



WARRNAMBOOL
CITY COUNCIL

Caretaker (Elections) Policy

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1. INTRODUCTION

1.1 PURPOSE

During the period preceding elections Council assumes a “caretaker role”. This period is defined in the Act as the election period and is often referred to as the “caretaker or election period”. The purpose of this Policy is to ensure the business of local government in the City of Warrnambool continues throughout the election period in a responsible and transparent manner in accordance with statutory requirements and established “caretaker” conventions.

1.2 SCOPE

This policy applies to Warrnambool City Council, Councillors and Council staff.

During the election period the business of Council continues and ordinary matters of administration still need to be addressed. This policy establishes a series of caretaker practices which aim to ensure that actions of the current Council do not bind an incoming council and limit its freedom of action.

The election period commences on the entitlement date, and continues until 6.00pm on election day.

For the 2016 Warrnambool City Council elections, the election caretaker period referred to in this document as the ‘**election period**’ commences at midnight on 20 September, 2016 and applies until 6pm on Saturday 22 October, 2016.

1.3 DEFINITIONS

Where terms used in this Policy are defined in the Local Government Act 1989 (the Act), their use in this Policy is consistent with the definition of the Act. Relevant sections of the Act are included at Attachment 1.

Publication includes any means of publication, including letters and electronic information on the Internet

Public consultation means a process that involves inviting individuals, groups or organisations or the community generally to comment on an issue or proposed action or proposed policy, and which includes discussion of that matter with the public.

Council Resources are the financial, human and material resources of Council and includes – offices, vehicles, staff, hospitality, services, property, equipment (phones, computers etc.) and stationery etc.

2. POLICY

2.1 POLICY STATEMENT

This policy commits Warrnambool City Council during the election period to:

- not making any major policy decisions during the election period;
- not making decisions that significantly affect the municipality or unreasonably bind the incoming Council;

- ensuring that public resources, including staff resources, are not used for election campaign purposes, or in a way that may improperly influence the result of an election; and
- not publishing or distributing electoral matter during the election period, unless it is simply information about the election process.

This policy prescribes the actions and procedures the organisation, Councillors and staff will implement in observance of statutory requirements and in the interests of good governance and a fair election generally, during the election period.

2.2 POLICY POSITION

This policy applies during an election period of a General Council election and or by-election and covers:

- Major policy decisions that are made by the Council;
- Scheduling consideration and announcement of major policy decisions;
- Use of the Council's resources including staff and materials published by Council;
- Access to information by Councillors and candidates;
- Council's online presence including social media;
- Communications and media services during an election period;
- Attendance and participation at Council organised activities and events;
- Public Consultation during the election period.

2.3 ROLES AND RESPONSIBILITIES

2.3.1 Improper Use of Position

Sections 76D and 76E of the Act prohibit Councillors from misusing or inappropriately making use of their position. A breach of section 76D attracts serious penalties including possible imprisonment. Section 76D in relation to the election period ensures a fair election is held where Council resources are not used for campaigning by sitting councillors to increase advantage over other candidates or to influence voters.

Appendix to this policy contains an extract of Section 76D and 76E of the Act.

2.3.2 Role of the Chief Executive

The Chief Executive will ensure, as far as practicable, that all Councillors and staff are informed of the application of this policy at least 30 days prior to the commencement of the election period and instructions are provided to staff on the implementation of the procedures detailed in this policy.

3. PROCEDURES

3.1 DECISION MAKING PROCESSES DURING THE ELECTION PERIOD

- a) It is an established democratic principle that elected bodies should not unnecessarily bind an incoming government during an election period. The Council therefore commits to this principle in that it will make every endeavour to avoid making decisions that inappropriately bind the incoming Council. This includes a commitment to not only comply with the requirements of section 93A of the Local Government Act 1989 (the Act), pertaining to "Major Policy Decisions", but as well relating to "Significant Decisions" as specified within this policy.

