

MINUTES

STATUTORY MEETING OF COUNCIL

Wednesday, 6 November 2013

Council Meeting held at the
Swan Hill Town Hall,
Council Chambers,
McCallum Street, Swan Hill
Commenced at 6:00 PM

COUNCIL:

Cr LT McPhee
Cr JN Katis
Cr GW Norton
Cr GI Cruickshank
Cr JA Kiley
Cr CM Adamson
Cr JB Crowe

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SECTION A – PROCEDURAL MATTERS

- **Open**

The Chief Executive Officer, Dean Miller declared the meeting open at 6pm.

- **Acknowledgement to Country**

The Chief Executive Officer, Dean Miller read the Acknowledgement to Country.

- **Prayer**

Councillor Greg Cruickshank read the prayer.

- **Apologies**

Nil

SECTION B – REPORTS

B.13.115 MAYORAL TERM OF OFFICE

Source: Procedural
Department: Chief Executive
File Number: 24-19-00

Summary

The Local Government Act 1989 allows for the election of a Mayor for a two-year term.

Council Plan Strategy Addressed

Councillor and Staff accountability - We will represent the interests of our community and will conduct our affairs openly and with integrity, reflecting high levels of good governance.

Develop open community relationships – We seek to achieve greater community inclusiveness and understanding of Council’s operations and decisions.

Recommendation

That Council determine whether to elect a Mayor for a term of one or two years.

Financial and Resource Implications

Costs associated with Mayoral allowances and ancillary costs are included in the budget each year.

Background

Local Government Act 1989 Section 71

1. At a meeting of the Council that is open to the public, the Councillors must elect a Councillor to be the Mayor of the Council.
2. Before a Mayor is elected under this section, the Council may resolve to elect a Mayor for a term of 2 years.
3. The Mayor is to be elected –

- a. After the fourth Saturday in October but not later than 30 November in each year; or
- b. If under subsection (2), the Mayor is elected for a term of 2 years, the next election of Mayor is 2 years after the fourth Saturday in October but not later than 30 November in the second year after the election; or
- c. As soon as possible after any vacancy in the office of the Mayor occurs.

Options

Council may resolve to elect the Mayor for either a one or two year term.

56/13 Motion

MOVED Councillor Cruickshank

That Council elect a Mayor for a term of one year.

SECONDED Councillor Norton

The Motion was put and CARRIED

B.13.116 ELECTION OF MAYOR 2013-2014

Source: Procedural
Department: Chief Executive
File Number: 24-19-00

Summary

This report outlines the process and statutory requirements for the election of Mayor for the period from the 6 November 2013 until the November 2013 Statutory Meeting or 2015 subject to the outcome of Agenda Item 1.

Election of Mayor

The Chief Executive Officer must conduct the election of the Mayor in accordance with the provisions of the Act.

Method of Voting

- Council's Local Law Number 1 Part B (attached) stipulates how to conduct the Mayoral election.

Council Plan Strategy Addressed

Councillor and Staff accountability - We will represent the interests of our community and will conduct our affairs openly and with integrity, reflecting high levels of good governance.

Develop open community relationships – We seek to achieve greater community inclusiveness and understanding of Council's operations and decisions.

Recommendation

NA.

Background

Under section 71 of the Local Government Act 1989, the Councillors must elect a Councillor to be the Mayor of the Council. The term of office of the Mayor is until the next Statutory Meeting of Council for the election of the Mayor is held or until any vacancy in the office of Mayor occurs.

Section 73 of the Local Government Act 1989 states that the Mayor of a Council takes precedence at all municipal proceedings within the municipal district and that

the Mayor must take the chair at all meetings of the Council at which he or she is present.

The Mayor should lead the Council in relation to policy making and the setting of Council priorities.

The role of the Mayor is to:

- Chair Council meetings.
- Exercise the casting vote at Council meetings when required.
- Represent the municipality at ceremonial occasions and in political forums.
- Lead, coordinate and provide guidance for the Council and Councillors.
- Lead the Council in relation to policy making and the setting of Council priorities.
- Speak publicly about the Local Government's role and developments in the community.
- Oversee the performance of the Chief Executive Officer.
- Liaise closely with the Chief Executive Officer to ensure effective relationships between Council and its administration in pursuing Council goals.

Relevant Legislation

Local Law No 1 – Meeting Procedure
Local Government Act 1989

Attachments

1 LOCAL LAW NUMBER 1 PART B

Councillor Kiley nominated Councillor Les McPhee for Mayor. Councillor Les McPhee accepted the nomination. The Chief Executive Officer, Dean Miller then asked for further nominations. As there were no further nominations the Chief Executive Officer then declared Councillor Les McPhee elected Mayor.

**PART B
ELECTION OF MAYOR**

Introduction: The purpose of this Part is to regulate the proceedings for the election of the Mayor and Deputy Mayor pursuant to Section 71 of the Act.

13 ELECTION OF MAYOR AND DEPUTY MAYOR

- 13.1 The Chief Executive Officer will preside at the election of the Mayor and undertake the role of acting Chairman and preside as the returning officer.
- 13.2 All Councillors are eligible to stand for election to the office of Mayor.
- 13.3 Voting shall be by a show of hands.
- 13.4 Candidates for the election of Mayor may address Council for up to five minutes prior to the election of Mayor being conducted.
- 13.5 In determining the election of Mayor, the following process will apply:
 - 13.5.1 Where only one nomination is received, that Councillor must be declared elected upon acceptance by the nominee.
 - 13.5.2 Where two nominations are received, the Councillor with the majority of votes cast will be declared elected.
 - 13.5.3 Where there are two or more nominations and all votes cast are equally divided between two or more nominees, the election must be determined by lot.
 - 13.5.4 Where there are more than two nominations received and the result has not been determined under paragraphs 13.5.2 or 13.5.3, the nominee with fewest number of votes cast must be eliminated (and if there is more than one nominee with an equal number of the fewest votes then a lot will determine the successful nominee in this instance) and the names of the remaining nominees must be put to the vote again, and
 - 13.5.5 The procedure in paragraph 13.5.3 must be repeated until the circumstances in paragraph 13.5.4 apply or until there are only two nominees remaining in which case a further vote must be taken and the nominee with the majority will be declared elected, or if there is an equal division of votes, the election must be determined by lot.
- 13.6 The procedure for the election of Deputy Mayor shall follow the same procedure as that for the Mayor.

