



Frankston City Council
Caretaker Guideline

CARETAKER GUIDELINE

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- *All references to Councillors should be read as including the Mayor.*
- *All references to Chief Executive Officer should read as including his delegate.*

CARETAKER GUIDELINE

1 What is this Guideline designed to achieve?

This Guideline applies during an 'Election Period' (see below for definition) to cover:

- (a) **decisions** that are made by Council;
- (b) any **material** that is published by the Council;
- (c) attendance and participation in Functions and Events;
- (d) the use of Council resources;
- (e) access to Council information; and
- (f) media services

This Guideline should be read in conjunction with Council's "*Code of Conduct for Councillors*".

2 Election Period

During an Election Period local government will go into 'Caretaker' mode, avoiding actions and decisions that could be seen to be influencing voters or which will have a significant impact on the incoming Council.

The **Local Government Act 1989** ("Act") provides that the Election Period commences on the Entitlement Date.

The **Local Government Amendment (Elections) Bill** was passed on 31 July 2008, and will come into effect on 15 August 2008. The duration of the Caretaker Period has been shortened from 57 days to 32 days. **The Caretaker Period of the 2008 Frankston City Council election will now commence on 28 October 2008.**

3 Why is a Caretaker Guideline Required?

In 1998 the City of Melbourne was the first Victorian council to implement a Caretaker Guideline. Since then the Act has been amended and requires all Councils to observe caretaker periods.

The Act specifically prohibits Council publishing or distributing electoral matter during the election period and the making of defined 'major policy decisions'. These statutory requirements are minimum governance standards only. In addition to providing guidance at an operational level to ensure compliance with those minimum standards, this Guideline builds on the minimum statutory standards to enhance the transparency and accountability of the Council, Councillors and Council staff during the Election Period. For example the Guideline expands on the list of matters the Council will treat as major policy decisions and provides a process for dealing with them.

4 Is my proposed action affected by this Guideline?

This Guideline **must** be complied with during an Election Period if ANY of the following apply to you:

- You are involved in making a major policy decision If so, refer to Section 6.
- You are involved in making a significant decision that will bind the incoming Council If so, refer to Section 6.

- You are about to publish written material which has reference in it to a **candidate** (which includes sitting Councillors) or **the election** or an **issue** before the voters in connection with the election If so, refer to Section 7
- You are involved in the creation of any Council publication. If so, refer to Section 7.
- You are involved in any public consultation process. If so, refer to Section 8.
- You are a Councillor who is planning to attend a function or event. If so, refer to Section 9.
- You supply resource support to Councillors If so, refer to Section 11.
- You are a Councillor requesting access to Council information If so, refer to Section 12.
- You are a Councillor requesting media advice or services If so, refer to Section 13.

5 Operation of Guideline

5.1 Start and Finish dates

This Guideline applies during the Election Period which:

- **STARTS** on Tuesday 28 October 2008 and
- **FINISHES** at 6:00pm, 29 November 2008 on the Election Day.

The Council may decide that this Guideline will commence on an earlier date than the entitlement date but has no option to delay the initiation of the caretaker period beyond the entitlement date.

6 Policy decisions during the Election Period

6.1 Who does this part of the Guideline apply to?

This section of the Caretaker Guideline applies to decisions made by the Council, a special committee of the Council, or a delegate of the Council.

In the context of this Guideline, significant decisions include:

- The appointment or dismissal of a Chief Executive Officer;
- Approval of contracts that require significant funding in future financial years or are regarded as politically sensitive;
- Decisions that have significant impacts on Council's income or expenditure or that relate to expenditure on politically sensitive matters;
- Major policy decisions or policy decisions of a politically sensitive nature.

6.2 Scheduling consideration of major policy decisions

As a general principle, the Chief Executive Officer should, as far as is practicable, **avoid** scheduling decisions for the Election Period and instead, ensure that major policy decisions are either:

- (a) considered by Council **prior** to the Election Period; or
- (b) scheduled for determination by the **incoming** Council.

6.3 Major policy decisions during Election Period

If a major policy decision cannot be scheduled prior to or after the Election Period, then you need to refer to the list below to determine whether it is affected by this Guideline. If you are unsure of whether a decision does or does not fall within the list below, speak with the Chief Executive Officer or his appointed delegate.

| Proposed Policy Decision | Is it allowed? | Source |
|--|--|---|
| Entering into a contract with a total value exceeding \$403,000. | No | This is prohibited by s93A of the Local Government Act. |
| Exercising a power to make entrepreneurial arrangements with the total value of the proposal \$403,000. | No | This is prohibited by s93A of the Local Government Act. |
| Any other significant decisions not specified above but will bind the incoming Council, will need advice from the Chief Executive Officer. | Only with approval from Chief Executive Officer Refer 6.4 | This is an internal Council requirement which goes beyond the statutory requirements. |

6.4 Considerations for the Chief Executive Officer in giving approval

In the case of a major policy decision referred to the Chief Executive Officer which is not expressly prohibited under section 93A of the Act, in deciding whether to give approval the Chief Executive Officer will need to have regard to a number of factors including:

- (a) whether the decision is 'significant';
- (b) the urgency of the issue (that is, can it wait until after the election?);
- (c) the possibility of financial repercussions if it is deferred;
- (d) whether the decision is likely to be controversial; and
- (e) whether the decision is in the best interests of the Council.

