

2021

# Councillor Code of Conduct



Mildura Rural City Council

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## **Acknowledgement of Country**

Council acknowledges the traditional custodians of the land comprising the Mildura Rural City Council area, and those of our neighbouring municipalities. We pay respect to Elders past and present, and celebrate and respect their continuing culture and connection to the land.

## Vision

Making this the most liveable, people-friendly community in Australia

## Our Values

**Respect** – We will be respectful towards others and value differences

**Honesty** – We will be ethical and open

**Integrity** – We will be reliable and trustworthy in all that we do

**Transparency** – We will be objective and fair in our communications and decisions

**Accountability** – We will be consistent and responsible for our actions

## Our Principles

**Leadership** – By providing clear direction through strategies and plans Council will achieve agreed outcomes for our community

**Customers** – Council is here to provide services to the whole municipality and therefore our community should have a say in what we do and how we do it

**Systems Thinking** – Council recognises that achieving excellent outcomes for our community is done through all parts of the organisation working together effectively and with other levels of government and the wider community

**People** – By involving and developing people, Council enhances commitment, performance and working relationships to improve organisational outcomes

**Continuous Improvement** – To remain relevant and capable of producing excellent results our organisation needs to continually learn and adapt

**Information & Knowledge** – Council will make the best quality decisions when effort is spent to collect and present all objective relevant data and information

**Variation** – By addressing the underlying factors that cause our processes to deliver inconsistent or unpredictable outcomes (variation) Council's customers will receive the highest standard of service

**Corporate & Social Responsibility** – Council will manage its operations to comply with law and ethical standards and to produce an overall positive impact on our community

**Sustainable Results** – To deliver sustainable results Council must have a culture that promotes accountability through all levels of the organisation

# 1. Introduction

## 1.1 Legislative framework

The *Local Government Act 2020 (the Act)* requires a Council to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct is required to be periodically reviewed. This Councillor Code of Conduct (the Code) has been adopted by Council to comply with the requirements of the Act.

A Councillor Code of Conduct:

- must include the Standards of Conduct prescribed by the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations) expected to be observed by Councillors;
- must include any provisions prescribed by the Regulations;
- must include provisions addressing any matters prescribed by the Regulations; and
- may include any other matters which Council considers appropriate, other than any other Standards of Conduct.

\* As referenced from the *Local Government Act 2020*

The Standards of Conduct with which Councillors are required to comply are specified in Schedule 1 to the *Regulations*.

Failure by a Councillor to comply with the Standards of Conduct constitutes misconduct under the Act, which may be pursued in accordance with the processes set out in this Code.

## 1.2 Councillors' commitment

As Councillors, we are committed to the principles of good governance, 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.

### 1.3 Purpose of this Code

The purpose of this Code is to set out the Standards of Conduct with which Councillors must comply, and to:

- foster good working relationships between Councillors, to enable Councillors to work constructively together in the best interests of the municipal community;
- promote the high standards of behaviours as committed to by Councillors, during Council meetings, Councillor briefings, and any other meetings which Councillors participate in from time to time; and
- establish benchmarks for Councillor conduct, designed to build public confidence in the integrity of local government.

## 2. Roles and Responsibilities

### 2.1 Role of Council

The role of Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community (see s.8 of the Act). Council provides good governance if:

- it performs its role in accordance with the Overarching Governance Principles in s.9 of the Act; and
- the Councillors perform their roles in accordance with s.28 of the Act.

In performing its role, Council may:

- perform any duties or functions and exercise any powers conferred on it under the Act or any other Act; and
- perform any other functions that it considers are necessary to enable that performance.

\* As referenced from the *Local Government Act 2020*

Good governance is fundamental to Council being able to perform its role. Good governance relies on, among other things, good working relationships between Councillors.

## 2.2 Role of Councillors

Section 28 of the Act provides that the role of a Councillor is:

- to participate in the decision-making of Council;
- to represent the interests of the municipal community in that decision-making; and
- to contribute to the strategic direction of Council through the development and review of key strategic documents of the Council, including the Council Plan.

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

- consider the diversity of interests and needs of the municipal community;
- support the role of Council;
- acknowledge and support the role of the Mayor;
- act lawfully and in accordance with the oath or affirmation of office;
- act in accordance with the Standards of Conduct; and
- comply with Council procedures required for good governance.

The role of a Councillor expressly excludes the performance of any responsibilities or functions of the Chief Executive Officer (CEO)

\* As referenced from the *Local Government Act 2020*

## 2.3 Role of the Mayor

Section 18 of the Act provides that the role of the Mayor is to:

- chair Council Meetings;
- be the principal spokesperson for Council;
- lead engagement with the municipal community on the development of the Council Plan;
- report to the municipal community at least once each year, on the implementation of the Council Plan;
- promote behaviour among Councillors that meets the Standards of Conduct set out in the Councillor Code of Conduct;
- assist Councillors to understand their role;
- take a leadership role in ensuring the regular review of the performance of the CEO;
- provide advice to the CEO when the CEO is setting the agenda for Council meetings;
- perform civic and ceremonial duties on behalf of Council.

