



# Councillor Code of Conduct 2021

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## Purpose

Council is required by Section 139 (1) of the *Local Government Act 2020* (the Act) to have a Councillor Code of Conduct. This is signed by Councillors when taking the Oath or Affirmation of Office. Additionally, in accordance with Section 139 (4) of the Act, Council must review and adopt the Code of Conduct within 4 months of a General Election.

The purpose of the Councillor Code of Conduct as set out in Section 139 (2) is to include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.

*'Baw Baw Shire has a history of collegiate Councillor groups and strong working relationships between Councillors. We wish to honour and continue this proud tradition, which has helped shape the organisation we have today. These strong relationships are imperative for navigating the challenging decisions that face us within the modern Local Government context and our growing municipality. Positive relationships are critical for Councillors in achieving our common goal of delivering the best outcomes for the Baw Baw Shire community.'*

## Scope

The Code of Conduct applies to all Councillors while elected as representatives of the Baw Baw Shire Council. It is noted that confidentiality provisions of the Act extend beyond a Councillor's term.

## Legislative context

*Local Government Act 1989*

*Local Government Act 2020* the following sections specifically address code of conduct matters;

- o **8** Role of a Council
- o **9** Governance and supporting Principles
- o **18-21** Role of Mayor and Deputy Mayor
- o **28** Role of a Councillor
- o **123** Misuse of Position
- o **124** Directing Council Staff
- o **125** Confidential Information and Section 3 Definitions

- **126-131** Conflicts of Interest
- **132-136** Personal Interest Returns
- **137&138** Gifts
- **139&140** Councillor Code of Conduct
- **141-147** Internal Arbitration Process
- **148-152** Principal Councillor Conduct Register and Councillor Conduct Officers
- **153-174** Councillor Conduct Panels

*Local Government (Electoral) Regulations 2020*

*Local Government (General) Regulations 2015*

*Local Government (Governance and Integrity) Regulations 2020*

*Local Government (Planning and Reporting) Regulations 2020*

*Independent Broad-based Anti-Corruption Commission Act 2011*

*Charter of Human Rights and Responsibilities Act 2006*

*Equal Opportunity Act 2010*

*Gender Equality Act 2020*

*Occupational Health and Safety Act 2004*

*Ombudsman Act 1973 (Vic)*

*Privacy and Data Protection Act 2014*

*Public Interest Disclosures Act 2012*

*Public Interest Monitor Act 2011*

*Racial and Religious Tolerance Act 2001*

*Victorian Inspectorate Act 2011*

**Section 139 Councillor Code of Conduct:**

- (1) A Council must develop a Councillor Code of Conduct.
- (2) The purpose of the Councillor Code of Conduct is to include the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions as Councillors, including prohibiting discrimination, harassment (including sexual harassment) and vilification.
- (3) A Councillor Code of Conduct—
  - (a) must include the standards of conduct prescribed by the regulations expected to be observed by Councillors; and
  - (b) must include any provisions prescribed by the regulations for the purpose of this section; and
  - (c) must include provisions addressing any matters prescribed by the regulations for the purpose of this section; and
  - (d) may include any other matters which the Council considers appropriate, other than any other standards of conduct.

- (4) A Council must review and adopt the Councillor Code of Conduct within the period of 4 months after a general election.
- (5) A Council must adopt the Councillor Code of Conduct under subsection (4) by a formal resolution of the Council passed at a meeting by at least two-thirds of the total number of Councillors elected to the Council.
- (6) Until a Council adopts a Councillor Code of Conduct under subsection (4), the Councillors must comply with the existing Councillor Code of Conduct.
- (7) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act (including the *Charter of Human Rights and Responsibilities Act 2006*) or regulation.

*'Baw Baw Shire Councillors agree to comply, to the best of their knowledge, with the requirements of Legislation and Regulations in carrying out the requirements of the role of Councillor.'*

## Standards of Conduct

In accordance with Section 139 (3) (a) of the Act, the Minister has prescribed standards of conduct which are specified in the *Local Government (Governance and Integrity) Regulations 2020*. These standards are referenced in clause 12 of the Regulations and are detailed within Schedule 1 of the Regulations. The Act requires that the standards are included in the Code of Conduct. The standards cover much of what is expected in a Councillor Code of Conduct.

### Local Government (Governance and Integrity) Regulations 2020

#### Schedule 1—Standards of conduct Regulation 12

##### 1. Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor—

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*; and
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- (d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

##### 2. Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including

by ensuring that the Councillor—

- (a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- (b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- (c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

### **3. Compliance with good governance measures**

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following—

- (a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- (b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- (c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;
- (d) any directions of the Minister issued under section 175 of the Act.

### **4. Councillor must not discredit or mislead Council or public**

- (a) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.
- (b) In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

### **5. Standards do not limit robust political debate**

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.

*'Baw Baw Shire Councillors agree to comply with the requirements of these Standards of Conduct which have been prescribed by the Minister relating to their behaviour and conduct in carrying out the requirements of the role of Councillor.'*

## **Related policies and documents**

- Child Safety Policy 2017
- Community Engagement Policy 2021 (tba)
- Council Plan 2021-2025 (tba)

The printed document is an uncontrolled document. To ensure you have the latest policy visit Council's website at [www.bawbawshire.vic.gov.au](http://www.bawbawshire.vic.gov.au) or contact the Governance team on 03 5624 2411.

