

# Councillor Code of Conduct

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# 1. Purpose of the Councillor Code of Conduct and Definitions

## (a) Purpose of the Councillor Code of Conduct

This Councillor Code of Conduct 2016 (Code) addresses the statutory requirements set out in accordance with Section 76C of the *Local Government Act 1989* (the Act), namely it:

- includes Councillor Conduct Principles
- establishes a process for resolving disputes between Councillors; and
- includes other matters relating to the conduct of Councillors which Council considers appropriate

Within four months after each Council Election (or as otherwise required) Council will:

- call a special meeting solely for the purpose of reviewing the Councillor Code of Conduct; and
- at that special meeting, approve any amendments to be made to the Councillor Code of Conduct determined by Council to be necessary following the review of the Councillor Code of Conduct

From the 2016 Council elections, a person elected to be a Councillor is not capable of acting as a Councillor until the person has read the Councillor Code of Conduct and made a declaration stating that they will abide by the Councillor Code of Conduct. It is the personal responsibility of Councillors to ensure that they are conversant with, and comply with, the provisions of this Code.

A copy of this Code of Conduct (as amended from time to time) must be:

- given to each Councillor
- available for inspection at the council office and any district offices
- published on the Council's internet website

## (b) Definitions

Throughout this Code, there are key governance terms that are defined in the *Local Government Act 1989* (Act). While this Code does not override the provisions in the Act, standard definitions are helpful to provide guidance, particularly for Section 16, Internal Dispute Resolution.

**Bullying** by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or member of Council staff and that behaviour creates a risk to the health and safety of that Councillor or member of Council staff.

**Councillor Conduct Panel** means a panel of 2 people selected by the Principal Councillor Conduct Registrar under section 81V.

**Gross misconduct** by a Councillor 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.

**Misconduct** by a Councillor means:

- (a) Failure by a Councillor to comply with Council's internal resolution procedure;
- (b) Failure by a Councillor to comply with a written direction given by the Council under section 81AB
- (c) Repeated contraventions of the Councillor conduct principles

**Serious misconduct** by a Councillor means:

- (a) The failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor
- (b) The failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give
- (c) The failure of a Councillor to comply with a direction of a Councillor Conduct Panel
- (d) Continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel
- (e) Bullying of another Councillor or member of Council staff by a Councillor
- (f) Conduct by a Councillor in respect of a member of Council staff in contravention of section 76E
- (g) The release of confidential information by a Councillor in contravention of section 77

## 2. Introduction

This Code has three main aims, including:

- presenting an opportunity for Hobsons Bay to articulate what we mean by good conduct and good governance
- creating the standards to which Councillors must adhere
- clearly stating the processes to be followed, including the management of internal disputes and, as a last resort, the use of penalties

Councillors will use this Code, and other policies, protocols and practices to ensure the peace, order and good government of the municipal district of Hobsons Bay City Council.

This Code, which incorporates the statutory requirements specified for a Code of Conduct in accordance with section 76C of the Act, was first adopted by resolution of Council on 7 June 2016.

## 3. Ethical Behaviour & Hobsons Bay's Vision, Mission and Values

As Councillors, we acknowledge that ethical behaviour is consistent with what society and individuals typically think are good values. Ethical behaviours therefore include honesty, fairness, equality, dignity and respect for diversity.

Councillors also acknowledge that we are in positions of substantial responsibility. A key part of balancing these responsibilities is the need to accept that at times, our own views and ethics will be different from the views and ethics of some individuals in the community.

Where we work to strike an ethical balance in Council business, we commit to focussing on what may be in the overall best interests of the Hobsons Bay community – now and in the future.

At times this may conflict with what is in the current and future interests of some parts of the community. These situations will also arise as a result of Council's obligations to make decisions that embrace 'triple bottom line outcomes' of people, place (natural and built environments) and prosperity.

As Councillors, when confronted by challenges to our or others' ethics, we will focus on three key areas, including:

1. Moral – are we doing the right things in the Hobsons Bay community?
2. Legal – are we acting in accordance with all relevant laws?
3. Organisational – are we working in harmony with our Councillor and staff colleagues within the bounds of this Code and other relevant policies?

Finally, we acknowledge that the Vision, Mission and Values of the Hobsons Bay City Council provide important context and guidance in relation to ethical decision-making and Councillor behaviour.

**(a) Vision**

Council's overarching strategic document, the Municipal Health and Wellbeing Plan - 2013-17 describes the organisational Vision, created as a result of extensive community research, as follows:

*Valuing the wellbeing of our people and our place, now and into the future:*

*A safe, clean, accessible and connected municipality, which values diversity, protects its heritage and environment, fosters a strong sense of community and provides opportunities to achieve the best possible health and wellbeing.*

*A place that people are proud to call home.*

**(b) Mission**

The Council Plan 2013-17, the key strategic document to guide the work of the organisation toward achieving that Vision, describes the organisational Mission as follows:

*Working with our community to plan, deliver and advocate for the services and infrastructure that will achieve a healthy, connected and sustainable future in Hobsons Bay.*

**(c) Principles we will uphold in carrying out our Mission**

The Council Plan also articulates the following:

- *uphold Human rights and social justice*
- *provide equitable access to services, infrastructure and economic opportunities*
- *enhance the environmental sustainability of the city*
- *provide accountable, transparent, well-informed governance for the benefit of the community*
- *work in partnership with service providers and other levels of government to advocate for, and meet, community needs*
- *be an organisation that is innovative, proactive, financially sound and strives to improve*
- *inform, listen to and engage with communities*

**(d) Goals**

The Community Health and Wellbeing Plan and Council Plan were developed following an extensive program of consultation and research that identified four key goals to drive the Council’s action planning.

1. *An Inclusive, Resilient and Healthy Community*
2. *A Well Planned, Vibrant and Sustainable Place*
3. *Quality Community Infrastructure and Public Open Spaces and Places*
4. *An Innovative, Proactive and Leading Organisation*

**(e) Values and Principles of Behaviour**

Adoption of this Code of Conduct also signifies affirmation by each Councillor of the following values and behaviours as those that are necessary to achieve the Goals, Mission and Vision of the organisation.

- Honesty**
- *being upfront*
  - *open disclosure and avoiding hidden agendas*
- Trust**
- *no surprises*
  - *keeping our promises*
- Integrity**
- *being fair*
  - *not taking short cuts*
  - *leading by example*
  - *willingness to contribute*
- Collaboration**
- *visiting “the coal face” on a regular basis to stay in touch with our community*
  - *being inclusive and not excluding people*
  - *responding to feedback*
  - *fostering productive relationships*
  - *not undermining decisions of the Council*
- Respect**
- *maintaining clarity of roles*
  - *avoiding personal comments and accusations*
- Accountability**
- *being personally accountable for our actions*
  - *honouring our commitments*
  - *working collegiately*

## 4. Role of Council, Councillors and the Mayor

### (a) Role of Council

As the elected leaders of Hobsons Bay City Council, Council plays two key roles – the first being leadership, and the second being to ensure good governance. Council's role, as defined by the Act includes:

- acting as a representative government by taking into account the diverse needs of the local community in decision making
- providing leadership by establishing strategic objectives and monitoring their achievement
- maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner
- advocating the interests of the local community to other communities and governments
- acting as a responsible partner in government by taking into account the needs of other communities
- fostering community cohesion and encouraging active participation in civic life

### (b) Role of Councillors

As defined by the Act the role of a Councillor is:

- to participate in the decision-making of the Council
- to represent the local community in that decision-making
- 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

In performing the role of a Councillor, a Councillor must:

- give consideration to the diversity of interests and needs of the local community
- observe principles of good governance and act with integrity
- contribute to the Council's strategic direction through development and review of key strategic documents of the Council
- provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under the *Local Government Act 1989* and other Acts
- participate in the responsible allocation of Council resources through the annual budget
- facilitate effective communication between the Council and the community

Legal authority as Councillors only exists when we are participating, as members of the Council, in a formal Council Meeting to make decisions, and we acknowledge that outside of the Council Meeting, as individual Councillors we have no such authority to make decisions.

