

Model Councillor Code of Conduct, Training for Mayors and Councillors & Internal Resolution Procedure

Consultation Stage Two Report

October 2024

Introduction

The *Local Government Amendment (Governance and Integrity) Act 2024* made various amendments to the *Local Government Act 2020* (the Act) that aim to enhance standards of governance and behaviour across the local government sector.

Key reforms include:

- The introduction of a Model Councillor Code of Conduct (Model Code)
- Mandatory mayoral training
- A requirement to complete councillor induction training within four months of taking the oath or affirmation of office (previously six months)

Annual mandatory professional development training for councillors, and council procedures for dealing with alleged breaches of the Model Code.

To enact those reforms, Local Government Victoria (LGV) developed the Local Government (Governance and Integrity) Amendment Regulations 2024 (the Regulations). The Regulations prescribe the Model Code and the content that must be covered in the delivery of the new mandatory training. It also prescribes the procedures for dealing with alleged breaches of the Model Code (Internal Resolution Procedure).

This work has been guided by a local government steering committee made up of representatives from the following groups:

- Department of Government Services
- Local Government Inspectorate
- Regional Cities Victoria
- Rural Councils Victoria
- Peri-Urban Councils Victoria
- Interface Councils
- Melbourne 9
- Municipal Association of Victoria
- Victorian Local Governance Association
- Local Government Professionals
- Australian Local Government Women's Association.

Consultation Overview

Stage One

Two surveys were conducted from 21 June - 15 July 2024 on the Engage Victoria platform to get the views of councillors, Chief Executive Officers (CEOs), council staff, peak bodies, and members of the community. The survey focused on what should and should not be included in the Model Code and the professional development and Mayoral training.

The feedback from the surveys was used to guide the drafting of the Regulations.

Stage Two

The second stage of the Engage Victoria consultation ran from 6 August 2024 - 4 September 2024. The consultation sought detailed feedback on drafts of the:

- Model Councillor Code of Conduct
- Internal Resolution Procedure
- Training Outline for Mandatory Induction Training, Mayoral Training and Professional Development Training.

Feedback and examples were also sought on whether any additional matters should be included in the Regulations, and whether any content should be removed or revised.

A total of 52 submissions were received from:

- 23 councils
- 5 community members
- 5 council staff members
- 3 CEOs
- 6 councillors
- 1 former councillor
- 2 independent government agencies
- 7 local government sector peak bodies.

Summary of feedback and how it has been addressed

Overall, there was a high level of support in the submissions received. While some submissions described the standards of conduct as being too onerous for Councillors or needing to be more expansive to cover more types of conduct, most thought that with additional clarity the standards of conduct were appropriate.

The feedback received has been grouped into themes and summarised below. Note that all feedback has been considered carefully in the development of the Regulations and Guidance, but they may not have been entirely captured.

The tables also contain a summary of how the feedback has been reflected in the Regulations or the associated guidance that has been produced to assist councils and councillors.

Model Councillor Code of Conduct

Feedback	Change made
A clear statement of intent should be made, at the start of the Model Councillor Code	The Model Councillor Code of Conduct Guidance (Model Code Guidance) has been developed. It provides an overview of the Model Code, the purpose and scope of the Model Code and the responsibilities of councillors under the Model Code.
Provide examples to clearly set out expected standards of behaviour	The Model Code Guidance contains illustrative examples to aid councillors in interpreting and understanding the requirements of the Model Code of Conduct. Some of those examples are based on published internal arbitration decisions, councillor conduct panel decisions and integrity reports. There also examples on the standards of conduct.
Expand the standard of conduct on diligently using council processes to become informed about matters which are subject to council decisions	The Model Code Guidance contains a section on diligently using council processes. It details what is required of councillors and sets out an example of councillors who were failing to inform themselves.
Provide clarity on the responsibilities and functions of the CEO within the standard of conduct on not performing the role of the CEO	The Model Code has been amended to clarify that a councillor must not perform, or purport to perform, any responsibilities or functions of the CEO.
Provide clarity on the scope of the obligation in relation to gender equality	The Model Code has been amended to reference the obligations of councils under the <i>Gender Equality Act 2020</i> . A section has been included in the Model Code Guidance that details what these obligations are and what is required of councillors.
In "councillors must treat others with dignity, fairness, objectivity, courtesy and respect," the term others should	The Model Code has been amended to provide that "A Councillor must treat others, including other councillors, members of council staff and members of the public,

