

Councillor Code of Conduct Support Guide

This Councillor Code of Conduct Support Guide is to be read in conjunction with the Councillor Code of Conduct that was adopted in 2016.

This Guide comprises resource material that complements the Councillor Code of Conduct, in order to assist Councillors to better understand their responsibilities and obligations.

This Guide has been produced for the internal reference of Councillors and Council staff. It is not a public document. It does not require adoption by Council. The Guide can be administratively updated to reflect legislative changes and in order to add additional material deemed useful by Councillors.

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1. Definitions

The following definitions are listed to assist with the reading of this Guide:

Arbiter means an independent arbiter appointed by a Council to consider alleged violations of the Council's Code by a Councillor and make final determinations on them

Assembly of Councillors means a meeting of an advisory committee of the Council, if at least one Councillor is present, or a planned or scheduled meeting of at least half of the Councillors and one member of Council staff which considers matters that are intended or likely to be:

- the subject of a decision of the Council or
- subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee but does not include a meeting of the Council, a special committee of the Council, an audit committee established under section 139 of the Act, a club, association, peak body, political party or other organisation¹

Confidential information means information that is:

- provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential or
- designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential or
- designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential

Council means Ararat Rural City Council, being a body corporate constituted as a municipal Council under the Local Government Act 1989

Council Officers means the Chief Executive Officer (CEO) and staff of Council appointed by the CEO

Councillor Conduct Panel (CCP) means a panel of two people established by the Principal Councillor Conduct Registrar (PCCR) to hear applications of misconduct and serious misconduct

Councillors means the individuals holding the office of a member of Ararat Rural City Council

Election Period means the period that starts on the last day on which nominations for that election can be received and ends at 6:00pm on Election Day

Electronic media means any electronic device used by Councillors and/or staff to transmit information/data and/or mail

¹ The definition appears in section 3 of the Act

Gross Misconduct 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

Local Community includes:

- people who live in the municipal district
- people and bodies that are ratepayers
- people and bodies that conduct activities in the municipal district

Misconduct means any of the following:

- failure by a Councillor to comply with the Council's internal resolution procedure or
- failure by a Councillor to comply with a written direction given by the Council under section 81AB or
- repeated contravention of any of the Councillor conduct principles

Municipal Monitor means a person appointed by the Minister for Local Government to monitor governance and provide reports to the Minister

Penalty Unit has the meaning set out in section 110 of the *Sentencing Act 1991*²

Principal Conduct Officer (PCO) means an officer appointed by each Council to assist the council in the implementation of its Code, including conduct of the internal resolution procedure

Principal Councillor Conduct Registrar (PCCR) means an employee of the Department of Environment, Land, Water and Planning (DELWP) whose role is to administer all CCP processes and appeals of panel decisions

Section or Act means the Act and sections made under it

Serious Misconduct means:

- the failure of a Councillor to attend a CCP hearing formed to make a finding in respect of that Councillor or
- the failure of a Councillor to give a CCP any information the CCP has requested the Councillor to give or
- the failure of a Councillor to comply with a direction of a CCP or
- continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a CCP or
- bullying of another Councillor or member of Council staff by a Councillor or
- conduct by a Councillor in respect of a member of Council staff in contravention of section 76E or
- the release of confidential information by a Councillor

2. The role of Councillors

The role of a Councillor is now defined in section 65 of the Act to provide greater clarity and better understanding of what is expected of Councillors. The section provides that the role of a Councillor is to do all of the following:

² A penalty unit is currently \$151.67. The amount is indexed annually on 1 July.

- to participate in the decision-making of the Council
- to represent the local community in that decision-making
- to contribute to the strategic direction of the Council through the development
- review of key strategic documents of the Council including the Council Plan

In performing the role of a Councillor, a Councillor must do all of the following:

- consider the diversity of interests and needs of the local community
- observe principles of good governance and act with integrity
- provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts
- participate in the responsible allocation of the resources of Council through the annual budget
- 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.

3. What a Councillor must not do in exercising their role

The Reforms arising from the Local Government Amendment (Improved Governance) Act 2015 – A guide for councils (The Guide) states:

“Councillors are not responsible for implementing council actions. They also have no authority to give directions to council staff. This is to facilitate effective administration and to avoid staff being subject to conflicting directions. Clear lines of managerial authority are critical. This is not to say councillors cannot express their views about administrative matters or implementation – but rather that they must do so through the CEO.

