



Councillor Code of Conduct 2022

Adopted by Council - October 2022

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1 INTRODUCTION

Mornington Peninsula Shire Council (Council) is constituted under the *Local Government Act 2020* (the Act) to perform the functions and exercise necessary to ensure the peace, order and good government of the municipal district.

The Council consists of 11 Councillors democratically elected by the community of Mornington Peninsula Shire. Pursuant to section 139(1) of the Act, the Council must develop a Councillor Code of Conduct.

The purpose of the Councillor Code of Conduct is to include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

Section 139(3) provides that a Councillor Code of Conduct –

- (a) *Must include the standards of conduct prescribed by the regulations expected to be observed by Councillors; and*
- (b) *Must include any provisions prescribed by the regulations for the purpose of this section; and*
- (c) *Must include provisions addressing any matters prescribed by the regulations for the purpose of this section; and*
- (d) *Must include any other matters which the Council considers appropriate, other than any other standards of conduct.*

2 OVERARCHING PRINCIPLES

Under the Act, Council decision making is subject to a principles-based approach.

Section 9(1) of the Act provides that a Council must in the performance of its role give effect to the overarching governance principles.

Section 9(3) of the Act provides that in giving effect to the overarching governance principles, a Council must take into account the following supporting principles—

- (a) *The community engagement principles;*
- (b) The public transparency principles;
- (c) The strategic planning principles;
- (d) The financial management principles; and
- (e) The service performance principles.

Part 3, Division 1 of the Act provides that Council decision making should be informed and underpinned by community accountability, including community engagement and public transparency.

3 ROLES AND RESPONSIBILITIES

To achieve good governance, it is necessary to achieve clarity around the different roles and responsibilities within Council.

3.1 ROLE OF COUNCIL

The role of the Council is defined in section 8(1) of the Act which provides:

(1) *The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.*

3.2 ROLE OF COUNCILLOR

The role of a Councillor is defined in section 28 of the Act which provides:

(1) *The role of every Councillor is—*

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

(2) *In performing the role of a Councillor, a Councillor must—*

- (a) *Consider the diversity of interests and needs of the municipal community; and;*
- (b) *Acknowledge and support the role of the Mayor; and*
- (c) *Act lawfully and in accordance with the oath or affirmation of office; and*
- (d) *Act in accordance with the standards of conduct; and*
- (e) *Comply with Council procedures for good governance.*

3.3 ROLE OF THE MAYOR

The role of the Mayor is defined in section 18 of the Act which provides:

(1) *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 Chief Executive Officer; and*
- (h) *Provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and*
- (i) *Perform civic and ceremonial duties on behalf of the Council.*

The Mayor also has specific powers that are outlined in section 19 of the Act.

3.4 ROLE OF DEPUTY MAYOR

The role and powers of the Deputy Mayor are outlined in section 21 of the Act.

3.5 ROLE OF THE CHIEF EXECUTIVE OFFICER

Under section 46 of the Act, the Chief Executive Officer is responsible for:

- (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.

The scope of these functions are further outlined in section 46(2) and (3) of the Act.

4 STANDARDS OF CONDUCT

The Act and the *Local Government (Governance and Integrity) Regulations 2020* establish the standards of conduct that are required of Councillors. All Councillors are expected to abide by the standards of conduct and work to ensure that other Councillors uphold the standards of conduct.

STANDARD 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 –

- (a) Takes positive action to eliminate discrimination, sexual harassment, and victimisation in accordance with the *Equal Opportunity Act 2010*; and
- (b) Supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- (c) Does not engage in abusive, obscene, or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- (d) 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.

STANDARD 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 –

- (a) Undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- (b) Diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- (c) Is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (d) 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.

STANDARD 3 – COMPLIANCE WITH GOOD GOVERNANCE MEASURES

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following –

- (a) Any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors.
- (b) The Council expenses policy adopted and maintained by the Council under section 41 of the Act.
- (c) The Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act.
- (d) Any directions of the Minister issued under section 175 of the Act.

STANDARD 4 – A COUNCILLOR MUST NOT DISCREDIT OR MISLEAD COUNCIL OR PUBLIC

- (a) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.
- (b) In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

STANDARD 5 – STANDARDS DO NOT LIMIT ROBUST POLITICAL DEBATE

Nothing in these standards is intended to limit, restrict, or detract from robust public debate in a democracy.

