

Hobsons Bay Councillor Code of Conduct

2021 Version 1.0 – February 2021



Code Details

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| Title | Hobsons Bay Councillor Code of Conduct |
| Date of Adoption by Council | 22 February 2021 |
| Date of Review and Adoption | Within the period of four months after a general election |
| Responsible Director | Director Corporate Services |
| Responsible Department | Governance and Information Management |
| Legislative Context | <p>Section 139 of the <i>Local Government Act 2020</i> requires a council to develop a Councillor Code of Conduct and sets out the requirements of a Code of Conduct as follows:</p> <ol style="list-style-type: none"> (1) A Council must develop a Councillor Code of Conduct. (2) 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. (3) A Councillor Code of Conduct— <ol style="list-style-type: none"> (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) may include any other matters which the Council considers appropriate, other than any other standards of conduct. (4) A Council must review and adopt the Councillor Code of Conduct within the period of 4 months after a general election. (5) A Council must adopt the Councillor Code of Conduct under subsection (4) 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. |

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| | <p>(6) Until a Council adopts a Councillor Code of Conduct under subsection (4), the Councillors must comply with the existing Councillor Code of Conduct.</p> <p>(7) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act (including the <i>Charter of Human Rights and Responsibilities Act 2006</i>) or regulation.</p> |
| <p>Victorian Charter of Human Rights and Responsibilities Act 2006</p> | <p>In developing this procedure, the subject matter has been considered to determine if it raises any human rights issues. In particular, whether the scope of any human right established under the Victorian <i>Charter of Human Rights and Responsibilities Act 2006</i> is in any way limited, restricted or interfered with by the contents of this policy.</p> <p>It is considered that the Councillor Code of Conduct is consistent with the rights outlined in the Charter. The human rights most relevant to these procedures are the rights to:</p> <ul style="list-style-type: none"> • recognition and equality before the law (section 8) • life (section 9) • protection of privacy and reputation (section 13) • freedom of thought, conscience, religion and belief (section 14) • freedom of expression (section 15) • protection of families and children (section 17) |
| <p>Related Policies</p> | <ul style="list-style-type: none"> • Child Safe Policy • Complaint Handling Policy • Councillor and Staff Interaction Policy • Hobsons Bay Council Support and Expenses Policy • Hobsons Bay Governance Rules • Hobsons Bay Media Policy • Hobsons Bay Privacy Policy • Election Period Policy • Gifts, Benefits and Hospitality Policy • Information (Access and Use) Policy • Records Management Policy |

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1 INTRODUCTION

The Hobsons Bay Councillor Code of Conduct 2021 (the Code) is made under section 139 of the *Local Government Act 2020* (the LG Act). It includes the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors.

Section 139 of the LG Act requires a council to review and adopt a Councillor Code of Conduct within a period of four months after a general election. Outside of an election, a council may review and amend its Councillor Code of Conduct at any time.

The Councillor Code of Conduct must include:

1. The standards of conduct prescribed by the regulations
2. Any provisions prescribed by the regulations
3. Provisions addressing any matters prescribed by the regulations
4. Any other matters which the Council considers appropriate

A Councillor Code of Conduct must be made or amended by a formal resolution of Council at a meeting by at least two thirds of the total number of Councillors elected to Council. For Hobsons Bay City Council this means that at least five out of seven Councillors must vote in favour of the motion to adopt or amend the Councillor Code of Conduct.

Failure by a Councillor to comply with the standards of conduct prescribed in this Code constitutes misconduct for the purposes of the LG Act. The LG Act provides for a range of sanctions that an arbiter may impose upon Councillors for misconduct.

Failure to comply with Council's internal arbitration process or to comply with a sanction directed by an arbiter amounts to serious misconduct. Continued or repeated misconduct after an initial finding will also amount to serious misconduct.

2 PURPOSE AND COMMITMENT

At Hobsons Bay City Council, the elected Councillors are committed to working together in the best interests of the people within the Hobsons Bay municipality, observing the highest standard of behaviour, and discharging their responsibilities to the best of their skill and judgment.

As part of this commitment, all Councillors will adhere to conduct principles, values and behaviours outlined in the Code. A commitment to working together constructively will enable the achievement of Hobsons Bay's vision in a manner that is consistent with its core values.

