

Council Member Candidacy for State and Federal Parliament

Introduction

Unlike some other States, Local Government in WA does not feature official political party affiliations and endorsement. As a result, community and media interest often arises when Council Members are publicly aligned with political parties, seek preselection, or nominate as candidates for a State or Federal election. Similar considerations are also likely to arise if a Council Member intends to run as an independent candidate in a State or Federal election.

In these circumstances, it is necessary to balance the rights of Council Members to participate in democratic processes with the responsibilities, obligations, and commitments in their role as a Council Member.

Council Members planning to take an active role in State or Federal politics must consider:

- the need to effectively meet the demands of their role as a Council Member,
- managing potential conflicts of interest or perceptions of bias,
- the need to avoid the use of Local Government resources for electoral purposes,
- the need to avoid using their Council Member office for private political purposes,
- the importance of distinguishing between their role as a Council Member and as a candidate or party spokesperson when making public comment or dealing with the community,
- the imperative for the Local Government to maintain effective working relationships with local Parliamentary representatives and State and Federal Governments of any party.

The purpose of this document is to highlight considerations for Council Members. This is not legal advice and Council Members considering candidacy may wish to seek independent legal advice regarding their personal circumstances.

Local Government Act 1995

Council Members are elected to perform their duties in a lawful manner and must comply with relevant provisions of the *Local Government Act 1995* (the Act), and standards of conduct prescribed in Schedule 1 of the *Local Government (Model Code of Conduct) Regulations 2021* (the Model Code of Conduct) and adopted by the Local Government.

Requirement: Any conflicts of interest must be disclosed and managed in accordance with Part 5, Division 6, subdivision 1 of the Act, and clause 22 of the Model Code of Conduct.

Consider:

- Potential impartiality interest arising from membership of political party.
- Possibility of a financial relationship between party and Council Member, giving rise to potential indirect financial interest.
- Campaigning and public statements must avoid a reasonable apprehension of bias or prejudice.
- Potential impartiality interest or perception of bias arising from overlap between matter before Council and party's platform, policies, or public statements.

Requirement: Disclose gifts received in capacity as Council Member that exceed prescribed value threshold (s.5.87A of the Act).

Note that acceptance of gifts exceeding prescribed value threshold (even if not in capacity as Council Member) will make the donor a Closely Associated Person (s.5.62(1)(eb) of the Act).

Consider:

- Gifts or donations to an individual's State or Federal campaign may not require disclosure as not received in capacity as Council Member. Separate political donation disclosure regime applies.
- Discretionary disclosure to Local Government may support transparency and accountability. Discretionary disclosures can be made to the CEO for inclusion in the Local Government's gift register, and/or when completing the annual return.
- Donors over prescribed value threshold will become closely associated person for remainder of Council Member term.

Requirement: Council Members must not use Local Government resources for electoral purposes (cl. 17 of the Model Code of Conduct).

Consider:

- Local Government resources include Council Member email addresses and use of title.
- Manage communication carefully and direct any community service requests to CEO.
- Maintain strict division between Council business and activities as a candidate so that only the appropriate resources are used.
- Must not use any equipment provided by the Local Government for personal political purposes i.e. laptop, mobile phone.

Requirement: Council Members must not make improper use of their office to gain an advantage for themselves or another person, or to cause a detriment to another person or the Local Government (cl. 18 of the Model Code of Conduct).

Consider:

- Avoid use of Council Member title if making public statements when politically campaigning.
- Maintain clear division between role as Council Member and role as candidate or party spokesperson.
- Avoid conflicts between personal interest in electoral success and duties as a Council Member. May include managing potential impartiality interest or perception of bias arising from overlap between matter before Council and electorally significant issues, announced policy positions or manifesto of your party or any other party.

Q & A

Q. Does my status as a Council Member prevent me running for State or Federal Parliament?

A. No. Eligibility for election to the WA Parliament is defined primarily under the *Electoral Act 1907* and the *Constitution Acts Amendment Act 1899*, while the Commonwealth Constitution and *Commonwealth Electoral Act 1918* deal with eligibility for election to Federal Parliament. These criteria have not been applied to exclude Council Members.

The *Local Government Act 1995* does not prevent Council Members seeking election to State or Commonwealth Parliaments, but does provide that if elected to Parliament, they are disqualified as a Council Member (section 2.20).

