

# Councillor Internal Resolution Procedure



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<b>APPROVAL</b>	Council Date: 24 March 2025
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<b>REVIEW</b>	March 2029
<b>RESPONSIBLE EXECUTIVE</b>	General Manager Customer and Corporate Support

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## 1. Purpose

This Internal Resolution Procedure (procedure) is adopted 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. Councillors may also use the first stage of this procedure for other matters where a resolution is required (see point 3 of this procedure).

## 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 or more Councillors (the Complainant) alleges that another Councillor or Councillors (the Respondent) has breached the Model Councillor Code of Conduct.

This procedure provides all parties with support and encouragement to promptly resolve a dispute in a manner that enables the Councillors to move forward and maintain effective working relationships. The specific role of the Mayor is stipulated, and this procedure will overall provide guidance and promote behaviour that meets the standards of conduct set out in the Model Councillor Code of Conduct.

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<sup>1</sup>.

The stages of this procedure must be completed within 80 days of the date of the alleged misconduct, unless extenuating circumstances arise. This will allow for an application for a finding of misconduct to the Principal Councillor Conduct Registrar (PCCR) to be made within the three-month deadline, in accordance with section 143 of the Act should an attempt at internal resolution be unsuccessful.

An overview of the procedure (Attachment 3) can be viewed in the form of a flowchart.

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

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<sup>1</sup> 'Internal arbitration' refers to the process provided for under Division 5 of Part 6 the Act in which an arbiter is appointed to a council by the Principal Councillor Conduct Registrar (PCCR) to hear an allegation of misconduct by a councillor. The arbiter appointed to the council to conduct an internal arbitration process is selected by the PCCR from a panel list established by the Secretary of the Department of Government Services under section 142 of the Act (Source: Local Government Victoria, *Fact Sheet: Internal Arbitration Process*, version 1.0, November 2024).

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

The 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 may seek advice from the Mayor regarding this first stage of internal resolution.

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 a Councillor's perspective (e.g., "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/s 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, a Councillor does not feel comfortable communicating directly with another Councillor or Councillors, or a request for discussion has been refused, it will be escalated to Conciliation, the second stage of the procedure.

#### 4.1 Initiating conciliation

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

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

On receiving the *Conciliation Application Form* via the Councillor Conduct Officer, the Mayor will assess the information received and confirm all requirements have been met. Via the Councillor Conduct Officer, the Mayor will seek legal advice to indicate that reasonable grounds exist for the conciliation. Should reasonable grounds exist, conciliation will proceed; should reasonable grounds not exist, conciliation will not proceed.

#### 4.2 Participating in conciliation

Councillors are encouraged but not obliged to engage in conciliation. Conciliation may occur in various forms such as meeting together in person, via an online meeting, holding separate meetings with the parties or an alternative means as agreed to by all parties.

A Respondent declining to participate in the conciliation must advise the Complainant and the Mayor of their unwillingness to participate, and the reasons for this. That advice must be provided no more than one week after receiving notice of the completed 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 this instance, 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 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 always conducting themselves in a courteous and respectful manner 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 Terms of Engagement**

Throughout the conciliation process, the parties are required to maintain confidentiality, act with good will and integrity and uphold the standards as outlined in the Model Councillor Code of Conduct. A Terms of Engagement form (see attachment 4) will be presented to all parties and the Mayor to sign before the commencement of conciliation.

### **4.6 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.

### **4.7 End or termination of conciliation**

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

- (a) the parties cannot jointly choose a Councillor to conduct the conciliation within one week of being asked to do so;
- (b) the Respondent notifies the Mayor that they do not wish to participate in conciliation and the reasons for it, based on adverse health or wellbeing or safety concerns, within one week of receiving the Conciliation Application Form;
- (c) the Respondent does not respond to the Conciliation Application Form at all within two weeks of receiving it;
- (d) conciliation has not occurred within four weeks of the Complainant submitting the Conciliation Application Form;

- (e) conciliation has occurred and the parties have been unable to resolve the dispute; or
- (f) the dispute has been resolved.

