

Fact Sheet: Councillor Conduct Framework

The purpose of this fact sheet is to provide an overview of the Councillor Conduct Framework under Part 6 of the **Local Government Act 2020**.

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The councillor conduct framework

Before making an application for an internal arbitration process, or a Councillor Conduct Panel hearing, it is important for councillors to understand that there are various mechanisms available to address different councillor conduct issues, including the council's internal resolution procedure.

The councillor conduct framework is established under Part 6 of the **Local Government Act 2020** (LG Act) and provides a hierarchy for the management of councillor conduct complaints to address different levels of misconduct:

- **Misconduct** means a breach by a councillor of the Model Councillor Code of Conduct (Model Code of Conduct).

A council, a councillor or a group of councillors can make an application under section 143 of the LG Act for an **internal arbitration process** to make a finding of misconduct against a councillor.

- **Serious misconduct** is defined in section 3 of the LG Act and covers more serious conduct issues such as bullying, disclosure of confidential information, and failure to disclose a conflict of interest.

A council, a councillor, a group of councillors or the Chief Municipal Inspector (CMI) can make an application under section 154 of the LG Act for a **Councillor Conduct Panel** to make a finding that a councillor has engaged in serious misconduct.

- **Gross misconduct** is defined in section 3 of the LG Act and means behaviour that demonstrates that a councillor is not of good character or is otherwise not a fit and proper person to hold the office of councillor.

The CMI can apply to the **Victorian Civil and Administrative Tribunal** (VCAT) to make a finding that a councillor has engaged in gross misconduct.

In addition to the formal mechanisms described above, every council is required to have in place a **council internal resolution procedure** (CIRP) for dealing with alleged breaches of the Model Code of Conduct.

Whilst the CIRP must provide an avenue for dealing with alleged breaches of the Model Code of Conduct, it may also provide councils with an effective option for

addressing other types of complaints or disputes that may arise. These may include interpersonal disputes or complaints about serious misconduct.

Councillors are strongly encouraged to attempt to resolve any complaint through the CIRP procedure in the first instance.

The councillor conduct framework operates alongside provisions of the LG Act that make it an **offence** to engage in certain conduct. Breaches of specific offences under the LG Act carry penalties and may result in criminal prosecution and conviction. The CMI through the Local Government Inspectorate is responsible for investigating and prosecuting alleged breaches (including offences) of the LG Act. The CMI also separately has the ability to bring applications for alleged serious misconduct and gross misconduct (as mentioned above).

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>



Under the councillor conduct framework it is the responsibility of councillors to hold each other to account. Councillors who wish to lodge an application need to consider the nature of the alleged conduct in question and decide what the most appropriate avenue is to pursue the complaint if they cannot resolve it internally.

Related resources

The legislative framework

It is important that councillors inform themselves about their statutory rights and obligations by reading and understanding the LG Act and associated regulations that apply to them.

The statutory basis for the councillor conduct framework is in Part 6 of the LG Act which makes provision for matters relating to council integrity. The **Local Government (Governance and Integrity) Regulations 2020** (G&I Regulations) also prescribe important matters relating to the councillor conduct framework, including the Model Code of Conduct, the CIRP and matters relating to internal arbitration process applications and procedures.

The latest versions of the [LG Act](#) and [G&I Regulations](#) are available on the Legislation Victoria website.

Other guidance

Other guidance material regarding the councillor conduct framework is available on the Local Government Victoria website, including the following:

- Guidance on the Model Councillor Code of Conduct
- Fact Sheet: Internal arbitration processes
- Fact Sheet: Councillor Conduct Panels

Additionally, internal arbitration process and Councillor Conduct Panel decisions and statements of reasons are published on the Local Government Victoria website.

Roles and responsibilities in relation to the councillor conduct framework

Councillors

As part of the role of a councillor under section 28 of the LG Act, councillors must act lawfully and in accordance with the Model Councillor Code of Conduct. This is a commitment they each make when taking the oath or affirmation of office prior to acting as a councillor.

In this regard, councillors are individually and collectively responsible for upholding and maintaining appropriate standards of behaviour.

However, where disputes arise between councillors, councillors, in the first instance, are expected to make every effort to resolve their concerns directly with other councillors involved as early as possible, with a view to maintaining effective working relationships.

Where a matter cannot be resolved internally, councillors are expected to use the councillor conduct framework where appropriate by initiating an application in good faith, and refrain from leveraging it for political purposes.

Councillors have certain obligations in relation to these processes that are designed to safeguard the integrity of the councillor conduct framework. A failure to comply with these obligations may themselves constitute serious misconduct.

These obligations include:

- Complying with an internal arbitration process
- Complying with a direction given by an arbiter
- Attending a councillor conduct panel hearing
- Complying with a direction of a councillor conduct panel
- Maintaining confidentiality in relation to an internal arbitration process or councillor conduct panel.

