

1. Title: **Public sector employees contesting elections**

2. **Effective Date:** April 2008

3. Purpose:

This guideline provides information for employees of the Queensland public sector who wish to nominate as candidates for Federal, State or Local Government elections. The guideline notes current legislation, directives and policy governing issues about leave, resignation and code of conduct requirements. These apply generally to public service employees (exceptions are noted), but may not apply to all public sector employees. All public sector employees considering contesting an election should check with their employing authority about:

- the application of the legislation, directives and policy mentioned in the guideline to their own particular circumstances
- any other requirements relevant to their employing authority.

Intending candidates should also consider seeking legal advice about these matters.

4. Guidelines:

Federal elections

Are you required to resign to contest an election?

Yes, you must resign.

Because of the *Commonwealth of Australia Constitution Act*, section 44, you must resign from public employment (“an office of profit under the Crown”) before contesting an election for a seat in the Federal Parliament or risk your election being declared invalid by a Court of Disputed Returns (see High Court decision, *Sykes v Cleary and Others*, 1992).

When should you resign to contest a Federal election?

It is not clear at what point a public sector employee should resign to avoid a challenge. The latest acceptable date to resign would appear to be the date of formal nomination with the Australian Electoral Commission as a candidate (see High Court decision, *Sykes v Cleary and Others*, 1992).

It may be prudent to ensure resignation takes effect before nominating as a candidate. This matter is one for the employee not the employer.

Intending candidates for election to the Federal Parliament should seek legal advice about these matters.

Are you required to take leave to contest an election?

Not applicable (resignation required).

What provisions are available for campaign leave?

Not applicable (resignation required).

Are you required to resign if you are a successful candidate?

Not applicable (already resigned to campaign for election).

If you resign to contest an election, can you be reappointed to your paid State appointment if you are an unsuccessful candidate?

Yes. You may be reappointed under the *Crown Employees Act 1958*.

State elections

Are you required to resign to contest an election?

1. Subject to paragraph (2), a person holding a paid State appointment is not required to resign (see *Parliament of Queensland Act 2001*, section 65(2)).
2. However, certain statutory office holders and their deputies are obliged to resign (see *Parliament of Queensland Act 2001*, section 67).

Are you required to take leave to contest an election?

Yes. A person holding a paid State appointment must be absent on leave for the election period (see the *Parliament of Queensland Act 2001*, section 66(1)).

The election period is defined in the *Parliament of Queensland Act 2001*, section 66 (7).

What provisions are available for campaign leave?

Special Leave Directive No 8/06, part C category 1 provides for special leave for campaign purposes for State elections using accrued leave credits or without pay.

This part of the directive applies to public service officers only (see Directive 8/06 and the *Public Service Act 2008*, chapter 5, division 2).

When should you take campaign leave?

Intending candidates who hold a paid State appointment must take leave for the election period (see *Parliament of Queensland Act 2001*, section 66(1)).

The election period is defined in the *Parliament of Queensland Act 2001*, section 66 (7).

Are you required to resign if you are a successful candidate?

Yes. Your paid State appointment is taken to end on the day before the day of the poll at which you are elected (see *Parliament of Queensland Act 2001*, section 66 (4)).

If you resign to contest an election, can you be reappointed to your paid State appointment if you are an unsuccessful candidate?

Yes. You may be reappointed under the *Crown Employees Act 1958*.

Local Government elections

Are you required to resign to contest an election?

No, you are not required to resign.

Are you required to take leave to contest an election?

No. You are not required to take leave for the election period.

What provisions are available for campaign leave?

Special Leave Directive No 8/06, part C category 1 provides for special leave for campaign purposes for Local Government elections using accrued leave credits or without pay.

This part of the directive applies to public service officers only (see Directive 8/06 and the *Public Service Act 2008*, chapter 5, division 2).

When should you take campaign leave?

There are no legislative provisions governing the timing of campaign leave. However, your decisions about taking campaign leave and the timing of that leave should be informed by the ethics obligations for public officials set out in the *Public Sector Ethics Act 1994* and agency Codes of Conduct made under that Act (see *Public Sector Ethics Act 1994*, pt 3 and note 1 below).

Are you required to resign if you are a successful candidate?