B.13.117 ELECTION OF DEPUTY MAYOR 2013/2014

Source: Procedural
Department: Chief Executive
File Number: 24-19-02

Summary

The Local Government Act 1989 is silent in relation to the election of a Deputy Mayor, however there is nothing to preclude Council from appointing a Deputy Mayor.

Council Plan Strategy Addressed

Councillor and Staff accountability - We will represent the interests of our community and will conduct our affairs openly and with integrity, reflecting high levels of good governance.

Development of open community relationships – We seek to achieve greater community inclusiveness and understanding of Council’s operations and decisions.

Recommendations

N/A.

Financial and Resource Implications

There is no provision in the Act for a separate allowance for Deputy Mayor.

Background

At the 8 December 2008 Special Council Meeting, Council adopted a Deputy Mayor Position Policy (**POL/GOV006**) to strengthen the position of Mayor and the operations of Council.

Council resolved as follows:

That Council elect a Deputy Mayor to support the Mayoral role to facilitate the smooth and uninterrupted civic, statutory and policy-making functions of Council in the absence of the Mayor.

Swan Hill Rural City Council Local Law No 1 “Meeting Procedures Local Law”, Part B stipulates that the procedure for the election of Deputy Mayor shall be the same as that for the Mayor.

Section 73 of the Act provides that:

3. If there is a vacancy in the office of Mayor or the Mayor is absent, incapable of acting or refusing to act, the Council must appoint one of the Councillors to be the acting Mayor.
4. An acting Mayor may perform any function or exercise any power conferred on the Mayor.

It would be appropriate for the Deputy Mayor to act as Acting Mayor for the purposes of Section 73, however Council may appoint any Councillor to be Acting Mayor.

Options

Council policy is to maintain the position of Deputy Mayor.

Councillor Katis nominated Councillor Cruickshank for Deputy Mayor. Councillor Cruickshank accepted the nomination. The Chief Executive Officer, Dean Miller then asked for further nominations to which Councillor Crowe nominated Councillor Adamson for Deputy Mayor. Councillor Adamson accepted the nomination. The Chief Executive Officer then stated that due to having two nominations that Councillor Cruickshank and Councillor Adamson would each have up to five minutes to speak to the nomination. Councillor Cruickshank spoke first followed by Councillor Adamson. The Chief Executive Officer asked for the vote of Councillors and after the vote declared Councillor Adamson Deputy Mayor.

57/13 Motion

MOVED Councillor Norton

That standing orders be suspended to robe the Mayor.

SECONDED Councillor Adamson

The Motion was put and CARRIED

58/13 Motion

MOVED Councillor Norton

That standing orders be resumed.

SECONDED Councillor Kiley

The Motion was put and CARRIED

B.13.118 COUNCIL MEETING LOCATIONS

Source: Procedural
Department: Chief Executive
File Number: 22-13-00

Summary

Each year Council holds its Ordinary meetings in a range of locations throughout the municipality to enable members of the community to be present.

Council meetings commence at 7pm on the third Tuesday of each month.

Council Plan Strategy Addressed

Developing open community relationships - We seek to achieve greater community inclusiveness and understanding of Council's operations and decisions.

Councillor and staff accountability – We will represent the interests of our community and will conduct its affairs openly and with integrity, reflecting high levels of good governance.

Recommendation

That Council meetings in 2014 be held at the locations, dates and times specified in Table 1.

Policy Implications

The Swan Hill Rural City Council Code of Governance identifies that Council meets in different locations throughout the municipality to facilitate public access. Meetings are held at 7.00pm at night to enable members of the community to attend.

Financial and Resource Implications

Costs associated with conducting Council meetings outside of the Council Chamber in the Swan Hill Town Hall are included in the budget each year.

Triple Bottom Line Impact

Facilitating community access to Council meetings will aid the Sustainable Community goal of Building Community Capacity.

Background

Historically Council has held its meetings on the third Tuesday of the month, commencing at 7.00pm to enable interested members of the community to attend Council meetings. For the same reason Council has held its ordinary monthly meetings in a range of locations throughout the municipality.

In the last three years Council has met regularly in Robinvale and on two occasions at smaller locations in the municipality. Traditionally, Council has not met in January (an exception to this practice was made in 2012).

Issues

Meeting in locations outside of Swan Hill enables access to Council meetings by members of the community who otherwise would have to travel significant distances to attend Council meetings.

Scheduling meetings in other locations enables Councillors to inspect local developments and issues prior to the commencement of the Council meeting.

The following table includes meeting locations for 2012 and 2013, and proposed meeting locations and times for 2014:

SECTION B - REPORTS

6 November 2013

Month	2012	2013	2014
January	Swan Hill	No meeting	No meeting
February	Swan Hill	Swan Hill	Swan Hill 18 February 2014 7.00pm
March	Lake Boga	Lake Boga	Ultima 18 March 2014 7.00pm
April	Swan Hill	Swan Hill	Swan Hill 15 April 2014 5.00pm
May	Manangatang	Swan Hill	Swan Hill 20 May 2014 7.00pm
June	Robinvale	Boundary Bend	Swan Hill 17 June 2014 7.00pm
July	Swan Hill	Robinvale	Swan Hill 15 July 2014 5.00pm
August	Swan Hill	Swan Hill	Robinvale 19 August 2014 7.00pm
September	Swan Hill	Swan Hill	Swan Hill 16 September 2014 7.00pm
October	Swan Hill	Nyah	Piangil 21 October 2014 7.00pm
November	Swan Hill	Swan Hill	Swan Hill 18 November 2014 7.00pm
December	Swan Hill	Swan Hill	Swan Hill 16 December 2014 7.00pm

Options

Council can resolve to:

- Continue meeting on the third Tuesday of the month or another day.
- Continue commencing meetings at 7.00pm or at another time.
- Meet in any location it sees fit.

59/13 Motion

MOVED Councillor Cruickshank

That Council meetings in 2014 be held at the locations, dates and times specified in Table 1 with the amendments of the April meeting to be held at 5.00pm instead of 7.00pm and the June meeting to be held at 7.00pm instead of 5.00pm.

SECONDED Councillor Norton

The Motion was put and CARRIED

B.13.119 APPOINTMENT OF COUNCIL DELEGATES TO OUTSIDE ORGANISATIONS AND COMMUNITY GROUPS

Source: Procedural
Department: Chief Executive
File Number: 22-20-00

Summary

The purpose of the report is to consider the appointment of Councillors to outside organisations and community groups.

