

MODEL CODE OF CONDUCT

For Victorian Councils

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Local Government Victoria
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*Department for
Victorian Communities*



Model Code of Conduct¹

This Code of Conduct was adopted by resolution of the [insert name of council] Council on [insert date] and in accordance with section 76C of the Local Government Act 1989.

Preliminary²

1. The [insert name of council] Council consist of the councillors who are democratically elected by the electors of [insert name of municipality] in accordance with the Local Government Act 1989 (the Act).
2. The role of the Council is to provide leadership for the good governance of [insert name of municipality]. It includes:
 - a. acting as a representative government by taking into account the diverse needs of the local community in decision making;
 - b. providing leadership by establishing strategic objectives and monitoring their achievement;
 - c. maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
 - d. advocating the interests of the local community to other communities and governments;
 - e. acting as a responsible partner in government by taking into account the needs of other communities;
 - f. fostering community cohesion and encouraging active participation in civic life.

¹ Section 76C of the Local Government Act 1989 (the Act) requires each council to adopt a Code of Conduct for councillors within 6 months after the section comes into operation. (*The provision came into operation on 31 July 2004*). Councils are also required to review their Codes within 6 months after each general election of councillors.

This Model Code of Conduct has been prepared by Local Government Victoria to assist councils developing their codes. It is not, in itself, a mandatory document. While section 76C of the Act specifies some mandatory components of a Code of Conduct, it is up to each council to develop and adopt a complete Code of Conduct that best suits its own needs and circumstances.

The minimum information that the Act specifies must be included in a Code of Conduct includes

- the rules of conduct in section 76B of the Act,
- procedures for resolving disputes between councillors, and
- procedures for the disclosure of interests and conflicts of interest.

The Act also requires that a Code of Conduct must include a statement of caretaker procedures, including

- procedures consistent with section 93A the Act,
- procedures consistent with section 55D the Act, and
- procedures to ensure council resources are not inappropriately applied during an election.

² The wording used in this section of the Model Code of Conduct is drawn from the Local Government Charter (sections 3B and 3D of the Act).

Councillor Behaviours

3. The council affirms the following principles of behaviour.
 - A. Each councillor is aware of their responsibility to comply with the **rules of conduct** specified in Section 76B of the Act that require that councillors must³:
 - a) Act honestly;
 - b) Exercise reasonable care and diligence;
 - c) Not make improper use of their position
 - to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person, or
 - to cause, or attempt to cause, damage to the Council;
 - d) Not make improper use of information acquired because of their position
 - to gain, or attempt to gain, directly or indirectly, an advantage for themselves or for any other person, or
 - to cause, or attempt to cause, damage to the Council⁴.
 - B. Councillors will treat all people with **courtesy and respect**, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:
 - a) Treating members of the community with dignity and ensuring that neither offence nor embarrassment are caused;
 - b) Treating fellow councillors with respect, even when disagreeing with their views or decisions;
 - c) Ensuring their punctual attendance at council and committee meetings; and
 - d) Acting with courtesy towards council staff and avoiding intimidatory behaviour.
 - C. Councillors will always act with **integrity and honesty**;
 - a) Being honest in all dealings with the community, with other councillors and with council staff;
 - b) Always acting with impartiality and in the best interests of the community as a whole;
 - c) Not acting in ways that may damage the Council or its ability to exercise good government;
 - d) Exercising reasonable care and diligence in performing their functions as councillors; and
 - e) Complying with all relevant laws, be they Federal, State or Local Laws.

³ The Rules of Conduct listed in paragraph A must be included in every council's Code of Conduct. The Council may also wish to consider including section 76B as an attachment to their Code of Conduct.

⁴ Section 76B specifies a maximum penalty of up to 100 penalty units (\$10,000) for a failure to comply with the requirements to not make improper use of their position or improper use of information acquired because of their position. In addition, a person convicted of an offence against these provisions is ineligible to be a councillor for 7 years.

