



Councillor Code of Conduct

GOVERNANCE & INFORMATION SERVICES

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REFERENCES

Ballarat City Council Caretaker Policy for Councillors
 Ballarat City Council Councillor and Staff Interactions Policy
 Ballarat City Council Councillor Expenses Entitlement Policy
 Ballarat City Council Councillor Professional Development Policy
 Ballarat City Council Councillors Role Statement
 Ballarat City Council Deputy Mayor Role Statement
 Ballarat City Council Gift and Hospitality Policy
 Ballarat City Council Mayor Role Statement
 Ballarat City Council Procurement Policy
 Ballarat City Council Public Participation Community Consultation Engagement Framework
 Ballarat City Council Register of Interests Policy
 Ballarat City Council Social and Electronic Media Policy
 Ballarat City Council Telecommunications Policy
 Ballarat City Council Use of Computer and Telecommunication Services Policy
 Ballarat City Council Meeting Procedure Local Law No 18
 Local Government Act 1989
 Freedom of Information Act 1982
 Charter of Human Rights and Responsibility Act 2006
 Conflicts of Interest in Local Government - A Guide - DPCD
 Guide to Councillor Conduct Arrangements - DPCD

DEFINITIONS

“**Act**” means the Local Government Act 1989

“**Code**” means the Councillor Code of Conduct Policy

“**Councillor Conduct Panel**” a panel appointed pursuant to the Act

“**Independent Appointee**” means a person suitably qualified in mediation or conciliation nominated by the President of the Law Institute of Victoria

“**Information**” includes letters, reports, documents, facilities, attachments, tapes or electronic media and/or other forms of information including verbal.

“**Policy**” means any policy adopted by Council from time to time.

“**Special Committee**” means a committee established pursuant to Section 86 of the Act.

“**Advisory Committee**” means a committee appointed by Council resolution.

“**VCAT**” Victorian Civil and Administrative Tribunal

COUNCILLOR CODE OF CONDUCT

This Code, which incorporates the statutory requirements specified for a Code of Conduct in accordance with section 76C of the Victorian Local Government Act 1989, was adopted by resolution of the Ballarat City Council on 24 July 2013.

It is considered that the Councillor Code of Conduct does not impact on any human rights identified in the Charter of Human Rights Act 2007.

1 INTRODUCTION

As Councillors of the City of Ballarat we are committed to working together in the best interests of the people within our municipality and to discharging our responsibilities to the best of our skill and judgment.

This commitment is reinforced by our Statement of Intent and Principles of Practice which underpin the Council Plan.

As Councillors we acknowledge that the Local Government Act 1989 and Council policies place a range of obligations on us and that the Code of Conduct is part of the broader framework for effective and accountable governance of the municipality.

2 STATEMENT OF INTENT (What the Council will do)

As a matter of principle we will work collaboratively with all sections of our Community, our organisation and other levels of Government and commit to:

The implementation of best practice procedures for governance, community engagement and decision making that provide confidence to the community in the process of decision making and community participation.

3 PRINCIPLES OF PRACTICE

As Councillors we have established the following value-based principles of how we will achieve our statement of intent. These principles will dictate what is considered and how decisions will be made through collective leadership:

We will:

- Act in the interests of ratepayers and residents, while balancing the needs of specific interests in our community;
- Maintain robust and transparent debate which is respectful of all views and opinions;
- Think and act strategically whilst being receptive to new ideas and opportunities;
- Ensure that key decisions will be based on engaging with communities and stakeholders, and clearly communicating the rationale for those decisions; and
- Recognise the importance of delivering excellence in customer service that focus on delivering positive and timely outcomes.

4 COUNCILLOR CONDUCT PRINCIPLES

In carrying out our role as Councillors, we will:

- Act with integrity;
- Exercise our responsibilities impartially in the interests of the local community;
- Not make improper use of our position to advantage or disadvantage any person;
- Avoid conflicts between our public duties as Councillors and our personal interests and obligations;
- Act honestly and avoid making oral or written statements and avoid actions that may

mislead a person or persons;

- Treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other people;
- Exercise reasonable care and diligence and submit to lawful scrutiny that is appropriate to the office of Councillor;
- Strive to ensure that public resources are used prudently and solely in the public interest;
- Act lawfully and in accordance with the trust placed in us as elected representatives of our community; and
- Support and promote these principles by leadership and example so as to ensure the public has confidence in the office of Councillor.

5 ADHERENCE TO CODE OF CONDUCT

As Councillors we confirm that we will adhere to these principles in our general conduct and our commitment is further reinforced in the following ways:

Courtesy and Respect

Treating all people with **courtesy and respect**, recognising that there are legitimate differences in opinions, race, culture, religion, language, gender and abilities. This includes:

- Treating members of the community with dignity and respect;
- Treating fellow councillors with respect, even when disagreeing with their views;
- or decisions;
- Debating contentious issues without resorting to personal acrimony or insult;
- Ensuring our punctual attendance at Council and committee meetings;
- Recognising the personal impacts of the demands placed on each other through the obligations and responsibilities of carrying out our role as Councillors and as a Council providing appropriate support; and
- Acting with courtesy towards Council staff and avoiding intimidatory behaviour.

Integrity and Honesty

Acting with **integrity and honesty** in all dealings with the community, with other Councillors and with Council staff.

Acting with impartiality and in the best interests of the community as a whole.

Avoiding actions personal or otherwise that may damage the Council or its ability to exercise good government.

Exercising reasonable care and diligence in performing our functions as Councillors.

Complying with all relevant Federal, State and Local Laws.

Trust

Recognising that we hold a **position of trust** and will not misuse or derive undue benefit from our positions:

Avoiding conflicts of interest and comply with the relevant provisions of the Act and this Code of Conduct relating to interests and conflicts of interest.

Refraining from exercising undue influence on other Councillors, members of Council staff or members of the public to gain or attempt to gain a personal advantage.

Complying with the provisions of the Council's Gift and Hospitality Policy.

Respectfully declining to accept gifts either in our role as Councillors or where it could be perceived to influence our position as a Councillor except:

- Such a gift is offered in an open or public forum and refusal would be obviously discourteous;
- Acceptance would not cause any potential, perceived or actual compromise or conflict of interest;
- The gift does not have a significant monetary value (as a guide, less than \$50); and
- The gift is not offered on a regular basis.

6 COUNCIL RESOURCES

At Ballarat, Councillors recognise the need to exercise appropriate prudence in the use of Council resources. This includes:

- Maintaining appropriate separation between our personal property and Council property in the care of the Council.
- Not using Council resources, including staff, equipment and intellectual property for electoral or other personal purposes.
- Ensuring that Council resources are always used effectively and economically and for the purposes for which they are provided.
- Ensuring that Council resources are not used in a way that creates an impression of Council endorsement.
- Ensuring that claims for out of pocket expenses are accurate and relate strictly to Council business in accordance with the adopted Councillor Expenses Entitlement Policy.