<p>be expanded on to ensure that it is clear that this includes council staff</p>	<p>with dignity, fairness, objectivity, courtesy and respect ...".</p>
<p>The standard of conduct on occupational health and safety should include psychological safety</p>	<p>A section has been included in the Model Code Guidance on risks to health and safety, which clarifies that under the <i>Occupational Health and Safety Act 2004</i> the term 'health' includes psychological health.</p>
<p>The following should be added as a standard of conduct "must take positive action to eliminate discrimination, sexual harassment, and victimisation in accordance with section 15 of the <i>Equal Opportunity Act 2010</i>"</p>	<p>This is captured in the <i>Equal Opportunity Act 2010</i>. A note has been included in the Guidance alerting councillors to their obligations under this Act.</p>
<p>A model social medial policy should be created and included in the regulations to ensure uniformity and consistency</p>	<p>The Model Code will not require councillors to comply with their council's social media policy due to concerns expressed about uniformity and consistency. The Model Code has instead been strengthened to provide that:</p> <ul style="list-style-type: none"> • Councillors must refrain from making public comment, including to the media, which could reasonably be perceived to be an official comment on behalf of the council where the councillor has not been authorised by the mayor to make such a comment. <p>A section has also been included in the Model Code Guidance to clarify that the Model Code applies equally to councillors when using social media, and how councillors can use their social media responsibly. Councils are still encouraged to develop their own social media or communications policy to support councillors to act consistently with the Model Code when using social media.</p>
<p>A model confidential information policy should be created and included in the regulations to ensure greater uniformity and consistency</p>	<p>The Model Code will not require councillors to comply with their council's information policy due to concerns about uniformity and consistency. The Model Code has instead been strengthened to provide that:</p>

	<ul style="list-style-type: none"> • Councillors must not make Council information publicly available where public availability of the information would be contrary to the public interest. <p>The Model Code also includes a 'Note' referencing section 58 of the Act which sets out the public transparency principles to which this information relates.</p> <p>A section has also been included in the Model Code Guidance on the types of information which this may apply. Councils are encouraged to adopt and maintain a Public Transparency Policy which sets out a process for designating and managing council information, particularly when its release would be contrary to the public interest.</p>
<p>The standards of conduct should clearly state that public commentary by a Councillor is captured</p>	<p>A section has been included in the Model Code Guidance on when the Model Code applies. It provides details on when a councillor is acting as a councillor and when they are acting in their private capacity. The Model Code Guidance also clarifies that the Model Code applies equally to councillors when using social media.</p>
<p>The standards of conduct should include failures to declare conflicts of interest</p>	<p>This is a ground for an application for a finding of serious misconduct under the <i>Local Government Act 2020</i> (the Act) and is an offence under the Act.</p> <p>A section has been included in the Model Code Guidance on serious misconduct and who can make an application. A section has also been included on offences under the Act.</p>
<p>The standards of conduct should include misuse of position and failures to submit personal interest returns</p>	<p>These are offence provisions under the Act. Note that recent amendments to the Act enable fines to be issued by the Chief Municipal Inspector for failure to submit a personal interest return.</p>
<p>The Model Code should clarify that robust public debate needs to be carried out in a respectful manner</p>	<p>The Model Code Guidance clear states that the Model Code does not prevent councillors from debating issues and expressing their</p>

	views on issue before the council, provided they do so in a respectful manner that is compatible with the other standards of conduct.
An outline of the internal arbitration process should be provided, including possible sanctions	<p>A section has been included in the Model Code Guidance on internal dispute resolution procedures. This includes an overview of the possible sanctions.</p> <p>Further guidance about the Councillor Conduct Framework processes is available on the LGV website.</p>

