

# Public sector employees and elections

Guidelines for public sector employees conduct during election periods

Procedures for public sector employees contesting federal, state, territory or local government elections; and Post-election processes

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Acronyms	Full form
PSEMA	<i>Public Sector Employment and Management Act 1993</i>
CEO	Chief Executive Officer
CSS	Commonwealth Superannuation Scheme
NTGPASS	Northern Territory Government and Public Authorities Superannuation Scheme
NTPS	Northern Territory Public Sector

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## 1. Foreword

The objects of the PSEMA are to:

- provide for an apolitical public sector that is efficient and effective in serving the government, the Legislative Assembly and the people of the Northern Territory
- provide for the administration of the public sector and the employment and management of employees
- provide for the obligations and rights of employees
- promote fairness and equality of employment opportunity in the public sector.

To achieve this the PSEMA sets our principles of administration and management; human resource management; and performance and personal conduct of individuals in the public sector. In addition to these principles, there is a Code of Conduct that must be followed by all employees and officers in the public sector.

The principles and Code of Conduct must be applied at all times, but especially at election time, be it federal, state, territory, or local government. It is imperative that the apolitical, professional and efficient nature of the public sector be maintained.

These guidelines set out procedures for public sector employees wishing to offer themselves as candidates for political office and for the public sector after an election.

CEOs should ensure all employees are fully aware of these guidelines, the principles and the Code of Conduct and that any employee wishing to seek political office is provided with a copy of these guidelines.

VICKI TELFER

Commissioner for Public Employment

November 2019

## 2. Introduction

Public sector employees form a significant proportion of the Northern Territory community and therefore have an important role to play in the Northern Territory's good governance. This may occur as a public sector employee in support of the government of the day, or as an elected representative to one of the three levels of government.

The critical issue, and the purpose of these guidelines, is to ensure that the two roles are not combined or confused.

The General Principles (Part 1A) of the [PSEMA](#) together with the [Code of Conduct](#) (Employment Instruction Number 12) set out the framework that governs the conduct of public sector employees and their contact with politicians and members of the public. These documents are available on the Office of the Commissioner for Public Employment's website at <https://www.ocpe.nt.gov.au/>.

For ease of reference, these guidelines have been divided into three parts:

- Part 1 – public sector employee conduct during election periods

- Part 2 – public sector employees who wish to contest federal, state, territory, or local government elections
- Part 3 – post-election processes, including new administrative arrangements

## **3. Part 1: public sector employee conduct during election periods**

### **3.1. Introduction**

These guidelines set out the way public sector employees should conduct themselves during election periods. They can be used by both employees who are either participating in the electoral process or putting themselves forward as candidate, and by their managers. Part 2 of these guidelines will set out the specific requirements for candidates in elections.

### **3.2. Employee conduct**

Every employee has a responsibility to their employer to carry out their duties to the best of their ability. Whilst this is true of any workplace, the commitment and accountability has greater emphasis for public sector employees who are under constant public scrutiny. The fundamental foundation of the public sector is that its employees are politically neutral and have the integrity to provide advice and service to the government of the day without fear or favour.

As indicated in the introduction, the general principles (Part 1A) of PSEMA, together with the Code of Conduct, provides the framework for contact between public sector employees, politicians, and members of the public.

PSEMA and the Code of Conduct set out a range of matters concerned with public sector employees' obligations to the government of the day and their official duties. In broad terms, the first priority of employees is to carry out government policy. In doing so, they are expected to act in a manner that withstands the closest public scrutiny.

To assist employees in their official duties, relevant aspects of PSEMA and the Code of Conduct are discussed in the following information.

### **3.3. Obligations to the government of the day**

PSEMA sets out the functions of public sector agency CEOs. Under PSEMA, CEOs are subject to the direction of the portfolio minister and are responsible to that minister for his or her performance of their functions. In turn, CEOs direct employees of and contractors in their agency in the duties they perform to enable the agency to achieve its stated outcomes. In carrying out their duties, employees are required under PSEMA to observe certain principles of conduct. Public sector employees are therefore obliged to serve their ministers, within the law, with skill, impartiality, professionalism and integrity.

### **3.4. Political neutrality**

Public sector employees are required to serve the government of the day. They must act to ensure not only that their agency maintains the confidence of its minister or ministers, but also to ensure that it is able to establish the same professional and impartial relationship should there be a change in

minister/government. This convention of political neutrality is designed to ensure the public sector provides strong support for good government of the Northern Territory, regardless of the political party in power.