As individual Councillors we agree to:

- represent our communities
- advocate on a broad range of issues
- maintain good working relationships with other levels of government, non-government, community groups and the private sector
- attend community functions
- facilitate community participation, and
- promote community development

As a collective, Council will work together to:

- set service standards and priorities, and monitor the performance of the organisation
- plan strategies for the whole municipality and a sustainable future
- determine financial strategies, including the allocation of resources via the Council Budget
- oversee the management of community assets
- monitor the performance and employment of the Chief Executive Officer

As Councillors, we will rely on the cooperation and support of our fellow Councillors, as well as Council staff, to achieve our goals.

### **(c) Role of the CEO in staffing matters**

Councillors acknowledge that their roles do not include any of the functions of the Chief Executive Officer as set out in section 94A of the Act:

1. The Chief Executive Officer is responsible for:
  - (a) Establishing and maintaining an appropriate organisational structure for the Council
  - (b) Ensuring that the decisions of the Council are implemented without undue delay
  - (c) The day to day management of the Council's operations in accordance with the Council Plan
  - (d) Developing, adopting and disseminating a code of conduct for Council staff
  - (e) Providing timely advice to the Council
  - (f) Ensuring that the Council receives timely and reliable advice about its legal obligations under the *Local Government Act 1989* and any other Act
  - (g) Supporting the Mayor in the performance of the Mayor's role
  - (h) Carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the *Accident Compensation Act 1985* or the *Workplace Injury Rehabilitation and Compensation Act 2013*
  - (i) Performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act
2. The Chief Executive Officer may appoint as many members of Council staff as are required to enable the functions of the Council under the *Local Government Act 1989* or any other Act to be carried out and to enable the Chief Executive Officer to carry out his or her functions
3. The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff
4. The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors
5. A reference to Council staff in this section does not include a reference to the Chief Executive Officer

Council acknowledges that the CEO's role encompasses all staffing matters including the appointment of as many members of Council staff as required to enable the functions of Council and the CEO to carry out their functions. Council also notes that the CEO's staffing role is subject to sections 94B, 94C and 94D of the Act.

Council appreciates that while their role is to set the Council Budget each year, and not to direct the CEO in relation to individual staffing matters any significant staffing variations such as new appointments and related savings would ideally be flagged with them prior to any significant changes being made.

## **(d) Roles of Mayor**

### **As Leader of the Council**

The Mayor is the leader of Council, and has a number of legislated roles in section 73AA of the Act including:

- providing guidance to Councillors about what is expected of a Councillor including the obligations and responsibilities of a Councillor
- acting as the principal spokesperson for the Council
- supporting good working relations between Councillors
- carrying out the civic and ceremonial duties of the office of Mayor

Civic and ceremonial duties of the Mayor include official events held by Council or others (such as other governments, community organisations, schools or business organisations) for celebratory, ritual, commemorative or planning purposes.

At Hobsons Bay, while there are some civic and ceremonial duties which require the Mayor to play a representational and/or presiding role, the Mayor may delegate those roles to another Councillor, except in the case of Citizenship Ceremonies where the role reverts to the Deputy Mayor or alternatively the CEO.

As our community leader and advocate, the Mayor also performs a number of conventional and functional roles including:

- championing the adopted policies and decisions of Council
- advocating for the wellbeing of the Hobsons Bay community
- attending community functions, and if invited presiding at these functions
- promoting community development and engagement
- maintaining productive relationships with key stakeholders such as other governments, local community organisations and peak bodies as well as the business sector

In addition the Mayor will:

- represent the position of Council consistent with the balanced view of the Council as a whole
- ensure that conflict is considered without favour and that there is respect shown for diverse views

### **Taking precedence at Council Meetings**

Another of the Mayor's major roles is to take precedence at all municipal proceedings, including taking the Chair at all meetings of Council at which the Mayor is present. However, the Mayor may from time to time delegate certain tasks to other Councillors as required.

The Mayor is responsible for the orderly conduct of Council meetings through the Meeting Procedure and Common Seal Local Law 2015, and will:

- preside efficiently, firmly and fairly over Council Meetings
- promote high standards of democratic governance and internal governance
- encourage a high standard of debate on issues before Council
- guide meetings to ensure respectful conduct at all times
- facilitate participation of all Councillors
- exercise the casting vote where a Council vote is tied

## **Promoting collaborative working relationships**

As well as presiding at meetings, the Mayor also plays the critical leadership role of promoting good working relationships. The Mayor does this by setting high standards for relationships between themselves and all others. This includes relationships:

- between the Mayor and the CEO
- between the Mayor and Councillors, and among Councillors collectively
- between the Council and the CEO
- between Councillors and Council staff where appropriate
- ensuring that conflict is considered without favour and that there is respect each other's diverse views

Additionally, the Mayor, in collaboration with the CEO, facilitates and works to resolve disputes internally, as otherwise outlined and discussed in this Code.

### **(e) Roles of staff and relationship with Councillors**

Good governance at Hobsons Bay relies on everyone being clear about their roles, and about the need for constructive and professional relationships at all times.

The highest level of teamwork occurs when Councillors and Council staff have a mutual respect for each other's roles and responsibilities. This mutual respect creates the necessary co-operation required for Council to achieve its plans.

Council's role is to discuss and decide on the high-level vision, and then the strategies and policies to achieve this vision. Council staff advise Council, implement Council decisions and oversee service delivery.

Given the unique governance setting of the local government sector, these roles can often overlap. It is therefore important that Council staff recognise the complex political environment in which Councillors operate. Likewise, it is important for Councillors to understand that it is a highly complex task to prepare information and provide quality advice on a very wide range of issues.

Where uncertainty or conflict arises from this overlap, the policies and practices contained in this Code and incorporated policies will be followed to reach a mutual understanding.

This Code supports the aforementioned legislated powers of the CEO to manage all staffing matters. As a result, we agree that we will:

- respect the role of Council staff and treat them in a way that builds mutual respect at all times. We expect the same treatment in return, as required by Hobsons Bay's Employee Code of Conduct
- observe the Chief Executive Officer, Councillor and Staff Interaction Protocol and other relevant protocols and policies. These protocols and policies aim to provide clear and effective communication guidelines between Councillors and Council staff, ensuring both act with courtesy and avoid intimidating behaviour
- respect and support the role of the CEO to provide Council with timely and reliable advice about its legal obligations under the *Local Government Act 1989* or any other Act
- we have no capacity to individually direct members of staff to carry out particular functions, or exercise powers or discretions in any particular way
- refrain from using our positions as Councillors to improperly influence members of staff in their duties or functions, or to gain an advantage for ourselves or others
- not inappropriately influence the written reports or recommendations of staff

Council also supports the CEO's other legislated powers to promote good working relationships between Councillors and Council staff, including:

- supporting the Mayor in the performance of his or her role
- performing any other function specified in the *Local Government Act 1989* or any other Act
- managing interactions between Council staff and Councillors

The CEO, Councillors and staff will manage their relationships in accordance with all relevant policies and practices contained in this Code. Council particularly acknowledges the importance of the Chief Executive Officer, Councillor and Staff Interaction Protocol.

