

# Public sector employees contesting elections

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This circular outlines the rights and responsibilities of public sector employees participating in local, state or federal elections and should be read in conjunction with the Code of Conduct for the Queensland Public Service (or entity specific code) and applicable employing legislation.

Two types of employees are referred to in this circular:

- *public service employees* as defined in the *Public Service Act 2008* (PSA)
- *public sector employees* defined as public service employees **and** persons employed in any of the following 'public sector entities':
  - the parliamentary service
  - a local government
  - a university, university college or agricultural college
  - an entity established under an Act or under State or local government authorisation for a public, State or local government purpose
  - an entity prescribed under a regulation.

## Does a public sector employee have to resign to contest an election?

### Federal elections

Yes.

A person holding 'any office for profit under the Crown' is unable to be elected as a Senator or Member of the House of Representatives (s44 – *Commonwealth of Australia Constitution Act*).

The Australian Electoral Commission (AEC) has advised that in order to comply with the Constitution candidates should resign their public employment prior to nominating for election<sup>1</sup>.

### State elections

Generally no, however there are certain roles where a public sector employee **must** resign on nominating as a candidate; these roles are listed in s67 of the *Parliament of Queensland Act 2001* (PoQA).

Additional to this, under s66 of the PoQA, a public sector employee **must** be absent on leave (either paid or unpaid) for the duration of the election period. The election period commences when a person becomes a candidate<sup>2</sup> and ceases when the election outcome is known.

<sup>1</sup> See the Australian Electoral Commission Candidates Handbook, Part 2

<sup>2</sup> A person becomes a candidate when the names of persons properly nominated for election are display at the returning officer's office – s93 *Electoral Act 1992*

Public service employees can apply to use accrued leave or seek special leave<sup>3</sup>. Other public sector employees need to consider whether leave is available to them as part of their employment conditions.

If the employee is successful in being elected as a member of the Legislative Assembly, their public sector employment is deemed to end on the day before polling day.

If the employee is unsuccessful they can return to duty at the conclusion of their approved period of leave.

### **Local elections**

Public sector employees are not required to resign to contest a local government election<sup>4</sup>.

However, public service employees have an obligation to resolve any conflicts between their public service duties and other interest in favour of the public interest<sup>5</sup>. It is appropriate for agencies to discuss with a person nominating for or elected as a local government councillor how they will manage the potential conflict presented by their dual responsibilities; this may include accessing periods of paid and/or unpaid leave.

If a local government employee is successful in being appointed as a local government councillor, they are automatically taken to have resigned as a local government employee on the day before they become a councillor<sup>6</sup>.

### **Can an unsuccessful election candidate be re-appointed to the public sector?**

Yes.

The PSA<sup>7</sup> entitles a permanent public sector employee who has resigned to participate in federal or state election and was not elected to:

- a. be reappointed to their former role; or
- b. be appointed to another role with the State and this may be at the same classification level or a lower classification level as the former role.

This applies to people employed in:

- a. the public service; or
- b. the police service; or
- c. any other office, position or place under the State where "State" is defined as including a board, commission, commissioner, corporation, instrumentality or other person representing the State.

Reappointment may only be made:

- a. if the person resigned within 6 months before the day the period for nomination of candidates in the election ended; and
- b. must be made within 3 months after the return of the writ for the election.

Where a person has been reappointed, the continuity of the person's service is taken not to have been broken by their resignation.

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<sup>3</sup> See the directive relating to special leave available on the PSC website

<sup>4</sup> See section 26 of the *Local Government Electoral Act 2011*

<sup>5</sup> See sections 102 and 186 of the *Public Service Act 2008*

<sup>6</sup> See section 167 of the *Local Government Act 2009*

<sup>7</sup> See sections 129-132



### **What rights and responsibilities does an employee have prior to the election period commencing?**

The rights and responsibilities of employees in relation to elections commence prior to the formal election period – for example, when an employee has been pre-selected as a candidate.

The provisions of the Code of Conduct for the Queensland Public Service (or entity specific code) and applicable employing legislation apply equally during this period, including the obligation to declare and manage conflicts of interest. Employees seeking or having been pre-selected should discuss this with their manager to ensure appropriate strategies can be put in place to manage any conflicts of interest that may arise during this period.

### **Employees of the Electoral Commission of Queensland (ECQ)**

The ECQ is an independent and impartial body responsible for conducting Queensland elections under the *Electoral Act 1992* (Qld) and the *Local Government Electoral Act 2011*. As such it is particularly important ECQ employees discuss with their employer the potential conflicts of interest, and impact on their employment responsibilities, of nominating for election.

Superseded by employees  
Public sector employees  
contesting elections guideline

