

## Fact Sheet: Councillor Conduct Panels

The purpose of this fact sheet is to provide information to councillors about **Councillor Conduct Panels** under Division 7 of Part 6 of the Local Government Act 2020, including in relation to the requirements for making an application for a Councillor Conduct Panel and the conduct of Councillor Conduct Panels hearings.

Version 1.0 – December 2024

### Section 1: Making an application for a Councillor Conduct Panel

#### What is a Councillor Conduct Panel?

A Councillor Conduct Panel (CCP) hearing refers to the process provided for under Division 7 of Part 6 the *Local Government Act 2020* (LG Act) in which a CCP is formed by the Principal Councillor Conduct Registrar (PCCR) to hear an allegation of **serious misconduct** by a councillor.<sup>1</sup>

The CCP formed to hear an application that alleges serious misconduct comprises two people selected by the PCCR from a panel list established by the Minister for Local Government under section 153 of the LG Act.<sup>2</sup>

#### What types of complaints are heard by a Councillor Conduct Panel?

A CCP may hear an application made under section 154 of the LG Act that alleges serious misconduct by a councillor.

Serious misconduct is defined in section 3 of the LG Act to mean –

- (a) the failure by a Councillor to comply with the Council's internal arbitration process;
- (b) the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;
- (c) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
- (d) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;
- (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);

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<sup>1</sup> Section 154(1) of the LG Act.

<sup>2</sup> Section 156 of the LG Act.

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

The grounds of serious misconduct are further outlined below.

### **Non-compliance with the Councillor Conduct Framework (grounds (a)-(e))**

Serious misconduct includes the failure to comply with the council's internal arbitration process or with a direction given to the councillor by an arbiter, and the failure to attend a CCP hearing or to comply with a direction of a CCP. It also includes continued or repeated misconduct after a finding has already been made against a councillor by an arbiter or a CCP.

These provisions reinforce the authority and integrity of internal arbitration process and CCP processes and determinations made by arbiters and CCPs.

It is important to note that grounds (a)-(e) of serious misconduct are not concerned with non-compliance with the **council's internal resolution procedure** (CIRP) under section 140 of the LG Act. The CIRP is supplementary to internal arbitration or CCP processes and is a matter for each council and the councillors involved.

### **Bullying (ground (f))**

Bullying is defined in section 3 of the LG Act, which provides that -

"bullying by a Councillor 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".

Bullying is defined in the same way it is defined in the Commonwealth Fair Work Act 2009, which is the definition used by WorkSafe Victoria. This is repeated, unreasonable behaviour that creates a risk to health and safety.

To meet the definition of bullying under the LG Act, an application must show that -

- there is **repeated unreasonable behaviour** towards another councillor or member of council staff;
- the behaviour is by a councillor; and
- the behaviour creates a **risk to the health and safety** of that other councillor or member of council staff.

This means that a single occurrence of unreasonable behaviour will not meet the definition of bullying under the LG Act. For example, isolated comments directed to a councillor by another councillor at a council meeting or in an email will not amount to bullying if it is a one-off incident. Further, the repeated unreasonable behaviour must be directed towards the same councillor or member of councillor staff rather than towards individuals at large.

To ensure that mayors are supported to hold councillors to account for poor behaviour in accordance with their role, the LG Act makes clear that reasonable steps taken by a mayor carried out in a reasonable manner is not bullying.<sup>3</sup>

### **Sexual harassment (ground (g))**

Serious misconduct includes conduct by a councillor that is conduct of the type that is sexual harassment of a councillor or a member of council staff.

Sexual harassment under the Act has the same meaning given by section 92 of the *Equal Opportunity Act 2010*.

Section 92(1) of the *Equal Opportunity Act 2010* states that a person sexually harasses another person if he or she -

- makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person; or
- engages in any other unwelcome conduct of a sexual nature in relation to the other person—  
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.

Section 92(2) states that conduct of a sexual nature includes -

- subjecting a person to any act of physical intimacy;
- making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence;
- making any gesture, action or comment of a sexual nature in a person's presence.