## 5. Councillor Conduct Obligations and Interests

As well as complying with this Code and supporting policies, there is legislative guidance about Councillor Conduct and Interests in Division 1A of Part 4 of the Act which outlines how Councillors should conduct themselves on Council.

### (a) Primary Principle of Councillor Conduct (S76B)

It is a primary principle of Councillor Conduct that, in performing the role of a Councillor, a Councillor must comply with section 76B and 76BA of the Act which states that a Councillor must:

- act with integrity
- impartially exercise his or her responsibilities in the interests of the local community
- not improperly seek to confer an advantage or disadvantage on any person

### (b) Additional Principles Of Councillor Conduct (S76BA)

In performing the role of a Councillor, a Councillor must:

- (a) Avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations
- (b) Act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person
- (c) Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons
- (d) Exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office
- (e) Endeavour to ensure that public resources are used prudently and solely in the public interest
- (f) Act lawfully and in accordance with the trust placed in him or her as an elected representative
- (g) Support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor

Councillors are required to conduct themselves in observance of the primary principle and the general principles. We undertake to do this.

### (c) Misuse of Position (S76D)

In accordance with section 76D of the Act, a person who is, or has been, a Councillor or member of a special committee must not misuse his or her position:

- (a) To gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person

(b) To cause, or attempt to cause, detriment to the Council or another person

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 special committee include:

- (a) Making improper use of information acquired as a result of the position they held or holds; or
- (b) Disclosing information that is confidential information within the meaning of section 77(2); or
- (c) Directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
- (d) Exercising or performing, or purporting to exercise or perform, a power, duty or function that they are not authorised to exercise or perform; or
- (e) Using public funds or resources in a manner that is improper or unauthorised
- (f) Failing to disclose a conflict of interest as required under this Division

**(d) Improper direction and improper influence (S76E)**

A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff, in the exercise of any power or in the performance of any duty or function by the staff member.

## 6. Additional Principles for Councillor Behaviours and Obligations

As well as the Primary and Additional Principles of Councillor Conduct outlined in the Act, Councillors also affirm their support for the following additional principles of Councillor behaviour and obligations. As such, we agree to:

- (a) Comply with all relevant federal, state and local laws
- (b) Maintain ethical and professional standards and exercise reasonable care and diligence in their duties
- (c) Treat all matters on their individual merits
- (d) Practice and support the important 'no surprises' good governance rule
- (e) Always act with impartiality and in the best interests of the community as a whole
- (f) Punctually attend Council, Committee and Assembly Of Councillor Meetings where possible
- (g) Actively participate in the decision making processes, except when an apology or leave of absence is granted
- (h) Adopt a positive attitude to teamwork, including treating our fellow Councillors with respect, even when disagreeing with their views or decisions
- (i) Support and communicate with each other in our Councillor, Ward Councillor and Council and Community Committee delegate roles
- (j) Not direct another Councillor on how to vote
- (k) Maintain proper standards of dress and decorum, along with a high standard of public propriety
- (l) Be informed about the processes and strategic functions of Council
- (m) Avoid situations that might create a conflict between our public and private roles
- (n) Keep the community informed about the activities and plans of Council and report on a regular basis
- (o) Act in a reasonable and fair way and in a manner which is not discriminatory on the basis of gender, religion, race or contrary to the *Equal Opportunity Act 1995*
- (p) Treat all members of the community honestly, fairly and with dignity and in a way which does not cause offence or embarrassment to individuals or groups

- (q) Ensure the security of confidential information
- (r) Make no commentary on confidential information to the media or any member of the public until Council determines the matter is no longer confidential
- (s) Undertake professional development
- (t) Act in ways that do not damage Council or its ability to exercise good governance
- (u) Refrain from any partisan political activities which would impair performance or be in conflict with our duties as Councillors

**(a) Personal dealings with Council**

When we deal with our Council in our private capacity (e.g. as a ratepayer, recipient of a Council service or applicant for a permit) we do not expect nor will we request preferential treatment in relation to any such private matter. We will avoid any action that could lead Council staff or members of the public to believe that we are seeking preferential treatment.

## 7. Conflict of Interest

Conflict of interest is about being transparent. Understanding what this means in the context of a Councillor’s role is essential to ensure good governance and to giving our community the confidence it expects in its Councillors.

In our respective roles as elected representatives we have been entrusted to govern on behalf of the whole the Hobsons Bay community. Councillors therefore acknowledge that we will always be aware of the potential for any actual, as well as any perceived, conflict of interest.

In particular, we note the Ombudsman’s definition that:

*A conflict exists in any situation where a public official could be influenced, or could be reasonably perceived by an outside observer to be influenced, by a private interest when performing an official function.*

We will ensure we do not gain personal benefit from our positions, whether or not a matter is before us for decisions.

If a matter is formally before Council and we have personal interests in any of the decisions that we are part of as a government, public body or private enterprise, Councillors will declare that interest and withdraw immediately from the decision-making processes. We will understand and adhere to all legislative requirements.

Sections 77A to 81 of the Act define the specific circumstances that lead to a conflict of interest and describe what Councillors and staff must do if they believe there is a conflict. These sections of the Act also cover direct and indirect interests, disclosure requirements, exemptions provision of advice and registers of interest.

Conflict of interest requirements apply to Council meetings, the Special Planning Committee, Council’s Audit Committee, Assemblies of Councillors and Section 223 Committees.

Local Government Victoria has also produced a Councillor Guide to Conflict of Interest for further guidance.

In declaring different types of interests in these meetings, Councillors will use the following table as a ‘desktop’ guide.

Type of Interest		Detail
<b>Direct Interest (s.77B)</b>		<p>Reasonably likely that your benefits, obligations, opportunities or circumstances will be directly altered</p> <p>Reasonably likely to receive a direct benefit or loss measurable in financial terms</p> <p>Person has, or the person together with a member/s of their family have a controlling interest in a company or other body that has a direct interest</p>
<b>Indirect Interest</b>	Close Association (s.78)	<p>A member of your family has a direct interest or an indirect interest</p> <p>A relative has a direct interest</p> <p>A member of your household has a direct interest</p>
	Indirect Financial Interest (s.78A)	<p>Likely to receive a benefit or incur a loss, measurable in money, resulting from a change to another person's interests</p> <p>Holding shares in a company or body that has a direct interest (subject to threshold - \$10,000 value of shares if company shares issued exceeds \$10 million)</p> <p>When a person with a direct interest owes money to you</p>
	Conflict of Duty (s.78B)	<p>Manager or member of the governing body of an organisation with a direct interest</p> <p>Partner, consultant, contractor, agent or employee of person, company or body with a direct interest</p> <p>Trustee for a person with a direct interest</p> <p>Past dealings in relation to the matter as duty to another person or body</p>
	Applicable Gift (s.78C)	<p>Election donations valued at or above \$500 in previous 5 years</p> <p>Other Gifts valued at or above \$500 over a 5 year period excluding reasonable hospitality received when attending in an official capacity and a gift received 12 months before becoming a Councillor.</p>
	Party to the Matter (s.78D)	Initiated or became party to civil proceedings in relation to the matter
	Impact on Residential Amenity (s.78E)	Reasonably likely that your residential amenity will be directly altered
<b>Conflicting Personal Interest</b>	Conflicting with Public Duty (s.79B)	Personal interest is in conflict with Councillor's public duty in relation to the matter. Application needs to be made to the Council/Special Committee to be exempted from voting. Council/Special Committee cannot unreasonably withhold its consent.

