

Policy Name	Board Member Code of Conduct
Adopted by Board	16 December 2020
Approval Authority	GRLC Board
Version No	1
Responsible Person	Chief Executive Officer
Scheduled Review Date	October 2024

1. **INTRODUCTION**

1.1 **Legislative framework**

Section 139 of the *Local Government Act 2020* (**Act**) requires a council to develop and maintain a Councillor Code of Conduct. The Councillor Code of Conduct is required to be periodically reviewed.

A Councillor Code of Conduct:

- must include the Standards of Conduct prescribed by the *Local Government (Governance and Integrity) Regulations 2020* (**Regulations**) expected to be observed by Councillors; and
- must include any provisions prescribed by the Regulations; and
- must include provisions addressing any matters prescribed by the Regulations; and
- may include any other matters which Council considers appropriate, other than any other Standards of Conduct.

The Standards of Conduct with which Councillors are required to comply are specified in Schedule 1 to the Regulations.

Failure by a Councillor to comply with the Standards of Conduct constitutes misconduct under the Act, which may be pursued in accordance with the processes set out in the relevant Code.

1.2 **Application to Regional Library Corporations**

It is likely that the Act's requirements concerning Councillor Codes of Conduct apply to Regional Library Corporations.

Under section 197(7) of the *Local Government Act 1989* (**the 1989 Act**), various provisions relating to councils and Councillors apply to Regional Library Corporations. One of the provisions which, until recently, applied to Regional Library Corporations was section 76C of the 1989 Act. The latter has been repealed but substantially re-enacted in the form of section 139 of the Act. It is likely that the

effect of section 17(1) of the *Interpretation of Legislation Act 1984* is to replace the reference (in the 1989 Act) to section 76C with a reference to section 139 of the Act.

Even if this is not so, it is convenient for the Board to adopt a new Board Code of Conduct that mirrors contemporary Councillor Codes of Conduct.

In the event of section 139 of the Act not extending to Regional Library Corporations, Board members nonetheless agree to comply with the:

- Standards of Conduct set out Part 2 of this Code; and
- processes set out in Parts 3 and 4 of this Code (or processes that follows the processes set out in Parts 3 and 4 with any necessary adaptations).

This Board Code of Conduct (**Code**) replaces the previous Board Code of Conduct adopted on 12 February 2018.

1.3 Purpose of this Code

The purpose of this Code is to set out the Standards of Conduct with which Board members must comply and to:

- foster good working relationships between Board members to enable Board members to work constructively together in the best interests of the Corporation, its member councils and the municipal communities for which the member councils are responsible;
- lift the standard of behaviour of Board members during Board meetings, Board briefings and any other meetings in which Board members participate from time to time; and
- establish benchmarks for Board members conduct designed to:
 - build public confidence in the integrity of the Corporation; and
 - give effect to the Corporation’s Vision, Mission and Values.

2. STANDARDS OF CONDUCT

The Standards of Conduct to be observed by Board members are set out in the Regulations. Failure to comply with the Standards of Conduct constitutes ‘misconduct’ for the purposes of the Act. If allegations of misconduct cannot be resolved between Board members informally, they will be referred to the internal arbitration process, which may result in the imposition of sanctions.

2.1 Treatment of others

A Board member must, in performing the role of a Board member, treat other Board members, members of the Corporation’s staff and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Board member:

- takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the *Equal Opportunity Act 2010*;

- supports the Corporation in fulfilling its obligation to achieve and promote gender equality;
- does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Corporation staff and other Board members; and
- in considering the diversity of interests and needs of the community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

2.2 Performing the role of Board members

A Board member must, in performing the role of a Board member, do everything reasonably necessary to ensure that the Board member performs the role of a Board member effectively and responsibly, including by ensuring that the Board member:

- undertakes any training or professional development activities that the Corporation decides it is necessary for all Board members to undertake to effectively perform the role of a Board member;
- diligently uses Corporation processes to become informed about matters which are subject to Corporation decisions;
- is fit to conscientiously perform the role of a Board member when acting in that capacity or purporting to act in that capacity; and
- represents the interests of the community in performing the role of a Board member by considering and being responsive to the diversity of interests and needs of the community.

