

Questions and answers about councillors running for State Parliament

Date 29/04/2024

During an election campaign

written notice to the general manager of the relevant council.

Can a councillor maintain their office of councillor if they are seeking a position in State Parliament?

It is a matter for individual councillors running for State Parliament to decide whether they step down from their office of councillor during the election period. They will need to ask and receive approval for a leave of absence from the council during this period. However, there is no legal requirement to vacate their office.

Can a councillor continue to receive their allowance if they are running for State Parliament?

Under section 340A(3) of the *Local Government Act*, a councillor can choose not to receive all or part of their allowances. This is a decision for individual councillors.

Section 340A:

- (3) *A councillor, mayor or deputy mayor may decide not to receive part or all of an allowance.*
- (4) *A decision under subsection (3) is to be by*

What happens if the mayor and/or deputy mayor run for State Parliament?

A mayor and deputy mayor can choose to continue in their office while running for State Parliament. In this case nothing needs to be done.

They may however choose to take a leave of absence from their office while they run their campaign. In this case, these positions will need to be filled temporarily.

Under section 44(2) of the *Local Government Act*, if the office of the mayor becomes vacant, the deputy mayor is to act as mayor. Under section 44(5), if the deputy mayor is acting as the mayor, or if they are temporarily absent for any period, the councillors are to elect one of their number to the office of deputy mayor.

These acting arrangements stay in place until the councillors return to their roles.

Can a councillor use their position of councillor to campaign for a State Parliament election?

No. Councillors need to be careful that they do not use their position as a councillor to gain an advantage. This could be a breach of Part 3, clause 2 of the Councillor Code of Conduct. This states that a councillor must not take advantage, or seek to take advantage, of his or her position to influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.

Are there caretaker conventions in local government?

The State Government is subject to caretaker conventions. These are rules that guide everyone in State Government. They state what people can and can't do between the calling of an election and the forming of a new government. These rules apply to State Government politicians and employees.

Local government, including councillors, do not have the same caretaker conventions.

In the 2022 local government elections, many councils voluntarily adopted an election caretaker policy. The Tasmanian Government and the Local Government Association of Tasmania (LGAT) agreed on an approach to managing consultation and engagement between the State Government and local government during that election period.

Caretaker requirements will be looked at in the future process of legislative reform,

After election day

If a councillor is elected to State Parliament, when is their position as councillor terminated?

Schedule 5, clause 3 of the *Local Government Act* 1993 provides that a councillor must vacate their office of councillor when they become a member of a Parliament of Australia. This occurs on the declaration of the polls.

Clause 3:

(1) The office of a councillor becomes vacant if the councillor –

(ea) is, on the day on which he or she begins to hold that office, a member of any Parliament in Australia, and is such a member for 30 days continuously during that term of office of the councillor; or

(eb) becomes, after the day on which he or she begins to hold that office, a member of any Parliament in Australia;

What happens if the mayor and/or deputy mayor are elected to State Parliament?

If the mayor is elected to State Parliament the office of mayor becomes vacant. The acting deputy mayor can act in this role until a new mayor is elected under section 44(2) of the *Local Government Act*. A new mayor is elected through a by-election or through a

local government election process. If it is within 6 months before a local government election, then the mayor is elected through a normal local election.

If the deputy mayor is elected to State Parliament, their office becomes vacant. Under section 44(4) of the *Local Government Act*, a new deputy mayor is elected by the councillors from one of their number. This councillor is elected to the position for the rest of the term.

If a deputy mayor is elected to State Parliament, when does the council need to elect a new deputy mayor?

If the deputy mayor is elected to State Parliament, their office becomes vacant. Under section 44(4) of the *Local Government Act*, a new deputy mayor is elected by the councillors from one of their number. This councillor is elected to the position for the rest of the term.

Under clause 3(2) of schedule 5 of the Act, the general manager must advise the Electoral Commissioner of the vacancy. Under section 307 or 308 of the Act, a recount or by-election will then be conducted to fill the vacant position of councillor. The Electoral Commissioner determines the timing of a by-election in consultation with the general manager.

The timing of electing a deputy mayor is an internal matter for the council. The legislation is silent on the matter. The council is not required to wait until a new councillor is elected via a recount or by-election.