Further information about sexual harassment is available on the Victorian Equal Opportunity and Human Rights Commission website [here](#).

### **Confidential information (ground (h))**

Serious misconduct includes, subject to certain exceptions, conduct where a councillor intentionally or recklessly discloses information that they know, or should reasonably know, is confidential information.<sup>4</sup>

Confidential information is defined in section 3 of the LG Act. An application that alleges disclosure of confidential information should specify the class of confidential information under section 3 that is alleged to have been disclosed.

The disclosure of confidential information also constitutes an offence under the LGA Act, which may result in criminal prosecution and conviction.

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<sup>3</sup> Section 18(3) of the LG Act.

<sup>4</sup> Section 125 of the LG Act.

### **Directing council staff (ground (i))**

Serious misconduct includes conduct by a councillor that contravenes the requirement that a councillor must not direct, or seek to direct, a member of council staff.

Section 124 of the LG Act provides that a councillor must not intentionally direct, or seek to direct, a member of council staff -

- in the exercise of a delegated power, or the performance of a delegated duty or function, of the council; or
- 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
- 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 this Act or any other Act; or
- in relation to advice provided to the council or a delegated committee, including advice in a report to the council or delegated committee.

This reflects that powers are given to the council as a whole, and that an individual councillor does not have the legal authority to instruct or direct a member of council staff or the council administration.

Directing a member of council staff also constitutes an offence under the LG Act, which may result in criminal prosecution and conviction.

### **Failure to disclose a conflict of interest (ground (j))**

Serious misconduct includes the failure by a councillor to disclose a conflict of interest and to exclude themselves from the decision-making process when required to do so in accordance with the LG Act.

An application alleging serious misconduct on the ground that a councillor has failed to disclose a conflict of interest may only be made by the CMI.

Failure to disclose a conflict of interest also constitutes an offence under the LG Act, which may result in criminal prosecution and conviction.

Information about how to make a complaint to the Local Government Inspectorate is available at: <https://www.lgi.vic.gov.au/make-complaint-local-government-inspectorate>

## Who can make an application for a Councillor Conduct Panel?

An application for a CCP may be made by –

- a council by resolution,
- a councillor,
- a group of councillors, or
- the Chief Municipal Inspector (CMI).<sup>5</sup>

An application for a finding of serious misconduct that alleges that a councillor has failed to disclose a conflict of interest **may only be made by the CMI.**<sup>6</sup>

If a member of the community believes that a councillor has engaged on serious misconduct and that it should be dealt with under the councillor conduct framework, it is open to them to raise these concerns with the mayor of the council, another councillor or the CMI.

## Do councillors need to attempt to resolve a complaint before making an application for a Councillor Conduct Panel?

Where appropriate, councillors are strongly encouraged to attempt to discuss a complaint informally with the other councillor(s) concerned. They should make every effort to resolve their concerns directly with those involved as early as possible, with a view to maintaining effective working relationships.

Every council is required to have in place an internal resolution procedure for dealing with alleged breaches of the Model Code of Conduct.<sup>7</sup> Schedule 1A to the G&I Regulations prescribes the **council's internal resolution procedure** (CIRP) that may be followed by councils to deal with alleged breaches of the Model Code of Conduct. This procedure must include a conciliation process that is to be conducted by the mayor and may include any other process that the council considers appropriate.

Whilst the CIRP must provide an avenue for dealing with alleged breaches of the Model Code of Conduct, it may also provide councils an effective avenue to address other types of complaints or disputes that may arise. These may include interpersonal disputes or complaints about serious misconduct.

Where a matter alleging serious misconduct cannot be resolved internally, despite attempts to do so, or where use of the CIRP could be counterproductive or problematic, an application for a CCP may be made.



**Councillors should attempt to resolve a complaint informally at the earliest opportunity as applications for a CCP must be made within 12 months of the alleged serious misconduct occurring.**

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<sup>5</sup> Section 154(2) of the LG Act.

<sup>6</sup> Section 154(4) of the LG Act.