- Council Expense Policy 2020
- Councillor Staff Interaction Policy 2019
- Customer Excellence Strategy 2019
- Fraud and Corruption Prevention Policy 2017
- Gifts and Hospitality Policy 2021 (tba)
- Governance Rules 2020
- Public Transparency Policy 2020
- Media Policy 2021 (tba)
- Social Media Policy 2021 (tba)

*'Baw Baw Shire Councillors agree to abide by the requirements of these policies and any future revisions of the policies, noting that all are adopted policies of the Council.'*

## Role of Councillors

Our primary role as Councillors is to set the vision and directions for the Baw Baw Shire Council, represent and advocate on behalf of the whole Community. As Councillors we are a vital link between the community and Council and are key to facilitating communication with the community and encouraging engagement with the activities of Council.

Councillors are obligated by the Act to make decisions that will benefit and be in the best interest of the whole community. Council has a statutory responsibility to represent all people who live, participate and invest within the municipality.

Councillors appoint, manage and support the Chief Executive Officer of the organisation to deliver the strategic direction of the Council. Councillors should not be involved in the operational decisions of the organisation or its services and, in adherence to the Act will not misuse their position to direct staff.

We recognise that behaviour of individual Councillors not only reflects on the Council as a whole but may also have an effect on Council strategies and programs. We value teamwork and, in order to support our work as a team, we commit ourselves to ensuring the following:

- We have regard for each other: including listening and communicating respectfully, acknowledging each other's feelings, carefully defining problems or issues, making time to discuss them informally and avoiding all forms of abuse.
- We will make time to develop supportive relationships where we are honest in our dealings with each other in order to build trust, collaboration and innovation.
- We will work in a manner that encourages authenticity, including being open-minded, valuing experience and ideas and seeking to increase our knowledge and options before making decisions.

## Role of the Mayor

The Mayor is the elected leader of the Council who is required to provide guidance to Councillors in establishing and promoting appropriate standards of conduct.

A key role of the Mayor is to facilitate good relationships between Councillors, Councillors and the Chief Executive Officer and Council staff. The Mayor sets the tone and style of behaviour, practice and projection of the Council working with, supporting and coordinating the team of Councillors.

The primary roles and responsibilities of the Mayor as defined in Section 18 (1) of the Act are:

- a. chair Council meetings; and
- b. be the principal spokesperson for the Council; and
- c. lead engagement with the municipal community on the development of the Council Plan; and
- d. report to the municipal community, at least once each year, on the implementation of the Council Plan; and
- e. promote behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct; and
- f. assist Councillors to understand their role; and
- g. take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer; and
- h. provide advice to the Chief Executive Officer when the Chief Executive Officer is setting the agenda for Council meetings; and
- i. perform civic and ceremonial duties on behalf of the Council.

## Role of the Deputy Mayor

The role of the Deputy Mayor is to give effective support to the Mayor and Councillors during the day-to-day function of Council.

Under section 21 of the Act, the Deputy Mayor must undertake the role of the Mayor if:

- a. the Mayor is unable for any reason to attend a Council meeting or part of a Council meeting; or
- b. the Mayor is incapable of performing the duties of the office of Mayor for any reason, including illness; or
- c. the office of Mayor is vacant.

The Deputy Mayor will also take responsibility for the internal resolution process when the matter relates to the Mayor.

## Functions of the Chief Executive Officer

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The Chief Executive Officer (CEO) has a statutory responsibility under the Act and is accountable to the Mayor and Councillors for delivering Council's strategies and services. The CEO is responsible for the operations of the Council, to provide professional, relevant and timely information and support to the Council.

Section 46 of the Act identifies the functions of the Chief Executive Officer;

(1) the Chief Executive Officer is responsible for:

- (a) supporting the Mayor and the Councillors in the performance of their roles; and
- (b) ensuring the effective and efficient management of the day to day operations of the Council.

(2) this responsibility includes the following—

- (a) ensuring that the decisions of the Council are implemented without undue delay;
- (b) ensuring that the Council receives timely and reliable advice about its obligations under this Act or any other Act;
- (c) supporting the Mayor in the performance of the Mayor's role as Mayor;
- (d) setting the agenda for Council meetings after consulting the Mayor
- (e) when requested by the Mayor, reporting to the Council in respect of the implementation of a Council decision;
- (f) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the Workplace Injury Rehabilitation and Compensation Act 2013.

## Conduct and Behaviour

In addition to the Standards of Conduct established in the Local Government (Governance and Integrity) Regulations 2020, Councillors of Baw Baw Shire Council commit to;

- o acting with integrity;
- o exercising our responsibilities impartially in the interests of the local community;
- o not making improper use of our position to advantage or disadvantage any person;
- o avoiding conflicts between our public duties as Councillors and our personal interests and obligations;
- o acting honestly, and avoiding making oral or written statements or taking actions that may mislead a person;
- o treating all persons with respect and show due respect for the opinions, beliefs, rights and responsibilities of other Councillors, council officers and others;



- exercising reasonable care and diligence and submit to lawful scrutiny that is appropriate for our office;
- ensuring that public resources are used prudently and solely in the public interest;
- acting lawfully and in accordance with the trust placed in us as elected representatives of the Baw Baw Shire Community;
- supporting and promoting these principles by leadership and example to ensure the public has confidence in the office of Councillor.