- b) Council will not hold an ordinary Council meeting during the election period.
- c) The Chief Executive will ensure, as far as practicable, that matters of Council business requiring major policy or significant decisions are scheduled for Council to enable resolution prior to the commencement of the election period, or deferred where appropriate for determination by the incoming Council.
- d) Scope exists for Council to hold a special Council meeting but only in the most urgent or extraordinary circumstances or any statutory circumstances or any statutory processes that may arise. *Refer clause 3.1.3*

3.1.1 Major Policy Decisions

- a) Section 93A of the Act prohibits the making of “Major Policy Decisions” during the election period. In the context of this Policy, a ‘major policy’ decision as defined in section 93A (6) of the Act means any decision:
 - (i) relating to the employment or remuneration of a Chief Executive under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (ii) to terminate the appointment of a Chief Executive Officer under section 94;
 - (iii) to enter into a contract with a total value exceeding either \$100,000 or 1% of Council’s revenue from rates and charges levied under section 158 in the preceding financial year, whichever is the greater (**for Warrnambool \$309,650** based on 2014/15)
 - (iv) to exercise any power under section 193 - entrepreneurial powers - of the sum assessed in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of the Council’s revenue from rates in the preceding financial year.
- b) If Council considers that there are extraordinary circumstances where Warrnambool’s community would be significantly disadvantaged by the Council not making a particular major policy decision, the Council will, by resolution, request an exemption from the Minister for Local Government in accordance with section 93A(2) of the Act.
- c) The prohibitions in section 93A also apply to a special committees or a person acting under delegation given by Council [s93A(1)].

3.1.2 Significant Decisions

- a) Over and above the decisions specified in section 93A of the Act, the Council will avoid making other decisions during the election period that are of a significant nature and which would unnecessarily bind an incoming Council.
- b) “Significant Decisions” include:
 - (i) Irrevocable decisions that commit the Council to substantial expenditure or major actions; and
 - (ii) Irrevocable decisions that will have a major impact on the municipality or the community.
- c) The Council acknowledges that it has an ongoing responsibility to act in the best interests of the community. Therefore, where a delay in making a “significant decision” would result in significant detriment to the local community, or the broader community, the Council may make an exception to this procedure. In making an exception to this procedure, the Council

will deal with the matter impartially, having regard to the long term interests of the community and as transparently as possible.

- d) In the case of a decision that significantly affects the municipality or binds the incoming Council, which is not expressly prohibited under section 93A of the Act, a number of factors will need to be considered, including:
 - (i) The urgency of the issue (that is, can it wait until after the election);
 - (ii) The possibility of financial and/or legal repercussions if it is deferred;
 - (iii) Whether the decision is likely to be controversial; and
 - (iv) The best interests of Council.

3.1.3 Caretaker Statement – Special Council Meeting Reports

Note: As Council will not hold an ordinary Council Meeting during the election period, this section only applies to reports for a Special Council Meeting, if such a meeting is called.

- a) In order to facilitate compliance with its commitment to ensuring appropriate decision-making during elections, Council adopts the following procedure.
- b) During the election period, the Chief Executive will ensure that a “Caretaker Statement” is included in every report submitted to a Special Council meeting (if required) for a decision.
- c) The “Caretaker Statement” will specify one of the following:
 - (i) *“The recommended decision is not a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, or a “Significant Decision” within the meaning of this policy.”*
 - (ii) *“The recommended decision is not a “Major Policy Decision” within the context of Local Government Act 1989. The recommended decision is a “Significant Decision” within the meaning of this policy, but an exception should be made for the following reasons [insert reasons for making an exemption]”.*
 - (iii) *“The recommended decision is to seek an exemption from the Minister because the matter requires a “Major Policy Decision” within the meaning of section 93A of the Local Government Act 1989”.*
 - (iv) *“The recommended decision is a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, but an extraordinary circumstances exemption was granted by the Minister for Local Government on [insert date]”.*
- d) During the election period, the Council will not make a decision on any matter or report that does not include one of these Caretaker Statements.

3.2 PUBLIC CONSULTATION DURING AN ELECTION PERIOD

- a) Public consultation means a process that involves inviting individuals, groups or organisations or the community generally to comment on an issue or proposed action or proposed policy, and which includes discussion of that matter with the public.
- b) Public consultations **are best to be avoided** during the election period.

