Important information for Council election candidates on the obligations of persons elected to be Councillors.

ELECTED PERSONS

Before being capable of acting as a Councillor, all persons elected to be Councillors must:

a. take the oath of office; and
b. read the Council’s Councillor Code of Conduct; and

c. make a declaration that they will abide by the Council’s Councillor Code of Conduct.

Until each of these requirements has been completed an elected person cannot act as a Councillor. It is an offence under section 66 of the Local Government Act 1989 (Act) to act as a Councillor while being incapable of doing so. Further if an elected person does not complete the requirements within three months of the date they were declared elected, their position will become vacant and a new election (which they cannot participate in) will be held to fill this vacancy.

There are no exceptions to these requirements and they must be complied with.

Taking the Oath of Office

To take the oath of office, a person elected to be a Councillor must make an oath or affirmation using the following specific words. No substitute wording is permitted.

"I will undertake the duties of the office of Councillor in the best interests of the people in the municipal district of [insert municipality] and faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1989 or any other Act to the best of my skill and judgment."

The oath must be taken in accordance with the ordinary requirements for making an oath or affirmation under the Evidence (Miscellaneous Provisions) Act 1958.

The oath of office must be:

a. made before the Council’s Chief Executive Officer; and
b. dated and signed before the Council’s Chief Executive Officer; and
c. recorded in the minutes of the Council.

Reading the Councillor Code of Conduct

All persons elected to be a Councillor must read their Council’s Councillor Code of Conduct, which should be provided to them by their Council’s Chief Executive Officer. However, the Act makes it the individual responsibility of each elected person to obtain and read the Code.

Declaring to abide by the Code of Conduct

TEMPLATE FOR DECLARATION

"I hereby declare that I have read the Councillor Code of Conduct for [insert Council name] adopted on [insert date code was adopted] and declare that I will abide by this Code."

Councillor Signature Block

[Signature and date]

CEO (as witness) Signature Block

[Signature and date]

After reading the Councillor Code of Conduct, a person elected to be a Councillor must make a declaration that they will abide by it.

A declaration to abide by a Councillor Code of Conduct must be:

a. in writing; and
b. witnessed by the Council’s Chief Executive Officer

The exact wording of the written declaration is not prescribed in the legislation. However, it must be framed as a personal declaration and the term ‘abide’ should be used.

The Chief Executive Officer must witness the declaration to abide by the Code. As evidence of
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compliance it should be signed and dated by the Councillor and by the Chief Executive Officer.

COUNCILLORS

Councillors are required to review and adopt a Councillor Code of Conduct for the new Council and then make a declaration to abide by that Code.

Reviewing the Councillor Code of Conduct

All Councils are required to review their Councillor Code of Conduct within four months of a general election. Councils must call a special meeting solely to review the Councillor Code of Conduct and approve any amendments they determine are necessary.

The content of the Councillor Code of Conduct is the responsibility of each Council. Councillors may be given information about the purpose and content of the Code, including possible changes, and discuss it in meetings preceding the special meeting to formally consider and approve amendments to the Code.iii

Declaring to abide by the Councillor Code of Conduct

Where amendments are made to the Councillor Code of Conduct following a review, all Councillors are required to make a declaration that they will abide by the amended Code within one month of the amendments being approved. It is the responsibility of each Councillor to do so.

A declaration to abide by a Councillor Code of Conduct must be:

a. in writing; and
b. witnessed by the Council’s Chief Executive Officer

The exact wording of the written declaration is not prescribed in the legislation. However, it must be framed as a personal declaration and the term ‘abide’ should be used. (see Template for Declaration above)

The Chief Executive Officer must witness the declaration to abide by the Code. As evidence of compliance it should be signed and dated by the Councillor and by the Chief Executive Officer.

Failure to strictly comply with these requirements within one month of amendments to the Code being approved will result in the disqualification of the Councillor for the remainder of the Council’s term.iv Late declarations cannot be accepted and will not end a Councillor’s disqualification.

A declaration to abide by the Councillor Code of Conduct must be made each time that the Code is amended during the term of the Council and must occur within one month of the amendments being approved.

Disqualifying Councillors

Disqualification of Councillors is automatic and will begin at the end of the one month period if all of the requirements have not been strictly complied with.v This occurs without any action by the State Government or Council.

If a Council becomes aware that a Councillor is disqualified it should take appropriate steps to ensure that the disqualified Councillor does not continue to act as a Councillor or receive their Councillor allowance.

It is an offence carrying a penalty of up to 1 year of imprisonment or a fine of up to $18,655 to continue to act as a Councillor if disqualified. The Local Government Investigations and Compliance Inspectorate is responsible for investigating and prosecuting offences under the Act.

CHECKLIST FOR REQUIREMENTS

Step 1. Election is held.
Step 2. Candidate is declared elected.
Step 3. Elected person takes oath of office.
Step 4. Elected person reads Councillor Code of Conduct and makes a written declaration to abide by the Code.
Step 5. Elected person may now act as Councillor.vi
Step 6. Council reviews and makes necessary amendments to the Code (within four months of the election).
Step 7. Councillor makes a written declaration to abide by the Code (within one month of the Code being amended).

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i See section 66 of the the Local Government Act 1989. The maximum penalty for an offence under section 66 is a term of imprisonment not exceeding 1 year or a fine not exceeding 120 penalty units.

ii The requirements in relation to the oath of office and Councillor Code of Conduct for persons elected to be Councillors are contained in section 63 of the Local Government Act 1989.

iii The requirements in relation to the review of a Councillor Code of Conduct are contained in section 78C of the Local Government Act 1989.

iv See Local Government Act 1989 s 29(1) (a)

v The grounds for disqualification are set out in section 29 of the Local Government Act 1989 and include this and other grounds.

vi If an elected person does not complete steps 3 and 4 within 3 months of being declared elected their position is vacated.