6.5 What about the announcement of decisions made prior to the Election Period?

To avoid doubt, the Guideline applies only to the actual making of decisions, not the announcement of decisions that have been made prior to the Election Period. However, as far as practicable such announcements should be made before the Election Period begins.

7 Council publications during the Election Period

7.1 Prohibition on publishing materials during election

It is prohibited under the Act for Council:

- (a) to print, publish or distribute; or
- (b) to cause, permit or authorise others to print, publish or distribute on behalf of the Council,

any advertisement, handbill, pamphlet or notice that contains electoral matter during the Election Period.

Councillors are, however, able to publish campaign material on their own behalf, but cannot purport for that material to be originating from, or authorised by, Council or Frankston City Council i.e. by use of Council logos.

Publications should be read broadly to include electronic information and web based productions.

The controls do not cover newspaper advertisements that simply announce the holding of a meeting or the election process itself.

7.2 Considerations of Chief Executive Officer in granting publication approval

In considering whether to grant approval for the publication of material during the Election Period, in accordance with the provisions in the Act, the Chief Executive Officer:

- (a) **Must not permit** any materials to be published which include reference to the following:
 - (i) the election;
 - (ii) a candidate in the election;
 - (iii) a current Councillor; or
 - (iv) an issue before the voters in connection with the election.

- (b) **May approve** publication of material which only contains information about:
 - (i) the election process itself; or
 - (ii) Council information that does not include any reference to a current Councillor otherwise precluded by this Guideline.

7.3 Council Agendas/Reports

During the election period, the Chief Executive Officer will ensure that a “Caretaker Statement” is included in every report submitted to the Council or to a special committee of council for a decision.

The “Caretaker Statement” will specify one of the following:

- I. “The recommended decision is not a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, or a “Significant Decision” within the meaning of the Code of Conduct”.
- II. “The recommended decision is not a “Major Policy Decision” within the context of Local Government Act 1989. The recommended decision is a “Significant Decision” within the meaning of the Code of Conduct, but an exception should be made for the following reasons [insert reasons for making an exemption]”.
- III. “The recommended decision is to seek an exemption from the Minister because the matter requires a “Major Policy Decision” within the meaning of section 93A of the Local Government Act 1989”.
- IV. “The recommended decision is a “Major Policy Decision”, as defined in section 93A of the Local Government Act 1989, but an extraordinary circumstances exemption was granted by the Minister for Local Government on [insert date]”.

During the election period, the Council will not make a decision on any matter or report that does not include one of these Caretaker Statements.

7.4 Frankston City Website

During the Election Period the website will not contain material precluded by this Guideline. Any references to the election will only relate to the election process. Information about Councillors will be restricted to titles, names, and contact details.

7.5 Annual Report

If the publication date of the Annual Report occurs during the Election Period, it is affected by the legislative restrictions on publications and therefore may not include information about Councillors beyond what is required by the Local Government Regulations.

7.6 Council Publications

Any Council publication which is potentially affected by this Guideline will be reviewed by the Governance Services Coordinator, to ensure that any circulated, displayed or otherwise publicly available material during the Election Period does not contain material that may be construed as 'electoral matter'.

8 Public consultation during the Election Period

8.1 Prohibition

It is prohibited under this Guideline for public consultation to be undertaken during the Election Period (new consultation or existing) on an issue that is contentious unless prior approval is given by the Council or the Chief Executive Officer. For the purposes of this clause 8, public consultation means a process that involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

8.2 Approval for public consultations

Due to the prohibition in section 8.1, it is prudent for the Council not to commission or approve any public consultation if such consultation is likely to run into the Election Period, unless the Council or the Chief Executive Officer gives prior approval. Where public consultation is approved to occur during the Election Period the results of that consultation will not be reported to Council until after the Election Period except where approved by the Chief Executive Officer or his delegate.

9 Attendance at functions & events during Election Period

Reference to events and functions means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to the Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners, receptions and balls.

9.1 Public Events Staged by External Bodies

Councillors may continue to attend events and functions during the Election Period.