- c) The requirements of sub-clause 3.2.b) (above) do not apply to public consultation required under the Planning and Environment Act 1987, or matters subject to section 223 of the Act.
- d) Consultations may be undertaken during the election period under sub-clause 3.2.c) to facilitate the day-to-day business of Council, to ensure matters continue to be proactively managed. Consultations will avoid any express or implied links to the election.
- e) Consultations under statutory provisions outlined in sub-clause 3.2.c) shall only proceed after express agreement by the Chief Executive and the Director City Growth and then if it relates solely to the normal day-to-day business of Council.

3.3 COUNCIL PUBLICATIONS DURING AN ELECTION PERIOD

3.3.1 Certification of Council publications during an election period

- a) Section 55D of the Act imposes limitations on Council publications during the election period. This is to ensure that Council does not publish material with public funds that may influence, or be seen to influence, voting in an election.
- b) It is prohibited under S55D of the Act for Council:
 - (i) To print, publish or distribute; or
 - (ii) To cause, permit or authorise to be printed, published or distributed on behalf of the Council;

any advertisement, handbill, pamphlet or notice during the election period unless it has been certified, in writing, by the Chief Executive (this power cannot be delegated).

- c) Even though section 55D refers specifically to “an advertisement, handbill, pamphlet or notice” it has been interpreted to refer to documents produced for the purpose of communicating with the community, including
 - (i) Council newsletters
 - (ii) Advertisements and notices e.g. job advertisements, public notices of contracts etc.
 - (iii) Media releases
 - (v) Leaflets and brochures
 - (vi) Mailouts to multiple addresses
- d) Council will avoid all publication activity during the election period except where essential for the conduct of Council operations. Where printing, publishing or distributing a document is deemed essential to Council business during the election period the Chief Executive certification is required for all publications. Publication includes electronic information and web based productions.
- e) Certification may be required prior to the election period if the material is to be distributed during the election period.
- f) The **procedure for certifying publications** is:

- Step 1 During an election period all proposed publications that are normally sent to the Communications unit and/or other Council units for publication e.g. Organisation Development for job advertisements must be sent in the first instance to the Manager Governance Projects & Risk.
- Step 2 The Manager Governance Projects & Risk is responsible for checking that no election material is present (other than factual election process information).
Refer clause 3.3.5;
- Step 3 Should the proposed publication contain electoral material, it will be returned to the author for correction and re-submission.
- Step 4 Should the proposed publication not contain electoral material, the Manager Governance Projects & Risk will send the material to the Chief Executive via email for certification, by advising:

“This material has been checked and does not contain any electoral or electoral related matter to the best of my knowledge. In accordance with the requirements of S55D(1) of the Local Government Act 1989 can you please certify in writing that you authorise for this material to be printed, published or distributed.”
- Step 5 If the proposed publication is approved by the Chief Executive, he/she will certify this in writing (return email is acceptable):

“I certify that the attached material is suitable for printing, publishing or distributing on behalf of Warrnambool City Council”
- Step 6 The Manager Governance Projects & Risk is responsible for maintaining the record of certification of documents and advising relevant officers of the publication approval.

- g) Councillors may publish campaign material on their own behalf, as long as the material does not originate from, or is authorised by, Council or use Council logos.

3.3.2. Council’s Online Facilities (includes Social Media)

- a) Warrnambool City Council’s website is the main corporate site; there are also separate websites for other Council operations including Warrnambool Art Gallery, Aquazone, Lighthouse Theatre, Surfside Holiday Park and Flagstaff Hill Maritime Village. Council also has a number of social media sites including twitter feeds and facebook pages.
- b) Council auspiced social media must not be used for election campaigning.
- c) At the start of the election period any online information on Council hosted sites about Councillors who are candidates will be restricted to their name and contact details.
- d) Council agendas and minutes of meetings do not require certification if they are published in the usual way on the website.
- e) Any references on Council’s website to the election will only relate to the election process.
- f) Any new material published on Council’s website during the election period that may be considered an advertisement, handbill, pamphlet or notice must be subject to the certification process outlined in clause 3.3.1.f).