2.3 Compliance with good governance measures

A Board member, in performing the role of a Board member, to ensure the good governance of the Corporation, must diligently and properly comply with the following:

- 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 the Corporation's staff and Board members;
- the Corporation expenses policy adopted and maintained by the Corporation;
- any Governance Rules developed, adopted and kept in force by the Corporation under section 60 of the Act; and
- any directions of the Minister for Local Government issued under section 175 of the Act (governance directions).

2.4 Board Member must not discredit or mislead the Corporation or public

In performing the role of a Board member, a Board member must:

- ensure that their behaviour does not bring discredit upon the Corporation;
and
- not deliberately mislead the Corporation or the public about any matter related to the performance of their public duties.

2.5 Standards do not limit robust political debate

Board members acknowledge that nothing in the Standards of Conduct is intended to limit, restrict or detract from robust public debate in a democracy. So, while Board members must always meet these Standards of Conduct, participation in vigorous debate of matters before the Board for decision should not be viewed as being inconsistent with them.

3. INTERPERSONAL DISPUTES BETWEEN BOARD MEMBERS

Board members acknowledge that interpersonal differences and disputes (as distinct from allegations of contravention of the Standards of Conduct) may arise from time to time. Board members commit to taking reasonable steps to resolve any interpersonal difference or dispute that arises without recourse to formal processes with a view to maintaining effective working relationships.

In resolving interpersonal differences or disputes, Board members will consider pursuing informal steps, including:

3.1 Informal discussions between Board members

Board members will first consider discussing their interpersonal difference or dispute informally with a view to resolving it.

3.2 Facilitated discussion

If Board members are unable to discuss their interpersonal difference or dispute informally, or their informal discussions are unsuccessful, they will consider approaching a fellow Board member, chosen with the agreement of both Board members, to facilitate a discussion with a view to resolving their interpersonal difference or dispute.

If the interpersonal difference or dispute cannot be resolved informally, the Board members will consider whether any of the conduct giving rise to it constitutes a contravention of the Standards of Conduct. If they consider that it does, they may choose to pursue it as such under Part 4 of this Code.

4. ALLEGATIONS OF CONTRAVENTION OF THE CODE

An allegation that the Standards of Conduct have been breached by a Board member can be made by:

- the Board, by resolution;
- a Board member; or
- a group of Board members.

Where an allegation is made by the Board or by a group of Board members, a single Board member must be nominated to act as the representative of the Board or the group of Board members (as the case may be) in the internal resolution process. Only that Board member will be entitled to participate in the internal resolution process.

When an allegation of a breach of the Standards of Conduct is alleged, the Board members who are party to the allegation undertake to use their best endeavours to resolve it in a courteous and respectful manner without recourse to formal processes under this Code or under the Act. If, after these endeavours have been exhausted, the allegation remains unresolved, either or both of the Board members may have recourse to any or all of the internal resolution processes set out in this Code.

Board members accept the following three-phase internal resolution process:

- Formal discussion between the Board members, facilitated by the Chair or, if the Chair is involved in the allegation, the Deputy Chair or, if both the Chair and the Deputy Chair are involved in the allegation, the most recent past Chair
- Formal mediation between the Board members, facilitated by a qualified mediator
- Formal internal arbitration process.

Board members recognise that the first and second phases are voluntary and that they are not obliged to agree to either of them but will endeavour to resolve allegations without resorting to the mandatory internal arbitration process.

4.1 The application

An application alleging a breach of the Standards of Conduct must:

4.1.1 include the:

- (a) name of the Board member alleged to have breached the Standards of Conduct;
- (b) clause(s) of the Standards of Conduct that the Board member is alleged to have breached;
- (c) particular misconduct, or behaviour, that the Board member is alleged to have engaged in that resulted in the breach; and
- (d) phase of the internal resolution process being pursued by the Board member making the allegation at the first instance; and

4.1.2 be submitted to the Chief Executive Officer (**CEO**) for:

- (a) action, if the application seeks engagement in the first or second phase of the internal resolution process; or
- (b) referral to the Principal Councillor Conduct Registrar, if the application seeks a formal internal arbitration process.

If an application received by the CEO does not meet the requirements of this Part 4.1, the CEO will return it to the Board member submitting it with a brief statement of the ways in which the application is deficient.

