



**MANSFIELD SHIRE**

**COUNCILLOR CODE OF  
CONDUCT**

**Adopted by Council on 16 February 2021**



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## PART 1 – BACKGROUND

### 1. Purpose

This Code of Conduct sets out the Standards of Conduct that we, as Councillors, must comply with. Further, this Code of Conduct and Charter contain an expression of intent about how we will achieve the highest levels of good governance, so that we meet all aspects of the *Local Government Act 2020* and maintain public confidence in the integrity of Mansfield Shire Council.

Part 5 and Part 6 set out procedures for managing alleged contraventions of the Standards of Conduct and processes for dealing with other interpersonal disputes between Councillors, respectively.

### 2. Definitions

<b>Act</b>	means the <i>Local Government Act 2020</i> (as amended from time to time).
<b>Bullying</b>	means the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff.
<b>CEO</b>	means the Chief Executive Officer appointed by Council, and includes a person acting in the role of Chief Executive Officer, from time to time.
<b>Charter</b>	means the Councillor Charter set out in Part 8 of this Code of Conduct.
<b>Chief Municipal Inspector</b>	means the Chief Municipal Inspector appointed by the Minister for Local Government to carry out the functions prescribed by sections 182 and 183 of the Act.
<b>Code of Conduct or Code</b>	means this Mansfield Shire Councillor Code of Conduct .
<b>Confidential Information</b>	has the same meaning as in the Act.
<b>Council</b>	means Mansfield Shire Council.
<b>Councillors</b>	means the individuals elected to hold the office of a member of Council, who have taken the Oath or affirmation that they will abide by this Code of Conduct.
<b>Councillor Conduct Officer</b>	means the Officer appointed by the CEO under section 150 of the Act to carry out the functions set out in section 151 of the Act.
<b>Councillor Conduct Panel</b>	means the panel appointed by the Principal Councillor Conduct Registrar to hear an application relating to serious misconduct.



<b>Council Officer</b>	means a natural person, including the CEO, employed by Council or engaged by Council under contract.
<b>Council Policy</b>	means the policies adopted by Council from time to time.
<b>Gross Misconduct</b>	has the same meaning as in the Act.
<b>IBAC</b>	means the Independent Broad-based Anti-corruption Commission of Victoria.
<b>Misconduct</b>	has the same meaning as in the Act.
<b>Municipal Monitor</b>	means a person appointed by the Minister for Local Government under section 179 to carry out the functions set out in sections 180 and 181 of the Act.
<b>Panel</b>	means a Councillor Conduct Panel appointed under section 156 of the Act.
<b>Principal Councillor Conduct Registrar</b>	means the person appointed by the Secretary of the Department of Jobs, Precincts and Regions to carry out the functions prescribed by section 149 of the Act.
<b>Regulations</b>	means the <i>Local Government (Governance and Integrity) Regulations 2020</i> .
<b>Serious Misconduct</b>	has the same meaning as in the Act.
<b>VCAT</b>	means the Victorian Civil and Administrative Tribunal.



## PART 2 – CODE OF CONDUCT

### 3. Legislation

As Councillors, we are aware that the Act sets clear parameters and requirements with respect to our conduct while performing our duties as Councillors of the Mansfield Shire.

This includes the requirement under section 30 of the Act that as Councillors we all swear or affirm that we will abide by the Code of Conduct at all times.

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 Code of Conduct 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 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.

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 of Conduct.

## PART 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.

### 4. The Standards of Conduct

#### 4.1 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.

## 4.2 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:

- ✓ undertakes 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 responsive to the diversity of interests and needs of the municipal community.

## 4.3 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).

## 4.4 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.

#### 4.5 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.

## PART 4 – GOOD GOVERNANCE

Nothing in this part 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 agree will contribute to the good governance, integrity and responsible operation of Council.

### 5. Our Commitment to Good Governance

Our Council Plan 2013-17 clearly states the Aim of this Council is:

*“To work with our community to continue to build a Shire that is recognised for its balanced economic, social, and environmental development that, in turn, acknowledges the diverse needs and values of our communities.” (pg 3)*

The Good Governance theme provides a foundation for our Council Plan, in that:

*“Council will do all that it can to represent its community to the best of its ability, and to act at all times with integrity and openness.” (pg 12)*

### 6. 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.

## **7. Use of Council Information**

We acknowledge that we will comply with our obligations under section 125 of the Act in relation to Confidential Information, recognising that this obligation extends to ensuring the safekeeping of Confidential Information.

