

# Fact sheet: Standing down a councillor

This fact sheet considers the standing down of a councillor by the Minister for Local Government or the Victorian Civil and Administrative Tribunal (VCAT).

## What does standing down a councillor mean?

A councillor may be stood down while their behaviour as a councillor is under investigation or if they have been charged with a serious offence.

When they are stood down, they are not able to perform their duties as a councillor and their allowance is suspended.

## How is a councillor stood down in Victoria?

People often request that a councillor be stood down while we investigate them for breaches or offences under the *Local Government Act 2020*.

However, we cannot stand a councillor down simply due to allegations that may or may not be proven.

A councillor is elected to represent their community so they can only be stood down in very serious circumstances. It is not done lightly.

The reasons why a councillor can be stood down and the process are set out in the Act.

The Act sets out how either the Minister for Local Government or VCAT may stand a councillor down.

## 1 Ministerial intervention

The first pathway created by **sections 224–228** of the Act allows the Minister to step in.

This pathway can be taken when one of the following happens:

- an application has been made to a Councillor Conduct Panel for a finding of serious misconduct against a councillor<sup>1</sup>
- an application has been made to the VCAT alleging gross misconduct by the councillor
- a Commission of Inquiry into the council of the councillor has been appointed<sup>2</sup>
- an application has been made to the Supreme Court to oust the councillor from office.

The Minister must also have reason to believe that the councillor:

- is creating a serious risk to the health and safety of councillors, council staff or others
- or
- is preventing the council from performing its functions.

When these elements are met, the Minister may refer the councillor to the Chief Municipal Inspector or a Municipal Monitor to investigate.

The investigation findings must be reported to the Minister and councillor within 10 days (or another agreed period). The councillor has an opportunity to respond within five days.

With this report to hand, the Minister may then make a recommendation to the Governor-in-Council to stand down the councillor.

### How long is the councillor stood down for if the Minister intervenes?

The councillor can be stood down for up to six months or until:

- the formal processes are finalised at the Councillor Conduct Panel, VCAT or Supreme Court – resulting in a final determination, withdrawal or dismissal
- or
- the Commission of Inquiry report is presented to Parliament.

1 A Councillor Conduct Panel is an independent process which assesses and makes a decision on allegations of serious misconduct. It can reprimand the councillor, direct them to make an apology or suspend them from office.

2 A Commission of Inquiry is a formal body which conducts an inquiry into the affairs of a council. It has power to examine witnesses and inspect documents and it must issue a report of its findings to the Minister.

## 2 Application to VCAT

The second pathway to stand a councillor down is set out in **section 229**. This is when the Chief Municipal Inspector applies to VCAT after the councillor has been charged with a serious offence.

A serious offence:

- has a maximum penalty of at least 120 penalty units or 12 months' jail
- is punishable upon first conviction by imprisonment of two years or more
- or
- disqualifies them from managing corporations.

VCAT must consider the nature and circumstances of the charge before deciding to stand down the councillor.

### Examples of serious offences

Some examples of where we could use this pathway include:

- a councillor has been charged with aggravated assault

- a breach of an intervention order
- a councillor being disqualified from managing a corporation after a bankruptcy.

### How long is the councillor stood down for if a VCAT application is successful?

If VCAT makes an order to stand down the councillor, it will remain in place until the legal proceedings for the serious offence are concluded.

It is important to note that this pathway is not immediate. The case may have to wait for a period of time until it is heard by VCAT, during which time the person can continue in their role.

### What if the charge is withdrawn by Victoria Police?

If Victoria Police decide not to progress the relevant charge (or charges), then the Chief Municipal Inspector will withdraw the application to stand down the councillor.

## Consequences of being stood down

When a councillor is stood down, they are suspended from their role. They must not perform any of the functions and duties or exercise the power of a councillor.

Also, they cannot attend council meetings, delegated committees or attend council premises.

The councillor's allowance is also suspended while they are stood down.