

# COUNCILLOR CODE OF CONDUCT

**This Code, which incorporates the statutory requirements specified for a Code of Conduct in accordance with section 76C of the *Local Government Act 1989*, was adopted by resolution of the Latrobe City Council on 16 November 2009.**

## **1. Introduction**

As Councillors of the Latrobe City Council we are committed to working in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.

## **2. Councillor Conduct Principles**

We endorse and agree to the following Councillor Conduct Principles specified in sections 76B and 76BA of the *Local Government Act 1989* (the Act):

- 2.1 In carrying out our role as Councillors, we will:
  - 2.1.1 act with integrity; and
  - 2.1.2 impartially exercise our responsibilities in the interests of the local community; and
  - 2.1.3 not improperly seek to confer an advantage or disadvantage on any person.
- 2.2 In addition, in performing our role each Councillor will:
  - 2.2.1 avoid conflicts between our public duties as a Councillor and our personal interests and obligations;
  - 2.2.2 act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
  - 2.2.3 treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council officers and other persons;
  - 2.2.4 exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
  - 2.2.5 endeavour to ensure that public resources are used prudently and solely in the public interest;
  - 2.2.6 act lawfully and in accordance with the trust placed in us as elected representatives;
  - 2.2.7 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.

## **3. Council decision making**

- 3.1 We are committed to making all decisions impartially and in the best interests of the whole community and acknowledge that effective decision-making is vital to the democratic process and an essential component of good governance. Accordingly:
  - 3.1.1 We will actively and openly participate in the decision making process, striving to be informed to achieve the best outcome for the community;
  - 3.1.2 We will respect the views of the individual in the debate. However, we also accept that decisions are based on a majority vote; and
  - 3.1.3 We accept that no Councillor can direct another Councillor on how to vote on any decision.

#### **4. Confidential information**

Councillors acknowledge that we will comply with our obligations under section 77 of the *Local Government Act 1989* in relation to confidential briefings or information (as defined under the Act) and recognise that this obligation extends to ensuring the safekeeping of confidential information.

#### **5. Access to and use of Council information**

5.1 We will treat Council information appropriately, by:

5.1.1 Not using information gained by virtue of our position as a Councillor for any purpose other than to exercise our role as a Councillor;

5.1.2 Respecting the Council's policies in relation to public comments and communications with the media;

5.1.3 Not releasing information deemed 'confidential information' in accordance with section 77 of the Act; and

5.1.4 Recognising the requirements of the *Information Privacy Act 2000* regarding the access, use and release of personal information.

5.2 Councillors acknowledge that all requests made by Councillors for briefings from Council officers or access to information on Council files should be registered and reported. This obligation does not apply to requests for clarification/explanation of items on a forthcoming Council agenda.

#### **6. Use of Council resources**

6.1 Council resources are to be used effectively and economically by ensuring:

6.1.1 We maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role;

6.1.2 we do not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and ensure payments are made where appropriate; and

6.1.3 we do not use public funds or resources in a manner that is improper or unauthorised.

#### **7. Relationships with Staff**

7.1 As Councillors we will work as part of the Council team with the Chief Executive Officer and other members of staff. There should be mutual respect and understanding between Councillors and officers in relation to their respective roles, functions and responsibilities.

7.2 Our role is one of advocacy and leadership rather than management and administration. The Chief Executive Officer is responsible for all staff matters.

7.3 As Councillors, we will be aware of the requirements of Section 76E of *Local Government Act 1989* and must not seek to improperly direct or influence members of Council staff in the exercise of their duties. It is appropriate to notify either the relevant General Manager or Manager when specific issues or particular functions are required to be undertaken.

#### **8. Communication and Media**

We will endeavour to ensure that the messages communicated through the media are clear and consistent, and positively portray the Council as a decisive and responsible governing body.

- 8.1 The Mayor will provide official comment to the media on behalf of Council where the matter is of a political, controversial or sensitive nature. This includes:
- 8.1.1 State-wide political issues affecting Local Government;
  - 8.1.2 Contentious local issues that impact the community that do not relate directly to the business of Council but to the representation of the community;
  - 8.1.3 Issues pertaining to policy and Council decisions;
  - 8.1.4 Issues relating to the strategic direction of the Council; and
  - 8.1.5 The Mayor may nominate another Councillor to make official comment on behalf of the Council, where appropriate.
- 8.2 The Chief Executive Officer is the official spokesperson for all operational matters pertaining to the Latrobe City Council as an organisation including:
- 8.2.1 Staffing and structure of the organisation;
  - 8.2.2 Corporate issues relating to service provision or the day-to-day business of Council;
  - 8.2.3 The Chief Executive Officer may nominate a Council officer spokesperson if appropriate.
- 8.3 As individual Councillors we are entitled to express independent views through the media, however we will make it clear that any unofficial comment is a personal view, and does not represent the position of the Council as a whole.

## **9. Conflict of Interest Procedures**

The Council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

For the purpose of this Code, “direct interest”, “indirect interest” and “conflicts of interest”, have the meanings specified in the Act.

- 9.1 We will comply with all the provisions of the Act in regard to Conflicts of Interest.

In addition to the requirements of the Act:

- 9.2 We will give early consideration to each matter to be considered by the Council, any special committee to which we belong, or assembly of Councillors, to ascertain if we have a conflict of interest.
- 9.3 We recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual Councillor and that Council officers cannot offer any advice in relation to potential conflicts. If we cannot confidently say that we do not have a conflict of interest, we will declare a conflict of interest and comply with the relevant requirements as if we had a conflict of interest.
- 9.4 If we consider that we may be unable to vote on a matter because of a conflict of interest, we will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council, a special committee, or an assembly of Councillors, as well as the Chief Executive Officer.

## **10. Dispute Resolution Procedures**

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

- 10.2 In the event of any dispute occurring where Councillors are unable to resolve interpersonal conflicts that adversely affect the operation of the Council, the parties to the dispute agree to work together to try to resolve the dispute and will agree to the appointment of a mediator nominated by the Chief Executive Officer and acceptable to both parties, or failing agreement, nominated by the President of the Municipal Association of Victoria and appointed by the Chief Executive Officer, if they are unable to resolve the dispute within seven days.
- 10.3 If a mediator is appointed, all Councillors agree to cooperate with the dispute resolution process and use their best endeavours to assist the mediator when requested.
- 10.4 In the event that a dispute cannot be resolved through application of these processes, it may be referred to a Councillor Conduct Panel.
- 10.5 If the dispute relates to an apparent offence under the *Local Government Act 1989* it should be referred to the Minister for Local Government and not the subject of an application to a Councillor Conduct Panel.
- 10.6 The dispute resolution procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through debate and voting in Council and Committee meetings.