*'Baw Baw Shire Councillors agree to fulfill our role as Councillors at all times abiding by the Act and endeavouring to foster positive working relationships between ourselves, the community and staff of Baw Baw Shire.'*

## Directing Council Staff

Councillors will not use their position to influence Council staff in the performance of their public or professional duties to obtain a private benefit for themselves or for somebody else.

Councillors will not take advantage (or seek to take advantage) of their status or position with or of functions they perform for Council in order to obtain a private benefit for themselves or for any other person or body.

Councillors acknowledge and agree to comply with their obligations regarding improper direction and improper influence section 124 of The Act -

A Councillor must not intentionally direct, or see 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 this Act or any another Act; or
- (d) in relation to advice provided to the Council or a delegated committee, including advice in a report to the Council or delegated committee

## Decision Making

As representatives of the community, Councillors have a primary responsibility to be responsive to community views and to adequately communicate the attitudes and decisions of Council.

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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 other individual Councillors or the Council as a whole. Councillors will support the decisions made by Council and will not speak against or subvert decisions of Council.

Council will be open and transparent in its decision making and encourage community participation in Council Meetings. 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 be informed to achieve the best outcome for the community.
- Commit to making all decisions impartially and in the best interests of the community which are fair and unbiased decisions and adhere to the principles of natural justice.
- Treat all matters on individual merit and base decision making on facts.
- Respect the views of the individual in debate, however, also accept that decisions are to be based on a majority vote.
- Consider a person or person's interests which may be affected by a Council decision.
- Seek approval of Council for leave of absence from council Meetings.
- Observe Council's Media Policy when speaking to the media about Council decisions.

## Confidential Information

As Councillors, we will respect the confidentiality of the information we receive in the course of performing our duties and responsibilities. We will not, under any circumstances, intentionally or recklessly disclose electronically, verbally or in writing, information to a third party for as long as it continues to be confidential.

Confidential Information as defined in Section 3 of the Act;

- (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- (b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- (c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;
- (d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
- (e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- (f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;

- (g) private commercial information, being information provided by a business, commercial or financial undertaking that—
  - (i) relates to trade secrets; or
  - (ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- (h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a);
- (i) internal arbitration information, being information specified in section 145;
- (j) Councillor Conduct Panel confidential information, being information specified in section 169;
- (k) information prescribed by the regulations to be confidential information for the purposes of this definition;
- (l) information that was confidential information for the purposes of section 77 of the *Local Government Act 1989*;

*'We acknowledge the requirements of Section 125 of the Act in relation to Confidential Information.'*

## Misuse of Information

As Councillors we will not misuse our position to gain or attempt to gain, directly or indirectly, information that will advantage ourselves or any other person.

We recognise the 10 Information Privacy Principles of the *Privacy and Data Protection Act 2014* regarding the access, use and release of personal information. We will comply with Council policies relating to accessing Council information.

## Media and Social Media

As Councillors we will ensure that the messages communicated through the media are clear and consistent, and positively portray the Council.

The Mayor will provide official comment to the media on behalf of Council on all matters in relation to the Council and its decisions. The Mayor may request another Councillor or the Chief Executive Officer to make official comment on behalf of the Council, where appropriate.

As individual Councillors, we are entitled to express our own independent views through the media, however we will make it clear that any unofficial comment is our own personal view and does not represent the position of the Council as a whole.

Councillors are aware that the use of social media exposes Council and Councillors to legal and reputational risk. When using social media, Councillors need to have at the forefront of their minds their obligations under the Code of Conduct. The Code of Conduct applies to online

activity in the same way it does to other written or verbal communications. Council has provided the Queensland Councillor Social Media Guide as a resource for Councillors to follow.

Additional detail can be obtained from Council's Media Policy and Social Media Policy.

*'We undertake to comply with Council's Media and Social Media Policies and respect the functions of the Mayor and Chief Executive Officer to be the spokespeople for the Council in accordance with our policies.'*

## Use of Council Resources

In accordance with current Council policy and practice, Council resources, including office and hospitality facilities, support staff, equipment/services, merchandise and stationery are provided or made available to Councillors for normal Council business and are therefore not to be used in connection with any other activities.

This includes:

- maintaining appropriate security over Council property, facilities and resources; and adhering to any guidelines or policies that have been established for the use of Councillor resources and facilities;
- not using public funds or resources in a manner that is improper or unauthorised;
- not using Council resources, including staff, equipment and/or intellectual property for electoral or other purposes;
- ensuring that all expense claims are accurate, are supported by the relevant documentation and strictly relate to Council business.

A Councillor will seek authorisation from the Council through the Mayor prior to using public funds or resources for any purposes that is not a standard/regular practice or likely to incur expenditure that may not be deemed an acceptable use by the broader community. The Council Expense Policy provides further guidance on the use of council resources.

## Gifts

Councillors may occasionally be offered gifts or other hospitality. Councillors should avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment.