The time for conciliation may be extended where extenuating circumstances exist or by an agreement between parties to the dispute, whether the matter has been escalated to one of the formal dispute resolution procedures outlined in the Act.

#### **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, the Councillor Conduct Officer and Chief Executive Officer, the original must be retained by the Mayor.

The Mayor must specify if any matters are to be shared with the broader Councillor group (e.g., if the outcome includes a change of practice).

### **5. Third stage of Internal Resolution Procedure – External Mediation**

Where a conciliation process has been performed and not been successful in resolving the dispute, the third stage of this procedure is engaging an external mediator.

On occasion, the Mayor may make a request to the Councillor Conduct Officer to bypass the conciliation process to commence external mediation. In doing so, the Mayor must specify the reasons why conciliation is not appropriate. The Councillor Conduct Officer will advise the Chief Executive Officer of the request and assess for approval.

#### **5.1 Initiating an external mediator**

A request for external mediation via the Mayor with knowledge of the parties to the dispute may be made to the Councillor Conduct Officer to engage an external mediator by completing an *External Mediation Application Form*. That form (see Attachment 2 to this procedure) must:

- (a) specify the names of the Complainant and Respondent; and
- (b) specify the provision (or provisions) of the Model Councillor Code of Conduct alleged to have been breached; and
- (c) detail what was said or done by the Respondent to constitute a breach of the Model Councillor Code of Conduct; and
- (d) detail dispute resolution processes attempted and the reasons why an external mediator is requested; and
- (e) attach any supporting information to provide examples of the behaviour complained of (e.g. screenshots or emails); and
- (f) be dated and signed by the Mayor.

Forms will be received by the Councillor Conduct Officer who will, in confidence, confirm receipt of the request to the parties of the dispute and the Chief Executive Officer, copying in the Mayor. The Councillor Conduct Officer will advise the Chief Executive Officer of the application.

#### **5.2 Participating in external mediation**

The Councillor Conduct Officer must confirm in writing whether the parties to the dispute are willing to attend an external mediation.

If the other party declines to participate, reasons must be provided in writing to the Councillor Conduct Officer who will provide a copy to the parties and the Mayor. Once received, the Councillor Conduct Officer is not required to take any further action.

### **5.3 Engaging an external mediator**

If the parties confirm participation to an external mediation to the dispute, the Councillor Conduct Officer will recommend an external mediator from Council's panel. The parties and/or Mayor may also suggest a suitable mediator for consideration.

Engagement of an external mediator must:

- (a) comply with Council's procurement policy; and
- (b) not exceed the total cost of \$3500 inclusive of GST.

Council will cover the cost of the external mediator. The cost of external mediator engagement will be reported as a Councillor expense where a party has declined to participate in the conciliation process.

### **5.4 Roles and responsibilities**

The role of the external mediator 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 Mayor must be in attendance and the participatory role will be directed by the external mediator.

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. Councillors are responsible for always conducting themselves in a courteous and respectful manner during the conciliation.

The role of the Councillor Conduct Officer is to provide the external mediator with the administrative support necessary to arrange and conduct the external mediation.

### **5.5 Terms of Engagement**

Throughout the external mediation process, the parties are required to maintain confidentiality, act with good will and integrity and uphold the standards as outlined in the Model Councillor Code of Conduct. A Terms of Engagement Form (see attachment 4) will be presented to all parties and the Mayor to sign before the process of external mediation commences.

### **5.6 Support from Council**

Council, through the Councillor Conduct Officer, will provide administrative assistance to the external mediator when arranging a time and place for mediation, 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 mediation 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.