<sup>7</sup> Section 140 of the LG Act.

## What if councillors do not attempt to resolve a complaint informally?

Although it is not mandatory for councillors to participate in any informal resolution processes, the PCCR may reject an application if an application does not show that sufficient or appropriate steps were taken to attempt to resolve a matter or provide adequate reasons as to why no steps were taken to resolve the matter.<sup>8</sup>

The PCCR may also exercise their discretion to reject an application or refer a matter back to the council if satisfied that the matter the subject of the application has been or is being dealt with, or would more appropriately be dealt with by the council.<sup>9</sup>

A CIRP must include the form and availability of a record of any agreement, resolution or outcome reached through the process. This record may assist councillors to address this requirement in their application.

Councillors should also consider whether it would be appropriate to pursue an application in circumstances where it appears the matter has been resolved. A common example of where this might occur is where the councillor the subject of the complaint has acknowledged their behaviour and made a full and unreserved apology.

## What information needs to be included in an application?

The LG Act sets out certain requirements for making an application for a CCP.<sup>10</sup>

The application for a CCP must specify –

- where the application is made by the council or a group of councillors, the name and address of the councillor whom the council or the group of councillors has appointed as their representative – this councillor will have the responsibility of being the primary contact; and
- the ground or grounds of serious misconduct; and
- the circumstances, actions or inactions of the councillor who is the subject of the application that are alleged as constituting serious misconduct; and
- the particulars of any evidence of those circumstances, actions or inactions of the councillor that are alleged as constituting serious misconduct; and
- with respect to the matter that is the subject of the application-
  - any steps taken by the council to resolve the matter and the reason why the matter was not resolved; or
  - If the council has not taken any steps to resolve the matter, the reason why the council did not take any steps to resolve the matter.



**It is important that an application addresses all of the matters set out in section 154 of the LG Act, otherwise the application will be rejected or returned to you by the PCCR.**

<sup>8</sup> Section 155(1)(c) of the LG Act.

<sup>9</sup> Section 155(2) of the LG Act.

<sup>10</sup> Sections 154(6) and 154(7) of the LG Act.

## Important points to remember when preparing an application

When describing the circumstances, actions or inactions that are alleged as constituting serious misconduct, the application should describe these specifically in relation to types of serious misconduct that the councillor is alleged to have breached.

Applicants must do more than simply set out bare allegations or assertions as the basis for their application. For example, "Councillor Y approached a parking enforcement officer and requested that the parking enforcement officer to withdraw a parking fine." An applicant must include supporting details of the alleged conduct and describe the specific behaviour that is the subject of the application. For example, "On 1 January 2025, I witnessed Councillor Y approach Mr Smith, a parking enforcement officer of the Council outside the customer service centre. Councillor Y expressed concern that a parking fine had been issued against Mrs Jones. Councillor Y explained that Mrs Jones is elderly and will struggle to afford the fine and asked Mr Smith to 'Withdraw the parking fine and issue a warning'".

It is not necessary to include all evidence in an application that may ultimately be provided to a CCP hearing the matter (e.g., screen shots of social media posts, copies of emails, newspaper clippings), however an application should describe the evidence that they intend to rely on in support of the allegations made.

### Example

Councillor X makes an application for a CCP on the basis that Councillor Y has engaged in serious misconduct. The application -

- Specifies that Councillor Y is alleged to have engaged in serious misconduct on the ground that Councillor Y bullied Councillor X.
- Describes (having regard to the definition of bullying under the LG Act) the repeated unreasonable behaviour of Councillor Y that is alleged to constitute bullying, which in the particular case are:
  - At the Council meeting of 1 January 2025, during the debate on Item 2, Councillor Y stood up, interrupted Councillor X's remarks and shouted in an aggressive manner, "you are a brainless idiot".
  - On 10 January 2025, Councillor Y made a social media post which made insulting and false statements about Councillor X. The social media post included words to the effect of: "Councillor X is a brainless idiot and nobody likes them" and "Councillor X has not read a single council report".
  - On 12 January 2025, Councillor Y arranged for all councillors to have a social gathering following a councillor briefing. Councillor X was the only Councillor not to be informed of the gathering or receive an invitation and found out about the gathering from another councillor.
- Specifies that Councillor Y's behaviour has caused a risk to Councillor X's health and safety in that Councillor X has been unable to attend councillor briefings and is suffering from stress and anxiety levels following the alleged incidents.
- Specifies that:
  - Councillor Y's behaviour that occurred at the council meeting of 1 January 2025 was recorded and a copy of that recording will be provided in support of the allegation.