Councillors must be aware of their responsibilities relating to Gifts, Hospitality & Donations. For transparency and accountability purposes, gifts will be recorded in the Gift Register whether they are accepted, not accepted or returned.

Gifts exceeding \$500 may under Section 128 of the Act create a Material Conflict of Interest. Division 10 of the Act outlines requirements for campaign donations.

Section 138 of the Act requires Council to adopt a Councillor Gift Policy. This policy provides further guidance on Gifts including procedures for declaring gifts, prohibited gifts and details required for the gift register.

## Child Safety

Council has adopted its Child Safe Policy and Child Safety has been included in the mandatory Councillor induction program. Council prides itself on being a child safe organisation and has zero tolerance for child abuse. Council adheres to the Victorian and National Child Safe Standards and related legislation.

As Councillors we affirm the Statement of Commitment to Child Safety:

*'Baw Baw Shire Council is committed to providing and actively promoting a safe environment for children. Council has zero tolerance towards child abuse, and is committed to protecting the physical, emotional, cultural and social wellbeing of all children. Council has policies and systems to protect children, and all allegations and safety concerns will be treated seriously. Baw Baw Shire Council acknowledges that children's safety is a whole of community responsibility and is everyone's business.'*

As Councillors we will respect, listen to and promote the rights of children and ensure behaviour and interactions with children are age appropriate, respectful and adhere to the behavioural expectations outlined in the Child Safe Standards.

## Conflict of Interest

As Councillors we are committed to making all decisions impartially and with the best interests of the whole community. Regarding conflicts of interest, we will comply with all the provisions of the Act in Sections 127 and 128 of the Act and Council's Governance Rules. We agree to be bound by the disclosure of conflict of interest requirements of Sections 130 and 131 of the Act and Councils Governance Rules.

In addition to the requirements of The Act, Councillors will:

- (a) recognise that the legal onus to determine whether a conflict of interest exists rests entirely with each individual Councillor;
- (b) give early consideration and notify the Mayor as well as the Chief Executive Officer on whether a conflict of interest exists on any matter to be considered at a Council meeting/briefing, Delegated Committee or Advisory Committee of which the Councillor is a member;
- (c) notify, as soon as possible, the Mayor or the Committee Chair if they consider that they are unable to vote on a matter because of a conflict of interest.

## Elections and State/Federal Nominations

Council's election period policy, contained within its Governance Rules, provides direction in relation to decision making, use of Council resources, attendance at events and media protocols during the election period. Neither the Council logo nor Council stationery will be used by Councillors in any way that relates to the election.

Councillors will follow any guidelines issued in relation to Candidature of Councillors in State or Federal Elections. Once pre-selected, a Council will inform the CEO and Mayor in writing. A Councillor will take leave of absence once an election is called until such time as the election result is declared. During this time the Councillor is still entitled to receive their Councillor Allowance.

## Dispute Resolution

### Community Member/Staff Complaints

A code of conduct complaint is a complaint that shows or tends to show conduct on the part of a Councillor or the exercise of their functions as a Councillor that, if proven, would constitute a breach of this code or policies relating to this code.

A code of conduct complaint must be made within three months of the alleged conduct occurring or within three months of the complainant becoming aware of the alleged conduct. A complaint made after three months may only be accepted if the Chief Executive Officer or their delegate, is satisfied that the allegations are serious and compelling.

All code of conduct complaints are to be made to the Chief Executive Officer in writing. This clause does not operate to prevent a person from making a complaint to an external agency

The Chief Executive Officer may decide to take no action in relation to a code of conduct complaint about a councillor, where;

- they consider that no action is warranted in relation to the complaint; or
- if the complaint is deemed frivolous, vexatious, misconceived or lacking in substance; or
- relates to a matter the substance of which has previously been considered and addressed by the council and does not warrant further action; or
- the complaint is not made in a way that would allow the alleged conduct and any alleged breaches of the council's code of conduct to be readily identified

Where the Chief Executive Officer decides to take no action in relation to a code of conduct complaint about a Councillor, the Chief Executive Officer must give the complainant reasons in writing for their decision within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.

Where the Chief Executive Officer considers it to be practicable and appropriate to do so, the Chief Executive Officer may seek to investigate the matter or refer the matter to the Councillor Conduct Officer or to an external agency.

The Chief Executive Officer will make a recommendation to the Mayor for actions to be taken. Where the complaint involves the Mayor the Chief Executive Officer to the deputy mayor. The Chief Executive Officer will recommend that the complaint is resolved by the Mayor using means such as, but not limited to;

- counselling;
- training;
- mediation;
- informal discussion;
- a voluntary apology;
- an undertaking not to repeat the offending behaviour;
- other measures as deemed necessary by the Chief Executive Officer in consultation with the Mayor or Mayors delegate.

The resolution of a code of conduct complaint under this clause is not to be taken as a determination that there has been a breach of the council's code of conduct.

Where the code of conduct complaint is resolved to the satisfaction of the Chief Executive Officer, the complainant will be notified in writing of the steps taken to resolve the complaint within 21 days of receipt of the complaint and this shall finalise the consideration of the matter under these procedures.