If, as Councillors, we consider we have a direct or indirect interest in a matter before a Council Meeting, we will disclose the class and nature of the interest, and leave the room in which the Council Meeting is being held immediately before any discussion or debate and we will not vote on the matter.

If we have such an interest and will not be attending the relevant meeting, we will submit written notice of the conflict of interest to the CEO or Chairperson of the Council Meeting.

If we have a conflict of interest in a matter at an Assembly of Councillors we will:

- disclose to the meeting that we have a conflict of interest
- leave the meeting while the matter is being discussed

We note that it is possible for a Councillor to make a written submission under S223 of the Act, in respect of a matter and present a submission to the Council Meeting or Committee Meeting of Council. However, we acknowledge that we can only participate in the meeting only for our written submission to be heard.

Councillors recognise that although we may seek advice about a possible conflict of interest from staff and/or others, the legal responsibility to decide if a conflict exists rests entirely with us. We also acknowledge that advice provided to us as to the status of a possible conflict of interest we may hold, may also be discoverable via *Freedom Of Information Act 1982* (FOI).

Finally, as Councillors, we agree not to use Conflicts Of Interest as a weapon against each other, including making assertions that another Councillor has a conflict.

#### **(a) Other legislative requirements**

The Act includes requirements in relation to Councillor eligibility, electoral conduct and the election period (caretaker period). Alleged contraventions of these provisions are not to be dealt with by the Council using the internal resolution procedure in this Code of Conduct. Allegations in relation to contravention of these provisions should be directed to the Victorian Electoral Commission or the Local Government Inspectorate, depending on the nature of the allegation, for investigation and any consequent action.

We undertake to comply with the various provisions relating to these matters.

## **8. Confidential Information**

Councillors agree that we will comply with our obligations in accordance with s77 of the Act, in relation to confidential briefings or information (as defined under the Act as well as in the State Government's Guide to Local Government). We recognise these obligations extend to ensuring the safekeeping of confidential information. Under the Act, information is confidential if any of the following circumstances exist:

1. The information was provided to Council or special committee in relation to a matter considered in a meeting closed to the public in accordance with section 77(2a)
2. The information was designated as "confidential information" by a resolution of the Council or special committee that specifies the relevant ground (or grounds) under section 77(2b)
3. The information was designated as 'confidential information' in writing by the CEO, specifying the relevant ground (or grounds) under section 77 (2c). This designation lapses after 50 days unless Council resolves to make the information confidential

Information ceases to be confidential if Council resolves, at any time, that the information is not confidential.

As Councillors, we acknowledge that a great deal of sensitive and confidential information is shared between staff and Councillors during the process of considering options, prior to and including the decision-making stages. This is why Councillors will carefully comply with the legislation mentioned above, as well as our *Information (Access and Use) Policy* which is included as an Incorporated Document in this Code as a further guide for Councillor and Council staff obligations.

If, as Councillors, we are uncertain whether something is “confidential”, we will presume that it is and seek advice prior to its release.

A Councillor may disclose information that the Councillor knows is confidential information in the following circumstances:

- (a) For the purposes of any legal proceedings arising out of this Act
- (b) To a court or tribunal in the course of legal proceedings
- (c) Pursuant to an order of a court or tribunal
- (d) To the Chief Municipal Inspector to the extent reasonably required by the Chief Municipal Inspector
- (e) To a Councillor Conduct Panel in the course of a hearing and for the purposes of the hearing
- (f) To a municipal monitor to the extent reasonably required by the municipal monitor
- (g) To the extent reasonably required for any other law enforcement purposes

## 9. Access to and Use of Council Information

### (a) Access to and use of Council information

As Councillors, we agree to treat Council information appropriately, by:

- not using information gained because of our position as Councillors for any purpose other than to exercise our role as Councillors
- respecting Council’s policies in relation to public comments and communications with the media
- not releasing information deemed ‘confidential information’ in accordance with s77 of the Act for our own, or any other person’s, advantage
- not discussing, distributing or allowing to be communicated to another party, any ‘confidential’ information, where marked as such or which by its content could be reasonably considered to be of a confidential nature
- not using information to cause harm or damage to any person, body or the Council
- recognising the requirements of the *Privacy and Data Protection Act 2014* and the *Health Records Act 2001*, regarding the access, use and release of personal information. Personal information includes any information that is likely to be able to identify any individual

In relation to appropriate access to, and use of, information, we will also look for further information and guidance provided in the *Information (Access and Use) Policy* which is an incorporated document in this Code.

### (b) Communicating Council information

As Councillors we commit to being responsive to community views (as representatives of the community) and adequately communicating the attitudes and decisions of the whole Council.

There may be times when, as individual Councillors, we disagree with a majority decision of Council and we want the community to know this. This is legitimate and needs to be balanced with our other obligations. Councillors commit to:

- individually and collectively respect the decision making process of Council which is based on a decision of the majority of the Council
- communicate balanced views through an 'explain and not blame' lens, presenting the Council as effective and cohesive
- accurately convey information concerning adopted policies, procedures and decisions of the Council
- observe the policy of the primary spokesperson of Council being the Mayor, noting that there will be other times when - following agreement - other Councillors may act as spokespersons (e.g. as Ward Councillor)
- not communicating confidential information until Council decides it is no longer to be treated as confidential
- leaving to Council staff or delegated officers all communication relating to Council planning approvals, permits and so on, until after decisions are made by the Council on such matters

## 10. Media Communications

To ensure that the messages communicated through the media are clear and consistent, and positively portray Council as a decisive and responsible governing body, as Councillors we will observe Council's Media Guidelines. These guidelines outline the appropriate spokesperson for Council and the organisation under a range of circumstances.

For further detailed information and guidance, Councillors should refer to the Media Guidelines, which is an incorporated document in this Code or contact a member of Council's communication team.

## 11. Use of Council Resources

The *Councillor Support and Expenses Policy* is an incorporated document in this Code. This policy details the administrative support, resources and facilities that are to be provided to Councillors to assist us to undertake our roles.

Councillors will ensure resources are used effectively and economically, and only in the course of our official duties. Councillors also understand the limitations required during Election Periods to ensure there is no reality or perception that Council resources are used for electoral purposes. Council's *Election Period Policy 2016* explains these limitations in greater detail and is an incorporated document in this Code.

Councillors agree that, while in our control, Council assets will be maintained, properly secured and not misused.

## 12. Gifts, Benefits and Hospitality

We acknowledge that our *Gifts, Benefits and Hospitality Staff and Councillors Policy 2015* guides the acceptance, refusal and disclosure of gifts, benefits or hospitality, and that this is an incorporated document in this Code.

This Policy aims to ensure that:

- a high standard of probity and accountability is maintained
- legislative requirements and community expectations are met
- Council activities and decisions are not influenced, or perceived to be influenced, by the receipt of goods, benefits or hospitality
- decision-making by Councillors and Council staff is impartial and promotes and maintains public confidence
- gifts that are accepted or declined are properly disclosed and managed in a fully transparent manner

The Hobsons Bay City Council recognises that Councillors and Council officers will on occasion be offered gifts, benefits and hospitality.