## **11. Roles within Latrobe City Council**

We recognise that being clear about the different roles of the various parts of our organisation will assist us in maintaining good governance. We also recognise that by understanding our roles we can better communicate and work together.

We agree on the following definitions of roles:

### **11.1 Mayor**

The Mayor is the leader of Latrobe City Council and as such should be the leader of all Councillors. The Mayor has a key role to help all Councillors participate and work together in the interests of the Latrobe City Council's community.

In fostering good governance, the most important roles of the Mayor are:

- 11.1.1 to chair the Council meetings in a way which encourages the participation and involvement by all Councillors;
- 11.1.2 to encourage Councillors to treat each other with respect and courtesy;
- 11.1.3 to model the type of behaviour which Latrobe City Council expects of all Councillors;
- 11.1.4 to provide leadership in demonstrating and achieving good governance;
- 11.1.5 to work with the Chief Executive Officer in providing leadership to the entire organisation;
- 11.1.6 to be the public spokesperson in support of Council decisions;
- 11.1.7 to liaise with all Councillors with a view to facilitating the capacity of Councillors to work together and to identify any possible issues or problems which may require assistance in resolution; and
- 11.1.8 to be the leader of all Councillors and not to align themselves with any particular group of Councillors.

### **11.2 Deputy Mayor**

Council has a Deputy Mayor in order to enhance the leadership provided by the Mayor and also to ensure that Latrobe City Council can be represented by its political leadership wherever this is necessary or desirable. The Deputy Mayor should also assist the Mayor to facilitate the spirit of cooperation and inclusion between Councillors.

The Deputy Mayor is part of the leadership group and as such should participate in the meetings between the Mayor and the Chief Executive Officer.

The most important roles of the Deputy Mayor are:

- 11.2.1 to deputise for the Mayor as required when the issue or function relates to the entire municipality (when the issue or function is more ward based, the Mayor may nominate the ward Councillor to be his or her representative);
- 11.2.2 to liaise with all Councillors with a view to facilitating the capacity of Councillors to work together and to identify any possible issues or problems which may require assistance in resolution; and
- 11.2.3 to model leadership and good governance behaviour internally and externally.

### 11.3 Councillors

We have important roles to play in helping to achieve good governance. We recognise that we need to work together to achieve the best outcomes for the Latrobe City Council community.

These key elements are included in the role of a Councillor:

- 11.3.1 to advocate and represent to Council on behalf of the community;
- 11.3.2 to facilitate communication between Council and the community;
- 11.3.3 to debate the issues in an open, honest and informed manner to assist the decision-making process;
- 11.3.4 to keep the whole-of-municipality in mind when considering and addressing issues; and
- 11.3.5 to listen to the various Latrobe City Council communities and ensure the communities are informed about Council's views.

### 11.4 Chief Executive Officer

A key role of the Chief Executive Officer at Latrobe City Council is to foster a culture of democratic governance in the organisation. The Latrobe City Council Administration recognises that it is part of the organisation and that the reason for its existence is to support the Council in reflecting the aspirations of the Latrobe City community. The Chief Executive Officer should support this process by:

- 11.4.1 ensuring the provision of the best possible advice to Council, (this is the highest priority in supporting good governance);
- 11.4.2 ensuring that this advice incorporates the political context of the issue - at Latrobe City Council, the organisation shouldn't "play politics", but recognises that issues have a political context and that sophisticated advice reflects this;
- 11.4.3 recognising that one of the highest priorities of the position is governance and devoting time to managing relationships and facilitating the decision-making processes;
- 11.4.4 modelling and leading the organisation in the culture of democratic governance;
- 11.4.5 ensuring that the organisation understands its role in democratic governance and providing appropriate training;
- 11.4.6 ensuring that all Councillors are treated with the courtesy and respect arising from their position;
- 11.4.7 facilitating good communication between the officers and Councillors through appropriate strategies including the weekly Bulletin;
- 11.4.8 not to align him or herself with any particular group of Councillors; and

11.4.9 to encourage all parties to treat each other with courtesy and respect.

## 11.5 Latrobe City Officers

The role of the administration at Latrobe City Council is to implement Council's goals, strategies and services and to support democratic governance through its support of and advice to Council.

At Latrobe City Council, officers also play other roles at times. These include assisting Councillors with particular ward issues and providing Councillors with advice and information.

Councillors at Latrobe City Council should recognise that at times they do place demands on officers and understand that these expectations can raise issues for officers. Councillors and officers should use good and open communication in order to ensure that relationships are not adversely affected and that expectations are understood and negotiated.

## 12. Relationships

Good governance and a successful Code of Conduct at Latrobe City Council is based on good relationships between the different parts of the organisation.

### 12.1 Mayor / Councillors

A good relationship between the Mayor and Councillors will assist all in working together to deliver the community plan and Latrobe 2021 vision. It will also increase the public credibility of the Latrobe City Council. Councillors understand that:

- 12.1.1 the Mayor is the leader of the Council and this role should be respected by all Councillors;
- 12.1.2 the Mayor should facilitate an inclusive approach to decision-making and involvement in Council activities in general;
- 12.1.3 the Mayor is responsible for Councillors' training and development and should work with the Chief Executive Officers to ensure that Councillors receive necessary training opportunities; and
- 12.1.4 the Mayor is a source of assistance for Councillors and also has the responsibility for facilitating resolution of any disputes between Councillors.

### 12.2 Councillors / Councillors

Councillors need each other to achieve their individual and collective goals. Good relationships between Councillors assist in achieving a successful Council, a pleasant working environment and a Council with public credibility. Councillors recognise that:

- 12.2.1 Councillors should have good working relationships in order to succeed individually and collectively;
- 12.2.2 while they may have different views, Councillors should treat each other with respect and courtesy;
- 12.2.3 disagreements, if they must be aired, should be expressed in a way that causes no detriment to individual Councillors or the Council as a whole; and
- 12.2.4 Councillors should not undermine each other, either within the organisation or in public.