Therefore councillors must understand that all communication with council staff must be in line with the policies and protocols put in place by the CEO.

This is reinforced by the expansion of the role of CEO in section 94A of the Act to include responsibility for managing interactions between councillors and staff. This extends to the CEO being responsible for developing, implementing and enforcing policies and protocols to manage interactions between councillors and staff.

Councillors who improperly direct or influence a member of council staff in the exercise of their duties will be in breach of section 76E of the Act”³

4. Functions of the Mayor

The functions of Mayor are now defined in legislation to provide greater clarity and to reflect the role of the Mayor as it has evolved.

Previously the Act identified only three functions differentiating the Mayor from other Councillors:

³ Penalty: 120 penalty units

- as chairperson of meetings of Council at which the Mayor is present
- having a casting vote where necessary
- taking precedence at all municipal proceedings

The functions of the Mayor of a Council now include:

- 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 Code by Councillors under sections 76B, 76BA and 76C
- acting as the principal spokesperson for the Council
- supporting good working relations between Councillors
- carrying out the civic and ceremonial duties of the office of Mayor

5. The role of the CEO in supporting the Mayor

Prior to the recent legislative amendments, section 94A of the Act provided that the CEO of a Council was responsible for all of the following:

- establishing and maintaining an appropriate organisational structure for the Council
- ensuring that the decisions of the Council are implemented without undue delay
- the day to day management of the Council's operations in accordance with the Council Plan
- developing, adopting and disseminating a code of conduct for Council staff
- providing timely advice to the Council
- ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act
- supporting the Mayor in the performance of the Mayor's role as Mayor
- 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
- performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act

Section 94A of the Act now expands the functions of the CEO to specifically include the responsibility for supporting the Mayor in the performance of his or her role. The expansion of the role of CEO also includes responsibility for managing interactions between Councillors and staff. This means the CEO is responsible for developing, implementing and enforcing policies and protocols to manage interactions between Councillors and staff.

The Guide states:

“The CEO in practice also supports the Mayor to achieve a complete understanding of the full range of functions expected of them. However, in some instances other councillors have questioned why the CEO should treat the Mayor differently. The Act now makes clear this is an expectation which lies squarely within the functions and responsibilities of the CEO. An example of such additional support may involve the CEO providing advice on the Mayor's role at functions such as citizenship ceremonies, as well as

at official meetings with other organisations where the mayor represents a council”.

6. Hierarchy and definitions of misconduct

The reforms create a hierarchy for management of councillor conduct issues, with:

- councils dealing with breaches of councillor codes
- panels dealing with the majority of cases
- VCAT dealing with exceptional cases

Section 3(1) of the Act provides new definitions. These new definitions for misconduct, serious misconduct and gross misconduct are summarised in *Table 1* along with the authority responsible for addressing the matter. The new Councillor Conduct Framework is shown on page 19.

Degree of Seriousness	Definition	Responsible Authority
Conduct inconsistent with standards Council has set itself	Breaches of Council 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

Table 1

*Bullying, which is a form of serious misconduct, is defined as repeated unreasonable behaviour that creates a risk to the health and safety of another councillor or a member of council staff. This is consistent with the definition of bullying used in the *Fair Work Act 2009* and by WorkSafe.

7. Supporting Council management of Councillor behaviour

Until now, councils have had little capacity to manage and resolve issues arising from poor conduct by individual councillors. Councils now have a clear role in doing

so through establishing and creating a compliance mechanism to achieve adherence to the Council's Code of Conduct.

The internal resolution procedure is a mandatory requirement for inclusion within the Code of Conduct. Ararat Rural City Council's internal resolution procedure is described in detail in the Code.

The Act now provides for an independent arbitration process, mechanisms for resolution and sanctions which councils can apply to address any failure to meet Code standards.

Section 63 defines the conditions for the declaration⁴ to abide by a Councillor Code of Conduct. All Councillors must read the Code and make a declaration that they will abide by the Code. The declaration must be signed and witnessed by the CEO. If the Councillor fails to do so within three months of being elected their position is declared vacated (Section 64). This means that failure to make a declaration to abide by the Code is now a ground for disqualification as a councillor (section 29 (1) (e)).

