



# City of Port Phillip – Councillor Code of Conduct

February 2021



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## Policy governance

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Governance & Organisational Performance Department

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Council

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Outlined in Code of Conduct



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## Purpose

The purpose of the Councillor Code of Conduct is to outline the expected behaviour of Councillors as required under the Local Government Act 2020.

## Outcomes

The outcomes of the Councillor Code of Conduct are to:

- set out the behaviour expected of Councillors;
- support and foster good working relationships between Councillors;
- mandate the conduct of Councillors to build public confidence in the integrity of local government;
- meet the legislative requirements of the Local Government Act 2020 (the Act).

## Definitions

Table 1: Definitions of terms

Term	Definition
<b>Council Conduct Officer</b>	Officer appointed by the Chief Executive Officer to support the administration of informal and formal Councillor Code of Conduct processes.
<b>Councillor Conduct Panel</b>	Panel appointed by the Principal Councillor Conduct Registrar to consider issues of serious misconduct by Councillors.
<b>Principal Councillor Conduct Registrar</b>	Independent person appointed by the State Government to manage formal Councillor Code of Conduct processes.
<b>Misconduct</b>	Any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct.
<b>Serious Misconduct</b>	Any of the following: — <ol style="list-style-type: none"> <li>the failure by a Councillor to comply with the Council's 'internal' arbitration process;</li> <li>the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147 of the Act;</li> <li>the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;</li> <li>the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;</li> <li>continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b) of the Act;</li> </ol>



Term	Definition
	(f) bullying by a Councillor of another Councillor or a member of Council staff;
	(g) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
	(h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
	(i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;
	(j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision-making process when required to do so in accordance with the Act.

## Responsibilities

Table 2: Responsibilities of roles

Role	Responsibility
<b>Mayor</b>	Promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct and assist Councillors to understand their role.
<b>Deputy Mayor</b>	To support the Mayor in discharging their responsibilities and undertaking these responsibilities on behalf of the Mayor, if a matter involves the Mayor or the Mayor is unavailable.
<b>Councillors</b>	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 policy and procedures.
<b>Chief Executive Officer</b>	Support the Mayor, Deputy Mayor and Councillors to fulfill the requirements of the Councillor Code of Conduct.
<b>Council Conduct Officer</b>	Assist in the implementation and conduct of informal and formal internal resolution procedures and assist the Principal Councillor Conduct Registrar perform the functions specified in section 149 of the Act.

## Scope

The Councillor Code of Conduct applies to a Councillor who is conducting the business of Council; conducting the business of the office to which they have been elected or appointed and or acting as a representative of Council. For the purposes of this Code, the term 'Councillors' includes the Mayor, the Deputy Mayor and all other Councillors of Council, except where the context otherwise indicates or requires.



**Commitment** As an elected representative charged with decision making for the City of Port Phillip, I am committed to undertaking the duties and responsibilities of my office by working together with my fellow Councillors in a respectful and constructive manner.

I acknowledge that I will:

- comply with the prescribed standards of conduct as outlined in the Local Government (Governance and Integrity) Regulations and the associated undertakings outlined in this Code of Conduct;
- act lawfully and in accordance with Council policy and procedures;
- provide civic leadership and contribute effectively to the interests and advancement of Council and its community;
- contribute to the strategic vision for Council;
- uphold the public trust in the office of Councillor; and
- act in accordance with all my obligations to the best of my skill and judgment.

This Code sets out my commitment to my fellow Councillors and the community to govern the city in a manner which accords with the expressed behaviours and standards.

By signing below, I declare to my fellow Councillors and to the community that I have read, understood and will abide by this Code of Conduct.

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**Councillor Tim Baxter**

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**Councillor Andrew Bond**

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**Councillor Rhonda Clark**

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**Councillor Katherine Copsey**

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**Councillor Louise Crawford**

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**Councillor Heather Cunsolo**

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**Councillor Marcus Pearl**

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**Councillor Peter Martin**

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**Councillor Christina Sirakoff**



**Standards of Conduct** Councillors must comply with the prescribed standards of conduct in Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020. A breach of the conduct standards constitutes misconduct as defined under the Act.

## Standard 1 – Treatment of Others

I will, in performing my role as 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 I: —

- take positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010; and
- support the Council in fulfilling its obligation to achieve and promote gender equality; and
- will not engage in abusive, obscene or threatening behaviour in my dealings with members of the public, Council staff and Councillors; and
- I will consider the diversity of interests and needs of the municipal community, will treat all persons with respect and will have due regard for their opinions, beliefs, rights and responsibilities.

