



# Swan Hill Rural City Council Councillor Code of Conduct

*This code of conduct was adopted by resolution of the Swan Hill Rural City Council on Tuesday, 21 February 2017 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.

## 1. Introduction

### Councillor Values

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

- Community engagement
- Leadership
- Fairness
- Accountability

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

While the Code of Conduct can be reviewed and amended at any time, it is mandatory for the Council to review and make any necessary amendments to its Councillor Code of Conduct within four months after the general election.

A Councillor Code of Conduct must include an internal resolution procedure for dealing with any alleged contraventions of the Code. A Council can apply sanctions to a Councillor who has been found to have contravened the Councillor Code of Conduct.

Failure by a Councillor to comply with the Council's internal resolution procedure, or failure to comply with a written direction given by the Council under section 81AB of the Act (sanctions for contravention of the Code), constitutes misconduct by a Councillor.

If a Councillor Conduct Panel determines a finding of misconduct against a Councillor, the Panel may apply further sanctions against that Councillor.

Within one month of any amendments to a Councillor Code of Conduct being approved, A Councillor must make a declaration stating they will abide by the Code of Conduct.

A declaration by a Councillor must be in writing and witnessed by the Chief Executive Officer.

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

## 2. Purpose of the Councillor Code of Conduct

The purpose of Local Government is to provide a system under which councils can perform the functions and exercise the powers conferred by or under the Local Government Act 1989 and any other Act for the peace, order and good government of their municipal districts.

Good governance is fundamental to a council being able to perform its purpose. Good governance relies on good working relations between Councillors.

This Code:

- Sets out the standards of conduct expected of elected representatives.
- Endeavours to foster good working relations between Councillors to enable Councillors to work together constructively and in the best interests of the local community.
- Mandates conduct that has been designed to build public confidence in the integrity of Local Government.

## 3. Background

Within four months after a general election, a Council must:

- a) Call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- b) At that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.

A copy of this Code of Conduct (as amended from time-to-time) must be:

- Given to each Councillor.
- Available for inspection at the Council office and any district offices.
- Published on Council's website.

From the 2016 Council elections, a person elected to be a Councillor is not capable of acting as a Councillor until that person has read the Councillor Code of Conduct and made a declaration stating that they will abide by the Councillor Code of Conduct.

It is the personal responsibility of Councillors to ensure they are conversant with this Code of Conduct and comply with the provisions.

### Role of Mayor and Councillors

The primary role of the Mayor and Councillors is to provide leadership for the good governance of the Swan Hill Municipality. Section 65 of the Act provides that the role of a Councillor is:

- a) To participate in the decision-making of the Council; and
- b) To represent the local community in that decision-making; and
- c) To contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.

In performing the role of Councillor, a Councillor must:

- a) Consider the diversity of interests and needs of the local community; and
- b) Observe principles of good governance and act with integrity; and
- c) Provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and
- d) Participate in the responsible allocation of the resources of Council through the annual budget; and
- e) Facilitate effective communication between the Council and the community.

The role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A of the Act.

### Role of Mayor

Section 73AA of the Act describes the functions of the Mayor as including:

- a) Providing guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65, and the observation of the Councillor conduct principles and the Councillor Code of Conduct by Councillors under sections 76B, 76BA and 76C; and
- b) Acting as the principal spokesperson for the council; and
- c) Supporting good working relations between Councillors; and
- d) Carrying out the civic and ceremonial duties of the office of Mayor.

A Councillor Code of Conduct:

- a) Must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct.
- b) May set out processes for the purpose of resolving an internal dispute between Councillors.
- c) Must include any provisions prescribed for the purpose of this section.
- d) Must include provisions addressing any matters prescribed for the purpose of this section.
- e) May include any other matters relating to the conduct of Councillors which the Council considers appropriate.

## 4. Councillor Conduct Principles

The Act places obligations on Councillors in relation to the way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions.