Public sector employees are responsible for providing advice to the government that is frank, independent, and based on an accurate representation of the facts that is as comprehensive as possible. This includes setting out the advantages, disadvantages, costs, and consequences of all available options and, where appropriate, recommending a particular course of action.

However, final decisions on policy are the prerogative of ministers. Public sector employees should not withhold relevant information, nor seek to obstruct or delay a decision, nor attempt to undermine, nor improperly influence government policy (for example, by the unauthorised release of official information).

If an employee finds themselves in a situation where their conscience constrains them from carrying out a lawful instruction, they should discuss their circumstances and options with their manager or CEO. They must not do anything to circumvent or undermine the government's policies.

### **3.5. Public comment on government policy**

Within agencies, the CEO may authorise certain employees to respond to requests from the media or members of the public about aspects of government policy, or its implementation or administration by the agency. Official comment on behalf of the agency should be made only by those employees authorised to do so.

### **3.6. Contact with minister and ministerial staff**

Contact between the minister and ministerial staff is normally with the CEO. Where a minister or ministerial staff member contacts an employee directly, the employee must advise their CEO of the contact as soon as possible. It should be noted that each agency has established procedures regarding contact with the minister and the minister's staff, therefore in such situations employees should refer to their agency's secretariat for advice.

### **3.7. Contact with other politicians, persons standing for political office and their staff**

Where a public sector employee is contacted by a politician other than their own portfolio minister, for example, another minister, the Leader of the Opposition, a member of the opposition or a member of another government, a person standing for political office (including a pre-selected candidate or a self-nominated independent candidate), or a member of staff of any elected member or person standing for election, the employee should refer the person making the contact to the minister with portfolio responsibility. In the absence of the minister, the person should be referred to the employee's CEO.

### **3.8. Individual comment**

Generally, no matter what jurisdiction or level of election, public sector employees have the same rights of free speech and independence in the conduct of their private affairs as every other member of the public.

However, they also have a duty not to compromise their employer or their minister by public criticism of, or comment on, government policy.

Clause 13 of the Code of Conduct sets out the meaning of 'public comment' and the responsibilities of public sector employees. In brief, employees should ensure that their contribution to any public debate or discussion is appropriate to the position they hold, and is compatible with the essential need to maintain a politically neutral public sector. This is particularly important for those in senior positions or who are members of a profession that has significant public influence.

As a general guide, comments made by a public sector employee would be regarded as unacceptable if they:

- revealed advice given to the minister
- used or revealed any information gained in the course of official duties where this was not already known by, or readily available to, the general public
- criticised, or offered alternatives to, a proposed or actual ministerial policy or agency program, or that of any other minister or agency with which the employee was professionally involved
- purported to express or imply an agency or official view, rather than clearly expressing a personal view only
- gave openly partisan support or criticism of a political party
- constituted a personal attack on a minister, an elected member, agency colleagues, or other public sector employees

or

- resorted to criticism that was sufficiently strong and/or persistent so as to call into question the employee's ability to impartially implement, administer or advise upon a government policy.

Employees should be aware that to disregard or act in a manner inconsistent with the principles set out in PSEMA and the Code of Conduct constitutes a breach of discipline.

The use of personal social media accounts to make unacceptable individual comments may constitute a breach of discipline if the user is identifiable as a public service employee.

If an employee is in any doubt of the proper course of action or whether to make public comment, the matter should be discussed with a more senior officer, the CEO, or the Commissioner for Public Employment, as appropriate.

### **3.9. Political participation**

Public sector employees must ensure that their participation in political matters, e.g. electioneering on behalf of a political candidate, does not bring them into conflict with their duty as public sector employees to act in a politically neutral manner. This includes the receipt and distribution of political material and/or posting of electioneering material on workplace noticeboards or Northern Territory Government emails and messaging systems.

### **3.10. Use of official information**

In the course of their employment and official duties, public sector employees have access to government information and documents. At all times, but especially in the lead up to an election, public sector employees must not disclose information or documents acquired in the course of their employment. The

only exceptions to this are when there is a legal requirement to disclose the information or documents; or the public sector employee has proper authority to make these disclosures.

In practical terms, public sector employees who are either pre-selected candidates; independent candidates; official candidates; or political volunteers in an election must not disclose official information that is not generally available in the public domain.