### **Complaints between Councillors**

This dispute resolution process is intended to be used:

1. when Councillors have been unable to resolve an interpersonal conflict and where the situation is unduly affecting the operation of the Council; or
2. to manage complaints or concerns regarding the behaviour of Councillors from the public or Council staff.

It is not intended to resolve differences in policy or decision-making, which are appropriately resolved through discussion and voting in Council and Delegated Committee Meetings.

Where the dispute arises from a complaint generated by a member of the public or Council staff, access to the dispute resolution process under this code is as determined by the Chief Executive Officer. Members of the public or Council staff cannot make application for an internal arbitration process or Councillor Conduct Panel.

Baw Baw Shire Councils dispute resolution process comprises the following components:

- 1) Self-Resolution
- 2) Mayoral Negotiation

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### 3) External Mediation

#### Self-Resolution

Before commencing any formal dispute resolution process, the Councillors who are parties to a dispute are expected to use their best endeavours to resolve the matter in a courteous and respectful manner between themselves. Councillors will take personal responsibility and endeavour to resolve their differences in an informal manner recognising that they have been elected to represent the best interests of the community.

#### Mayoral Negotiation

If the informal resolution process between the Councillors is unsuccessful, the Mayor should be involved as soon as practically possible to convene a meeting of the parties.

A dispute referred for Mayoral negotiation may relate to:

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

The party requesting the Mayoral negotiation meeting is to provide the Mayor with the name of the other Councillor and the details of the dispute in writing. The written request is to indicate that it is for a "Mayoral negotiation" dispute resolution process. Where the request relates to an alleged contravention of the Councillor Code of Conduct, the request must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the request is made by a group of Councillors; and
- be signed and dated by the requestor or the requestor's representative.

Within 5 working days of receipt of the complaint, the Mayor will:

- provide written acknowledgment of receipt of the complaint to the Complainant;
- provide a copy of the complaint to the Councillor concerned; and
- attempt to facilitate a resolution and convene a meeting

The Mayor may call upon the Councillor Conduct Officer (CCO) for advice and guidance at this point in the process.

The role of the Mayor at the meeting is to provide guidance to Councillors about what is expected of a Councillor including in relation to the role of a Councillor under section 28 of the Act and the Councillor Code of Conduct.



The Mayor is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties. Where one party does not comply with the agreement, the other party has recourse to external mediation.

If the parties cannot resolve the dispute at the meeting, a further meeting may be convened with the consent of both parties. Where the dispute remains unresolved, the parties should progress to external mediation or make application for internal arbitration.

If a dispute involves the Mayor, the Deputy Mayor will facilitate the meeting and fulfill the requirements of the Mayor.

### External Mediation

If reconciliation of the dispute is not possible after Mayoral negotiation, either party may seek the Mayor approval to engage an external mediator to resolve the dispute, preferably with the active support of the parties to the dispute, who must be informed of such a decision in any circumstance.

The applying Councillor is to submit a written application to the CCO setting out the name of the Councillor and the details of the dispute. The applying Councillor is to indicate that the application is for an “external mediation”, and must:

- specify the name of the Councillor alleged to have contravened the Code;
- specify the provision(s) of the Code that is alleged to have been contravened;
- include evidence in support of the allegation;
- name the Councillor appointed to be their representative where the application is made by a group of Councillors; and
- be signed and dated by the applying Councillor.

The applying Councillor is to notify the other party of the request and provide them with a copy of the application either at the same time that it is submitted to the CCO or as soon as practical thereafter.

The CCO is to engage the services of an external mediator to conduct the mediation at the earliest practicable opportunity. The mediator is to document any agreement reached at the meeting. Copies of the agreement are to be provided to both parties.

**Note:** If the complaint is considered a breach of the ‘**prescribed standards**’ in the *Local Government (Governance and Integrity) Regulations 2020*, or serious misconduct a Councillor, a group of Councillors, or Council by Resolution may at any time during these processes, and within three months of the complaint occurring, make an application for an ‘internal arbitration process’ (ref S143 of the Act) or within 12 months application for a ‘Councillor Conduct Panel’ (ref S154 of the Act) whether or not the dispute has been the subject of the processes of “self-resolution”, “mayoral negotiation” or “external mediation”.

## Allegations Relating to Misconduct

Where there are allegations of misconduct or serious misconduct application for an internal arbitration process (misconduct) or Councillor Conduct Panel (serious misconduct) is required.

Application can be made by;

- the Council following a Council Resolution; or
- a Councillor; or
- a group of Councillors; or
- the Chief Municipal Inspector for a Councillor Conduct Panel.

In making the application for an Internal Arbitration Process, the application must be made within three months of the alleged misconduct occurring. In relation to applications for a Councillor Conduct Panel the period of time is within 12 months of the alleged serious misconduct occurring.

### Internal Arbitration Process (Misconduct)

An application under section 143 must be given to the Principal Councillor Conduct Registrar in the manner specified by the Principal Councillor Conduct Registrar in any guidelines published under section 149(1)(c).

Internal arbitration will involve the Principle Councillor Conduct Register (who is appointed by the Minister) making a determination to appoint an arbiter to investigate and make a finding in the matter.