Under section 226C of the *Local Government Act 1993*, if you are elected to a local government position in a relevant council, your full time paid State appointment is taken to end the day prior to the day of the poll at which you were elected. Relevant councils are prescribed under section 226B of the *Local Government Act 1993*. For councillors, a relevant local government council is:

- Brisbane City Council; and
- A local government that belongs to remuneration category 5 or higher, as decided by the Local Government Remuneration Tribunal under section 250AJ of the *Local Government Act 1993*.

For mayors, a relevant local government council is:

- The same categories as for councillors; and
- A local government that belongs to category 3 or 4, as decided by the Local Government Remuneration Tribunal under section 250AJ of the *Local Government Act 1993*.

If you are elected to a local government position in a council not described in section 226B of the *Local Government Act 1993*, your full time paid State appointment is not affected (i.e. your employment status will not change).

If your full time paid State appointment ends as a result of election, can you continue to work on a part time basis?

Under section 226C(3) of the *Local Government Act 1993*, if your full time paid State appointment is ended by election to a local government position in a relevant council, you may still be appointed to a part time role. This part time appointment may be to either your original position or another paid State role.

Any appointment to a part time paid State appointment is at the discretion of your chief executive officer, taking into account any relevant directives, policies and guidelines, including the requirements of the current directive relating to public service employees engaging in other employment and/or provisions in the *Public Sector Ethics Act 1994*.

In considering requests for part time paid State appointments, major issues for a chief executive officer will be to ensure that public sector employees do not place themselves or the public sector in a position that will invite criticism in relation to conflict of interest and other ethics obligations for public officials set out in the *Public Sector Ethics Act 1994* and agency Codes of Conduct made under that Act. Chief executive officers should also consider the operational requirements of the agency and whether paid time employment is desirable for the retention of specialist or technical skills.

What leave arrangements are available for public sector employees elected to local government office?

Public service employees who are elected to a local government position may be eligible for paid leave to attend local government meetings or business (see *Special Leave Directive No 8/06*, part C, category 2). This part of the directive applies to public service officers and employees only (see directive 8/06 and the *Public Service Act 2008*, chapter 4, part 1, division 3).

A chief executive may grant special leave without salary for any purpose and for any period determined by the chief executive (see *Special Leave Directive No 8/06*, part B). This part of the directive applies to public service officers only (see directive 8/06 and the *Public Service Act 2008*, chapter 4, part 1, division 3).

If you resign to contest an election, can you be reappointed to your paid State appointment if you are an unsuccessful candidate?

There is no legislation providing for reappointment after resignation to contest a local government election.

Notes

Public Sector Ethics Act 1994 and Codes of Conduct

The political rights of all Queensland citizens are protected by the *Anti-Discrimination Act 1991*. Protection against unlawful discrimination is clearly provided for public sector employees, but their conduct must conform to the professional obligations and standards outlined in the *Public Sector Ethics Act 1994* and agency Codes of Conduct made under that Act.

Party-political activity by employees may have the potential to cause concern about the professional integrity of individuals and the Queensland public sector. Agency Codes of Conduct generally set out professional ethics expectations, which require that public sector employees provide conscientious service to the elected government of the day, irrespective of the political allegiance of the officer. Employees are expected to exercise care in ensuring that particular political activities (such as holding office in a party, or being a member of a party committee) do not give rise to a conflict with official duties.

Generally, Codes recognise that public sector employees have the right to undertake party-political activity, provided it is clearly conducted in a private capacity, and that the employee does not allow a conflict of interest to arise.

Public sector employees who intend to stand for election should have regard to their agency's Code of Conduct. Some election leave is not currently covered by legislation or other policy instruments. In these discretionary cases, decisions by employees and their employing authorities should be informed by agency codes of conduct, especially in relation to a situation that may give rise to conflict of interest issues.

In considering whether a particular political activity involves a possible conflict of interest, the facts of each case must be considered, and an objective assessment must be made as to the extent of any specific conflict. In addition, the principles of work performance and personal conduct as provided for under the *Public Service Act 2008*, section 26 must be upheld.

A potential conflict of interest may be resolved satisfactorily by, for example, an appropriate rearrangement or reassignment of the employee's duties.

It is expected that intending election candidates will arrange their campaign activities, including campaign leave, so as to avoid any appearance that a candidate's campaign is in effect, being supported through the candidate's public service employment.