- g) Any publication on social media sites like facebook, twitter etc. which are auspiced by Council, will also generally require certification by the Chief Executive.
- h) During an election period facebook and twitter posts are to be kept to minimum, normal day-to-day activities only. **No launches or announcement of any new projects, policy initiatives, or programs.** Where possible, the functions that permit comments and posts by the public on Council social media will be disabled during the caretaker period and if so Council will provide an explanation via social media on this being necessitated in accordance with this Policy.
- i) No new Council You Tube videos will be uploaded during the election period.
- j) Council's Communications unit monitors Warrnambool City Council's corporate website, facebook site and twitter feeds between the hours of 8.15am and 5.00pm on weekdays (excluding public holidays). During the Election period monitoring will extend to after hours and weekends and will be undertaken by the Communication unit which will have the editing access to delete any material posted that makes reference to candidates or the 2016 election.

3.3.3 Council Publications

- a) Any current Council publication which may be potentially affected by this policy will be reviewed by the Communication unit in consultation with the Manager Governance Projects & Risk to ensure that any circulated, displayed or otherwise publicly available material during the election period does not contain material that may be construed as "electoral matter".
- b) Council's City Assist unit undertake an audit of brochures and pamphlets in all Council's customer service centres, and remove any which might contain electoral matter prior to the election period.
- c) Any references to Councillors in Council publications printed, published or distributed during the election period must not include promotional text.
- d) Emails that are part of the normal conduct of Council business should not require certification. However, emails with multiple addressees, used for broad communication with the community, will be subject to the certification process.
- e) Mass mail outs or identical letters sent to a large number of people by or on behalf of Council must be subject to the certification process.
- f) Council staff should not prepare Councillors' private mail or electoral correspondence and such material must not be printed on Council stationery or using Council equipment.
- g) Councillors may use the title "Councillor" in their election material, as they continue to hold that position during the election period. To avoid confusion, Councillors shall ensure that any election publication using the title "Councillor" clearly indicates that **it is their own material and does not represent Council.**
- h) Material printed or disseminated during the election period to publicise a function or event must be subject to the certification process.

3.3.4 Council's Annual Report

- a) Council is statutorily required to produce an Annual Report during the election period. This publication is not considered an 'advertisement, handbill, pamphlet or notice' and does not require certification.
- b) The annual report must not include material that is electioneering or that publicises the attributes or achievements of individual Councillors.
- c) A summary version of the annual report is regarded as a pamphlet and must be subject to the certification process detailed in clause 3.3.1.
- d) A text version is lodged with the Minister of Local Government by the statutory deadline of 30 September. Printed copies of the text version of the Annual Report will only be distributed upon request until the expiration of the election period.

3.3.5 What is 'Electoral Material'

Material is **definitely an electoral matter** if it:

- Publicises the strength or weaknesses of a candidate;
- Advocates the policies of the Council or of a candidate;
- Responds to claims made by a candidate;
- Publicises the achievements of the elected Council;
- Publicises matters that have already been the subject of public debate;
- About matters that are known to be contentious in the community and likely to be the subject of election debate;
- Deals with Election Candidates statements;
- Refers to Councillors or candidates by name or by implicit reference.

3.4 USE OF COUNCIL RESOURCES DURING AN ELECTION PERIOD

- a) It is an established democratic principle that public resources must not be used in a manner that would influence the way people vote in elections. Council therefore commits to this principle in that it will ensure Council resources are not used inappropriately during a Council election. This includes a commitment to comply with the following procedures in addition to the requirements of section 55D of the Act.
- b) Council will ensure that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice is to be sought from the staff's Director.
- c) Council resources, including offices, support staff, hospitality services, equipment and stationery will be used exclusively for normal Council business during the election period, and shall not be used in connection with any electioneering activity.
- d) No Council events, logos, letterheads, or other Warrnambool City Council branding should be used for, or linked in any way to, a candidate's election campaign.
- e) The Chief Executive or any staff should not be asked to undertake any tasks connected directly or indirectly with electioneering.