The prescribed process for an application for internal arbitration must include:

- the name of the Councillor alleged to have breached the standards of conduct; and
- the clause of the standards of conduct that the Councillor is alleged to have breached; and
- the misconduct that the Councillor is alleged to have engaged in that resulted in the breach; and
- after receiving an application under section 143 of the Act, the Councillor Conduct Officer provides the application to the Councillor who is the subject of the application.

The Principal Councillor Conduct Registrar, after examining an application under section 143, must appoint an arbiter to the Council to hear the matter if the Principal Councillor Conduct Registrar is satisfied that the application is not frivolous, vexatious, misconceived or lacking in substance and there is sufficient evidence to support an allegation of a breach of the Councillor Code of Conduct as specified in the application.

Information provided to an arbiter or produced by an arbiter for the purpose of an internal arbitration process, other than the findings and the reasons, is confidential information.

An arbiter appointed to hear a matter subject to an application must:

- conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- ensure that the hearing is not open to the public.

An arbiter may hear each party to the matter in person or solely by written or electronic means of communication and is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit. The arbiter may at any time discontinue the hearing if the arbiter considers that the application is vexatious, misconceived, frivolous or lacking in substance, or the applicant has not responded, or has responded inadequately, to a request for further information.

If after completing the internal arbitration process, the arbiter determines that a Councillor has failed to comply with the prescribed standards of conduct, the arbiter may make a finding of misconduct against the Councillor. If the arbiter makes a finding of misconduct, the arbiter may under Section 147(2) of the Act do any one or more of the following;

- (a) direct the Councillor to make an apology in a form or manner specified by the arbiter;
- (b) suspend the Councillor from the office of Councillor for a period specified by the arbiter not exceeding one month;
- (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the arbiter;
- (d) direct that the Councillor is removed from being the chair of a delegated committee for the period determined by the arbiter;
- (e) direct a Councillor to attend or undergo training or counselling specified by the arbiter.

If, at any time before, during or after the hearing of an application for an internal arbitration process, the arbiter believes that the conduct that is the subject of the application for an internal arbitration process appears to involve serious misconduct and would more appropriately be dealt with as an application under section 154 of the Act, the arbiter must refer the matter in writing to the Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the arbiter's decision and statement of reasons and recorded in the minutes of the meeting. If the arbiter's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled.

### **No Applications during Election Period**

An application cannot be made for an internal resolution procedure during the election period for a general election. Any internal resolution procedure that is in progress is to be suspended during the election period for a general election.

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

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

### **Councillor Conduct Panel (serious misconduct)**

The Principal Councillor Conduct Registrar manages the establishment of Councillor Conduct Panels. All applications (supported with evidence) to establish a panel to hear allegations of serious misconduct must go to the registrar. Serious misconduct is defined in Section 3 Definitions of the Act. The panel must be established if the registrar is satisfied that the application is not frivolous or misconceived or lacking in substance, is supported by evidence and council processes have been fully exhausted or are not appropriate and within 12 months of the alleged serious misconduct occurring.

The Principal Councillor Conduct Registrar must select 2 people from the panel list who the Principal Councillor Conduct Registrar considers suitable to form a Councillor Conduct Panel in accordance with this section and any guidelines in relation to panel procedures published by the Principal Councillor Conduct Registrar.

Section 163(2) of the Act outlines the conduct 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 Councillor Conduct 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 a Council or a group of Councillors, the appointed representative must represent the Council or group of Councillors at the hearing;
- (e) the Councillor Conduct Panel is not bound by rules of evidence but may inform itself in any way it thinks fit;
- (f) the Councillor Conduct Panel is bound by the rules of natural justice;
- (g) the procedure of a Councillor Conduct Panel is otherwise in its discretion.
- (h) The respondent must be provided with an opportunity to be heard.

### **Determination by a Councillor Conduct Panel (Section 167 of the Act)**

- (1) After a Councillor Conduct Panel has conducted a hearing, the Councillor Conduct Panel may—
  - (a) make a finding of serious misconduct against a Councillor; or
  - (b) if it is satisfied that a Councillor has breached one or more of the prescribed standards of conduct and the application for a finding of serious misconduct was made to the Councillor Conduct Panel within the period of 3 months after the breach occurred, make a finding of misconduct against a Councillor; or
  - (c) whether or not a finding of misconduct or serious misconduct against a Councillor has been made, make a finding that remedial action is required; or
  - (d) dismiss the application.
- (2) If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor becomes ineligible to hold the office of Mayor or Deputy Mayor for the remainder of the Council's term unless the Councillor Conduct Panel directs otherwise.
- (3) If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor Conduct Panel may do any one or more of the following—
  - (a) reprimand the Councillor;
  - (b) direct the Councillor to make an apology in a form or manner determined by the Councillor Conduct Panel;
  - (c) suspend the Councillor from office for a period specified by the Councillor Conduct Panel not exceeding 12 months;
  - (d) direct that the Councillor is ineligible to chair a delegated committee of the Council for a period specified by the Councillor Conduct Panel not exceeding the remainder of the Council's term.
- (4) If a Councillor Conduct Panel makes a finding of misconduct against a Councillor as specified in subsection (1)(b), the Councillor Conduct Panel may do any one or more of the following—
  - (a) direct the Councillor to make an apology in a form or manner specified by the Councillor Conduct Panel;
  - (b) suspend the Councillor from the office of Councillor for a period specified by the Councillor Conduct Panel not exceeding one month;
  - (c) direct that the Councillor be removed from any position where the Councillor represents the Council for the period determined by the Councillor Conduct Panel;
  - (d) direct that the Councillor be removed from being the chair of a delegated committee for the period determined by the Councillor Conduct Panel.
- (5) For the purposes of subsection (3) or (4), any period of suspension of a Councillor from the office of Councillor is to be reduced by any period during which the Councillor was stood down under Division 6 of Part 7 in relation to the relevant conduct.