5 INTERNAL DISPUTE RESOLUTION

Councillors commit to working effectively together and developing good working relationships at all times, recognising that they have been elected to represent the best interests of the community.

Where appropriate, before commencing any formal referral process available under the Act, Councillors who are parties to a dispute, where unable to resolve interpersonal conflicts that adversely affect the operation of the Council agree to:

- Work together with openness and transparency;
- Remain courteous and respectful; and
- Seek assistance to resolve differences when required.

Dispute resolution procedures are not intended to:

- Resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council and Committee meetings; or
- Detract from a Councillors right to refer a matter pursuant to the Act.

An application for an internal resolution procedure cannot be made during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

There are two methods of internal dispute resolution: Internal Mediation and External Mediation.

5.1 INTERNAL MEDIATION

Where Councillors are in dispute and have been unable to resolve the dispute between themselves, they may request the Mayor to convene a meeting of the parties for Internal Mediation.

A dispute referred for Internal Mediation may relate to:

- (a) An interpersonal conflict between Councillors where the conflict is or is likely to affect the operations of the Council; or
- (b) An alleged contravention of the Councillor Code of Conduct.

A matter should not be referred to Internal Mediation, where the matter is about the Mayor (see clause 5.2).

5.1.1 INTERNAL MEDIATION PROCESS

- (a) Requests for Internal Mediation are to be put in writing to the Mayor and include:
 - i. The name of the other Councillor;
 - ii. The details of the dispute;
 - iii. Where the dispute relates to an alleged contravention of the Councillor Code of Conduct, specify the provisions of the Councillor Code of Conduct that are alleged to have been contravened;
 - iv. Include evidence in support of the allegation;
 - v. Name the Councillor appointed to be their representative where the request is made by a group of Councillors; and
 - vi. Be signed and dated by the applicant or the applicant's representative.

- (b) A copy of the written request is to be provided to the other party at the same time as it is provided to the Mayor.
- (c) The Mayor will:
 - i. Convene a meeting within five working days of an accepted request;
 - ii. Provide guidelines in advance to facilitate the meeting; and
 - iii. Arrange for the documentation of any agreement reached at the end of the meeting.

The Mayor is not required to convene an Internal Mediation if the dispute is considered to be frivolous or vexatious. Frivolous or vexatious means a complaint that is without merit, and/or has been brought with the primary intent or harassing or discrediting another Councillor.

5.2 EXTERNAL MEDIATION

- (a) Following Internal Mediation, a Councillor or a group of Councillors may make an application for a dispute to be referred for External Mediation in circumstances where:
 - i. An Internal Mediation process has been attempted and has failed; or
 - ii. The matter involves the Mayor.
- (b) A written application for External Mediation is to be submitted in writing to the Mayor, or if the complaint relates to the Mayor, the Chief Executive Officer, and include:
 - i. The name of the other Councillor;
 - ii. The details of the dispute;
 - iii. The date of Internal Mediation and the outcome of Internal Mediation;
 - iv. Where the matter relates to an alleged contravention of the Councillor Code of Conduct, specify the provisions of the Councillor Code of Conduct that is alleged to have been contravened;
 - v. Include evidence in support of the allegation;
 - vi. Name the Councillor appointed to be their representative where the request is made by a group of Councillors; and
 - vii. Be signed and dated by the requestor or the requestor's representative.
- (c) A copy of the written request is to be provided to the other party at the same time as it is provided to the Mayor or the Chief Executive Officer.
- (d) The Chief Executive Officer will:
 - i. Engage the services of an external mediator and convene a meeting within one month.
 - ii. Advise the applicant, the other Councillor and Mayor of the mediator and the date and time of the meeting.
- (e) The mediator will:
 - i. Provide independent, impartial mediation services.

- ii. Will document any agreement made as part of the mediation and provide to the parties involved.

5.3 OUTCOMES FROM DISPUTE RESOLUTION

Following either Internal Mediation or External Mediation, Councillors acknowledge that the following outcomes are possible and agree to be bound by them. Following dispute resolution, the Mayor may:

- Ask any Councillor to give an apology; and/or
- Refer the Councillor for further training and development.

