# Guidance

### ACT Public Servant Conduct during the 2019 Federal Government Election Period



## Purpose

This guide outlines the expected behaviour of ACT public sector officers, employees, members of the Senior Executive Service (SES), and members of government boards and committees (collectively referred to as ACT public servants) during a Federal election and its associated Caretaker period.

## How do ACT Public Servants maintain public confidence during election periods?

It is important that the ACT Public Service maintains the confidence of the Government, members of the Legislative Assembly and the wider community at all times. Actions of ACT public servants during a Federal election caretaker period could create the perception of a lack of impartiality or be taken to indicate official support.

To avoid this, it is important to be aware of your behavioural obligations as an ACT public servant.

[Division 2.1 of the *Public Sector Management Act 1994*](https://www.legislation.act.gov.au/View/a/1994-37/current/PDF/1994-37.PDF) (PSM Act) sets out the values, principles and conduct requirements that apply to an ACT public servant. The best practice principle requires an ACT Public Servant to work efficiently, collaboratively and in an accountable way and make fair and reasonable decisions. Expected conduct includes:

* taking all reasonable steps to avoid conflicts of interest;
* complying with laws and reasonable directions given by a person with the authority to do so;
* treating all people courteously and making all reasonable efforts to help members of the public understand their rights and meet their obligations under the law;
* doing your job with reasonable care, diligence, impartiality and honesty;
* behaving in a way that upholds the integrity and reputation of the service including not engaging in intimidating behaviour or applying improper influence, favouritism or patronage;
* not using your job, information you gain in the course of doing your job or territory resources inappropriately; and
* not disclosing any confidential information or making a comment that might reasonably be taken as official comment without the correct authority to do so.

In addition, the ACT Public Service Code of Conduct (2012) specifically requires that you are aware of any perceived or real conflicts of interest including in relation to party-political activities.

## How can ACT public servants exercise their rights to political expression and participation during federal election periods?

As members of the community, ACT public servants have the right to political expression and participation. In your role as an ACT public servant, you must maintain a standpoint of neutrality and political impartiality.

To get this balance right, you must be alert to whether any political activity that you engage in will adversely impact your ability to perform your official duties, give rise to a real or perceived conflict of interest or breach any other conduct requirements of the PSM Act.

For example, the types of political activities that ACT public servants may choose to do in their own time are:

* participating in political campaigns or canvassing including doorknocking, letterboxing, phone polling and other volunteer campaign activities;
* engaging in political debate and making comment in a private capacity including on social media platforms; and
* participating in rallies and events.

In undertaking these types of activities, you must avoid creating the impression that you are acting in your role as an ACT public servant. Accordingly, you should not engage in a political activity while:

* identifying yourself as a an ACT public servant, including by placing that information on social media profiles;
* wearing any kind of work uniform/lanyard;
* giving the impression that you are speaking on behalf of the government and/or the Directorate for which you work.

Under section 9 of the *Public Sector Management Act 1994*, a public employee must not disclose information obtained during the course of their duties unless they:

* do so in the course of duties and have the proper authority to do so;
* are required to do so by law; or
* are giving evidence in court.

Unlawful disclosure of official information may constitute a breach of the PSM Act, and may amount to a criminal offence under the *Crimes Act* *1900*.

## What is expected workplace conduct during the Federal election period?

Expectations of workplace conduct during Federal election periods are the same as at other times.

Where your duties involve public contact, ACT public servants should take care to avoid creating the impression of official endorsement of a political stance or party, such as by displaying party political material or badges.

ACT public servants must not participate in political activities during working hours unless they are on approved leave.

## Can ACT public servants use work resources for election activities?

Section 9 of the PSM Act, prohibits ACT public servants from improperly using a Territory resource. In practice, this means that you must not use work resources to pursue your own private interests, including election related activities.

For example, it is not appropriate to use a work photocopier, Territory vehicle, work telephones, meeting rooms, email accounts, mailing lists or uniforms for political activities.

## Use of Official Premises, Facilities and Equipment

ACT Government premises such as schools, hospitals and bus depots may be used as the backdrop for political advertising or policy material by local and federal government and non-government parties (e.g. photography or filming) provided that no official resources are utilised, the operations of the site are not unreasonably impacted and it is undertaken on a case by case basis. It is important that the impartiality of ACT public servants is not compromised through their appearance in party political material of this sort.  With this in mind it may be more appropriate for actors to be used in place of officials.