\* As referenced from the *Local Government Act 2020*

## 2.4 Role of the Deputy Mayor

Section 21 of the Act provides that the role of the Deputy Mayor is to perform the role, and exercise any of the powers of the Mayor if;

- the Mayor is unable for any reason to attend a Council Meeting or part of a Council Meeting;
- the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or
- the office of the Mayor is vacated.

\* As referenced from the *Local Government Act 2020*

## 2.5 Role of the CEO

Section 94A of the *Local Government Act 1989* sets out the functions of the CEO, which include:

- establishing and maintaining an appropriate organisational structure for Council;
- ensuring Council decisions are implemented without undue delay;
- day to day management of Council's operations in accordance with the Council Plan;
- developing, adopting and disseminating a Staff Code of Conduct;
- providing timely advice to Council;
- ensuring that Council receives timely and reliable advice about its legal obligations;
- supporting the Mayor in the performance of the Mayor's role; and
- carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation.

\* As referenced from the *Local Government Act 1989*

From 1 July 2021, s.94A of the *Local Government Act 1989* will be replaced by s.46 of the Act. The CEO's functions will then include:

- supporting the Mayor and the Councillors in the performance of their roles;
- ensuring the effective and efficient management of the day to day operations of the Council;
- ensuring that Council receives timely and reliable advice about its legal obligations;
- supporting the Mayor in the performance of the Mayor's role;
- setting the Agenda for Council Meetings after consulting the Mayor;

- when requested by the Mayor, reporting to Council in respect of the implementation of a Council decision;
- carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation;
- establishing and maintaining an organisational structure for Council;
- being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff; and
- managing interactions between members of Council staff and Councillors and ensuring that policies, practices and protocols that support arrangements for interaction between Council staff and Councillors are developed and implemented;

\* As referenced from the *Local Government Act 2020*

The CEO will determine the extent to which Councillors will be informed of decisions made in pursuit of these functions. Councillors acknowledge that any information provided by the CEO is provided as a courtesy and in pursuit of maintaining good working relationships.

Councillors accept that they must not seek to direct the CEO with respect to the fulfilment of these functions, this is in accordance with s.124 of the Act, and outlined in s.4.2 of this Code.

It is neither the role, nor the responsibility of the CEO to mediate disagreements arising between Councillors, or to draft or otherwise assist in the drafting of, an application under this Code or the Act.

## **2.6 Role of Councillor Conduct Officer**

The CEO will, from time to time, appoint a member of Council staff as the Councillor Conduct Officer under s.150 of the Act.

The Councillor Conduct Officer must:

- assist Council in the implementation and conduct of the internal arbitration process;
- assist the Principal Councillor Conduct Registrar to perform his or her functions; and
- assist the Principal Councillor Conduct Registrar in relation to any request for information.

\* As referenced from the *Local Government Act 2020*

It is neither the role, nor the responsibility of the Councillor Conduct Officer to draft, or to otherwise assist in the drafting of, an application under this Code or the Act.

## **2.7 Role of the Principal Councillor Conduct Registrar**

The Principal Councillor Conduct Registrar is appointed by the Secretary Department of Jobs, Precincts and Regions under s.148 of the Act, and is employed by the State Government under Part 3 of the *Public Administration Act 2004*. The role of the Principal Councillor Conduct Registrar, relevantly includes:

- receiving and examining applications for the appointment of an arbiter;
- appointing an arbiter from the panel list kept by the Secretary Department of Jobs, Precincts and Regions as required; and
- publishing guidelines in relation to processes and procedures relating to internal arbitration process applications as considered necessary.

### 3. Standards of Conduct

The Standards of Conduct to be observed by Councillors are set out in the Regulations. Failure to comply with the Standards of Conduct constitutes 'misconduct' for the purposes of the Act. If allegations of misconduct cannot be resolved between Councillors informally, they will be referred to the internal arbitration process, which may result in the imposition of sanctions.

#### 3.1 Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor:

- takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*;
- supports Council in fulfilling its obligation to achieve and promote gender equality;
- does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

#### 3.2 Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor:

- undertake any training or professional development activities that Council decides it is necessary for all Councillors to undertake to effectively perform the role of a Councillor;
- diligently uses Council processes to become informed about matters which are subject to Council decisions;
- is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- represents the interests of the municipal community in performing the role of a Councillor by considering and being responsible to the diversity of interests and needs of the municipal community.