7 COUNCIL INFORMATION

Councillors will have access to information that may at times be confidential or controversial. Consequently, all Councillors agree to treat Council Information appropriately, by:

- Not using information gained by virtue of being a Councillor for any purpose than to exercise our role as a Councillor;
- Respecting the Council's policies in relation to public comments and communications with the media;
- Not releasing information deemed 'confidential information' in accordance with section 77 of the Act ; and

- Recognising the requirements of the Information Privacy Act 2000 regarding the access, use and release of personal information.
- That access to information is limited to that which is relevant to a matter before Council or is required to perform the role of Councillor;
- Ensuring information is not used in a way that can cause detriment to the Council.

8 DECISION MAKING

As Councillors we are committed to participating in Council's decision making impartially and in the best interests of the whole community.

There may be times when individual Councillors disagree with a majority decision of Council. Individual Councillors are entitled to express their own independent views, however, this should not be done in a way that reflects negatively on individual Councillors or the Council. This includes comments made on Social Media. Recognising that comments made by Councillors even when a personal view most likely are perceived by the community as the Councillors view.

To ensure constructive decision-making and communication of Council decisions Councillors will:

- Regularly attend meetings of Council, actively and openly participating in the decision making process, striving to achieve the best outcome for the community.
- Seek approval of Council for leave of absence from council meetings.
- Observe Council's Media Guidelines.
- Respect the views of the individual in debate, however, also accept that decisions are to be based on a majority vote.
- Not make allegations which are personally offensive derogatory or defamatory.
- Treat all matters on individual merit and base decision making on facts.

9 CONFLICT OF INTEREST PROCEDURES

We are committed to making all decisions impartially and in the best interests of the whole community. We therefore recognise the importance of fully observing the requirements of the Act in regard to the disclosure of conflicts of interest.

As Councillors we recognise that the legal onus to determine whether a conflict of interest exists rests entirely with the individual Councillor and that Council officers cannot offer any advice in relation to potential conflicts. If we cannot confidently say that we do not have a conflict of interest, we will declare a conflict of interest and comply with the relevant requirements as if we had a conflict of interest.

For the purpose of this Code, "direct interest", "indirect interest" and "conflicts of interest", have the meanings specified in the Act.

As Councillors we will comply with all the provisions of the Act in regard to Conflicts of Interest:

- If we consider that we have a **direct or indirect interest** in a matter before the Council, a special committee of council or an Assembly of Councillors, we have a conflict of interest.

- If we have a **conflict of interest** in a matter we will comply with the requirements of the Act and ensure we disclose the class and nature of the interest leave the room in which the meeting or assembly is being held during any discussion, debate and vote on the matter.
- If we have a personal interest in a matter to be considered by the Council or special committee that is not a conflict of interest, and we consider that our personal interest **may be in conflict** with our public duty to act impartially and in the interest of the whole community, we will declare a **conflicting personal interest** under section 79B of the Act immediately before the matter is considered at the relevant meeting and apply to the Council or special committee to be exempted from voting on the matter.

In addition to the requirements of the Act:

We will give early consideration to each matter to be considered by the Council, special committee of which we are a member, or an Assembly of Councillors, to ascertain if they have a conflict of interest.

If we consider that we may be unable to vote on a matter because of a conflict of interest, we will notify, as soon as possible, the Mayor or the Committee Chair, depending on whether the matter is to be considered by the Council, a special committee, or an Assembly of Councillors, as well as the Chief Executive Officer.

Councillors will not accept gifts either in their roles as Councillor or where it could be perceived to influence the Councillor, except in accordance with the requirements of the Ballarat Council Gift & Hospitality Policy.

10 DISPUTE RESOLUTION PROCEDURES

At times there will be disputes or grievances between Councillors arising from alleged breaches of the Code. These disputes may require resolution outside the Council Chamber.

The Councillor Conduct arrangements in the Act provide for three levels of dispute resolution. Council's internal dispute resolution processes, Councillor Conduct Panels and the VCAT.

A Council's internal dispute resolution process is the first formal step to be taken when there is a dispute between Councillors that has the capacity to undermine the effective operation of the Council.

Before commencing any formal dispute resolution process, such as referral to Councillor Conduct Panel or through the VCAT, the Councillors who are parties to any disagreement will endeavour to resolve their differences informally in a courteous and respectful manner, recognising that they have been elected to represent the best interests of the community. Councillors may seek assistance of any third party in resolving their differences.

In the event that differences are unable to be resolved and the situation is unduly affecting the operation of Council, the following process will be applied:

1. A written report (complaint) will be furnished by a Councillor to the Mayor detailing an alleged breach of the Code specifying the relevant provisions of the Code of Conduct.
2. Within 5 working days of receipt of the complaint, the Mayor will:
 1. provide written acknowledgment of receipt of the complaint;
 2. provide a copy of the complaint to the Councillor concerned; and
 3. attempt to facilitate a resolution.

3. The Mayor may call upon the Chief Executive Officer for advice and guidance at this point in the process. The Mayor may appoint an independent expert to express an opinion in relation to the dispute.
4. If the matter is not able to be satisfactorily resolved, the Mayor shall appoint an Independent Appointee conciliator, being a person suitably qualified in mediation or conciliation nominated by the President of the Law Institute of Victoria.
5. If an Independent Appointee is appointed all Councillors shall cooperate in the dispute resolution process and provide reasonable assistance to the Independent Appointee as requested.
6. Following mediation a report is to be prepared for the Mayor by the Independent Appointee which sets out the outcome of the mediation and may include any general recommendations which may be of assistance to Council. This report is to be provided within 21 days of appointment of the Independent Appointee or such other reasonable time as agreed by the Mayor. The report will be subsequently presented during a closed section of a Council meeting.
7. In the event that the Mayor or Deputy Mayor is either a complainant or a respondent, the Deputy Mayor shall assume the role of the Mayor for the purposes of this part of the Code.
8. In the event that the above internal processes fail to reach a resolution, the matter may be formally referred to either the Councillor Conduct Panel in the first instance or the VCAT. The process for formal resolution is outlined in Part 4 of the Act.

We also acknowledge that the dispute resolution procedure is not intended to resolve differences in policy or decision making, which are appropriately resolved through debate and voting in Council and Committee meetings.

11 WHISTLEBLOWERS PROTECTION ACT 2001

The Ballarat city Council is committed to the aims and objectives of the Whistleblowers Protection Act 2001. It does not accept improper conduct by its Councillors, or staff, nor reprisals against those who come forward to disclose such conduct.

A Councillor who knows or has good reasons to suspect any fraud, corruption, criminal or unethical conduct of another Councillor should be free to report such behaviour.

Councillors will comply with Councils Whistleblowers Protection Policy.