Council Plan Strategy Addressed

Developing open community relationships - We seek to achieve greater community inclusiveness and understanding of Council's operations and decisions.

Councillor and staff accountability – We will represent the interests of our community and will conduct its affairs openly and with integrity, reflecting high levels of good governance.

Recommendation

That Council nominate and/or appoint Councillors to external organisations as shown in Attachment 1 to this report.

Financial and Resource Implications

Travel and accommodation costs will be incurred by Councillors, but these are budgeted for annually.

Triple Bottom Line Impact

Appointments to external organisations will assist Council in achieving triple bottom line objectives.

Background

Council makes appointments to various external organisations and community groups. This assists Council in working closely with its community and taking part in a wide range of activities associated with the development of the Municipality.

Options

Some of the appointments are mandatory (eg Audit Committee) and others are optional.

Attachments

1 COUNCIL DELEGATIONS

60/13 Motion

MOVED Councillor Norton

That Council nominate and/or appoint Councillors to external organisations as shown in Attachment 1 to this report.

SECONDED Councillor Crowe

The Motion was put and CARRIED

COUNCIL DELEGATES

Organisation	Councillor Representative	Councillor/Officer December 2012/ 2013	Councillor/Officer December 2013/ 2014
Asset Naming Sub-Committee (of Council)	Mayor or Deputy Mayor 1 Councillor as member	Deputy Mayor Cr Katis	Deputy Mayor Cr Katis
Audit Committee	2 Councillors as members	Cr Katis Cr Crowe	Cr Katis Cr Crowe
Chief Executive Officer Performance Review Committee	Mayor, Immediate Past Mayor and Councillor	Mayor, Immediate Past Mayor and Councillor	Mayor, Deputy Mayor and Immediate Past Mayor
Swan Hill Regional Livestock Exchange	Councillor Officer	Cr McPhee	Cr McPhee
Swan Hill Indoor Sport & Recreation Centre Committee of Management	Ward Councillors as observers	Cr Adamson	Cr Adamson
Swan Hill Leisure Centre Committee of Management	Councillor as Delegate Councillor as Sub-Delegate	Cr Kiley Cr Adamson Sub-Delegate	Cr Adamson Cr Kiley Sub-Delegate
Swan Hill Regional Art Gallery Advisory Committee	Councillor as member	Cr Kiley	Cr Kiley
Alan Garden Reserve, Committee of Management	Councillor as a member	-	Cr Kiley
Central Murray Regional Waste Management Group	Councillor as Director on Group Board	Cr Cruickshank	Cr Cruickshank

Organisation	Councillor Representative	Councillor/Officer December 2012/ 2013	Councillor/Officer December 2013/ 2014
Livestock Saleyards Association of Victoria Inc	Councillor as member	Cr McPhee	Cr McPhee
Municipal Association of Victoria	Councillor as Delegate Councillor as Sub-Delegate	Cr Norton Mayor as Sub-Delegate	Cr Norton Mayor as Sub-Delegate
Municipal Emergency Management Planning Committee	Councillor as Chair	Cr McPhee Cr Katis Sub-Delegate	Cr McPhee Cr Katis Sub-Delegate
Murray Darling Association	Councillor as member	Cr Norton Cr Crowe Sub-Delegate	Cr Norton Cr Crowe Sub-Delegate
Murray Mallee Local Learning & Employment Network (MLLEN)	Councillor/Officer as member	Cr Adamson	Cr Adamson
Murray River Group of Councils	Mayor and CEO	Mayor CEO	Mayor CEO
North West Municipalities Association	Mayor and CEO or Councillors	Cr Norton as Delegate Cr Adamson as Sub-Delegate	Cr Norton as Delegate Cr Adamson as Sub-Delegate
Swan Hill Community House	Councillor as member	Cr McPhee	Cr McPhee
Swan Hill “Healthy Minds” Network	Councillor as member	Cr Kiley	Cr Kiley
Swan Hill Inc.	Councillor/Officer as board member	Cr Kiley	Cr Kiley
Victorian Local Governance Association (VLGA)	Councillor Delegate and Councillor as Sub-Delegate	Councillor McPhee as Delegate and Councillor Adamson as Sub-Delegate	Councillor McPhee as Delegate and Councillor Adamson as Sub-Delegate

Committee	Councillor 2012/13	Councillor 2013/14
Robinvale Aboriginal Elders Committee	Cr Katis	Cr Katis
Robinvale Euston Business Association	Cr Katis	Cr Katis
Lake Boga Inc	Cr McPhee	Cr McPhee
Manangatang Improvement Group	Cr Norton	Cr Norton
Nyah Action Group	Cr Norton	Cr Norton
Ultima Progress Association	Cr McPhee	Cr McPhee
Bigger Better Beverford Group	Cr Cruickshank Cr Adamson Cr Crowe Cr Kiley	Cr Cruickshank Cr Adamson Cr Crowe Cr Kiley
Woorinen Progress Association	Cr Cruickshank Cr Adamson Cr Crowe Cr Kiley	Cr Cruickshank Cr Adamson Cr Crowe Cr Kiley
Piangil Community Group	Cr Norton	Cr Norton
Boundary Bend Progress Association	Cr Norton	Cr Norton
Swan Hill Rural City Residents & Ratepayers Association	Any Councillor can attend	Any Councillor can attend
Rail Freight Alliance	Cr Cruickshank Cr Adamson	Cr Cruickshank Cr Adamson
Central Murray Regional Transport Forum	Cr Cruickshank Cr Adamson	Cr Cruickshank Cr Adamson
Tree Committee	Cr Katis Cr Kiley	Cr Katis Cr Kiley
Chisholm Reserve Motor Sports Development Group	Cr Cruickshank Cr Crowe Cr Adamson	Cr Cruickshank Cr Crowe Cr Adamson
Community Grants	Cr Crowe	Cr Crowe

Committee	Councillor 2012/13	Councillor 2013/14
Rural Councils Victoria	Cr Norton	Cr Norton
GWM Water Mallee Customer Committee	-	Cr Norton

B.13.120 SETTING OF COUNCILLOR ALLOWANCES

Source: Procedural
Department: Chief Executive
File Number: 24-08-00

Summary

The Local Government (Council Remuneration Review) Panel Report April 2008 recommended the new Council and Mayoral allowances and support package to better reflect the contribution made by locally elected councillors.