In undertaking all our duties we will treat information appropriately, by:

- not using information we gain through being a Councillor for any purpose other than to exercise our role;
- respecting Council policy in relation to public comments and communications with the media;
- not releasing Confidential Information, which we recognise is an offence under section 125 of the Act carrying a maximum penalty of 120 penalty units; and
- recognising the requirements of the Privacy and Data Protection Act 2014 regarding access to, and use and release of, personal information.

We acknowledge that all requests made by Councillors for briefings from Council Officers or for access to information on Council files should be made via email.

Councillors seeking information or an explanation about, or wishing to provide feedback on, a matter should do so via an email to the CEO and relevant Director. The response to the request is to be provided to all Councillors.

## **8. Use of Council Resources**

We acknowledge that we are reliant on public funds alone and that this carries with it a heightened need to ensure that:

- there is adequate security over Council property, facilities and resources provided to us to assist in performing our role;
- we do not use Council resources, including services of Council staff, for private purposes, unless legally or properly authorised to do so, and payments are made where appropriate;
- we do not use public funds or resources in a manner that is improper or unauthorised; and
- we will comply with the Council Expense Policy at all times.



## 9. Acceptance of Gifts in Limited Circumstances

We 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.

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

- we know the name and address of the person making the gift; or
- at the time when the gift is made, we reasonably believe 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.

We 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.

## 10. Federal and State Elections

We acknowledge that Councillors may nominate as candidates in elections at all levels of government. If nominating as a candidate in an election, or assisting in the campaign of a candidate in an election, we commit to not using their position as a Councillor for purposes associated with their campaign, or the campaign of any other candidate. We also commit to observing any guidelines applicable to our nomination as candidates in elections adopted by Council from time to time.

## PART 5 – DEALING WITH ALLEGED BREACHES OF THE STANDARDS OF CONDUCT

### 11. Hierarchy of Alleged Breaches and Potential Consequences

As Councillors, we recognise that recent changes to the Act have set in place a formal hierarchy of conduct issues that define the nature of alleged breaches of conduct standards and the responsible authority for dealing with alleged misconduct, as follows:

Nature of alleged misconduct	Degree of seriousness of alleged misconduct under the Act	Authority responsible for investigating and deciding on the alleged misconduct
Breach of this Councillor Code of Conduct	Conduct that is inconsistent with the standards Council has set itself or the Standards of Conduct	Council – the Dispute Resolution Procedure outlined in this Code may be employed
Any breach by a Councillor of the Standards of Conduct	Misconduct	Internal arbitration process if an application is made: <ul style="list-style-type: none"> <li>- by way of a Council resolution; or</li> <li>- by a Councillor or group of Councillors</li> </ul>



Nature of alleged misconduct	Degree of seriousness of alleged misconduct under the Act	Authority responsible for investigating and deciding on the alleged misconduct
<ul style="list-style-type: none"> <li>• Failure to comply with the internal arbitration process;</li> <li>• failure to comply with a direction given to the Councillor by an arbiter under section 147;</li> <li>• failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;</li> <li>• failure 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;</li> <li>• bullying;</li> <li>• sexual harassment of a Councillor or a member of Council staff;</li> <li>• the disclosure of information the Councillor knows, or should reasonably know, is Confidential Information;</li> <li>• improperly directing Council staff;</li> <li>• failure to disclose a conflict of interest and to exclude oneself from the decision making process when required to do so in accordance with the Act</li> </ul>	Serious Misconduct	Councillor Conduct Panel if an application is made: <ul style="list-style-type: none"> <li>- by way of a Council resolution; or</li> <li>- by a Councillor or group of Councillors; or</li> <li>- by the Chief Municipal Inspector</li> </ul>
Behaviour that demonstrates that a Councillor: <ul style="list-style-type: none"> <li>• is not of good character; or</li> <li>• is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature</li> </ul>	Gross misconduct	VCAT, on application by the Chief Municipal Inspector



We also acknowledge that the Act prescribes a series of consequences for misconduct as follows:

Authority responsible for hearing and deciding allegations of misconduct	Findings	Consequence
Internal Arbitration process	Misconduct by a Councillor	<ul style="list-style-type: none"> <li>- Apology required</li> <li>- Suspension from office (up to 1 month)</li> <li>- Removal from position where the Councillor represents the Council for a period</li> <li>- Removal from chair of a delegated committee for a period</li> <li>- Attend or undergo training or counselling</li> </ul>
Councillor Conduct Panel	Serious Misconduct by a Councillor	<ul style="list-style-type: none"> <li>- Reprimand</li> <li>- Apology required</li> <li>- Suspension from office (up to 12 months)</li> <li>- Ineligibility to chair a delegated committee (up to the remainder of Council's term)</li> <li>- Remedial action, including mediation, training or counselling</li> <li>- Ineligibility to be Mayor or Deputy Mayor (unless the Panel determines otherwise)</li> </ul>
VCAT	Gross Misconduct by a Councillor	<ul style="list-style-type: none"> <li>- Disqualification (up to 8 years) and vacating the office of the Councillor</li> </ul>
Minister for Local Government via an Order in Council (Following investigation by Municipal Monitor or the lodgement of a request for a Councillor Conduct Panel alleging misconduct or gross misconduct).	Councillor conduct that: <ul style="list-style-type: none"> <li>- threatens a person's health and safety</li> <li>- prevents Council from performing its functions</li> </ul>	<ul style="list-style-type: none"> <li>- Suspension while allegations are heard by conduct panel, VCAT, the Supreme Court or Commission of Inquiry</li> <li>- Suspension (up to 6 months)</li> <li>- Councillor allowances to be withheld during suspension and not paid if serious or gross misconduct found.</li> </ul>

## 12. Making an Application Alleging Breach of the Standards of Conduct

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 made, 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 of Conduct 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 of Conduct.

We accept the following two-phase internal resolution process:

- Internal Mediation between the Councillors, facilitated by the Mayor, or the Deputy Mayor, as the case may be; and
- Statutory Internal Arbitration process.

We recognise that the Internal Mediation process is voluntary and that we are not obliged to participate in it but we will endeavour to resolve allegations without resorting to the mandatory Internal Arbitration process.

All allegations will be dealt with in the strictest confidence, involving only those parties that are mentioned in the application and those Council Officers or other persons required to support any investigation or mediation as specified by this Code of Conduct and/or the Act.

Councillors alleging a breach of the Standards of Conduct must provide as much information and detail as possible about the alleged breach so that the matter may be accurately and thoroughly investigated.

We note that a copy of the allegation that is made will be provided to the Councillor(s) that are alleged to have breached the Standards of Conduct.

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

- be marked 'confidential';
- include the:
  - contact details of the Councillor making the application or the representative of the group of Councillors making the application, including their postal address, telephone number and email address;
  - name of the Councillor alleged to have breached the Standards of Conduct;
  - clause(s) of the Standards of Conduct that the Councillor is alleged to have breached;
  - particular misconduct, or behaviour, that the Councillor is alleged to have engaged in that resulted in the breach; and
  - phase of the internal resolution process being pursued by the Councillor making the allegation at the first instance; and
- be submitted to the Councillor Conduct Officer for:
  - action, if the application requests Internal Mediation in the first instance; and



- 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 above requirements, 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 3 months after the alleged breach of the Standards of Conduct occurred (see section 143(3) of the Act).

### **13. Resolution Procedures for Alleged Breaches of the Standards of Conduct**

There are two options that comprise our internal resolution procedure for hearing and responding to alleged breaches of the Standards of Conduct.

Procedure 1 **Internal Mediation** facilitated by the Mayor (or, if the matter involves the Mayor as a party, the Deputy Mayor).

Procedure 2 **Internal Arbitration Process** under section 141 of the Act coordinated by the Councillor Conduct Officer.

#### **13.1 Procedure 1: Internal Mediation**

This process will be overseen by the Mayor, unless the Mayor is a party to the application, in which case the Deputy Mayor will undertake the duties of the Mayor as outlined in this Procedure.

We acknowledge that this Internal Mediation process is voluntary. An application concerning an alleged breach of the Standards of Conduct may proceed directly to Procedure 2: Internal Arbitration Process, if the applicant so chooses.

The Councillor Conduct Officer will provide a copy of an application for Internal Mediation to the:

- ✓ Mayor, for action; and
- ✓ CEO, for information,

within 24 hours of receiving it.

The CEO will arrange for administrative support, including record keeping and other logistical support, to be provided as required. We acknowledge that the extent of administrative support to be provided is a matter for the CEO.

The Mayor may, at any time, seek guidance from the CEO and/or Councillor Conduct Officer with respect to the conduct of the Internal Mediation process. Parties to the application will be informed by the Mayor of his/her intention to seek such advice.

The Mayor may also request the attendance of the CEO at part or all of an Internal Mediation process, but only with the prior written consent of the parties to the application. The role of the CEO in this instance would be to advise the Mayor on



the requirements of the Act and this Code of Conduct and to explore options for the resolution of the allegations. Councillors note that it is neither the role nor the responsibility of the CEO to mediate disagreements between Councillors.

Legal representation must not be engaged by any party given this is an Internal Mediation process to be conducted in a relatively informal manner based on good faith between all parties.