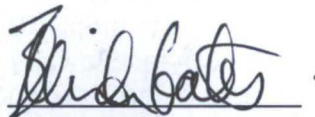
12 ENDORSEMENT

This Code of Conduct was adopted by the Council on 24 July 2013 and is signed by all Councillors:

Signatures



Cr John Burt



Cr Belinda Coates



Cr Vicki Coltman



Cr Des Hudson



Cr Peter Innes



Cr Amy Johnson



Cr Joshua Morris



Cr Samantha McIntosh



Cr John Philips

13 ATTACHMENTS - EXTRACTS LOCAL GOVERNMENT 1989

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Division 1A—Conduct and interests

76AA Definitions

In this Division—

family has the same meaning as **family member** has in section 78;

matter means a matter with which a Council, special committee or a member of council staff is concerned and that will require—

- (a) a power to be exercised, or a duty or function to be performed, or a decision to be made, by the Council or a special committee in respect of the matter;
- (b) a power to be exercised, or a duty or function to be performed, or a decision to be made by a member of council staff in respect of the matter;

not-for-profit organisation means a body or organisation that—

- (a) operates exclusively for charitable, civil or other social purposes; and
- (b) does not share or allocate the funds or profits of the body or organisation with the owners, shareholders or executives of the body or organisation;

relevant person means a person who is a—

- (a) Councillor; or
- (b) member of a special committee; or
- (c) member of Council staff.

76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, 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 staff 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.

76C Councillor Code of Conduct

- (1) A Council must develop and approve a Councillor Code of Conduct for the Council within 12 months after the commencement of section 15 of the **Local Government Amendment (Councillor Conduct and Other Matters) Act 2008**.
- (2) A Council must review the Councillor Code of Conduct within the period of 12 months after a general election.
- (3) A Councillor Code of Conduct—
 - (a) must include the Councillor conduct principles;
 - (b) may set out processes for the purpose of resolving an internal dispute between Councillors;

* * * * *

 - (d) must include provisions in respect of any matter prescribed for the purpose of this section;
 - (e) may include any other matters relating to the conduct of Councillors which the Council considers appropriate.
- (5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.
- (5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.
- (6) A copy of the current Councillor Code of Conduct must be—
 - (a) given to each Councillor;

- (b) available for inspection by the public at the Council office and any district offices.
- (7) On and from the commencement of section 15 of the **Local Government Amendment (Councillor Conduct and Other Matters) Act 2008**, a Councillor Code of Conduct is taken to include the Councillor conduct principles.

76D Misuse of position

- (1) 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; or
 - (b) to cause, or attempt to cause, detriment to the Council or another person.
- Penalty: 600 penalty units or imprisonment for 5 years or both.
- (2) 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 he or she 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 he or she is not authorised to exercise or perform; or
 - (e) using public funds or resources in a manner that is improper or unauthorised; or
 - (f) failing to disclose a conflict of interest as required under this Division.
- (3) This section—
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
 - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

76E Improper direction and improper influence

- (1) 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 member.
- (2) A Councillor must not direct, or seek to direct, a member of Council staff—
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
 - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
 - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
 - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.
- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

77 Confidential information

- (1) A person who is, or has been, a Councillor or a member of a special committee, must not release information that the person knows, or should reasonably know, is confidential information.
- (2) For the purposes of this section, information is **confidential information** if—
- (a) the information was provided to the Council or a special committee in relation to a matter considered by the Council or special committee at a meeting closed to members of the public and the Council or special committee has not passed a resolution that the information is not confidential; or
 - (b) the information has been designated as confidential information by a resolution of the Council or a special committee which specifies the relevant ground or grounds

- applying under section 89(2) and the Council or special committee has not passed a resolution that the information is not confidential; or
- (c) subject to subsection (3), the information has been designated in writing as confidential information by the Chief Executive Officer specifying the relevant ground or grounds applying under section 89(2) and the Council has not passed a resolution that the information is not confidential.
- (3) Confidential information referred to in subsection (2)(c) ceases to be confidential at the expiry of the period of 50 days after the designation is made unless subsection (2)(a) or (2)(b) applies to the information.

77A Direct and indirect interests

- (1) A relevant person has a conflict of interest in respect of a matter if the relevant person has a direct interest or indirect interest in the matter.
- (2) A relevant person has a direct interest in a matter if the relevant person has an interest of a kind described in section 77B.
- (3) A relevant person has an indirect interest in a matter if the relevant person has—
- a close association as specified in section 78; or
 - an indirect financial interest as specified in section 78A; or
 - a conflicting duty as specified in section 78B; or
 - received an applicable gift as specified in section 78C; or
 - become an interested party as specified in section 78D; or
 - a residential amenity that may be altered as specified in section 78E.
- (4) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
- (5) A relevant person does not have a conflict of interest in a matter if the direct interest or indirect interest the relevant person holds—
- is held as a resident, ratepayer or voter and does not exceed the interests generally held by other residents, ratepayers or voters; or
 - is held in common with a large class of persons and does not exceed the interests generally held by the class of persons.
- (6) A relevant person does not have a conflict of interest in a matter if the relevant person—
- does not know the circumstances that give rise to the conflict of interest; and
 - would not reasonably be expected to know the circumstances that give rise to the conflict of interest.

77B Direct interest

- (1) A person has a direct interest in a matter if there is a reasonable likelihood that the benefits, obligations, opportunities or circumstances of the person would be directly altered if the matter is decided in a particular way.
- (2) Without limiting subsection (1), a person has a direct interest in a matter if—
- there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;
 - the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.
- (3) A person who has a membership in a club or organisation that has a direct interest in a matter—
- does not, by reason of that membership, have a direct interest in the matter under subsection (1); and
 - does not have an indirect interest in the matter, by reason of that membership, unless the person has an indirect interest in the matter under section 78A, 78B or 78C.
- (4) In subsection (2), **controlling interest** has the same meaning as it has in section 72(2) of the **Payroll Tax Act 2007**.

78 Indirect interest by close association

- (1) In this section—

daughter means a biological daughter, step-daughter, adopted daughter, or female child for whom the person has custodial responsibilities;

direct relative means the spouse, domestic partner, son, daughter, mother, father, brother or sister of the person;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

family member means—

- (a) a spouse or domestic partner of the person; or
- (b) a son, daughter, mother, father, brother or sister that regularly resides with the person;

relative means—

- (a) a direct relative of the person;
- (b) a direct relative of a person who is the direct relative of the person;

son means a biological son, step son, adopted son or male child for which the person has custodial responsibilities.

- (2) A person has an indirect interest by close association in a matter if—
 - (a) a family member of the person has a direct interest or an indirect interest in a matter; or
 - (b) a relative of the person has a direct interest in a matter; or
 - (c) a member of the person's household has a direct interest in a matter.
- (3) For the purposes of the definition of **domestic partner** in subsection (1)—
 - (a) **registered relationship** has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
 - (c) a person is not a domestic partner of another person only because they are co-tenants.