The allowance package is based on a three-category model of Council allowances, based on revenue and population figures and ensures that Councils can retain flexibility and discretion to set allowances within a range in consultation with their community.

New allowance ranges applied to all Councils effective from 27 October 2012.

Council Plan Strategy Addressed

Councillor and Staff accountability - We will represent the interests of our community and will conduct our affairs openly and with integrity, reflecting high levels of good governance.

Recommendation

That Council leave the Councillor allowance unchanged at \$21,740 (97% of the maximum allowed) and the Mayoral allowance unchanged at \$57,678 (83% of the maximum allowed)

Financial and Resource Implications

Costs associated with Councillor allowances are included in the budget each year.

Background

The Local Government Act 1989 states;

The Victorian Government sets upper and lower limits for all allowances paid to Councillors and Mayors. For the purpose of these allowances limits, Councils are divided into three categories based on the income and population of each council.

Soon after being elected Council determined the precise annual amount that will be paid to the Mayor and Councillors, within the limits set by the Government.

The Councillors allowance was set at \$21,740 and the Mayoral allowance at 57,678. If the Council wishes to increase the allowances up to the maximum allowable, it will need to undertake a public submission process in accordance with Section 223 of the Act.

The current allowance range applicable to this Council is:

Category 2 – Councillors from \$9,317 to \$22,405 and up to \$69,325 for the Mayor. Additionally a remote travel allowance will continue to provide compensation for the time spent on long distance travelled by Councillors in remote areas, This allowance provides for a maximum limit of \$5,000 per annum (at daily rate of \$40 in respect to each meeting or function) or as may be amended from time to time by Order in Council.

Superannuation at 9% is paid in addition to the allowance.

Councillors are not employees of the Council and do not receive employment benefits such as leave entitlements.

Additional support is provided to Councillors in accordance with the Act and Council Policy. These include;

Resources/facilities mandatory

- Administration support
- Office access for the Mayor and Councillors
- Vehicle for the Mayor
- Computer-desktop and iPad or a laptop
- Fax/printer
- Mobile phone and landline if determined
- Stationery
- Access to fax/copier

Reimbursement will be provided for Council related:

- Travel - including reimbursement of public transport costs
- Phone call costs
- Internet
- Child care/family care

Options

Council may set the allowances at any figure within the allowable range.

61/13 MOTION

MOVED Councillor Norton

That Council leave the Councillor allowance unchanged at \$21,740 (97% of the maximum allowed) and the Mayoral allowance unchanged at \$57,678 (83% of the maximum allowed)

SECONDED Councillor Katis

The Motion was put and CARRIED

SECTION F – URGENT ITEMS NOT INCLUDED IN AGENDA

B.13.121 REVIEW OF COUNCILLOR CODE OF CONDUCT POLICY

Source: Procedural
Department: Corporate Services
File Number: 24-18-00

Summary

The Local Government Act (1989) requires that Council reviews its Councillor Code of Conduct within 12 months of a general election.

Council Plan Strategy Addressed

Councillor and Staff accountability - We will represent the interests of our community and will conduct our affairs openly and with integrity, reflecting high levels of good governance.

Recommendation

That Council approve the Code of Conduct.

Policy Implications

The Code of Conduct incorporates the specified changes in accordance with the Local Government Act (1989) and has been further amended to include policies that govern Councillor behaviour within the Swan Hill Rural City Council. The intent of policy remains the same with changes occurring on the following pages.

- Pg 2 Amended table of contents – to reflect numbering changes
- Pg 3 Moved 2.7 into the introduction rather than under the role of Councillors.
- Pg 4 Moved 2.8 under section 3 as the statement is reflective of conduct rather than role.
- Pg 5 Added 'and staff' under in section 4.1 to be consistent with section 3
- Pg 7 Section 6 extract from the Councillor Expense Reimbursement and Support Policy removed and replaced with statement – Councillors must comply with Councillor Expense Reimbursement and Support Policy POL/GOV 004.
Section 6.3 changed to 6.2 text from the Overseas and Interstate Travel Policy removed and replaced with

	Travel.
	Councillors must comply with Councils travel policy
Pg 8	Section 7 Communication- text from Media policy removed and statement added - Councillors must comply with Councils Media Policy POL/GOV 003
Pg12-15	Section 14-18 made subsections of 13 as all matters relate to the caretaker period
Pg 15-16	Section 20 renumber to 14, & 21 renumbered to 15

Triple Bottom Line Impact

This code is consistent with Council’s values expressed in the Council Plan as it relates directly to the Leadership and Governance Section.

Background

Within twelve months following a Council election, the Local Government Act (1989) requires Council to review its Code of Conduct, and if required, amend the code to reflect how the activities of Councillors should be governed.

Section 76C of the Act requires that a Code of Conduct include the following issues:

- Councillor conduct principles, which are listed in section 76B and 76BA.
- Procedures for resolving disputes between Councillors.
- Provisions for any matter prescribed for Section 76C.
- Procedures for disclosure of interests.
- Statement of caretaker procedures, including ensuring Council resources are not used inappropriately.
- The Code may include other matters of conduct that a Council considers appropriate.

Issues

The Code encompasses all aspects of the legislation and reflects how Councillors currently fulfill their role.

The code is based on the principle that achieving positive outcomes for the community requires a team effort of all Councillors, and that a Councillor develops and maintains productive relationships with members of the community, Council staff and other Councillors through adhering to the Councillor Code of Conduct . The code seeks to facilitate public trust in the Council as a democratic entity.

Consultation

As this code deals with the relationships between Councillors, consultation with the community is not appropriate in this case.

All members of the Executive Management Team and Councillors have reviewed the Code of Conduct.

Options

Council may adopt this Councillor Code of Conduct or seek to make changes to it.

Attachments

1 COUNCILLOR CODE OF CONDUCT

62/13 Motion

MOVED Councillor Adamson

That Council approve the Code of Conduct with amendments to the attachment in section 12.3.

SECONDED Councillor Norton

The Motion was put and CARRIED

There being no further business the Mayor, Councillor Les McPhee closed the meeting at 6.26pm.



COUNCILLOR

CODE OF CONDUCT

This code of conduct was adopted by resolution of the Swan Hill Rural City Council on Tuesday, 17 November 2009 and in accordance with Section 76C of the Local Government Act 1989.

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CODE OF CONDUCT

This Code of Conduct, which incorporates the statutory requirements specified for a Code of Conduct in accordance with section 76C of the Local Government Act 1989, was originally adopted by resolution of the Swan Hill Rural City Council on **Tuesday, 17 November 2009**.