### 12.3 Mayor / Chief Executive Officer

This important relationship assists in the smooth running of the organisation through good communication and anticipation of issues. It should be outward looking – that is, focused on how the elected representatives and the organisation can be supported to best achieve the organisations goals. We understand that:

- 12.3.1 the Mayor and Chief Executive Officer should work closely together and put energy into achieving a good working relationship;

- 12.3.2 the relationship between the Mayor and Chief Executive Officer should be characterised by consistency, openness and good communication - each has the responsibility to keep the other informed about important and relevant issues and good communication ensures that an understanding develops about what is important and relevant;
- 12.3.3 the Mayor and the Chief Executive Officer need to understand that each has different roles and authorities - while the Mayor is the leader of Latrobe City Council, this position has no specific authority, unlike the Chief Executive Officer who has particular authorities under the *Local Government Act 1989* and the relationship between the Mayor and the Chief Executive Officer should be sensitive to this issue;
- 12.3.4 the relationship between the Mayor and the Chief Executive Officer should aim to facilitate involvement and inclusion amongst the Councillors and the organisation - it does not seek to concentrate power in the relationship;
- 12.3.5 to facilitate inclusion and information sharing, the Mayor and Chief Executive Officer will publish a list of key meetings attended in the previous week in the weekly Bulletin; and
- 12.3.6 the Mayor and the Chief Executive Officer recognise the importance of consistent communication and, to support this, should have fixed weekly meetings which also involve the Deputy Mayor.

#### 12.4 Councillors / Chief Executive Officer

Good relationships between Councillors and the Chief Executive Officer assist good governance and support the Code of Conduct. The Chief Executive Officer is often able to assist Councillors in addressing constituent issues. Similarly Councillors can keep the Chief Executive Officer informed about issues which may require additional resources. Good relationships between the Chief Executive Officer and Councillors can develop the relationship between Councillors and officers.

The Chief Executive Officer is also accountable to Councillors when they sit as Council. Councillors sitting as Council, are also responsible for performance management of the Chief Executive Officer. At Latrobe City Council it is recognised that:

- 12.4.1 performance management of the Chief Executive Officer is important to the organisation achieving its goals and setting the goals for the Chief Executive Officer is as important as assessing whether they have been achieved;
- 12.4.2 Councillors should commit themselves to spending the necessary time to set the goals as well as assessing their achievement;
- 12.4.3 the relationship between Councillors and Chief Executive Officer is based on a good understanding of each other's roles;
- 12.4.4 Councillors understand that the Chief Executive Officer can be a source of advice and support and that good communication between Councillors and the Chief Executive Officer can assist the Chief Executive Officer's role; and
- 12.4.5 all Councillors have an interest in the selection and performance of the Chief Executive Officer and will ensure that any sub-committees charged with responsibilities in these areas will be broadly representative of the whole Council.

#### 12.5 Councillors / Officers

In general relationships between Councillors and the officers at Latrobe City Council should be based on:

- 12.5.1 a mutual understanding and respect for each others' roles;
- 12.5.2 a preparedness to identify, discuss and resolve issues and problems if they arise;

- 12.5.3 on the part of the officers, a respect for and commitment to democratic governance and the primacy of Council in the organisational structure; and
- 12.5.4 on the part of Councillors, an understanding that the officers carry, in addition to its normal bureaucratic role, an additional workload, which at other levels of government, is shared with electorate officers and researchers. This means that:
  - 12.5.4.1 Councillor requests have implications both for workload and potential “politicisation” of officers and Councillors bear this in mind when requesting information and/or assistance from officers; and
  - 12.5.4.2 Officers understand that they are the only direct resource Councillors have when they require information or assistance and should keep this in mind when they are approached.

### **13. Councillor requests for information**

We will from time to time request information from the Chief Executive Officer, General Managers and Managers.

Councillors recognise that such requests should be issues based. Councillor requests can significantly add to the workloads of officers and cannot always be responded to immediately. Officers understand that it is legitimate for Councillors to make information requests of officers.

The process for addressing Councillor requests for Information is that Councillors address information requests to the Chief Executive Officer, General Managers or Managers via the Mayoral and Council Support division. Where the information request does not, in the judgment of the Chief Executive Officer, General Manager or Manager, involve significant resources, the request will be met within a timeframe agreed on between the Chief Executive Officer, General Manager or Manager.

If the Chief Executive Officer, General Manager or Manager believes that the information request will involve significant resources, he or she will work with the requesting Councillor to prepare a report to Council seeking an appropriate Council resolution for the request to be met. Generally, all Councillor requests for information should be made through the Mayoral and Council Support division. From time to time direct requests may be made through the Chief Executive Officer, General Manager or Managers directly.

If a General Manager or Manager believe that the requests from a Councillor or Councillors are becoming excessive, he or she will report this to the Chief Executive Officer who will discuss it with the Councillor/s concerned and then with the Mayor if the problem persists.

#### **13.1 Requests via email**

The protocol aims to ensure that all responses from officers to Councillors in respect to Councillor requests for information is provided to all Councillors.

The rationale for this approach is to ensure that all Councillors are provided with information at the same time and within the same context. This process ensures that no Councillor is either advantaged or disadvantaged in respect to access to information.

All Councillors will be emailed a copy of the response provided following an individual Councillor request for information. This protocol also removes from officers the delicate choice of what matters are of concern to all Councillors. This process enables officers to remain well removed from the political processes in that all Councillor requests for information are dealt with in a uniform, transparent and unbiased manner.

There is benefit in all Councillors receiving notification of all requests and the responses as these can be used by Councillors to inform them of trends and patterns of requests coming from other areas of Latrobe City. Such patterns may provide vital information at budget preparation discussions.

If a Councillor makes a request which they believe is of a private or confidential nature, the email will be directed to the Chief Executive Officer. Discussions will take place between the Councillor and the Chief Executive Officer to determine if the Chief Executive Officer agrees that the item should remain confidential and not shared with all other Councillors. If the Chief Executive Officer disagrees with the confidential nature of the email the Councillor will have the opportunity to withdraw the request.

### 13.2 Councillor / Chief Executive, General Manager and Manager Communication

Councillor-officer communication should incorporate the following understandings:

- 13.2.1 Councillor and officer's roles are complex and every effort is to be made to understand where each is coming from;
- 13.2.2 formal advice to Council will only be provided from the Chief Executive Officer and General Managers;
- 13.2.3 Councillors do not have the authority to direct officers;
- 13.2.4 communication is based on respect for each other and is not to be used to undermine other Councillors or officers;
- 13.2.5 officers will inform their manager about any contact with Councillors;
- 13.2.6 a Councillor who wishes to complain about an officer will speak only with the Chief Executive Officer; and
- 13.2.7 officers approaching Councillors about organisational issues are referred to their Manager, General Manager or Chief Executive Officer.