### **3.3 Compliance with good governance measures**

A Councillor, in performing the role of a Councillor, to ensure the good governance of Council, must diligently and properly comply with the following:

- any policy, practice or protocol developed and implemented by the CEO in accordance with s.46 of the Act for managing interactions between members of Council staff and Councillors;
- the Council expenses policy adopted and maintained by Council under s.41 of the Act;
- the Governance Rules developed, adopted and kept in force by Council under s.60 of the Act; and
- any directions of the Minister for Local Government issued under s.175 of the Act (governance directions).

### **3.4 Councillor must not discredit or mislead Council or public**

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

- ensure that their behaviour does not bring discredit upon Council; and
- not deliberately mislead Council or the public about any matter related to the performance of their public duties.

### **3.5 Standards do not limit robust political debate**

Councillors acknowledge that nothing in the Standards of Conduct is intended to limit, restrict or detract from robust public debate in a democracy. So, while Councillors must always meet these Standards of Conduct, participation in vigorous debate of matters before Council for decision should not be viewed as being inconsistent with them.

\* As referenced from the *Local Government Act 2020*

## 4. Prohibited Conduct

In addition to observing the Standards of Conduct, Councillors acknowledge that the Act prohibits them from engaging in certain conduct, and that doing so constitutes a criminal offence. This conduct relates to:

- misuse of position;
- improper direction and improper influence;
- confidential information;
- conflict of interest; and
- electoral conduct.

Councillors acknowledge that, while these matters are not Standards of Conduct, and are not to be addressed as a contravention of this Code, they undertake to comply with them.

In the case of non-compliance, these matters could be the subject of an application to a Councillor Conduct Panel made by the Chief Municipal Inspector, or of a complaint to the Local Government Inspectorate, the Independent Broad-Based Anti-Corruption Commission or Victoria Police, depending on the nature of the allegation.

### 4.1 Misuse of Position

A Councillor must not misuse his or her position:

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

Circumstances involving the misuse of position by a Councillor include, but are not limited to:

- making improper use of information acquired as a result of the Councillor's position (current and past);
- disclosing information that is confidential information;
- directing, or improperly influencing, or seeking to direct or improperly influence, a member of Council staff;
- exercising or performing, or purporting to exercise or perform, a power, duty or function that the Councillor is not authorised to exercise or perform;
- using public funds or resources in a manner that is improper or unauthorised;
- participating in a decision on a matter in which the Councillor has a conflict of interest.

\* As referenced from the *Local Government Act 2020*

## 4.2 Directing a member of Council staff

A Councillor must not intentionally direct, or seek to direct, a member of Council staff:

- in the exercise of a delegated power, or the performance of a delegated duty or function of Council;
- in the exercise of a power or the performance of a duty or function exercised or performed by the staff member as an authorised officer under the Act or any other Act;
- in the exercise of a power or the performance of a duty or function the staff member exercises or performs in an office or position the staff member holds under the Act or another Act; or
- in relation to advice provided to Council or a delegated committee, including advice in a report to Council or delegated committee.

\* As referenced from the *Local Government Act 2020*

## 4.3 Confidential information

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

For the purposes of the Act 'confidential information' means the following information:

- Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
- law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
- legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;

- private commercial information, being information provided by a business, commercial or financial undertaking that:
  - relates to trade secrets; or
  - if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- confidential meeting information, being the records of meetings closed to the public under the Act;
- internal arbitration information, being information specified in s 145 of the Act;
- Councillor Conduct Panel confidential information, being information specified in s 169 of the Act;
- information prescribed by regulations to be confidential information for the purposes of the Act; and
- information that was confidential information for the purposes of s 77 of the Local Government Act 1989.

\* As referenced from the *Local Government Act 2020*

A Councillor may disclose information that would be considered 'confidential information' if the information that is disclosed is information that Council has determined should be publicly available.

Otherwise, a Councillor may disclose information that the he or she knows is confidential information in the following circumstances, and as included at s.125 of the Act:

- for the purposes of any legal proceedings arising out of the Act;
- to a court or tribunal in the course of legal proceedings;
- pursuant to an order of a court or tribunal;
- in the course of an internal arbitration and for the purposes of the internal arbitration process;
- in the course of a Councillor Conduct Panel hearing and for the purposes of the hearing;
- to a Municipal Monitor to the extent reasonably required by the Municipal Monitor;
- to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector;
- to a Commission of Inquiry to the extent reasonably required by the Commission of Inquiry; and

- to the extent reasonably required for any other law enforcement purposes.

\* As referenced from the *Local Government Act 2020*

Councillors acknowledge they will have access to confidential information in many forms, and it will not always be labelled as being 'confidential'. Councillors will take reasonable steps to inform themselves about the confidential nature of any Council information before discussing it outside the organisation.

#### **4.4 Conflict of Interest**

If a Councillor has a conflict of interest in a matter which is to be considered or discussed at a meeting of Council or a delegated committee, a meeting of a community asset committee, or any other meeting held under the auspices of Council, the Councillor must, if he or she is attending the meeting, disclose the conflict of interest in accordance with the Governance Rules (unless any of the exemptions apply).