- Councillor Y's statements on social media occurred on 10 January 2025 and a copy of that social media post will be provided in support of the allegation.
- Councillor Y sent the invitation for the gathering to all councillors via email on 10 January 2025 except for Councillor X and a copy of that email will be provided in support of the allegation.
- Medical evidence will be provided showing that Councillor X has suffered from stress and anxiety levels following the alleged incidents.
- States that Councillor X attempted to resolve the matter in accordance with the council's internal resolution procedure but that was unsuccessful because Councillor Y refused to participate in the conciliation process.

### **Applications made by the council or a group of councillors**

If an application is made by the council, a copy of the minutes of the council meeting recording the resolution must be included with the application.

If an application is made by the council or a group of councillors, the application must state the name and address of the councillor whom the council or the group of councillors has appointed as representative of the council or the group of councillors.<sup>11</sup>

This councillor will have the responsibility of being the primary contact and representing the council or group of councillors in relation to the process.

### **Application forms**

While not mandatory, councillors are encouraged to use the *Councillor Conduct Panel Application Form*, which includes prompts to assist councillors with submitting a valid application.

A copy of the application form is available on the Department's website or alternatively, may be requested from the council's Councillor Conduct Officer (CCO).

Applications and any supporting materials should be lodged as a single PDF document to assist the PCCR with processing applications.

### **How can an application be lodged?**

An application for a CCP must be made to the PCCR.

Applications can be lodged with the PCCR -

- by email to: [pcc.registrar@ecodev.vic.gov.au](mailto:pcc.registrar@ecodev.vic.gov.au)
- by post to: Principal Councillor Conduct Registrar  
Level 8, 1 Spring Street  
Melbourne, VIC 3000

You can also contact your council's CCO to assist you with this process, however, if doing so, you should be mindful of the time limit for making an application.

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<sup>11</sup> Section 156(7) of the LG Act.



## What is the time limit for making an application?

An application for a CCP must be made within **12 months** of the alleged serious misconduct occurring.<sup>12</sup>

An application is taken to be made when it is received by the PCCR.<sup>13</sup>

This requirement means that the PCCR cannot form a CCP to hear the matter if the PCCR receives the application more than 12 months after the alleged serious misconduct occurred.

Further, an application that alleges bullying by a councillor of another councillor or a member of council staff must not allege behaviour by the councillor that did not occur within the previous 12 months.<sup>14</sup>

It is important that an application clearly sets out the date the serious misconduct is alleged to have occurred. Failure to do so may result in the PCCR rejecting the application or returning the application to you.

### **Example**

*Councillor X intends to make an application for a CCP, alleging that Councillor Y engaged in bullying behaviour. While preparing the application, Councillor X recalls other inappropriate conduct that was directed to them by Councillor Y that took place more than 12 months ago.*

*As an application must be made within 12 months of the alleged serious misconduct occurring, Councillor X should not include in their application any alleged behaviour that constituted bullying that occurred more than 12 months ago.*

## Is an application confidential?

Information relating to a CCP is confidential information within the meaning of the LG Act.<sup>15</sup>

This includes -

- information provided to or produced by the PCCR for the purposes of an application for a CCP to be formed;
- information, other than a decision or reasons for a decision, that is provided to, or produced by, a CCP, for the purposes of conducting the CCP hearing;
- any part of a statement of reasons or any other document under the control or possession of the CCP that the CCP determines contains confidential information.

This means that councillors must keep information relating to an application for a CCP confidential and out of the public domain.