Councillors acknowledge the following policy principles:

- Councillors and Council officers must not solicit, demand or request gifts or any personal benefit for themselves or another person by virtue of their position
- no gift may be accepted that could influence, or be perceived to influence, a Councillor or Council officer in the performance of their public or professional duties
- monetary gifts (of any value and including gift vouchers) must never be accepted
- all gifts of appreciation, whether accepted or declined, are to be recorded in the Council Gifts Register
- the Chief Executive Officer or relevant Director will ensure that official gifts presented to the Council are recorded in the Council Gift Register
- a significant occasion gift to the Mayor must not exceed \$500. A significant occasion gift to a Councillor or Council officer must not exceed \$250. All significant occasion gifts must be recorded in the Council Gifts Register and disclosed on the Council website
- where hospitality is only modest in nature and provides an opportunity to network or undertake business of a common purpose, it may be appropriate to accept such invitations. Incidental refreshments at meetings, working lunches, or similar, **are not considered to be a gift and need not be recorded** in the gift register unless they occur at a frequency that may give rise to the perception of a conflict of interest under the *Local Government Act 1989*. In some circumstances a Councillor or Council officer may attend the event if the Council either fully reimburses the organisation for the full cost of the hospitality or if the Councillor or council officer personally pays for their own attendance

In addition to the above policy principles, we will record all campaign donations in our “campaign donation return”.

### 13. Fraud and Corruption

Councillors are committed to good governance and ethical behaviour as key to responsible, effective and accountable local government. Council does not accept improper conduct by either Councillors or staff, nor reprisals against people who come forward to allege or disclose improper conduct.

If, as Councillors, we know or have good reasons to suspect fraud, corrupt, criminal or unethical conduct of another Councillor, this will be immediately reported to the CEO.

Finally, Hobsons Bay City Council will provide Councillors with briefings on policies and strategies that deal with fraud and corruption, and training from time to time as required.

## 14. Protected Disclosure Complaints

### (a) Complaints by Councillors

We acknowledge that disclosures about improper conduct, or a complaint in accordance with the *Protected Disclosure Act 2012* (which succeeds the *Whistleblowers Protection Act 2001*) by Councillors, must be made to the Independent Broad-Based Anti-Corruption Commission (IBAC) or to the Ombudsman.

These disclosures must not be made to the Council.

### (b) Complaints by members of the public

A disclosure about a Councillor should be immediately referred to the Independent Broad-Based Anti-Corruption Commission (IBAC).

## 15. Council Evaluating its Governance Performance

Councillors agree that the aim of the governance policies, protocols and practices contained in this Code; associated documents incorporated by reference and the appropriate legislation, is to improve our effectiveness as a Council, acting on behalf of the community.

We acknowledge that the effectiveness of our governance needs to be measured. This will enable Councillors to continually assess our agreed priorities, measure performance and satisfaction and serve as an early warning for any emerging governance issues that need to be discussed and resolved.

Being a high performing Council is only possible if we are all willing to work through all issues that arise, and to evaluate honestly whether we are performing effectively as Councillors and as a Council.

Therefore, as Councillors, we agree to continue to reflect on and evaluate our individual and collective performances.

A critical element in successful measurement of performance has been an openness and willingness for ongoing dialogue between Councillors and senior staff on how to do things better and to discuss the 'undiscussables'.

Only when issues are discussed openly will processes and relationships be improved and both underpin good governance.

As part of this ongoing review of our performance, Councillors commit to:

- discuss any issues arising that impact on a Councillor or the Council with the Mayor and/or CEO, or as required under the Section 16: Resolving Internal Disputes
- hold informal debrief sessions after Council Meetings, as well as the Special Planning Committee to work through any matters of concern as required
- formally review Council policies and decision making effectiveness through Councillor and Executive Workshops
- a mid-term review to assess whether the Council and personal goals are being achieved. This review may include facilitated discussions, a performance assessment questionnaire or other means as agreed

## 16. Resolving Internal Disputes

### (a) Introduction

To achieve Council's and the community's vision, Councillors agree that it is critical to work as an effective team. For us to function at maximum effectiveness, all Councillors agree to:

- demonstrate strong and inspired leadership
- share a set of common goals
- share our workload, public profile, rewards and acknowledgments
- support each other
- respect the skills and abilities of all of its members
- be forward looking and strategic in our thinking and planning
- maximise goodwill
- work within an agreed framework of 'rules' and agreed ethics

We also commit to the following actions to promote teamwork and procedural fairness:

- promoting a conducive environment for Councillors to speak with each other and, if needed, resolve disputes between us directly
- "agreeing to disagree" and accepting that we will hold different views, without the need to seek recourse through grudges or revenge
- "playing fair" at all times and concentrating on the issues rather than games, tricks or surprises aimed at each other
- accepting that majority decisions are exactly that. They should be respected by those for and against the argument
- sticking with and supporting the consensus position. This is in the best interests of the community. We will not reserve the right to speak against it or attack it after the formal decision has been made
- disclosing our identity to each other (unless serious extenuating circumstances exist) when complaints are made
- respecting and being seen to respect the opinions and view of all Councillors, staff and the community equally and fairly

Finally, while the handling of internal complaints is not a formal judicial process, Councillors accept that the processes and policies included here represent fair and transparent ways to address internal disputes, as they are in keeping with both the *Local Government Act 1989*, as well as the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

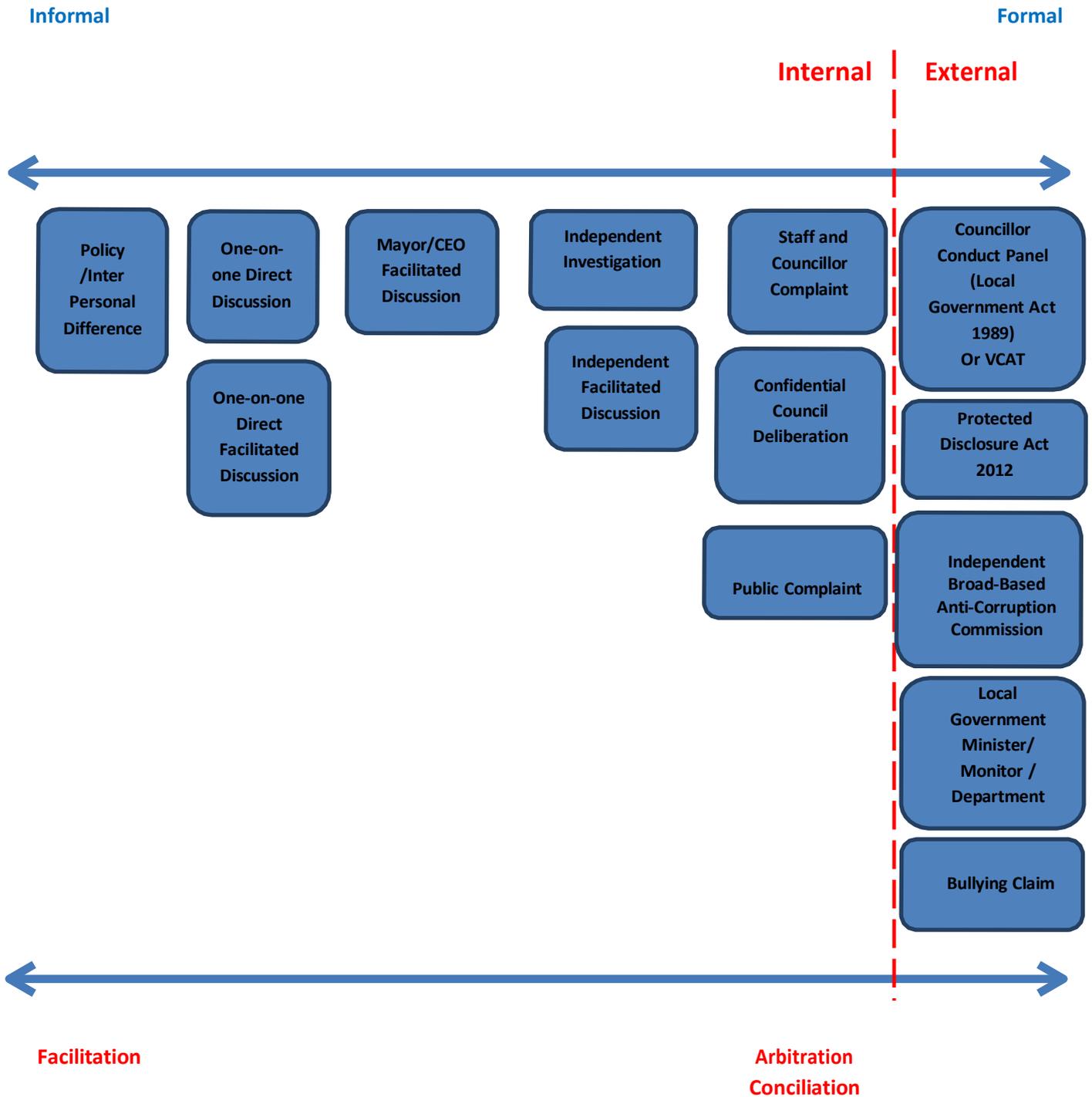
### (b) Who administers internal disputes between Councillors?

