



AUSTRALIAN CAPITAL TERRITORY

2008 GENERAL ELECTION

GUIDANCE ON CARETAKER CONVENTIONS

Issued by Chief Minister's Department, August 2008

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1. Introduction

It is accepted practice within governments at both the State/Territory and Commonwealth levels that special arrangements apply with regard to the operation of government in the “caretaker period” immediately before and after an election.

Each general election brings with it the possibility of a change of government, and so it is appropriate for governments to operate in ways that will not limit the freedom of action of an incoming government.

Successive ACT governments have adopted similar arrangements during the caretaker period. These arrangements have no legal standing and so are known as the “caretaker conventions”.

Adherence to the caretaker conventions is ultimately the responsibility of the Chief Minister. The Chief Minister strongly supports adherence to these longstanding conventions, and has approved these guidelines.

The following guidelines apply to all ACT Government Ministers and to all officers of ACT Government departments and agencies.

2. The Caretaker Period

In accordance with the provisions of Section 100(1) of the *Electoral Act 1992*, the Australian Capital Territory is scheduled to hold a general election for the Legislative Assembly on Saturday, 18 October 2008.

It is accepted practice in the Australian system of government that the period during which the caretaker conventions apply commences from the time of the dissolution of the Parliament. This reflects that, after dissolution, there is no parliamentary chamber to which a government may be held accountable.

However, under the ACT’s system of fixed terms of parliament, where the Legislative Assembly is not dissolved until the day of a general election, the caretaker period must be defined differently.

The ACT’s caretaker conventions apply from the beginning of the “election period” as defined by the *Electoral Act 1992*. Under section 3 of the *Electoral Act*:

“the ‘election period’, in relation to an election, means the period -

- (a) beginning on the first day of the pre-election period; and
- (b) ending when the result of the election is declared under section 189”.

The “pre-election period” is defined under section 3 as:

“...the period of 37 days ending on the end of polling day for an election”.

Thus, in relation to the 2008 ACT general election, the caretaker period begins on 12 September, which is 37 days before polling day on 18 October.

The *Australian Capital Territory (Self-Government) Act 1988* requires the Legislative Assembly to elect one of its number to be Chief Minister on the first sitting day following a general election. The Chief Minister then appoints Ministers to form Government. Therefore, in the event of a change of Government, the caretaker conventions will remain in force until the first sitting day of the Legislative Assembly following a general election.

Alternatively, in the event of a returned Government, the caretaker conventions will apply until such time as the Government is clearly returned. This would be where the Government has a majority of Assembly seats in its own right, or where the Government can clearly count upon a majority of Assembly Members for support. At this time the incumbent Government regains its mandate to govern without the restrictions of the caretaker period. If, however, the likely outcome of the election of the Chief Minister by the Legislative Assembly remains unclear, the caretaker conventions will remain in force until the first sitting day of the Assembly.

3. Operations of the Government

The ordinary business of government continues during the caretaker period. However, the caretaker conventions in effect during this period impact on a number of areas of government administration. These areas are:

3(a) Policy Decisions

The Government should avoid taking major policy decisions likely to commit an incoming government.

This restriction would not apply to the *implementation* of major policy decisions taken before the caretaker arrangements came into effect. Where possible, it is desirable that decisions be announced before the start of the caretaker period.

If circumstances require the Government to make a major policy decision during the caretaker period that would potentially commit an incoming government, this should be done in consultation with the Opposition.

The Government may, of course, announce during the caretaker period new policy initiatives that it proposes to implement after the election, should the Government be returned to office.

3(b) Appointments

The Government should avoid making appointments of any significance during the caretaker period.

Ministers should:

- if possible, defer the appointment until after the caretaker period;
- if an appointment needs to be made for reasons of continuity, appoint for a short term only to carry through until after the caretaker period; or
- if a short-term appointment is not practicable, appoint for the full term, following consultation with the Opposition.

3(c) *Contracts and Undertakings*

The Government should avoid entering into major contracts or other undertakings during the caretaker period that are likely to commit an incoming government.