The appropriate channel for consideration of requests by political parties to use ACT Government premises will vary across directorates, and your Communications team will facilitate the necessary approvals if a request for an event is made.  The Communications team will ensure your directorate's protocols are met. In the event that a request is received, please make contact with your Communications team.

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.

## Standing for election: Can an ACT public servant contest a Federal government election?

Any ACTPS employee who is standing for a seat in the House of Representatives or the Senate should follow the procedures set out below.

Please note that the procedures outlined below are intended to be a guide, and that candidates should seek their own independent advice in relation to candidature and point of any resignation from the ACTPS.

In addition, the Australian Electoral Commission provides a [Candidate’s Handbook](https://www.aec.gov.au/elections/candidates/candidates-handbook/index.htm) which contains essential information for candidates standing for election for the Senate and the House of Representatives.

## Leave Without Pay to Campaign for Election

Under ACT Public Sector Enterprise Agreements (F25.2 of the Administrative and Related Classifications Enterprise Agreement), an ACTPS employee may be granted leave to enable the employee to campaign for election.

To access this form of leave, the employee must be “standing for election to the ACT Legislative Assembly, Commonwealth or State House of Parliament or other legislative or advisory body”.

The leave can be granted for a maximum period of three months and is to be taken without pay. Periods of leave to campaign for election will not count as service for the calculation of other entitlements including recognition of prior service.

ACT public servants wishing to access leave without pay to campaign for their election to the Commonwealth Parliament must do so prior to their nomination as a candidate because they will need to resign in order to be eligible to nominate. Leave entitlements, including LWOP under the campaign for election provision, are no longer accessible upon an employee’s resignation. All accrued and unpaid eligible entitlements will be paid out at the next available pay day following resignation.

Candidates for Federal Elections may not lodge nominations until after the writ for the election has been issued. The date fixed for the close of nominations must be at least 10 days, but not more than 27 days after the issue of the writ.

## Do ACT public servants need to resign from the ACTPS if they wish to contest a Federal Election?

Yes. Under Section 44 of the Australian Constitution, a person cannot nominate for the Senate or the House of Representatives if they are a public servant. This means that an ACT public servant must first resign before nominating as a candidate in the Federal election.

If you are unsure as to whether you are an ACT public servant, you should seek independent legal advice to clarify your status.

## What Do ACT Public Servants need to know before resigning?

ACT public servants should be aware that resigning will result in a termination of their employment and employment relationship with the ACT Public Service. This means that in your final payment you will receive entitlements such as base pay; unused annual leave; long service leave entitlements where applicable; and leave loading. If you do not want your leave entitlements paid out at the time of your resignation, please discuss this with your HR team who will liaise with the Workforce Capability and Governance Division within the Chief Minister, Treasury and Economic Development Directorate.

## Re-appointment of unsuccessful election candidates

Sections 131, 136 and 139 of the PSM Act allow a former SES member, officer or employee who is an unsuccessful election candidate to apply to the Head of Service to be re-employed, re-appointed or re-engaged. Such requests must be made within 2 months after the declaration of the result of the election.

Division 7.2 of the *Public Sector Management Standards* 2016 outlines eligible employment for the purposes of calculating entitlements. Previous employment can be recognised for Long Service Leave (LSL) purposes provided any break in employment between ceasing duty with the ACT Public Service (or other eligible employment) and recommencing duty is *no more than twelve months*.

Previous employment can be recognised for Personal Leave purposes provided any break in employment between ceasing duty with the ACT Public Service (or other eligible employment) and recommencing duty is *no more than two months*.

ACT public servants considering standing as a candidate in a federal election should seek independent legal advice *before they resign* on how to re-join the ACT Public Service in the event that their candidature is unsuccessful.

## Other legislative requirements

The Australian Electoral Commission provides [guidance](https://www.aec.gov.au/elections/candidates/overview.htm) on the qualification and eligibility requirements under Section 44 of the Australian Constitution for candidates for the Senate or the House of Representatives.

ACT public servants are encouraged to obtain independent legal advice if they are in any doubt whether the provisions of the above Acts apply to them.

## Further information

For further information, please contact Public Sector Management Group, on [PSM@act.gov.au](mailto:PSM@act.gov.au)