## Division 1A—Conduct and interests

### 76AA Definitions

In this Division—

**assembly of Councillors** (however titled) means a planned or scheduled meeting of at least 3 Councillors and one member of Council staff which considers matters that are intended or likely to be—

- (a) the subject of a decision of the Council; or
- (b) subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee—

but does not include a meeting of the Council, a special committee of the Council, a club, association, peak body, political party or other organisation;

**matter** means a matter with which a Council, special committee or a member of council staff is concerned and that will require—

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or a special committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of council staff in respect of the matter;

**relevant person** means a person who is a—

- (a) Councillor; or
- (b) member of a special committee; or
- (c) member of Council staff.

### 76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- (a) act with integrity; and
- (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.

### 76BA General Councillor conduct principles

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 officers 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;

- (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.

**76C Councillor Code of Conduct**

(1) A Council must develop and approve a Councillor Code of Conduct for the Council within 12 months after the commencement of section 15 of the **Local Government Amendment (Councillor Conduct and Other Matters) Act 2008**.

(2) A Council must review the Councillor Code of Conduct within the period of 12 months after a general election.

(3) A Councillor Code of Conduct—

- (a) must include the Councillor conduct principles;
- (b) may set out processes for the purpose of resolving an internal dispute between Councillors;

\* \* \* \* \*

(d) must include provisions in respect of any matter prescribed for the purpose of this section;

(e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.

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(5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.

(5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.

(6) A copy of the current Councillor Code of Conduct must be—

- (a) given to each Councillor;
- (b) available for inspection by the public at the Council office and any district offices.

(7) On and from the commencement of section 15 of the **Local Government Amendment (Councillor Conduct and Other Matters) Act 2008**, a Councillor Code of Conduct is taken to include the Councillor conduct principles.

**76D Misuse of position**

(1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—

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

Penalty: 100 penalty units.

(2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—

- (a) making improper use of information acquired as a result of the position he or she held or holds; or

- (b) disclosing information that is confidential information within the meaning of section 77(2); or
  - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
  - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
  - (e) using public funds or resources in a manner that is improper or unauthorised.
- (3) This section—
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
  - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

#### **76E Improper direction and improper influence**

- (1) A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.
- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
  - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
  - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
  - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
  - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.
- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

#### **77 Confidential information**

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this section, information is **confidential information** if—
  - (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) subject to subsection (3), 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.
- (3) Confidential information referred to in subsection (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made unless subsection (2)(a) or (2)(b) applies to the information.

#### **77A Direct and indirect interests**

- (1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.
- (3) A relevant person has an indirect interest in a matter if the relevant person has—
  - (a) a close association as specified in section 78; or
  - (b) an indirect financial interest as specified in section 78A; or
  - (c) a conflicting duty as specified in section 78B; or
  - (d) received an applicable gift as specified in section 78C; or
  - (e) become an interested party as specified in section 78D.
- (4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds is one held as a resident, ratepayer or voter and the interest—
  - (a) is held in common with other residents, ratepayers or voters; and
  - (b) does not exceed the interests held by other residents, ratepayers or voters.

#### **77B Direct interest**

- (1) A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subsection (1), a person has a direct interest in a matter if—
  - (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;
  - (b) there is a reasonable likelihood that the residential amenity of the person will be directly affected if the matter is decided in a particular way.

#### **78 Indirect interest by close association**

- (1) In this section—

***daughter*** means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;

**direct relative** means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;

**domestic partner** of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
  - (i) for fee or reward; or
  - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

**family member** means—

- (a) a spouse or domestic partner of the person; or
- (b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

**relative** means—

- (a) a direct relative of the person;
- (b) a direct relative of a person who is the direct relative of the person;

**son** means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.

- (2) A person has an indirect interest by close association in a matter if—
  - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
  - (b) a relative of the person has a direct interest in a matter; or
  - (c) a member of the person's household has a direct interest in a matter.
- (3) For the purposes of the definition of **domestic partner** in subsection (1)—
  - (a) **registered relationship** has the same meaning as in the **Relationships Act 2008**; and
  - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
  - (c) a person is not a domestic partner of another person only because they are co-tenants.

#### **78A Indirect interest that is an indirect financial interest**

- (1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—

- (a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);
  - (b) the person is owed money from another person and that other person has a direct interest in the matter.
- (3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million, the person's indirect financial interest is not a conflict of interest.
- (4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.
- (5) For the purposes of determining the value of shares under this section, the share value is to be taken from—
- (a) the close of business on the most recent of 30 June or 31 December; or
  - (b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

**78B Indirect interest because of conflicting duties**

- (1) A person has an indirect interest in a matter because of a conflicting duty if the person—
- (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;
  - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
  - (c) is a trustee for a person who has a direct interest in a matter.
- (2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.
- (3) A person does not have an indirect interest because of a conflicting duty if—
- (a) the person is only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;
  - (b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person—
    - (i) was appointed or nominated to that position by the Council; or
    - (ii) was appointed to the relevant special committee of the Council to be a representative of the not-for-profit organisation;
  - (c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;
  - (d) the person only holds a position that has been prescribed for the purposes of this section.

### **78C Indirect interest because of receipt of an applicable gift**

- (1) In this section, ***applicable gift*** means one or more gifts with a total value of \$200 or more, received from a person or persons specified in subsection (2), in the 5 years preceding the decision or the exercise of the power, duty or function.
- (2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—
  - (a) a person who has a direct interest in the matter; or
  - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
  - (c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.

### **78D Indirect interest as a consequence of becoming an interested party**

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

### **79 Disclosure of conflict of interest**

- (1) If a Councillor or member of a special committee has a conflict of interest in a matter which is to be, or is likely to be, considered or discussed at a meeting of the Council or the special committee, the Councillor or member must—
  - (a) if he or she intends to be present at the meeting, disclose the conflict of interest in accordance with subsection (2);
  - (b) if he or she does not intend to be present at the meeting, disclose the conflict of interest in accordance with subsection (3).
- (2) A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—
  - (a) by either—
    - (i) advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or
    - (ii) advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and
  - (b) classifying the type of interest that has given rise to the conflict as either—
    - (i) a direct interest; or
    - (ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, or 78D; and
  - (c) describing the nature of the interest; and
  - (d) if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.

