



Council Procedure

Councillor Internal Resolution Procedure

Department/Unit	People, Communications & Governance	First Implemented	21 May 2025	Review Date	May 2029
Origin	Executive Manager People, Communications & Governance	Reviewed	-	Version	1
Authorising Officer	Endorsement by Council	Effective From	21 May 2025	TRIM Reference	E1533

Purpose

This Internal Resolution Procedure (Procedure) is adopted under and in accordance with section 54A and 140 of the *Local Government Act 2020* (the Act) and regulation 1A of the *Local Government (Governance and Integrity) Regulations 2020*.

This Procedure is to provide a conciliation process that Councillors may follow to deal with and resolve conflict, dispute, disagreement or when dealing with alleged breaches of the Model Councillor Code of Conduct.

Scope

This procedure applies to any disputes between Mansfield Shire Councillors with the exclusion of differences between Councillors in relation to policy or decision making which are appropriately resolved through discussion and voting in Council meetings.

It does not apply to:

- ▶ disputes between Councillors and staff or between Councillors and members of the public;
 - Disputes between Councillors and staff will be managed by the Chief Executive Officer in accordance with their responsibilities under section 46 of the Act.
 - Disputes between Councillors and members of the public will be considered or referred to the relevant body in accordance with Mansfield Shire Council's Complaints Handling Policy.
- ▶ allegations of sexual harassment;
- ▶ disclosures made about a Councillor under the *Public Interest Disclosures Act 2012*, which can only be made to the Independent Broad-based Anti-corruption Commission; and
- ▶ allegations of criminal misconduct, which should be immediately referred to Victoria Police or

the relevant integrity authority.

Disputes between Councillors may arise in a variety of circumstances. This Procedure is to apply to those disputes in which one Councillor (the Complainant) alleges that another Councillor (the Respondent) has breached the Model Councillor Code of Conduct.

The following internal resolution steps will be undertaken by Councillors to resolve disputes:

- a) Informal discussion between involved parties to the dispute.
- b) If (a) is unsuccessful, application to the Councillor Conduct Officer for a conciliation discussion between the involved parties to be facilitated by the Mayor.

This Procedure provides both parties to a dispute with support and encouragement to resolve the dispute in a manner that enables the Councillors to move forward and maintain effective working relationships.

This Procedure is designed to minimise cost and disruption of disputes to Council and individual Councillors and, where possible, avoid disputes escalating and becoming the subject of an internal arbitration.

It is acknowledged that this Procedure will not be suitable for resolution of all disputes between Councillors.

Councillors recognise that interpersonal differences and disputes may arise occasionally and are committed to resolving these matters in a manner that fosters effective working relationships without resorting to formal processes. To resolve interpersonal differences the Complainant will first make efforts to address the issue directly and respectfully with the Respondent. If the issue cannot be resolved the Complainant may seek assistance from a fellow Councillor to facilitate a constructive discussion. Should the dispute remain unresolved the Complainant will assess whether the conduct involved violates the Model Councillors of Conduct in which case they may choose to pursue the matter under conciliation.

Stage One: Informal Discussion

A Complainant is encouraged to raise their issue directly with the Respondent in a respectful and courteous manner either in person or in writing where they feel comfortable to do so.

Councillors are encouraged to recognise that:

- (a) certain behaviours and communications may be perceived by others to be causing issues or offence that may not have been intended;
- (b) it can provide useful insight to reflect on their own behaviour or motivation and possible contribution to the dispute, whether intended or not; and
- (c) dealing with the dispute early is more likely to avoid the issue escalating and resolve it before it threatens the effective operation of Council.

It is useful to frame any issue from the Councillor's perspective (e.g., "I felt disrespected when you said / did ..."), rather than accusing another person of holding a particular position or taking a negative action deliberately. A Councillor should let the other Councillor know how they feel and ask for an explanation rather than making accusations or assumptions.

Stage Two: Conciliation

Where a direct conversation between Councillors has not been successful in resolving the dispute or a Councillor does not feel comfortable communicating directly with another Councillor the second stage of this Procedure is conciliation.