The Mayor will implement the following Procedure with respect to an application for Internal Mediation:

- Step 1: Telephone the Councillor who lodged the application within two (2) working days of receiving the application from the Councillor Conduct Officer to acknowledge receipt of the application and to have an initial discussion with the Councillor.
- Step 2: Send a confidential letter to the Councillor making the application within two (2) working days of receiving the application from the Councillor Conduct Officer to formally acknowledge the receipt of the application and record the initial telephone conversation.
- Step 3: Telephone the Councillor the subject of the application, as soon as possible and in any event no later than two (2) working days after receiving the application from the Councillor Conduct Officer, to inform them that they are the subject of an application under this Code of Conduct and the nature of the allegation(s).
- Step 4: Email the Councillor the subject of the application within two (2) working days of receiving the application from the Councillor Conduct Officer to confirm receipt of the application and provide them with a copy of the application.
- Step 5: Undertake an initial review of the evidence provided in support of the application.
- Step 6: Request the Councillor the subject of the application to advise, within five (5) working days of receiving the application from the Councillor Conduct Officer, whether they will participate in Internal Mediation and:
- if the Councillor declines, the Mayor will proceed to Steps 6A and 6B;
  - if no advice is received, the Councillor will be taken to have declined and the Mayor will proceed to Steps 6A and 6B; or
  - if all parties provide consent, the Mayor will arrange a suitable time and location for the meeting and proceed to Step 7.
- Step 6A: Should the Councillor the subject of the application decline to participate in this Internal Mediation process, the Councillor making the application shall be informed in writing of that fact within two (2) working days of being notified by the Councillor making such refusal.



**Step 6B:** If the Councillor the subject of the application declines to participate in the Internal Mediation procedure, the Mayor will inform all parties that the Councillor making the application will be offered the option of escalating the matter to Procedure 2 – Internal Arbitration Process.

Should the offer of Internal Arbitration be accepted by the Councillor making the application, the Mayor shall inform the Councillor the subject of the application, the Councillor Conduct Officer and the CEO and request the Councillor Conduct Officer to commence Procedure 2 – Internal Arbitration Process.

**Step 7:** If the parties to an application agree to participate in the Internal Mediation process, a meeting will be convened by the Mayor, with assistance from the Councillor Conduct Officer, for conduct of the mediation. The meeting will be held within five (5) working days of the Councillor the subject of the application agreeing to participate.

The purpose of this meeting is to provide all parties with an equal hearing and to explore possible means of resolving the matter.

Equal opportunities for all parties shall be given to express their viewpoints during the Internal Mediation process. Should separate conversations with the parties be considered by the Mayor to be desirable, all conversations must be conducted in a consistent manner.

Nothing prevents the Mayor from holding more than one meeting as part of the Internal Mediation process if the Mayor forms the view that more than one meeting will assist in resolving the matter, provided that all parties to the application agree. If they do not, the Councillor making the application will be offered the option of escalating the matter to Procedure 2 – Internal Arbitration Process.

Any agreements or resolutions reached at the conclusion of the Internal Mediation process must be recorded in writing and a copy provided to both parties within two (2) working days of the conclusion.

Should action be required by a party(ies), the timeframes for doing so must be outlined in this correspondence.

**Step 8:** Once the parties have:

- reached agreement on the resolution of the application; and
- any action agreed to as part of that resolution has been completed,

the application will be considered to be closed.

All parties must be informed in writing by the Councillor Conduct Officer that the outstanding actions have been completed as a means of closing off the Internal Mediation process.



The Councillor Conduct Officer will then close the file.

**Step 9:** If the parties cannot reach agreement at the conclusion of the Internal Mediation process, or the actions agreed to are not completed within the specified timeframes, the Mayor will inform the Councillor Conduct Officer and the Councillor Conduct Officer will ask the Councillor making the application if they wish to escalate the matter to Procedure 2 – Internal Arbitration Process.

If the Councillor making the application advises that they:

- wish to escalate the matter to Procedure 2 – Internal Arbitration Process, the Councillor Conduct Officer will commence that procedure; or
- do not wish to escalate the matter to Procedure 2 – Internal Arbitration Process, the Councillor Conduct Officer will close the application and no further action will be taken.

### **13.2 Procedure 2: Internal Arbitration Process**

A breach of the Standards of Conduct constitutes Misconduct and may be referred to an arbiter for determination. The process for Internal Arbitration is prescribed by Part 6 of the Act and r 11 of the Regulations.

The Internal Arbitration process may be commenced either after Internal Mediation proves unsuccessful in resolving allegation(s), or as the first step in an application.

This Internal Arbitration process will be overseen by the Councillor Conduct Officer.

