

# Monash Councillor Dispute Resolution

*Corporate Governance and Legal Services*

## OVERVIEW:

This policy outlines guidelines and procedures for alleged breaches of the Model Councillor Code of Conduct. It is essential for Council to have this policy in place to ensure council resolve conflicts efficiently, fairly, and amicably, ensuring smooth operations and compliance with regulations.

RESPONSIBILITIES:	Manager Corporate Governance and Legal for the corporate implementation, review, and interpretation of this policy.
RELATED DOCUMENTS:	Local Government Act 2020 Model Councillor Code of Conduct
REVIEW BY:	Coordinator Governance

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## 1. Purpose

This Internal Resolution Procedure (**Procedure**) is adopted under and in accordance with section 140 of the *Local Government Act 2020 (Act)* and regulation 12A of the *Local Government (Governance and Integrity) Regulations 2020*.

This Procedure will be observed when dealing with alleged breaches of the Model Councillor Code of Conduct.

## 2. Internal Resolution Procedure

Disputes between Councillors may arise in a variety of circumstances. This Procedure is to apply to those disputes in which one Councillor (**the Complainant**) alleges that another Councillor (**the Respondent**) has breached the Model Councillor Code of Conduct.

This Procedure provides both parties to a dispute with support and encouragement to resolve the dispute in a manner that enables the Councillors to move forward and maintain effective working relationships.

This Procedure is designed to minimise cost and disruption of disputes to Council and individual Councillors and, where possible, avoid disputes escalating and becoming the subject of an internal arbitration.

It is acknowledged that this Procedure will not be suitable for resolution of all disputes between Councillors.

An overview of the Procedure is annexed, in the form of a flowchart.

## 3. First Stage of Internal Resolution Procedure – Discussion

A Complainant is encouraged to raise their issue directly with the Respondent in a respectful and courteous manner, either in person or in writing, where they feel comfortable to do so.

Councillors are encouraged to recognise that:

- (a) certain behaviours and communications may be perceived by others to be causing issues or offence that may not have been intended;
- (b) it can provide useful insight to reflect on their own behaviour or motivation and possible contribution to the dispute, whether intended or not; and
- (c) dealing with the dispute early is more likely to avoid the issue escalating and resolve it before it threatens the effective operation of Council.

It is useful to frame any issue from the Councillor's perspective (eg "I felt disrespected when you said / did ..."), rather than accusing another person of holding a particular position or taking a negative action

deliberately. A Councillor should let the other Councillor know how they feel and ask for an explanation, rather than making accusations or assumptions.

## 4. Second Stage of Internal Resolution Procedure – Conciliation

Where a direct conversation between Councillors has not been successful in resolving the dispute, or a Councillor does not feel comfortable communicating directly with another Councillor, the second stage of this Procedure is conciliation.

### 4.1. Initiating conciliation

A Complainant initiating conciliation must notify the Mayor and the Respondent of the dispute by completing a **Conciliation Application Form**. That form (see Attachment 1 to this Procedure) must:

- (a) specify the names of the Complainant and Respondent;
- (b) specify the provision (or provisions) of the Model Councillor Code of Conduct alleged to have been breached;
- (c) detail what was said or done by the Respondent to constitute a breach of the Model Councillor Code of Conduct;
- (d) attach any supporting information to provide examples of the behaviour complained of (eg screenshots or emails); and
- (e) be dated and signed by the Complainant.

### 4.2. Participating in conciliation

Councillors are not obliged to engage in conciliation but should only decline to participate if they honestly and reasonably believe that their participation would adversely affect their health or wellbeing or would otherwise be unsafe.

A Respondent declining to participate in the conciliation must advise the Complainant and the Mayor of their unwillingness to participate, and the reasons for it. That advice must be provided no more than one week after receiving the Conciliation Application Form.

### 4.3. Conduct of conciliation

Conciliation is to be conducted by the Mayor except when the Mayor is a party to the dispute or otherwise unavailable to conduct conciliation. In that case the Deputy Mayor will assume the role of the Mayor in the conciliation process. If both the Mayor and the Deputy Mayor are parties to the dispute or otherwise unavailable to conduct the conciliation, the role of the Mayor must be performed by a Councillor jointly chosen for the purpose by the parties.

When, in this Procedure, reference is made to the Mayor it includes:

- (a) the Deputy Mayor; and
- (b) a Councillor jointly chosen for the purpose by the parties,

when the Mayor and/or the Deputy Mayor are parties to the dispute or otherwise unavailable to conduct a conciliation.

