



Commissioner for Public Administration

**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 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.
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 62050296.

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;

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).

ATTACHMENT A

- (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.