



CITY OF  
PERTH

# Guide to Caretaker Period Requirements under the *Local Government Act 1995*



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*The City of Perth acknowledges the Whadjuk Nyoongar people as the Traditional Custodians of the lands and waters where Perth City is situated and pays its respects to Elders past, present and future.*

# 1. Introduction

The *Local Government Act 1995* (the Act) includes uniform caretaker period provisions that apply to all local governments to aid in ethical and appropriate decision making in the lead up to a local government election.

The caretaker period commences at the close of nominations for relevant elections and ends on the day after the results of the election are declared.

This guideline outlines the caretaker provisions that are required by the Act and gives additional guidance to Council Members and City staff when making decisions or undertaking official duties within the Caretaker Period.

It outlines important obligations under the City of Perth Code of Conduct for Council Members, Committee Members and Candidates, and the [Communication Protocol](#) for all Council Members regardless of whether they are also candidates for an election.

In this guide a reference to:

***Candidate/s*** means all candidates including sitting Council Members.

***Council Member/s*** means all Council Members including those that are also candidates.

***Council Members who are also candidates*** means only those Council Members who are candidates and not other Council Members or candidates

## 1.4A. Caretaker period

- (1) In this Act —
- caretaker period, in relation to a local government, means a period that —
- (a) begins at the close of nominations (as defined in section 4.49(a)) for a relevant election for the local government; and
  - (b) ends —
    - (i) on the day after the day on which the returning officer declares the result of the relevant election under section 4.77; or
    - (ii) if section 4.57(1) applies to the relevant election — on the day after the day on which the close of nominations falls; or
    - (iii) if section 4.58(1) applies to the relevant election — on the day after the day on which the candidate dies.
- (2) In subsection (1) — **relevant election** means any of the following —
- (a) an ordinary election;
  - (b) an inaugural election;
  - (c) an election under section 4.11, 4.12, 4.13 or 4.14;
    - i. after restructure of districts, wards or membership (s4.11)*
    - ii. after reinstatement of council (s4.12)*
    - iii. after all members' offices become vacant (s4.13)*
    - iv. after council is dismissed (s4.14)*
  - (d) an election under section 4.15 (*fresh election*) after an election that is a relevant election under paragraph (a), (b) or (c) or this paragraph is declared invalid.

### Section 4.49(a) – close of nominations

#### 4.49. How to make an effective nomination

The nomination of a candidate is only effective if —

- (a) a completed nomination paper, in the prescribed form, is received by the returning officer at the nomination place (by delivery, post, facsimile or other prescribed means) within the period beginning on the 51st day before election day and *ending at 4 p.m. on the 44th day before election day (the close of nominations)*; and

*This information provides a summary of the legislation  
Please go to the Local Government Act 1995 for full legislative requirements*

# 1. Decision making during Caretaker Periods

## 1.1. Significant Acts

Under the Section 3.73 of the Act, decisions that are defined as ‘significant acts’ may not be made by the local government (and includes decisions made under delegation) during the caretaker period unless otherwise allowed under Section 3.73 (4) to (6).

### **3.73. Restrictions on what local government may do during caretaker period**

(2) During a caretaker period, a local government must not do a significant act.

**significant act** means any of the following —

- (a) making a local law (including making a local law to amend or repeal a local law);
- (b) entering into, or renewing or terminating, the contract of employment of the CEO or of a senior employee;
- (c) entering into a major land transaction;
- (d) entering into a land transaction that is preparatory to entry into a major land transaction;
- (e) commencing a major trading undertaking;
- (f) entering into a contract, or other agreement or arrangement, in prescribed circumstances;
- (g) inviting tenders in prescribed circumstances;
- (h) deciding to do anything referred to in paragraphs (a) to (g);
- (i) an act done under a written law or otherwise that is a prescribed act.

#### **Communications agreement**

A communications agreement adopted under section 5.92A may not be adopted or amended in a caretaker period in accordance with section 5.92C (2) and 5.92C.

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Please go to the Local Government Act 1995 for full legislative requirements*

## 1.2. Provisions that allow for a significant act to be done during the Caretaker period

### 3.73. Restrictions on what local government may do during caretaker period

#### Section 3.73 (4) to (6)

- (4) A local government may do a significant act during a caretaker period if —
- (a) the local government’s decision to do the significant act was made before the caretaker period; and
  - (b) any prescribed requirements are met.
- (5) A local government may do a significant act during a caretaker period if it is necessary for the local government to do the significant act during the caretaker period in order to comply with any of the 14 following —
- (a) a written law;
  - (b) an order of a court or tribunal;
  - (c) a contractual obligation of the local government under a contract entered into by the local government before the caretaker period.
- (6) The Departmental CEO may authorise a local government to do a significant act during a caretaker period if the Departmental CEO is satisfied that it is necessary for the local government to do the significant act during the caretaker period —
- (a) because of an emergency; or
  - (b) to ensure the proper operation of the local government.

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## 2. Representing the City

As elected representatives Council Members will continue to be invited to functions or other events to represent the City in their capacity as Council Members during the Caretaker Period.

During the caretaker period, a Council Member may not promote their own, or any other candidate's electoral campaign while performing the functions of their role as Council Member.

Section 18 of the City of Perth Code of Conduct for Council Members, Committee Members and Candidates prohibits Council Members from using their office to gain an advantage for themselves or any other person.

### **18. Securing personal advantage or disadvantaging others**

1. A council member must not make improper use of their office — (a) to gain, directly or indirectly, an advantage for the council member or any other person; or (b) to cause detriment to the local government or any other person.
2. Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83

*This information provides a summary of the City of Perth Code of Conduct for Council Members, Committee Members and Candidates*

*Please go to the Code for more information*

### **2.1. Speaking at events or functions**

The Lord Mayor (or the Deputy Lord Mayor when acting as Lord Mayor) is the sole spokesperson for the City of Perth and may continue to fulfill the functions of that role under the Act and under the *City of Perth Act 2016*.