- (3) A Councillor or member of a special committee who has a conflict of interest and will not be attending the meeting of Council or special committee must make a full disclosure of that interest to the Chief Executive Officer or Chairperson that—
- (a) is in writing; and
  - (b) classifies the type of interest that has given rise to the conflict as either—
    - (i) a direct interest; or
    - (ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, or 78D; and
  - (c) describes the nature of the interest.
- (4) If a Chairperson has been given a written disclosure under subsection (3), he or she must give the written disclosure to the Chief Executive Officer.
- (5) The Chief Executive Officer must—
- (a) keep written disclosures given to him or her under this section in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and
  - (b) destroy the written disclosure when the 3 year period referred to in paragraph (a) has expired.
- (6) While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must—
- (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
  - (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (7) The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—
- (a) consideration of the matter; and
  - (b) all votes on the matter.
- (8) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—
- (a) the declaration of the conflict of interest; and
  - (b) the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.
- (9) Unless section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence.
- Penalty: 100 penalty units.

#### **79A Conflict of interest defence**

It is a defence to a prosecution under section 79(9), 80A(3), 80B(2) or 80C(2) if the relevant person proves that he or she did not know—

- (a) that he or she had a conflict of interest in relation to the matter; or

- (b) that a matter in respect of which he or she had a conflict of interest was considered or discussed at the relevant meeting.

#### **79B Conflicting personal interest**

- (1) This section does not apply to a Councillor or member of a special committee who has a conflict of interest in the matter.
- (2) If a Councillor or a member of a special committee considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter.
- (3) If a Councillor or member of a special committee makes an application under subsection (2), he or she must give reasons in support of the application.
- (4) A Council or special committee may consent to an application made under subsection (2) and must not unreasonably withhold consent.
- (5) If a Council or special committee consents to an application under subsection (4), sections 79(6), 79(7), 79(8) and 79(9) apply as if the personal interest that is the subject of an application under subsection (2) were a conflict of interest specified under this Act.

#### **79C Certain situations where Councillor taken to not have a conflict of interest**

- (1) A Councillor is taken to not have a conflict of interest for the purposes of this Division if the matter relates to—
  - (a) the nomination or appointment by the Council of the Councillor to a position for which the Councillor will not be remunerated;
  - (b) the election of the Mayor under section 71 or the appointment of an acting Mayor under section 73(3);
  - (c) a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2);
  - (d) the adoption of a policy in relation to the reimbursement of expenses under section 75A;
  - (e) the adoption of a Councillor Code of Conduct under section 76C;
  - (f) an application to a Councillor Conduct Panel or VCAT under Division 1B;
  - (g) an application for an exemption under section 80;
  - (h) the appointment of members and Chairpersons of special committees;
  - (i) a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation.
- (2) If a budget or revised budget to be approved by a Council includes funding for a matter in respect of which a Councillor has a conflict of interest the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if—
  - (a) the Council approved the matter and the proposed funding previously; and
  - (b) the Councillor disclosed the nature of the conflict of interest under this Division when the decision in respect of the funding was originally considered and made.

**79D Person may make submission despite conflict of interest**

- (1) Subject to subsection (2), a relevant person who has a conflict of interest in a matter and who has made a written submission under section 223 in respect of the matter, may present his or her submission under section 223(1)(b) to the Council or committee of the Council.
- (2) The relevant person who has a conflict of interest in a matter must not be at the meeting of the Council or committee of the Council any longer than is required for the person to be heard in support of the person's written submission.

**80 Exemption by Minister**

- (1) Despite section 79—
  - (a) a Council may apply, in writing, to the Minister for an exemption of any Councillor from any or all of the provisions of section 79 if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of Councillors affected by section 79;
  - (b) a Chief Executive Officer of a Council may apply, in writing, to the Minister, after receiving written declarations of conflicts of interest from a majority of Councillors, for an exemption of those Councillors from any or all of the provisions of section 79.
- (1A) After reviewing an application received from a Council or a Chief Executive Officer, the Minister may require the Council or Chief Executive Officer to provide additional information in respect of the application, including copies of the written declarations of conflicts of interests made by Councillors under section 79.
- (1B) In considering an application made by a Council or Chief Executive Officer, the Minister must have regard to—
  - (a) the extent of the conflicts of interest of the Councillors; and
  - (b) the public interest.
- (2) The Minister may, after considering an application under subsection (1B), exempt in writing a Councillor from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit.
- (3) The Minister may revoke an exemption.

**80A Requirements to be observed by an assembly of Councillors**

- (1) At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of—
  - (a) the names of all Councillors and members of Council staff attending;
  - (b) the matters considered;
  - (c) any conflict of interest disclosures made by a Councillor attending under subsection (3).
- (2) The Chief Executive Officer must ensure that the written record of an assembly of Councillors is—
  - (a) kept for a period of 4 years after the date of the assembly; and
  - (b) made available for public inspection at the offices of the Council for a period of 12 months after the date of the assembly.

- (3) If a Councillor attending an assembly of Councillors knows that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsection (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly.

Penalty: 100 penalty units.

- (4) A Councillor must disclose the conflict of interest either—
- (a) immediately before the matter in relation to which the Councillor has a conflict of interest is considered; or
  - (b) if the Councillor realises that he or she has a conflict of interest after consideration of the matter has begun, as soon as the Councillor becomes aware that he or she has a conflict of interest.

**80B Members of Council staff to disclose conflicts of interest in respect of delegated functions**

- (1) This section applies to a member of Council staff who has been delegated a power, duty or function of the Council under section 98 or under another Act, either directly or indirectly.
- (2) A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must—
- (a) not exercise the power or discharge the duty or function; and
  - (b) in the case of the Chief Executive Officer, disclose the type of interest and the nature of the interest to—
    - (i) the Mayor, in writing, as soon as he or she becomes aware of the conflict of interest in the matter; and
    - (ii) the Council by no later than the next ordinary meeting of the Council.
  - (c) in the case of any other member of staff, disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing, as soon as he or she becomes aware of the conflict of interest in the matter.

Penalty: 100 penalty units.

**80C Persons to disclose interests to Council when providing advice**

- (1) This section applies to Council staff and persons engaged under a contract to provide advice or services to the Council or a special committee.
- (2) A person who is providing advice or a report to a meeting of the Council or a special committee, and who has a direct or indirect interest in a matter to which the advice or report relates, must disclose the type of interest when providing the advice or report and before the advice or report is considered by the Council or the committee.