Councillors are committed to the standards of conduct outlined in this Code.

The Code sets out:

1. The Councillor Charter
2. The standards of conduct
3. Dispute resolution processes

Part 1 Councillor Charter

1 KEY ROLES AND RESPONSIBILITIES

1.1 Roles

An understanding and agreement of the different roles within Council helps achieve good governance. The key roles are outlined below.

Hobsons Bay City Council comprises seven Councillors who are democratically elected by the community in accordance with the LG Act 2020.

The primary role of Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. Council must perform its role in accordance with the overarching governance principles.

Section 9 Overarching governance principles and supporting principles

- (1) A Council must in the performance of its role give effect to the overarching governance principles.
- (2) The following are the overarching governance principles—
 - (a) Council decisions are to be made and actions taken in accordance with the relevant law;
 - (b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
 - (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
 - (d) the municipal community is to be engaged in strategic planning and strategic decision making;
 - (e) innovation and continuous improvement is to be pursued;
 - (f) collaboration with other Councils and Governments and statutory bodies is to be sought;
 - (g) the ongoing financial viability of the Council is to be ensured;
 - (h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
 - (i) the transparency of Council decisions, actions and information is to be ensured.
- (3) 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;
 - (e) the service performance principles

1.2 Councillor/organisation relationship

Council consists of democratically elected Councillors (the electoral arm) and the organisation/staff (the operational arm).

Good governance is dependent on how well the relationship between the elected members and the organisation works, as well as mutual respect and understanding between Councillors and officers in relation to their respective roles, functions and responsibilities.

Councillors need to be aware of the requirements of section 124 of The LG Act and must not intentionally direct, or seek to direct, a member of Council staff in the exercise of their duties. This provision also applies in respect of officer reports presented to Council and on directing staff under delegation or as an authorised officer. It is important to note that section 124 applies to Councillors even when acting in a group outside formal Council or delegated committee meetings such as at Councillor briefings.

To achieve good governance, clear and effective communication protocols for Councillors and Council staff are essential. In accordance with the Hobsons Bay Councillor and Staff Interaction Policy, the following applies to the relationship between Councillors and staff:

- acknowledgement that the Chief Executive Officer (CEO) is responsible for all administrative and staff matters and that all staff are answerable to the CEO, and therefore Councillors' primary point of communication should be with the CEO
- Councillors will refrain from using their position to improperly influence members of staff in their duties or functions, or to gain an advantage for themselves or others
- Councillors will treat staff in a professional and respectful manner at all times
- Councillors will provide and maintain a working environment that is safe and without risks to health and take appropriate measures to eliminate discrimination, sexual harassment or victimisation so far as is reasonably practicable
- Councillors seeking information on a specific matter should do so via the CEO or the relevant Director in accordance with the Councillor and staff interaction protocols
- contact with Managers is appropriate where Councillors are seeking clarification or further specific information on a particular matter
- Councillors are to lodge resident or Councillor requests with the Executive Assistant to the Mayor and Councillors for logging into the appropriate system

1.3 Role of a Councillor

A Councillor's role is to represent and advocate on behalf of their community. They are a valuable link between the community and Council and are key to facilitating communication with the community and encouraging engagement with the activities of Council.

There is an expectation that Councillors will make decisions that will benefit and be in the best long-term interest of the whole community. Council has a statutory responsibility to represent all people who live, participate and invest within the municipality.

Councillors are responsible for establishing and maintaining the good governance of Council.

Councillors determine Council policies and set the strategic direction of Council. Councillors have a key advocacy and leadership role. Councillors appoint, manage and support the CEO of the organisation to deliver the strategic objectives of Council. The CEO is responsible for management and administration. The organisation is responsible for the implementation of Council policy and decisions, service delivery and providing professional advice to Councillors.

Councillors collectively, as a Council, have responsibility to:

1. Determine high level strategic directions, policy and service delivery programs
2. Facilitate and encourage the planning and development of the City
3. Advocate on behalf of the local community to various stakeholders and governments
4. Represent all citizens and create a viable and sustainable future
5. Undertake duties and responsibilities as authorised under The LG Act

Councillors should not be involved in the operational decisions of the organisation or its services and, in adherence to The LG Act, will not misuse their position to direct staff.