As Councillors of Swan Hill Rural City Council, we undertake to comply with the various provisions of the Act and with this Code of Conduct. Councillors will respect their fellow Councillors and employees in the carrying out of their duties and will ensure that their interaction with employees, and their use of Council information, accords with Council's policies and legal requirements.

Section 76B of the Act sets out the primary principle of Councillor conduct as follows:

"It is the 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."

Section 76BA of the Act sets out the general principles of Councillor conduct as follows:

"In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must:

- a) Avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- b) Act honestly and avoid statements (whether orally 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 staff and other persons;
- d) Exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that it 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."

Councillors are required to conduct themselves in observance of the primary principle and the general principles. We undertake to do this.

## Functions of the Chief Executive Officer

The Chief Executive Officer is responsible for:

- h) Establishing and maintaining an appropriate organisational structure for the Council; and
- i) Ensuring that the decisions of the Council are implemented without undue delay; and
- j) The day to day management of the Council's operations in accordance with the Council Plan; and
- k) Developing, adopting and disseminating a code of conduct for Council staff; and
- l) Providing timely advice to the Council; and
- m) Ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;
- n) Supporting the Mayor in the performance of the Mayor's role as Mayor;
- o) Carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and
- p) Performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.

The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors by ensuring appropriate policies, practices and protocols are in place and defining appropriate arrangements for interactions between Council staff and Councillors.

We undertake to respect the functions of the Chief Executive Officer and to comply with the policies, practices and protocols that have been put in place by the Chief Executive Officer to define appropriate arrangements for interactions between Council staff and Councillors.

## Use of Council resources, funds, reimbursement and travel

We commit to using Council resources effectively and economically. To ensure this, we will:

- Maintain adequate security over Council property, facilities and resources provided to us to assist in performing our role and will comply with any Council policies applying to their use;
- Ensure any expense claims that we submit are in compliance with the relevant legislative provisions and Council policy;
- Not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate; and
- Not use public funds or resources in a manner that is improper or unauthorised.
- Comply with the Councillor Expense Reimbursement and Support Policy POL/GOV004.
- Comply with Council's Travel Policy and ensure the Statutory Register of Overseas or Interstate Travel is maintained in accordance with regulation 11 (c) of the Local Government (General) Regulations 2004

## Gifts and benefits

We will scrupulously avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to gain favourable treatment from an individual Councillor or from Council.

We will take all reasonable steps to ensure that our immediate family members (parents, spouse, children or siblings) do not receive gifts or benefits that give rise to the appearance of being an attempt to gain favourable treatment.

Where a gift is received on behalf of Council, the gift becomes the property of Council. For transparency and accountability purposes, these gifts will be recorded in the Councillors Gifts Register with a notation that it is the property of Council.

We recognise that gifts equal to or above the gift disclosure threshold received in the twelve months prior to an election from a person or body that has a direct interest in a matter may give rise to an indirect interest because of receipt of an applicable gift.

We will record all campaign donations in our Campaign Donation Return.

### Communication

We recognise that as representatives of the local community, we have a primary responsibility to be responsive to community views and to adequately communicate the position and decisions of Council.

We undertake to comply with the Council's Media Policy POL/GOV 003 and respect the functions of the Mayor and Chief Executive Officer to be the spokespersons for the Council in accordance with our policy.

Councillors are required to comply with the statutory requirements contained in the Privacy Act and Local Government Act 1989, which prohibit the disclosure of personal and confidential information.

We acknowledge that individual Councillors are entitled to express their personal opinions through the media. Where we choose to do so, we will make it clear that such comments are of a personal view and does not represent the position of Council. We undertake to ensure that any such comments are devoid of comments that could reasonably be construed as being derogatory, offensive or insulting to any person.

### Personal dealings with Council

When we deal with our Council in our private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit), we do not expect, nor will we request, preferential treatment in relation to any such private matter.