A Councillor may have a 'general' or a 'material' conflict of interest in a matter being considered at a meeting.

##### **4.4.1 General Conflict of Interest**

A Councillor has a 'general' conflict of interest in a matter if an impartial, fair-minded person would consider that the Councillor's private interests could result in the Councillor acting in a manner that is contrary to their public duty.

For the purposes of general conflict of interest:

- 'private interests' means any direct or indirect interest of a Councillor that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief; and
- 'public duty' means the responsibilities and obligations that a Councillor has to members of the public in their role as a relevant person.

\* As referenced from the *Local Government Act 2020*

#### 4.4.2 Material Conflict of Interest

A Councillor has a 'material' conflict of interest in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.

The benefit may arise or the loss incurred:

- directly or indirectly; or
- in a pecuniary or non-pecuniary form.

For the purposes of a material conflict of interest, any of the following is an 'affected person':

- the Councillor;
- a family member of the Councillor;
- a body corporate of which the Councillor or their spouse or domestic partner is a Director or a member of the governing body;
- an employer of the Councillor, unless the employer is a public body;
- a business partner of the Councillor;
- a person for whom the Councillor is a consultant, contractor or agent;
- a beneficiary under a trust or an object of a discretionary trust of which the Councillor is a trustee;
- a person from whom the Councillor has received a disclosable gift (i.e. exceeding \$500 in value).

\* As referenced from the *Local Government Act 2020*

Councillors acknowledge that they must be clear about their associations with parties external to Council and to avoid conflicts between those associations and their role as Councillors.

#### **4.5 Other legislative requirements**

The Act includes requirements relating to eligibility to be a Councillor, electoral conduct and the election period ('caretaker period'). 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.

Councillors acknowledge they are responsible for complying with the various provisions relating to these matters.

## 5. Good Governance

Nothing in this Part **Error! Reference source not found.** of the Code is intended to impose a binding Standard of Conduct on Councillors. These matters are expressed as operating in addition to the Standards of Conduct. Further, nothing in this part of the Code is intended to modify or derogate from the Standards of Conduct.

This part of the Code sets out conduct that the Councillors have identified will contribute to the good governance, integrity and responsible operation of Council.

### 5.1 Overarching Governance Principles

Councillors will support the role of Council by ensuring that Council gives effect to the overarching governance principles when participating in Council's decision-making functions.

The overarching governance principles are set out in s.9(2) of the Act, and are as follows:

- Council decisions are to be made and actions taken in accordance with the relevant law;
- priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- the municipal community is to be engaged in strategic planning and strategic decision making;
- innovation and continuous improvement is to be pursued;
- collaboration with other councils and governments and statutory bodies is to be sought;
- the ongoing financial viability of Council is to be ensured;
- regional, state and national plans and policies are to be taken into account in strategic planning and decision making; and
- the transparency of Council decisions, actions and information is to be ensured.

\* As referenced from the *Local Government Act 2020*

## **5.2 Council decision-making**

Councillors are committed to ensuring a high level of transparency in Council's decisions and Council's decision-making processes. Councillors acknowledge that Council decisions cannot be made other than by resolution made at properly constituted Council meetings following fulsome public debate in the Council Chamber. While Councillors will engage in informal discussion of matters coming before Council for decision, they acknowledge that these informal discussions are not decision-making forums, and that a final position on such matters cannot be reached before the Council Meeting.

Councillors acknowledge the role that reports prepared by members of Council staff provide, by way of professional advice, which assists in informing Councillors about matters before Council for decision. Councillors will respect and consider the information provided by members of Council staff, to assist Council's decision-making functions.

Councillors undertake to exercise due diligence by properly examining and considering all the information provided to them relating to matters they are required to make a decision on.

## **5.2 Binding caucus votes**

Councillors must not participate in binding caucus votes in relation to matters to be considered at a Council or Delegated Committee Meeting.

For the purpose of section 5.2 of this Code, a binding caucus vote is a process whereby a group of Councillors are compelled by a threat of disciplinary or other adverse action to comply with a predetermined position on a matter before the Council or Delegated Committee, irrespective of the personal views of individual members of the group on the merits of the matter before them.

Section 5.2 of this Code does not prohibit Councillors from discussing a matter before the Council or Delegated Committee prior to considering the matter in question at a Council or Delegated Committee Meeting, or from voluntarily holding a shared view with other Councillors on the merits of a matter.

Section 5.2 of this Code does not apply to a decision to elect the Mayor or Deputy Mayor, or to nominate a person to be a member of a Council Committee or a representative of the Council on an external body.

### **5.3 Use of Council resources**

Councillors commit to using Council resources effectively, economically and only for proper purposes connected with this role as a Councillor, consistent with relevant Council policies and procedures.