The Mayor, as the leader of Council, is required to provide guidance to Councillors in establishing and promoting appropriate standards of conduct.

The requirements of the role of a Councillor are outlined in section 28 of the LG Act.

Section 28 Role of a Councillor

- (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) support the role of the Council; and
 - (c) acknowledge and support the role of the Mayor; and
 - (d) act lawfully and in accordance with the oath or affirmation of office; and
 - (e) act in accordance with the standards of conduct; and
 - (f) comply with Council procedures required for good governance.
- (3) The role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer.

1.4 Role of the Mayor

The Mayor is the elected leader of Council. A key role of the Mayor is to facilitate good relationships between Councillors and between Councillors, the CEO and the Executive Leadership Team. The Mayor sets the tone and style of behaviour, practice and projection of Council working with, supporting and coordinating the team of Councillors.

The primary roles and responsibilities of the Mayor include:

Section 18 Role of Mayor

(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.

1.5 Role of the Deputy Mayor

The role of the Deputy Mayor is to give effective support to the Mayor and Councillors during the day-to-day function of Council.

The Deputy Mayor must undertake the role of the Mayor if:

- the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting
- the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness
- the office of Mayor is vacant

The Deputy Mayor will take responsibility for the internal resolution process when the matter relates to the Mayor.

1.6 Role of the Chief Executive Officer

The CEO has a number of statutory responsibilities and is accountable to the Mayor and Councillors for delivering Council's strategies and services. The CEO is responsible for the operations of Council and for providing professional, relevant and timely information and support to Council.

Section 46 of the LG Act identifies the functions of the CEO.

Section 46 Functions of the Chief Executive Officer

- (1) A 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 responsibility under section 46(1)(b) includes the following:

- ensuring that the decisions of Council are implemented without undue delay
- ensuring that Council receives timely and reliable advice about its obligations under the LG Act or any other Act
- supporting the Mayor in the performance of the Mayor's role as Mayor
- setting the agenda for Council meetings after consulting the Mayor
- when requested by the Mayor, reporting to Council in respect of the implementation of a Council decision
- carrying out Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the *Workplace Injury Rehabilitation and Compensation Act 2013*

Part 2 Councillor Conduct Standards

2 STANDARDS OF CONDUCT

The LG Act places obligations on Councillors in relation to way they should act. The Act also prohibits certain conduct by Councillors and prescribes penalties for Councillors who contravene these provisions.

The Councillor Conduct Framework is aimed at ensuring that Councillors conduct themselves in accordance with the standards expected. This includes the values and behaviours that Councillors collectively set and that are outlined in the Code.

Section 139 of the LG Act requires a Councillor Code of Conduct to include the standards of conduct prescribed by the regulations expected to be observed by Councillors.

The following standards of conduct are prescribed within Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020.

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.

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.

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 *Local Government Act 2020* 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 *Local Government Act 2020*;
- (c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the *Local Government Act 2020*;
- (d) any directions of the Minister issued under section 175 of the *Local Government Act 2020*.

4. Councillor must not discredit or mislead Council or public

- (1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.
- (2) 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.

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.

3 SPECIFIC COUNCILLOR CONDUCT OBLIGATIONS

3.1 Social media

Councillors need to ensure that the use of social media minimises exposure of Council and Councillors to legal and reputational risk.

When using social media Councillors need to have at the forefront of their minds their obligations under the Code. The Code applies to online activity in the same way it does to other written or verbal communications. This means three key things:

- 1. Be respectful
- 2. Be fair and open minded
- 3. Be accurate

3.2 Gifts, benefits or hospitality

Councillors should 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 secure favourable treatment. Councillors must be aware of their responsibilities relating to gifts, hospitality and donations. The Hobsons Bay Gifts, Benefits and Hospitality Policy provides further guidance on gifts, including prohibited gifts.

3.3 Conflict of interest

Each Councillor is required to identify, manage and disclose any conflicts of interest they may have. Councillors therefore recognise the importance of fully observing the requirements of the LG Act in regard to the disclosure of conflicts of interest and will comply with requirements of the LG Act in regard to conflicts of interest. Upon identifying a conflict of interest, Councillors will follow the procedures as set out in the LG Act.