Internal Resolution Procedure

Feedback	Change made
Provide clarity on whether the internal resolution procedure is mandatory	The Regulations have been amended to clarify that councillors may use the internal resolution procedure to deal with alleged breaches of the Model Councillor Code of Conduct. There may be situations where internal resolution is unsuitable or inappropriate. In those cases, an internal arbitration process may be a more appropriate course of action. For example, where there are no prospects of resolving a dispute or where a councillor may not feel safe to use this process.
Before any matter is escalated to an external Arbiter process, council should provide evidence that they have made all reasonable efforts to resolve disputes	The Regulations will require that an application for an internal arbitration process must specify all steps taken by council to resolve the matter. Or, if the council has not taken any step to resolve the matter, the reason council did not do so.
Regulations should prescribe a consistent internal resolution procedure	The Regulations prescribe a conciliation process that councils must make available to councillors. Councils' internal resolution procedure may include other resolution processes such as external mediation. Councils' internal resolution procedures may also include other processes to address other types of complaints such as serious misconduct, interpersonal conflicts, etc.

<p>The internal resolution procedure should include an option to engage professional mediators at a councillor's request</p>	<p>The Regulations enable the mayor to perform the role, functions, and duties of the conciliator. If the mayor is unable to perform the role, the deputy mayor or an external conciliator can be brought in.</p> <p>Councils can also develop additional resolution processes such as external mediation.</p>
<p>The internal resolution procedure should cover other types of complaints (e.g. serious misconduct, interpersonal conflicts, complaints from staff or the community)</p>	<p>Councils' internal resolution procedures may also include other processes to address other types of complaints such as serious misconduct, interpersonal conflicts, etc.)</p>
<p>Councils should be given adequate time to update their internal dispute resolution procedure to make it consistent with the Regulations</p>	<p>Councils have until 1 July 2025 to update their internal resolution procedure to comply with the Regulations.</p> <p>Councils can use the internal resolution procedure in their previous Councillor Code of Conduct until the updated one is adopted.</p>
<p>Provide guidance on what steps councils should take if the mayor is a party to a dispute and what mayors should document throughout the process</p>	<p>The Regulations have been amended to clarify that the procedure should set out the role of the mayor and identify any support available to them. They also clarify that the deputy mayor or another person can conduct the conciliation if the mayor is unable to do so.</p>

Induction Training, Mayoral Training and Professional Development Training

Feedback	Change made
<p>Responsibility for determining the precise content of each training module and the method of delivery should rest with the CEO</p>	<p>The approval of processes and activities to meet the mandatory training requirements within the allocated budget is a matter for the CEO.</p> <p>The Guidance on the mandatory training for mayors, deputy mayors and councillors (Training Guidance) has been developed to assist CEO in understanding the legislative requirements for mandatory training. The Training Guidance also assists them to develop, deliver, and report on the training</p>