In particular and in accordance with the Council Expenses Policy, Councillors will:

- maintain adequate security over Council property, facilities and resources provided by Council to assist in performing their role;
- comply with any legislation and Council policies and procedures applying to the use of Council property, facilities and resources provided by Council to assist in performing their role;
- not use Council resources, including the services of members of Council staff, for private purposes, unless authorised to do so by the Chief Executive Officer, and paying for those resources when required to do so; and
- not use public funds or resources in a manner that is improper or unauthorised.

### **5.4 Gifts and benefits**

Councillors will 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.

Councillors will take all reasonable steps to ensure that their immediate family members do not receive gifts or benefits that give rise to the appearance of an attempt to gain favourable treatment.

Councillors will only accept gifts that exceed the gift disclosure threshold (currently, \$500) if:

- the name and address of the person making the gift are known to them; or
- at the time when the gift is made, they reasonably believed that the name and address provided are the true name and address of the person making the gift.

Anonymous gifts that exceed the gift disclosure threshold will be disposed of to Council within thirty (30) days of receiving the gift.

Councillors will comply with the Councillor Gift Policy, once adopted, and any other policies and procedures adopted by Council from time to time relevant to the acceptance of gifts.

## **5.5 External communications**

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

Councillors are committed to respecting the function of the Mayor as the spokesperson of Council in accordance with the Act.

Councillors undertake to comply with Council's Media Relations Policy and any other relevant policies, as adopted from time to time, including recognition of, and respect for the:

- role of the Mayor as the principal spokesperson of Council, including in communications with the media on behalf of Council;
- role of the CEO in communicating with the media on behalf of Council with respect to matters of an operational nature; and

In accordance with Council's Media Relations Policy, Councillors may choose to refer media queries to the Media Officer.

Councillors have been elected to represent our community and are free to communicate with them through various forums, including media. Councillors have a responsibility to ensure their interactions with media outlets (including social media) is appropriate and compliant with the Media Relations Policy. When expressing a personal opinion, Councillors will make it clear they are expressing a personal opinion and not purporting to represent a position of Council.

## **5.6 Personal dealings with Council**

When Councillors deal with Council in their private capacity (eg as a ratepayer, recipient of a Council service or applicant for a permit), they will not expect or request preferential treatment in relation to any such private matter. Councillors will avoid any action that could lead members of Council staff or members of the community to believe that they are seeking preferential treatment.

## **5.7 Occupational Health and Safety**

Councillors acknowledge that meeting Council's obligations as an employer under the *Occupational Health and Safety Act 2004* by, among other things, providing a safe workplace for members of Council staff and visitors to Council premises is essential.

Councillors are committed to working in ways that protect and promote the health and safety of members of Council staff and visitors, to Council premises and to minimise risks to them.

## **5.8 Elections**

Councillors may nominate as candidates in elections at both State and Federal levels of government.

If nominating as a candidate in an election, Councillors commit to:

- notifying the CEO of their nomination as soon as practicable after being nominated;
- declaring their nomination publicly at the next Ordinary Council meeting after being nominated;
- applying for a leave of absence for the duration of their candidacy in the relevant election;
- not using their position as a Councillor for purposes associated with their campaign; and
- ensuring compliance with Councils Election Period Policy.

Any Councillor who is assisting in the campaign of a candidate in an election commits to not using their position as a Councillor for purposes associated with their campaign.

## **5.9 Child Safe Standards**

Councillors acknowledge the importance of protecting the safety of children in its municipal community, and encouraging their participation and empowerment. Councillors support Council's zero tolerance approach to child abuse and its adherence to the Victorian Child Safe Standards and related legislation including Failure to Disclose, Failure to Protect and Grooming offences.

Councillors will maintain the highest standards of professional conduct in attitude and behaviour towards, and in their interactions with, children and young people. As leaders, Councillors will uphold the rights and best interests of children and young people in the municipal community to the extent possible.

## 6. Interpersonal Disputes between Councillors

Councillors acknowledge that interpersonal differences and disputes (as distinct from allegations of contravention of the Standards of Conduct) may arise from time to time. Councillors commit to taking reasonable steps to resolve any interpersonal difference or dispute that arises without recourse to formal processes with a view to maintaining effective working relationships.

In resolving interpersonal differences or disputes, Councillors will consider pursuing informal steps, including:

### 6.1 Informal discussions between Councillors

Councillors will first consider discussing their interpersonal difference or dispute informally with a view to resolving it.

### 6.2 Facilitated discussion

If Councillors are unable to discuss their interpersonal difference or dispute informally, or their informal discussions are unsuccessful, they will consider approaching a fellow Councillor, chosen with the agreement of both Councillors, to facilitate a discussion with a view to resolving their interpersonal difference or dispute.