78A Indirect interest that is an indirect financial interest

- (1) A person has an indirect financial interest in a matter if the person is likely to receive a benefit or incur a loss, measurable in monetary terms, as a consequence of a benefit received or loss incurred by another person who has a direct or indirect interest in the matter.
- (2) Without limiting subsection (1), a person has an indirect financial interest that is a conflict of interest if—
 - (a) the person has a beneficial interest in shares of a company or other body that has a direct interest in the matter, except in the circumstances specified in subsection (3);
 - (b) the person is owed money from another person and that other person has a direct interest in the matter.
- (3) If a person, and family members of the person, hold shares in a company or body that has a direct or indirect interest in a matter with a combined total value that does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million, the person's indirect financial interest is not a conflict of interest.
- (4) Subsection (2)(b) does not apply if the other person is an authorised deposit-taking institution.
- (5) For the purposes of determining the value of shares under this section, the share value is to be taken from—

- (a) the close of business on the most recent of 30 June or 31 December; or
- (b) if the person has lodged an ordinary return since the most recent of 30 June or 31 December, the close of business on the date the return was submitted.

78B Indirect interest because of conflicting duties

- (1) A person has an indirect interest in a matter because of a conflicting duty if the person—
 - (a) is a manager or a member of a governing body of a company or body that has a direct interest in a matter;
 - (b) is a partner, consultant, contractor, agent or employee of a person, company or body that has a direct interest in a matter;
 - (c) is a trustee for a person who has a direct interest in a matter.
- (2) A person has an indirect interest in a matter because of a conflicting duty if the person held a position or role specified in subsection (1) and, in that position or role, dealt with the matter.
- (3) A person does not have an indirect interest because of a conflicting duty if—
 - (a) the person is, or has been, only an employee in the service of the Crown or of a body established by or under any Act for a public purpose and the person has no current or expected responsibilities as that employee in relation to a matter;
 - (b) the person only holds a position in a not-for-profit organisation for which the person receives no remuneration and the person was appointed to the relevant special committee of the Council to be a representative of the non-for-profit organisation;
 - (ba) the person only holds a position, with the Council's approval as a representative of the Council, in an organisation for which the person receives no remuneration;
 - (c) the person is only a Councillor who holds a position in the Municipal Association of Victoria or in another body that has the purpose of representing the interests of Councils;
 - (ca) the person is only a member of a development assessment committee established under Part 4AA of the **Planning and Environment Act 1987**;
 - (d) the person only holds a position that has been prescribed for the purposes of this section.

78C Indirect interest because of receipt of an applicable gift

- (1) In this section, **applicable gift** means one or more gifts with a total value of, or more than, the gift disclosure threshold, received from a person or persons specified in subsection (2) in the 5 years preceding the decision or the exercise of the power, duty or function but does not include—
 - (a) reasonable hospitality received by the person at an event or function the person attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee; or
 - (b) a gift, other than an election campaign donation, that was received by the person more than 12 months before the person became a Councillor, a member of Council staff or a member of a special committee.
- (2) A person has an indirect interest in a matter if the person has received an applicable gift, directly or indirectly, from—
 - (a) a person who has a direct interest in the matter; or
 - (b) a director, contractor, consultant, agent or employee of a person, company or body that the person knows has a direct interest in a matter; or
 - (c) a person who gives the applicable gift to the person on behalf of a person, company or body that has a direct interest in the matter.
- (3) For the purposes of determining when a person became a Councillor or member of a special committee under subsection (1)(b), if the person is re-elected or reappointed as a Councillor or a member of a special committee, on completion of his or her term of office, the previous term of office served by that person as a Councillor or member of a special committee must be counted as continuous service with any service completed by the person after the person's re-election or reappointment.

78D Indirect interest as a consequence of becoming an interested party

A person has an indirect interest in a matter if the person has become an interested party in the matter by initiating civil proceedings in relation to the matter or becoming a party to civil proceedings in relation to the matter.

78E Indirect interest because of impact on residential amenity

A person has an indirect interest in a matter if there is a reasonable likelihood that the residential amenity of the person will be altered if the matter is decided in a particular way.

79 Disclosure of conflict of interest

- (1) If a Councillor or member of a special committee has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or the special committee, the Councillor or member must, if he or she is attending the meeting, disclose the conflict of interest in accordance with subsection (2).
- (2) A Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest—
 - (a) by either—
 - (i) advising the Council or special committee at the meeting of the details required under paragraphs (b) and (c) immediately before the matter is considered at the meeting; or
 - (ii) advising the Chief Executive Officer in writing of the details required under paragraphs (b) and (c) before the meeting; and
 - (b) classifying the type of interest that has given rise to the conflict as either—
 - (i) a direct interest; or
 - (ii) an indirect interest and specifying the particular kind of indirect interest under section 78, 78A, 78B, 78C, 78D or 78E; and
 - (c) describing the nature of the interest; and
 - (d) if the Councillor or member advised the Chief Executive Officer of the details under paragraph (a)(ii), the Councillor or member must make a disclosure of the class of interest only to the meeting immediately before the matter is considered at the meeting.
- (3) For the purposes of section 79(2)(a)(i), if a Councillor or member of a special committee has a conflict of interest in two or more matters which are to be considered or discussed consecutively at a meeting of the Council or the special committee, the Councillor or member may make a full disclosure of each of those interests immediately before the first matter is considered at the meeting.
- (5) The Chief Executive Officer must—
 - (a) keep written disclosures given to him or her under this section in a secure place for 3 years after the date the Councillor or member of a special committee who made the disclosure ceases to be Councillor or member of a committee; and
 - (b) destroy the written disclosure when the 3 year period referred to in paragraph (a) has expired.
- (6) While the matter is being considered or any vote is taken in relation to the matter, the Councillor or member of a special committee must—
 - (a) leave the room and notify the Mayor or the Chairperson of the special committee that he or she is doing so; and
 - (b) remain outside the room and any gallery or other area in view or hearing of the room.
- (7) The Mayor or the Chairperson of the special committee must cause the Councillor or member of a special committee to be notified that he or she may return to the room after—
 - (a) consideration of the matter; and
 - (b) all votes on the matter.
- (8) If a Councillor or member of a special committee discloses a conflict of interest, the Chief Executive Officer or the Chairperson must record in the minutes of the meeting—
 - (a) the declaration of the conflict of interest; and
 - (b) the classification of the interest that has given rise to the conflict, and if the Councillor or member has disclosed the nature of the interest to the meeting, the nature of the interest.

- (9) Unless section 80 applies, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence and liable to a fine not exceeding 120 penalty units.

79B Conflicting personal interest

- (1) This section does not apply to a Councillor or member of a special committee who has a conflict of interest in the matter.
- (2) If a Councillor or a member of a special committee considers that he or she has a personal interest in relation to a matter that is in conflict with his or her public duty in relation to the matter, the Councillor or member may, immediately before the matter is considered at the relevant meeting, apply to the Council or special committee to be exempted from voting on the matter.
- (3) If a Councillor or member of a special committee makes an application under subsection (2), he or she must give reasons in support of the application.
- (4) A Council or special committee may consent to an application made under subsection (2) and must not unreasonably withhold consent.
- (5) If a Council or special committee consents to an application under subsection (4), sections 79(6), 79(7), 79(8) and 79(9) apply as if the personal interest that is the subject of an application under subsection (2) were a conflict of interest specified under this Act.