While the Code can be reviewed and amended at any time, it is mandatory for the Council to review the Code within twelve months after each general election.

Introduction

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

Councillors are able to exercise authority as Council after they are formally sworn in and when they meet formally as Council or a special committee. All decisions are made at Council or special committee meetings or through delegations that are formally made by Council. (2.7)

Our commitment to working together constructively will enable us to achieve a sustainable community with a strong identity, working together for community cohesion, economic prosperity and sound environmental management in a manner that is consistent with our values.

1. Councillor Values

The Council undertakes to foster and uphold the following values in the exercise of its various powers and roles:

- 1.1 Community Engagement
- 1.2 Leadership
- 1.3 Fairness
- 1.4 Accountability

2. Role of Councillors

The primary role of Councillors is to provide leadership for the good governance of Swan Hill. The role of councillors also includes:

- 2.1. Acting as a representative government by taking into account the diverse needs of the local community in decision making;

- 2.2. Providing leadership by establishing strategic objectives and monitoring their achievement;
- 2.3. Maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
- 2.4. Advocating the interests of the local community to other communities and governments;
- 2.5. Acting as a responsible partner in government by taking into account the needs of other communities; and
- 2.6. Fostering community cohesion and encouraging active participation in civic life.
- 2.7.
- 2.8

3. Councillor Conduct Principles

Councillors will respect fellow Councillors and staff in the carrying out of their duties and ensure that their interaction with staff and their use of Council information accords with Council's policies and legal requirements. (2.8)

In carrying out their role, Councillors must remain aware of their responsibility to comply with the principles of Councillor Conduct specified in sections 76B and 76BA¹ of the Act, which require that Councillors must:

- 3.1. Act with integrity;
- 3.2. Exercise their responsibilities impartially in the interests of the entire local community;
- 3.3. Not make improper use of their position to advantage or disadvantage any person;
- 3.4. Avoid conflicts between their public duties as Councillors and their personal interests and obligations;
- 3.5. Act honestly and avoid making oral statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- 3.6. Treat all persons with respect and will show due respect for the opinions, beliefs, rights and responsibilities of other Councillors, council officers and

¹ Sections 76B and 67BA of the Act are included in the extract attached at Annex A.

- other people;
- 3.7. Exercise reasonable care and diligence and they will submit to lawful scrutiny that is appropriate to their office;
- 3.8. Try to ensure that public resources are used prudently and solely in the public interest;
- 3.9. Act lawfully and in accordance with the trust placed in them as elected representatives of their community; and
- 3.10. Support and promote these principles by leadership and example so as to ensure the public has confidence in the office of Councillor.

4. Adherence to Code of Conduct

In adherence to the Code of Conduct, Councillors will:

- 4.1. Treat members of the community and staff with dignity and ensuring that neither offence nor embarrassment are caused
- 4.2. Treat fellow councillors with respect, even when disagreeing with their views or decisions
- 4.3. Debate contentious issues without resorting to personal acrimony or insult
- 4.4. Ensure their punctual attendance at Council and committee meetings
- 4.5. Act with courtesy towards Council staff and avoiding intimidatory behaviour.
- 4.6. Not act in ways that may damage the Council or its ability to exercise good government
- 4.7. Exercise reasonable care and diligence in performing their functions as councillors
- 4.8. Comply with all relevant laws, be they Federal, State or Local Laws.
- 4.9. Councillors will avoid conflicts of interest and comply with the relevant provisions of the Act and this Code of Conduct relating to interests and conflicts of interest
- 4.10. Councillors may not receive additional payments or rewards from external sources for work, which they are paid as a normal part of their role as a Councillor (refer POL/CORP226).
- 4.11. A declaration of gifts shall be made to the Executive Support Officer for recording on Council's Gift register.

- 4.12. Where Councillors receive gifts with an estimated value of more than \$200 the gift will become the property of the Council.
- 4.13. Council may choose to retain the gift for Council use or to dispose of the gift in accordance with its Gifts Policy.
- 4.14. Maintain appropriate separation between their personal property and Council property in the care of the Council
- 4.15. Not use Council resources, including staff, equipment and intellectual property for electoral or other personal purposes
- 4.16. Ensure that claims for out of pocket expenses are accurate and relate strictly to Council business.
- 4.17. Not use information gained by virtue of being a councillor for any purpose than to exercise their role as a councillor
- 4.18. Respect the Council's policies in relation to public comments and communications with the media (refer section 7).
- 4.19. Not release information deemed 'confidential information' in accordance with section 77² of the Act (refer section 5).
- 4.20. Recognise the requirements of the Information Privacy Act 2000 regarding the access, use and release of personal information.

5. Confidential information

Councillors acknowledge that they will comply with their obligations under s77 in relation to Councillor Assemblies, Council Meetings and other confidential information or discussion (as defined under the Act) and recognise that this obligation extends to ensuring the safekeeping of confidential information.

6. Use of Council Funds, Reimbursement and Travel

6.1 Councillors must comply with the Councillor Expense Reimbursement and Support Policy POL/GOV 004.

6.2 Councillors must comply with Council's Travel Policy. To ensure the Statutory Register of Overseas or Interstate Travel is maintained in accordance with regulation 11 (c) of the Local Government (General) Regulations 2004

² Section 77 of the Act is included in the extract attached at Annex A.

7. Communication

Councillors will comply with Council's Media Policy POL/GOV 003. Councillors are required to comply with the statutory requirements contained in the Privacy Act and Local Government Act, which prohibit the disclosure of personal and confidential information.

8. Relationships with Staff

8.1 The Chief Executive Officer is responsible for all staff matters.

8.2 Councillors must adhere to the requirements of Section 76E of The 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 Director or Manager when specific issues or particular functions are required to be undertaken

9. Primary and Ordinary Returns

Councillors are required to comply with the statutory requirements contained in the Privacy Act and Local Government Act surrounding Primary and Ordinary Returns.

9.1 Primary Returns must be lodged by a Councillor within 30 days of election day or 7 days of taking the oath of office [s.81(3)]. Note, the Act continues to provide that a re-elected Councillor does not have to submit a new Primary Return [s.81(3)].

9.2 Irrespective of the date the last Primary Return was submitted, Ordinary Returns must be submitted by a Councillor, a member of a special committee or a nominated officer twice a year: 30 June or within 40 days of 30 June; and 31 December or within 40 days of 31 December [s.81(5)].