We will avoid any action that could lead Council staff or members of the public to believe that we are seeking preferential treatment.

## 5. Prohibited conduct and adherence to Code of Conduct

The Local Government Act 1989 has specific provisions that prohibit Councillors from certain conduct. This conduct relates to:

- Misuse of position
- Improper direction and improper influence
- Confidential information
- Conflict of interest
- Electoral conduct

These matters are set out below in order to provide a complete picture of the obligations on Councillors.

While these matters are not of a nature to be addressed as a contravention of the Councillor Code of Conduct, we undertake to comply with the prohibitions on Councillor conduct set out below.

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

*(Note: Serious misconduct by a Councillors means:*

- a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or*
- b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or*
- c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or*
- d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or*

- e) *bullying of another Councillor or member of Council staff by a Councillor; or*
- f) *conduct by a Councillor in respect of a member of Council staff in contravention of section 76E; or*
- g) *the release of confidential information by a Councillor.)*

In adherence to the Code of Conduct, Councillors will:

- Treat members of the community and staff with dignity and ensure that neither offence or embarrassment are caused.
- Treat fellow Councillors with respect, even when disagreeing with their views or decisions.
- Debate contentious issues without resorting to personal acrimony or insult.
- Ensure punctual attendance at Council and committee meetings.
- Act with courtesy towards Council staff and avoid intimidating behaviour.
- Not act in ways that may damage the Council or its ability to exercise good governance.
- Exercise reasonable care and diligence in performing functions as Councillors.
- Comply with all relevant laws - be they Federal, State or Local Laws.
- 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.
- Not receive additional payments or rewards from external sources for work in which they are paid as a normal part of their role as a Councillor (refer POL/CORP226).
- Declare gifts to the Executive Support Officer for recording on Council's Gift Register. Where Councillors receive gifts with an estimated value of more than \$200, the gift will become the property of Council. Council may choose to retain the gift for Council use or to dispose of the gift in accordance with its Gifts Policy.
- Maintain appropriate separation between their personal property and Council property in the care of the Council.
- Not use Council resources, including staff, equipment and intellectual property, for electoral or other personal purposes.
- Ensure that claims for out of pocket expenses are accurate and relate strictly to Council business.
- Not use information gained by virtue of being a Councillor for any purpose other than to exercise their role as a Councillor.
- Respect Council's policies in relation to public comments and communications with the media.
- Not release information deemed 'confidential information' in accordance with section 77 of the Act.
- Recognise the requirements of the Information Privacy Act 2000 regarding the access, use and release of personal information.

## Misuse of position

A Councillor must not misuse his or her position to:

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

Circumstances involving the misuse of position by a Councillor 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; or
- f) Failing to disclose a conflict of interest as required under this Division.

## Improper direction and improper influence

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 exercise 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.

## 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.

A Councillor must not disclose information that he or she knows, or should reasonably know, is confidential information.

A Councillor may disclose information that he or she knows is confidential information in the following circumstances:

- e) For the purposes of any legal proceedings arising out of this Act.
- f) To a court or tribunal in the course of legal proceedings.
- g) Pursuant to an order of a court or tribunal.
- h) To the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector.
- i) To a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing.
- j) To a Municipal Monitor to the extent reasonably required by the Municipal Monitor.
- k) To the extent reasonably required for any other law enforcement purposes.

## 6. Conflict of Interest procedures

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

For the purpose of this Code, *direct interest*, *indirect interest* and *conflicts of interest*, have the meanings specified in the Act<sup>3</sup>.

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of Council, special committee, an assembly of Councillors, an Audit Committee or a Section 223 Committee, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the provisions of the Act (unless any of the exemptions apply).

- 6.1** 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.
- 6.2** 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 and leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter.
- 6.3** If a Councillor has a **personal interest** in a matter to be considered by the Council or special committee (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 79B<sup>4</sup> of the Act immediately before 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:

- 6.4** 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.
- 6.5** 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.
- 6.6** 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 Officer<sup>5</sup>.