This restriction includes commitments that would be politically contentious. If a major contract or undertaking cannot be deferred until after the caretaker period, the Government should seek the agreement of the Opposition before entering into the contract or undertaking.

3(d) *Ministerial Attendance at Intergovernmental Fora during an Election Period*

Ministers, whilst they retain their office and title during the pre-election period, would not generally represent the ACT in intergovernmental fora unless it is unavoidable. Where possible, Ministers and agencies should seek postponement of such meetings until after the election. If postponement is not possible, a senior departmental officer should attend the meeting in an observer capacity to ensure that the ACT is fully informed of progress, briefing the Minister on return.

The usual practice is for the Chief Executive of the Chief Minister's Department to write to jurisdictional counterparts advising them of the timing of the ACT Election and seeking their cooperation with intergovernmental arrangements during this period.

3(e) *Requests by Ministers of Departments and Agencies*

Ministers may seek a wide range of factual information during the pre-election period, some of which may be incorporated into Ministerial speeches or political publications. It is appropriate for the public service to provide factual information to Ministers provided that they take no active part in the incorporation of this material into information of a party political nature.

3(f) *Commencement of Legislation*

During the caretaker period, a Minister may, by notified commencement notice, and with the approval of the Chief Minister, approve the commencement of legislation that has been passed in the Legislative Assembly.

4. Operations of Departments and Agencies

During the caretaker period, the ongoing obligation on departments and agencies to act in an apolitical manner in keeping with ACT public sector requirements, takes on added significance. The caretaker period affects a department's or agency's usual activities in several ways:

4(a) Provision of Information and Advice to Ministers

A department or agency should continue to provide information and advice concerning the day-to-day business of government to Ministers. Accordingly, factual material should be provided if requested by a Minister, even if it might be drawn upon for use in speeches or other material for the election campaign. Provided that the material is strictly factual, the use to which it is put is a matter for the Minister.

Strictly factual analysis of opposition policies in terms of practical implementation, for example costing, can be undertaken, but departments and agencies need to exercise the utmost care not to become involved in critiquing the policy. Having regard to the potential sensitivity of such requests, and consistent with the advice of the ACT Commissioner for Public Administration on this issue, Chief Executives of departments and agencies should refer such requests to the Chief Executive, Chief Minister's Department for decision.

4(b) Ministerial Correspondence

Ministers would usually sign only the necessary minimum of correspondence. Any correspondence beyond this necessary minimum should be prepared for signature by Chief Executives or their delegates, rather than allowing the correspondence to accumulate for an incoming Minister.

In preparing correspondence, departments and agencies should avoid using language that might be construed as implying any particular outcome of the election. References to post-election action should be expressed in terms of "the incoming Government".

4(c) Cabinet Documents

Before the date of the election, the Chief Executives of departments and agencies must ensure that all Cabinet documents are accounted for and securely stored so that, if there is a change of government, the documents can be returned promptly to the Cabinet Office for destruction in accordance with the provisions of the *Cabinet Handbook*.

Alternatively, documents may be destroyed by Cabinet Liaison Officers according to the guidelines given in the *Cabinet Handbook*, which can be found at http://www.cmd.act.gov.au/_data/assets/pdf_file/0007/1600/Cabinet_Handbook2007.pdf.

4(d) Pre-Election Budget Update

The Under Treasurer is required, under Section 20C(1) of the *Financial Management Act 1996*, to prepare a pre-election budget update and provide it to the parliamentary counsel for notification at least 30 days before the polling day of an ordinary election. In the case

of the 2008 ACT general election, this update should be provided on or before Thursday, 18 September. The *Financial Management Act 1996* may be found at <http://www.legislation.act.gov.au/a/1996-22/current/pdf/1996-22.pdf>.

The purpose of the pre-election budget update is to give the electorate an accurate picture of the Territory's financial position before the election, and allow the assessment of the Government's financial performance against its financial policy objectives and strategies. The update should include budget estimates for the Territory, General Government Sector and Public Trading Enterprises.