Councillors acknowledge that even in the best of teams, disagreements will arise. In such situations, Councillors commit to the following guidance and processes to resolve internal disputes.

The Director Corporate Services will securely maintain all confidential files relating to internal disputes between Councillors. However, they are not charged with resolving the internal dispute and may at any time appoint an external investigator or Arbiter with suitable legal and dispute resolution experience to assist to resolve any internal dispute. As such, the Director Corporate Services will administer complaints and provide advice to the CEO and Mayor as outlined elsewhere in this policy.

**(c) Internal and external dispute resolution**

The following diagram provides some initial guidance on the difference between internally- managed and externally-managed disputes. While it is indicative only, the processes and steps detailed in the remainder of this section of the Code will be used to deal with internal disputes. The only exceptions to this include Councillor claims of bullying, harassment and discrimination, or complaints about Councillors from members of the public. These exceptions will be handled either by referral to other bodies or by an independent external investigator. These exceptions and the internal and external processes to be followed are discussed in further detail at the end of this section of the Code.



While the above diagram appears linear, we acknowledge that the reality is a more circular process.

This process is not required to be automatic or linear (or in other words, one action or process following another) Councillor complainants and respondents involved in an internal dispute may assess their options at any time and decide to pursue a different path or stage.

We agree that the first few informal steps to resolving internal disputes between us are critical. We therefore commit to ensuring that all genuine effort will be made by all parties to resolve differences early, so disputes do not escalate.

Councillors will not take the making of a complaint lightly, and we will not use the making of complaints to score political points against our Councillor colleagues. This also means that we will genuinely participate in all necessary measures to resolve internal disputes rather than avoid our obligations and commitment to each other and the Councillor team.

We also acknowledge that if a pattern of unsubstantiated or vexatious complaints continues to be experienced, the Director Corporate Services may refuse to apply resources to investigate these complaints. In these instances, the CEO will inform the Council of these decisions and why they were taken.

#### **(d) Substantiating and investigating claims**

Reflecting further on what constitutes an effective team discussed in 16(a) above, we acknowledge that some differences between us:

- are no more than differences of opinion about a particular issue, in which case the appropriate course is for the differences to be resolved through a vote in the Council Chamber
- other differences require us to use the sensible and sensitive processes outlined in this Code for resolving internal disputes

Councillors acknowledge that no substantiation or investigation of claims is necessary for the first category of differences, after the Mayor and CEO acting on advice from the Director Corporate Services has found that the dispute is only a difference of opinion.

Councillors also acknowledge that the resolution of internal disputes is seriously undermined if parties to a dispute refuse to be identified for no reasonable reason. In these circumstances, if a complainant is not willing to have their identity disclosed, this will limit the further actions that can be taken to resolve the complaint, and it may be that the complaint cannot be pursued.

In relation to other, more serious differences that are also impacting negatively on the morale of the Council, an external investigator or Arbiter with suitable legal and dispute resolution experience may be engaged at the discretion of either the Director Corporate Services or the CEO.

#### **(e) Agreement of all parties to processes to be followed**

All parties to an internal dispute need to be clear at all times and agree to the processes being followed. If agreement cannot be reached and maintained then the internal dispute resolution process would cease. It is then open to the complainant and respondent to choose other dispute resolution processes (e.g. Councillor Conduct Panel).

#### **(f) Roles of the Mayor, the CEO and the Council**

Councillors accept that while the Director Corporate Services will handle all administration concerning a complaint, it is a requirement that the Mayor and the CEO agree on recommended process steps to be taken.

The Director Corporate Services may at any time appoint an external investigator or Arbiter with suitable legal and dispute resolution experience to assist to resolve any internal dispute.

**(g) When would Council formally consider a dispute relating to Councillor Conduct?**

Any consideration by Council (as a Confidential Item at an Ordinary Council Meeting) would be due to the more serious nature of an alleged instance of behaviour/s that breaches this Code.

An external investigator or Arbiter with suitable legal and dispute resolution experience would provide a written Confidential Report to Council, which would include at least the following:

- the original complaint and responses
- any evidence or documentation relied upon by the complainant/s and the respondent during the course of the internal dispute, and
- any advice as they see fit to the Council concerning actions or sanctions to be considered by Council

All written reports for consideration of Council (as a Confidential Item at an Ordinary Council Meeting), will be distributed on a confidential basis to all Councillors, no less than seven working days prior to the scheduled Ordinary Council Meeting.

**(h) Dispute resolution processes**

Council's three phase dispute resolution process involves:

- direct negotiation between the parties in dispute with the Mayor in attendance to provide guidance
- external mediation by an independent mediator engaged by the Chief Executive Officer; and
- an internal resolution procedure involving an independent Arbiter

**(i) Phase 1 – Direct negotiation**

Where Councillors who are in dispute have not been able to resolve the dispute between them, either (or both) party (parties) may request the Mayor to convene a meeting of the parties.

A dispute referred for direct negotiation may relate to:

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

The party requesting the direct 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 "direct negotiation" dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code that is 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; and
- be signed and dated by the requestor or the requestor's representative

The requestor is to notify the other party of the request and provide him or her with a copy of the written request either at the same time as it is provided to the Mayor or as soon as practicable thereafter.

The Mayor is to ascertain whether or not the other party is prepared to attend a “direct negotiation” meeting.

If the other party is not prepared to attend a meeting, the Mayor is to advise the requestor forthwith. No further action is required of the Mayor.

If the other party declines to participate in a meeting, this does not constitute a contravention of this Councillor Code of Conduct.

If the other party consents to a meeting, the Mayor is to convene a meeting of the parties at the earliest available opportunity. Unless one or both parties are unavailable, this should be within 5 working days of receiving the consent of the other party.

The Mayor may present the parties with guidelines, in advance of the meeting or at the meeting, to help facilitate the meeting.

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 in accordance with section 65 of the Act, and the observation of the Councillor Conduct Principles and the Councillor Code of Conduct.

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 or 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, either or both of the parties have recourse to external mediation or the internal resolution procedure where the matter relates to an alleged contravention of the Councillor Code of Conduct.

Where the Mayor is a party to the dispute, the request is to be made to the Deputy Mayor (if any) or the immediate past Mayor. The Deputy Mayor or the immediate past Mayor will perform the functions ascribed to the Mayor.

#### **(j) Phase 2 – External mediation**

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 “direct negotiation”.