In addition to the requirements of the LG Act, Councillors will:

1. Give early consideration and notify the Mayor as well as the CEO on whether a conflict of interest exists on any matter to be considered at a Council Meeting or briefing, delegated committee meeting or advisory committee meeting of which the Councillor is a member
2. Consider whether a conflict of interest exists
3. Recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual Councillor and that Council officers cannot offer any advice in relation to potential conflicts. If a Councillor cannot confidently say that a conflict of interest exists, the Councillor will declare a conflict of interest and comply with the relevant requirements as if they have a conflict of interest
4. Notify, as soon as possible, the Mayor or the Committee Chair if they consider that they are unable to vote on a matter because of a conflict of interest depending on whether the matter is to be considered by Council or a delegated committee

3.4 Use of Council resources

Councillors recognise the need to exercise appropriate prudence in the use of Council resources and to ensure that they are used solely in the public interest. This includes:

1. Maintaining appropriate security over Council property, facilities and resources provided to assist them in performing their role, and adhering to any guidelines or policies that have been established for the use of Councillor resources and facilities
2. Not using public funds or resources in a manner that is improper or unauthorised
3. Not using Council resources, including staff, equipment and/or intellectual property for electoral or other purposes
4. Ensuring that all expense claims are accurate, supported by the relevant documentation and strictly related to Council business

The Hobsons Bay Council Support and Expenses Policy provides further guidance on the use of Council resources.

3.5 Interacting with children and young people

Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Victorian Child Safe Standards and related legislation.

Councillors must be aware of their responsibilities outlined in Council's Child Safe Policy and be clear about processes for reporting and acting on concerns or reports of abuse or neglect of a child.

Councillors will respect, listen to and promote the rights of children and ensure behaviour and interactions with children are age appropriate, respectful and adhere to the behavioural expectations outlined in the Child Safe Standards.

4 IMPROPER CONDUCT

There are specific types of conduct that are expressly prohibited by the LG Act. Councillors acknowledge that, in many cases, a breach of a specific provision in the LG Act may be subject to prosecution in a court.

4.1 Misuse of position

Councillors acknowledge and agree to adhere to their responsibilities under section 123 of the LG Act.

Section 123 Misuse of position

- (1) A person who is, or has been, a Councillor or member of a delegated committee must not intentionally misuse their position—
 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.
- (2) An offence against section 123(1) is an indictable offence.
- (3) For the purposes of this section circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a delegated committee include—
 - (a) making improper use of information acquired as a result of the position the person held or holds; or
 - (b) disclosing information that is confidential information; or
 - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff; or
 - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that the person is not authorised to exercise or perform; or
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) participating in a decision on a matter in which the person has a conflict of interest.

(4) This section–

- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of delegated committees; and
- (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

4.2 Directing a member of Council staff

Councillors must not use their position to influence Council staff in the performance of their public or professional duties or to obtain a private benefit for themselves or for somebody else.

Councillors must not take advantage (or seek to take advantage) of their status or position with, or of functions they perform for, Council in order to obtain a private benefit for themselves or for any other person or body.

Councillors acknowledge and agree to comply with their obligations in regard to improper direction and improper influence in accordance with section 124 of the LG Act.

Section 124 Directing a member of Council staff

A Councillor must not intentionally direct, or seek to direct, a member of Council staff –

- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
- (b) 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
- (c) 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 another Act; or
- (d) in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee.

4.3 Confidential information

Councillors have access to Council information necessary for them to carry out their roles properly. However, a Councillor must remain impartial and must not use Council information to gain advantage for themselves or any other person. Information is confidential for the purposes of the LG Act if it is:

1. Provided for a closed Council or delegated committee meeting
2. Designated confidential by resolution of a Council or delegated committee
3. Designated confidential by the CEO including the items discussed at all Councillor Briefing Sessions

Information discussed at a closed meeting is confidential. Unless the information is already publicly available, Councillors must not talk about anything discussed at the meeting with people who were not present, in accordance with section 125 of the LG Act.