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<sup>12</sup> Section 154(3) of the LG Act.

<sup>13</sup> Section 154(3A) of the LG Act.

<sup>14</sup> Section 154(3B) of the LG Act.

<sup>15</sup> Section 169 of the LG Act.

The disclosure by a councillor of information the councillor knows, or should reasonably know, is confidential information constitutes serious misconduct. Additionally, intentionally or recklessly disclosing confidential information constitutes an offence under section 125 of the LG Act that carries a penalty of up to 120 penalty units.

Section 125(3) of the LG Act permits confidential information to be used in the course of a CCP, including in an application for a CCP, and for the purposes of the CCP hearing.

This means that councillors and members of council staff may discuss or share information relating to these processes within council, where it's shared for the purpose of the CCP, for example, for the purposes of arranging witnesses or arranging venues.

At the completion of the CCP process the CCP's decision and statement of reasons must be tabled at the next council meeting and recorded in the minutes of that meeting. CCP decisions are also published on the Department's website.

### **What happens once an application is made to the PCCR?**

When an application is made, the PCCR will acknowledge receipt of the application to the applicant.

The PCCR will inform the respondent councillor that an application has been made against them and provide them with a copy of the application. The PCCR will also notify the council's CCO of the application.

### **PCCR must examine the application**

Before an arbiter can be appointed to hear the matter, the PCCR is required to examine an application to determine whether or not it meets the requirements of section 155(1) of the LG Act.<sup>16</sup>

In examining the application under section 155(1) of the LG Act, the PCCR must be satisfied that –

- the application is not frivolous, vexatious, misconceived or lacking in substance; and
- there is sufficient evidence to support an allegation of serious misconduct as specified in the application; and
- the council—
  - has taken sufficient or appropriate steps to resolve the matter and the matter remains unresolved; or
  - has not taken any steps to resolve the matter but the Principal Councillor Conduct Registrar is satisfied as to the Council's reasons for not taking any steps.

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<sup>16</sup> Section 155(1AA) of the LG Act.

## Action the PCCR must take after examining an application

After examining an application for a CCP, the PCCR must take the following action if satisfied of the matters set out in section 155(1) of the LG Act –

- form a CCP to hear the matter the subject of the application without undue delay; and
- if the application alleges serious misconduct of the type relating to the release of confidential information or seeking to direct a member of council staff, provide a copy of the application to the CMI.<sup>17</sup>

A CCP is formed by the PCCR by selecting two members from the panel list established by the Minister for Local Government.<sup>18</sup> The Minister must establish the panel list of eligible persons in accordance with section 153 of the LG Act.

The PCCR must ensure that at least one of the two people selected on the CCP is an Australian lawyer who has been admitted to the legal profession for at least 5 years, and this person selected is the chairperson for the CCP.<sup>19</sup>

The PCCR must reject an application or refer the matter back to the council if not satisfied of the matters set out in section 155(1) of the LG Act.<sup>20</sup> However, if an application for a CCP is made by the CMI, the PCCR must form a CCP to hear the matter and has no discretion to reject the application.<sup>21</sup>

If the PCCR believes the matter the subject of the application has been or is being dealt with, or would more appropriately be dealt with, by the council or another person or body (for example, the CMI or IBAC), the PCCR may reject the application, refer the matter back to council, or refer the matter to that person or body.<sup>22</sup>

The rejection or referral of an application by the PCCR does not, however, prevent a further application being made for a CCP in respect of the same conduct by that councillor.<sup>23</sup>

## Related applications

If the PCCR receives a *subsequent application* that appears to be related to an existing application for which a CCP has been formed, the PCCR must –

- forward the subsequent application to the existing CCP; or
- reject the subsequent application on the basis the PCCR considers it is frivolous, vexatious, misconceived or lacking substance.<sup>24</sup>

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<sup>17</sup> Sections 155(1A) and 156(1) of the LG Act.

<sup>18</sup> Section 156(1) of the LG Act.

<sup>19</sup> Sections 156(3) and 156(4) of the LG Act.