9.3 A Councillor, a member of a special committee or a nominated officer must disclose in their Primary Return (as at the date of the return), and Ordinary Returns (in relation to the return period), the name or description of any company or body he or she holds or held a beneficial interest in, except where 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 [s.81(6)(b),7(b)]

9.4 A Councillor, a member of a special committee or nominated officer must disclose in their Ordinary Returns, any gift including cash donations of or above the amount or value of \$200 received from a person other than a relative [s.81(7)(e)]. 'Relative is defined in s.78.

- 9.5. The CEO must decide which members of staff, other than senior officers, must lodge a returns [s.81(1)].
- 9.6 Where members of a special committee have been exempted from submitting returns, the Council must review the exemptions within 12 months after a general election [s.81(2A), (2B)].
- 9.7. The CEO must maintain a record of the names of persons who have inspected the register of interests. A Councillor, a member of a special committee or a nominated officer may inspect the record of names of people who have inspected their personal records [s.81(13A), (13B)].

10. 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 Act³.

Councillors will comply with all the provisions of the Act in regard to Conflicts of Interest:

- 10.1 If the councillor considers that they have a **direct or indirect interest** in a matter before the Council, a special committee of council or an assembly of councillors, they have a **conflict of interest**
- 10.2. If a councillor has a **conflict of interest** in a matter they will comply with the requirements of the Act and ensure they disclose the class and nature of the interest leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter.
- 10.3. If a councillor has a personal interest in a matter to be considered by the Council or special committee that is not a conflict of interest, and the Councillor considers that their personal interest **may be in conflict** with their public duty to act impartially and in the interest of the whole community, the Councillor will declare a **conflicting personal interest** under section 79B⁴ of the Act immediately before

³ "Direct Interests", Indirect Interests and "Conflicts of Interest" are defined in sections 77A, 77B, 78, 78A, 78B, 78C and 78D, which are included in the extract attached at Annex A.

⁴ Section 79B of the Act is included in the extract attached at Annex A.

the matter is considered at the relevant meeting and apply to the Council or special committee to be exempted from voting on the matter.

In addition to the requirements of the Act:

- 10.4. Councillors will give early consideration to each matter to be considered by the Council, special committee of which the councillor is a member, or assembly of councillors, to ascertain if they have a conflict of interest
- 10.5. Councillors recognise that the legal onus to determine whether a conflict of interest exists rests entirely with the individual councillor. If a councillor cannot confidently say that he or she does not have a conflict of interest, the councillor will declare a conflict of interest and comply with the relevant requirements as if they had a conflict of interest
- 10.6. If the councillor considers that they may be unable to vote on a matter because of a conflict of interest, they 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 Officer⁵.

11. Disqualifications to be a Councillor

Councillors are required to adhere to the statutory requirements as specified under section 28A of the Act¹.

12. Dispute Resolution Procedures

- 12.1. If the dispute relates to an apparent offence under the *Local Government Act* it should be referred to the Minister for Local Government and not the subject of an application to a Councillor Conduct Panel.
- 12.2. 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.
- 12.3. In the event of any dispute occurring where councillors are unable to resolve interpersonal conflicts that adversely affect the operation of the Council, the Chief Executive Officer will nominate a mediator acceptable to both parties, or failing agreement, President of the Municipal Association of Victoria and will

⁵ This is to enable the Council administration to prepare resolution for Council consideration if it appears that a Ministerial exemption under section 80 of the Act may be required. An exemption may only be sought following a formal Council resolution.

¹ Section 28A and 28B of the Act is included in the extract attached to Annex A

appoint the mediator as soon as possible.

- 12.4. 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.
- 12.5. In the event that a dispute cannot be resolved through application of these processes, it may be referred to a Councillor Conduct Panel.
- 12.6. 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

13. Statement of Caretaker Procedures

The Local Government Act 1989 requires Council to comply with caretaker requirements during an election period.

- 13.1. The Council is committed to fair and democratic election and therefore adopts and endorsed the following practices and legislative requirements.
- 13.2. The Statement of Caretaker procedures is in two parts, addressing two fundamental policy principles:
 - 13.2.1. Council Decision Making
 - 13.2.2. Use of Council Resources

13a. *Council Decision Making*

It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during an election period. The Council therefore commits to the principle that it will make every endeavour to avoid making decision that inappropriately bind the incoming Council. This includes a commitment to comply with the requirements of Section 93A of the Local Government Act 1989 (The Act), relating to "Major Policy Decision", as well as with the policies specified below in relation to "significant Decisions".

13b. *Major Policy Decisions*

Section 93A of the Act prohibits the making of "Major Policy Decisions" during the election period, which is from Entitlement day until 6.00pm on the Election Day.

Major Policy decisions are defined by the Act to be decisions:

- 13b.1 relating to the employment or remuneration of a Chief Executive Officer under section 94 of the Act, other than a decision to appoint an acting Chief Executive Officer.
- 13b.2 to terminate the appointment of a Chief Executive Officer under section 94 of the Act.
- 13b.3 to enter a contract the total value of which exceeds whichever is the greater of \$100,000 or 1 per cent of the Council's revenue from rates in the preceding financial year.
- 13b.4 to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100,000 or 1 per cent of the Council's revenue from rates in the preceding financial year.
- 13b.5 If the Council considers that there are extraordinary circumstances where the municipality or the local community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council, will by resolution request an exemption from the Minister for Local Government, in accordance with section 93A(2).

13c *Significant Decisions*

In addition to the decisions specified in section 93A of the Act, the Council will avoid making other decisions during the election period that are of a significant nature and which would unnecessarily bind an incoming Council.

"Significant Decisions" include:

- 13c.1 Irrevocable decisions that commit the Council to a substantial expenditure or significant actions
- 13c.2 Irrevocable decisions that will have a significant impact on the municipality or the community.

13d *Use of Council Resources*

It is an established democratic principle that public resources must not be used in a way that would influence the way people vote in elections, except in regard to supporting the actual election process. The Council therefore commits to the principle that it will ensure that Council resources are not used inappropriately during a Council election.

This includes a commitment to comply with the following procedures in addition to the requirements of section 55D of the Act.

