the applicant and the respondent of the time and place for the hearing
- attend the hearing(s) and assist the arbiter in the administration of the process.

In identifying an arbiter to hear the application, the Principal Conduct Officer must select an arbiter who is suitably independent and able to carry out the role of arbiter fairly.

The role of the arbiter is to:

- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor
- make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the arbiter must give to the Council
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council
- recommend an appropriate sanction or sanctions where the arbiter has found that a Councillor has contravened the Councillor Code of Conduct.

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

- in consultation with the Principal Conduct Officer, fix a time and place to hear the application
- authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing
- hold as many meetings as he or she considers necessary to properly consider the application. The arbiter may hold a directions hearing

- have discretion to conduct the hearings as he or she deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows
- ensure that the parties to and affected by an application are given an opportunity to be heard by the arbiter
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application
- ensure that the rules of natural justice are observed and applied in the hearing of the application
- ensure that the hearings are closed to the public.

Each party is entitled to be legally represented however representation will be at the party's own expense unless the Council resolves otherwise. Alternatively, but not in addition, each party is entitled to have with them a support person. That support person provides only personal support and does not give advice during the meeting. Support here is limited to suggesting that a break be taken if one of the parties appears upset but otherwise remaining silent during the meeting.

An arbiter:

- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Councillor Code of Conduct
- may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Councillor Code of Conduct and will recommend an appropriate sanction for the contravention
- may find that there is insufficient evidence to determine the matter
- will suspend consideration of an internal resolution procedure during the election period for a general election.

The arbiter is to give a copy of his or her findings and the statement of reasons to the Principal Conduct Officer, the (applicant and the respondent).

The Principal Conduct Officer will present a copy of the arbiter's findings, statement of reasons and any recommended sanctions to the next ordinary meeting of the Council for its consideration at the in-camera part of the meeting. If an arbiter has found that a contravention of the Councillor Code of Conduct has occurred, the Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- direct the Councillor to make an apology in a form or manner specified by the Council
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council)

- direct that, for a period of up to, but not exceeding, 2 months on a date specified by the Council the Councillor:
 - be removed from any position where the Councillor represents the Council
 - to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

An application cannot be made for an internal resolution procedure 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.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

- the application was made by the Council and the Council so resolves; or
- the application were made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application; or
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application.

PARTICIPATION

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

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

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