

Candidature of Councillors State or Federal Elections

The perception of the politicisation of local government resulting from councillors running for office in state or federal parliament remains a contentious issue in Victoria.

Councillors are elected to perform their duties in a lawful manner and must comply with relevant provisions of the *Local Government Act 1989 (the Act)* including principles of councillor conduct set out in section 76B of the Act.

These principles of conduct require councillors to act honestly and to exercise reasonable care and diligence in performing the role of a councillor. They also provide that it is an offence if a councillor makes improper use of his/her position or of information acquired because of his/her position to, *inter alia*, gain or attempt to gain, directly or indirectly, an advantage for him/herself or for any other person.

The *Commonwealth Electoral Amendment (Members of Local Government Bodies) Act 2003* provides that any state legislation that discriminates against a councillor on the ground that the councillor has been, or is to be, nominated or declared as a candidate for the House of Representatives or the Senate has no effect.

The commonwealth and state constitutions disqualify a person from holding office who is profiting from the crown or the state.

It may be prudent for a councillor/council to seek legal advice in relation to these issues.

The MAV recommends that councils, at a minimum, adopt the following Guidelines as part of their Councillor Code of Conduct developed under section 76C of the Act or to supplement that Code.

Guidelines

1. A councillor who becomes an endorsed candidate of a registered political party or publicly expresses an intention to run as an independent candidate for a state or federal election (a Prospective Candidate), should provide written advice to the CEO, as soon as practicable, who should then advise all councillors.
2. A councillor who is a Prospective Candidate, should declare his/her intended candidacy at a meeting of the council as soon as practicable after notifying the CEO pursuant to Guideline 1.
3. A councillor who nominates as a candidate for a state or federal election (a Nominated Candidate), should apply for leave of absence from the council and this leave of absence should commence no later than the date of their nomination as a candidate with the relevant electoral commission for the election (Nomination Date) and conclude no earlier than the close of voting for the election. During this period, a councillor who is on a leave of absence should not attend meetings of the council or otherwise act as a councillor.

APPENDIX B



4. Any councillor / staff relationship protocol which the council has in place in respect of the caretaker period prior to a council election, should be observed by a Nominated Candidate and this should apply from their Nomination Date until the close of voting for the election.
5. A council, upon receiving an application for a leave of absence from a councillor who is a Nominated Candidate or who intends to become a Nominated Candidate, should approve that application.
6. A councillor who is a Prospective Candidate or a Nominated Candidate, should take care to differentiate between his/her role as a state or federal election candidate and role as a councillor when making public comment.
7. A councillor who is a Prospective Candidate or a Nominated Candidate, should not use council resources, including council equipment and facilities in relation to his/her candidacy.
8. A councillor who is a Prospective Candidate or a Nominated Candidate, should not use council activities, including committee meetings and council-related external activities in relation to his/her candidacy.

The distinction between Prospective Candidate and Nominated Candidate

This policy draws a distinction between Prospective Candidates and Nominated Candidates because, as with council elections, candidates for state and federal elections only become actual nominated candidates a few weeks prior to the relevant election date. Accordingly, this policy recommends different treatment for Prospective Candidates and Nominated Candidates on the basis that some requirements are recommended as appropriate for Nominated Candidates during a formal election period which are not considered to be necessary prior to the formal election period.