(6) If a Councillor Conduct Panel makes a finding that remedial action is required, the Councillor Conduct Panel may direct the Councillor who is the subject of the application to attend one or more of the following—

- (a) mediation;
- (b) training;
- (c) counselling.

(7) For the purposes of subsection (6), a Councillor Conduct Panel may set reasonable conditions in respect of how or when remedial action is to be undertaken.

(8) Any necessary expenses incurred by Councillors in attending mediation, training or counselling must be paid by the Council.

(9) In addition to any findings made under subsection (1)(a), (b) or (c), a Councillor Conduct Panel may direct that the Council amend its Councillor Code of Conduct in a particular way or to address a particular issue.

(10) A Council must comply with a direction under subsection (9) within the period of 3 months after the direction is given.

After a Councillor Conduct Panel has made determination, the Councillor Conduct Panel must give a copy of the decision to;

- o The Council
- o The parties to the matter;
- o The Minister;
- o The Principal Councillor Conduct Registrar

The panel's decision and statement of reasons must be tabled at the next Council meeting after the Council received the copy of the decision and statement of reasons and recorded in the minutes of the meeting. If the panel's decision and statement of reasons contains any confidential information, the confidential information must be redacted from the copy tabled.

**Note:** in relation to Councillor Conduct Panels, this section is not exhaustive. It is a summary only of Division 7 Councillor Conduct Panels and VCAT as defined in Sections 153 to 174 of the *Local Government Act 2020*.

## Risk Management

Legislative non-compliance is identified as a high risk on Council's Enterprise Risk Register. Council, through adopting this Councillor Code of Conduct is responding to and providing a control for the risk of legislative non-compliance. The Councillor Code of Conduct, and related policies, outline the expectations and legislative requirements of Councillors. This Code of Conduct provides a clear means of managing allegations of breaches of the Code by Councillors or complaints against Councillors and mitigates the identified risk.

In accordance with Section 40 of the Act, Council will provide details of all Councillor reimbursements to its Audit and Risk Committee.

## Review

In accordance with Section 140 of the Act the Council may review or amend the Councillor Code of Conduct at any time. Any change requires a formal resolution of the Council passed by at least two-thirds of the total number of Councillors elected to the Council.

## Definitions

Chief Municipal Inspector	The Chief Municipal Inspector is responsible for investigating and prosecuting possible breaches and offences under the <i>Local Government Act 2020</i> , investigating allegations of Councillor misconduct, serious misconduct and gross misconduct, making an application for a Councillor Conduct Panel to make a finding of serious misconduct against a Councillor and making an application to the Victorian Civil and Administrative Tribunal for a finding of gross misconduct by a Councillor.
Conflict of Interest	Arises where an impartial, fair-minded person considers the Councillor would be influenced by a private interest when carrying out their public duty.
Councillor	All references to 'Councillor' include the Mayor, Deputy Mayor and elected members of the Baw Baw Shire Council.
Councillor Conduct Panel	A panel formed by the Principal Councillor Conduct Registrar under Section 156 of the <i>Local Government Act 2020</i> to hear applications and make findings of alleged serious misconduct by a Councillor.
Employee	Includes all members of staff, contractors and volunteers under the direct control or supervision of Baw Baw Shire Council.
Gross misconduct	By a Councillor means behaviour that demonstrates that a Councillor is not of good character or is otherwise not a fit and proper person to hold the office of Councillor, including behaviour that is sexual harassment and that is of an egregious nature.
Minister	The Minister for Local Government.
Misconduct by a Councillor	Means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct.
Serious misconduct by a Councillor	Means any of the following— (a) the failure by a Councillor to comply with the Council's internal arbitration process;



<p>(definition taken from section 3 of the Local Government Act 2020)</p>	<p>(b) the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;</p> <p>(c) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;</p> <p>(d) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;</p> <p>(e) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);</p> <p>(f) bullying by a Councillor of another Councillor or a member of Council staff;</p> <p>(g) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;</p> <p>(h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;</p> <p>(i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;</p> <p>(j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act;</p>
<p>Councillor Conduct Officer</p>	<p>The person appointed in writing by the Chief Executive Officer under Section 150 of the <i>Local Government Act 2020</i>.</p>
<p>Principal Councillor Conduct Registrar</p>	<p>The person appointed by the Secretary under Section 148 of the <i>Local Government Act 2020</i>.</p>
<p>the Act</p>	<p><i>Local Government Act 2020</i>.</p>