## Standard 2 – Performing the Role of Councillor

I will in performing the role of Councillor, do everything reasonably necessary to ensure that I perform the role of a Councillor effectively and responsibly, including by ensuring that I: —

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

## Standard 3 – Compliance with Good Governance Measures

I will, in performing the role of a Councillor, ensure the good governance of the Council, and I acknowledge I must diligently and properly comply with the following: —



- any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- any directions of the Minister issued under section 175 of the Act.

## Standard 4 – Council Reputation

- I will, in performing the role of Councillor, ensure my behaviour does not bring discredit upon the Council.
- I will in performing the role of a Councillor, not deliberately mislead the Council or the public about any matter related to the performance of my public duties.

## Standard 5 – Standards do not limit robust political debate

- I note that nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

In undertaking these duties, I agree and will abide by:

- The Council's Governance Rules;
- The Councillor Contact Guidelines;
- Councillor Allowances and Expenses Policy;

# City of Port Phillip Dispute Resolution Procedure

## Purpose

This part describes the processes for Councillors who wish to report and resolve a dispute with another Councillor under the Code.





Councillors recognise that the democratic process of local government involves holding, and expressing, different and sometimes opposing viewpoints. It is a normal, and vital, function of this process that these different views are shared in a considered and informed way. Although all Councillors strive to engage in positive, constructive and respectful interactions, conflict and/or disputes may arise. All Councillors recognise they hold an individual and collective responsibility to resolve disputes in a proactive, positive and courteous manner before they are escalated, to avoid such disputes threatening the effective operation of Council.

The primary purpose of an internal resolution procedure is to provide Councillors with support and mechanisms to resolve conflicts and disputes in a manner that enables them to move forward and establish and maintain effective working relationships. The internal resolution procedure consists of two parts. An informal and a formal process.

Importantly this procedure: -

- is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council and Planning Committee meetings;
- only applies to Councillors. If a member of the public wishes to make a complaint about a Councillor the member of the public will be referred to the appropriate external authority e.g. Local Government Inspectorate, Ombudsman or IBAC. If a Council staff member, contractor or volunteer has a concern about a Councillor this should be reported to their Manager or Contract Manager. Where necessary the Chief Executive Officer will discuss the matter with the Mayor. The Chief Executive Officer may also put in place arrangements to manage any concerns in line with other legislative responsibilities held by the Chief Executive Officer e.g. occupational health and safety requirements;
- does not cover matters of serious misconduct. The procedure for addressing serious misconduct is outlined in the Local Government Act 2020.

## Informal Resolution Process

Before commencing a formal dispute resolution process, the Councillors who are parties to a dispute are encouraged to use their best endeavours to resolve their issue or dispute in a courteous and respectful manner between themselves, stop any behaviour that is causing issues, and to avoid the issue escalating and threatening the effective operation of Council.

Where the issue or dispute remains unresolved or where the circumstances make resolution between Councillors inappropriate, the parties may resort to Council's informal dispute resolution processes set out below: -

- Resolution discussion - with one of the following in attendance and facilitating the meeting: Mayor or Deputy Mayor;
- Mediation - with an external accredited mediator at the cost of Council. The Chief Executive Officer (or delegate) and the Council Conduct Officer will support the Mayor or Deputy Mayor in administering the engagement of the mediator.



The Councillor(s) wishing to access this process must write to the Mayor, or in the case of the Mayor, the Deputy Mayor and: -

- Specify the name of the Councillor(s) involved;
- Outline the details of the alleged dispute;
- Include evidence in support of the alleged dispute;
- Name the Councillor appointed to be the representative, where the application is made by a group of Councillors;
- Be made within three months of the alleged issue occurring.

Upon receipt of request, the Mayor or Deputy Mayor will: -

- Acknowledge receipt of the request for informal dispute resolution;
- Advise the Councillor(s) named in the request of the informal dispute;
- Determine whether a resolution discussion or mediation is the best approach to manage the situation. As part of this process, the Mayor or Deputy Mayor may request that the Chief Executive Officer (or delegate) and the Councillor Conduct Officer engages external legal advice to support them in determining the best way to manage the situation;
- Facilitate the informal resolution process, which may be supported by external legal or mediation support engaged by the administration. This external legal advisor or mediator will also provide advice to the Mayor or Deputy Mayor on whether it is appropriate for Councillors to have support person(s) present during the resolution procedure and the form this can take;
- Write to all Councillors involved at the conclusion of the informal resolution process outlining the outcome and closure of the process.

In the case of an informal resolution process, all parties must agree to participate prior to it commencing.

At any time, a Councillor may resolve to halt participation in an informal resolution process. In addition, at any time, a Councillor may decide to access the formal resolution process.