79C Certain situations where Councillor taken to not have a conflict of interest

- (1) A Councillor is taken to not have a conflict of interest for the purposes of this Division if the matter only relates to—
 - (a) the nomination or appointment by the Council of the Councillor to a position for which the Councillor will not be remunerated;
 - (b) the election of the Mayor under section 71 or the appointment of an acting Mayor under section 73(3);
 - (c) a decision in relation to the payment of allowances to the Mayor or Councillors under section 74 or 74C(2);
 - (d) the adoption of a policy under section 75B in relation to the reimbursement of expenses;
 - (e) the adoption of a Councillor Code of Conduct under section 76C;
 - (f) an application to a Councillor Conduct Panel or VCAT under Division 1B;
 - (g) an application for an exemption under section 80;
 - (h) the appointment of members and Chairpersons of special committees;
 - (i) a resolution that has the effect of making the Councillors eligible or ineligible for the superannuation guarantee under taxation legislation;
 - (j) the conduct of a Councillor with respect to—
 - (i) an internal dispute that involves the Councillor;
 - (ii) an allegation of misconduct or serious misconduct (as defined in section 81A) by the Councillor;
 - (k) a submission provided to an electoral representation review under section 219F;
 - (l) a submission provided for the purposes of a subdivision review conducted under section 219N.
- (2) If a budget or revised budget to be approved by a Council includes funding for a matter in respect of which a Councillor has a conflict of interest the Councillor is taken to not have a conflict of interest for the purposes of approving the budget or revised budget if—
 - (a) the Council previously approved the matter and the proposed funding for the matter for inclusion in the budget or revised budget; and
 - (b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter and the proposed funding for the matter was previously considered and made.
- (3) If a Council Plan to be approved by a Council includes a matter in respect of which a Councillor has a conflict of interest, the Councillor is taken to not have a conflict of interest for the purposes of approving the Council Plan if—
 - (a) the Council previously approved the matter for inclusion in the Council Plan; and
 - (b) the Councillor disclosed the nature of the conflict of interest under section 79 when the decision in respect of the matter was previously considered and made.

- (4) If a Councillor with a conflict of interest referred to in subsection (2) or (3) notifies the Mayor or Chairperson prior to the consideration of the budget, revised budget or Council Plan of the conflict of interest, the Mayor or Chairperson must allow a prior motion to be put that the matter or funding be considered for inclusion in the budget, revised budget or Council Plan.

79D Person may make submission despite conflict of interest

- (1) Subject to subsection (2), a relevant person who has a conflict of interest in a matter and who has made a written submission under section 223 in respect of the matter, may present his or her submission under section 223(1)(b) to the Council or committee of the Council.
- (2) The relevant person who has a conflict of interest in a matter must not be at the meeting of the Council or committee of the Council any longer than is required for the person to be heard in support of the person's written submission.

80 Exemption by Minister

- (1AA) Despite section 79, the Minister may, of his or her own motion, exempt in writing a person, other than a Councillor, from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit if the Minister is satisfied that—
 - (a) extraordinary circumstances exist that justify the exemption of the person; and
 - (b) it is in the public interest to exempt the person.
- (1AB) In exempting a person under subsection (1AA), the Minister must have regard to the extent of the conflict of interest of the person.
 - (1) Despite section 79—
 - (a) a Council may apply, in writing, to the Minister for an exemption of any Councillor from any or all of the provisions of section 79 if the Council is of the opinion that the transaction of any Council or special committee business would be impeded because of the number of Councillors affected by section 79;
 - (b) a Chief Executive Officer of a Council may apply, in writing, to the Minister, after receiving written declarations of conflicts of interest from a majority of Councillors, for an exemption of those Councillors from any or all of the provisions of section 79.
 - (1A) After reviewing an application received from a Council or a Chief Executive Officer, the Minister may require the Council or Chief Executive Officer to provide additional information in respect of the application, including copies of the written declarations of conflicts of interests made by Councillors under section 79.
 - (1B) In considering an application made by a Council or Chief Executive Officer, the Minister must have regard to—
 - (a) the extent of the conflicts of interest of the Councillors; and
 - (b) the public interest.
 - (2) The Minister may, after considering an application under subsection (1B), exempt in writing a Councillor from any or all of the provisions of section 79 for an unlimited or specified period, subject to any conditions the Minister thinks fit.
 - (3) The Minister may revoke an exemption.

80A Requirements to be observed by an assembly of Councillors

- (1) At an assembly of Councillors, the Chief Executive Officer must ensure that a written record is kept of—
 - (a) the names of all Councillors and members of Council staff attending;
 - (b) the matters considered;
 - (c) any conflict of interest disclosures made by a Councillor attending under subsection (3);
 - (d) whether a Councillor who has disclosed a conflict of interest as required by subsection (3) leaves the assembly.
- (2) The Chief Executive Officer must ensure that the written record of an assembly of Councillors is, as soon as practicable—
 - (a) reported at an ordinary meeting of the Council; and
 - (b) incorporated in the minutes of that Council meeting.

- (3) If a Councillor attending an assembly of Councillors knows, or would reasonably be expected to know, that a matter being considered by the assembly is a matter that, were the matter to be considered and decided by Council, the Councillor would have to disclose a conflict of interest under section 79, the Councillor must, at the time set out in subsection (4), disclose to the assembly that he or she has a conflict of interest and leave the assembly whilst the matter is being considered by the assembly.
Penalty: 120 penalty units.
- (4) A Councillor must disclose the conflict of interest either—
- immediately before the matter in relation to which the Councillor has a conflict of interest is considered; or
 - if the Councillor realises that he or she has a conflict of interest after consideration of the matter has begun, as soon as the Councillor becomes aware that he or she has a conflict of interest.

80B Members of Council staff to disclose conflicts of interest in respect of delegated functions

- (1) This section applies to—
- a member of Council staff who has been delegated a power, duty or function of the Council under section 98(1) or 98(3) or under another Act;
 - the Chief Executive Officer who has been given a power, duty or function under this Act or another Act;
 - any other member of Council staff who has been delegated a power, duty or function of the Chief Executive Officer under section 98(2).
- (2) A member of Council staff who has a conflict of interest in a matter in which they also have delegated power, duty or function must—
- not exercise the power or discharge the duty or function; and
 - in the case of the Chief Executive Officer, disclose the type of interest and the nature of the interest to—
 - the Mayor, in writing, as soon as he or she becomes aware of the conflict of interest in the matter; and
 - the Council by no later than the next ordinary meeting of the Council.
 - in the case of any other member of staff, disclose the type of interest and the nature of the interest to the Chief Executive Officer, in writing, as soon as he or she becomes aware of the conflict of interest in the matter.
- Penalty: 120 penalty units.
- (3) The Chief Executive Officer does not have a conflict of interest in a matter if the matter only relates to—
- the adoption or amendment of a policy relating to Council staff generally;
 - the adoption of a code of conduct for Council staff under section 95AA;
 - a decision to delegate a power, duty or function to a member of Council staff;
 - a decision to request the appointment of a probity auditor under Division 4.

