

# Public sector employees contesting elections

**Effective date:** 20/05/2024

Supersedes: Circular 01/22

## 1. Purpose

This guideline outlines the rights and responsibilities of public sector employees participating in local, state or federal elections.

## 2. Application

Unless otherwise stated, the guideline applies to public sector employees as provided for at section 12 of the *Public Sector Act 2022* (PS Act).

Public sector employees are employed in public sector entities. Section 8 of the PS Act provides what a public sector entity is. Subject to exclusions listed in section 8, public sector entities include:

- public service entities, which are departments and other entities listed at schedule 1 of the PS Act;
- another entity prescribed by regulation as a public sector entity;
- a registry or other administrative office of a court or tribunal of the State;
- another type of agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act for a public or State purpose.

The guideline should also be read in conjunction with any applicable legislation under which employees perform work, are employed or appointed (employing legislation).

A reference to a chief executive in this document is subject to an entity's delegation arrangements and may include another appropriate person such as an employee's manager.

## 3. Guideline

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

### Federal elections

A person who holds 'any office for profit under the Crown' is incapable of being chosen, or of sitting, as a senator or member of the House of Representatives (s44 – *Commonwealth of Australia Constitution Act*) (the Constitution).

The Australian Electoral Commission (AEC) website includes public servants as an example of 'holding an office of profit under the Crown'. The AEC indicates that state public servants would be disqualified from standing for election.<sup>1</sup>

## State elections

Generally public sector employees do not have to resign to contest a state election, however there are particular senior roles, for example the Deputy Commissioner of the Police Service, where a public sector employee **must** resign on nominating as a candidate; these roles are listed in section 67 of the *Parliament of Queensland Act 2001* (PoQ Act). If they do not resign from their position, they are deemed to have done so.

In addition, under section 66 of the PoQ Act, a person contesting a state election who holds a paid State appointment **must** be absent on accrued or unpaid leave for the duration of the election period. Section 65 of the PoQ Act sets out what paid state appointment means.

The election period commences when a person becomes a candidate for an election. In accordance with section 93(3) of the *Electoral Act 1992*, a person becomes a candidate when the names of persons properly nominated for election are displayed at the returning officer's office. Becoming a candidate, differs from a person nominating to become a candidate, being nominated as a candidate, being pre-selected by a political party to be a candidate or declaring an intention to contest an election.

Election period means:

- if the person is elected—from when the election period commences to the end of the day before the day of the poll at which the person is elected; or
- if the person is not elected— from when the election period commences to the election of the candidate who is elected for the electoral district.

Public service employees can apply to use accrued leave or seek special leave (without pay).<sup>2</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.

An employee that is not elected can return to duty at the conclusion of their approved period of leave.

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

Yes.

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<sup>1</sup> See the Australian Electoral Commission's *Electoral Background: Constitutional disqualification and intending candidates* which refers to case law, particularly *Sykes v Cleary* [1992] HCA 60. Note the AEC does not provide specific legal advice to prospective candidates and recommends candidates obtain legal advice on qualifications under the Constitution.

<sup>2</sup> See the directive relating to special leave.

The PS Act<sup>3</sup> entitles certain permanent public sector employees who have resigned to participate in a federal or state election, including Queensland or another state, and who are not elected to:

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

This applies to people employed in any capacity in:

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

If an employee resigned within 6 months before the day the period for nomination of candidates in the election ended, the employee is eligible for reappointment or appointment if they notify their chief executive of an intention to exercise their right to reappointment within 2 months after the return of the writ for the election.

The reappointment or appointment must be made within 3 months after the return of the writ for the election.

Where a person has been reappointed or appointed under these PS Act arrangements, the continuity of the person’s service is taken not to have been broken by their resignation.

### **Local government elections**

Public sector employees are not required to resign to contest a local government election.

However, under the PS Act, public sector employees must disclose private interests that conflict or may conflict with the discharge of their duties as an employee. It is appropriate for a public sector employee nominating for or elected as a local government councillor to discuss with their chief executive how they will manage the potential conflict presented by their dual responsibilities. This may include accessing periods of paid and/or unpaid leave.

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

While requirements to resign or take leave to contest a federal or state election generally apply in relation to the formal election period, campaigning and other politically related duties for those seeking election may commence prior to the formal election period – for example, when an employee has been pre-selected as a candidate.

Employees should consider how indicating an intention to contest an election or commencing duties and/or activities related to an election may impact upon their position as a public sector employee, particularly in relation to managing conflicts interest.

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<sup>3</sup> See sections 271-273 of the Public Sector Act 2022.

## Conflicts of Interest

Conflict of interest requirements may be found in the PS Act, codes of conduct and any other applicable legislation under which employees perform work, are employed, or are appointed.

Employees must consider their obligations to declare and manage actual and perceived conflicts of interest, which apply during any pre-election period and at all times throughout the employment relationship.