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<sup>3</sup> *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.

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

<sup>5</sup> 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

## Other legislative requirements

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period).

Alleged contraventions of these provisions are not to be dealt with by Council using the internal resolution procedure in this Code of Conduct. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

We undertake to comply with the various provisions relating to these matters.

## Relationships with Staff

The Chief Executive Officer is responsible for all staff matters.

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.

# 7. 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.

- 7.1** Primary Returns must be lodged by a Councillor within 30 days of election day or seven 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)].
- 7.2** 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)].
- 7.3** 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)].
- 7.4** 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.
- 7.5** The CEO must decide which members of staff, other than senior officers, who must lodge a return [s.81(1)].
- 7.6** 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)].
- 7.7** 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)].

## 8. Dispute Resolution

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

The Council's three phase dispute resolution process involves:

- Direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance.
- External mediation by an independent mediator engaged by the Chief Executive Officer.
- An internal resolution procedure involving an independent arbiter.

Phase 1 - Direct Negotiation	Phase 2 - External Mediation	Phase 3 - Internal Resolution Procedure	Councillor Conduct Panel
<p>Either or both parties may request in writing that the Mayor convene a meeting of both parties.</p> <p>If not resolved, either party can escalate to external mediation.</p>	<p>Application made in writing to the Principal Conduct Officer including name of Councillor and details of dispute.</p> <p>The Principal Conduct Officer will advise the Mayor and CEO of application.</p> <p>If external mediation is unable to resolve dispute, matter can be escalated to internal resolution procedure.</p>	<p>Application alleging breach of Councillor Code of Conduct submitted to Principal Conduct officer.</p> <p>Application must specify name of Councillor alleged to have breached Code, the relevant provision, evidence in support of allegation.</p> <p>Principal Conduct Officer will advise the Mayor and CEO of application and provide a copy of application to the alleged Councillor within two days of receipt.</p> <p>An independent arbiter will be appointed to hear the application.</p> <p>An arbiter will provide written statements of findings to Council, the applicant and the respondent.</p>	<p>An application for a Councillor Conduct Panel to make a finding of misconduct or serious misconduct must be made to the Principal Councillor Conduct Registrar.</p> <p>A Councillor who does not participate in internal resolution may be guilty of misconduct.</p>

### Phase 1 – Direct negotiation

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

A dispute referred for direct negotiation may relate to:

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

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

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

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

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

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

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

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

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

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 65 of the Act, and the observation of the Councillor conduct principles and the Councillor Code of Conduct.

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

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

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

## Phase 2 – External mediation

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

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

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

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

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

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

The Principal Conduct Officer is to ascertain (in writing) whether or not the other party is prepared to attend an external mediation. If the other party declines to participate in an external mediation, he or she is to provide their reasons for doing so in writing to the Principal Conduct Officer. These reasons may be taken into account if the matter is, subsequently, the subject of an application for a Councillor Conduct Panel.

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

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

The Chief Executive Officer is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

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

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

### Phase 3 - Internal resolution procedure – Arbitrator

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

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

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

An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

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

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

On receiving an application, the Principal Conduct Officer will:

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

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

The role of the arbiter is to:

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

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

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

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

Where an application to have legal representation is granted by an arbiter, the costs of the respondent's legal representation are to be borne by the respondent in their entirety.

An arbiter:

- May find that a Councillor, who is a respondent to an internal resolution procedure application, has not contravened the Code.
- May find that a Councillor, who is a respondent to an internal resolution procedure, has contravened the Code.
- Will suspend consideration of an internal resolution procedure during the election period for a general election.

The arbiter is to give a copy of his or her findings and the statement of reasons to the Council, the applicant and the respondent. At the same time the arbiter provides the findings and statement of reasons, he or she shall, where a Councillor has been found to have contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by the Council.