<sup>20</sup> Section 155(3) of the LG Act.

<sup>21</sup> Section 155(4) of the LG Act.

<sup>22</sup> Section 155(2) of the LG Act.

<sup>23</sup> Section 155(5) of the LG Act.

<sup>24</sup> Section 157(1) of the LG Act.

If a CCP receives a subsequent application, the CCP must decide either –

- to join the subsequent application to the existing application before the CCP; or
- to return the subsequent application to the PCCR, who must examine the subsequent application in accordance with section 155 of the LG Act.<sup>25</sup>

### **Can an application be withdrawn?**

An applicant can withdraw an application by notice in writing to the PCCR at any time before the application has been examined by the PCCR.

If a CCP has already been formed to hear the application, the applicant may notify the CCP in writing of their intention to withdraw the application via the PCCR.

### **How long does it take for the PCCR to examine an application for a Councillor Conduct Panel?**

As each application is different, the time required for the PCCR to examine an application to ensure it meets the requirements under section 155 of the LG Act will vary.

As a general guide, the PCCR will endeavour to acknowledge an application within 2-4 business days of receipt, after which the PCCR will seek to notify the parties of the outcome of the examination within 15-20 business days.

### **Can a respondent to an application provide the PCCR with a response to the allegations?**

No. The PCCR is required to examine an application in accordance with the LG Act and in doing so, must be satisfied of the matters set out under the LG Act. The LG Act does not permit the PCCR to consider any response or material from the respondent in respect of the application.

If a CCP is subsequently formed to hear the matter, the respondent will have the opportunity to respond to the allegations and present evidence to the CCP at that time.

### **What may happen to an application for a Councillor Conduct Panel where the type of serious misconduct alleged is also an offence that can be prosecuted in court?**

The following types of serious misconduct are also offences which carry penalties of up to 120 penalty units, and can be prosecuted by the CMI in court –

- seeking to direct a member of council staff under section 124 of the LG Act;
- the release of confidential information under section 125 of the LG Act;
- a failure to comply with conflict of interest requirements under section 130 of the LG Act.

If an application for a CCP to make a finding of serious misconduct has been made against a councillor in respect of directing a member of council staff or disclosing

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<sup>25</sup> Sections 157(2) and 157(3) of the LG Act.

confidential information, and the PCCR is satisfied of the matters set out in section 155(1), the PCCR must provide a copy of the application to the CMI. The CMI has the power to then require a CCP to suspend or stop the consideration of a matter in order to commence an investigation into the matter.

If an application for a CCP to make a finding of serious misconduct has been made against a councillor in respect of this conduct, a councillor must not be separately charged with an offence in respect of the same conduct by the CMI, unless –

- the CCP application is withdrawn;
- the CMI requires the CCP to suspend or stop the matter;
- before the CCP makes a determination against the councillor, that councillor ceases to be a councillor;
- the matter or behaviour has been referred to another law enforcement agency.<sup>26</sup>

Similarly, if a councillor has been charged with an offence with respect of this conduct, a separate application for a CCP to make a finding of serious misconduct against the councillor must not be made for the same conduct.<sup>27</sup>

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<sup>26</sup> Section 158 of the LG Act.

<sup>27</sup> Section 159 of the LG Act.

## Section 2: Conducting a Councillor Conduct Panel hearing

### What happens if a Councillor Conduct Panel is formed to hear the application?

If a CCP is formed to hear the application by the PCCR, the CCP will commence the hearing with the support and assistance of the PCCR and the council's CCO.

Under the LG Act, this involves the CCP –

- fixing a time and a place for the hearing to be conducted; and
- serving a written notice (either via post or electronic means) of the time and place of the hearing on –
  - the applicant (being an individual councillor, a group of councillors, the council, or the CMI);
  - the respondent (being the councillor, whose conduct has prompted the application); and
  - the council.<sup>28</sup>

### Councillor Conduct Panel procedures

How the CCP is conducted is at the discretion of the CCP, subject to certain requirements set out in the LG Act.