80C Persons to disclose interests to Council when providing advice

- (1) This section applies to Council staff and persons engaged under a contract to provide advice or services to the Council or a special committee.
- (2) A person who is providing advice or a report to a meeting of the Council or a special committee, and who has a conflict of interest in a matter to which the advice or report relates, must disclose the type of interest constituting the conflict of interest when providing the advice or report and before the advice or report is considered by the Council or the committee.
Penalty: 60 penalty units.
- (3) A disclosure made by a person under subsection (2) must be recorded in the minutes of the meeting.
- (4) A person who has made a disclosure under subsection (2) must disclose the nature of the interest if required to make that disclosure by the Council or committee.
- (5) Sections 77A to 78E apply to a person to whom this section applies as if the person were a relevant person under this Division.

- (1) In this section—
nominated officer means the senior officers of the Council and any other member of the Council staff nominated by the Chief Executive Officer;
relative has the same meaning as **relative** has in section 78;
return period in relation to the ordinary return of a Councillor, member of a special committee or nominated officer means—
- (a) if the last return of the Councillor, member of a special committee or nominated officer was a primary return, the period between the date of the primary return and the date the ordinary return is submitted; or
 - (b) if the last return of the Councillor, member of a special committee or nominated officer was an ordinary return, the period between the date of that return and the date the current ordinary return is submitted.
- (2) A person who becomes a Councillor or a member of a special committee must submit a primary return in the prescribed form to the Chief Executive Officer within—
- (a) in the case of a Councillor—
 - (i) 30 days of election day; or
 - (ii) 7 days of making the oath of office of a Councillor; or
 - (b) 30 days of becoming a member of a special committee.
- Penalty: 60 penalty units.
- (2A) A Council may exempt a member of a special committee who is not a Councillor from being required to submit a primary return or an ordinary return.
- (2B) The Council must review any exemptions in force under subsection (2A) within the period of 12 months after a general election.
- (3) If a person is re-elected or reappointed upon completion of his or her term of office as a Councillor or member of a special committee, the Councillor or member of a special committee does not have to submit a new primary return.
- (4) Any person who becomes a nominated officer must within 30 days of becoming a nominated officer submit a primary return in the prescribed form to the Chief Executive Officer.
- Penalty: 60 penalty units
- (4A) Any person who becomes a nominated officer solely because of the amendment made to this Act by section 8 of the **Local Government (Amendment) Act 1994** is deemed for the purposes of subsection (4) to have become a nominated officer on the date section 8 of that Act came into operation.
- (5) A Councillor, a member of a special committee or a nominated officer must submit an ordinary return in the prescribed form to the Chief Executive Officer on—
- (a) 30 June or within 40 days after 30 June; and
 - (b) 31 December or within 40 days after 31 December.
- Penalty: 60 penalty units.
- (6) A Councillor, a member of a special committee or a nominated officer must disclose the following information in the primary return as at the date of the primary return—
- (a) the name of any company or other body in which he or she holds any office whether as a director or otherwise;
 - (b) the name or description of any company or body in which he or she holds a beneficial interest unless the total value of the interest does not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million;
 - (c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she has any beneficial interest other than by way of security for any debt;
 - (d) a concise description of any trust in which he or she holds a beneficial interest or of which he or she is a trustee and a member of his or her family holds a beneficial interest;
 - (e) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, a member of a special committee or nominated officer.
- Penalty: 60 penalty units.

- (7) A Councillor, a member of a special committee or a nominated officer must disclose in an ordinary return the following information in relation to the return period—
- (a) if he or she has held an office whether as director or otherwise in any company or body, corporate or unincorporate—the name of the company or body;
 - (b) the name or description of any company or body in which he or she holds or has held a beneficial interest unless the total value of the interest does or did not exceed \$10 000 and the total value of issued shares of the company or body exceeds \$10 million;
 - (c) the address or description of any land in the municipal district of the Council or in a municipal district which adjoins that municipal district in which he or she had any beneficial interest other than by way of security for any debt;
 - (d) a concise description of any trust in which he or she held a beneficial interest or of which he or she is a trustee and a member of his or her family held a beneficial interest;
 - (e) particulars of any gift of or above the amount or value of the gift disclosure threshold received by him or her, either directly or indirectly, other than a gift received—
 - (i) from a person who is a relative of him or her; or
 - (ii) as hospitality at an event or function he or she attended in an official capacity as the Mayor, a Councillor, a member of Council staff or a member of a special committee;
 - (f) any other substantial interest whether of a pecuniary nature or not of him or her or of a member of his or her family of which he or she is aware and which he or she considers might appear to raise a material conflict between his or her private interest and his or her public duty as a Councillor, member of a special committee or nominated officer.

Penalty: 60 penalty units.

- (9) The Chief Executive Officer must maintain a register of the interests of Councillors, members of special committees and nominated officers consisting of the last 3 returns that those Councillors, members and officers were required to submit under this section.
- (10) The Chief Executive Officer must allow a person to inspect the register if that person has previously made written application to the Chief Executive Officer to do so and the application meets the requirements of the regulations.
- (11) The register may be inspected at the office of the Council during normal office hours.
- (12) The Chief Executive Officer must take all reasonable steps to ensure that no person other than a person who has made application has access to or is permitted to inspect the register or any return.
- (13) A person must not publish any information derived from the register unless that information is a fair and accurate summary or copy of the information derived from the register.
- (13A) The Chief Executive Officer must maintain a record of the names of persons who have inspected the register of interests under subsection (10).
- (13B) A Councillor, a member of a special committee or a nominated officer, whose interests are recorded in the register may inspect the recorded names of people kept under subsection (13A) who have inspected his or her personal records.
- (14) A member of Council staff must not, whether before or after he or she ceases to be so employed, make a record of, divulge or communicate to any person any information in relation to a matter dealt with by this section that is gained by or conveyed to him or her during his or her employment with the Council or make use of that information for any purpose other than the discharge of his or her official duties under this section.
- Penalty: 60 penalty units.
- (16) As soon as practicable after a person ceases to be a Councillor or a member of a special committee or a nominated officer, the Chief Executive Officer must remove all the returns submitted by that person from the register.