If the interpersonal difference or dispute cannot be resolved informally, the Councillors will consider whether any of the conduct giving rise to it, constitutes a contravention of the Standards of Conduct. If they consider that it does, they may choose to pursue it as such under part **Error! Reference source not found.** of this Code.

## 7. Complaints from members of the public

In accordance with section 107 of the Act, Council must adopt a Complaints Policy on or before 1 January 2022, this policy must include a prescribed process for dealing with complaints about the Council.

Until such time as this policy is adopted, the following provisions will apply.

- 7.1 Where a complaint is received from a member of the public in respect of a Councillor, the complaint will be forwarded to the Mayor for their consideration, a copy will be provided to the Chief Executive Officer and the Councillor Conduct Officer for their information;
- 7.2 Where the complaint relates to the Mayor, the complaint will be forwarded to the Deputy Mayor or, if the Mayor and the Deputy Mayor are both involved in the complaint, the most recent past Mayor;
- 7.3 Where it has been determined by the Mayor (or position identified in section 7.2) the complaint relates to a breach of the Councillor Code of Conduct, the Mayor (or position identified in section 7.2) will determine the appropriate method of managing the complaint, this may be in accordance with section 6.1 or 6.2 of this Code;
- 7.4 Where the Mayor determines to manage the complaint in accordance with section 6.1 or 6.2 of this Code, the Councillor the subject of the complaint will be provided with a copy of the complaint for their consideration;
- 7.5 The complainant(s) and Councillor(s) concerned will be notified in writing of the process followed and the outcome of the complaint by the Mayor;
- 7.6 The outcome communicated by the Mayor is final, and is not subject to an appeals process. However, members of the public will be advised of their right to escalate complaints to external integrity bodies such as:
  - The Local Government Inspectorate;
  - The Independent Broad-Based Anti-Corruption Commission (IBAC);
  - The Victorian Ombudsman;
  - The Minister for Local Government

- 7.7 Members of Council staff will not assess or investigate any such complaint. If the complaint involves a potential Public Interest Disclosure, it will be dealt with in accordance with the *Public Interest Disclosure Act 2012*
- 7.8 Section 7 of this Code will be repealed when Council adopts the Complaints Policy under section 107 of the Act, at such time the provisions contained within the Complaints Policy will replace section 7 of this Code.
- 7.9 In the interest of clarity, until such time as a new Complaints Policy is adopted, the current complaints policy adopted by Council in July 2018 remains in force.

## 8. Allegations of Contravention of the Code

An allegation that the Standards of Conduct have been breached by a Councillor can be made by:

- Council, by resolution;
- a Councillor; or
- a group of Councillors.

Where an allegation is made by Council or by a group of Councillors, a single Councillor must be nominated to act as the representative of Council or the group of Councillors (as the case may be) in the internal resolution process. Only that Councillor will be entitled to participate in the internal resolution process.

When an allegation of a breach of the Standards of Conduct is alleged, the Councillors who are party to the allegation undertake to use their best endeavours to resolve it in a courteous and respectful manner, without recourse to formal processes under this Code or under the Act. If, after these endeavours have been exhausted, the allegation remains unresolved, either or both of the Councillors may have recourse to any, or all of the internal resolution processes set out in this Code.

Councillors accept the following three-phase internal resolution process:

- Facilitated discussion between the Councillors, facilitated by the Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the allegation, the most recent past Mayor;
- Formal mediation between the Councillors, facilitated by a qualified mediator;
- Formal internal arbitration process.

Councillors recognise that the first and second phases are voluntary and that they are not obligated to agree to either of them, but will endeavour to resolve allegations without resorting to the mandatory internal arbitration process.

## **8.1 The applicant**

An application alleging a breach of the Standards of Conduct must:

8.1.1 include the:

- (a) name of the Councillor alleged to have breached the Standards of Conduct;
- (b) clause(s) of the Standards of Conduct that the Councillor is alleged to have breached;
- (c) particular misconduct, or behaviour, that the Councillors is alleged to have engaged in that resulted in the breach; and
- (d) phase of the internal resolution process being pursued by the Councillor making the allegation at the first instance; and

8.1.2 be submitted to the Councillor Conduct Officer for:

- (a) action, if the application seeks engagement in the first or second phase of the internal resolution process; or
- (b) referral to the Principal Councillor Conduct Registrar, if the application seeks a formal internal arbitration process.

If an application received by the Councillor Conduct Officer does not meet the requirements of this Part 8.1, the Councillor Conduct Officer will return it to the Councillor submitting it with a brief statement of the ways in which the application is deficient.

A Councillor may revise and resubmit to the Councillor Conduct Officer a deficient application, provided that the Councillor submits the revised application no later than three months after the alleged breach of the Standards of Conduct occurred (see s.143(3) of the Act).