A copy of the arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of Council for its consideration. If an arbiter has found that a contravention of the Code has occurred, the Council may, after considering the arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- Direct the Councillor to make an apology in a form or manner specified by the Council.
- Direct the Councillor to not attend up to, but not exceeding, two meetings of Council (in respect of the next scheduled meetings of Council).
- Direct that, for a period of up to, but not exceeding, two months on a date specified by Council, the Councillor:
  - Be removed from any position where the Councillor represents the Council; and
  - To not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction.

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

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

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

Degree of Seriousness	Definition	Responsible Authority
Conduct inconsistent with standards council has set itself.	Breaches of Councillor Code of Conduct.	Council.
Misconduct.	Failing to comply with a Council's internal resolution procedure, including failure to abide by any decision of Council in relation to a breach of the Code and repeated breaches of Councillor conduct principles.	Panel.
Serious misconduct.	Failing to comply with panel processes, bullying, improperly directing staff, releasing confidential information and repeated misconduct.	Panel.
Gross misconduct.	Behaviour that demonstrates lack of character to be a Councillor.	VCAT.

### Application to a Councillor Conduct Panel

A Councillor Conduct Panel may hear an application that alleges misconduct or serious misconduct by a Councillor. It is not the intention that a Councillor Conduct Panel be formed to hear allegations of breaches of the Councillor Conduct Principles or Councillor Code of Conduct, unless this conduct is repeated conduct constituting misconduct.

An application for a Councillor Conduct Panel to make a finding of misconduct or serious misconduct must be made to the Principal Councillor Conduct Registrar. An application must:

- Specify the ground or grounds for the application
- 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; and
  - The particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the misconduct or serious misconduct.
- Specify:
  - Any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or
  - If Council did not take any steps to resolve the matter that is the subject of the application, the reason why Council did not take any steps to resolve the matter.
- If the application is made by Council or a group of Councillors, state the name and address of the Councillor whom Council, or group, have appointed as representative of Council or group.

An application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor may be made by:

- Council, following a resolution of Council to make an application to a Councillor Conduct Panel in respect of a Councillor's conduct; or
- A Councillor or a group of Councillors.

An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by:

- Council, following a resolution of the Council to make an application to a Councillor Conduct Panel in respect of a Councillor's conduct; or
- A Councillor or a group of Councillors; or
- The Chief Municipal Inspector.

VCAT may hear an application made by the Chief Municipal Inspector that alleges gross misconduct by a Councillor. An application to make a finding of gross misconduct may only be made by the Chief Municipal Inspector.

## 9. Who is a Principal Conduct Officer?

Principal Conduct Officer means the person appointed in writing by the Chief Executive Officer to be the Principal Conduct Officer for Council under section 81Y.

The Chief Executive Officer must appoint, in writing, an eligible person to be the Principal Conduct Officer. A Principal Conduct Officer must:

- a) Assist Council in the implementation of, and conduct of, the internal resolution procedure of a Council; and
- b) Assist the Principal Councillor Conduct Registrar to perform the functions specified in section 81T.

A person is eligible to be the Principal Conduct Officer when:

- c) The person is a senior officer (other than the Chief Executive Officer); or
- d) Council resolves that the person is suitably qualified to perform the functions of the Principal Conduct Officer.

## 10. Statement of Caretaker Procedures

The Local Government Act 1989 requires Council to comply with caretaker requirements during an election period. Councillors are to abide by Swan Hill Rural City Council's Election Period (Caretaker) Policy POL/GOV016 and the Election Period (Caretaker) Procedure PRO/GOV016.

## 11. Conclusion

The Code must be reviewed by Council within four 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.