The form of declaration is shown in Attachment 1.

Within one month of any amendment being made to the Code, all Councillors must make a declaration stating that they will abide by the revised Code. This declaration must be signed and witnessed by the CEO (section 76C).

8. Sanctions for breaches of the Code

Section 81AB specifies that Councils may impose sanctions through their internal resolution procedure for breaches of the Code. These must be voted on by Council as a whole and they may include:

- requiring an apology
- suspension from up to two council meetings
- a direction that they not attend or chair an advisory or special committee for up to two months; and
- a direction that they be removed from a position where they represent council for up to two months.

The Guide states:

“These sanctions are aimed at ensuring councillors know the consequences of their actions in breaching the standards of behaviour that they, as councillors, have adopted. The sanction framework is designed to assist councils assume responsibility for resolving behavioural and conduct issues occurring within the council.

The primacy given to councils addressing councillor conduct internally is reinforced by the way applications to establish panels are dealt with. The Principal Councillor Conduct Registrar is required to refer matters back to a council to resolve if the internal council code process has not been exhausted prior to an application for a panel”.

⁴ The declaration need not be a statutory declaration

9. Principal Conduct Officer

The Act creates a new position of Principal Conduct Officer (PCO) which must be appointed by each Council. The functions of the PCO include assisting the Council in the implementation and conduct of the internal resolution procedure in its Code and assisting the PCCR.

The PCO can be appointed as:

- a senior Council officer appointed by the CEO; or
- another person (not necessarily a Council staff member) appointed by Council providing the Council resolves that the person is suitably qualified to perform the functions of the PCO

The Ararat Rural City Council PCO is the Director Corporate Strategy, Risk and Governance.

10. If the internal resolution procedure fails

Failure by a Councillor to comply with a Council's internal resolution procedure or with a written direction given by the Council at the conclusion of the internal resolution process will constitute misconduct under the new definition provided by the Act. This gives the Council authority to enforce its Code.

Misconduct will be dealt with by Councillor Conduct Panels. Sanctions for misconduct include:

- reprimand
- a requirement for an apology
- enforced leave of absence for a maximum of two months
- ineligibility to be Mayor for a period specified by the CCP not exceeding the remainder of the Council's term

11. The Principal Councillor Conduct Registrar

The legislation, whilst encouraging Councils to self-regulate, also improves the capacity of external authorities to enforce standards of conduct in the sector through more effective CCPs.

A PCCR position is created in the Department of Environment, Land, Water and Planning. The registrar will be appointed by the Secretary of the department but will be separate from Local Government Victoria.

The PCCR will take over the current role managing panel processes performed by the Municipal Association of Victoria (MAV). In part this responds to the increasing number of applications. This change has been made in consultation with and agreed by the MAV. It will also leave the MAV free to provide independent advice to councils about the process.

Section 81J (6) of the Act now provides:

"If a Councillor Conduct Panel directs the Council to amend its Councillor Code of Conduct, the Council must comply with that direction within three months of the direction being made".

12. Jurisdiction of panels

Panels will now be able to more effectively and authoritatively deal with the whole spectrum of Councillor misconduct. In particular, panels will now be able to deal with allegations of serious misconduct.

Previously applications for serious misconduct were required to go to a panel for confirmation that there was evidence of serious misconduct before being referred on to VCAT. Respondents in applications for both misconduct and serious misconduct could elect to forward their application direct to VCAT.

Panels will now hear serious misconduct matters and have the power to impose the higher penalties that have until now been the preserve of VCAT, including:

- suspending a Councillor from Council for up to six months
- specifying that a Councillor is ineligible to be Mayor for up to four years, and
- specifying that a Councillor is ineligible to chair a special committee for up to four years

13. Information and Confidentiality

Councillors will have access to information that may at times be confidential. As such, Councillors will respect the confidentiality of the information received in the course of performing their duties and responsibilities and will not under any circumstances convey electronically, verbally or in writing, information to a third party for as long as it continues to be confidential.