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 Registrar is satisfied that:

- ✓ the application is not frivolous, vexatious, misconceived or lacking in substance; and
- ✓ 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:

- ✓ ensure that the parties involved are given an opportunity to be heard;
- ✓ 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;
- ✓ conduct the hearing with as little formality and technicality as the proper consideration of the matter permits;
- ✓ ensure that the hearing is closed to the public;
- ✓ refer the matter in writing to the Principal Councillor Conduct Registrar if, at any time before, during or after the hearing of an application for an Internal Arbitration process, 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;

Additionally, in conducting an arbitration the arbiter:

- ✓ 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 Internal Arbitration process 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.

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. Allegations of Serious Misconduct are heard by a Councillor Conduct Panel.

The following procedure will be implemented by the Councillor Conduct Officer within two (2) working days if:

- ✓ a Councillor submits an application for an Internal Arbitration process;
- ✓ a Councillor the subject of an application refuses to participate in an Internal Mediation process and the Councillor submitting the application wishes to proceed to Internal Arbitration; or
- ✓ an Internal Mediation process fails to resolve the application and the Councillor submitting the application wishes to proceed to Internal Arbitration:

- Step 1: Inform the CEO that a written application requesting internal arbitration has been received (without delay).
- Step 2: Telephone the Councillor making the application to acknowledge the receipt of the application. This will be completed within two (2) working days of receiving the written application.
- Step 3: Send a confidential letter to the Councillor making the application to formally acknowledge the receipt of the application and record the initial telephone conversation. This will also be completed within two (2) working days of receiving the written application.



- Step 4: Telephone the Councillor the subject of the application to inform them that they are the subject of an application for Internal Arbitration and the nature of the matter. This will be completed within two (2) working days of confirming receipt of the written application.
- Step 5: Email the Councillor the subject of the application confirming receipt of the application and providing a copy of the application. This will also be completed within two (2) working days of confirming receipt of the written application.
- Step 6: Refer the application to the Principal Councillor Conduct Registrar for examination, and notify the Councillors involved and the CEO (for the CEO's information only) of the referral. This will be completed within five (5) working days of receiving the written application.
- Step 7: Await advice from the Principal Councillor Conduct Registrar about the application and take such steps as are necessary to give effect to the Principal Councillor Conduct Registrar's advice, in accordance with any instructions received.

The Principal Councillor Conduct Registrar will examine an application referred by the Councillor Conduct Officer and determine whether it should be accepted. If 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.

If, after completing the Internal Arbitration process, the arbiter determines that a Councillor has failed to comply with the Standards of Conduct, the arbiter may make a finding of Misconduct against the Councillor and impose one or more of the following sanctions:

- ✓ 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.

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

- ✓ Council;
- ✓ the Councillor(s) making the application and the Councillor the subject of it; and
- ✓ 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 Council receives the copy of the arbiter's decision and statement of reasons and recorded in the minutes of that meeting. If the arbiter's decision and statement of reasons contain any Confidential Information, the Confidential Information must be redacted from the copy before it is tabled.



## **PART 6 – RESOLUTION PROCEDURE FOR INTERPERSONAL DISPUTES BETWEEN COUNCILLORS**

As Councillors, we agree to use every endeavour to resolve any differences between ourselves in private and without causing disruption or adverse effects to our role or the function of Council.

We acknowledge that interpersonal differences and disputes (as distinct from allegations of breach of the Standards of Conduct) may arise from time to time. We 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.

We note that this procedure is not intended as a means of resolving differences in opinion on policy or decision-making between Councillors. Such issues are to be resolved through debate and voting in Council and Committee meetings.

In resolving interpersonal differences or disputes, we agree to follow the following procedure:

**Step 1:** Before commencing any formal dispute resolution process, parties to a dispute will endeavour to resolve their differences in a courteous and respectful manner between themselves, recognising that they have taken the Oath or Affirmation of Office, undertaking to represent the best interests of the community.

Should the parties be unable to resolve their differences, they will decide whether to proceed to Step 2.

**Step 2:** If the Councillors are unable to resolve their interpersonal dispute between themselves, 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 dispute.

**Step 3:** Should the interpersonal dispute remain unresolved following Steps 1 and 2, the parties to the dispute 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 5 of this Code.

## **PART 7 – DEALING WITH INTERNAL RESOLUTION PROCEDURES DURING THE ELECTION PERIOD**

The Councillor Conduct Officer will not accept applications alleging Misconduct during the Election Period. All such applications must be delayed until after the election is completed.

Applications and proceedings relating to allegations of Serious Misconduct or Gross Misconduct cannot be actioned during the Election Period in the lead up to a general election.