### 3.11. Conflicts of interest

At all times, but especially in the lead up to an election, public sector employees must follow the conflict of interest provisions of the Code of Conduct (s 16 applies). This means that public sector employees must disclose those interests, in writing to their CEOs. This provision applies whether the conflict of interest is real or perceived.

Personal conflicts of interest can include:

- outside employment (such as being elected as a mayor)
- office in a political party; election to local government; pre-selection as a candidate; or selfnomination as an independent candidate for election
- being a political volunteer or
- being an immediate family member of a pre-selected or self-nominated candidate for political office.

CEOs are the ultimate decision-makers in relation to any real or apparent conflicts of interest. They must decide whether:

- the public sector employee can continue his or her duties in the area
- the public sector employee should be requested to divest himself or herself of the conflicting interest

or

- a re-arrangement of duties amongst staff, or a transfer to perform duties that involve no such real or perceived conflict, should be organised.

### 3.12. Caretaker periods

Section 18.4 of the Code of Conduct provides that employees should acquaint themselves with the convention regarding “caretaker periods”, that is, the period which commences immediately after an election is called and extends up to the point at which a new government is sworn in. In particular, following the dissolution of parliament, the government assumes a “caretaker” role and avoids taking major policy decisions, making appointments of significance, or entering into major undertakings or contracts. This may impact on some employees’ duties during the caretaker period for a Northern Territory or other jurisdiction election. For example, ministerial correspondence between affected jurisdictions may need to be held in abeyance and policy-making processes, particularly those involving ministers, are likely to be suspended during this period.

Further information on Caretaker Conventions or the [Northern Territory Election Timetable](#) can be found at the linked websites.

### 3.13. Reporting anti-democratic conduct to the ICAC

All public sector employees, have a mandatory obligation to report improper conduct, including antidemocratic conduct, to the Independent Commissioner Against Corruption (ICAC).

Anti-democratic conduct includes offences against the Electoral Act 2004 or Chapter 8 of the Local Government Act 2008, and is conduct that affects, or is part of a course of conduct aimed at affecting:

- the behaviour of the community or multiple members of the community in relation to voting in elections
- the reputation, power or influence, or resources of a political party or a candidate for election
- the ability of the public to ascertain the resources and associated entities of a political party or the resources of a candidate for an election

or

- the Electoral Commissioner's ability to detect and investigate contraventions of the Electoral Act 2004 or Chapter 8 of the Local Government Act 2008 and generally to ensure compliance with those Acts.

Public sector employees can report improper conduct to the ICAC via <http://www.icac.nt.gov.au> or via phone on 1800 250 918, email, post or in-person. For further information, including contact details, visit the ICAC website.

The ICAC may, at any time, refer a matter that may involve anti-democratic conduct to the Electoral Commissioner.

## 4. Part 2: public sector employees who wish to contest federal, state, territory, or local government elections

### 4.1. Introduction

A public sector employee who wishes to stand for office in a federal, state, territory, or local government election must follow the procedures set out in the information below. Failure to do so may constitute a breach of PSEMA or the Code of Conduct, which could form a breach of discipline, the most serious consequence of which is termination of employment.

## 4.2. Pre-selection as a candidate for a political party or announcement of an intention to run as an independent

Political parties will often pre-select their candidates for an election many months ahead of the actual election. This enables them to ensure that their candidates gain sufficient exposure and public profiles to give them a good chance of being elected. Similarly, people may choose to put their names forward as independent candidates and start to campaign.

Campaigning can include activities such as door-knocking; attending school council meetings and other community activities; or commenting on public policy.

Before undertaking any of these activities, public sector employees who intend to stand for political office should follow the Code of Conduct provisions in relation to individual comment, political participation, use of official information or documents and conflicts of interest.

As either a pre-selected candidate or a self-nominated independent candidate in the lead up to an election and before writs for the election have been issued, public sector employees are not required to resign from the NTPS.

The legislative requirement to resign from office is outlined below, but it only applies once the writs for either a federal or Northern Territory election have been issued.

Public sector employees who are either pre-selected candidates or self-nominated independent candidates who are seeking information from NTPS agencies should make it clear that they are requesting this information in relation to their capacity as such. They should address all requests for information to the relevant minister, not the NTPS agencies.