Councillors will treat Council information appropriately by:

- not using information gained by virtue of being a Councillor for any purpose other than to exercise their role as a Councillor
- respecting Council's policies in relation to public comments and communications with the media
- not releasing information deemed "confidential information" in accordance with section 77 of the Act
- recognising the requirements of the *Privacy and Data Protection Act 2014* regarding the access, use and release of personal information
- adhering to Council policies relating to accessing Council information
- ensuring that items dealt with in the confidential section of a Council meeting or at an Assembly of Councillors are not discussed with anyone outside of such meeting to ensure good governance is upheld and the ability to debate in an open and frank manner is preserved
- Councillors acknowledge that all requests made by Councillors for briefings from Council officers or access to information on Council files should be registered and reported. This obligation does not apply to requests for clarification/explanation of items on a forthcoming Council agenda. Councillors seeking information/explanation or wishing to provide feedback on a matter should do so in accordance with Council policy

There may be times where, in accordance with section 77(1C), the Council resolves or the CEO designates items as confidential.

The release of confidential information by a Councillor in contravention of section 77 of the Act is now serious misconduct and is a misuse of position pursuant to section 76D of the Act.⁵

However, section 77(1A) of the Act provides that a Councillor may disclose information that he or she knows is confidential information in the following circumstances:

- 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
- to the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector
- to a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing
- to a municipal monitor to the extent reasonably required by the municipal monitor or
- to the extent reasonably required for any other law enforcement purposes

14. Misuse of Position

A Councillor must comply with section 76D of the Act which states that a person who is, or has been, 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, attempt to cause, detriment to the Council or another person

Circumstances involving the misuse of a position by a person who is, or has been, a Councillor include making improper use of information acquired as a result of their position, disclosing confidential information within the meaning of Section 77 (2) of the Act, exercising or performing a power, duty or function that they are not authorised to do or using public funds or resources in a manner that is improper or unauthorised.

Council has determined that misuse of position also involves the use of Council staff/resources above what an “ordinary” person is able to do for non-Council business.

15. Professional Indemnity Insurance

Under section 76 of the Act, Council is required to indemnify and keep indemnified each Councillor against claims or actions done or omitted to be done **in good faith** in the exercise of any function or power conferred on Council or the Councillor under the Act or any other Act.

This means that Council indemnifies Councillors against civil (not criminal) claims or actions providing they are performing a legitimate function as a Councillor and acting in good faith.

Not acting in good faith can mean acting with malice (i.e. with the intention of damaging someone), saying something in the knowledge that it is untrue or being reckless as to whether it is true.

⁵ Penalties for disclosing confidential information are set out in section 77 of the Act.

Councillors must understand their obligations with regard to good conduct, integrity and honesty and will ensure that they do not put themselves or the Council at risk.

16. Improper Direction or Improper Influence

A Councillor must comply with section 76E (2) of the Act which states:

“(2) A Councillor must not direct, or seek to direct, a member of Council staff:

(a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or

(b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or

(c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or

*(d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee”.*⁶

17. Interaction between Councillors and staff

Councillors require information in order to do their jobs. Some, but not all, of the information they require will be provided by Council reports.

Information requests by Councillors should generally be seen as legitimate. Fundamentally, if something would be available through Freedom of Information (Fol) provisions, it should be available to Councillors.

Access to information however, needs to satisfy privacy requirements. Information requests from Councillors should be specific and Council Officers must ensure that only material directly related to the request is supplied. Any advice provided to a Councillor should be generally available to all Councillors on request.

Councillors should ensure that their information requests are specific, legitimate and related to their roles. If a request for information from a Councillor is considered to require an excessive level of resource, the matter should be referred to the relevant Director or the CEO for guidance.

Councillors seeking information on policy issues and day to day matters in the exercise of their duties should contact the CEO, the relevant Director, or with the agreement of the CEO or Director, seek specific advice from the appropriate member of staff. The CEO or Director should advise Councillors of any impediment to the supply of the requested material.

In interacting with staff, Councillors must:

⁶ The penalty for a breach of section 76E (2) is 120 penalty units.

- only seek information on sensitive or controversial policy matters from the CEO or a Director
- behave in keeping with the provisions of the Code and this Guide

In interacting with Councillors, staff must:

- ensure that Councillors receive timely, courteous, succinct and accurate advice to help Councillors in the performance of their civic and statutory duties
- not withhold information from a Councillor if the information is available to other Councillors
- when providing advice to Councillors, document the interaction in those terms that would occur if such advice was being provided to a member of the community

It is within the discretion of the CEO to require that a Councillor put a request in writing or to advise the Council of a request to obtain particular information.