### **5.7 End or termination of mediation**

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

- (a) the parties cannot jointly agree on an external mediator to conduct the mediation process within one week of being asked to do so;
- (b) the Respondent notifies the Councillor Conduct Officer that they do not wish to participate in external mediation and the reasons for it, based on adverse health or wellbeing or safety concerns, within one week of receiving the External Mediation Application Form;
- (c) the Respondent does not respond to the Councillor Conduct Officer to confirm participation at all within two weeks of receiving it;
- (d) mediation has not occurred within four weeks of the Complainant submitting the Conciliation Application Form;
- (e) mediation has occurred and the parties have been unable to resolve the dispute; or
- (f) the dispute has been resolved.

The time for mediation 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.

## **5.8 Record of outcome**

The external mediator must document any agreement that is reached between the Complainant and Respondent via the mediation process. The agreement must be signed by the Complainant, Respondent and External Mediator. Copies must be provided to the Complainant and Respondent, the Councillor Conduct Officer and Chief Executive Officer, and the original must be retained by the External Mediator.

## **6. State Government Intervention - Internal Arbitration Process**

Should the dispute remain unresolved upon the termination of external mediation for any of the reasons outlined at Clause 5.7, the Complainant may apply to the PCCR for an arbiter to make a finding of misconduct in accordance with the internal arbitration process.

An application for a finding of misconduct must be made to the PCCR within three months of the alleged misconduct occurring.

## **7. Circumstances in which the Councillor Internal Resolution Procedure does not apply**

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.

## **8. 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. Sections 141-147 of the Act provide for an internal arbitration process concerning a breach of the Standards of Conduct set out in the Model Councillor Code of Conduct.

## **9. Related Documents and Resources**

### **Legislation**

*Local Government Act 2020*

*Local Government (Governance and Integrity) Regulations 2020*

*Model Councillor Code of Conduct 2024*

### **External Documents**

[Local Government Victoria: Councillor conduct framework](#)

[Local Government Victoria: Fact Sheet: Internal Arbitration Process - November 2024](#)

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## Attachment 1 Conciliation Application Form

*(to be completed by the Complainant to initiate conciliation in the event of a dispute between Councillors)*

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

Signed by .....

on .....

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## Attachment 2 External Mediation Application Form

*(to be completed by the Councillor Conduct Officer to initiate external mediation should conciliation be unsuccessful)*