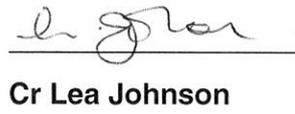
## 12. Endorsement

This Councillor Code of Conduct was adopted by Council on **21 February 2017** and is signed by the following Councillors:

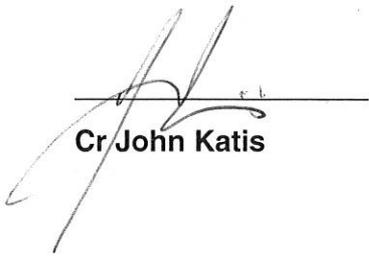
Signatures



Cr Chris Jeffery



Cr Lea Johnson



Cr John Katis



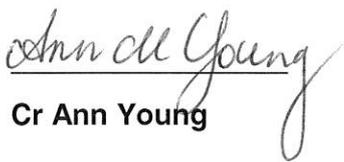
Cr Les McPhee



Cr Bill Moar



Cr Gary Norton



Cr Ann Young

## Definitions

**Arbiter** – an independent arbiter appointed by a council to consider alleged violations of the council’s Councillor code of conduct by a Councillor and make final determinations on them.

**Chief Municipal Inspector (CMI)** – head of the Local Government Investigations and Compliance Inspectorate.

**Councillor conduct panel** – a panel established by the Principal Councillor Conduct Registrar to hear applications of misconduct and serious misconduct.

**Principal Conduct Officer** – an officer appointed by each council to assist the council in the implementation of its Councillor code of conduct, including conduct of the internal resolution procedure.

**Principal Councillor Conduct Registrar** - an employee of the Department of Environment, Land, Water and Planning whose role is to administer all Councillor conduct panel processes and appeals of panel decisions.

**VCAT** – the Victorian Civil and Administrative Tribunal has responsibility for hearing applications for findings of gross misconduct.

**VEC** – the Victorian Electoral Commission is the statutory election service provider for all Victorian council elections and Victorian State elections.

### **How is misconduct , serious and gross misconduct and bullying is defined in the Act?**

(1) In Section 3(1)

“**misconduct** by a Councillor means any of the following—

- (a) failure by a Councillor to comply with the council’s internal resolution procedure; or
- (b) failure by a Councillor to comply with a written direction given by the council under Section 81AB; or
- (c) repeated contravention of any of the Councillor conduct principles;”

“**serious misconduct** by a Councillor means—

- (a) the failure of a Councillor to attend a Councillor conduct panel hearing formed to make a finding in respect of that Councillor; or
- (b) the failure of a Councillor to give a Councillor conduct panel any information the Councillor conduct panel has requested the Councillor to give; or
- (c) the failure of a Councillor to comply with a direction of a Councillor conduct panel; or
- (d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor conduct panel; or
- (e) bullying of another Councillor or member of council staff by a Councillor; or
- (f) conduct by a Councillor in respect of a member of council staff in contravention of Section 76E; or
- (g) the release of confidential information by a Councillor in contravention of Section 77.”

“**gross misconduct** by a Councillor means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor;”

“**bullying** by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or member of council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of council staff;”

## Annexes:

### A. 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;

***Ministerial 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.

#### For further information please refer to The Local Government Act 1989

- 28A Disqualification to be a Councillor due to conflicting duties:
- 76B Primary principle of Councillor conduct
- 76BA General Councillor conduct principles
- 76C Councillor Code of Conduct
- 76D Misuse of position
- 76E Improper direction and improper influence
- 77 Confidential information
- 77A Direct and indirect interests
- 77B Direct interest
- 78 Indirect interest by close association
- 78A Indirect interest that is an indirect financial interest

- 78B Indirect interest because of conflicting duties
- 78C Indirect interest because of receipt of an applicable gift
- 78D Indirect interest as a consequence of becoming an interested party
- 79 Disclosure of conflict of interest
- 79A Conflict of interest defence
- 79B Conflicting personal interest
- 79C Certain situations where Councillor taken to not have a conflict of interest
- 79D Person may make submission despite conflict of interest
- 81 Register of interests
- 81B Application to Councillor Conduct Panel
- 81D Referral to VCAT
- 81N Suspension of matters during election period