



# **COUNCILLOR CARETAKER PROCEDURE POLICY**

This Councillor Caretaker Procedure Policy was adopted by resolution of the Yarriambiack Shire Council on 22 April 2015.

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## **STATEMENT OF CARETAKER PROCEDURES**

The purpose of these procedures is to ensure that the ordinary business of local government in the Yarriambiack Shire Council continues throughout an election period in a responsible and transparent manner, and in accordance with statutory requirements and established “caretaker” conventions. These procedures commit Council during the caretaker period to:

1. Avoid making significant new policies or decisions that could unreasonably bind a future Council; and
2. Ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing councillors as candidates in the election.

### **Use of Council Provided Resources to Councillors**

*Councillors must not unreasonably use any Council resource for campaign purposes during the caretaker period or seek reimbursement from Council for costs incurred for a campaign related purpose.*

*Incidental use of Council provided resources (such as a vehicle in the case of the Mayor, mobile phone or other device), in connection with any campaign-related purpose and as part of the ordinary course of that Councillor's daily and typical use of such a resource, does not breach Council policies or, in the view of Council, any applicable electoral laws. Council considers that the provision of such resources and their continued use during the caretaker period, including their incidental use in respect of any campaign purpose, does not confer any particular, unreasonable or unfair electoral advantage on a councillor-candidate compared to other candidates.*

*In reaching this position, Council notes the position expressed in its expenses policy that it is reasonable for councillors to use these resources for both Council and incidental non-Council related purposes and that any out of pocket costs arising from such use for non-Council purposes should not be claimed as reimbursement from Council.*

*Council has also considered that the use of mobile phones, computers and cars is almost universal in the wider community today and that there is no unique or special advantage conferred on a councillor-candidate by merely continuing to have access to one or more of these resources during the caretaker period.*

*Council considers that it would be impractical for a Councillor to have to operate two mobile phones or two of any of the other resources merely to avoid use of any one of those Council provided resources in connection with a campaign purpose.*

*Council further notes that there is no cost or other impact for Council if a councillor uses one of these resources for non-Council purposes. Moreover, Council's expenses policy expressly contemplates this sort of arrangement in relation to mobile phone use and deals with the process for attributing the out of pocket costs of the phone calls between Council related calls and non-Council related calls. However, during the election period, councillors should be especially mindful not to seek reimbursement for any out of pocket costs which arise from a campaign related purpose.*

*Accordingly, Council has formed the view and this is the position adopted in this policy that it is impractical and unnecessary for current councillors who are seeking re-election to have to go out and purchase their own devices merely for use during the caretaker period. In fact it is considered that it would be an unreasonable and unnecessary imposition on councillor-candidates, who for the past four years of their term have had these resources provided by Council, and who if re-elected, would have the reasonable expectation that these resources will continue to be provided to them, if they were forced to have to purchase such resources personally for the purposes of only a matter of a few weeks for use during the caretaker period.*

*Council further notes that this approach is consistent with the approach adopted in the Victorian Parliament and the Australian Parliament for Members of Parliament in those places.*

### **Major Policy Decisions**

Section 93A of the *Local Government Act 1989* prohibits the making of "Major Policy Decisions" (Major Policy Decisions has the same meaning as the *Local Government Act 1989*) during the election period, which is from Entitlement Day until 6:00 pm on the Election Day. "Major Policy" decisions are defined by the Act to be decisions:

- a) relating to the employment or remuneration of a Chief Executive Officer under Section 94 of the *Local Government Act 1989*, other than a decision to appoint an acting Chief Executive Officer;
- b) to terminate the appointment of a Chief Executive Officer under Section 94 *Local Government Act 1989*;
- c) to enter into a contract the total value of which exceeds whichever is the greater of \$100 000 or such higher amount as may be fixed by Order in Council under Section 186(1) of the *Local Government Act 1989*; or 1% of the Council's revenue from rates and charges levied in the preceding financial year;

- d) to exercise any power under Section 193 if the sum assessed under Section 193(5A) of the *Local Government Act* 1989 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 of the *Local Government Act* 1989 in the preceding financial year.

If the Council considers that there are extraordinary circumstances where the municipality or the local 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 *Local Government Act* 1989.

### **S 55D - Electoral Matter**

1. The Council commits to the principle that it will ensure that Council resources are not used inappropriately during a Council election.
2. Council will ensure it complies with Section 55D of the *Local Government Act* 1989 which requires that a Council does not 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 unless it only contains information about the election process.
3. Council will review all publications prior to the commencement of the caretaker period, and during the caretaker period, prior to publication, to ensure that any such publications comply with the requirements of Section 55D of the *Local Government Act* 1989.

The following definitions from the *Local Government Act* 1989 are noted:

Section 3 (1) "**electoral advertisement, handbill, pamphlet or notice**" means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

"**publish**" means publish by any means including by publication on the internet.

## APPENDIX 1

### Section 93A of the *Local Government Act 1989* – Conduct of Council

#### **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 of the *Local Government Act 1989*;
  - (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) of the *Local Government Act 1989*; or
    - (ii) 1% of the Council's revenue from rates and charges levied under Section 158 of the *Local Government Act 1989* in the preceding financial year;
  - (d) to exercise any power under section 193 if the sum assessed under Section 193(5A) of the *Local Government Act 1989* 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 of the *Local Government Act 1989* in the preceding financial year.

## APPENDIX 2

### Section 55D of the Local Government Act 1989 – Prohibition on Council

55D A Council must not 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 unless it only contains information about the election process.

Definitions: –

Section 3 **"electoral advertisement, handbill, pamphlet or notice"** means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper announcing the holding of a meeting;

**"publish"** means publish by any means including by publication on the internet;

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