5.4 DISPUTE RESOLUTION UNDER THE ACT

Nothing in this clause prevents a Councillor from referring alleged conduct or misconduct to the Principal Councillor Conduct Officer as provided for under the Act.

6 OTHER MATTERS

6.1 HANDLING AND USE OF CONFIDENTIAL AND PERSONAL INFORMATION

Councillors must ensure that they manage confidential information in accordance with the Act and the Governance Rules, including the prohibition against unlawful disclosure in section 125.

Any Councillors with access to personal or health care information, must ensure that it is managed in accordance with the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*.

6.2 CONFLICT OF INTEREST

Councillors must ensure that they understand and comply with the provisions in Part 6, Division 2 of the Act relating to conflicts of interest.

6.3 COMPLIANCE WITH LEGISLATIVE POLICY

Councillors must ensure that they comply with legislative policies adopted by Council pursuant to the Act and as amended, including but not limited to:

- Council expenses policy in relation to the reimbursement of out-of-pocket expenses for Councillors and members of delegated committees pursuant to section 41;
- Policies, practices and protocols that support arrangement for interaction between members of Council staff and Councillors pursuant to section 46(3)(d);
- Governance Rules pursuant to section 60;
- An election period policy pursuant to section 69; and
- Councillor gift policy pursuant to section 138.

6.4 COMPLIANCE WITH COUNCIL POLICY AND LEGISLATION

Councillors must also ensure that they comply with any applicable legislation that applies, including but not limited to:

- *Work Health and Safety Act 2011;*
- *Public Interest Disclosures Act 2012;*
- *Independent Broad-based Anti-corruption Commission Act 2011; and*
- Anti-discrimination legislation under both Commonwealth and State legislation.

Councillors must ensure that they comply with applicable policies adopted by the Council and as amended, including but not limited to policies addressing:

- Communications and media;
- Use of Council resources and facilities; and
- Health and wellbeing in the workplace.

6.5 FRAUD AND CORRUPTION

Councillors must ensure that they understand and comply with the obligations and expectations of public officials regarding fraud and corruption with the *Independent Broad-based Anti-corruption Commission Act 2011* and the *Public Interest Disclosures Act 2012*.

7 COUNCILLOR CONDUCT AND LEGISLATIVE OBLIGATIONS

Councillors must ensure that they comply with the provisions under the Act in relation to Councillor conduct and those provisions which are offence provisions.

Offence provisions under the Act include, but are not limited to:

- Misuse of position pursuant to [section 123](#);
- Directing a member of Council staff pursuant to [section 124](#);
- Disclosure of confidential information pursuant to [section 125](#);
- Failure to disclose and manage a conflict of interest pursuant to [section 130](#); and
- Electoral offences pursuant to [division 9 of part 8](#).

8 COUNCILLOR MISCONDUCT

Under the Act, there are three categories of Councillor misconduct: misconduct, serious misconduct, and gross misconduct. These are defined in [section 3](#) of the Act.

Misconduct by a Councillor means *any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct*.

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;*

- (b) *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 a Councillor Conduct Panel under section 167(1)(b);*
- (f) *Bullying by a Councillor of another Councillor or member of Council staff;*
- (g) *Conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or 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; and*
- (j) *The failure by a Councillor to disclose a conflict of interest and to exclude themselves from decision making process when required to do so in accordance with this Act.*

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.*

Each type of conduct is addressed separately.

8.1 MISCONDUCT - INTERNAL ARBITRATION PROCESS

Allegations of misconduct are addressed in accordance with the Act and in particular sections 141 to 147.

8.2 SERIOUS MISCONDUCT – COUNCILLOR CONDUCT PANEL

Allegations of serious misconduct are addressed in accordance with the Act and in particular sections 154 to 170.

8.3 GROSS MISCONDUCT – VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

Allegations of gross misconduct are addressed in accordance with the Act and in particular sections 171 to 173.

9 REVIEW OF COUNCILLOR CODE OF CONDUCT

In accordance with section 140 of the Act the Council may review or amend the Councillor Code of

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Conduct at any time. The 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.