4(e) Incoming Government Briefs

The Chief Minister's Department is responsible for coordinating two sets of incoming government briefs in the lead-up to an election. One set of briefing papers will be developed for the event of a returned government, and the second for the event of a newly elected government taking office.

4(f) Consultation with Public Servants by the Opposition

In order to ensure a smooth transition in the event of a change of government, there may need to be consultation between the Opposition and departmental officers during the caretaker period.

For such consultations to occur, the leader of the Opposition should request the relevant Minister to grant access to departmental and agency officers. The Minister should notify the Chief Minister, and the relevant Chief Executive, of any such request and whether the request was granted.

The subject matter of the discussions between officials and the Opposition should be restricted to matters relating to the machinery of government and government administration, and may include advice on the administrative and technical practicalities and procedures involved in implementing policies already proposed. Officers are not authorised to discuss Government policies or to provide opinions on alternative policies or other party-political matters.

Officers are to inform Ministers, through their Chief Executive, of when the discussions are to take place.

4(g) Publications and Advertising Campaigns

During the caretaker period, departmental and agency publications and advertising material should proceed only if they constitute a normal operational requirement of the department or agency. In such cases, publications or advertising material should not include photographs and/or statements of a Minister.

Departments and Agencies should carefully monitor their media releases during the caretaker period to ensure that the material is of public interest, relates only to the day-to-day business of the department or agency, and cannot reasonably be construed as being for political purposes.

There are strict requirements governing the publication of “electoral matter”. In the case of government agency publications, these do not require authorisation as electoral matter if they include as a minimum on the cover and/or title page the agency name and the ACT Government logo or:

- the agency name;
- the Canberra Coat of Arms; and
- the words ‘Australian Capital Territory’, ‘Australian Capital Territory Legislative Assembly’, ‘ACT Legislative Assembly’, ‘Australian Capital Territory Government’ or ‘ACT Government’.

Further guidance can be obtained from the ACT Electoral Commission’s website, at: <http://www.elections.act.gov.au/pdfs/factsheets/factauthorise.pdf>.

4(h) Government Use of Electronic Communication

Agency websites may retain material placed on the website before the commencement of the caretaker period in most cases. Agencies should check the wording of any icons and links on their websites to ensure that they cannot be interpreted as promoting a Government policy. Agencies should add only the following material to their websites during the caretaker period:

- agency-related announcements of a routine, apolitical nature;
- purely factual material; and
- information on existing policies and programs, unless the information includes statements of a partisan political nature.

If agency websites contain links to websites outside the act.gov.au domain, agencies should consider the need for clear entry/exit messages.

In order to avoid the need for authorisation as electoral matter, agency websites must conform to the ACT Electoral Commission’s guidelines for government publications, as outlined above under “Publications and Advertising Campaigns”.

Electronic bulletin boards and email systems provided by agencies should not be used to publish or distribute political material. Material from political parties and how-to-vote material, whether produced by a union, a church or any other organisation should not be displayed.

Any interactive functions of websites within the act.gov.au domain such as discussion groups, chat rooms or blogs which allow unmoderated comment or debate should be moderated during the caretaker period. Words along the following lines might be appropriate: “In the period preceding an election for the ACT Legislative Assembly, the ACT Government assumes a caretaker role. It is important during that time that ACT Government resources are not used to communicate political material. As this website is hosted by the [department/agency], the site will be moderated from the beginning of the Caretaker Period on 12 September 2008 until after the election to ensure that political material is not placed on the site.”

4(i) *The Use of Government Agency Premises*

There may be occasions where agency premises can appropriately be used during the caretaker period by political parties for public events, such as media conferences, or where they are the obvious place for a function (for example, the opening of a building by a Minister). In the case of official functions involving the use of agency resources, it would generally be appropriate for the Opposition spokesperson, member or candidate to be given the opportunity to be present.