- D. Councillors recognise that they hold a **position of trust** and will not misuse or derive undue benefit from their positions.
- a) Councillors will avoid conflicts of interest and comply with the relevant provisions of the Act and this Code of Conduct relating to interests and conflicts of interest;
 - b) Councillors will not exercise undue influence on other councillors, members of council staff or members of the public to gain or attempt to gain an advantage for themselves;
 - c) Councillors will not accept gifts either in their roles as councillor or where it could be perceived to influence the councillor except;
 - Where the gift would generally be regarded as only having a token value and could not be perceived to influence the councillor's actions,
 - Where refusal of the gift may cause offence or embarrassment, in which case the gift may be accepted on behalf of the Council and becomes the property of the council.
- E. Councillors will exercise appropriate prudence in the use of **public resources**. This includes:
- a) Maintaining appropriate separation between their personal property and public property in the care of the Council;
 - b) Not using public resources, including staff and equipment for electoral or other personal purposes;
 - c) Ensuring that claims for out of pocket expenses are accurate and relate strictly to council business.
- F. Councillors will treat **council information** appropriately, by:
- a) Not using information gained by virtue of being a councillor for any purpose than to exercise their role as a councillor;
 - b) Respecting the Council's policies in relation to public comments and communications with the media;
 - c) Not releasing information deemed "confidential information" in accordance with section 77 of the Act⁵; and
 - d) Recognising the requirements of the Information Privacy Act 2000 regarding the access, use and release of personal information.

Conflict of Interest Procedures⁶

4. The council is committed to making all decisions impartially and in the best interests of the whole community. It therefore recognises the importance of fully observing the requirements of the Act in regard to the disclosure of Interests and Conflicts of Interest.
5. For the purpose of this Code, "Interests", "Conflicts of Interest" and "Pecuniary Interests" have the meanings specified in the Act⁷.

⁵ The Council may wish to consider including section 77 of the Act as an attachment to their Code of Conduct.

⁶ A Code of Conduct must include procedures for the disclosure of interests and conflicts of interest

⁷ "Interests" and "Conflicts of Interest" are defined in sections 77A and 77B of the Act.

6. Councillors will comply with all, the provisions of the Act in regard to Interests and Conflicts of Interest:
 - a. If the councillor considers that they have, or might reasonably be perceived to have, an **interest** in a matter before the Council or a special committee of council, they will clearly state the nature of their interest at the meeting and immediately before the matter is considered. This will be done on every occasion that the matter is considered by the Council or special committee.
 - b. If a councillor has an Interest in a matter to be considered by the Council or special committee that is a **pecuniary interest**, they will also declare that they have a Conflict of Interest.
 - c. If a councillor has an Interest in a matter to be considered by the Council or special committee that is not pecuniary, and the Councillor considers that their personal interest **may be in conflict** with their public duty to act impartially and in the interest of the whole community, the Councillor will declare a Conflict of Interest.
 - d. If a councillor has a **Conflict of Interest** in a matter they will comply with the requirements of the Act and ensure they do not move or second the motion and that they leave the room in which the meeting is being held during any vote on the matter and not vote on the matter.

7. In addition to the requirements of the Act:
 - a. Councillors will give **early consideration** to each matter to be considered by the Council, or special committee of which the councillor is a member, to ascertain if they have an Interest or a Conflict of Interest.
 - b. Councillors recognise that, while they may seek advice about a possible conflict of interest, the **legal onus** rests entirely with each councillor themselves. If a councillor cannot confidently say that he or she does not have a conflict of interest, the councillor will declare a possible conflict of interest and comply with the relevant requirements as if they had a conflict of interest.
 - c. If the councillor considers that they may be unable to vote on a matter because of a Conflict of Interest, they will **notify**, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council or a special committee, as well as the Chief Executive Officer (or the designated officer)⁸.
 - d. If a councillor has declared a Conflict of Interest on a matter, they will **limit** their **participation** in any discussion on the matter to ensure they cannot be perceived as pursuing their own personal interests. This usually means that the councillor will restrict their comments to factual statements that may assist the decision making process or to feedback about the concerns of their constituents.

⁸ This is to enable the council administration to prepare a resolution for council consideration if it appears that a Ministerial exemption under section 80 of the Act may be required. An exemption may only be sought following a formal council resolution.