Proceedings that have been referred to the Internal Arbitration process are not required to be suspended under the Act during the election period, however, the arbiter may decide to suspend proceedings until after the Election Period expires.



Any matters that are being dealt with through Internal Mediation will be adjourned as soon as the Election Period commences.

All parties to a suspended matter will be informed in writing by the Mayor or Councillor Conduct Officer (whichever is relevant) that the matter has been adjourned for the duration of the Election Period.

Should an Internal Mediation be adjourned and the Councillor, or one or more of the Councillor where there is more than one, the subject of the application is not returned to office, the matter will be closed and no further action will be taken.

If the responding Councillor is returned to office, the matter may be resumed.

## **PART 8 – COUNCILLOR CHARTER**

Being a Councillor can be a complex task where there are competing interests, divergent viewpoints and sometimes competing objectives. As Councillors, we recognise that the community has placed its trust in us.

This Charter defines the roles and responsibilities of Council, the Mayor and individual Councillors. In doing so, this Charter is a key expression of our commitment to good governance on behalf of our community.

The standards of behaviour that will underpin how we interact with fellow Councillors, the CEO, Council Officers, contractors and members of the public are also clearly set out.

In making these statements we will be better placed to keep each other, and ourselves, accountable.

This Charter is to be used as a frequent reference point not only for Councillors but for anyone interacting with us, as it provides clarity about what we do and how we will go about doing it. This ensures we are accountable for our behaviour and that we continuously meet our legal responsibilities.

### **14. Our Role**

The Act outlines the statutory roles and responsibilities we, as an elected Council, must fulfil.

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

- it performs its role in accordance with the Overarching Governance Principles in section 9 of the Act; and
- the Councillors perform their roles in accordance with section 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 determines are necessary to enable that performance.

In representing the community, we must ensure that we not only make decisions on behalf of the people who live in the municipal district, but those who are ratepayers and those who conduct business within the municipal district.

As individual Councillors we perform many more roles in our day-to-day duties as elected representatives of the municipal community.

## **15. Appointment & Appraisal of the CEO**

We take the responsibility for appointing and monitoring the performance of the Shire's CEO seriously. It is also essential that all Councillors create and maintain a productive, open relationship with the CEO based on mutual trust and respect.

Council will undertake a thorough review of the CEO's performance on an annual basis on the anniversary of the CEO's appointment. We will also undertake a less intensive mid-year review.

Benchmarking to identify appropriate remuneration levels for the CEO, based on similar sized Councils, will be undertaken on an annual basis.

## **16. Our Standards of Behaviour**

In addition to specifying the Standards of Conduct, the Code of Conduct also provides an opportunity for this Council to express its commitment to ethical, lawful behaviour and the achievement of good governance.

Nothing in this Part 8 of the Code of Conduct is intended to impose a binding Standard of Conduct on Councillors. This Part 8 sets out conduct that we agree will contribute to the good governance, integrity and responsible operation of Council.

We believe it is important to reinforce the principles underpinning the Code of Conduct by making some clear statements about the standards of behaviour both we as Councillors, and our community, expect Councillors to demonstrate at all times.

Furthermore, we will promote and support Council's values which are:

### **Respect**

We will treat everyone with respect, recognising and valuing all viewpoints.

### **Integrity**

We will work in an open and transparent way, ensuring our processes, decisions and actions are ethical, responsible and honest.

### **Inclusion**

We recognise that there is diversity in the community and will strive to work and direct our resources and services in ways that will result in fair and equitable outcomes for all.



## **Accountability**

We will accept full responsibility for all that we do, for the way in which we do it and for the outcomes, whether good or bad.

## **Empowerment**

We accept that we are here to serve the community and will ensure that people's views are heard and acted upon where we have the capacity to do so.

## **17. Effective Communication**

In our role as Councillor, we communicate with all kinds of people, groups and stakeholders in a variety of settings. Effective communication is, therefore, one of the key skills every Councillor must possess.

We also know that we must invest time communicating with each other if we are to achieve our desired level of efficacy and performance as a cohesive unit.

Accordingly, in relation to communication we will:

- ensure we dedicate time to fostering and maintaining open and honest relationships between Councillors throughout our term on Council;
- respect the role of the Mayor as the Council's spokesperson;
- demonstrate to the community that a group of diverse people representing a multitude of views and interests can work together as a cohesive unit working for the good of all our community;
- show respect to each other, to the CEO, Council Officers and all members of the public at all times;
- air our differences and any grievances with other Councillors in a private but open and mature way; and
- respect and comply with any Council policies and procedures relating to the media.

