



Election Period Policy Review

Local Government Investigations and Compliance Inspectorate

Foreword

This review was undertaken in response to amendments to the Local Government Act 1989 (Act) in November 2015, with the inclusion of section 93B into the Act which required all Councils to adopt an election period policy by 31 March 2016.

The purpose of the policy is to provide the community with an understanding of the procedures each council will adopt during the election period to ensure the fairness of the election, appropriate use of council resources and to prevent inappropriate decision making. Importantly, the policy must be provided to all current councillors and be published on the council website.

The Local Government Inspectorate (Inspectorate), as the dedicated integrity agency for local government in Victoria, has responsibility to receive complaints and investigate breaches relating to the electoral provisions of the Act. In 2012, my office received numerous complaints during the election period relating to council resources or council positions being used for the purpose of campaigning. Many of these complaints emanated from a misunderstanding of what was permissible or a perception of unfairness.

As an integrity agency we are very supportive of initiatives that provide good guidance and clarity not only for councils, but for candidates and the community. Accordingly, in support of the election period policy amendment and in preparation for the upcoming election, the Inspectorate has undertaken a review of each council's policy.



Section 93A of the Act previously set out provisions to prohibit the making of major policy decisions during the election period, however the new legislative amendments in section 93B of the Act now require councils to:

- a) Prevent inappropriate decisions and misuse of resources;
- b) Limit public consultation and council events;
- c) Ensure equitable access to council information to all candidates.

In addition, election period policies must be displayed on Council websites, be available for public inspection at council offices or service centres and must be given to all councillors.

These requirements are designed to promote consistency and rigour around council procedures and reduce ambiguity and confusion surrounding election period arrangements in the 32 days leading up to the conduct of general elections.

I would also like to acknowledge the responsiveness and assistance provided by councils to my office in the completion of this review and I am pleased to now share the outcomes of this work.

David Wolf
Chief Municipal Inspector



Introduction

THE ELECTION PERIOD

The Act prescribes that the election period refers to the period commencing on the last day of nominations that can be received, and concludes at 6pm on election day. The Victorian Electoral Commission's 2016 local government election timeline lists Tuesday 20 September 2016 as the day that nominations close. For clarity, this is the commencement date of the election period.

Victorian Councils are required under the legislation to have a policy stating how councils will operate during a council election period in order to support transparency, accountability and good governance. To assess councils compliance with this requirement, in April 2016 the Inspectorate commenced a review of the election period policies of all Victorian Councils, to determine if they met the relevant provisions of the Act.

Following reforms arising from the Local Government Amendment (Improved Governance) Act 2015, the Inspectorate sought specific information to assess whether the policies provided clarity around decision making, information access and the use of council resources and events.

The Inspectorate focused on whether:

- a) Councils adopted an election period policy by 31 March 2016;
- b) The policies contain the provisions mandated by the Act including:

1) Preventing inappropriate decisions and misuse of resources.

Inappropriate decisions are those which would affect voting at an election or decisions that may negatively impact an incoming Council and could be deferred until after the election.

Policies must also outline procedures to address how council will avoid misuse of council resources during the election period, specifically to prevent their use for electioneering by candidates. Such resources include staff, property, equipment and stationery.

2) Limiting public consultation and council events

Whilst public consultation is an integral part of a councils' policy development process, any such consultation undertaken in the immediate period prior to an election may lead to it becoming an election issue and influence voting.

The scheduling of council events in the lead up to an election also frequently raises concerns over their potential use for electioneering by sitting councillors.

3) Equitable access to Council information

Policies should satisfy the community that current councillors standing for re-election will be treated in the same manner as non-councillor candidates with respect to council held information. Policies must indicate that during the election period councillor candidates will only have access to the information necessary to perform their current role and functions. In addition, policies may state how requests for information will be treated and how information requested by one candidate can be accessed by all candidates.

- c) All Councillors were provided with a copy of the election period policy and that the public have access to election period policies at Council offices and via Council websites.

The Inspectorate has now completed the review of the caretaker policies of all Victorian Councils and assessed them against the requirements of the Act. The following information represents the findings of this review and outlines the areas of misunderstanding or non-compliance and also best practice examples that support transparency and accountability by Councils during election periods.

What was the objective?

The objective of this review was not only to identify that the provisions required by the Act were contained in each Council's policy, but that these provisions constituted comprehensive and unambiguous processes to be observed during the 2016 election period.

The Inspectorate sought responses and supporting evidence from all Victorian Councils for the following information:

1. Has Council adopted an election period policy by 31 March 2016? If so, provide details of the meeting or link to minutes.
2. Provide link to show that the election period policy is available on Council's website.
3. Which pages of your policy address the following items and how does your policy ensure compliance with these measures:
 - (a) Preventing inappropriate decisions and misuse of resources;
 - (b) Limiting public consultation and council events;
 - (c) Equitable access to Council information.
4. Do all Councillors have a copy of your election period policy? If so, when was the policy provided to them? If available, provide an attachment or link to minutes or document where councillors signed to indicate their receipt of the policy
5. Apart from the Council's website, how else can the public access Council's election period policy?



What did we find?

All Victorian Councils responded to the Inspectorate's questions, as requested. Seventy-eight of the 79 Victorian Councils adopted an election period policy by 31 March 2016, as required by the Act. The remaining council adopted its current election period policy at its meeting of 12 April 2016 which, although it did not meet the legislative timeframe, remains a valid policy.

TRANSPARENCY

Only three Councils did not have their election period policies available on their websites by 31 March 2016 and have now done so. All other Councils displayed their policies on their websites and advised that these were made available for public access through Council offices or Service Centres. In addition, eight Councils advised that they will include their election period policy as part of the candidate information packs provided during information sessions for the upcoming election.