The LG Act requires a CCP to conduct a hearing before it can make a determination under section 167 of the Act.<sup>29</sup>

The LG Act provides that a CCP must conduct the hearing with as little formality and technicality as the proper consideration of the matter permits and ensure that the hearing is not open to the public.<sup>30</sup> Further, a CCP is not bound by the rules of evidence, like a Court, and may be informed in any manner the CCP sees fit.<sup>31</sup>

Although these processes are intended to be informal, the LG Act provides that the rules of natural justice apply to a CCP.<sup>32</sup> This means that the CCP must allow a person to present his or her side of the story and must make decisions in an objective and unbiased way. Section 163(3) of the LG Act expressly states that a CCP must ensure that parties involved in a CCP hearing are given an opportunity to be heard by the CCP.

In keeping with the low level of formality of these processes, section 163(2)(b) of the LG Act specifically states that a councillor who is a party to a CCP does not have a right to representation unless the CCP considers that representation is necessary to ensure that the process is conducted fairly. If a councillor wishes to be legally represented on this basis, it is open to them to seek leave from the CCP.

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<sup>28</sup> Section 160 of the LG Act.

<sup>29</sup> Section 163(1) of the LG Act.

<sup>30</sup> Section 163(2)(a) of the LG Act.

<sup>31</sup> Section 163(2)(e) of the LG Act.

<sup>32</sup> Section 163(2)(f) of the LG Act.

## What does the Councillor Conduct Panel process look like in practice?

There is no standard, or one size fits all approach, however a typical CCP hearing may consist of -

- an initial directions hearing conducted in person or online via MS Teams or Zoom,
- written submissions and/or supporting material being provided to the CCP by each party, and
- a hearing conducted in-person on council premises or at another venue arranged by the council.

How the CCP decides to conduct the hearing may depend on a range of factors, such as the nature and scope of the allegations, whether the alleged facts are in dispute, whether the parties intend to call witnesses, and whether the CCP has granted leave for any of the parties to have legal representation.

Please note that CCPs typically prefer to hold hearings in-person for a number of important reasons, including:

- it allows the CCP to engage with the parties more directly and immediately and enhances the ability of the CCP to assess the credibility of evidence put forward,
- it ensures natural justice in that consistent practices and procedures are applied to the hearing and determination of all complaints, and
- it ensures that the matters disclosed during the CCP hearing are kept confidential and that the privacy of all parties is protected, which is more difficult to ensure in an online environment.



**Parties should raise any queries or concerns about the conduct of the CCP process directly with the CCP via the PCCR or their CCO.**

## What to expect at a directions hearing

A directions hearing (if held) provides an opportunity for the CCP to clarify how the matter will be conducted and direct the parties in preparation for the hearing to be conducted.

The types of matters that may be discussed at a directions hearing may include -

- what kind of information each party intends to rely on to support their case (e.g. council meeting recordings, witness lists/statements, copies of social media posts)
- how the parties should gather and present the information that supports their case
- timelines for submitting information that each party seeks to rely on at the hearing
- when and where the hearing will be held.



## What to expect at a hearing

How a hearing is conducted is a matter for the CCP and as a preliminary matter, the CCP will advise the parties on the conduct and format of the hearing and what is expected of the parties in relation to the hearing.

A hearing enables the CCP to understand the issues in dispute and hear and weigh up submissions and relevant evidence about the issues in question. Hearings are not open to the public and all information discussed in a hearing is confidential.

A hearing will generally consist of the following people -

- the CCP members,
- the applicant (or where there is more than one applicant councillor, the applicants' appointed representative),
- the respondent,
- the council's CCO, and
- the transcription/recording service provider.

During the hearing the parties will be given an opportunity to present their case and evidence (including any witnesses) and also address any evidence presented by the other party. The CCP will listen to and consider the evidence, ask the parties questions or seek clarification about matters raised, and encourage an efficient use of time.

Further, section 161 of the LG Act gives the CCP the power to -

- request that a person (including other councillors) attend a hearing and answer questions;
- request information from the applicant, the respondent or the council, including confidential information held by the council;
- direct the applicant or respondent to attend a hearing or provide information, including confidential information.