Division 1B—Councillor Conduct Panels

81A Definitions

In this Division—

CCP Registrar means a member of Council staff who is not the Chief Executive Officer and who is appointed in writing by the Chief Executive Officer to be the Councillor Conduct Panel Registrar for the Council under clause 8(1) of Schedule 5;

Councillor Conduct Panel means a panel of 2 people established by the MAV under Schedule 5;

gross misconduct by a Councillor means behaviour that—

- (a) contravenes—
 - (i) the Councillor conduct principles; and
 - (ii) a section of this Act, the contravention of which has a penalty of at least 60 penalty units; or
- (b) demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor;

MAV means the body corporate known as the Municipal Association of Victoria established under the **Municipal Association Act 1907**;

misconduct by a Councillor means—

- (a) conduct by a Councillor that is in breach of the Councillor Code of Conduct; or
- (b) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel where the Panel has not made a finding of misconduct against the Councillor;

serious misconduct by a Councillor means—

- (a) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel following a finding of misconduct made by the Councillor Conduct Panel in respect of the Councillor; or
- (b) the failure of a Councillor to cease conduct that contravenes the Councillor Code of Conduct after a Councillor Conduct Panel or VCAT has made a finding of misconduct or serious misconduct against the Councillor in respect of that behaviour; or
- (c) conduct by a Councillor that contravenes the Councillor conduct principles after the Councillor has had a previous finding of misconduct, serious misconduct or gross misconduct made against them by a Councillor Conduct Panel or VCAT in the last 4 years; or
- (d) conduct by a Councillor that contravenes—
 - (i) the Councillor conduct principles; and
 - (ii) section 76E or 77.

81B Application to Councillor Conduct Panel

- (1) An application for a Councillor Conduct Panel to make a finding of misconduct against a Councillor, or to authorise an application to VCAT for a finding of serious misconduct, may be made by—
 - (a) the Council, following a resolution of the Council to make an application to a Councillor Conduct Panel under this section in respect of a Councillor's conduct; or
 - (b) a Councillor; or
 - (c) a group of Councillors.
- (2) An application made by a Councillor or group of Councillors must be lodged with the CCP Registrar.
- (3) An application made under this section must—
 - (a) specify the ground or grounds for the application;
 - (b) set out the circumstances, actions or inactions of the Councillor who is the subject of the application that are alleged as constituting misconduct or serious misconduct;
 - (c) if the Councillor Code of Conduct provides processes for resolving internal disputes between Councillors—
 - (i) the reasons why the matter cannot be resolved by those processes; or
 - (ii) if those processes were used, the reasons why the matter was not resolved through those processes;
 - (d) if the application is made by the Council or a group of Councillors, state the name and address of the Councillor whom the Council has, or group have, appointed as representative of the Council or group.

81C Dismissal of application

A Councillor Conduct Panel may dismiss an application made by a Councillor or group of Councillors under section 81B at any time if—

- (a) the application is frivolous, vexatious, misconceived or lacking in substance; or
- (b) insufficient reasons have been given to explain why the matter cannot be resolved by internal dispute resolution processes.

81D Referral to VCAT

- (1) A Councillor who is the subject of an application made under section 81B (the **respondent**) may apply to the Councillor Conduct Panel for referral of the matter to VCAT at any time before the Panel determines the matter.
- (2) A Councillor Conduct Panel must refer an application made under section 81B to VCAT for determination if the respondent makes an application under subsection (1).
- (3) A Councillor Conduct Panel may refer an application made under section 81B to VCAT for determination if the Panel considers that it cannot make a determination because a person fails to attend a Panel hearing or to provide information that the Panel has requested.
- (4) If an application made under section 81B has been referred to VCAT for determination, a Councillor Conduct Panel must—
 - (a) in writing, advise the applicant, the respondent, the relevant Council and the Minister of the referral;
 - (b) provide VCAT with a copy of the application made under section 81B and any other documents the Panel considers relevant to the application.
- (5) The applicant in the application made under section 81B is taken to be the applicant in the application referred to VCAT under this section.

81E Application on grounds of gross misconduct

- (1) VCAT may hear an application made by the Secretary that alleges gross misconduct by a Councillor.
- (2) An application made under subsection (1) may only be made by the Secretary.

81F Parties to a VCAT proceeding

- (1) The applicant and respondent are parties to a proceeding referred to, or commenced in, VCAT under section 81D, 81E or 81J(1)(b).
- (2) In addition to any other parties, the following may request to be joined as parties to a VCAT proceeding referred to, or commenced, under section 81D or 81J(1)(b)—
 - (a) the Secretary;
 - (b) the relevant Council.

81G Notice of a Councillor Conduct Panel

- (1) A Councillor Conduct Panel must—
 - (a) fix a time and, subject to subsection (2), a place that is within the municipal district of the relevant Council, for the hearing to be conducted; and
 - (b) serve by post a notice of the time and place of the hearing on the applicant, respondent and Council.
- (2) For the purposes of subsection (1)(a), a Councillor Conduct Panel may fix a place for the hearing that is not within the municipal district of the relevant Council if the Panel considers it necessary or appropriate in the circumstances.

81H Procedures

- (1) A Councillor Conduct Panel may—
 - (a) request a person to attend a hearing and answer questions;
 - (b) request information from the applicant, the respondent or the Council, including confidential information held by the Council.
- (2) Members of a Councillor Conduct Panel that are provided with confidential information must ensure that the information is not released to the public.

81I Conduct of a Councillor Conduct Panel

- (1) A Councillor Conduct Panel must not make a determination under section 81J until it has conducted a hearing.

- (2) The following applies to a hearing of a Councillor Conduct Panel—
 - (a) the proceedings must be conducted with as little formality and technicality as the requirements of this Act and the proper consideration of the matter permit;
 - (b) there is no right to representation at the hearing except if the Panel considers that a party requires representation to ensure that the hearing is conducted fairly;
 - (c) the proceedings must not be open to the public;
 - (d) if the hearing is based on an application made by Council or group of Councillors, the appointed representative must represent the Council or group of Councillors at the hearing;
 - (e) the Panel is not bound by rules of evidence but may inform itself in any way it thinks fit;
 - (f) the Panel is bound by the rules of natural justice;
 - (g) the procedure of a Panel is otherwise in its discretion.
- (3) At the hearing of an application, the Councillor Conduct Panel must provide the respondent with an opportunity to be heard.

81J Determinations by a Councillor Conduct Panel

- (1) After a Councillor Conduct Panel has conducted a hearing, the Panel may—
 - (a) make a finding of misconduct against a Councillor; or
 - (b) authorise an applicant to make an application to VCAT if the Panel considers that there are reasonable grounds on which VCAT may make a finding of serious misconduct against a Councillor; or
 - (c) whether or not a finding of misconduct against a Councillor has been made, make a finding that remedial action is required; or
 - (d) in addition to any findings made under paragraphs (a) to (c), direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue; or
 - (e) dismiss the application.
- (2) If a Councillor Conduct Panel makes a finding of misconduct against a Councillor, the Panel may—
 - (a) reprimand that Councillor; or
 - (b) direct that Councillor to make an apology in a form or manner determined by the Panel; or
 - (c) direct that Councillor to take leave of absence for a period specified by the Panel not exceeding 2 months, commencing on a date specified by the Panel.
- (3) If a Councillor Conduct Panel makes a finding that remedial action is required under subsection (1)(c), the Panel may—
 - (a) direct the Councillor who is the subject of the application to attend mediation; or
 - (b) direct the Councillor who is the subject of the application to attend training; or
 - (c) direct the Councillor who is the subject of the application to attend counselling.
- (4) For the purposes of subsection (3), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.
- (5) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.
- (6) If a Councillor Conduct Panel directs the Council to amend its Councillor Code of Conduct, the Council must comply with that direction within 3 months of the direction being made.
- (7) This section does not apply to a Councillor Conduct Panel formed for the purposes of hearing a referral from VCAT under section 81L.

