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Councillor Code of Conduct

EVERY COUNCIL MUST MAINTAIN AND REGULARLY REVIEW ITS COUNCILLOR CODE OF CONDUCT. A CODE MUST INCLUDE THE COUNCILLOR CONDUCT PRINCIPLES.

A COUNCIL CAN APPLY FOR A COUNCILLOR CONDUCT PANEL TO ENFORCE ITS CODE OF CONDUCT IF THE MATTER CANNOT BE RESOLVED THROUGH INTERNAL PROCESSES.

Councillor conduct

The *Local Government Act 1989* (the Act) gives responsibility to manage the conduct of Councillors to the elected Council. This responsibility cannot be transferred to the Chief Executive Officer (CEO) or any member of Council staff.

Councils are empowered to manage the conduct of their members by adopting a Councillor Code of Conduct, by using internal dispute resolution processes and, if necessary, by applying for a Councillor Conduct Panel.

Adopting a Code

Every Council must have a Councillor Code of Conduct.

Section 76C of the Local Government Act 1989 says that the Council must review its

Code of Conduct within 12 months after each general election of Councillors. The Council may also review its code at any other time.

Contents of a code

A Councillor Code of Conduct must include the Councillor conduct principles (Attachment A).

A Council may decide to include other matters relating to the conduct of Councillors in its Code. Matters that a Council should consider including in its Code include:

- an internal dispute resolution process
- a process to deal with complaints about Councillors
- arrangements for recording gifts.

A Councillor Code of Conduct must not deal with the conduct of Council staff. Neither must it contain anything that is inconsistent with the Act or any other Act or Regulation.

Availability of the Code

A copy of the adopted Code must be

- given to each Councillor
- made available for public inspection at the Council.



Enforcing the Code

If a Councillor breaches the Code of Conduct, he or she may be required to participate in an internal dispute resolution process if the adopted Code contains such a process.

Even if the Code of Conduct does not contain a dispute resolution process, it is preferable to resolve disputes internally.

If a matter cannot be resolved internally, or if a Councillor refuses to participate in a dispute resolution processes, an application may be made for a Councillor Conduct Panel.

It is not recommended that an application be made for a Panel unless the matter is serious.

Panel members

A Councillor Conduct Panel (CCP) consists of two persons:

- a legal practitioner (the Chair)
- a person with local government experience.

The Municipal Association of Victoria maintains lists of people who are qualified to be on Panels and appoints members for a Panel when required. The MAV has no other responsibility for Panels, Panel processes or panel decisions.

Registrar

The CEO must appoint, in writing, a member of staff to be the CCP Registrar. A Registrar must always be appointed, even when there is no Panel.

The Registrar must:

- receive any application for a Panel
- notify the MAV a Panel is required;
- give a copy of the application to the parties

- give copies of the application to the Panel members
- arrange a venue for Panel hearings
- attend Panel hearings
- keep records of Panel hearings
- seal the records and give them to the CEO.

It is important that a Registrar be non-partisan. The Registrar must not:

- express any opinion, publicly or privately, about the merits of a case
- assist any party with its application or in the presentation of its case to the Panel, unless the assistance is only in regard to procedures
- give copies of applications or other Panel records to any person unless required to under the Act.

Panel application

An application for a Councillor Conduct Panel may only be made by:

- a resolution of the Council
- an application from one or more Councillors.

An application must:

- specify the grounds for the application, by referring to the relevant provision(s) in the Code of Conduct
- describe the misconduct that is alleged to be a breach of the Code and
- explain why the matter cannot be resolved through internal dispute resolution processes.

If the application is from the Council or a group of Councillors, the application must also nominate a Councillor to represent the Council or group.



Panel process

A Councillor Conduct Panel will usually conduct a hearing, although it may dismiss an application not made by a Council resolution if it considers the application to be frivolous, vexatious, misconceived or without substance.

A Panel hearing:

- is not open to the public
- is relatively informal
- is bound by the rules of natural justice.

A person does not have a right to legal representation in a Panel hearing unless the Panel considers such representation necessary for procedural fairness.

A Panel may ask a person to attend a hearing. It may also ask the applicant, the respondent or the Council to provide information. If the information is confidential, the Panel must ensure it is not released to the public.

Panel findings

If a Panel makes a finding of “misconduct” it may:

- Reprimand the Councillor
- Direct the Councillor to make an apology
- Direct that the Councillor take up to 2 months leave of absence.

Even if there is no finding of misconduct, the Panel may direct the Councillor to attend mediation, training or counselling.

Referral to VCAT

In certain circumstances a matter may be referred to VCAT:

- A Matter must be referred to VCAT if the respondent Councillor requests that the matter be heard by VCAT.

- The Panel may refer a matter to VCAT if it cannot make a decision because a person fails to attend a hearing or provide information.
- A Panel may authorise the applicant to make an application to VCAT if the Panel considers that there are reasonable grounds for a finding of “serious misconduct”.

Only VCAT can make a finding of “serious misconduct, which includes:

- A failure to comply with the direction of a Panel after a finding of misconduct
- A failure to cease misconduct after a misconduct finding
- Repeated misconduct after a misconduct finding
- A breach of section 76E of the Act, regarding improper direction or improper influence of Council staff
- A breach of section 77 of the Act, regarding the release of confidential information.

Review of Panel decision

A party to a Panel decision may, within 28 days of receiving the statement of reasons, apply to VCAT for a review of the decision.

An application for review may not be made in respect of:

- A decision to authorise, or not to authorise, an application to VCAT
- A decision to dismiss the application because it is frivolous, vexatious, misconceived or without substance
- A decision to dismiss the application because insufficient reasons were given for not being able to resolve the matter internally.



Referral to Department

If it appears to a Panel that there has been an offence under the Act, it must advise the Secretary of the Department of Planning and Community Development.

The Secretary may require the Panel to suspend or stop its hearings pending the outcome of an investigation by the Local Government Investigations and Compliance Inspectorate.

Election period

All Councillor Conduct Panel proceedings are suspended during the election period for a general election and are discontinued if the respondent Councillor is not re-elected.

Costs

The Chief Executive Officer must ensure that the members of a Councillor Conduct panel are paid in accordance with the schedule of fees set by the MAV.

If a matter is referred to VCAT, the Council must pay the legal costs of the parties, unless VACT orders otherwise.

Further Information

- *Local Government Act 1989:*
 - Sections 76B to 77
 - Sections 81A to 81S
 - Schedule 5.
- Guide to Councillor Conduct Arrangements, Local Government Victoria, 2009.

Attachment

- Councillor Conduct Principles

While this document provides general guidance, the definitive statement of legal obligations is the law itself – particularly the relevant provisions of the *Local Government Act 1989*.