Penalty: 50 penalty units.

- (3) A disclosure made by a person under subsection (2) must be recorded in the minutes of the meeting.
- (4) A person who has made a disclosure under subsection (2) must disclose the nature of the interest if required to make that disclosure by the Council or committee.

- (5) Sections 77A to 78D apply to a person to whom this section applies as if the person were a relevant person under this Division.

## 81 Register of interests

- (1) In this section—

**nominated officer** means the senior officers of the Council and any other member of the Council staff nominated by the Chief Executive Officer;

**return period** in relation to the ordinary return of a Councillor, member of a special committee or nominated officer means—

- (a) if the last return of the Councillor, member of a special committee or nominated officer was a primary return, the period between the date of the primary return and the date the ordinary return is submitted; or
- (b) if the last return of the Councillor, member of a special committee or nominated officer was an ordinary return, the period between the date of that return and the date the current ordinary return is submitted.
- (2) A person who becomes a Councillor or a member of a special committee must submit a primary return in the prescribed form to the Chief Executive Officer within—
- (a) in the case of a Councillor—
- (i) 30 days of election day; or
- (ii) 7 days of making the oath of office of a Councillor; or
- (b) 30 days of becoming a member of a special committee.

Penalty: 50 penalty units.

- (2A) A Council may exempt a member of a special committee who is not a Councillor from being required to submit a primary return or an ordinary return.
- (2B) The Council must review any exemptions in force under subsection (2A) within the period of 12 months after a general election.
- (3) If a person is re-elected or re-appointed or upon completion of his or her term of office as a Councillor or member of a special committee, the Councillor or member of a special committee does not have to submit a new primary return.
- (4) Any person who becomes a nominated officer must within 30 days of becoming a nominated officer submit a primary return in the prescribed form to the Chief Executive Officer.

Penalty: 50 penalty units.

- (4A) Any person who becomes a nominated officer solely because of the amendment made to this Act by section 8 of the **Local Government (Amendment) Act 1994** is deemed for the purposes of subsection (4) to have become a nominated officer on the date section 8 of that Act came into operation.
- (5) A Councillor, a member of a special committee or a nominated officer must submit an ordinary return in the prescribed form to the Chief Executive Officer on—

- (a) 30 June or within 40 days of 30 June; and
- (b) 31 December or within 40 days of 31 December.

Penalty: 50 penalty units.

- (6) A Councillor, a member of a special committee or a nominated officer must disclose the following information in the primary return as at the date of the primary return—
- (a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;
  - (b) the name or description of any company or body in which he or she holds a beneficial interest unless the total value of the interest does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million;
  - (c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she has any beneficial interest other than by way of security for any debt;
  - (d) a concise description of any trust in which he or she holds a beneficial interest or of which he or she is a trustee and a member of his or her family holds a beneficial interest;
  - (e) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, a member of a special committee or nominated officer.

Penalty: 50 penalty units.

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- (7) A Councillor, a member of a special committee or a nominated officer must disclose in an ordinary return the following information in relation to the return period—
- (a) if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate—the name of the company or body;
  - (b) the name or description of any company or body in which he or she holds or has held a beneficial interest unless the total value of the interest does or did not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million;
  - (c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she had any beneficial interest other than by way of security for any debt;
  - (d) a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;
  - (e) particulars of any gift of or above the amount or value of \$200 received by him or her, either directly or indirectly, from a person other than a relative (within the meaning of section 78) of him or her;
  - (f) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, member of a special committee or nominated officer.

Penalty: 50 penalty units.

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- (9) The Chief Executive Officer must maintain a register of the interests of Councillors, members of special committees and nominated officers consisting of the last 3 returns that those Councillors, members and officers were required to submit under this section.
- (10) The Chief Executive Officer must allow a person to inspect the register if that person has previously made written application to the Chief Executive Officer to do so and the application meets the requirements of the regulations.
- (11) The register may be inspected at the office of the Council during normal office hours.
- (12) The Chief Executive Officer must take all reasonable steps to ensure that no person other than a person who has made application has access to or is permitted to inspect the register or any return.
- (13) A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.
- (13A) The Chief Executive Officer must maintain a record of the names of persons who have inspected the register of interests under subsection (10).
- (13B) A Councillor, a member of special committee or a nominated officer, whose interests are recorded in the register may inspect the recorded names of people kept under subsection (13A) who have inspected his or her personal records.
- (14) A person employed by the Council must not, whether before or after he or she ceases to be so employed, make a record of, divulge or communicate to any person any information in relation to a matter dealt with by this section that is gained by or conveyed to him or her during his or her employment with the Council or make use of that information for any purpose other than the discharge of his or her official duties under this section.  
Penalty: 50 penalty units.
- (15) The Chief Executive Officer must—
  - (a) retain the returns of a Councillor, a member of a special committee or a nominated officer for a period of 3 years after the person has ceased to be a Councillor, a member of a special committee or a nominated officer; and
  - (b) at the end of that period, cause the returns to be destroyed.
- (16) As soon as practicable after a person ceases to be a Councillor or a member of a special committee or a nominated officer, the Chief Executive Officer must remove all the returns submitted by that person from the register.

## **Division 1B—Councillor Conduct Panels**

### **81A Definitions**

In this Division—

**CCP Registrar** means a member of Council staff who is not the Chief Executive Officer and who is appointed in writing by the Chief Executive Officer to be the Councillor Conduct Panel Registrar for the Council under clause 8(1) of Schedule 5;

**Councillor Conduct Panel** means a panel of 2 people established by the MAV under Schedule 5;

**gross misconduct** by a Councillor means behaviour that—

- (a) contravenes—
  - (i) the Councillor conduct principles; and
  - (ii) a section of this Act, the contravention of which has a penalty of at least 10 penalty units; or
- (b) demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor;

**MAV** means the body corporate known as the Municipal Association of Victoria established under the **Municipal Association Act 1907**;

**misconduct** by a Councillor means—

- (a) conduct by a Councillor that is in breach of the Councillor Code of Conduct; or
- (b) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel where the Panel has not made a finding of misconduct against the Councillor;

**serious misconduct** by a Councillor means—

- (a) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel following a finding of misconduct made by the Councillor Conduct Panel in respect of the Councillor; or
- (b) the failure of a Councillor to cease conduct that contravenes the Councillor Code of Conduct after a Councillor Conduct Panel or VCAT has made a finding of misconduct or serious misconduct against the Councillor in respect of that behaviour; or
- (c) conduct by a Councillor that contravenes the Councillor conduct principles after the Councillor has had a previous finding of misconduct, serious misconduct or gross misconduct made against them by a Councillor Conduct Panel or VCAT in the last 4 years; or
- (d) conduct by a Councillor that contravenes—
  - (i) the Councillor conduct principles; and
  - (ii) section 76E or 77.