## 8.2 Process on receiving an application

### 8.2.1 Application for facilitated discussion

On receiving an application for a Councillor which meets the requirements of Part 8.1 of this Code, and which seeks a facilitated discussion, the Councillor Conduct Officer will take the following steps:

- (a) notify the Mayor or, if the Mayor is involved in the allegation, the Deputy Mayor or, if both the Mayor and Deputy Mayor are involved in the allegation, the most recent past Mayor (as the case may be), and the CEO (for the CEO's information only) and provide them with a copy of the application;
- (b) notify the Councillor the subject of the allegation of the application, and provide them with a copy of the application;
- (c) request the Councillor the subject of the application, to advise whether they will participate in the facilitated discussion within five days of receiving the application, noting that, if no advice is received, the Councillor will be taken to have declined;
- (d) if the Councillor agrees to participate in the facilitated discussion:
  - (i) the Councillor Conduct Officer will, with the cooperation of the Councillors involved in the application and the Mayor, or if the Mayor is involved in the application, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the application, the most recent past Mayor (as the case may be), arrange a suitable time and place for the facilitated discussion, to be no later than five days from the date of the advice provided under paragraph (c).
  - (ii) the facilitated discussion must be completed with the Mayor or, if the Mayor is involved in the application, the Deputy Mayor or, if both the Mayor and the Deputy Mayor are involved in the application, the most recent past Mayor (as the case may be), providing a record of the outcome to the Councillors involved in the application, and the CEO no later than five days after the discussion takes place; and
  - (iii) if the facilitated discussion is not completed within five days of the date nominated for it to take place, the Councillors will be taken as

not having agreed to participate in a facilitated discussion, unless both Councillors agree to extend the time for completion;

- (e) if the facilitated discussion is not completed in accordance with this Part 8.2.1 for whatever reason, or if the facilitated discussion does not resolve the allegation the subject of the application, the Councillor Conduct Officer will advise the:
  - (i) Councillor making the application and ask the Councillor to advise whether they wish to escalate the matter to another phase of the internal resolution process and, if so, which phase;
  - (ii) Councillor the subject of the application; and
  - (iii) CEO; and
- (f) the Councillor Conduct Officer will make arrangements to close or to escalate the application, as the case may be, according to the advice of the Councillor making the application.

### 8.2.2 Formal Mediation

On receiving an application from a Councillor which meets the requirements of Part 8.1 of this Code, and which seeks a mediation, or on escalating an application where a facilitated discussion has not been completed, or has not resolved the allegation, the Councillor Conduct Officer will take the following steps:

- (a) notify the CEO and provide them with a copy of the application;
- (b) notify the Councillor the subject of the allegation, of the application and provide them with a copy of the application;
- (c) request the Councillor the subject of the application to advise whether they will participate in formal mediation within five days of receiving the application, noting that, if no advice is received, the Councillor will be taken to have declined;
- (d) if the Councillor agrees to participate in formal mediation:
  - (i) the CEO, or a member of Council staff nominated by the CEO for the purposes (the CEO's nominee), will engage a mediator, to be chosen by the CEO (or the CEO's nominee)
  - (ii) the CEO (or the CEO's nominee) will, with the cooperation of the Councillors involved in the application, arrange a suitable time and place for the formal mediation, to be no later than five business days from the date of the advice provided under paragraph (c); and
  - (ii) if the formal mediation is not complete within five business days of the date nominated for it to take place, the Councillors will be taken as not having agreed to participate in the mediation, unless both Councillors agree to extend the time for completion;
- (e) if the mediation resolves the application, the mediator will document the agreement reached by the Councillors involved and provide a copy of the agreement to both Councillors and to the CEO;

- (f) if the mediation is not completed in accordance with this Part 8.2.2 for whatever reason, the CEO (or the CEO's nominee) will advise the:
  - (i) Councillor making the application and ask the Councillor to advise whether they wish to escalate the matter to another phase of the internal resolution process and, if so, which phase; and
  - (ii) Councillor the subject of the application; and
- (g) the CEO (or the CEO's nominee) will ask the Councillor Conduct Officer to make arrangements to close or to escalate the application, according to the advice of the Councillor making the application.

### 8.2.3 Formal Internal arbitration

A breach of the Standards of Conduct constitutes 'misconduct' for the purposes of the Act, and may be referred to an arbiter for determination. The process for internal arbitration is prescribed by Part 6 of the Act and Regulation 11 of the associated Regulations.

Internal arbitration may be commenced either after the first two phases if the internal resolution process prove unsuccessful in resolving the allegation, or as the first step in an application.

On receiving an application from a Councillor which meets the requirements of Part 8.1 of this Code, and which seeks a formal internal arbitration process, or on escalating an application where a facilitated discussion and/or formal mediation has not been completed or has not resolved the allegation, the Councillor Conduct Officer will:

- (a) refer the application to the Principal Councillor Conduct Registrar;
- (b) notify the Councillors involved in the application of the referral;
- (c) notify the CEO of the referral (for the CEO's information only);
- (d) take such steps as are necessary to give effect to the Principal Councillor Conduct Registrar's advice, in accordance with any instructions received.