It is not appropriate that the use of agency premises extend to such activities as engaging public servants in political dialogue, or using public servants for logistical support for political functions. Nor should the use of premises unreasonably disrupt the normal operations of the offices concerned.

4(j) *Approval of Grants*

The payment of grants approved prior to the caretaker period can proceed but should be forwarded by the Department rather than by a Minister or another member of the Government.

During the caretaker period, commitments should not be made in respect of grant applications received during the period or which were lodged before commencement of the period but are awaiting decision.

4(k) *Response to Parliamentary Committee Reports*

Responses to outstanding parliamentary committee reports should be taken up with the incoming government. Agencies may, however, undertake appropriate preparatory work and consultation at the agency level so that they are in a position to provide early advice to the incoming government.

4(l) *Annual Reports*

The *Annual Reports (Government Agencies) Act 2004* makes specific provisions for the timetable for presenting annual reports in an election year. The Act requires Ministers to table reports in the Legislative Assembly during the 3 month period following the end of the financial year. However, the last sitting day before the 2008 election is 28 August. Accordingly, the Chief Minister has required that agencies and public authorities provide copies of their annual report to their Minister(s) by 24 September 2008. Arrangements will then be made to provide copies to Assembly Members through the Speaker by 30 September. A minimum of 40 copies should be provided with 20 copies to be retained by the Assembly Secretariat for tabling in the Assembly on the second sitting day following the scheduled 18 October election.

The Government Solicitor's Office has advised that any extension of time for providing Annual Reports should be sought before the last day of sitting prior to the caretaker period. Accordingly, approval for an extension of time to provide an Annual Report should be sought by the relevant Minister from the Chief Minister by 27 August 2008.

Agencies are advised that definitive guidance is available in the Chief Minister's Annual Reports Directions for 2007/08 to 2010/11, to be made available from June 2008 at Public Sector Managements' website: <http://www.psm.act.gov.au/publicationsaz.htm>. In addition, agencies may refer to the full text of the *Annual Reports (Government Agencies) Act 2004* at <http://www.legislation.act.gov.au/a/2004-8/current/pdf/2004-8.pdf>.

Other administrative reports and publications can be released during the caretaker period. However, where a report or publication contains information that is likely to be controversial, consideration should be given to whether delivery should be deferred until after the caretaker period.

4(m) Public Sector Ethical Requirements

Public sector agencies, public employees and members of Government boards and committees must consider numerous ethical issues during the pre-election period with regard to their operations and conduct. These issues might relate to real or perceived conflicts of interest, the public perception of impartiality in their operations and conduct, and the participation of individuals in political campaigning.

The Commissioner for Public Administration has provided advice to assist public officials (including Chief Executives and Executives) on these matters during the pre-election period and a copy is attached to these guidelines.

It is important that public employees uphold the values and principles prescribed in legislation at all times. It is timely, given the impending ACT Legislative Assembly election, to remind all public employees of their obligations.

The values and principles for ACTPS agencies are:

- service to the public;
- responsiveness to the government and the needs of the public;
- accountability to the government;
- fairness and integrity; and
- efficiency and effectiveness.

The general obligations of public employees are prescribed in section 9 of the [*Public Sector Management Act 1994*](#) (PSM Act).

5. Further Information

Where Ministers require further clarification of these guidelines, they should seek advice from the Chief Minister.

Where Chief Executives require further clarification of these guidelines, they should seek advice from the Chief Executive of the Chief Minister's Department.

General inquiries regarding the caretaker period arrangements and their application can be directed to:

Director, Cabinet and Intergovernmental Relations
Policy Division
Chief Minister's Department
Telephone 620 50230
Fax 620 76200

Further guidelines and information on arrangements that apply in the election period may be accessed from:

- Public Sector Management Group
www.psm.act.gov.au
Phone: 620 50358
- ACT Electoral Commission
www.elections.act.gov.au
Phone: 620 50033

Andrew Cappie-Wood
Chief Executive
Chief Minister's Department

August 2008

Appendix 1 – Guidance On Obligations Of Public Employees During the Pre-Election Period

Introduction

These guidelines provide advice about the expected behaviour of Territory employees to act impartially during the pre-election period. These guidelines should be read in conjunction with the “*Guidance on Caretaker Conventions*” for the 2008 General Election issued by the Chief Minister's Department.