## **81B Application to Councillor Conduct Panel**

- (1) An application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor, or to authorise an application to VCAT for a finding of serious misconduct, may be made by—
  - (a) the Council, following a resolution of the Council to make an application to a Councillor Conduct Panel under this section in respect of a Councillor's conduct; or
  - (b) a Councillor; or
  - (c) a group of Councillors.
- (2) An application made by a Councillor or group of Councillors must be lodged with the CCP Registrar.
- (3) An application made under this section must—
  - (a) specify the ground or grounds for the application;
  - (b) set out the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting misconduct or serious misconduct;

- (c) if the Councillor Code of Conduct provides processes for resolving internal disputes between Councillors—
  - (i) the reasons why the matter cannot be resolved by those processes; or
  - (ii) if those processes were used, the reasons why the matter was not resolved through those processes;
- (d) if the application is made by the Council or a group of Councillors, state the name and address of the Councillor whom the Council has, or group have, appointed as representative of the Council or group.

**81C Dismissal of application**

A Councillor Conduct Panel may dismiss an application made by a Councillor or group of Councillors under section 81B at any time if—

- (a) the application is frivolous, vexatious, misconceived or lacking in substance; or
- (b) insufficient reasons have been given to explain why the matter cannot be resolved by internal dispute resolution processes.

**81D Referral to VCAT**

- (1) A Councillor who is the subject of an application made under section 81B (the **respondent**) may apply to the Councillor Conduct Panel for referral of the matter to VCAT at any time before the Panel determines the matter.
- (2) A Councillor Conduct Panel must refer an application made under section 81B to VCAT for determination if the respondent makes an application under subsection (1).
- (3) A Councillor Conduct Panel may refer an application made under section 81B to VCAT for determination if the Panel considers that it cannot make a determination because a person fails to attend a Panel hearing or to provide information that the Panel has requested.
- (4) If an application made under section 81B has been referred to VCAT for determination, a Councillor Conduct Panel must—
  - (a) in writing, advise the applicant, the respondent, the relevant Council and the Minister of the referral;
  - (b) provide VCAT with a copy of the application made under section 81B and any other documents the Panel considers relevant to the application.
- (5) The applicant in the application made under section 81B is taken to be the applicant in the application referred to VCAT under this section.

**81E Application on grounds of gross misconduct**

- (1) VCAT may hear an application made by the Secretary that alleges gross misconduct by a Councillor.
- (2) An application made under subsection (1) may only be made by the Secretary.

**81F Parties to a VCAT proceeding**

- (1) The applicant and respondent are parties to a proceeding referred to, or commenced in, VCAT under section 81D, 81E or 81J(1)(b).
- (2) In addition to any other parties, the following may request to be joined as parties to a VCAT proceeding referred to, or commenced, under section 81D or 81J(1)(b)—

- (a) the Secretary;
- (b) the relevant Council.

**81G Notice of a Councillor Conduct Panel**

- (1) A Councillor Conduct Panel must—
  - (a) fix a time and, subject to subsection (2), a place that is within the municipal district of the relevant Council, for the hearing to be conducted; and
  - (b) serve by post a notice of the time and place of the hearing on the applicant, respondent and Council.
- (2) For the purposes of subsection (1)(a), a Councillor Conduct Panel may fix a place for the hearing that is not within the municipal district of the relevant Council if the Panel considers it necessary or appropriate in the circumstances.

**81H Procedures**

- (1) A Councillor Conduct Panel may—
  - (a) request a person to attend a hearing and answer questions;
  - (b) request information from the applicant, the respondent or the Council, including confidential information held by the Council.
- (2) Members of a Councillor Conduct Panel that are provided with confidential information must ensure that the information is not released to the public.

**81I Conduct of a Councillor Conduct Panel**

- (1) A Councillor Conduct Panel must not make a determination under section 81J until it has conducted a hearing.
- (2) The following applies to a hearing of a Councillor Conduct Panel—
  - (a) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit;
  - (b) there is no right to representation at the hearing except if the Panel considers that a party requires representation to ensure that the hearing is conducted fairly;
  - (c) the proceedings must not be open to the public;
  - (d) if the hearing is based on an application made by Council or group of Councillors, the appointed representative must represent the Council or group of Councillors at the hearing;
  - (e) the Panel is not bound by rules of evidence but may inform itself in any way it thinks fit;
  - (f) the Panel is bound by the rules of natural justice;
  - (g) the procedure of a Panel is otherwise in its discretion.
- (3) At the hearing of an application, the Councillor Conduct Panel must provide the respondent with an opportunity to be heard.

**81J Determinations by a Councillor Conduct Panel**

- (1) After a Councillor Conduct Panel has conducted a hearing, the Panel may—
  - (a) make a finding of misconduct against a Councillor; or

- (b) authorise an applicant to make an application to VCAT if the Panel considers that there are reasonable grounds on which VCAT may make a finding of serious misconduct against a Councillor; or
  - (c) whether or not a finding of misconduct against a Councillor has been made, make a finding that remedial action is required; or
  - (d) in addition to any findings made under paragraphs (a) to (c), direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue; or
  - (e) dismiss the application.
- (2) If a Councillor Conduct Panel makes a finding of misconduct against a Councillor, the Panel may—
- (a) reprimand that Councillor; or
  - (b) direct that Councillor to make an apology in a form or manner determined by the Panel; or
  - (c) direct that Councillor to take leave of absence for a period specified by the Panel not exceeding 2 months, commencing on a date specified by the Panel.
- (3) If a Councillor Conduct Panel makes a finding that remedial action is required under subsection (1)(c), the Panel may—
- (a) direct the Councillor who is the subject of the application to attend mediation; or
  - (b) direct the Councillor who is the subject of the application to attend training; or
  - (c) direct the Councillor who is the subject of the application to attend counselling.
- (4) For the purposes of subsection (3), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.
- (5) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.
- (6) If a Councillor Conduct Panel directs the Council to amend its Councillor Code of Conduct, the Council must comply with that direction within 3 months of the direction being made.
- (7) This section does not apply to a Councillor Conduct Panel formed for the purposes of hearing a referral from VCAT under section 81L.