## **18. Fostering Relationships with the Community and Other Stakeholders**

Council must be an effective representative and advocate for the municipal community. This requires us to develop effective relationships and networks with a wide variety of stakeholders.

In doing so we will:

- treat members of the municipal community with respect and courtesy;
- always act impartially and with the interests of the wider municipal community in mind;
- be open to different viewpoints;
- accept diversity within the community in terms of opinions, race, culture, religion, language, gender and abilities; and
- clearly state that when expressing our own personal views on a matter that we are not representing the position of the Council and, furthermore, when making such



comments, we will not make derogatory, offensive or insulting comments about any person.

## **19. Respecting the Role of the Mayor**

We will actively support the Mayor in performing his particular duties under the Act, which include the following functions:

- assisting Councillors to understand their roles;
- promoting behaviour among Councillors that meets the Standards of Conduct set out in this Councillor Code of Conduct;
- being the principal spokesperson of the Council;
- carrying out civic and ceremonial duties of the office of the Mayor; and
- chairing Council meetings.

## **20. Making Informed Decisions**

We are committed to making effective and impartial decisions in the best interest of the municipal community.

To achieve this we will:

- actively and openly participate in the decision-making process, while keeping an open mind and listening to the views of others prior to making a decision;
- share information with each other, and with relevant senior staff, so that the decision making process is efficient, effective and transparent to all;
- take all reasonable steps to ensure we will make ourselves informed of all relevant information prior to decision-making;
- debate contentious issues without resorting to personal acrimony or insult, showing courtesy towards Council Officers, community representatives and fellow Councillors;
- accept that decisions are based on a majority vote and that no Councillor can direct another Councillor on how to vote on any decision;
- foster an environment where frank and fearless advice is offered by the organisation and is received with respect;
- consider both the short- and long-term implications prior to making a decision; and
- disclose any conflict of interest in any matter to be considered or discussed at a meeting of Council, a delegated committee meeting, a Community Asset Committee meeting and any other meeting held under the auspices of Council and excuse ourselves from the meeting while the matter is being dealt with in accordance with the Act and the Governance Rules.

## **21. Our Relationships with Council Officers**

As Councillors we recognise and respect that operational matters are entirely the domain of the CEO.



We acknowledge that the CEO's role is to manage interactions between ourselves and Council Officers through the development and implementation of policies, practices and protocols. As Councillors, we are committed to adhering to such policies at all times. We also know that our community will be best served if there are strong and productive links between Council and the Administration.

We will foster our relationship with the Administration by:

- working as part of the Council team alongside the CEO and other senior Council Officers;
- creating an environment of mutual respect and understanding between Councillors and Council Officers;
- acknowledging our role is one of advocacy and leadership rather than day to day operational or staffing matters;
- complying with section 124 of the Act in not seeking to improperly direct or influence Council Officers;
- communicating issues of concern or requests for information through the CEO or the relevant departmental manager only; and,
- where we have interests outside of our role of Councillor and we require information or contact with Council Officers, we will clearly state that our contact is as a private citizen/businessperson not in our capacity as Councillor.

## **PART 9 – KEY GOVERNANCE ROLES AT MANSFIELD SHIRE COUNCIL**

It is important that we as Councillors recognise and support key governance roles within Council as a means of clearly defining roles and responsibilities.

### **22. Mayor**

The Mayor is the key spokesperson and figurehead for Council and plays an important role in providing guidance for Councillors and ensuring that we adhere to the Code of Conduct and Councillor Charter.

The Mayor is a mediator in disputes between Councillors and oversees the Internal Mediation procedure where an application is received alleging that a Councillor(s) may have breached the Standards of Conduct.

This role is also the key conduit between Council, Councillors and the CEO and, in turn, the Administration. Attachment 2 provides extracts from the Act in relation to the Mayor's role.

Council's Governance Rules give the Mayor particular powers and duties as Chair of Council meetings to ensure that they run effectively and efficiently, adhering to the provisions of the Governance Rules.



## 23. Individual Councillors

Our role is essentially to represent the Mansfield Shire community to the best of our ability through participating in decision making processes and contributing to setting a strategic direction for the Shire.

Section 28 of the Act outlines the specific requirements for individual Councillors. As Councillors, we must ensure that we comply with a variety of Council Policies and Procedures at all times, including adhering to this Councillor Code of Conduct and Councillor Charter. Attachment 2 provides extracts from the Act in relation to a Councillor's role.

## 24. CEO

The CEO is responsible for putting in place an organisational structure and overseeing the day-to-day operations of the Administration of the Mansfield Shire Council.