A Board member may revise and resubmit to the CEO a deficient application, provided that the Board member submits the revised application no later than 3 months after the alleged breach of the Standards of Conduct occurred (see section 143(3) of the Act).

4.2 Process on receiving an application

4.2.1 *Application for a facilitated discussion*

On receiving an application from a Board member which meets the requirements of Part 4.1 of this Code and which seeks a facilitated discussion, the CEO will take the following steps:

- (a) notify Chair or, if the Chair is involved in the allegation, the Deputy Chair or, if both the Chair and the Deputy Chair are involved in the allegation, the most recent past Chair and provide them with a copy of the application;
- (b) notify the Board member the subject of allegation in the application and provide them with a copy of the application;
- (c) request the Board member the subject of the application to advise whether they will participate in the facilitated discussion within 5 days of receiving the application and, if no advice is received, the Board member will be taken to have declined;
- (d) if the Board member agrees to participate in the facilitated discussion:
 - (i) the CEO will, with the cooperation of the Board members involved in the application and the Chair or, if the Chair is involved in the application, the Deputy Chair or, if both the Chair and the Deputy Chair are involved in the application, the most recent past Chair (as the case may be), arrange a suitable time and place for the facilitated discussion, to be no later than 5 days from the date of the advice provided under paragraph (c);
 - (ii) the facilitated discussion must be completed with the Chair or, if the Chair is involved in the application, the Deputy Chair or, if both the Chair and the Deputy Chair are involved in the application, the most recent past Chair (as the case may be) providing a record of the outcome to the Board members involved in the application and the CEO no later than 5 days after the discussion takes place; and
 - (iii) if the facilitated discussion is not complete within 5 days of the date nominated for it to take place, the Board members will be taken as not having agreed to participate in a facilitated discussion, unless both Board members agree to extend the time for completion;
- (e) if the facilitated discussion is not completed in accordance with this Part 4.2.1 for whatever reason, or if the facilitated discussion does not resolve the allegation the subject of the application, the CEO will advise the:

- (i) Board member making the application and ask the Board member to advise whether they wish to escalate the matter to another phase of the internal resolution process and, if so, which phase; and
 - (ii) Board member the subject of the application; and
- (f) the CEO will make arrangements to close or to escalate the application, according to the advice of the Board member making the application.

4.2.2 *Mediation*

On receiving an application from a Board member which meets the requirements of Part 4.1 of this Code and which seeks a mediation, or on escalating an application where a facilitated discussion has not been completed or has not resolved the allegation, the CEO will take the following steps:

- (a) notify the Board member the subject of allegation in the application and provide them with a copy of the application;
- (b) request the Board member the subject of the application to advise whether they will participate in mediation within 5 days of receiving the application and, if no advice is received, the Board member will be taken to have declined;
- (c) if the Board member agrees to participate in mediation:
 - (i) the CEO, or a member of the Corporation's staff nominated by the CEO for the purpose (**the CEO's nominee**), will engage a mediator, to be chosen by the CEO (or the CEO's nominee);
 - (ii) the CEO (or the CEO's nominee) will, with the cooperation of the Board members involved in the application, arrange a suitable time and place for the facilitated discussion, to be no later than 5 business days from the date of the advice provided under paragraph (b); and
 - (iii) if the mediation is not complete within 5 business days of the date nominated for it to take place, the Board members will be taken as not having agreed to participate in the mediation, unless both Board members agree to extend the time for completion;
- (d) if the mediation resolves the application, the mediator will document the agreement reached by the Board members involved and provide a copy of the agreement to both Board members and to the CEO;
- (e) if the mediation is not completed in accordance with this Part 4.2.2 for whatever reason, the CEO (or the CEO's nominee) will advise the:
 - (i) Board member making the application and ask the Board member to advise whether they wish to escalate the matter to

another phase of the internal resolution process and, if so, which phase; and

- (ii) Board member the subject of the application; and
- (f) the CEO will make arrangements to close or to escalate the application, according to the advice of the Board member making the application.

4.2.3 *Internal arbitration*

A breach of the Standards of Conduct constitutes 'misconduct' for the purposes of the Act and may be referred to an arbiter for determination. The process for internal arbitration is prescribed by Part 6 of the Act and regulation 11 of the Regulations.