Part 3 Dispute Resolution

5 COUNCILLOR DISPUTE RESOLUTION PROCEDURE

Councillors have an individual and collective responsibility to try every avenue possible to resolve such disputes in-house before allowing them to escalate further.

This dispute resolution procedure is intended to be used:

1. When Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council
2. To manage complaints or concerns regarding the behaviour of Councillors from the public or Council staff

It is not intended to resolve differences in policy or decision making, which are appropriately resolved through discussion and voting in Council and committee meetings.

Where the dispute arises from a complaint generated by a member of the public or Council staff, access to the dispute resolution process under this Code is only possible where a Councillor or group of Councillors takes up the complaint about another Councillor on behalf of the complainant.

Hobsons Bay City Council's grievance resolution procedure comprises three components:

1. Self resolution
2. Mayoral negotiation
3. External mediation

5.1 Self resolution

Councillors must take personal responsibility and endeavour to resolve their differences in an informal, but at all times courteous and respectful, manner, recognising that they have been elected to represent the best interests of the community.

5.2 Mayoral negotiation

If the informal self resolution process between the Councillors is unsuccessful, the Mayor should be involved as soon as practically possible to convene a meeting of the parties.

A dispute referred for mayoral negotiation may relate to:

- an interpersonal conflict between Councillors where the conflict is affecting or is likely to affect the operations of Council
- an alleged contravention of the Code

The party requesting the mayoral negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a "mayoral negotiation" dispute resolution process.

Where the request relates to an alleged contravention of the Code, the request must:

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code alleged to have been contravened
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the request is made by a group of Councillors
- be signed and dated by the requestor or the requestor's representative

Within five working days of receipt of the complaint, the Mayor will:

- provide written acknowledgement of receipt of the complaint to the complainant
- provide a copy of the complaint to the Councillor concerned
- attempt to facilitate a resolution and convene a meeting

The Mayor may call upon the Councillor Conduct Officer (CCO)¹ for advice and guidance at this point in the process.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor, including in relation to the role of a Councillor under section 28 of the LG Act, the observation of the Councillor standards of conduct and the Code.

The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the parties should progress to external mediation.

Dispute between Councillors and the Mayor

In the event that the dispute involves the Mayor, the Deputy Mayor or another Councillor nominated by Council resolution will perform the role of the Mayor in facilitating discussions between the parties in dispute and liaising with the CCO.

5.3 External mediation

If reconciliation of the dispute is not possible after mayoral negotiation, it is the responsibility of the Mayor to seek assistance from an external mediator to resolve the dispute, preferably with the

¹ The appointed Councillor Conduct Officer is the Director Corporate Services and the Acting Councillor Conduct Officer is the Manager Corporate Integrity (Legal Counsel)

active support of the parties to the dispute, who must be informed of such a decision in any circumstance.

A Councillor or a group of Councillors may make an application for a dispute to be referred for external mediation whether or not the dispute has been the subject of an application for self-resolution.

The applicant is to submit a written application to the CCO setting out the name of the Councillor and the details of the dispute. The application is to indicate that the application is for an “external mediation”. Where the application relates to an alleged contravention of the Code, the application must:

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code alleged to have been contravened
- include evidence in support of the allegation
- name the Councillor appointed to be their representative where the application is made by a group of Councillors
- be signed and dated by the applicant or the applicant’s representative

The applicant is to notify the other party of the request and provide the Councillor with a copy of the application either at the same time that it is submitted to the CCO or as soon as practicable thereafter.

The CCO is to ascertain in writing whether or not the other party is prepared to attend an external mediation. If the other party declines to participate in an external mediation, the Councillor is to provide their reasons for doing so in writing to the CCO. These reasons may be taken into account if the matter is subsequently the subject of an application for a Councillor Conduct Panel.

When the other party declines to participate in an external mediation, this does not constitute a contravention of this Code.

If the other party agrees to participate in an external mediation, the CCO is to advise the applicant, the Mayor and CEO immediately.

The CCO is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity.