- f) Photos or images taken by or provided by Council are not to be used by Councillors for the purposes of electioneering or in support of their election campaign. This applies equally to images on Council websites that may be able to be copied. *Also refer to clause 3.7*
- g) No election material or active campaigning is to be conducted at Council sponsored events or to be displayed in any Council building.
- h) Council staff must not undertake an activity that may affect voting in the election or authorise, use or allocate a Council resource for any purpose that may influence voting in the election; and
- i) Council staff that feel they are being placed in a compromising situation by a request from a Councillor should politely refer the Councillor to the Chief Executive for clarification.
- j) Any staff member who considers that a particular use of Council resources may influence voting in an election or provide an undue advantage for a candidate shall advise the Manager Governance Projects & Risk and their Director before authorising, using or allocating the resource. The Director in consultation with the Chief Executive will decide if the use of Council resources is appropriate or not.
- k) Public events will only be organised and run if it is totally unavoidable to conduct such events during the election period and then only with the express permission of the Chief Executive.
- l) Speeches for Councillors will only be prepared by Council staff in relation to events that are part of the normal services or operation of the Council and such speeches will not be circulated or available for publication.
- m) Neither the Council logo nor Council stationery will be used by Councillors in any way that relates to the election.
- n) Equipment and facilities provided to Councillors for the purpose of conducting normal Council business will not be used for campaigning purposes.
- o) Reimbursement of Councillor expenses incurred during the election period should only apply to costs incurred in the performance of normal Council duties, and not for campaigning and not for expenses that could be perceived as supporting or being in connection with a candidate's election campaign.
- p) Where Councillors have Council funded services, such as mobile phones, land lines and internet connections, and where it is impractical for Councillors to discontinue their use of these during the election, then Councillors will either reimburse the Council or not make a Council claim that exceeds normal usage levels for usage of those services during the election period.
- q) Councillors with their own private mobile phones may continue to seek reimbursement of telephone expenses incurred in undertaking Council business related calls. Councillors will be required to declare that those expenses were incurred in undertaking normal Council business.
- r) During the election period Councillors shall not participate in any regional and or interstate travel in their capacity as a Councillor. In circumstances where it is imperative that the Mayor (or nominee) represent Council on a delegation or forum, Council may by resolution approve such attendance. If consideration by Council is impractical the Chief Executive may determine the issue.

- s) The Council will consider and ensure all other Warrnambool City Council resources are not used inappropriately in ways that may influence voting in an election or provide an undue advantage for a candidate. This includes financial, human and material resources.

3.5 ACCESSING COUNCIL INFORMATION DURING AN ELECTION PERIOD

- a) The Council recognises that all election candidates have rights to information from the Council administration and that it is important that sitting Councillors continue to receive information that is necessary to fulfil their elected roles.
- b) Neither Councillors nor candidates will receive information or advice from Council staff that might be perceived to support election campaigns, and there shall be complete transparency in the provision of all information and advice during the election period.
- c) Information and briefing material prepared by staff for Councillors during the election period will relate only to factual matters or to existing Council services to assist Councillors in conducting normal day to day activities.
- d) An Information Request Register will be maintained by the Manager Governance Projects & Risk commencing on the opening of nominations on 15 September 2016. This Register will be a public document (available for inspection) that records all requests for information of a non-election nature by all candidates, and the responses given to those requests.
- e) Responses to candidate's requests will only be issued through the Manager Governance Projects & Risk on behalf of the Chief Executive. Council staff in receipt of a candidate request will be required to refer the request and proposed response to their Director and Manager Governance Projects & Risk. Only information that can be reasonably accessed will be released.
- f) Section 76D of the Act prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage. *Refer clause 2.3.1 and Appendix to this policy.*
- g) Any Freedom of Information (FOI) applications lodged during the election period will be dealt with where possible outside of the election period (the FOI Act specifies a 45 day period in providing a response)

3.6 ASSISTANCE TO CANDIDATES

- a) The Council affirms that all candidates standing for the Council election will be treated equally.
- b) Any assistance and advice to be provided to candidates as part of the conduct of the Council election will be provided equally to all candidates.
- c) All election related enquiries from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning, directed to the Manager Governance Projects & Risk.

3.7 COMMUNICATIONS AND MEDIA SERVICES DURING AN ELECTION PERIOD

- a) Council's communication systems and media services will not be used in any way that might influence the outcome of a Council election.