18. Use of Council Resources

The following must be adhered to by all Councillors:

- they must use Council property, facilities, funds and equipment honestly, efficiently, economically and carefully and in keeping with policies and procedures
- maintain adequate security over Council property, facilities and resources provided to assist in performing the role of Councillor and compliance with any Council policies applying to their use
- ensure any expense claims submitted comply with the relevant legislative provisions and Council policy
- Council equipment can be hired on the same terms and conditions as it may be made available for hire by members of the public
- Councillors are not permitted to borrow any Council equipment that is not ordinarily available for hire by members of the community
- Councillors are obliged to conform to the provisions of any policy dealing with the payment of expenses and provision of facilities to Councillors
- Councillors will not use public funds or resources in a manner that is improper or unauthorised

19. Access to Council Offices

Councillors are entitled to have access to the Council Chamber, Mayor's Office and other public areas of the Council offices.

Councillors who are not pursuing their civic duties have the same rights of access to Council buildings and premises as any other members of the public.

A Councillor does not have the right to enter staff only areas unless authorised to do so by the CEO or a Director.

20. Conflict & Disclosure of Interest Procedures

20.1 Legislative requirements

Council is committed to making all decisions impartially and in the best interests of the public. Council recognises the importance of fully observing the requirements of the Act relating to the disclosure of conflicts of interest.

To ensure that Councillors meet the requirements of the Act, the Local Government Victoria explanatory booklet *Conflict of Interest – A Guide for Councillors October 2012* should be read in conjunction with this Code.

In addition, Councillors must familiarise themselves with the following sections of the Act:

- sections 77A and 77B – direct interests
- sections 78, 78A, 78B, 78D and 78E – indirect interests
- sections 79, 79B, 79C and 79D – disclosure of any conflict of interest

Conflicts of interest must be disclosed at:

- Council meetings
- Assemblies of Councillors
- meetings of special committees, including committees established pursuant to section 223 of the Act to hear submissions
- meetings of the Audit Committee

20.2 Direct Interest

A Councillor has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the Councillor would be directly altered if the matter is decided in a particular way.

This includes where there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms and where the Councillor, or together with a member or members of the person's family, have a controlling interest in a company or other body that has a direct interest in the matter.

20.3 Indirect interest

A conflict of interest also exists where a Councillor has any of the six types of indirect interest.

These indirect interests are:

- close association - an indirect interest because of a close association with a family member, relative or member of the household who has a direct interest
- indirect financial interest - an indirect financial interest, including holding shares above a certain value in a company with a direct interest
- conflicting duty - a conflicting duty arising from having particular responsibilities to a person or organisation with a direct interest
- applicable gift - receipt of an applicable gift or gifts from a person or organisation with a direct interest
- interested party - a party to the matter by having become involved in civil proceedings in relation to the matter
- residential amenity – this occurs where there is a reasonable likelihood that the person's residential amenity will be altered if the matter is decided in a particular way

21. Assembly of Councillors

An assembly of Councillors is a meeting of an advisory committee (but not the Audit Committee) of the Council if at least one Councillor is present or a planned or scheduled meeting, comprising at least half the Councillors and one member of Council staff, at which matters are considered that are intended or likely to be:

- the subject of a decision of the Council; or
- subject to the exercise of a function, duty or power of the Council that has been delegated to a person or committee

If a Councillor attending an Assembly of Councillors knows that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79 of the Act, the Councillor must disclose to the assembly that he or she has a conflict of interest and leave the assembly while the matter is being considered.

The provisions for requirements to be observed by Assemblies of Councillors are provided under section 80A of the Act. The CEO will ensure that a written record of assemblies of Councillors is kept in accordance with the Act.

22. Gifts and Bribery

Councillors must 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 the Council. Councillors must adhere to Council's Gifts, Gratuities and Favours in Kind Policy.

Councillors must take all reasonable steps to ensure that their immediate family members (parents, spouse, children and 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 the Council, the gift becomes the property of the Council. For transparency and accountability purposes, these gifts will be recorded in the Council's Gift Register.

Gifts equal to or above the gift disclosure threshold received in the twelve months prior to 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.

Campaign donations must be disclosed in the campaign donation return.

Councillors must not seek or accept any immediate or future reward or benefit in return for performance of any duty or work for the Council.