The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the applicant has recourse to the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Part 4 Breaches of the Prescribed Standards of Conduct

6 INTERNAL ARBITRATION PROCESS

Section 141 Internal Arbitration Process

- (1) The internal arbitration process applies to any breach of the prescribed standards of conduct.
- (2) The following applies to an internal arbitration process—
 - (a) any processes prescribed by the regulations, including any application process;
 - (b) the arbiter must ensure that parties involved in internal arbitration process are given an opportunity to be heard by the arbiter;
 - (c) the arbiter must ensure that a Councillor who is a party to an internal arbitration process does not have a right to representation unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
 - (d) any requirements prescribed by the regulation

6.1 Making an application

An application for an internal arbitration process to make a finding of misconduct against a Councillor may be made under section 143 of the LG Act by:

- Council following a resolution of Council
- a Councillor or a group of Councillors

An application under section 143 of the LG Act must be made within three months of the alleged misconduct occurring.

The application must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c).

The prescribed process for an application for internal arbitration must include:

- the name of the Councillor alleged to have breached the standards of conduct
- the clause of the standards of conduct that the Councillor is alleged to have breached
- the misconduct that the Councillor is alleged to have engaged in that resulted in the breach
- after receiving an application under section 143 of the LG Act, the CCO provides the application to the Councillor who is the subject of the application

An arbiter appointed to hear a matter subject to an application must:

1. Conduct the hearing with as little formality and technicality as the proper consideration of the matter permits
2. Ensure that the hearing is not open to the public

An arbiter:

1. May hear each party to the matter in person or solely by written or electronic means of communication
2. Is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit
3. May at any time discontinue the hearing if the arbiter considers that:
 - a) The application is vexatious, misconceived, frivolous or lacking in substance
 - b) The applicant has not responded, or has responded inadequately, to a request for further information

6.2 Principal Councillor Conduct Registrar must examine application

Section 144 Principal Councillor Conduct Registrar must examine application

- (1) The Principal Councillor Conduct Registrar, after examining an application under section 143, must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is 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 Councillor Code of Conduct as specified in the application.
- (2) The Principal Councillor Conduct Registrar must reject an application if the Principal Councillor Conduct Registrar is not satisfied under subsection (1)(a) or (b).
- (3) The rejection of an application by the Principal Councillor Conduct Registrar under this section does not prevent a further application being made under section 143 in respect of the same conduct by a Councillor that was the subject of the rejected application.

Section 145 General Provision

Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.

6.3 Arbiter must refer certain applications

Section 146 Arbiter must refer certain applications

- (1) 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 under section 154, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.
- (2) If the Principal Councillor Conduct Registrar receives a referral under subsection (1), the Principal Councillor Conduct Registrar must notify the parties to the application for an internal arbitration process that the matter has been referred by the arbiter.

6.4 Sanctions that may be imposed by an arbiter on finding of misconduct

Section 147 Sanctions that may be imposed by an arbiter on finding of misconduct

- (1) If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor.
- (2) If an arbiter has made a finding of misconduct against a Councillor, the arbiter may do any one or more of the following—
 - (a) direct the Councillor to make an apology in a form or manner specified by the arbiter;
 - (b) suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
 - (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
 - (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
 - (e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.
- (3) The arbiter must provide a written copy of the arbiter's decision and statement of reasons to—
 - (a) the Council; and
 - (b) the applicant or applicants; and
 - (c) the respondent; and
 - (d) the Principal Councillor Conduct Registrar
- (4) Subject to subsection (5), a copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting.
- (5) If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled under subsection (4).

7 REQUEST FOR COUNCILLOR CONDUCT PANEL

The Principal Councillor Conduct Registrar² manages the establishment of Councillor Conduct Panels.

All applications (supported with evidence) to establish a panel to hear allegations of misconduct or serious misconduct must go to the registrar. The panel must be established if the registrar is satisfied that the application is not frivolous or misconceived or lacking in substance, is supported by evidence and Council processes have been fully exhausted or are not appropriate.