Public servants as members of the community have a right to political expression and participation. At the same time, they are servants of the executive and the community and public confidence in the integrity, impartiality and political neutrality of the ACTPS is crucial.

Division 2.1 of the *Public Sector Management Act 1994* (PSM Act) sets out the values and general principles that public servants must be preserved in their day to day work, including:

- service to the public;
- responsiveness to the requirements of the government;
- responsiveness to the needs of the public;
- accountability to the government;
- fairness and integrity; and
- efficiency and effectiveness.

The public service provides policy advice to the government of the day and has the responsibility for implementing the policies adopted by the elected government. The government has a right to expect that it is being assisted in its functions by public servants who are working in a politically neutral manner. Similarly, members of the public are entitled to expect that the government will be properly aided in pursuing its agenda and also that in their own dealings with government departments and agencies they will receive impartial advice.

Public Employees

1. A ‘public employee’ is defined in the PSM Act as “ a person –
 - (a) employed in the Service; or
 - (b) employed by a Territory instrumentality, or a statutory office holder”.

Conflicts of Interest

2. A conflict of interest may be actual, potential or apparent. An apparent conflict of interest may exist if a public employee's private interests appear, on reasonable grounds, to influence the performance of their official duties - even though there is no actual influence.

3. Public employees are able to join a political party, engage in political debate or in non-political community activity but must be alert as to whether these activities impact adversely on their ability to perform their official duties and/or place them in conflict with the general obligations of public employees in section 9 of the PSM Act. For example, it is unlikely that membership of a political party would of itself create a conflict of interest. It is more likely, however, that engaging in public debate on political issues in your area of work or holding an office or executive position within a political party may do so. You may wish to discuss these issues with the Public Sector Management Group in the Chief Minister's Department.
4. While all elements of section 9 of the PSM Act apply, the particular focus in the context of an upcoming election is whether political involvement places the public employee at risk of an actual or potential conflict of interest. Importantly, section 9 (b) of the PSM Act requires a public employee to act impartially. In accordance with the PSM Act, public employees must disclose to their Chief Executive and deal with any conflict of interest, either real or apparent. Active campaigning (including for another person or a party) has the capacity to raise a real or apparent conflict for most public employees.

Role of Chief Executives

5. Where a Chief Executive is concerned that there may be, or may appear to be, a conflict between an employee's duties and their involvement in political activities, the issue should be discussed with the employee. Chief Executives and Chief Executive Officers are responsible for resolving any issues about the status of public employees who are taking a politically active role in the election, in particular those public employees who are election candidates.
6. The circumstances of each situation, such as the level of the employee within the service; the extent to which they provide high level advice and their capacity to influence government decision-making; the extent to which they deal directly with those elected; and the extent to which they represent the government in public and the prominence of their government job in the community, must be considered by the relevant Chief Executive. Importantly, the Chief Executive should consider whether:
 - the conflict or apparent conflict impairs the public employee's ability to exercise impartial decision making or maintain public confidence in decision making;
 - the conflict involves improper use of information obtained through official duties or is unauthorised public comment; and
 - the conflict involves the use of any official facilities, including the employee's time during work hours.
7. Where an apparent conflict is identified, the Chief Executive should discuss this with the employee in an endeavour to resolve the matter. This discussion might include agreeing on parameters to the employee's involvement in the matter that

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has given rise to the apparent conflict or allowing the employee a period of time to withdraw from the specific work interest, activity or task. If these avenues to resolving the matter are not successful then the employee may need to cease involvement in the conflicting interest or activity and separate themselves from the relevant work area or duty.