Dispute Resolution Procedures⁹

8. Before commencing any formal dispute resolution process, the councillors who are parties to any disagreement will endeavour to resolve their differences in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community. Councillors may seek assistance in resolving their differences.
9. This dispute resolution procedure is intended to be used when councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council. 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.
10. A “Dispute” will be considered to be declared if the Council resolves that its operation is being impeded because of a dispute between some or all of the councillors. The resolution will state the reasons why public resources should be allocated to resolve the dispute.
11. If the Chief Executive Officer receives advice in writing from one or more councillors that they are unable to effectively perform their role because of a dispute between councillors and that attempts to resolve the dispute have not been effective, the Chief Executive Officer will bring the matter to the Council’s attention and the council may resolve that a Dispute be declared.
12. If a Dispute is declared, the Council will, as soon as is feasible:
 - a. Approve the appointment of an independent and suitably qualified mediator or conciliator who is acceptable to the councillors who are the parties in the dispute;
 - b. Decide to seek advice from the Municipal Association of Victoria, the Victorian Local Governance Association, or another appropriate external organisation to identify a suitably qualified mediator or conciliator; or
 - c. Decide that a mediator or conciliator will not be appointed.
13. The Council may only decide that a mediator or conciliator will not be appointed if one of the following applies:
 - a. The dispute is limited to matters of policy and decision making; or
 - b. An alternative approach, which is demonstrated to be more appropriate to the particular circumstance, is approved.
14. Irrespective of the above, the Council will not undertake a dispute resolution procedure if it appears that the procedure is likely to overlap with an election period for a council election.
15. If a mediator or conciliator is appointed, all councillors will cooperate with the dispute resolution process and provide reasonable assistance to the mediator or conciliator when requested.

⁹ A Code of Conduct must include procedures for resolving disputes between councillors.

16. At the conclusion of the dispute resolution process, the Council will consider a report in a meeting open to the public, that includes:
 - a. An independent report from the mediator or conciliator (except where the independent report must be considered in a closed meeting);
 - b. The recommendations of the mediator or conciliator;
 - c. The actions being taken as a consequence of the dispute resolution process; and
 - d. An estimate of the full cost to the Council of conducting the mediation process.

Statement of Caretaker Procedures¹⁰

17. The Council is committed to fair and democratic elections and therefore adopts and endorses the following practices and legislative requirements.
18. This Statement of Caretaker Procedures is in two parts, addressing two fundamental policy principles.
 - a. Council Decision Making; and
 - b. Use of Council Resources.

Council Decision Making

19. It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during an election period. The Council therefore commits to the principle that it will make every endeavour to avoid making decisions that inappropriately bind the incoming council. This includes a commitment to comply with the requirements of section 93A of the Local Government Act 1989 (the Act), relating to “Major Policy Decisions”, as well as with the policies specified below in relation to “Significant Decisions”.

Major Policy Decisions

20. Section 93A of the Act prohibits the making of “Major Policy Decisions” during the election period, which is from Entitlement day until 6:00 pm on the Election Day.
21. Major Policy decisions are defined by the Act to be decisions;
 - a. relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - b. to terminate the appointment of a Chief Executive Officer under section 94;
 - c. to enter into a contract the total value of which exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates in the preceding financial year;
 - d. to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates in the preceding financial year.

¹⁰ A Code of Conduct must include a statement of caretaker procedures in accordance with section 76C(4) of the Act. The statement of caretaker procedures should include procedures consistent with sections 93A and 55D of the Act, as well as including procedures to ensure that council resources are not inappropriately applied during an election period.

22. If the Council considers that there are extraordinary circumstances where the municipality or the local community would be significantly disadvantaged by the Council not making a particular Major Policy Decision, the Council will, by resolution, request an exemption from the Minister for Local Government, in accordance with section 93A(2).

Significant Decisions

23. In addition to the decisions specified in section 93A of the Act, the Council will avoid making other decisions during the election period that are of a significant nature and which would unnecessarily bind an incoming council.
24. “Significant Decisions” include:
 - a. Irrevocable decisions that commit the Council to substantial expenditure or significant actions; and
 - b. Irrevocable decisions that will have a significant impact on the municipality or the community.
25. The Council acknowledges that it has an ongoing responsibility to act in the best interests of the community. Therefore, where a delay in making a “significant decision” would result in significant detriment to the local community, or the broader community, the Council may make an exception to this procedure. In making an exception to this procedure, the Council will deal with the matter impartially, having regard to the long term interests of the community and as transparently as possible.