² The registrar is appointed by the Secretary to the Department

Section 154 Application to Councillor Conduct Panel

- (1) A Councillor Conduct Panel may hear an application that alleges serious misconduct by a Councillor.
- (2) Subject to subsection (4), an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor may be made by—
 - (a) the Council following a resolution of the Council to make an application to a Councillor Conduct Panel under this subsection in respect of a Councillor's conduct; or
 - (b) a Councillor or a group of Councillors; or
 - (c) the Chief Municipal Inspector.
- (3) An application under subsection (2) must be made within 12 months of the alleged serious misconduct occurring.
- (4) An application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor that alleges that the Councillor has failed to disclose a conflict of interest may only be made by the Chief Municipal Inspector.
- (5) An application made under this section must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(n).
- (6) An application made under this section must—
 - (a) specify the ground or grounds for the application; and
 - (b) set out—
 - (i) the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting serious misconduct; and
 - (ii) the particulars of any evidence of those circumstances, actions or inactions of the Councillor that are alleged as constituting the serious misconduct; and
 - (c) specify—
 - (i) any steps taken by Council to resolve the matter that is the subject of the application and the reason why the matter was not resolved by the taking of those steps; or
 - (ii) if the Council did not take any steps to resolve the matter that is the subject of the application, the reason why the Council did not take any steps to resolve the matter.
- (7) If an application is made under this section 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.

Appendix 1 Additional Conduct Provisions

Further to the above statutory requirements, Councillors will obey the law, relevant regulations, policies and procedures including:

1. **Equal Opportunity Act 2010** – refrain from discriminating, harassing or bullying other people and using offensive language in their capacity as a Councillor
2. The **Charter of Human Rights and Responsibilities 2006** – act compatibly, give proper consideration and take human rights into account when making decisions
3. **Occupational Health and Safety Act 2004** (OH&S Act) – have regard to the principles of health and safety. Councillors have the status of employees under the OH&S Act and should ensure that they contribute to a healthy and safe workplace. Councillors should be particularly mindful of this in their interactions with Council officers
4. **Privacy & Data Protection Act 2014** (PDP Act) – recognise the requirements of the PDP Act and the **Hobsons Bay Privacy Policy** regarding access, use and release of personal information which also applies to Councillors as individuals
5. **Hobsons Bay Governance Rules** (incorporating the Election Period Policy) – provides guidelines for the election of the Mayor, the role of the Mayor, the procedures governing the conduct of Council Meetings and set the rules of behaviour for those participating in or present at Council Meetings, provides for Conflict of Interest declaration processes and conduct during an election period
6. **Councillor and Staff Interaction Policy** – provides clarity surrounding Councillor and staff obligations and responsibilities in dealings with each other, and supports the CEO in the discharge of obligations and responsibilities pursuant to the LG Act 2020
7. **Hobsons Bay Council Support and Expenses Policy** – provides guidelines in respect of administrative procedures and reimbursement of necessary out of pocket expenses incurred while performing duties as a Councillor or delegated committee member
8. **Gifts, Benefits and Hospitality Policy** – provides clear guidelines to ensure that Councillors, staff and contractors are not compromised in the performance of their duties by accepting gifts or benefits which may result in a sense of obligation or could be interpreted as an attempt to influence
9. **Hobsons Bay Media Policy** – management of media contact, and to ensure Council's corporate image is maintained and promoted. Outlines the role of the Mayor as principal spokesperson of Council.
10. **Information (Access and Use) Policy** – clarifies the rights of Councillors to access Council information and provides Councillors with a procedure for accessing and using Council information, including confidential information. The policy supports good governance and management practices.
11. **Records Management Policy** – recognises the regulatory recordkeeping requirements under the *Public Records Act 1973*. Information created by Councillors while acting in an official capacity as a Councillor, must be kept as a record and registered into the recordkeeping system.

COUNCIL ADOPTION

This Code of Conduct was adopted at the Unscheduled Council Meeting of the Hobsons Bay City Council held on 22 February 2021.

All Councillors made a written declaration witnessed by the CEO that they have read the Councillor Code of Conduct and declared to abide by the Code at all times.

Cr Jonathon Marsden
Mayor

Dated:

Cr Daria Kellander
Deputy Mayor

Dated:

Cr Tony Briffa JP

Dated:

Cr Peter Hemphill

Dated:

Cr Pamela Sutton-Legaud

Dated:

Cr Diana Grima

Dated:

Cr Matt Tyler

Dated:

Aaron van Egmond
Chief Executive Officer

Dated:

Version History

| Version Number | Date | Authorised By |
|----------------|------------------|----------------------|
| 1.0 | 22 February 2021 | Adopted by Council (|