8. It may be that the only way for a real or apparent conflict to be resolved for an election candidate is by the public employee deciding to resign. There are special re-employment and re-appointment powers in respect of unsuccessful election candidates who are employed under the PSM Act (refer to paragraph 17 below).
9. A public employee who wishes to campaign on behalf of a candidate or a political party may apply for leave. While it may not fully resolve the possibility of improper use of information, approved leave will to some extent address the issue of impartiality and the use of the public employee's work time or official facilities. Furthermore, it will also demonstrate that the public employee has taken some steps to separate political activity from their public service duties, particularly during the pre-election period.

Executives and full-time holders of public office

10. Public servants owe a duty of political neutrality to the elected government and to the community and a greater duty is owed by senior public servants such as executives and full-time holders of public office. They are senior officials who hold special positions in government employment and in the community in general and have a significant capacity to influence government decision-making. For these public employees who are, or are intending to be, election candidates there is usually no other appropriate course than to resign. Executives are able to seek re-engagement if they are unsuccessful candidates at the election.
11. An executive or full-time holder of public office should carefully consider whether it would be appropriate to become involved in political campaigning for another person or a party. In such circumstances the use of leave may be an avenue to address the apparent conflict and should be discussed with the relevant Chief Executive. However, leave may not always be a satisfactory resolution to the apparent conflict given the principles of impartiality and political neutrality that are essential elements of an executive's relationship with the government.

Resignation and Campaign Leave for Election Candidates

12. Resignation may be an appropriate way for a candidate to avoid any suggestion that they have failed to fulfil their duty as a public employee. Refer to paragraph 15-17 below for information on resignation and re-appointment provisions.
13. Campaign leave, or the use of recreation or long service leave entitlements may be granted to election candidates.

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14. A Chief Executive may grant Campaign Leave, which is without pay, under either Public Sector Management Standard section 425 or the relevant provisions of the collective agreement to enable an officer or employee who is employed under the PSM Act to campaign for election. The maximum period of leave that may be granted for this purpose is three months. The period of leave does not count as service for any purpose.

Candidates

15. Subject to other requirements of public employees set out above, a public employee may be a candidate for election to the Legislative Assembly. However, sections 103 and 104 of the *Electoral Act 1992* (Attachment A) provide that a person is not qualified to take a seat if they hold public office or employment.
16. Candidates for election to the Assembly are provided with information by the ACT Electoral Commission. This includes advice that it is necessary, under the *Electoral Act 1992*, for public employees to resign before the official declaration of results. The Electoral Commissioner suggests that candidates seek their own advice on whether resignation is necessary in their particular case and the appropriate time to resign. Public employees seeking to contest elections other than those for the ACT Legislative Assembly should investigate whether similar restrictions exist in the relevant jurisdiction.
17. Public employees employed under the PSM Act who resign to contest an election, and are not elected, may be re-employed in or re-appointed to the ACT Public Service under sections 111 or 118 of the PSM Act. To be re-employed or re-appointed, the former public employee must have resigned no earlier than six months before nominations for the election closed, been an unsuccessful candidate and applied for re-employment or re-appointment no later than two months after the election result is declared.

Public Comment and Disclosure of Official Information

18. Public employees may participate in a private capacity in public discussions and debates about community issues. However, public employees should consider whether personal comments and statements could be mistaken for an official comment or undermine public confidence in the employee's ability, or that of their agency, to carry out official functions fairly and impartially.
19. Section 9 (m) of the PSM Act prescribes that a public employee may not disclose, without lawful authority, information obtained during the course of their duties. For example, it would be unlawful to disclose information if it is reasonably foreseeable that the disclosure could be prejudicial to the government in the conduct of its policies or programs, or if the information was or is to be communicated in confidence.

Fund Raising and Canvassing

20. Where a public employee chooses to become involved in campaigning for candidates for political office (for example, by handing out how-to-vote information or other canvassing for votes) then they should avoid giving any impression that such activities are undertaken other than in a private capacity. They should not, for example, wear an ACT Public Service uniform or display work related material.

