

Leading the Agenda in October 'Wrap Up'
One Year Out – Governance Procedures for Councils Leading into the 2020 Local Government Elections
[Video 'Wrap Up'](#)

Presented in partnership with *Leading the Agenda* sponsor Pitcher Partners
Wednesday 23 October 2019

Presenters **Chris Eddy**, consultant and former council CEO, **David Wolf**, Chief Municipal Inspector, Local Government Inspectorate and **Bo Li**, Senior Policy Advisor, VLGA.

Opening statement

Chris Eddy acknowledged regional and rural participants on Zoom.

Councils should already be thinking about the 2020 election. For example, every council Election Period Policy should have been updated by 22 September 2019 (i.e. 12 months before the election period starts). Several councils have not complied within this timeframe. Some councils may not need to make any changes. They can maintain their policy from 2016., as long as they can demonstrate a process of review. The Inspectorate will work with those councils who have not yet complied.

David will talk about the impact of the proposed legislation.

Bo will start with a refresher on what the current *Local Government Act* (1989) says.

The Local Government Act (2018) defines the election period: from 12 noon on the day nominations close (22 September 2020) to election day (Saturday 24 October 2020). Key dates are available from the VEC website.

Where are the correct dates listed in definitive form?

In Schedule 2 Section 3. In 2016 the election period commenced at 12 noon, as it will in 2020.

S93A. Councils must not make major policy decisions during the election period (so that the incoming council is able to implement their election promises, for example).

What is a fair and reasonable time in advance of the election period to make decisions?

Council Election Period Policy must include:

- decisions that may impact the elections
- decisions that can reasonably be made after the election
- transparency – all candidates have access to same information

- council resources must not be used for campaigning, even inadvertently. (There were complaints in 2016 about councillors' use of council mobile phones. Council events should not become campaign vehicles. Also use of mayoral car, printing, council publications.)

Sitting councillors can use the title 'Councillor' until 6am on election day.

Incumbent councillors may have an unfair advantage during the election campaign because they have access to information and knowledge of the business of council. The bulk of council decisions and confidential items to be discussed should be delayed. A complaint regarding an unfair advantage on these grounds would be very difficult to pursue. It would be classified as either a misuse of position or disclosure of confidential information and dis/advantage and intent would need to be proven. Material effect can only really be demonstrated after the election.

What can councils do to share information?

Have an online register where any requests for information are logged and all candidates have access.

Should councillors be prohibited from speaking at council events?

Attendance is fine. Any speaking notes should be vetted by the CEO. Council events must not be used for campaigning.

Use of mobile phones & other devices provided by council?

If a shared data plan, councillors can use device for "reasonable use". If a councillor's mobile phone is on a separate plan and \$1,000s are spent during campaign, the Inspectorate may investigate.

Is it appropriate to use a council-provided phone number on a campaign poster or leaflet?

No. Sitting councillors should use a separate, personal mobile phone.

During the election period:

- The CEO is not permitted to delegate certification of electoral advertisements, handbills, pamphlets or notices.
- Councillor images must be removed from council websites.
- Council publications should be suspended
- Published material needs to be operational/business-related only.

Example:

A council officer was told by the CEO they can't put an election corflute in their home front yard. This is not an issue under the Local Government Act (2018). It is up to the individual council and their staff code of conduct regarding political activity. Some codes do spell this out, e.g. notify manager, steps to follow, while individuals are entitled to a political view. It is not necessary for councils' Election Period Policy to cover this.

Sitting councillors must not use relationships with council officers to get election-related things done, e.g. printing.

2018 Exposure Draft of the Act

- some things simplified. Election period: 12 noon nomination day – 6pm election day
- Election Period Policy incorporated into governance rules of council
- \$100,000 rule removed
- 1% of rates and charges remains
- new clause: council must prohibit decisions *council feels* should not be made – i.e. council determines what is appropriate
- certification by CEO of pamphlets etc removed – however this is still good practice
- penalties for councillors and staff using council resources for election

The Bill may be introduced before the end of 2019. There are only three sitting weeks left. The VLGA will inform all councils when it is scheduled for discussion in parliament.

What is “reckless” printing, as opposed to intentional?

For the purposes of prosecution, when it is not possible to prove intentional, reckless is a lower bar.

Governance rules to include election period policy – is this a way to belatedly incorporate the Election Period Policy, if the September 2019 deadline has been missed?