Internal arbitration may be commenced either after the first two phases of the internal resolution process prove unsuccessful in resolving the allegation, or as the first step in an application.

On receiving an application from a Board member which meets the requirements of Part 4.1 of this Code and which seeks an internal arbitration process, or on escalating an application where a facilitated discussion and/or mediation has not been completed or has not resolved the allegation, the CEO will:

- (a) refer the application to the Principal Councillor Conduct Registrar;
- (b) notify the Board members involved in the application of the referral;
- (c) await advice from the Principal Councillor Conduct Registrar about the application; and
- (d) take such steps as are necessary to give effect to the Principal Councillor Conduct Registrar's advice, in accordance with any instructions received.

Board members recognise that an application for internal arbitration for an allegation of a breach of the Standards of Conduct will only be accepted by the Principal Councillor Conduct Registrar, and an arbiter will only be appointed, if the Principal Councillor Conduct Registrar is satisfied that:

- (e) the application is not frivolous, vexatious, misconceived or lacking in substance; and
- (f) there is sufficient evidence to support an allegation of a breach of the Board Code of Conduct.

It is for the Board member or Board members submitting an application to ensure that the application meets these requirements.

If the Principal Councillor Conduct Registrar is satisfied that an application for internal arbitration should be accepted, the Principal Councillor Conduct Registrar will appoint an arbiter from a panel list compiled by the Secretary to the Department of Jobs, Precincts and Regions.

In conducting an arbitration the arbiter must:

- (g) ensure that the parties involved are given an opportunity to be heard;
- (h) ensure that a Board member who is a party does not have a right to representation, unless the arbiter considers that representation is necessary to ensure that the process is conducted fairly;
- (i) conduct the hearing with as little formality and technicality as the proper consideration of the matter permits; and
- (j) ensure that the hearing is not open to the public.

Additionally, in conducting an arbitration the arbiter:

- (k) may hear each party to the matter in person or solely by written or electronic means of communication;
- (l) is not bound by the rules of evidence and may be informed in any manner the arbiter sees fit;
- (m) may at any time discontinue the hearing if the arbiter considers that the:
 - (i) application is vexatious, misconceived, frivolous or lacking in substance; or
 - (ii) Board member making the application, or representing the group of Board members making the application, has not responded, or has responded inadequately, to a request for further information.

If, at the completion of the internal arbitration process, the arbiter determines that a Board member has breached the Standards of Conduct, the arbiter may make a finding of misconduct against the Board member and impose any one or more of the following sanctions:

- (n) direct the Board member to make an apology;
- (o) suspend the Board member from the office of Board member for a period specified by the arbiter (not exceeding one month);
- (p) direct that the Board member be removed from any position where the Board member represents the Board for the period determined by the arbiter;
- (q) direct that the Board member is removed from being the chair of a delegated committee for the period determined by the arbiter; and/or
- (r) direct a Board member to attend or undergo training or counselling specified by the arbiter.

The arbiter must provide a written copy of the arbiter's findings and statement of reasons to:

- (s) the Board;
- (t) the applicant(s) and the respondent; and
- (u) the Principal Councillor Conduct Registrar.

A copy of the arbiter's decision and statement of reasons must be tabled at the next Board meeting after the arbiter's findings and statement of reasons are provided. If the arbiter's decision and statement of reasons contain any confidential information, the confidential information must be redacted before it is tabled

Board members recognise that a failure to participate in and comply with the internal arbitration process or a direction given to the Board member by an arbiter is 'serious misconduct' for the purposes of the Act. Allegations of 'serious misconduct' are heard by a Councillor Conduct Panel.

4.3 Responsibility of Board members

It is the responsibility of a Board member or Board members submitting an application to prepare the application, including by identifying and collating the evidence which supports it.

While members of the Corporation's staff may provide some administrative support, that support will not extend to assisting Board members with the preparation of the substance of an application.

5. ADOPTION OF THIS CODE

- 5.1 This Code was adopted by a resolution of the Board made at the Board meeting held on 16 December 2020, with a majority of at least two thirds of all Board members voting in favour of it.
- 5.2 This Code may be reviewed at any time but need not be reviewed until after the general election of Councillors to be held in October 2024.