Wearing of Party Political Badges, or other Display of Political Material

21. It is generally not appropriate to display political badges or other material at work. Public employees should be aware of their responsibility to contribute to a harmonious working environment and the display of political material while on duty or at work has the potential to disrupt those relationships.
22. Where a public employee's duties involve public contact, the displaying of political material at work is inappropriate as this may create the impression of official endorsement of the political material or, in some circumstances, create doubt as to whether certain matters are being dealt with in a politically neutral manner.

Use of Official Facilities and Equipment

23. Public employees must not use official facilities for promotion of any political party. The use of official facilities includes use of meeting rooms, the use of government telephones, facsimile machines, e-mail, computers and photocopiers. Electioneering activity or other political activity that involves expense to the Territory is likely to constitute a breach of section 9 of the PSM Act.

Government boards and committees

Conflict of interest

24. In relation to pre-election periods, members of boards and committees are reminded that they should provide an undertaking that they are not subject to a conflict between their personal or financial interests and those of the board or committee. In these circumstances, the member must advise the Chairperson or the Minister immediately if a real, perceived or apparent conflict of interest occurs during the membership. Pre-election political activity by a board member may create a conflict of interest. In such circumstances it would generally be expected that the member consider either resigning or standing down for the duration of the election campaign.

Candidates

25. Refer to paragraphs 15 and 16 above as similar arrangements apply for board and committee members. Sections 103 and 104 of the *Electoral Act 1992* provide that a person is not qualified to take a seat in the Assembly if he or she holds a remunerated statutory office or appointment or is otherwise employed by a Government or a Government body. Each member must seek their own advice about whether their appointment falls within this provision.

Further information

26. The contact officer is Luke McAlary, Acting Director Public Sector Management on ph 6205 0296.

Extract from the *Electoral Act 1992*

Part 9 Arrangements for elections

Division 9.1 Nominations

103 Eligibility—MLAs

- (1) Subject to this section, a person who is—
- (a) an Australian citizen; and
 - (b) at least 18 years old; and
 - (c) an elector or entitled to be an elector;

is eligible to be an MLA.

- (2) A person is not eligible to be an MLA if—
- (a) the person is a member of—
 - (i) the Parliament of the Commonwealth; or
 - (ii) the legislature of a State or another Territory; or
 - (b) the person—
 - (i) holds an office or appointment (other than a prescribed office) under a law of the Territory, the Commonwealth, a State or another Territory; or
 - (ii) is employed by the Territory, the Commonwealth, a State or another Territory, or by a Territory authority or a body (whether corporate or not) established by a law of the Commonwealth, a State or another Territory;

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and is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in relation to the office, appointment or employment.

- (3) In subsection (2) (b) (i):

prescribed office means an office of Speaker, Deputy Speaker, Chief Minister, Deputy Chief Minister, Minister or MLA.

- (4) A person is not eligible to be an MLA if the person is under a sentence of imprisonment for 1 year or longer for a conviction of an indictable offence.

Note For the meaning of ***indictable offence***, see the Legislation Act, s 190 (Indictable and summary offences).

- (5) A person is not eligible to be an MLA for the disqualification period if—
- (a) the person is convicted of an offence against—
 - (i) section 285 (Bribery) or section 288 (Violence and intimidation); or
 - (ii) the *Crimes Act 1914* (Cwlth), section 28 (Interfering with political liberty); or
 - (iii) the *Criminal Code* (Cwlth), part 2.4 relating to an offence mentioned in subparagraph (ii); or
 - (b) the person is found by the Court of Disputed Elections to have contravened (within the meaning of part 16) a section mentioned in paragraph (a) (i).

Note ***Contravention*** is defined for pt 16 (Disputed elections, eligibility and vacancies) in s 250.

- (6) For subsection (5), the ***disqualification period*** is 2 years after the conviction or finding.

104 Qualifications for nomination

A person is not eligible to be nominated for election as an MLA unless, at the hour of nomination—

- (a) the person is eligible to be an MLA; or
- (b) for a person referred to in section 103 (2) (b)—the person would, apart from that paragraph, be eligible to be an MLA.