81K Findings and orders by VCAT

- (1) In the case of an application referred to, or commenced in, VCAT under sections 81D, 81E or 81J(1)(b), VCAT may make any of the following findings—
 - (a) that a Councillor has engaged in conduct that constitutes misconduct;
 - (b) that a Councillor has engaged in conduct that constitutes serious misconduct;
 - (c) that a Councillor has engaged in conduct that constitutes gross misconduct.
- (2) VCAT may, in relation to a finding of misconduct under subsection (1)(a)—
 - (a) reprimand that Councillor; or
 - (b) make any or all of the following orders—

- (i) that the Councillor must make an apology in a form and manner determined by VCAT;
 - (ii) that the Councillor must take leave of absence for a period specified by VCAT not exceeding 2 months and commencing on a date specified by VCAT.
- (3) VCAT may make any or all of the following orders in relation to a finding of serious misconduct under subsection (1)(b)—
- (a) that the Councillor is suspended from office for a period specified by VCAT not exceeding 6 months;
 - (b) that the Councillor is ineligible to hold the office of Mayor for a period specified by VCAT not exceeding 4 years;
 - (c) that the Councillor is ineligible to chair a special committee of the Council for a period specified by VCAT not exceeding 4 years.
- (4) VCAT may make any or all of the following orders in relation to a finding of gross misconduct under subsection (1)(c)—
- (a) that the Councillor is disqualified for a period specified by VCAT not exceeding 4 years and his or her office is vacated;
 - (b) that the Councillor is suspended from office for a period specified by VCAT not exceeding 6 months;
 - (c) that the Councillor is ineligible to hold the office of Mayor for a period specified by VCAT not exceeding 4 years.
- (5) If VCAT makes a finding of serious misconduct or gross misconduct by a Councillor, the Councillor becomes ineligible to hold the office of Mayor for the remainder of the Council's term, unless VCAT otherwise orders.

81L Referral by VCAT to Councillor Conduct Panel

- (1) VCAT may refer a matter to a Councillor Conduct Panel, whether or not VCAT has made a finding under section 81K, if VCAT considers that—
- (a) remedial action is required; or
 - (b) the Councillor Code of Conduct requires amendment.
- (2) A Councillor Conduct Panel formed for the purposes of this section may—
- (a) direct the Councillor who is the subject of the referral to attend mediation; or
 - (b) direct the Councillor who is the subject of the referral to attend training; or
 - (c) direct the Councillor who is the subject of the referral to attend counselling;
 - (d) direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue.
- (3) For the purposes of subsections (2)(a), (2)(b) and (2)(c), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.
- (4) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.
- (5) If a Councillor Conduct Panel directs the Council to amend its Councillor Code of Conduct, the Council must comply with that direction within 3 months of the direction being made.

81M Notice of determinations and tabling of decisions

- (1) After a Councillor Conduct Panel has made a determination under section 81J, the Panel must give a copy of the decision to—
- (a) the Council; and
 - (b) the parties to the matter; and
 - (c) the Minister.
- (2) A copy of the decision given to the Council under subsection (1)(a) must be tabled at the next ordinary meeting of the Council and recorded in the minutes for that meeting.
- (3) A Councillor Conduct Panel must give a written statement of reasons for the decision, within 28 days of making a determination, to—
- (a) the Council; and
 - (b) the parties to the matter; and
 - (c) the Minister.
- (4) A statement of reasons provided in accordance with subsection (3) is taken to be a statement of reasons provided in accordance with section 46(1) of the **Victorian Civil and Administrative Tribunal Act 1998**.

- (5) A record of the decision of VCAT, made in respect of an application or review under this Division in relation to a Councillor of a Council, must be tabled at the next ordinary meeting of the Council and recorded in the minutes of that meeting.

81N Suspension of matters during election period

- (1) Applications and proceedings made and conducted under this Division must be suspended during the election period for a general election.
- (2) If an application is made to a Councillor Conduct Panel or VCAT for a finding of misconduct or serious misconduct against a person who is a Councillor before a general election, and that person is not returned to the office of Councillor as a result of the general election, the application made against that person who was a Councillor before the election lapses.
- (3) If an application is made to a Councillor Conduct Panel or VCAT for a finding of misconduct or serious misconduct against a person who is a Councillor before a general election, and that person is returned to the office of Councillor as a result of the general election, the application made against the Councillor may resume, whether or not the applicants were returned as a result of the general election.
- (4) An application under section 81E against a person who is a Councillor before a general election must resume after the general election is held whether or not the person is returned to the office of Councillor.

81O Breach of Act by Councillor

- (1) This section applies if it appears to a Councillor Conduct Panel that a Councillor has committed an offence under this Act.
- (2) A Councillor Conduct Panel must by notice in writing notify the Secretary that a Councillor appears to have committed an offence under this Act as soon as the Panel becomes aware of the apparent offence.

81P Investigation by inspector of municipal administration

- (1) The Secretary may at any time (whether or not the Secretary has received a notice under section 81O), by notice, require a Councillor Conduct Panel to suspend or stop the Panel's consideration of a matter.
- (2) If the Secretary has given notice to a Councillor Conduct Panel under subsection (1), the Secretary must refer the matter that was before the Panel to an inspector of municipal administration for investigation under section 223B.
- (3) The inspector of municipal administration must commence an investigation into a matter referred to him or her within 28 days of the referral under subsection (2).

81Q Review by VCAT

- (1) In this section, *party* means the applicant or respondent to an application made to, and matter heard by, a Councillor Conduct Panel, under this Division.
- (2) Subject to subsection (3), a party who is affected by the decision made by a Councillor Conduct Panel under this Division may apply to VCAT for review of the decision.
- (3) A person is not entitled to apply for review of a decision made by a Councillor Conduct Panel to—
 - (a) dismiss the application because it is frivolous, vexatious, misconceived or lacking in substance; or
 - (b) dismiss the application because insufficient reasons have been given to explain why the matter cannot be resolved by internal dispute processes; or
 - (c) authorise or not authorise an applicant to make an application to VCAT on the grounds of serious misconduct by a Councillor.

81R Time period for making application to VCAT

An application for review under section 81Q must be made within 28 days of the Councillor Conduct Panel giving a statement of reasons under section 81M.

81S Councillor Conduct Panels

Schedule 5 has effect with respect to the establishment of Councillor Conduct Panels.