- b) During the election period, Council employees must not initiate any public statement that relates to an election issue. Public statements are not only formal press releases but also verbal comments at meetings, functions and events where attending as part of their Council role.
- c) Council newsletters will not be printed by Council during the election period
- d) With the exception of the Mayoral column, any edition(s) of Council's C2C published from July 2016 and up to the commencement of the election period will only contain general information pertaining to the election process and will not contain any photograph of a candidate or Councillor, or any statement by a candidate or Councillor. Articles will minimise references to specific Councillors, and will not identify any Councillor in a manner that could promote a Councillor as an election candidate.
- e) In response to media inquiries the Chief Executive, Directors or the Manager Communications will only provide a response and such information should relate only to current services and operations.
- f) During the election period, Council initiated communications shall be restricted to the communication of normal Council activities.
- g) No media advice or assistance will be provided to Councillors in relation to election campaign matters.
- h) No publicity will be provided that involves specific Councillors during the election period.
- i) Councillors should not use their position as an elected representative or their access to Council staff and other Council resources or information in support of an election campaign. This includes photos or images provided by Council for past Council activities.
- j) Any requests from Councillors for media advice or assistance during the election period will be channelled through the Chief Executive.
- k) Media releases will not mention or quote any Councillor(s) during the election period.
- l) Contact with the local media will be restricted to the communication of normal Council activities and responding to questions not involving the election or possible election outcomes.
- m) Council sponsored events include launches, events, and any other public forum outside of the normal Council meeting cycle. Publicity of Council events (if any during the election period) will be restricted to the communication of factual material and will not mention or quote any Councillor or candidate.
- n) Councillor participation at Council sponsored events during an election period will not be used to gain attention in support of an election campaign.

4. GOVERNANCE

4.1 Policy Owner

- a) The Manager Governance Projects & Risk shall be responsible for monitoring the currency and viability of this Policy.

- b) Staff enquiries regarding the implementation of this policy should be initially directed to either Manager Governance Projects & Risk, your Manager or Director.
- c) In the case of Councillors and election candidates, enquires should be directed to the Manager Governance Projects & Risk or the Chief Executive.
- d) An electronic copy of this policy will be made available on Council's website at www.warrnambool.vic.gov.au

4.2 Policy Review

Pursuant to the Local Government Act provision, the Manager Governance Projects & Risk shall ensure this policy is reviewed in consultation with Council no later than twelve (12) months prior a general election.

4.3 Charter of Human Rights Compliance

- a) It is considered that this policy does not impact negatively on any rights identified in the Charter of Human Rights Act (2007).
- b) Warrnambool City Council is committed to consultation and cooperation between management and employees. The Council will formally involve elected employee representatives in any workplace change that may affect staff. It is considered that this policy does not impact negatively on any rights identified in the Charter of Human Rights Act (2007).

APPENDIX 1: RELEVANT SECTIONS OF THE LOCAL GOVERNMENT ACT

Section 55D Prohibition on Council

(1) A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.

(2) The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Penalty: 60 penalty units.

(3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.

(4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.

Penalty: 60 penalty units.

Section 76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must—

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

Section 76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must—

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;

- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

Section 76D Misuse of position

(1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—

- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

(2) For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—

- (a) making improper use of information acquired as a result of the position he or she held or holds; or
- (b) disclosing information that is confidential information within the meaning of section 77(2); or
- (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
- (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) failing to disclose a conflict of interest as required under this Division.

(3) This section—

- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
- (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

Section 76E Improper direction and improper influence

(1) A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.

(2) A Councillor must not direct, or seek 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 another Act; or
 - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.
- (3) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

Section 93A Conduct of Council during election period

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.
- (6) In this section, a major policy decision means any decision—
- (a) relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of—
 - (i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
 - (d) to exercise any power under section 193 if the sum assessed under section 193(5A) in respect of the proposal exceeds whichever is the greater of \$100 000 or 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year.

Section 95 Conduct principles (staff)

(1) Council staff must in the course of their employment—

- (a) act impartially;
- (b) act with integrity including avoiding conflicts of interest;
- (c) accept accountability for results;
- (d) provide responsive service.

(2) Nothing in subsection (1)(c) affects the granting of an indemnity to a member of Council staff in respect of any liability or limits the effect of—

- (a) any such indemnity, whether granted before or after the commencement of section 67 of the Local Government (Democratic Reform) Act 2003; or
- (b) any immunity conferred on a member of Council staff by or under any Act, whether before or after that commencement.