Q. Can my Local Government adopt policies that might affect my involvement in a State or Federal election?

A. This would depend on the purpose and effect of the policy. Policies with legitimate purposes that do not impose unreasonable obligations are likely to be appropriate. For example, a policy that prevents a Council Member from using a Local Government facility for political purposes seems appropriate. This would ensure the Council Member did not breach clause 17 of the Model Code of Conduct by misusing Local Government resources. However, a policy that was intended to limit or hinder a Council Member's private involvement in their personal political interests would not be appropriate.

Q. Should I tell my Local Government I am preparing to enter State/Federal politics at the next election?

A. Yes. While there is no legislative requirement to disclose your intentions to the Local Government, it is courteous to advise the CEO and in turn your Council Member colleagues. This enables the CEO to manage any community or media inquiries that are directed to the Local Government. The CEO will also be able to provide you with advice on your Council Member obligations.

An ethical obligation commences immediately upon making the commitment to running for office at the State Election. Only you are aware of your intentions and immediately declaring your candidacy shows that you are committed to the principles of personal integrity found in cl. 4 of the Model Code of Conduct, to act with honesty and integrity, identify and appropriately manage any conflict of interest, and avoid damage to the reputation of the Local Government.

Q. I am the preselected candidate in an upcoming election, do I need to make a declaration of interest?

A. Your preselection as a candidate does not in itself require a disclosure of interest under the Act. It will be your responsibility to identify occasions where your political affiliation or your candidacy intersects with a matter before Council. On those occasions you will need to disclose and manage your conflict of interest accordingly.

Q. I am preparing for the campaign and want to make sure I understand the issues of concern in the area. Can I ask the CEO to provide me with any recent community engagement results?

A. No. There are two aspects to this situation. Firstly, your right to access information as a Council Member is limited to information that is relevant to the performance of that role. You cannot use this right to access Local Government information for any other purpose. Using privileges or rights that you have as a Council Member for any other purpose would be a misuse of your office and a breach of clause 18 of the Model Code of Conduct. Secondly, the community engagement results are a Local Government resource, as is the CEO's time, and that of any other Local Government officer that might assist with your request. This would be a misuse of Local Government resources, and a breach of clause 17 of the Model Code of Conduct.

Q. I am drafting an advertisement to launch my campaign for the next State Election. Can I sign off using my Councillor title? For example, "Cr Ex Ample, your local Councillor and Sample Party candidate".

A. No. It is entirely inappropriate to associate or conflate your role as a Council Member with your personal political intentions. The use of your Council Member title may be considered a misuse of your office or Local Government resources. While your record of achievement as a Council Member may be relevant to your campaign, and referenced in your campaign materials, a strict separation between the two roles must be maintained. Your campaign materials are produced in your private capacity, and should not appear to be endorsed in your Council Member role.

Q. A community member contacted me to ask for help in resolving an issue with a Local Government service. I promised I would get it fixed for them and they said, "you've got my vote!". Is that ok?

A. As a candidate for State or Federal election, it will be even more important that you follow the mailbox model of communications when passing on community member service requests. That is, take note of the issue and their details, and advise that you will pass the information on to the Administration. Even better, advise community members to contact the Local Government administration directly in future as service requests are a day-to-day operational responsibility of the CEO, not the Council. This approach avoids the perception that you are seeking to use your Council Member role for electoral advantage.

Q. I am representing my Local Government at an upcoming community event. Can I still attend if I am a candidate at the next State election?

A. This may depend on the circumstances, including whether you are a Mayor / President, the nature of the event and the proximity to the election. You will need to consider whether there is a conflict between your attendance as a Council Member, with a duty to represent your Local Government and the interests of the District, and your private interests as a political candidate. It would certainly be inappropriate for you to attend as a Council Member and use this event for political campaigning. This would be a misuse of your office. Mayors or Presidents may consider that it is in the interests of your Local Government for

you to attend, in which case it will be your responsibility to ensure that you adhere strictly to your Council Member role. Alternatively, you may consider that it would be more appropriate for the Deputy to attend in your place.

Q. Can I remain a Council Member while campaigning?

A. There is no statutory requirement to take a leave of absence or resign to participate in a State or Federal election campaign. However, each Council Member pursuing State or Federal office must make a personal decision about whether, and for how long, they are able to effectively continue fulfilling their Council Member duties.

It is suggested that Council Members contesting a State or Federal election should take a leave of absence from the date of the issue of the writs; WALGA has an advocacy position to this effect. This occurs 4 to 6 weeks before election day, and coincides with the opening of official candidate nominations. A leave of absence from this date allows the candidate to focus entirely on their election campaign and avoid potential conflicts of interest or misuse of Local Government resources.