

## Public Sector Commissioner's Circular

# Participation by public sector employees and officeholders in Federal and State elections and by-elections

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| <b>Next review date:</b>   | As required | <b>Supersedes:</b> | 2015-04 / 2016-03  |

This information is provided to assist public sector employees and officeholders who are nominating, or intend to nominate, as candidates for the Commonwealth Parliament, Western Australian Parliament, and those participating in elections in some other form.

## Standing for an election

### Pre-selection

A Western Australian public sector employee or officeholder who has been pre-selected to stand in an election is not required to resign or take leave when pre-selection is confirmed. However, it is particularly important that the employee and their employer manage perceived and actual conflicts of interest. Although not obliged to take leave before nominating as a candidate, the employee may wish to consider applying for leave in situations where it would avoid any real or perceived conflicts of interest or the employee's obligation to keep their election related conduct separate from their public sector role.

### Nomination

A public sector employee must resign from the Western Australian public sector before nominating as a candidate in a **Federal election**. This ensures their candidacy is valid under section 44(iv) of the Commonwealth Constitution.

A person who is not a public sector employee but otherwise holds an office of profit under the Crown—such as a member of a government board or committee—may also be at risk of being disqualified from nominating for election. Further details are on the [Australian Electoral Commission](#) website.

The principal rules around public sector employee or officeholders contesting **State elections** are in the electoral laws. In general, a public sector employee may nominate without resigning but must take leave of absence for the election period commencing on the first working day after nomination. The Electoral Regulations authorise a public sector employee to apply for and take leave, and for a public sector employer to grant leave in these circumstances.

In some situations, a public sector employee may be required to resign, in accordance with legislation, before nominating for election. This includes section 77 of the *Electoral Act 1907* and Schedule V of the *Constitution Acts Amendment Act 1899*.

It is recommended that candidates seek advice from the [Western Australian Electoral Commission](#) concerning their status and eligibility to nominate for—or be elected to—State Parliament.

It is also recommended that all public sector employees and office holders considering nomination as a candidate in either a **Federal or State election seek independent legal advice** regarding their rights and obligations. This information does not constitute or provide a substitute for such advice.

### Reappointment in the public sector

In situations where a candidate has resigned from the public sector but is subsequently not elected, sections 103 and 104 of the *Public Sector Management Act 1994* (PSM Act) provide for their re-appointment subject to certain criteria.

### General participation in election activities

Public sector employees are reminded of the obligations imposed on them by section 102 of the PSM Act. Employees are required to seek written permission from their employing authority before engaging in paid employment, for example as a polling official for the Australian Electoral Commission.

Public sector employees must not use work time or public resources (e.g. computers, telephones and vehicles) for party political work. Officers, and ministerial staff in particular, should be aware of the potential for perceived conflicts of interest to arise where they assist with election campaigns or party political processes. Measures should be taken to manage real or perceived conflicts of interest, which may include taking leave.

Obligations in this regard are primarily set out in the PSM Act (particularly section 9), [Commissioner's Instruction No. 7: Code of Ethics](#), and agency codes of conduct. Further guidance is available within the [Conflicts of Interest: Guidelines for the Western Australian Public Sector](#). These obligations extend to employees even where their participation may be voluntary and unpaid.

For **State elections**, public sector employees are reminded that the Caretaker Conventions issued by the Department of the Premier and Cabinet apply. These conventions include additional information on political participation by public sector employees.

SHARYN O'NEILL  
PUBLIC SECTOR COMMISSIONER

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| Other relevant Circulars: | N/A |
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