MAJOR POLICY DECISIONS – SECTION 93A

Section 93A provides that no major policy decisions are to be made during the election period and defines these as decisions regarding the employment or termination of the Chief Executive Officer and all decisions on contracts which are in excess of the value of 1% of council revenue derived from rates and charges in the preceding year. If a council determines that extraordinary circumstances apply, they may apply in writing to the Minister for an exemption. All council policies appropriately identified and addressed this requirement.

PREVENTING INAPPROPRIATE DECISIONS

Section 93B(5) of the Act provides that decisions made by a Council during an election period include decisions that would affect voting in an election and/or decisions that could reasonably be made after the election.

All Council policies reviewed demonstrated a high level of understanding of what constituted an inappropriate decision. A number of Councils have opted not to schedule any meetings during the election period to mitigate the possibility that decisions are made which will bind an incoming Council and/or which can reasonably be made post the election.

What did we find? (continued)

INAPPROPRIATE USE OF COUNCIL RESOURCES

Section 93B(3)(a) of the Act provides that election period policies must contain procedures intended to prevent Councils from using resources inappropriately during the election period. The majority of Councils have included provisions in their policies which prohibit the use of any council resource to be utilised for the purposes of electioneering, by either Councillors or Council staff. However, three Councils permitted current Councillors to continue to use council funded mobile phone, council equipment and email addresses either during the election period, or for election campaign purposes, or for both. These resources include telephones, office equipment and council email addresses and social media handles.

On the basis that allowing councillor candidates to utilise council funded resources for electioneering purposes is not equitable to all candidates, the Inspectorate has written to the three councils requesting the policy be amended in accordance with the law. The Inspectorate will closely monitor the actions of those councils.

LIMITING PUBLIC CONSULTATION AND THE SCHEDULING OF PUBLIC EVENTS

All policies reviewed by the Inspectorate contained adequate procedures for limiting public consultation and the scheduling of public events during the election period. They all indicated that public consultation would either not occur at all during the election period, or if already commenced, be suspended until after the election, unless legally obliged to or required to due to extraordinary circumstances.

The majority of Councils' policies provided that public events would not be scheduled during the election period, however, Councillors are permitted to attend public events where necessary. The policies provided that Councillors were not to use appearances at public events for the purposes of electioneering and were not to speak at these events unless expressly authorised by the CEO. Any speeches must be written for them by Council staff under the direction of the CEO.

ACCESS TO COUNCIL INFORMATION BY CANDIDATES

All reviewed policies contained adequate procedures to ensure that information held by Council would be made equally available and accessible to all candidates in the election. In order to ensure transparency in this regard, Councils advised they would employ a public register of information requests so that each request for Council information is recorded and the information is available not only to the requestor but to all candidates in the election. All policies reviewed by the Inspectorate provide that these registers will be contained on publicly accessible Council websites.

ELECTION PERIOD

The Inspectorate noted that there was a difference across Councils' policies in stating the date the election period commences. The Act provides that the election period means the period that commences on the last day nominations for that election can be received and concludes at 6pm on election day. The last day for nominations for the 2016 election is 20 September 2016 and this is the date the election period commences.

COUNCIL WEBSITES

There were also varied views by Councils presented in their policies regarding the usage of Council websites and social media during the election period. All Council policies reviewed stated that no electoral material would be placed on council websites or social media during the election period and that any material posted would need to be certified by the CEO as material that is not electoral material or in breach of Council's policy and the Act.

However, there appeared to be confusion amongst some Councils regarding content placed on websites/social media prior to the election period which could be construed to be electoral material and whether or not this needed to be certified by the CEO.

The Inspectorate's view is that Council needs to not only act impartially but must be seen to act impartially throughout the entirety of the election period. This means that any website content which may have the potential to act as electoral material, whether or not displayed prior to the election period, should be removed prior to the commencement of the election period. The Inspectorate recommends Councils should only post general information regarding the ordinary business of Council and general election information, like where to vote, during this period.

Recommendations

1. Election period policies must be displayed on Council websites with clear advice to website visitors that these policies are also available for public access through Council offices or Service Centres.
2. Councils should include provisions in their policies which prohibit the use of any council resource to be utilised for the purposes of electioneering, by either Councillors or Council staff. These include telephones, office equipment, council email addresses and social media handles.
3. While Councillors are permitted to attend public events where necessary, policies must provide clear instructions stating that Councillors are not to use appearances at public events for the purposes of electioneering and were not to speak at these events unless expressly authorised by the CEO. Any speeches must be written for them by Council staff under the direction of the CEO.
4. A public register of information requests should be maintained by Councils and accessible on Council websites so that each request for Council information is recorded and the information is available to all candidates in the election.
5. Council policies must state that no electoral material would be placed on council websites or social media during the election period. Councils are advised to place an election period statement on their website and social media accounts advising they will not be updating or adding new information to those channels, other than necessary operational information.
6. Councils are advised to follow the example set by several Councils to include their election policy as part of the candidate information packs they will hand out during information sessions for the upcoming election.

Conclusion

In summary, the Inspectorate reiterates the importance of Councils adopting a clear and transparent policy, particularly in the context of a key requirement in the amendment to the Act for Councils to provide candidates with fair and equitable access to information.

This review demonstrated that the majority of Councils had developed and adopted an appropriate policy to address the election period. In order to ensure legislative requirements are strictly met, Councils need to adopt the aforementioned recommendations and commit to a practice of clearly conveying relevant policy information to Council staff, Councillors and the community.

The Inspectorate is encouraged by the clarity, guidance and direction the majority of policies provide, ultimately supporting fair and transparent council elections.