Importantly, the CEO is charged with ensuring Council decisions are acted upon without undue delay and providing timely advice to Council, including Council's legal obligations. The Act specifies that the CEO plays an important role in supporting the Mayor and the Councillors and putting into place policies and procedures to promote appropriate interactions between Council, individual Councillors and Shire staff. Attachment 2 provides extracts from the Act in relation to the CEO's role.

## 25. 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.

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 of Conduct or the Act.

## 26. Protected Disclosure Officer

This person has authority, as appointed by the CEO, to be the contact person for anyone wanting to make an allegation of improper and corrupt conduct by a Council staff member, contractor or Councillor under the *Public Interest Disclosure Act 2012*. This Officer must then follow the procedures outlined in Council's Protected Disclosure Policy 2019.



## **27. Audit and Risk Committee**

This Council appointed Committee draws upon local, independent expertise and is chaired by one of the external members. Its role is one of oversight and performance monitoring in relation to Council's financial management and risk management operations.

Two Councillors sit on the Committee, which is supported by the CEO and two General Managers.

## **28. Governance Coordinator**

Council's Governance Coordinator is responsible for undertaking a multitude of tasks relating to governance and Council business, including preparing the Council Plan, Annual Report, council agendas and minutes, local laws, performance reporting, delegations and developing Council policies and to ensure Council is compliant with all relevant legislation.

## **PART 10 – REVIEWING THIS CODE OF CONDUCT AND THE COUNCILLOR CHARTER**

Council will review this Code and Councillor Charter within four months of a general election, as required by the Act. Council can only amend the Councillor Code of Conduct by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council. Periodic reviews of this Code and Councillor Charter will also be undertaken by Council, as required, following the same process.

## **PART 11 – ADOPTION**

This Code was adopted by a resolution of Council made at the Council meeting held on 16 February 2021, with a majority of at least two thirds of all Councillors voting in favour of it.

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.



## PART 12 – ATTACHMENTS

### Attachment 1

#### SUMMARY OF CONFLICT OF INTEREST PROVISIONS LOCAL GOVERNMENT ACT 2020

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 relevant person 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 relevant person has to members of the public in their role as a relevant person.

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. A benefit or loss may be direct or indirect and it may be pecuniary or non-pecuniary.

For the purposes of material conflict of interest, an 'affected person' means:

- 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.



## Attachment 2

### EXTRACTS FROM THE LOCAL GOVERNMENT ACT 2020 – ROLE OF MAYOR, COUNCILLORS AND THE CEO

#### 1. Role of the Mayor

Section 18(1) of the Act provides that the role of the Mayor is to:

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

Additionally, section 19(1) of the Act provides that the Mayor has the following specific powers:

- (a) to appoint a Councillor to be the chair of a delegated committee;
- (b) to direct a Councillor, subject to any procedures or limitations specified in the Governance Rules, to leave a Council meeting if the behaviour of the Councillor is preventing the Council from conducting its business;
- (c) to require the CEO to report to the Council on the implementation of a Council decision.

#### 2. Role of Councillors

Section 28(1) of the Act provides that the role of a Councillor is:

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

Section 28(2) provides that in performing the role of a Councillor, a Councillor must:

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

The role of a Councillor expressly excludes the performance of any responsibilities or functions of the CEO.



### 3. Functions of the CEO

Under Section 94A of the *Local Government Act 1989*, the CEO is responsible for:

- (a) establishing and maintaining an appropriate organisational structure for the Council; and
- (b) ensuring that the decisions of the Council are implemented without undue delay; and
- (c) the day to day management of the Council's operations in accordance with the Council Plan; and
- (d) developing, adopting and disseminating a code of conduct for Council staff; and
- (e) providing timely advice to the Council; and
- (f) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act;
- (g) supporting the Mayor in the performance of the Mayor's role as Mayor;
- (h) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Accident Compensation Act 1985 or the Workplace Injury Rehabilitation and Compensation Act 2013; and
- (i) performing any other function or duty of the CEO specified in this Act or any other Act.

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:

- (a) supporting the Mayor and the Councillors in the performance of their roles; and
- (b) ensuring the effective and efficient management of the day to day operations of the Council;
- (c) ensuring that Council receives timely and reliable advice about its legal obligations;
- (d) supporting the Mayor in the performance of the Mayor's;
- (e) setting the agenda for Council meetings after consulting the Mayor;
- (f) when requested by the Mayor, reporting to Council in respect of the implementation of a Council decision;
- (g) carrying out Council's obligations as an employer with respect to Councillors as deemed employees under the workplace health and safety legislation;
- (h) establishing and maintaining an organisational structure for Council;
- (i) being responsible for all staffing matters, including appointing, directing, managing and dismissing members of Council staff;
- (j) 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.

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.

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.