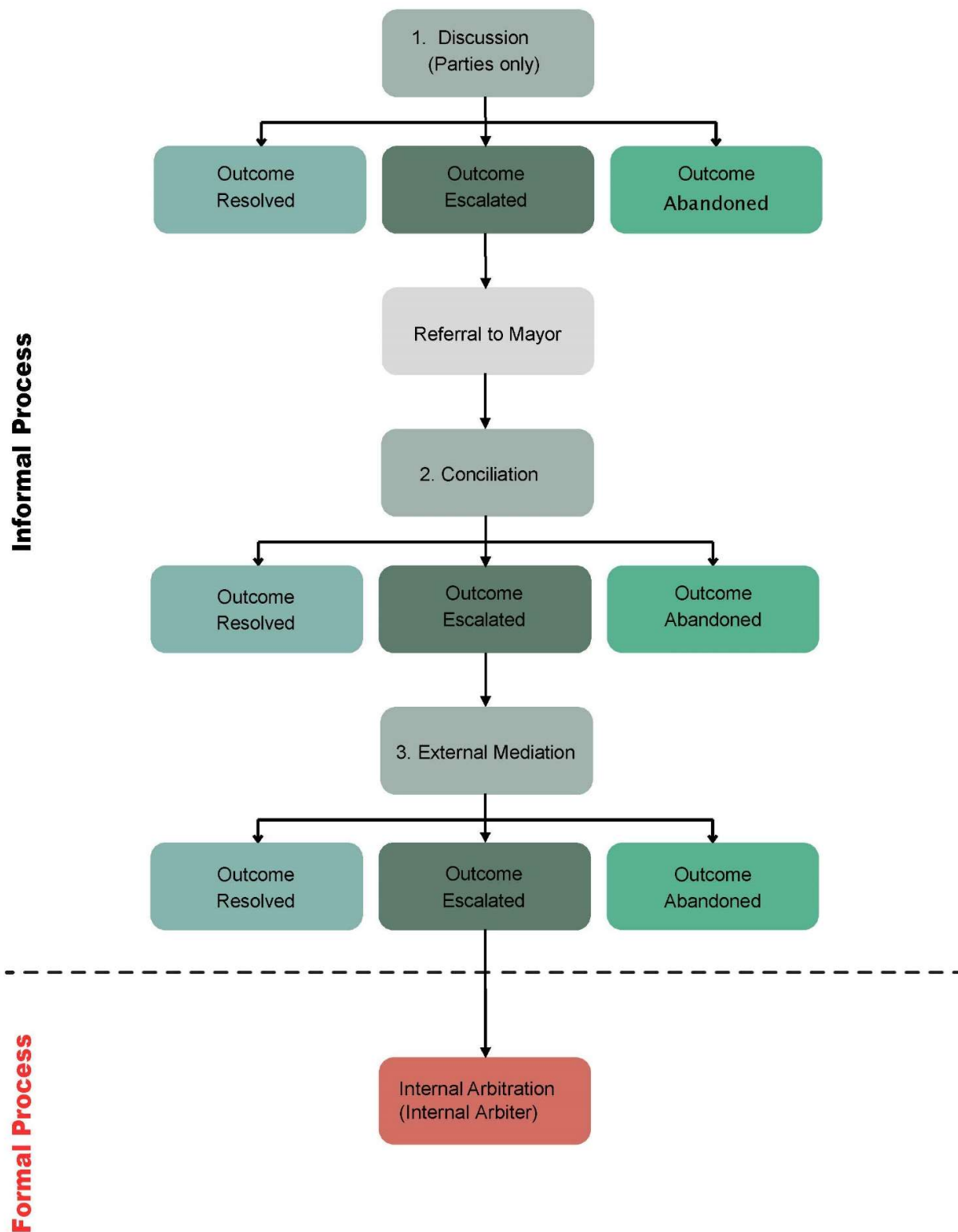
<b>Complainant:</b>	
<b>Respondent:</b>	
<b>Provisions of Model Councillor Code of Conduct breached:</b>	
<b>Action constituting breach:</b>  (Include dates, times and detailed descriptions of the action complained of. Attach further documents as necessary.)	
<b>Previous Dispute Resolution Processes:</b>  (Detail dispute resolution processes attempted and the reasons why an external mediator is requested )	

Signed by .....

on .....



## Attachment 3 Internal Resolution Procedure Flowchart



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## Attachment 4 Terms of Engagement

### Terms of Engagement for Councillors in Conciliation or External Mediation Processes

#### 1. Purpose

These Terms of Engagement outline the expectations and commitments for Councillors participating in a conciliation or external mediation process regarding an alleged breach of the Model Councillor Code of Conduct.

#### 2. Confidentiality

All parties agree to maintain strict confidentiality regarding all discussions, documents, and outcomes related to the conciliation or mediation process. Information disclosed during the process must not be shared with any external party unless required by law or as agreed by all parties and the Mayor.

#### 3. Good Faith and Integrity

Councillors commit to engaging in the process with honesty, respect, and integrity. Participants will make genuine efforts to resolve the matter in a constructive and cooperative manner, free from hostility or undue influence.

#### 4. Adherence to the Model Councillor Code of Conduct

All councillors agree to uphold the principles and standards outlined in the Model Councillor Code of Conduct throughout the process.

#### 5. Voluntary Participation and Commitment to the Process

Participation in the conciliation or mediation process is voluntary. However, once engaged, all councillors agree to fully participate, comply with procedural requirements, and consider proposed resolutions in good faith.

#### 6. Non-Retaliation

Councillors must not engage in any form of retaliation against any party involved or the Mayor in the conciliation or mediation process, regardless of the outcome.

#### 7. Acknowledgment and Agreement

By signing below, I acknowledge that I have read, understood, and agree to abide by these Terms of Engagement for the duration of the conciliation or external mediation process.

**Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_