**81K Findings and orders by VCAT**

- (1) In the case of an application referred to, or commenced in, VCAT under sections 81D, 81E or 81J(1)(b), VCAT may make any of the following findings—
- (a) that a Councillor has engaged in conduct that constitutes misconduct;
  - (b) that a Councillor has engaged in conduct that constitutes serious misconduct;
  - (c) that a Councillor has engaged in conduct that constitutes gross misconduct.
- (2) VCAT may, in relation to a finding of misconduct under subsection (1)(a)—
- (a) reprimand that Councillor; or

- (b) make any or all of the following orders—
  - (i) that the Councillor must make an apology in a form and manner determined by VCAT;
  - (ii) that the Councillor must take leave of absence for a period specified by VCAT not exceeding 2 months and commencing on a date specified by VCAT.
- (3) VCAT may make any or all of the following orders in relation to a finding of serious misconduct under subsection (1)(b)—
  - (a) that the Councillor is suspended from office for a period specified by VCAT not exceeding 6 months;
  - (b) that the Councillor is ineligible to hold the office of Mayor for a period specified by VCAT not exceeding 4 years;
  - (c) that the Councillor is ineligible to chair a special committee of the Council for a period specified by VCAT not exceeding 4 years.
- (4) VCAT may make any or all of the following orders in relation to a finding of gross misconduct under subsection (1)(c)—
  - (a) that the Councillor is disqualified for a period specified by VCAT not exceeding 4 years and his or her office is vacated;
  - (b) that the Councillor is suspended from office for a period specified by VCAT not exceeding 6 months;
  - (c) that the Councillor is ineligible to hold the office of Mayor for a period specified by VCAT not exceeding 4 years.
- (5) If VCAT makes a finding of serious misconduct or gross misconduct by a Councillor, the Councillor becomes ineligible to hold the office of Mayor for the remainder of the Council's term, unless VCAT otherwise orders.

**81L Referral by VCAT to Councillor Conduct Panel**

- (1) VCAT may refer a matter to a Councillor Conduct Panel, whether or not VCAT has made a finding under section 81K, if VCAT considers that—
  - (a) remedial action is required; or
  - (b) the Councillor Code of Conduct requires amendment.
- (2) A Councillor Conduct Panel formed for the purposes of this section may—
  - (a) direct the Councillor who is the subject of the referral to attend mediation; or
  - (b) direct the Councillor who is the subject of the referral to attend training; or
  - (c) direct the Councillor who is the subject of the referral to attend counselling;
  - (d) direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue.
- (3) For the purposes of subsections (2)(a), (2)(b) and (2)(c), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.
- (4) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.

- (5) If a Councillor Conduct Panel directs the Council to amend its Councillor Code of Conduct, the Council must comply with that direction within 3 months of the direction being made.

**81M Notice of determinations and tabling of decisions**

- (1) After a Councillor Conduct Panel has made a determination under section 81J, the Panel must give a copy of the decision to—
  - (a) the Council; and
  - (b) the parties to the matter; and
  - (c) the Minister.
- (2) A copy of the decision given to the Council under subsection (1)(a) must be tabled at the next ordinary meeting of the Council and recorded in the minutes for that meeting.
- (3) A Councillor Conduct Panel must give a written statement of reasons for the decision, within 28 days of making a determination, to—
  - (a) the Council; and
  - (b) the parties to the matter; and
  - (c) the Minister.
- (4) A statement of reasons provided in accordance with subsection (3) is taken to be a statement of reasons provided in accordance with section 46(1) of the **Victorian Civil and Administrative Tribunal Act 1998**.
- (5) A record of the decision of VCAT, made in respect of an application or review under this Division in relation to a Councillor of a Council, must be tabled at the next ordinary meeting of the Council and recorded in the minutes of that meeting.

**81N Suspension of matters during election period**

- (1) Applications and proceedings made and conducted under this Division must be suspended during the election period for a general election.
- (2) If an application is made to a Councillor Conduct Panel or VCAT for a finding of misconduct or serious misconduct against a person who is a Councillor before a general election, and that person is not returned to the office of Councillor as a result of the general election, the application made against that person who was a Councillor before the election lapses.
- (3) If an application is made to a Councillor Conduct Panel or VCAT for a finding of misconduct or serious misconduct against a person who is a Councillor before a general election, and that person is returned to the office of Councillor as a result of the general election, the application made against the Councillor may resume, whether or not the applicants were returned as a result of the general election.
- (4) An application under section 81E against a person who is a Councillor before a general election must resume after the general election is held whether or not the person is returned to the office of Councillor.

**81O Breach of Act by Councillor**

- (1) This section applies if it appears to a Councillor Conduct Panel that a Councillor has committed an offence under this Act.
- (2) A Councillor Conduct Panel must by notice in writing notify the Secretary that a Councillor appears to have committed an offence under this Act as soon as the Panel becomes aware of the apparent offence.

**81P Investigation by inspector of municipal administration**

- (1) The Secretary may at any time (whether or not the Secretary has received a notice under section 81O), by notice, require a Councillor Conduct Panel to suspend or stop the Panel's consideration of a matter.
- (2) If the Secretary has given notice to a Councillor Conduct Panel under subsection (1), the Secretary must refer the matter that was before the Panel to an inspector of municipal administration for investigation under section 223B.
- (3) The inspector of municipal administration must commence an investigation into a matter referred to him or her within 28 days of the referral under subsection (2).

**81Q Review by VCAT**

- (1) In this section, **party** means the applicant or respondent to an application made to, and matter heard by, a Councillor Conduct Panel, under this Division.
- (2) Subject to subsection (3), a party who is affected by the decision made by a Councillor Conduct Panel under this Division may apply to VCAT for review of the decision.
- (3) A person is not entitled to apply for review of a decision made by a Councillor Conduct Panel to—
  - (a) dismiss the application because it is frivolous, vexatious, misconceived or lacking in substance; or
  - (b) dismiss the application because insufficient reasons have been given to explain why the matter cannot be resolved by internal dispute processes; or
  - (c) authorise or not authorise an applicant to make an application to VCAT on the grounds of serious misconduct by a Councillor.

**81R Time period for making application to VCAT**

An application for review under section 81Q must be made within 28 days of the Councillor Conduct Panel giving a statement of reasons under section 81M.

**81S Councillor Conduct Panels**

Schedule 5 has effect with respect to the establishment of Councillor Conduct Panels.