

Council Policy – Election Invalidity Complaints

Responsible Directorate	Corporate Services
Responsible Business Unit/s	Corporate Performance
Responsible Officer	Manager Corporate Performance
Affected Business Units	Executive Services Corporate Services Corporate Performance

Objective

The objective of this Policy is to provide a decision-making framework for determining when Council would support initiating or joining an invalidity complaint under section 4.80 of the *Local Government Act 1995* (the Act).

Scope

This Policy applies to invalidity complaints initiated under s 4.80 of the Act where the election was for the Shire of Serpentine Jarrahdale (the Shire).

Policy

Introduction

Section 4.80 of the Act provides that any person who is dissatisfied with the result of an election or with the way in which an election was conducted may make an invalidity complaint.

Section 4.81 of the Act provides that an invalidity complaint is to be made to a Court of Disputed Returns, constituted by a magistrate, but can only be made within 28 days after notice is given of the result of the election.

Complaints Initiated by the Shire

The initiation of an invalidity complaint by the Shire is an extraordinary measure that shall only be initiated through a resolution of Council supported by evidence that:

- the reputation of the organisation is at risk; and
- the action is considered to support the good government of persons in the district; and
- an Electoral Offence has or is suspected to have occurred in the election; and
- that the Electoral Offence is believed to have impacted the outcome of the election; and
- the Council has received and noted independent legal advice regarding the matter.

In considering the matter, Council is to be aware that s4.83 of the Act provides that:

An election is not invalid because of -

- (a) a failure to do something in connection with the election within the time, or for the period or before the date allowed or required under this Act, so long as the failure does not affect the result of the election; or*
- (b) an irregularity or defect in the appointment or authorisation of an electoral officer; or*
- (c) a formal omission, irregularity or defect in a document, declaration, publication or other thing that a person has made, issued or done in good faith.*

Complaints initiated by another party

In all cases where some other party brings an invalidity complaint on a Shire Election, the Shire will join the action as an interested party with appropriate legal representation in order to receive details of the proceedings.

The joining of an invalidity complaint by the Shire must be supported by a resolution of Council.

Implementation

Where the Council has resolved to initiate or join an invalidity complaint, the Council's resolution shall be put into effect through:

- the appointment by Officers of a suitably qualified, independent legal professional who will be provided with all evidence that was available to Council in making the determination.
- the development of a governance management plan on roles and responsibilities, conflict of interests, risks and legal instruction.

The legal professional shall not obstruct the admission of any evidence to the Court and will neither defend or attack any successful or unsuccessful candidate but seek to have all evidence available presented to the Court of Disputed Returns for the magistrate to determine the outcome.

Definitions

Electoral Offence means an offence as set out in Part 4 Division 11 of the *Local Government Act 1995*.

Related Documents

- Nil

Legislation / Local Law Requirements

- *Local Government Act 1995*

Amendment Record

Relevant Delegations		Nil	
		Date	Resolution Number
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2	17 March 2025	OCM068/03/25	New template