Mayors

The mayor, by virtue of the position, is expected to foster positive relationships between councillors and take the lead in addressing poor councillor conduct when it arises.

To reflect this, the role of the mayor under section 18 of the LG Act includes to promote behaviour among councillors that is consistent with the Model Code of Conduct and to assist councillors to understand their role.

Further, councils are required to have in place an internal resolution procedure to address conduct that is in breach of the Model Code of Conduct. This procedure must include a conciliation process that is to be conducted by the mayor.

Councils

The LG Act imposes certain obligations on councils in relation to internal arbitration processes and councillor conduct panels, including the following:

- Section 140 of the LG Act provides that a council must implement and adopt an internal resolution procedure in relation to dealing with alleged breaches of the Model Councillor Code of Conduct.

- Sections 145B and 162 of the LG Act require a council to provide all reasonable assistance to an arbiter/councillor conduct panel which is necessary to enable the arbiter/councillor conduct panel to conduct an internal arbitration process/councillor conduct panel hearing.
- Sections 144B and 159A of the LG Act require a council to reimburse the State for the remuneration costs associated with internal arbitration processes and councillor conduct panels.
- Section 150 of the LG Act requires a Chief Executive Officer to appoint a person in writing to be a Councillor Conduct Officer and to notify the Principal Councillor Conduct Registrar (PCCR) of that appointment.

The LG Act also imposes certain requirements relating to the conduct of internal arbitration processes and councillor conduct panels that may require specific action to be taken by the council.

For example, sections 147 and 167 of the LG Act require arbiter and councillor conduct panel decisions and statement of reasons to be tabled at the next council meeting after the council receives the copy and for the decision and statement of reasons to be recorded in the minutes of the meeting.

Additionally, councils may need to take an active role in implementing any sanctions imposed on a councillor. For example, a council may need to arrange or facilitate any training directed by an arbiter or councillor conduct panel or ensure that appropriate arrangements are in place if a councillor is suspended to reflect that they cease to be a councillor for the duration of the suspension.

Councillor Conduct Officers

Section 150 of the LG Act requires a Chief Executive Officer to appoint a person in writing to be a Councillor Conduct Officer (CCO) and to notify the PCCR of that appointment.

The role of the CCO is set out in section 151 of the LG Act and includes to:

- Assist the council in the implementation of, and conduct of, the internal arbitration process of a council; and
- Assist the PCCR to perform the functions specified in section 149(1); and
- Assist the PCCR in relation to any request for information under section 149(3).

In practice, CCOs provide administrative and operational support associated with the council's internal resolution procedure and councillor conduct framework processes to councillors, arbiters, councillor conduct panels and the PCCR.

This may include:

- Providing councillors copies of application forms and referring councillors to relevant resources and supporting information
- Acting as the central point of contact between parties and an arbiter (e.g. notifying the parties of an internal arbitration hearing on behalf of an arbiter or relaying to the arbiter information or queries from the parties)
- Ensure that venues and resources are made available for hearings conducted by arbiters or councillor conduct panels
- Arranging an arbiter or councillor conduct panel decision to be tabled at the council meeting

- Arranging reimbursement of the State for arbiter and panel member sitting fees following the conclusion of a matter.

While a CCO can provide procedural support to councillors, a CCO cannot assist one party in a way that would give them an advantage over another party. This means that a CCO cannot provide advice to councillors about the merits of making an application, tell them what to include or how to write an application or how they may respond to an application.

Principal Councillor Conduct Registrar

The PCCR is appointed by the Secretary of the Department of Government Services under section 148 of the LG Act.

The PCCR's role is broadly to administer processes associated with the councillor conduct framework established under the LG Act.

The functions and powers of the PCCR are set out in section 149 of the LG Act and include:

- Receiving and examining applications for internal arbitration processes and councillor conduct panels
- Appointing arbiters and forming councillor conduct panels from the respective panel lists established under the LG Act
- Providing general advice and assistance to arbiters and members of councillor conduct panels regarding their functions
- Setting and publishing schedules of fees for arbiters and councillor conduct panels
- Publishing decisions of arbiters and councillor conduct panels
- Recovering the fees payable by the council following the conduct of an internal arbitration process or councillor conduct panel hearing.

The PCCR's role is distinct from the independent decision-making role of arbiters and panel members and must be performed in a way that ensures the integrity and independence of councillor conduct framework processes.

In this regard, the PCCR can provide general information about councillor conduct framework practices and procedures. For example, the PCCR can share a copy of application forms and refer councillors to relevant information and resources.

The PCCR cannot provide legal advice or to assist one party in a way that would give them an advantage over another party.

For example, the PCCR cannot:

- Assist councillors to prepare or respond to an application
- Provide an opinion on the merits of an application or what the outcome might be
- Provide advice about what should be said at a hearing by a party or relay information to an arbiter on a party's behalf during the conduct of an internal arbitration process.