13e *Electoral Matter*

The Council will ensure that it complies with section 55D of the Act which requires that a Council does not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

The following definitions from the Act are noted:

- 13e.1 section 3(1) – “electoral advertisement, handbill, pamphlet or notice” means an advertisement, handbill pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting.
- 13e.2 section 3(1) – “publish” means publish by any means including by publication on the Internet;
- 13e.3 section 3(1A) – “ electoral matter” means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.
- 13e.4 section 3(1B) – without limiting the generality of the definition of “electoral matter”, matter is to be taken to be intended or likely to affect voting in an election if it contain an express or implicit reference to, or comment on:
 - 13e.1.1 the election
 - 13e.1.2 a candidate in the election
 - 13e.1.3 an issue submitted to, or otherwise before, the voters in connection with the election

13f *Other Resources*

The Council will also ensure other council’s resources are not used inappropriately in ways that may influence voting in an election or provide an undue advantage for a candidate. This includes financial, human and material resources.

Prior to the election period for any election the Chief Executive Officer will ensure that all members of Council staff are advised in regard to the application of the caretaker procedures.

- 13f.1 Council staff will not undertake an activity that may affect voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer.
- 13f.2 Council staff will not authorise, use or allocate a Council resource for any purpose that may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer.

In applying these principles, the Council understands that the following will be normal practice during election periods:

- 13f.3 Public events will only be organised and run by the Council administration if they are part of the normal services or operation of the Council.
- 13f.4 Speeches for Councillors will only be prepared by Council staff in relation to events that are part of the normal services or operation of the Council and such speeches will not be circulated or available for publication.
- 13f.5 Media services, including media releases, will not be provided for councillors by the administration during the election period.
- 13f.6 Councillor newsletters will not be resourced by the Council in any way during the election period.
- 13f.7 Neither the Council logo nor Council stationery will be used by Councillors in any way that relates to the election.

14. Councillor Conduct Panels

- 14.1. The Council acknowledges that a Councillor who breaches of this Code of Conduct may be guilty of misconduct, serious misconduct or gross misconduct. Possible breaches of this Code will always be referred to a Councillor Conduct Panel for consideration.
- 14.2 For the purpose of this Code, "Councillor Conduct Panel", "misconduct", "serious misconduct" and "gross misconduct", have the meanings specified in the Act²⁶.

⁶ "Councillor Conduct Panel", "misconduct", "serious misconduct" and "gross misconduct" are defined in section 81A, which is included in the extract attached at Annex A.

14.3. 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:

19.3.1. The Council, following a resolution of the Council to make such an application

15. Conclusion

The Code must be reviewed by the Council within twelve months of the general election. The review process will provide an opportunity to ensure that the contents of the Code reflect the requirements of the Council, and that they remain best practice.

16. Endorsement

This Code of Conduct was adopted by the Council on **Tuesday, 17 November 2009** and is signed by the following Councillors:

Signatures

Cr Greg Cruickshank

Cr Jim Crowe

Cr Jessie Kiley

Cr Michael Adamson

Cr Les McPhee

Cr John Katis

Cr Gary Norton

Annexes:

A. Extract from the Local Government Act 1989

EXTRACT FROM THE LOCAL GOVERNMENT ACT 1989

28A Disqualification to be a Councillor due to conflicting duties:

1. 28A prevents a person from becoming or continuing to be a Councillor or nominating as a candidate at a Council election if the person is at the time either:
 - (a) A member of the Parliament of the Commonwealth of Australia, or of the Parliament of Victoria or of another State or a Territory of the Commonwealth; or
 - (b) Employed as a Ministerial officer, a Parliamentary adviser or an electorate officer (or corresponding position) by or for a member of the Parliament of the Commonwealth of Australia, or of the Parliament of Victoria or of another State or a Territory of the Commonwealth; or
 - (c) A Councillor of another Council in Victoria or a Councillor (or corresponding position) of another Council in another State or a Territory of the Commonwealth.

2. A person to whom subsection (1) (b) applies is not prevented from nominating as a candidate at an election or from being declared elected at an election if for the duration of the election period for that election:
 - (a) The person has taken leave from any office or position referred to in subsection (1) (b) held by that person; and
 - (b) The person does not perform any of the duties of that office or position.

3. Despite subsection (2), a person to whom subsection (1)(b) applies cannot take the oath of office after being declared elected if the person continues to hold any office or position referred to in subsection (1)(b).

4. In this section:

Electorate officer means a person employed under Part 4 of the Parliamentary Administration Act 2005;

ccMinisterial officer means a person employed as a Ministerial officer under Part 6 of the Public Administration Act 2004;

Parliamentary adviser means a person employed as a Parliamentary adviser under Part 6 of the Public Administration Act 2004.

Division 1A—Conduct and interests

Pt 4 Div. 1A
(Heading and
ss 76B, 76C)
inserted by
No. 109/2003
s. 57.

76AA Definitions

S. 76AA
inserted by
No. 67/2008
s. 20.

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;

S. 76B
inserted by
No. 109/2003
s. 57,
substituted by
No. 67/2008
s. 14.

S. 76BA
inserted by
No. 67/2008
s. 14.

- (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.

s. 76C

76C Councillor Code of Conduct

S. 76C
(Heading)
amended by
No. 67/2008
s. 15(1).

(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**.

S. 76C
inserted by
No. 109/2003
S. 76C(1)
substituted by
No. 67/2008
s. 15(2).

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

S. 76C(2)
amended by
No. 67/2008
s. 15(3).

(3) A Councillor Code of Conduct—

S. 76C(3)
amended by
No. 67/2008
s. 15(4)(a).

(a) must include the Councillor conduct principles;

S. 76C(3)(a)
substituted by
No. 67/2008
s. 15(4)(b).

(b) may set out processes for the purpose of resolving an internal dispute between Councillors;

S. 76C(3)(b)
amended by
No. 67/2008
s. 15(4)(c).

* * * * *

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

S. 76C(3)(c)
repealed by
No. 67/2008
s. 15(4)(d).

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

* * * * *

S. 76C(4)
repealed by
No. 67/2008
s. 15(5).

S. 76C(5)
amended by
No. 67/2008
s. 15(6).

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

S. 76C(5A)
inserted by
No. 67/2008
s. 15(7).

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

S. 76C(6)
amended by
No. 67/2008
s. 15(8).

(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.

S. 76C(7)
inserted by
No. 67/2008
s. 15(9).

(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

S. 76D
inserted by
No. 67/2008
s. 16.

(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.

s. 76E

76E Improper direction and improper influence

S. 76E
inserted by
No. 67/2008
s. 16.

- (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

S. 77
substituted by
Nos 34/1996
s. 3, 109/2003
s. 59.
S. 77(1)
amended by
No. 67/2008
s. 17.

- (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

s. 77A

(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.

s. 77B

- (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.