Initiating conciliation

A Complainant initiating conciliation must complete a **Conciliation Application Form** (Appendix A). That form must:

- (a) specify the names of the Complainant and Respondent;
- (b) specify the provision (or provisions) of the Model Councillor Code of Conduct alleged to have been breached;
- (c) detail what was said or done by the Respondent to constitute a breach of the Model Councillor Code of Conduct;
- (d) attach any supporting information to provide examples of the behaviour complained of (e.g., screenshots or emails); and
- (e) be dated and signed by the Complainant.

A complaint will not progress to conciliation until a **Conciliation Application Form** has been completed and provided to the Councillor Conduct Officer.

Councillors may not make an application on behalf of other parties.

Upon receipt of an application for conciliation, in accordance with this Procedure, the Councillor Conduct Officer will provide a copy of the application to:

- ▶ The Mayor, to action as the conciliation facilitator;
- ▶ The Chief Executive Officer, for information only; and
- ▶ The other party or parties to the dispute.

Conduct of conciliation

Conciliation is to be conducted by the Mayor except when the Mayor is a party to the dispute or otherwise unavailable to conduct conciliation. In that case the Deputy Mayor will assume the role of the Mayor in the conciliation process. If both the Mayor and the Deputy Mayor are parties to the dispute or otherwise unavailable to conduct the conciliation, the role of the Mayor must be performed by the Councillor Conduct Officer or an independent facilitator appointed with approval from both parties.

When, in this Procedure, reference is made to the Mayor it includes:

- (a) the Deputy Mayor and/or the Councillor Conduct Officer when the Mayor and/or the Deputy Mayor are parties to the dispute or otherwise unavailable to conduct a conciliation.
- (b) an Independent Facilitator.

Supported conciliation may be arranged if requested by either party. This would include having a facilitator as outlined above to liaise between the parties without a face-to-face meeting.

A Respondent declining to participate in the conciliation process must advise the Mayor of their unwillingness to participate and the reasons for it, the Mayor will then advise the Complainant. That advice must be provided in writing no more than one week after receiving the Conciliation Application Form.

Roles and responsibilities

The role of the Mayor is to provide guidance to the parties to the dispute about the Standards of Conduct in the Model Councillor Code of Conduct and actively explore whether the dispute can be resolved by agreement between them.

The role of the Complainant and Respondent is to explain their respective positions and, in a show of goodwill, actively explore the possibility of resolving the dispute by agreement.

All Councillors are responsible for conducting themselves in a courteous and respectful manner at all times during the conciliation.

The Councillor Conduct Officer will provide the Mayor with the administrative support necessary to arrange and conduct the conciliation. The Councillor Conduct Officer is appointed by the Chief Executive Officer as per Section 150(1) of the *Local Government Act 2020*.

Support from Council

Council, through the Councillor Conduct Officer, will provide administrative assistance to the Mayor when arranging a time and place for conciliation including any external technical or specialist assistance that may be required. Council will make a venue available to the Councillors within Council's offices that is private and suited to the conciliation process. Alternatively an appropriate external venue can be arranged at the cost of Council where deemed necessary by the Mayor.

The Mayor, upon request, may seek advice or assistance from Council in arranging external support or guidance where necessary. Parties to the application will be informed by the Mayor of their intentions to seek such advice.

Council will not pay the costs of legal advice or representation for any Councillor in connection with this Procedure.

Where there is an inconsistency between this Procedure and any Council policy regarding payment or reimbursement of Councillor legal costs this Procedure will prevail. Parties to a dispute may seek their own legal or other advice at their own cost if they choose to do so.

End or termination of conciliation

Conciliation will end under any of the following circumstances:

- (a) the Respondent notifies the Mayor that they do not wish to participate in conciliation, and the reasons for it within one week of receiving the Conciliation Application Form;
- (b) the Respondent does not respond to the Conciliation Application Form at all within two weeks of receiving it;

- (c) an initial conciliation meeting has not occurred within four weeks of the Complainant submitting the Conciliation Application Form;
- (d) conciliation has occurred and the parties have been unable to resolve the dispute; or
- (e) the dispute has been resolved.

The time for conciliation may be extended by agreement between the parties to the dispute whether or not the matter has been escalated to one of the formal dispute resolution procedures outlined in the Act.