During the caretaker period Council Members who are also candidates (other than the Lord Mayor or Deputy Lord Mayor when acting as Lord Mayor) are not authorised to make speeches or give addresses at events and functions where they are invited in their capacity as a Council Member.

Sections 2.8 and 2.9 of the *Local Government Act 1995* prescribe the role of a mayor or president and a deputy mayor or president.

Section 5.34 prescribes when the Deputy Lord Mayor can act in the position of Lord Mayor.

*This information provides a summary of the legislation  
Please go to the Local Government Act 1995 for full legislative requirements*

## **2.2. Representation at external bodies**

If a Council Member is appointed to an external organisation (for example - WALGA Zone, Library Board, MRC) as a representative of the City they may continue to attend meetings arranged by that organisation.

## **2.3. Events held by external bodies**

Council Members may continue to attend events and functions hosted by external bodies during the caretaker period.

The provisions of council policies that relate to Council Members attendance at events continue to apply during the caretaker period.

## **2.4. Civic events and functions**

If the CEO hosts an event during the caretaker period, Council Members may continue to be invited to attend.



## 3. Use of the City's resources

The *Local Government (Model Code of Conduct) Regulations 2021* prohibits Council Members from using the resources of a local government for an electoral purpose.

### 17. Misuse of Local Government Resources

- (1) In this clause —
- electoral purpose** means the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918;
  - resources of a local government** includes —
    - (a) local government property; and
    - (b) services provided, or paid for, by a local government.
- (2) A council member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by the local government or the CEO, to use the resources for that purpose.

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*Please go to the Code for more information*

### 3.1. City resources

City resources are not to be used for electioneering purposes. Included below, are some examples of the type of resources that must not be used.

Examples (not a conclusive list):

1. A City email account for electoral purposes.
2. A City issued mobile phone, if relevant.
3. City of Perth business cards, and
4. Facilities and resources that are only available to Council Members because they are a Council Member.

### 3.2. Access to information

Candidates seeking information on the electoral process may address their enquiry to the appointed Returning Officer.

During campaigning candidates may receive requests and inquiries from members of the public and these requests can be submitted to the City to be responded to through the usual City processes.

All other enquiries or requests by Council Members are to be in accordance with the City's Communication Protocol.

### 3.3. Published materials

Any materials published by, or for, a candidate must make it clear that the information included is not provided as an official publication of the City of Perth.

Published materials must not use the following:

- Council Member titles
- Council or City official logos and crests
- City of Perth photography and/or other promotional/communication material

Published materials should avoid using the following:

- Colouring, layouts and logos/images that are similar to official City published materials.

Candidates may not place published materials related to their election campaign on or inside City of Perth buildings or venues and must comply with the directions of the City in relation to any other local government property.

#### 8. Personal integrity

1. A council member, committee member or candidate —
  - (a) must ensure that their use of social media and other forms of communication complies with this code; and
  - (b) must only publish material that is factually correct.

#### **Example of a behavioural expectations included in the Code of Conduct.**

Do not engage in any fraudulent, corrupt or illegal behaviour, and report any information about actual or potentially fraudulent, corrupt, or illegal activities to the Chief Executive Officer or, if necessary, the Corruption and Crime Commission where the conduct may meet the definition of serious misconduct under the Corruption, Crime and Misconduct Act 2003

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*Please go to the Code for more information*

## Appendix

The [Department of Local Government, Sport and Cultural Industries](#) provides the following information as examples of significant acts and provides the prescribed circumstances referred to in (f), (g) and (i), these examples are subject to change pending the introduction of additional legislated prescribed circumstances.

Significant Act	Example
Making a local law (including making a local law to amend or repeal a local law)	The making of any local law is prohibited
Entering into, or renewing or terminating, the contract of employment of the CEO or of a senior employee.	Resolving to appoint a person as CEO or signing the contract for that person's appointment
Entering into a major land transaction	Resolving to undertake a major land transaction or signing the contract of sale for the land transaction
Entering into a land transaction that is preparatory to entry into a major land transaction	The CEO using delegated authority to purchase a portion of adjoining land for a major land transaction and signing the associated contract for purchase
Commencing a major trading undertaking	Resolving to commence the operation of a golf course for profit or opening the golf course for the first time
Entering into a contract, or other agreement or arrangement, in prescribed circumstances	Applies to entering into a contract, or other agreement or arrangement worth, or expected to be worth more than \$250,000 and includes contracts for good and services or the disposal or acquisition of property or entering into 2 or more contracts to avoid this requirement.  Resolving to accept the tender for a major works contract or signing the contract with the successful tenderer.
Inviting tenders inviting tenders in prescribed circumstances	Applies to tenders worth more or expected to be worth more than \$250,000.  The CEO determining to go to tender for some works or giving actual notice of the opening of the tender.
Deciding to do anything referred to in paragraphs (a) to (g)	The decision by council or delegated authority to do any of the above.

<p>An act done under a written law or otherwise that is a prescribed act</p>	<p>Applies to circumstances in Regulation 3A of the <i>Local Government (Functions and General) Regulations 1996</i>.</p> <p>The prescribed matters will include:</p> <ul style="list-style-type: none"> <li>• establishment or changes to a regional local government or regional subsidiary.</li> <li>• commencing the adoption, amendment or repeal of a local planning strategy, scheme, or policy.</li> <li>• commencing procurement of a panel of pre-qualified suppliers.</li> </ul>
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