Under the provisions of section 78C of the Act, Councillors can be seen to have an indirect interest if they have received an applicable gift or gifts with a total value of \$50 or more directly or indirectly from:

- a person who has a direct interest in the matter; or

- a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
- a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter

In addition to disclosing an interest in this instance, any gift, goods, service or other item of value worth \$50 or more that is offered by an external person, company or body, whether accepted or returned, must be promptly reported on the appropriate disclosure form to the CEO. This includes token gifts and acts of hospitality.

In addition to the statutory provisions, Council has a Gifts, Gratuities and Favours in Kind Policy.

23. Fraud and Corruption

Council is committed to preventing fraud and corruption in the Council workplace.

Councillors must adhere to Council's Fraud Prevention Policy, procedures and strategy.

All Councillors are accountable for reporting any suspected fraud and corruption which they become aware of, in line with the abovementioned policy. Any suspected fraud and/or corruption is to be reported immediately to the CEO. If the issue is one that involves the CEO then the matter must be reported to the Mayor.

Protection is available under the Protected Disclosure Act 2012 for anyone reporting an issue.

24. Candidature of Councillors State or Federal Elections

The Municipal Association of Victoria have provided the following:

The perception of the politicisation of local government resulting from councillors running for office in state or federal parliament remains a contentious issue in Victoria.

Councillors are elected to perform their duties in a lawful manner and must comply with relevant provisions of the *Local Government Act 1989 (the Act)* including principles of councillor conduct set out in section 76B of the Act.

These principles of conduct require councillors to act honestly and to exercise reasonable care and diligence in performing the role of a councillor. They also provide that it is an offence if a councillor makes improper use of his/her position or of information acquired because of his/her position to, *inter alia*, gain or attempt to gain, directly or indirectly, an advantage for him/herself or for any other person.

The *Commonwealth Electoral Amendment (Members of Local Government Bodies) Act 2003* provides that any state legislation that discriminates against a councillor on the ground that the councillor has been, or is to be, nominated or declared as a candidate for the House of Representatives or the Senate has no effect.

The commonwealth and state constitutions disqualify a person from holding office who is profiting from the crown or the state.

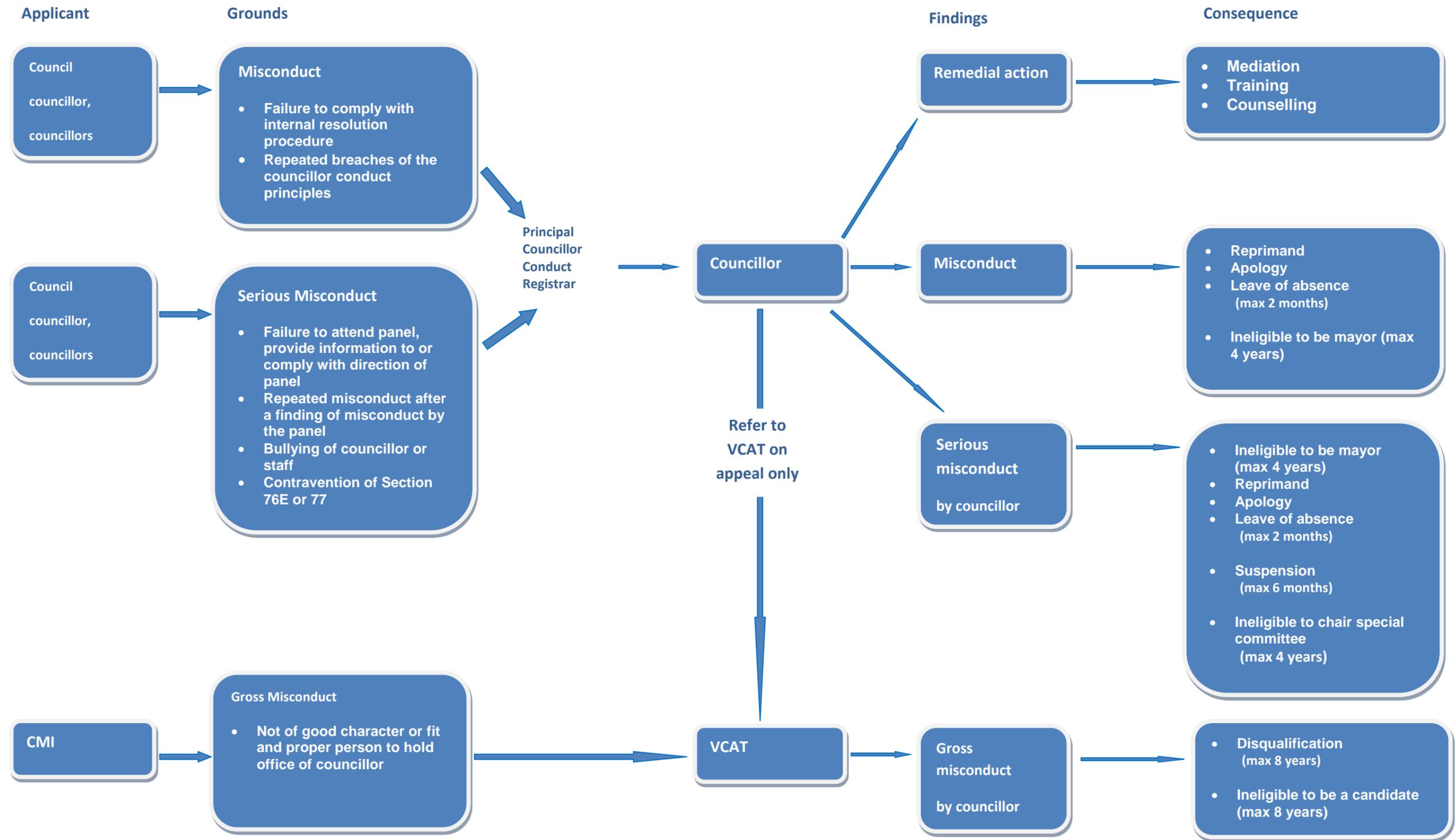
The following Guidelines form part of the Councillor Code of Conduct developed under section 76C of the Act or to supplement that Code.