	they are required to provide mayors, acting mayors, deputy mayors and councillors under the Act and the Regulations.
Training should include managing the employment of the CEO	The Training Guidance includes CEO recruitment and performance management as a topic that should be covered in professional development training each year.
Councillors should be required to participate in training on their occupational health and safety obligations as a priority following their election to Council	<p>The Training Guidance states that occupational health and safety policy and processes should be covered in Councillor induction training and in years 2 and 4 of professional development training.</p> <p>The Training Guidance also states that occupational health and safety and psychosocial hazards and responsibilities under the <i>Occupational Health and Safety Act 2004</i> should be covered each year of professional development training.</p>
Municipal Public Health and Wellbeing Plan and information about requirements set out for councils within the <i>Public Health and Wellbeing Act 2008</i> in the strategic planning and financial management	<p>Council Induction training and professional development training must include topics on strategic planning and financial management.</p> <p>The Training Guidance recommends that more detailed information on Municipal Public Health and Wellbeing Plans be covered in professional development training each year.</p>
Include provisions on the relationship between the mayor and CEO in professional development training	The Training Guidance recommends that information on the relationship between the mayor and the CEO be provided under 'Working together in a Council' in both induction training and in the second year of professional development training.
There should be a stand-alone training on gender equality	<p>Gender equality is currently covered in the suggested content in the Training Guidance for two of the prescribed matters in the Regulations:</p> <ul style="list-style-type: none"> • Community representation under giving effect to gender equality, diversity (including cultural and linguistic diversity), and inclusiveness (including unconscious bias)

	<ul style="list-style-type: none"> • Conduct under preventing and addressing sexual harassment and introduction to other legislative responsibilities relating to the behaviour of councillors, including the <i>Gender Equality Act 2020</i>.
A council's role in urban planning extends beyond that of a statutory decision-maker. It includes strategic planning, heritage policy, conservation of distinct areas, housing affordability, and compliance	The Regulations have been amended so that land use planning is a stand-alone topic that must be covered in induction training and professional development training. This is to capture the full range of a council's functions and responsibilities as a planning authority.
Learning. The training should include outcomes for each theme	The Training Guidance includes learning outcomes for each prescribed matter in the Regulations.
Content should be different in an election year so that the focus can be on the council's election period policy and conduct during the election period	The Regulations require professional development training to address each of the prescribed matters annually. However, there is flexibility for councils to determine what content to cover each year. The Training Guidance has been updated to note that councils may consider ensuring that the final year of professional development training is largely focused on election period considerations. This may include the election period policy, the use of council resources, and councillor integrity.
Set a deadline for completion of the training program in the final year of the program. This deadline should be on or before the opening of nominations for the council election	<p>The Regulations have been amended to provide that professional development training must be completed by 31 December in each year following a general election.</p> <p>In the year of a general election, councillors will need to complete their professional development training by 1 September (which is prior to the opening of nominations).</p>
Provide flexibility for CEOs to recognise the prior learning of experienced councillors	Attached to the Training Guidance is a confidence self-assessment tool for councillors to use. This tool will help determine whether each of the themes and proposed content reflects a "strong", "moderate" or "light" focus for professional development training.

	<p>This enables training activities to be tailored to the individual needs of councillors. However, this is not mandatory. councils can also use any assessment tools they consider helpful to determine training needs for councillors.</p> <p>The Training Guidance also recommends a 70/20/10 approach to training, enabling activities to be tailored for individual councillors where appropriate and necessary.</p>
<p>The guidance should include reference to the Australian Institute of Company Directors (AICD) course to encourage more councillors to undertake the course</p>	<p>A section has been included in the Training Guidance to provide councils with a list of existing resources and training that are available to councillors, including courses offered by the AICD.</p>

Other matters for future consideration

The submissions also contained suggestions that were out of scope of the development of the Regulations. These suggestions will be considered as part of future reform development and continuous improvement efforts:

- LGV should develop a Model Councillor Occupational Health & Safety Policy similar to that adopted by Surf Coast Shire Council and require councils to adopt it
- Update the Good Governance Guide to reflect the new legislation
- Council staff and CEOs should be able to lodge misconduct complaints with the Chief Municipal Inspector as they can with serious misconduct
- Training should be developed by integrity bodies
- Standardised Governance Rules are required
- Digital training products should be produced to assist councils
- candidates/councillors should have to have a Working with Children Check and potentially a Police Check
- Mobile devices should be banned in council meetings
- In person attendance at council meetings should be required
- A panel of mediators / conciliators should be established and maintained by LGV
- Training should be supplemented by mentoring and the use of formalised support networks, particularly for new women councillors.