Councillors recognise that an application for internal arbitration for an allegation of a breach of the Standards of Conduct will only be accepted by the Principal Councillor Conduct Registrar, and an arbiter will only be appointed, if the Principal Councillor Conduct Register is satisfied that:

- (f) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- (g) there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct.

It is for the Councillor or Councillors submitting an application to ensure that the application meets these requirements.

If the Principal Councillor Conduct Registrar is satisfied that an application for internal arbitration should be accepted, the Principal Councillor Conduct Registrar will appoint an arbiter from a panel list compiled by the Secretary to the Department of Jobs, Precincts and Regions.

In conducting an arbitration, the arbiter must:

- (h) ensure that the parties involved are given an opportunity to be heard;
- (i) ensure that a Councillor who is a party does not have a right to representation, unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
- (j) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- (k) ensure that the hearing is not open to the public.

Additionally, in conducting an arbitration, the arbiter:

- (l) may hear each party to the matter in person, or solely by written or electronic means of communication;
- (m) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit;
- (n) may, at any time, discontinue the hearing if the arbiter consider that the:

- (i) application is vexatious, misconceived, frivolous or lacking in substance; or
- (ii) Councillor making the application, or representing the group of Councillors making the application, has not responded, or has responded inadequately, to a request for further information.

If, at the completion of the formal internal arbitration process, the arbiter determines that a Councillor has breached the Standards of Conduct, the arbiter may make a finding of misconduct against the Councillor and impose any one or more of the following sanctions:

- (o) direct the Councillor to make an apology;
- (p) suspend the Councillor from the office of Councillor for a period specified by the arbiter (not exceeding one month);
- (q) direct that the Councillor be removed from any position where the Councillor represents Council for a period determined by the arbiter;
- (r) direct that the Councillor is removed from being the chair of a delegated committee for a period determined by the arbiter; and/or
- (s) direct a Councillor to attend or undergo training or counselling specified by the arbiter.

The arbiter must provide a written copy of the arbiter's findings and statement of reasons to:

- (t) Council;
- (u) the applicant(s) and the respondent; and
- (v) the Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the arbiter's findings and statement of reasons are provided. If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted before it is tabled.

Councillors recognise that a failure to participate in, and comply with the internal arbitration process, or a direction given to the Councillor by an arbiter is 'serious misconduct' for the purposes of the Act. Allegations of 'serious misconduct' are heard by a Councillor Conduct Panel.

### 8.3 Responsibility of Councillors

It is the responsibility of a Councillor or Councillors submitting an application to prepare the application, including by identifying and collating the evidence which supports it.

While members of Council staff may provide some administrative support, that support will not extend to assisting Councillors with the preparation of the substance of the application.

## 9. Adoption of this Code

9.1 This Code was adopted by a resolution of Council, made at the Council Meeting held on 24 February 2021, with a majority of at least two thirds of all Councillors voting in favour of it.

9.2 This Code may be reviewed at any time during the Council term, but need not be reviewed until after the general election to be held in October 2024.

## 10. Definitions

Chief Executive Officer	The Chief Executive Officer of the Mildura Rural City Council
Chief Municipal Inspector	The person appointed by the Minister under section 182 of the Act
Conflict of Interest	Where a relevant person has a general conflict of interest or material conflict of interest in accordance with the Act
Councillor	All references to Councillor include the Mayor, Deputy Mayor and elected members of the Mildura Rural City Council, except if expressly provided within the Code
Councillor Conduct Officer	The person appointed in writing by the Chief Executive Officer to be the Councillor Conduct Officer for the Mildura Rural City Council, under section 150 of the Act
Councillor Conduct Panel	Means a panel formed by the Principle Councillor Conduct Registrar under section 156
Confidential Information	Means the information as defined in section 3 of the Act

Disclosable Gift	One or more gifts with a total value of, or more than, \$500 or if an amount is prescribed for the purposes of the Act, the prescribed amount, received from a person in the five years preceding the decision on the matter
Employee	An employee of Council includes all members of staff, contractors and volunteers under the direct control or supervision of the Mildura Rural City Council
Minister	The Minister for Local Government
Misconduct	Misconduct by a Councillor means any breach by a Councillor of the prescribed Standards of Conduct in this Code and as specified in the Act
Principal Councillor Conduct Registrar	The person appointed by the Secretary to be the Principal Councillor Conduct Registrar under section 148 of the Act
Standards of Conduct	Means the Standards of Conduct prescribed under section 139(3)(a) of the Act
Serious Misconduct	Means the behaviour as described in section 3 of the Act
The Act	All references to 'the Act' are to the <i>Local Government Act 2020</i>