## 4.3. Legislative requirements for federal or Northern Territory elections

Section 44 (iv) of the Commonwealth of Australia Constitution Act 1900 states:

- A person who holds any office of profit under the Crown...shall be incapable of being chosen or of sitting as a Senator or a Member of the House of Representatives.”
- Similarly, section 21 of the Northern Territory (Self-Government) Act 1978 states:
- A person is not qualified to be a candidate for election as a member of the Legislative Assembly if, at the date of nomination he or she:
  - holds an office or appointment ... under a law of the Commonwealth state or territory; or
  - is employed by the Commonwealth, by a state or territory or a body corporate established for a public purpose by such a law; and he is entitled to any remuneration or allowance in respect of that office, appointment or employment.

Public sector employees who wish to stand for election should read [Employment Instruction Number 12 - Code of Conduct](#), and in particular section 18 dealing with ‘political participation’.

Section 38 of PSEMA specifies conditions which apply to former employees who wish to be re-appointed to the public sector if they are not elected. To take full advantage of the special provisions for reappointment to the public sector in the event of failing to be elected, the resignation must not be effective earlier than one month before the date on which nominations for the election closed.

Employees of the public sector are advised to obtain independent legal advice if they are in any doubt whether the provisions of these Acts apply to them.

#### 4.4. Resignation from the public sector

The election process is set out under the Electoral Act 2004 which states that a writ for the election will be issued by the Administrator. Candidates must lodge their nomination before 12 noon on 'nomination day' which is four days after the writ is issued. Political parties may have preselected candidates who are public sector employees before nomination day.

Before nominating as a candidate for a Federal or Territory election, an employee must first resign in writing from the NT public sector under Section 37 of PSEMA. The Public Sector Employment and Management Regulations state that at least 14 days' notice of resignation must be given. However, a CEO may accept a resignation in which a shorter period of notice is given.

Fixed period employees, including executive contract officers, employed on a contract of employment are also required to resign and should consider the provisions of their contract regarding resignation.

Leave of absence (e.g. recreation leave, long service leave, and leave without pay) is not available to employees to enable them to campaign for an election after the employee has nominated as a candidate.

#### 4.5. Re-appointment of unsuccessful election candidates

The authority to re-employ a person who has resigned to become a candidate at an election is provided in section 38 of PSEMA.

Provided that the conditions of resignation outlined above have been satisfied, an election candidate who has been unsuccessful can apply to be re-appointed to the public sector on the following conditions:

A person who is a former employee shall not be re-employed or re-appointed until after the official declaration of the result of the election within the electorate, which he or she has unsuccessfully contested.

- When the result of the election has been declared, if the unsuccessful candidate wishes to be reappointed to the public sector, he or she must apply to the CEO for re-appointment within a period of two months after the declaration of the results of the election.
- Upon receipt of an application for re-appointment by the former employee, re-appointment shall proceed unless there are proceedings pending against the person in respect of an offence against a law of the Commonwealth, a state or territory, or law of a foreign country which would constitute an offence if committed in the Northern Territory. Where this occurs, it will be necessary to await the outcome of the proceedings. The CEO, under sub-section 38(2) of PSEMA, will then consider the matter.
- Having verified that the application for re-appointment satisfies the general provisions, the CEO can proceed to re-appoint the person under section 38 of PSEMA. The re-appointment will be confirmed by letter to the employee. Generally, employees on contracts of employment prior to resignation will be required to enter into a new contract restricted to the remaining period of the original contract.

It should be noted that where a candidate successfully gains election and at a later time fails to be reelected, then that person has no entitlement under these special provisions to be re-appointed to the NT public sector.

## 4.6. Conditions of re-appointment

The conditions for re-appointment under section 38 of PSEMA include:

- A person seeking to be re-appointed has no entitlement to be re-appointed to the same position held immediately prior to resignation. Re-appointment will be at a salary equivalent, or as near as possible equivalent, to the salary that the person had immediately before the date on which his or her resignation took effect.
- The person will not be required to undergo any medical examination.
- Re-appointment is not subject to the person possessing the appropriate education qualifications or other appropriate requirements.
- Re-appointment will be without probation unless the person was still subject to the probationary process prior to resignation, in which case the probationary process must continue.

## 4.7. Entitlements on re-appointment

A person re-appointed under section 38 of PSEMA is deemed to have been on leave without pay for the period. This period means from the day of resignation up to and including the day immediately preceding the re-appointment date. The leave without pay counts as service for all purposes except accrual of recreation and personal leave. The effect on conditions of employment is detailed in the following paragraphs.