Once a public sector employee's intention to be a candidate in an election becomes public knowledge, the employee's political affiliation or alliance becomes known. Consequently, the potential for the employee's private conduct to create a conflict of interest may increase, particularly with regard to the ability of the employee to remain or appear to remain objective, independent, apolitical and impartial.

Employees whose intention to run has become public or common knowledge, or are seeking pre-selection, or having been pre-selected, should discuss this with their chief executive to ensure appropriate strategies can be put in place to manage any conflicts of interest that may arise during this period.

Examples of activities or behaviour undertaken during the pre-election period that may give rise to concerns over conflicts of interest include:

- expressing support for a policy platform, either directly through a public statement or indirectly by alignment with a political party;
- competing time demands and how this may impact on performance of duties, similar to potential conflicts that could arise when an employee engages in secondary employment.

Sections 89 and 183 of the PS Act contain conflict of interest requirements. Public sector employees should disclose their intention to contest an election with their chief executive, or subject to an entity's delegation arrangements, another appropriate person, such as their manager, or in the case of chief executives of departments, their relevant minister.

In accordance with these provisions, once a conflict is disclosed, the employee's ability to continue working on matters related to the conflict is subject to whether appropriate strategies can be put in place that are acceptable to the employee's chief executive or for chief executives, their relevant minister. The employee may be directed to resolve the conflict.

The resolution of conflicts of interest should be managed on a case by case basis, having regard to relevant factors including:

- an employee's rights under the *Human Rights Act 2019* (HR Act) including the right under section 23 to participate in public life, including having access to take public office
- the nature of the work the employee performs
- the nature and level of interaction with the community required by the employee in the performance of the employee's duties and
- the employee's level of responsibility and decision-making authority within their organisation.

When directing an employee to resolve a conflict of interests the employee's chief executive or the chief executive's delegate should have regard for the public sector principles at section 39 of the PS Act and their obligations under the HR Act.

### *Public Sector Act 2022*

Section 40 of the PS Act sets out principles to guide an employee's work performance and personal conduct. Principles that have been identified as being of particular relevance to employees when engaging in pre-election activities and the potential for conflicts of interest to arise include:

- providing sound and impartial advice to government;
- carrying out duties impartially and with integrity;
- ensuring the employee's personal conduct does not reflect adversely on the reputation of the public sector entity in which the employee is employed;
- observing the ethics principles under the *Public Sector Ethics Act 1994* (PSE Act); and
- complying with an approved code of conduct and any approved standard of practice as required under the PSE Act.

### *Codes of Conduct made under the Public Sector Ethics Act 1994*

Public sector employees may also be subject to conflict of interest duties and obligations included in codes of conduct made under the PSE Act.

The PSE Act provides that the Code of Conduct for the Queensland Public Service applies to public service agencies and public sector entities can develop their own codes of conduct.

Employees of public service agencies, as defined in the PSE Act must comply with the Code of Conduct for the Queensland Public Service. Employees of relevant public sector entities must comply with requirements of their specific codes of conduct, including any applicable conflict of interest arrangements.

Codes of conduct made under the PSE Act are to provide standards of conduct consistent with the PSE Act's ethics principles and values, including those related to integrity and impartiality. Under the PSE Act conflicts of interest issues should be resolved or appropriately managed in favour of the public interest.

### *The Queensland Government Enterprise Architecture Personal use of social media (the Social Media Guidelines)*

To assist employees in balancing their private political activities and public sector employment obligations, regard should be had to material published by the PSC including relevant directives, such as Declaration of Interest Directives and the Queensland Government Enterprise Architecture Personal use of social media guideline.

The Social Media Guidelines provide guidance for employees on use of social media, including how personal use may impact on the employee's employer. This is particularly relevant for employees intending to contest an election.

While the Guidelines have been developed for Queensland Government Departments and their employees, this is a useful guide which is relevant sector wide.

### *Integrity Act 2009*

The *Integrity Act 2009* (Integrity Act) requires certain statutory office holders (those listed in Schedule 1 of the Integrity Act or prescribed under a regulation) to disclose interests that conflict or may conflict with the discharge of an office holder's responsibilities. The office holder must disclose the nature of the interest and the conflict to the office holder's relevant Minister as soon as practicable after the relevant facts become known to the office holder and must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by the relevant Minister.<sup>4</sup>

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<sup>4</sup> See s40F of the *Integrity Act 2009*.

Under the Integrity Act, employees who are 'designated persons' may seek guidance from the Integrity Commissioner on managing conflicts of interest.

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

While the ECQ is a public service entity under the PS Act and a public service agency under the PSE Act, it is also an independent and impartial body responsible for conducting Queensland elections under the *Electoral Act 1992* and the *Local Government Electoral Act 2011*. As such it is particularly important ECQ employees discuss with their employer potential conflicts of interest, and the impact on their employment responsibilities, of nominating for election.