Approval date	24 February 2021
Approval authority	Council
Effective from	25 February 2021
Review term	Council term
Next review date	February 2025
Responsible position	Manager Governance
Responsible Director	Acting Executive Manager Corporate and Customer Service
Version	1





**Councillor Declarations**

I <u>DANIEL THOMAS GOSS</u> ... Hereby declare that I have read, understand and will abide by the Baw Baw Shire Council Councillor Code of Conduct 2021 adopted on 24 February 2021, in accordance with Section 139 (1) of the <i>Local Government Act 2020</i> .	
Signature 	Date 24.2.21
Witnessed by Chief Executive Officer, Mark Dupe	
Signature 	Date 24/2/21

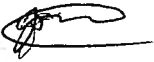
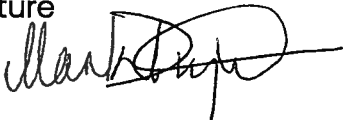


**Councillor Declarations**

I, <u>Annemarie McCabe</u> hereby declare that I have read, understand and will abide by the Baw Baw Shire Council Councillor Code of Conduct 2021 adopted on 24 February 2021, in accordance with Section 139 (1) of the <i>Local Government Act 2020</i> .	
Signature 	Date 24/2/2021
Witnessed by Chief Executive Officer, Mark Dupe	
Signature 	Date 24/2/21




### Councillor Declarations

I <u>Fazmin Tarru</u> Hereby declare that I have read, understand and will abide by the Baw Baw Shire Council Councillor Code of Conduct 2021 adopted on 24 February 2021, in accordance with Section 139 (1) of the <i>Local Government Act 2020</i> .	
Signature 	Date 24/2/21
Witnessed by Chief Executive Officer, Mark Dupe	
Signature 	Date 24/2/21

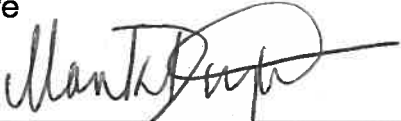


**Councillor Declarations**

I, Peter Kaszab Hereby declare that I have read, understand and will abide by the Baw Baw Shire Council Councillor Code of Conduct 2021 adopted on 24 February 2021, in accordance with Section 139 (1) of the *Local Government Act 2020*.

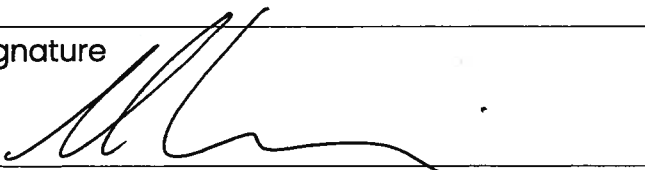
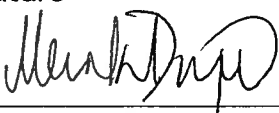
Signature 	Date 24/02/2021
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Witnessed by Chief Executive Officer, Mark Dupe

Signature 	Date 24/2/21
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Councillor Declarations

I <u>MICHAEL LEAPEY</u> Hereby declare that I have read, understand and will abide by the Baw Baw Shire Council Councillor Code of Conduct 2021 adopted on 24 February 2021, in accordance with Section 139 (1) of the <i>Local Government Act 2020</i> .	
Signature 	Date 24.02.2021
Witnessed by Chief Executive Officer, Mark Dupe	
Signature 	Date 24/2/21




Councillor Declarations

I G WALLACE..... Hereby declare that I have read, understand and will abide by the Baw Baw Shire Council Councillor Code of Conduct 2021 adopted on 24 February 2021, in accordance with Section 139 (1) of the *Local Government Act 2020*.



Signature 	Date 24.2.2021
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Witnessed by Chief Executive Officer, Mark Dupe

Signature 	Date 24/2/21
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**Councillor Declarations**

I <u>Patricia Jones</u> Hereby declare that I have read, understand and will abide by the Baw Baw Shire Council Councillor Code of Conduct 2021 adopted on 24 February 2021, in accordance with Section 139 (1) of the <i>Local Government Act 2020</i> .	
Signature 	Date 24/2/21
Witnessed by Chief Executive Officer, Mark Dupe	
Signature 	Date 24/2/21





**Councillor Declarations**

I <u>KEITH COOK</u> ..... Hereby declare that I have read, understand and will abide by the Baw Bow Shire Council Councillor Code of Conduct 2021 adopted on 24 February 2021, in accordance with Section 139 (1) of the Local Government Act 2020.	
Signature <u>Keith Cook</u>	Date <u>14/7/2021</u>
Witnessed by Chief Executive Officer, Mark Dupe	
Signature <u>Mark Dupe</u>	Date <u>14/7/2021</u>



### Councillor Declarations

I Farhat Firdous Hereby declare that I have read, understand and will abide by the Baw Bow Shire Council Councillor Code of Conduct 2021 adopted on 24 February 2021, in accordance with Section 139 (1) of the Local Government Act 2020.

Signature

A handwritten signature in black ink, appearing to read "Farhat", written over the printed word "Signature".

Date

14/06/2023

Witnessed by Chief Executive Officer, Mark Dupe

Signature

A handwritten signature in black ink, appearing to read "Mark Dupe", written over the printed word "Signature".

Date

14/06/2023