S. 77A
inserted by
No. 109/2003
s. 60,
substituted by
No. 67/2008
s. 21.

S. 77B
inserted by
No. 109/2003
s. 60,
substituted by
No. 67/2008
s. 21.

- (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.

s. 78

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;

S. 78
amended by
Nos 99/2004
s. 8(a),
76/1995
s. 10(5),
109/2003 s. 61,
12/2008
s. 73(Sch. 1
item 38),
substituted by
No. 67/2008
s. 21.

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

s. 78

(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

s. 78A

(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.

S. 78A
inserted by
No. 67/2008
s. 21.

- (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.

s. 78B

78B Indirect interest because of conflicting duties

S. 78B
inserted by
No. 67/2008
s. 21.

- (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

S. 78C
inserted by
No. 67/2008
s. 21.

- (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.

s. 78D

(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

S. 78D
inserted by
No. 67/2008
s. 21.

S. 79
amended by
Nos 125/1993
s. 14(h),
99/1994
s. 8(b),
substituted by
Nos 109/2003
s. 62, 67/2008
s. 22.

- (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

S. 79A
inserted by
No. 67/2008
s. 22. **S. 79A**

S. 79B
inserted by
No. 67/2008
s. 22.

S. 79C
inserted by
No. 67/2008
s. 22.

- (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.

S. 79D
S. inserted by
No. 67/2008
s. 22.

80 Exemption by Minister

S. 80(1)
substituted by
No. 67/2008
s. 23(1).

S. 80(1A)
inserted by
No. 67/2008
s. 23(1).

S. 80(1B)
inserted by
No. 67/2008
s. 23(1).

S. 80(2)
substituted by
No. 67/2008
s. 23(2).

S. 80A
inserted by
No. 67/2008
s. 24.

- (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.

s. 80B

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

S. 80B
inserted by
No. 67/2008
s. 24.

- (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

S. 80C
inserted by
No. 67/2008
s. 24.

- (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.

s. 81

- (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

S. 81(1) def. of *nominated officer* substituted by No. 99/1994 s. 9(a), amended by No. 67/2008 s. 25(1)(a).

S. 81(1) def. of *return period* amended by Nos 34/1996 s. 4(1)(a), 67/2008 s. 25(1)(b)(c).

S. 81(2) amended by Nos 99/1994 s. 9(b), 109/2003 ss 49(3), 63(a), substituted by No. 67/2008 s. 25(2).

(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.

S. 81(2A)
inserted by
No. 13/1990
s. 10.

(2B) The Council must review any exemptions in force under subsection (2A) within the period of 12 months after a general election.

S. 81(2B)
inserted by
No. 67/2008
s. 25(3).

(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.

s. 81

(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.

S. 81(4)
substituted by
No. 99/1994
s. 9(c),
amended by
Nos 109/2003
s. 63(b),
67/2008
s. 25(4).
S. 81(4A)
inserted by
No. 99/1994
s. 9(c).

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—

S. 81(5)
amended by
Nos 99/1994
s. 9(b),
109/2003
s. 63(c),
substituted by
No. 67/2008
s. 25(5).

(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—

S. 81(6)
amended by
No. 109/2003
s. 63(d).

(a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;

S. 81(6)(a)
amended by
No. 34/1996
s. 4(1)(b).

(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;

S. 81(6)(b)
substituted by
Nos 34/1996
s. 4(1)(c),
67/2008
s. 25(6).

(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;

S. 81(6)(c)
inserted by
No. 34/1996
s. 4(1)(c).

(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;

S. 81(6)(d)
inserted by
No. 34/1996
s. 4(1)(c).

(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.

S. 81(6)(e)
inserted by
No. 34/1996
s. 4(1)(c).

Penalty:50 penalty units.

* * * * *

S. 81(6A)
inserted by
No. 43/1993
s. 13,
repealed by
No. 109/2003
s. 63(e).

(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.

S. 81(7)(b)
amended by
No. 34/1996
s. 4(1)(d),
substituted by
No. 67/2008
s. 25(7)(a).

S. 81(7)(c)
amended by
No. 34/1996
s. 4(1)(e).

S. 81(7)(d)
amended by
No. 34/1996
s. 4(1)(f).

S. 81(7)(e)
amended by
No. 109/2003
s. 63(f),
substituted by
No. 67/2008
s. 25(7)(b).

S. 81(7)(f)
amended by
No. 13/1990
s. 31(d).

Penalty:50 penalty units.

* * * * *

S. 81(8)
repealed by
No. 99/1994
s. 9(d).

- (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. S. 81(9)
substituted by
No. 99/1994
s. 9(e).
- (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. S. 81(10)
amended by
No. 99/1994
s. 9(f).
- (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. S. 81(12)
amended by
No. 99/1994
s. 9(f).
- (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). S. 81(13A)
inserted by
No. 67/2008
s. 25(8).
- (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. S. 81(13B)
inserted by
No. 67/2008
s. 25(8).
- (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— S. 81(15)
amended by
No. 99/1994
s. 9(f).
 - (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.

S. 81(16)
amended by
No. 99/1994
s. 9(f)(g);
s. 81A

Division 1B—Councillor Conduct Panels

Pt 4 Div. 1B
(Heading and
ss 81A–81S)
inserted by
No. 67/2008
s. 18.

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.

s. 81B

81B Application to Councillor Conduct Panel

S. 81B
inserted by
No. 67/2008
s. 18.

- (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

S. 81C
inserted by
No. 67/2008
s. 18.

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

S. 81D
inserted by
No. 67/2008
s. 18.

- (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—

s. 81E

- (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

S. 81E
inserted by
No. 67/2008
s. 18.

- (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.

S. 81F
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s. 18.

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.

S. 81G
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No. 67/2008
s. 18.

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.

S. 81H
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No. 67/2008
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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;

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- (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.

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- (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

S. 81K
inserted by
No. 67/2008
s. 18.

- (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.

s. 81L

- (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

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- (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.

s. 81N

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.

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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.

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- (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.

s. 81P

S. 81P
inserted by
No. 67/2008
s. 18.

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).

S. 81Q
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No. 67/2008
s. 18.

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.

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No. 67/2008
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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.

S. 81S
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No. 67/2008
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81S Councillor Conduct Panels

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