Caretaker Statement

26. In order to facilitate compliance with its commitment to ensuring appropriate decision making during elections, the Council adopts the following procedure.
27. During the election period, the Chief Executive Officer will ensure that a “Caretaker Statement” is included in every report submitted to the Council or to a special committee of council for a decision.
28. The “Caretaker Statement” will specify one of the following:
 - a. “The recommended decision is not a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, or a “Significant Decision” within the meaning of the Code of Conduct”.
 - b. “The recommended decision is not a “Major Policy Decision” within the context of Local Government Act 1989. The recommended decision is a “Significant Decision” within the meaning of the Code of Conduct, but an exception should be made for the following reasons [insert reasons for making an exemption]”.
 - c. “The recommended decision is to seek an exemption from the Minister because the matter requires a “Major Policy Decision” within the meaning of section 93A of the Local Government Act 1989”.
 - d. “The recommended decision is a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, but an extraordinary circumstances exemption was granted by the Minister for Local Government on [insert date]”.
29. During the election period, the Council will not make a decision on any matter or report that does not include one of these Caretaker Statements.

Use of Council Resources

30. It is an established democratic principle that public resources must not be used in a way that would influence the way people vote in elections, except in regard to supporting the actual election process. The Council therefore commits to the principle that it will ensure that council resources are not used inappropriately during a council election. This includes a commitment to comply with the following procedures in addition to the requirements of section 55D of the Act.

Electoral Matter

31. The Council will ensure that it complies with section 55D of the Act which requires that a council does not print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.
32. The following definitions from the Act are noted:
- Section 3(1) **"electoral advertisement, handbill, pamphlet or notice"** means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;
- "publish"** means publish by any means including by publication on the Internet;
- Section 3(1A) **"electoral matter"** means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the returning officer for the purposes of conducting an election.
- Section 3 (1B) Without limiting the generality of the definition of "electoral matter", matter is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on—
- (a) the election; or
 - (b) a candidate in the election; or
 - (c) an issue submitted to, or otherwise before, the voters in connection with the election.

Other Resources

33. The Council will also ensure other councils resources are not used inappropriately in ways that may influence voting in an election or provide an undue advantage for a candidate. This includes financial, human and material resources.
34. Prior to the election period for any election the Chief Executive Officer will ensure that all members of council staff are advised in regard to the application of the caretaker procedures.
- a. Council staff will not undertake an activity that may affect voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer; and
 - b. Council staff will not authorise, use or allocate a council resource for any purpose that may influence voting in the election, except where it only relates to the election process and is authorised by the Chief Executive Officer.
35. Any staff member who considers that a particular use of council resources may influence voting in an election or provide an undue advantage for a candidate should advise their manager before authorising, using or allocating the resource. The manager will seek appropriate advice in order to ascertain whether the use of council, resources is in accordance with this statement.

36. In applying these principles, the Council understands that the following will be normal practice during election periods.
- a. Public events will only be organised and run by the council administration if they are part of the normal services or operation of the council.
 - b. Speeches for councillors will only be prepared by council staff in relation to events that are part of the normal services or operation of the council and such speeches will not be circulated or available for publication.
 - c. Media services, including media releases, will not be provided for councillors by the administration during the election period.
 - d. Councillor Newsletters will not be resourced by the Council in any way during the election period.
 - e. Neither the Council logo nor council stationery will be used by councillors in any way that relates to the election.
37. In addition, equipment and facilities provided to councillors for the purpose of conducting normal council business will not be used for campaigning purposes.
- a. Where councillors have council funded services, such as mobile phones, land lines and internet connections, and where it is impractical for councillors to discontinue their use of these during the election, councillors will reimburse the Council for usage of those services during the election period that exceeds normal usage levels. (Councils may wish to consider the specific ways to administer this procedure).

Endorsement¹¹

38. This Code of Conduct was adopted by the Council on [insert date] and is signed by the following councillors.

[signature blocks of all councillors]

¹¹ A copy of the Council's Code of Conduct must be given to each councillor and the Code must be available for inspection by the public at the council office and any district office (Section 76C(6) of the Act)