An application made for a dispute to be referred for external mediation may relate to:

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

The applicant is to submit a written application to the Principal Conduct Officer 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 Councillor Code of Conduct, the application must:

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code that is 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 him or her with a copy of the application either at the same time that it is submitted to the Principal Conduct Officer or as soon as practical thereafter.

The Principal Conduct Officer 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, they need to provide their reasons for doing so in writing to the Principal Conduct Officer. 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 Councillor Code of Conduct.

If the other party agrees to participate in an external mediation, the Principal Conduct Officer is to advise the applicant, the Mayor and Chief Executive Officer forthwith.

The Chief Executive Officer 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.

### **(k) Phase 3 - Internal resolution procedure - Arbiter**

An application cannot be made for an internal resolution procedure 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.

If the respondent to an application for an internal resolution procedure is not returned to office as a Councillor in the election, the application lapses. If the respondent is returned to office in the election, the application may resume if:

- the application was made by the Council and the Council so resolves
- the application were made by a group of Councillors and any one (or more) of those Councillors who has been returned to office wishes to proceed with the application
- the applicant (individual Councillor) is returned to office and wishes to proceed with the application

A Councillor or a group of Councillors may make an application alleging that a Councillor has contravened this Councillor Code of Conduct. The application must:

- specify the name of the Councillor alleged to have contravened the Code
- specify the provision(s) of the Code that is 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 application must be submitted to the Council's Principal Conduct Officer.

An applicant may withdraw an application for an internal resolution procedure. Once an application has been withdrawn, the same or a similar application relating to the same instance in relation to the respondent Councillor cannot be resubmitted by the applicant.

On receiving an application, the Principal Conduct Officer will:

- advise the Mayor and CEO of the application without undue delay
- provide a copy of the application to the Councillor who is the subject of the allegation at the earliest practical opportunity but not later than two working days from receipt of the application
- identify an Arbiter to hear the application
- obtain from the Arbiter written advice that they have no conflict of interest in relation to the Councillors involved
- notify the parties of the name of the proposed Arbiter and provide them with the opportunity (2 working days) to object to the person proposed to be the Arbiter
- consider the grounds of any objection and appoint the proposed Arbiter or identify another Arbiter
- provide a copy of the application to the Arbiter as soon as practicable after the opportunity for the parties to object to an Arbiter has expired
- after consultation with the Arbiter, advise the applicant and the respondent of the time and place for the hearing
- attend the hearing(s) and assist the Arbiter in the administration of the process

In identifying an Arbiter to hear the application, the Principal Conduct Officer must select an Arbiter who is suitably independent and able to carry out the role of Arbiter fairly.

The role of the Arbiter is to:

- consider applications alleging a contravention of the Councillor Code of Conduct by a Councillor
- make findings in relation to any application alleging a contravention of the Councillor Code of Conduct which the Arbiter must give to the Council
- give a written statement of reasons supporting the findings to the Council at the same time as it gives its findings to the Council
- recommend an appropriate sanction or sanctions where the Arbiter has found that a Councillor has contravened the Councillor Code of Conduct

In considering an application alleging a contravention of the Councillor Code of Conduct, an Arbiter will:

- in consultation with the Principal Conduct Officer, fix a time and place to hear the application
- authorise the Principal Conduct Officer to formally notify the applicant and the respondent of the time and place of the hearing
- hold as many meetings as is necessary to properly consider the application. The Arbiter may hold a directions hearing
- have discretion to conduct the hearings as the Arbiter deems fit while ensuring that the hearings are conducted with as little formality and technicality as due and proper consideration of the application allows

- ensure that the parties to and affected by an application are given an opportunity to be heard by the Arbiter
- consider an application by a respondent to have legal representation at the hearing to ensure that the hearing is conducted fairly and may, in his or her absolute discretion, grant the application or deny the application
- ensure that the rules of natural justice are observed and applied in the hearing of the application
- ensure that the hearings are closed to the public

Where an application to have legal representation is granted by an Arbiter, the costs of the respondent's legal representation are to be borne by the respondent in their entirety.

An Arbiter:

- may find that a Councillor who is a respondent to an internal resolution procedure application has not contravened the Code
- may find that a Councillor who is a respondent to an internal resolution procedure has contravened the Code
- will suspend consideration of an internal resolution procedure during the election period for a general election

The Arbiter is to give a copy of his or her findings and the statement of reasons to Council, the applicant and the respondent. At the same time, the Arbiter provides the findings and statement of reasons; the Arbiter shall, where a Councillor has been found to have contravened the Code, recommend an appropriate sanction or sanctions for the contravention for consideration by the Council.

#### **(I) Sanctions for Councillor Contravention of this Code**

A copy of the Arbiter's findings, statement of reasons and any recommended sanctions is to be submitted to the next ordinary meeting of the Council for its consideration. If an Arbiter has found that a contravention of the Code has occurred, the Council may, after considering the Arbiter's findings, statement of reasons and recommendation on sanctions, give any or all of the following written directions to the Councillor:

- direct the Councillor to make an apology in a form or manner specified by the Council
- direct the Councillor to not attend up to, but not exceeding, 2 meetings of the Council (in respect of the next scheduled meetings of the Council)
- direct that, for a period of up to, but not exceeding, 2 months on a date specified by the Council the Councillor:
  - be removed from any position where the Councillor represents the Council; and
  - to not chair or attend any advisory committee or special committee meeting or an assembly of Councillors or any other meeting specified in the direction

Any such sanction applied as above will commence from the next scheduled Ordinary or Special Meetings of the Council after the written direction is made.

A Councillor who does not participate in the internal resolution procedure may be guilty of misconduct. The Act provides that misconduct by a Councillor means any of the following:

- (a) Failure by a Councillor to comply with the Council's internal resolution procedure; or
- (b) Failure by a Councillor to comply with a written direction given by the Council under section 81AB

(c) Repeated contravention of any of the Councillor conduct principles Allegations of misconduct are heard on application by a Councillor Conduct Panel

**(m) Bullying, harassment and discrimination**

Council will apply the following definition of bullying:

*Bullying by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or member of Council staff and that behaviour creates a risk to the health and safety of that Councillor or member of Council staff.*

Hobsons Bay City Council has an obligation to provide its employees, as well as others, with a safe workplace. Councillors acknowledge there are a number of complexities which justify all complaints of bullying, harassment or discrimination by Councillors being handled by an independent external investigator or Arbiter with suitable legal experience in these areas. Some of these complexities include:

- inconsistencies with how Councillors are defined – either as employees under the *Accident Compensation Act 1985*, or as ‘others’ under the *Occupational Health and Safety Act 2004*
- significant restrictions on Councillor claims for worker’s compensation if any action taken by this Councillor contravenes this Code
- practical difficulties in staff directly deciding on the merits of competing claims of Councillors

Councillors agree that while the Director Corporate Services will administer files and undertake other organisational functions in relation to these claims, an external investigator or Arbiter with suitable legal experience in these areas will be appointed by the CEO to handle the complaint, including the investigation and, if appropriate, any recommendations to Council.