#### **4.4. Roles and responsibilities**

The role of the Mayor is to provide guidance to the parties to the dispute about the Standards of Conduct in the Model Councillor Code of Conduct, and actively explore whether the dispute can be resolved by agreement between them.

The role of the Complainant and Respondent is to explain their respective positions and, in a show of goodwill, actively explore the possibility of resolving the dispute by agreement.

All Councillors are responsible for conducting themselves in a courteous and respectful manner at all times during the conciliation.

The role of the Councillor Conduct Officer is to provide the Mayor with the administrative support necessary to arrange and conduct the conciliation.

#### **4.5. Support from Council**

Council, through the Councillor Conduct Officer, will provide administrative assistance to the Mayor when arranging a time and place for conciliation, including any technical assistance that may be required. Council will make a venue available to the Councillors within Council's offices that is private and suited to the conciliation process.

Council will not provide any substantive guidance or advice about the subject matter of the dispute, or pay the costs of legal advice or representation for any Councillor in connection with this Procedure. Parties to a dispute may seek their own legal or other advice at their own cost, if they choose to do so.

#### **4.6. End or termination of conciliation**

Conciliation will end or be terminated if any of the following occurs:

- (c) the parties cannot jointly choose a Councillor to conduct the conciliation within one week of being asked to do so;
- (d) the Respondent notifies the Mayor that they do not wish to participate in conciliation, and the reasons for it, within one week of receiving the Conciliation Application Form;

- (e) the Respondent does not respond to the Conciliation Application Form at all within two weeks of receiving it;
- (f) conciliation has not occurred within four weeks of the Complainant submitting the Conciliation Application Form;
- (g) conciliation has occurred and the parties have been unable to resolve the dispute; or
- (h) the dispute has been resolved.

The time for conciliation may be extended by agreement between the parties to the dispute, whether or not the matter has been escalated to one of the formal dispute resolution procedures outlined in the Act.

#### **4.7. Confidentiality**

Parties and other participants are expected to maintain confidentiality concerning the dispute and the operation of this Procedure.

#### **4.8. Record of outcome**

The Mayor must document any agreement that is reached between the Complainant and Respondent. The agreement must be signed by the Complainant, Respondent and Mayor. Copies must be provided to the Complainant and Respondent, and the original must be retained by the Mayor. Again, parties and the Mayor are expected to maintain the confidentiality of the agreement reached.

### **5. External Mediation**

- a) Notwithstanding the availability of other processes to resolve disputes under this Internal Resolution Process, if at any time a Complainant, a Respondent or the Mayor feels that the dispute will be better addressed through an external mediator, then they can make that request in writing of the Mayor, or in the case of the Mayor, the CEO for an external mediation (external mediation).
- b) At the time the request is made, notice should also be provided to the other parties, by the requesting Councillor.
- c) If all parties agree to an external mediation, then the Mayor or the CEO will ask the Councillor Conduct Officer to facilitate an external mediator to conduct the mediation at the earliest practicable opportunity.
- d) The mediator will document any agreement reached at the end of the external mediation, with copies provided to all parties.

## 6. Internal Resolution Procedure does not Apply in these Circumstances

The following disputes are not covered by this Procedure:

- (a) differences between Councillors in relation to policy or decision making, which are appropriately resolved through discussion and voting in Council meetings;
- (b) complaints made against a Councillor or Councillors by a member or members of Council staff, or by any other external person;
- (c) allegations of sexual harassment;
- (d) disclosures made about a Councillor under the *Public Interest Disclosures Act 2012*, which can only be made to the Independent Broad-based Anti-corruption Commission; and
- (e) allegations of criminal misconduct, which should be immediately referred to Victoria Police or the relevant integrity authority.

## 7. Formal Dispute Resolution Procedure

This Procedure operates alongside, and does not replace, the formal dispute resolution procedures outlined in the Act.

The formal dispute resolution procedure applies to misconduct, serious misconduct and gross misconduct.

Section 141 of the Act provides for an internal arbitration process concerning a breach of the Standards of Conduct set out in the Model Councillor Code of Conduct.

## Attachment 1 Conciliation Application Form

<b>Complainant:</b>	
<b>Respondent:</b>	
<b>Provisions of Model Councillor Code of Conduct breached:</b>	
<b>Action constituting breach:</b>	
<b>(Include dates, times and detailed descriptions of the action complained of. Attach further documents as necessary.)</b>	

Signed by ..... )  
 ..... )  
 ..... )  
 on ..... )



## Annexure

### INTERNAL RESOLUTION PROCEDURE FLOWCHART