1. A Councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a state or federal election (a Prospective Candidate), should provide written advice to the CEO, as soon as practicable, who should then advise all Councillors.
2. A Councillor who is a Prospective Candidate, should declare his/her intended candidacy at a meeting of the Council as soon as practicable after notifying the CEO pursuant to Guideline 1.
3. A Councillor who nominates as a candidate for a state or federal election (a Nominated Candidate), should apply for leave of absence from the Council and this leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a Councillor who is on a leave of absence should not attend meetings of the Council or otherwise act as a Councillor.
4. Any Councillor / staff relationship protocol which the Council has in place in respect of the caretaker period prior to a Council election, should be observed by a Nominated Candidate and this should apply from their Nomination Date until the close of voting for the election.
5. A Council, upon receiving an application for a leave of absence from a Councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, should approve that application.
6. A Councillor who is a Prospective Candidate or a Nominated Candidate, should take care to differentiate between his/her role as a state or federal election candidate and role as a Councillor when making public comment.
7. A Councillor who is a Prospective Candidate or a Nominated Candidate, should not use Council resources, including Council equipment and facilities in relation to his/her candidacy.
8. A Councillor who is a Prospective Candidate or a Nominated Candidate, should not use Council activities, including committee meetings and Council-related external activities in relation to his/her candidacy.

The distinction between Prospective Candidate and Nominated Candidate

These guidelines draw a distinction between Prospective Candidates and Nominated Candidates because, as with Council elections, candidates for state and federal elections only become actual nominated candidates a few weeks prior to the relevant election date. Accordingly, this policy recommends different treatment for Prospective Candidates and Nominated Candidates on the basis that some requirements are recommended as appropriate for Nominated Candidates during a formal election period which are not considered to be necessary prior to the formal election period.

Councillor Conduct Framework



Appendix 1



Ararat Rural City

ARARAT RURAL CITY COUNCIL

DECLARATION PURSUANT TO SECTION 76C(6A) OF THE LOCAL GOVERNMENT ACT 1989

I, _____ do declare that:

- a) I have read the Ararat Rural City Council's Councillor Code of Conduct which was adopted by the Council on 23 May 2016; and
- b) I will abide by the Code of Conduct.

Definition

In this Declaration, Councillor Code of Conduct means the Code of Conduct developed by Council pursuant to section 76C of the *Local Government Act 1989*.

DECLARED at _____ in the State of Victoria on 2016

Signature

**Full name
Councillor**

before me:

Signature

**Andrew Evans
Chief Executive Officer**