9.2 Council Events & Functions

Council organised events and functions held during the Election Period will be reduced to only those essential to the operation of the Council. This may be varied by a Council resolution or where the Chief Executive Officer has given prior approval.

9.3 Speeches/Keynote addresses

Councillors may make speeches at Council organised or sponsored events and functions during the Election Period subject to prior approval of the Chief Executive Officer.

9.4 Publication of promotional material

In preparing any material concerning a Council organised or sponsored function or event that will be published or distributed during the Election Period, such preparation must be consistent with the controls under section 7 of this Guideline.

10 Considerations in giving approval under Clause 8 or 9

In the case of a matter referred to the Chief Executive Officer under clause 8 or 9 of this Guideline which is not expressly prohibited under clause 7.2(a) of this Guideline, in deciding whether to give approval the Chief Executive Officer will need to have regard to a number of factors including:

- (a) whether the decision is 'significant';
- (b) the urgency of the issue (that is, can it wait until after the election?);
- (c) the possibility of financial repercussions if it is deferred;
- (d) whether the decision is likely to be controversial; and
- (e) whether the decision is in the best interests of the Council.

11 Council Resources

The Council will ensure that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard. Council staff should avoid assisting Councillors in ways that could create a perception that they are being used for electoral purposes. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice will be sought from the Chief Executive Officer.

11.1 Council Resources

Council resources, including officers, support staff, hospitality services, equipment and stationery should be used exclusively for normal Council business during the Election Period, and should not be used in connection with an election.

11.2 Correspondence

General correspondence addressed to councillors will be answered as usual. However, Councillors will sign only the necessary minimum of correspondence during the caretaker period and correspondence in respect to significant, sensitive or controversial matters should be signed by the Chief Executive Officer. Replies will be prepared so as to protect Council staff from perceptions of political bias.

11.3 Expenses Incurred by Councillors

Payment or reimbursement of costs relating to Councillors out-of-pocket expenses incurred during the Election Period should only apply to necessary costs that have been incurred in the performance of normal Council duties not campaigning, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign. In the case of Councillor claims that cover a combination of Council and electoral business, the Chief Executive Officer may approve a partial reimbursement to cover Council activities.

11.4 Council Branding & Stationery

No Council logos, letterheads, or other Frankston City Council branding will be used for, or linked in any way to, a candidate's election campaign.

11.5 Support Staff to the Mayor and Councillors

Support staff for the Mayor and Councillors must not be asked to undertake any tasks connected directly or indirectly with an election campaign.

11.6 Community Meetings

Community Meetings will not be held during the Election Period.

12 Access to Council Information

All candidates have equal rights to access public information relevant to their election campaigns from the Council administration. Neither Councillors nor candidates will be provided information or advice from Council staff that might be perceived to support election campaigns, and there shall be transparency in the provision of all information and advice during the Election Period.

12.1 Information & Briefing Material

Information and briefing material prepared or secured by staff for a Councillor during the Election Period must be necessary to the carrying out of the Councillors role and must not be related to election issues or to issues that might be perceived to be of an electoral nature.

12.2 Information Request Register

The Governance Services Coordinator will maintain an Information Request register during the Election Period. This Register will be a public document that records all requests for information by Councillors and candidates, and the response given to those requests. Staff will be required to provide details of requests and responses to the Governance Services Coordinator for inclusion in the Register.

13 Media & Media Services

Council's Public Relations services are intended to promote Council activities or initiatives and must not be used in any way that might favour a candidate.

13.1 Media Advice

Any requests for media advice or assistance from Councillors during the Election Period will be channelled through the Chief Executive Officer or the General Manager, Corporate and Governance. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves specific Councillors.

13.2 Media Releases/Spokespersons

Media releases will not refer to specific Councillors. Where it is necessary to identify a spokesperson in relation to an issue the Chief Executive Officer or his delegate will determine the appropriate person.

13.3 Publicity Campaigns

During the Election Period, publicity campaigns, other than for the purpose of conducting the election will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, the Chief Executive Officer or his delegate must approve it. In any event, Council publicity during the Election Period will be restricted to communicating normal Council activities and initiatives.

13.4 Councillors

Councillors will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign.

13.5 Council Employees

During the Election Period no Council employee may make any public statement that relates to an election issue unless statements have been approved by the Chief Executive Officer or the relevant General Manager.

14 Equity in Assistance to Candidates

The Council affirms that all candidates for the Council election will be treated equally.

14.1 Candidate Assistance & Advice

Any assistance and advice to be provided to candidates as part of the conduct of the Council Election will be provided equally to all candidates.

14.2 Election Process Enquiries

All election process related enquiries from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer or his nominee.