## Do the parties need to participate in the Councillor Conduct Panel process?

The failure by a councillor who is a respondent to a CCP hearing to attend a CCP process, or the failure of a councillor to comply with a direction of a CCP, constitutes serious misconduct under the LG Act.

## What sanctions can a Councillor Conduct Panel impose after a finding of serious misconduct?

Generally, following the completion of the hearing, the CCP will reserve its decision and make their determination at a later date.

After conducting the hearing, the CCP may –

- make a finding of serious misconduct against a councillor;
- make a finding of misconduct against a councillor (provided the application for a CCP was made within 3 months after the breach occurred);
- whether or not a finding of misconduct or serious misconduct against a councillor has been made, determine that remedial action is required;
- dismiss the application.<sup>33</sup>

Where remedial action is required, the CCP may direct the councillor to attend mediation, training and counselling and may set reasonable conditions as part of this.<sup>34</sup> Any expenses incurred by councillors in attending mediation, training or counselling must be paid by the council.<sup>35</sup>

If a CCP makes a finding of serious misconduct against a councillor, the councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the council's term, unless the CCP directs otherwise.<sup>36</sup>

Further, if a CCP makes a finding of serious misconduct, the CCP may –

- reprimand the councillor;
- direct the councillor to make an apology;
- suspend the councillor from office for a period not exceeding 12 months;
- direct that the councillor is ineligible to chair a delegated committee of the council for a period not exceeding the remainder of the council's term.<sup>37</sup>

If a CCP makes a finding of misconduct against a councillor, the CCP may –

- direct the councillor to make an apology;
- suspend the councillor from office;
- direct that the councillor be removed from any position where the councillor represents the council for a period determined by the CCP;
- direct that the councillor be removed from being the chair of a delegated committee for a period determined by the CCP.<sup>38</sup>

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<sup>33</sup> Section 167(1) of the LG Act.

<sup>34</sup> Sections 167(6) and 167(7) of the LG Act.

<sup>35</sup> Section 167(8) of the LG Act.

<sup>36</sup> Section 167(2) of the LG Act.

<sup>37</sup> Section 167(3) of the LG Act.

<sup>38</sup> Section 167(4) of the LG Act.

## Who will receive a copy of the Councillor Conduct Panel's decision, and will it be made public?

Under the LG Act, after a CCP has made a determination, the CCP must give a copy of the decision, and within 28 days of making a determination give a written statement of reasons for the decision, to –

- the council;
- the parties to the matter;
- the Minister for Local Government; and
- the PCCR.<sup>39</sup>

A copy of the CCP decision and written statement of reasons given to the council must be –

- tabled at a council meeting specified by the CCP, or otherwise the next council meeting; and
- recorded in the minutes of that council meeting.<sup>40</sup>

If the CCP's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy of the decision tabled at the council meeting. Confidential information is redacted by the CCP (not the council) under subsection 168(3B) of the LG Act.

The PCCR will also arrange for a copy of the decision to be published on the Department's website.

## What happens if a councillor fails to comply with a sanction imposed by a Councillor Conduct Panel?

The failure by a councillor to comply with a direction given to the councillor by a CCP constitutes **serious misconduct** under the LG Act.

## Can the decision of a Councillor Conduct Panel be appealed?

If a councillor is dissatisfied with a CCP's decision it is open to the councillor to obtain independent legal advice about their rights.

It is open to a person affected by a decision of a CCP to apply to the Victorian Civil and Administrative Tribunal (VCAT) for merits review of the CCP's decision.<sup>41</sup>

An application to VCAT for review must be made within 28 days of the CCP giving a statement of reasons.<sup>42</sup>

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<sup>39</sup> Sections 168(1) and 168(3) of the LG Act.

<sup>40</sup> Sections 168(2) and 168(3A) of the LG Act.

<sup>41</sup> Section 170(1) of the LG Act.

<sup>42</sup> Section 170(3) of the LG Act.