- Adopt the policy now and amend as required when the Bill is passed
- There will be a transition period to phase in changes
- Election matters will likely be in the first tranche

David was asked for his insights into the new legislation. Will it be less burdensome on council administrations?

It is principle-based legislation: e.g. the test is what council thinks is appropriate, like the fair-minded person test; however, conflict of interest remains a problem.

A key change is to the campaign donation structure; the process will be taken away from councils to receive, collate and report donations to the Minister. Under the proposed legislation, this process will be run from the Inspectorate, which has supported the change. Candidates will be required to notify the Inspectorate of every donation.

In 2016 only a third of candidates received donations: 2,800 reports, which the Inspectorate then publishes within three days. One flaw in the current system is that each candidate has 21 days to notify, which may be after ballot has taken place.

The Inspectorate wants to set up an IT solution to the publication of donations – an automated process. The VEC has a process at state level.

Pre-candidate training is a great initiative. The Inspectorate wants candidates to demonstrate personal and financial probity by a police check; the government is resistant to this, so training is the answer. This will do a lot to eliminate/minimise ineligible and dummy candidates. We are yet to see the detail, e.g. who will be responsible for delivering the training.

The VLGA supports candidates having knowledge and training when they run and may be elected, so that they understand the scope and limits of the role of a councillor. Training also contributes to more informed voters. The VLGA will also provide training for councillors.

Training needs to be fluid, because government policy is still that people can decide to run right up to election day.

DISCUSSION & QUESTIONS

Transparency / avoiding major policy decisions / preventing inappropriate decisions / inappropriate use of council resources / limiting public consultation and public events / access to council information by candidates / council publications, websites and social media profiles / internal communications plan

Communications at council is central to good governance in an election period. The thinking should be done so that the organisation is ready to go through the election process appropriately and responsibly. Everyone at council must understand their responsibilities, which can be specified in an internal comms plan. The election is not just something that is happening in the background or off to the side.

Where is reasonable test of what is too soon or soon enough before election period for major decisions?

Subjective – weigh up all implications, case by case.

Councils can use an 18-month calendar to include media after the election – create agility to accommodate changes to the Act. Note all councils use same consultants to do LG101.

Plan for the period of flux between the end of the election and the declaration of results (Fri 6 November). Technically there is no council during this period. Councillors must be sworn in and sign the code of conduct, which happens later still. (13 councils did not fully comply with signing of code of conduct requirements in 2016. These councillors were ineligible.) CEOs need to manage expectations, especially of returning councillors.

Councils must recover the voters' roll, which is available to any candidate. The Inspectorate will scrutinise this more closely in 2020.

Deadlines and key dates – draft from the VEC distributed.

Councillors' use of social media – some are confused about councillor, citizen and candidate roles.

The danger is that social media can be weaponised and misused. It is vitally important to apply council codes of conduct to social media use. Councillors need to be informed of their roles, duties, liabilities – and social media use.

Inspectorate view: Once a councillor is sworn in, they represent the council in every forum – no personal sphere exists.

Some councils do no updates to the council website during an election period; however, it is important to maintain communication with the community and continue operational business. It is wise to remove all councillor profiles from the council website. The same test needs to be applied to all council social media platforms.

Social media guidelines from the Inspectorate would be very helpful. (state and commonwealth yet to bed down an approach. Problematic re authorisation of a tweet, for example.)

The VLGA will include social media in FastTrack training event in February 2020 for councillors.
ENDS:

Next VLGA Event

Professor Jay Friedlander Workshop

Presented by the Office of Social Innovation, Central Queensland University, as part of Sustainable Futures: Real Strategies for People, Planet, Profit, this workshop will equip participants to systemically and strategically embed the UN Sustainable Development Goals across their operations. This two-hour workshop, aimed at changemakers in council, from councillors to coordinators, working in areas from climate change through to community and economic development, will focus on impact, measurability and creating abundance. Prof. Friedlander takes sustainability beyond greenwashing and ad hoc initiatives, to ensure best outcomes for people and planet.

Workshop details:

Wednesday 6 November 2019
10 am to 12 noon
VLGA meeting room, 60 Leicester Street, Carlton

Ticket and registration <https://www.outix.net/tickets/event/SDGWorkshop-VLGA>(link is external)

VLGA Annual General Meeting

Thursday 14 November 2019
3.30pm for a 4.00pm start
Pitcher Partners
Level 13, 664 Collins Street, Docklands

Refreshments will be provided.

[Registrations](#)