The Chief Executive Officer (or delegate) and Councillor Conduct Officer will support the Mayor and Deputy Mayor with the administrative elements of the above process. They will also arrange appropriate support, for example, access to Council's Employee Assistance Program is made available to Councillors involved.

If the Chief Executive Officer is of the opinion that information relating to informal resolution processes is confidential information within the relevant meaning of the Local Government Act, the Chief Executive Officer will designate the information as confidential and advise Councillors and/or members of Council staff in writing accordingly.



## Formal Resolution Process

At any time, a Councillor, group of Councillors or Council by resolution, can choose to access the formal resolution process under the Act. This involves a party (the Applicant) to a dispute requesting the Principal Councillor Conduct Registrar (external to Council) to appoint an impartial third party (the Arbiter) to make findings in relation to allegations concerning another Councillor(s) (the Respondent) and whether they have engaged in misconduct under the Act.

The application must:

- Specify the name of the Councillor alleged to have breached the conduct standards;
- Specify the clause of the conduct standards in the Local Government (Governance and Integrity) Regulations 2020 that the Councillor is alleged to have breached;
- Specify the misconduct that the Councillor is alleged to have engaged in that resulted in the breach of the conduct standards;
- 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;
- Be made within three months of the alleged misconduct occurring;
- Be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c) of the Act 25.

An Applicant may withdraw an application for arbitration at any time.

Once an application has been withdrawn, the same or a similar application relating to the same issues or dispute in relation to the other Councillor cannot be resubmitted by the Applicant.

Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information and as such will not be released.



On receiving an application:

- The Principal Councillor Conduct Registrar will: -
  - Examine an application and will seek to appoint an arbiter to hear the matter if they are satisfied that:
    - The application is not frivolous, vexatious, misconceived or lacking in substance;
    - There is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in 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;
  - Contact the Council Conduct Officer who provide the application to the Councillor who is the subject of the application, and will advise the Chief Executive Officer and Mayor or Deputy Mayor (as appropriate);
  - Notify the parties of the name of the proposed Arbiter and provide them with the opportunity 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.

The role of the Arbiter includes:

- Considering an application alleging a breach of the prescribed standards of conduct;
- Ensuring that a Councillor who is a party to an arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
- Making findings in relation to the application;
- Providing a written statement of reasons supporting the findings to the parties at the same time as providing the findings to Council;



An Arbiter:

- May find that a Councillor who is a Respondent to an application has not engaged in misconduct;
- May find that a Councillor has engaged in misconduct;
- May hear each party to the matter in person or solely by written or electronic means of communication;
- Is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit;
- May at any time discontinue the hearing if the arbiter considers that the application is vexatious, misconceived, frivolous or lacking in substance or the applicant has not responded, or has responded inadequately, to a request for further information;
- Will suspend the process during the election period for a general election;
- Must refer the matter in writing to the Principal Councillor Conduct Registrar if the arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct and would more appropriately be dealt with as an application to a Councillor Conduct Panel under section 154 of the Act.

The Arbiter is to provide a copy of their findings and the statement of reasons to:

- Council;
- The applicant or applicants;
- The Councillor who is the subject of the allegation;
- The Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be publicly tabled at the next Council meeting after Council has received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting. If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted before submission to the Council meeting.

If an arbiter has made a finding of misconduct the arbiter may do any one or more of the following:

- Direct the Councillor to make an apology in a form or manner specified by the arbiter;
- Suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
- Direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
- Direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
- Direct a Councillor to attend or undergo training or counselling specified by the arbiter.



A Councillor who does not participate in the internal arbitration procedure may be guilty of serious misconduct.

Internal arbitration information is confidential information under section 3(i) of the Local Government Act. Information is managed by the arbiter who will determine what can and cannot be released with respect to any matter.

Allegations of serious misconduct are heard on application to the Principal Councillor Conduct Registrar (or referral from the Chief Municipal Inspector) who may elect to establish a Councillor Conduct Panel.

The process for management of serious misconduct is outlined in the Local Government Act 2020.

### **Council must pay fees**

A Council must pay the fees specified in a notice issued by the Principal Councillor Conduct Registrar under section 149(1)(e) or (m) of the Act following:

- any internal arbitration process conducted for, or on behalf of, the Council;
- any Councillor Conduct Panel hearing conducted for, or on behalf of, the Council.

Council will however not pay for the legal advice of a Councillor(s) subject to a Councillor Code of Conduct process, unless resolved otherwise by Council.

## **Attachments**

Nil



## Relevant policy, regulations or legislation

Local Government Act 2020

Local Government (Governance and Integrity) Regulations 2020

## Attachments

Nil