**(n) Complaints from members of the public**

Given the need to ensure both the reality and the perception of independence, all complaints made by members of the public will not be handled by the Mayor or any other Councillor. Rather, while complaints from members of the public will be brought to the attention of the Local Government Investigations and Compliance Inspectorate, these complaints will be handled in the following ways:

1. The Director Corporate Services will administer the complaint
2. If it appears in the early stages that a quick resolution can be agreed, this will be facilitated
3. If not, an external investigator or Arbiter with suitable legal and dispute resolution experience will be engaged to handle any investigations
4. In any brief to this external investigator or Arbiter, it will be made clear that if a quick and easy resolution satisfactory to both parties can be found (e.g. an apology), then this should be facilitated
5. If not, then external investigator or Arbiter would provide a report to the Director Corporate Services and the CEO who will consider the report and recommendations, and refer this to a confidential meeting of the Council if necessary

Early in the administration of these complaints, all copies of complaints and the process to resolve these complaints will be sent to the Local Government Investigations and Compliance Inspectorate (Inspectorate).

Members of the public will be advised of what processes will be followed, as well as their rights to take these complaints to other bodies such as:

- the Independent Broad-Based Anti-Corruption Commission (IBAC)
- the Victorian Ombudsman
- the Minister for Local Government

Provisions relating to vexatious complaints and Natural Justice mentioned elsewhere in this Code are also relevant to the receipt, handling and consideration of complaints about Councillors from members of the public.

Information concerning more serious complaints from the public concerning “improper” or “corrupt” or “specified” conduct covered by the *Protected Disclosure Act 2012*, as well as Guidelines published by the IBAC, will also be made available to the public.

#### **(o) Complaints about staff by Councillors**

Consistent with the powers of the CEO as mentioned elsewhere in this Code, if Councillors have concerns about the performance or conduct of any staff member, they must raise these concerns directly with the CEO who has responsibility for all staffing matters. The CEO may delegate a relevant Director to resolve these concerns. If Councillors believe that the conduct of the staff member is of a more serious nature – that is it may be improper, corrupt and may lead to an indictable offence, they must raise their concerns externally with the IBAC.

#### **(p) Counselling Support**

During the processes of resolving internal disputes, Councillors acknowledge that all parties are entitled to use the services of Council’s Employee Assistance Program (EAP). Hobsons Bay’s EAP is a counselling service for employees and Councillors to seek professional assistance for any work related or personal problems. Further information about the EAP service can be sought from the CEO.

## **17. Commitment to and Enforcement of This Code**

Compliance with this Code will be monitored by Councillors. Alleged breaches of the Code should be handled internally if possible and in accordance with the processes outlined in Section 16 – Dispute Resolution. Any alleged crime will be referred to the appropriate authority (e.g. police or Local Government Victoria) for further investigation.

## **18. Election Period Policy (Caretaker Procedures)**

Council is committed to fair and democratic elections and therefore adopts and endorses the Election Period Policy, which is an incorporated document in this Code.

## **19. Human Rights Charter Compliance**

This Code has been reviewed for Human Rights Charter Compliance.

## 20. Incorporated Documents

The following policies, protocols and practices are incorporated by reference within this Code, and as Councillors we therefore agree to follow them. These policies, protocols and practices are as follows:

<b>Policy</b>	<b>Date Adopted</b>	<b>Next Review Date</b>
Chief Executive Officer, Councillors and Staff Interaction Protocol	Approved by the CEO 31 October 2016	Council term 2016-2020
Councillor Support and Expenses Policy	13 August 2013	Council term 2016-2020
Election Period Policy	8 March 2016	March 2019
Gifts, Benefits and Hospitality Staff and Councillors Policy	9 June 2015	30 June 2017
Information (Access and Use) Policy	26 June 2012	Council term 2016-2020
Media Guidelines	February 2009	30 June 2017

## 21. Councillor Declaration

**In accordance with Section 76C of the *Local Government Act 1989*, a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct. The declaration must be in writing and be witnessed by the Chief Executive Officer.**

**The Councillor Code of Conduct declarations, signed by each Councillor and witnessed by the Chief Executive Officer, are attached to this Code.**



### **Councillor Code of Conduct Declaration**

I, Cr Tony Briffa, hereby declare that I have read the Councillor Code of Conduct for Hobsons Bay City Council adopted on 14 February 2017 and declare that I will abide by this Code.

A handwritten signature in black ink, appearing to read 'Tony Briffa', written over a horizontal line.

Councillor Tony Briffa

Date: 14 February 2017

#### **Witness**

A handwritten signature in black ink, appearing to read 'Chris Eddy', written over a horizontal line.

Christopher Douglas Eddy  
Chief Executive Officer

Date: 14/2/17



**Councillor Code of Conduct Declaration**

I, Cr Sandra Wilson, hereby declare that I have read the Councillor Code of Conduct for Hobsons Bay City Council adopted on 14 February 2017 and declare that I will abide by this Code.

A handwritten signature in black ink, appearing to read 'Sandra Wilson', written over a horizontal line.

Councillor Sandra Wilson

Date: 14/2/2017

**Witness**

A handwritten signature in black ink, appearing to read 'Chris Eddy', written over a horizontal line.

Christopher Douglas Eddy  
Chief Executive Officer

Date: 14/2/17



### Councillor Code of Conduct Declaration

I, Cr Angela Altair, hereby declare that I have read the Councillor Code of Conduct for Hobsons Bay City Council adopted on 14 February 2017 and declare that I will abide by this Code.

Councillor Angela Altair

Date: 21/2/2017

**Witness**

Christopher Douglas Eddy  
Chief Executive Officer

Date: 21/2/2017



### **Councillor Code of Conduct Declaration**

I, Cr Peter Hemphill, hereby declare that I have read the Councillor Code of Conduct for Hobsons Bay City Council adopted on 14 February 2017 and declare that I will abide by this Code.

*Peter Hemphill*

Councillor Peter Hemphill

Date: 14-2-17

#### **Witness**

*Chris Eddy*

Christopher Douglas Eddy  
Chief Executive Officer

Date: 14/2/17



### **Councillor Code of Conduct Declaration**

I, Cr Jonathon Marsden, hereby declare that I have read the Councillor Code of Conduct for Hobsons Bay City Council adopted on 14 February 2017 and declare that I will abide by this Code.

A handwritten signature in blue ink, appearing to read 'Jonathon Marsden', written over a horizontal line.

Councillor Jonathon Marsden

Date: 2017-02-14

**Witness**

A handwritten signature in black ink, appearing to read 'Chris Eddy', written over a horizontal line.

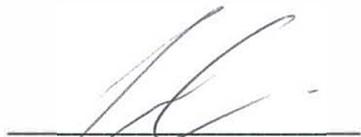
Christopher Douglas Eddy  
Chief Executive Officer

Date: 14/2/17



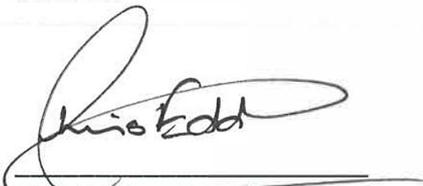
### **Councillor Code of Conduct Declaration**

I, Cr Colleen Gates, hereby declare that I have read the Councillor Code of Conduct for Hobsons Bay City Council adopted on 14 February 2017 and declare that I will abide by this Code.

  
Councillor Colleen Gates

Date: 14 February 2017

**Witness**

  
Christopher Douglas Eddy  
Chief Executive Officer

Date: 14/2/17



### **Councillor Code of Conduct Declaration**

I, Cr Michael Grech, hereby declare that I have read the Councillor Code of Conduct for Hobsons Bay City Council adopted on 14 February 2017 and declare that I will abide by this Code.

A handwritten signature in blue ink, appearing to read 'Michael Grech', written over a horizontal line.

Councillor Michael Grech

Date: 14.02.17

#### **Witness**

A handwritten signature in black ink, appearing to read 'Chris Eddy', written over a horizontal line.

Christopher Douglas Eddy  
Chief Executive Officer

Date: 14/2/17