If the dispute has not been resolved after conciliation the matter may be referred to a formal dispute resolution process, such as mediation or internal arbitration in accordance with Section 141 of the Act, depending on the nature of the alleged conduct/dispute. If no further resolution is possible, the conciliation process will be closed, and no additional action will be taken.

If either party fails to participate in conciliation, the matter will be formally documented and the non-participating party will be notified of the outcome. The conciliation process may be closed or the matter may be escalated to a more formal dispute resolution process depending on the alleged conduct/circumstances and the agreement of the participating parties involved.

If an application for an internal arbitration process is made the Principal Councillor Conduct Registrar, as per Section 141(1) of the Act, will examine the application and appoint an arbiter if they are satisfied that:

- (a) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- (b) there is sufficient evidence to support an allegation of a breach of the Model Councillor Code of Conduct as specified in the application; and
- (c) the Council—
 - (i) has taken sufficient or appropriate steps to resolve the matter and the matter remains unresolved; or
 - (ii) has not taken any steps to resolve the matter but the reason for that is adequate.

Record of outcome

The Mayor must document any agreement that is reached between the Complainant and Respondent. The agreement must be signed by the Complainant, Respondent and Mayor. Copies must be provided to the Councillor Conduct Officer, Chief Executive Officer, Complainant and Respondent for information.

Where agreement is not reached, the Mayor will notify the Complainant and Respondent of the reason for the end or termination of conciliation as set out above under 'End or termination of conciliation'.

Confidentiality

Parties and other participants must maintain confidentiality concerning the dispute and the operation of this Procedure.

Suspension of Internal Resolution Procedures During Election Period

Conciliation applications made and resolution processes conducted under this Procedure must be suspended during the election period for a general election.

If a conciliation application is made against or by a person who is a Councillor before a general election and the person is not returned to the office of Councillor as a result of the general election the application lapses.

Formal Dispute Resolution Procedure

This Procedure operates alongside, but does not replace, the formal dispute resolution procedures outlined in the Act. The formal dispute resolution procedure applies to misconduct, serious misconduct and gross misconduct.

Section 141 of the Act provides for an internal arbitration process concerning a breach of the Model Councillor Code of Conduct.

Section 154 the Act provides for a Councillor Conduct Panel to hear an application that alleges serious misconduct by a Councillor.

Definitions

The following definitions are extracts from Section 3 of the *Local Government Act 2020*.

Term	Definition
Councillor Conduct Officer	At Mansfield Shire Council this means the Executive Manager People, Communications & Governance
Gross misconduct	by a Councillor means behaviour that demonstrates that a Councillor— (a) is not of good character; or (b) 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;
Misconduct	by a Councillor means any breach by a Councillor of the Model Councillor Code of Conduct;
Model Councillor Code of Conduct	means the Code of Conduct prescribed in accordance with section 139;
Serious misconduct	by a Councillor means any of the following— (a) the failure by a Councillor to comply with the Council's internal arbitration process;

Term	Definition
	<p>(b) the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;</p> <p>(c) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;</p> <p>(d) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;</p> <p>(e) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);</p> <p>(f) bullying by a Councillor of another Councillor or a member of Council staff;</p> <p>(g) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;</p> <p>(h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;</p> <p>(i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;</p> <p>(j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act;</p>
Sexual Harassment	<p>has the meaning given by section 92 of the <i>Equal Opportunity Act 2010</i>; A person sexually harasses another person if he or she—</p> <p>(a) makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or</p> <p>(b) engages in any other unwelcome conduct of a sexual nature in relation to the other person—</p> <p>in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.</p>
The Act	<i>Local Government Act 2020</i>

Endorsement

This Councillor Internal Resolution Procedure was adopted by Council on 21 May 2025 and is signed by the following Councillors:

Cr Steve Rabie (Mayor)

Cr James Tehan (Deputy Mayor)

Cr Mandy Treasure

Cr Bonnie Clark

Cr Tim Berenyi

Appendix A: Conciliation Application Form

Complainant:	
Respondent:	
Provisions of Model Councillor Code of Conduct breached:	
Action constituting breach: <i>(Include dates, times and detailed descriptions of the action complained of. Attach further documents as necessary)</i>	

Signed by)
)
)
 on)

Received by)
 Councillor Conduct Officer)
)
)
 on)