## 4.8. Personal leave

The employee receives a personal leave entitlement equivalent to that held immediately prior to the date of resignation. The period of leave without pay does not count towards the accrual of personal leave entitlements.

## 4.9. Long service leave

On resignation, any outstanding entitlements to long service leave become payable by the agency. Where payment in lieu of long service leave is made, it is not possible for a person to repay the amount at a later time in order to regain a long service leave credit.

However, a person may retain a credit of long service leave on resignation. The employee must request the CEO not to authorise payment in lieu to him/her with respect to any long service leave entitlements held at the time of resignation. The request must be in writing, addressed to the CEO and must be made before the employee's resignation takes effect. The period of leave without pay counts as service for the accrual of long service leave.

## 4.10. Recreation leave

On resignation, any outstanding entitlement to recreation leave is paid out by the agency. On reappointment the employee may elect to repay this amount and receive in its stead a recreation leave

credit equivalent to that held immediately prior to resignation. The period of leave without pay does not count towards the accrual of recreation leave.

## 4.11. Airfares

Cashing up of accrued airfares is permitted prior to resignation only. Under no circumstances may unused airfares be cashed up after the date of resignation. Repayment of the cashed up fare on re-appointment is not permitted. The period of leave without pay counts as service for the accrual of airfares.

## 4.12. Superannuation

Special provisions apply to candidates for elections. These are contained in Part VIII of the Superannuation Act 1976 (Commonwealth Superannuation Scheme - CSS), and Rule 5 of the Northern Territory Government and Public Authorities Superannuation Scheme (NTGPASS) Rules. Other superannuation arrangements that could be affected include various accumulation funds, the Northern Territory Police Supplementary Benefits Scheme (NTPSBS) and the Northern Territory Supplementary Superannuation Scheme (NTSSS). As the subject is complex, employees should discuss options with the Commonwealth Superannuation Corporation (for CSS members) or the NT Superannuation Office (for NTGPASS, NTPSBS and NTSSS members).

An overview of the principal scheme arrangements follows.

## 4.13. For CSS members

On resignation, benefits due under the scheme become payable. Where an unsuccessful candidate is subsequently re-appointed under section 38 of the Act, any benefits paid out would be recoverable by the Commonwealth Superannuation Corporation. In effect, any amounts paid out would need to be re-paid to the CSS.

As an alternative, employees covered by the CSS may decide to preserve their superannuation rights by completing form S2(a) (available from Personnel Officers). Under this option no action would be taken regarding superannuation benefits, pending the outcome of the election.

For an unsuccessful candidate re-appointed under section 38 of the Act, the period of leave without pay counts as service for CSS purposes and thus employee contributions become payable for the period.

## 4.14. For NTGPASS members

The member will need to apply in writing to the Commissioner of Superannuation in order to be considered to be on an approved period of leave without pay for the period between the date of termination (which must not be more than one month before the date on which nominations for the election closed) and the date 2 months after the declaration of the election results, unless the member resumes employment or elects to cease to be a member. The member is not required to contribute to NTGPASS while on the period of approved leave without pay.

## 4.15. For Accumulation Fund members

Employees who joined the public sector after 9 August 1999 should notify their superannuation provider of their intentions. Employer Contributions cease on the date the resignation becomes effective. Where an

unsuccessful candidate is re-appointed under section 38 of the Act, Employer Contributions will recommence from the date of re-appointment.

## 4.16. Local government elections

There are no legislative requirements in relation to employment for public sector employees wishing to nominate as candidates in local government elections.

Consequently, an employee who wishes to contest a local government election is entitled to apply for recreation leave in accordance with normal provisions.

If employees are elected, they must:

- Obtain their CEO's written permission to engage in outside employment (which includes employment, work, or service for which payment is made by way of pay, salary, honorarium, commission, fee, allowance or other reward).
- Ensure that their local government duties do not interfere with their primary responsibilities as public sector employees.
- Comply with the provisions contained in PSEMA and the Code of Conduct, particularly the requirement for employees to disclose in writing to the CEO any potential for a conflict of interest to occur between personal interest, including local government office, and official duty. If employees become aware of a conflict of interest, it may be necessary to withdraw from the political arena or resign from the NT Public Sector.

It is important to note that where an employee resigns to contest a local government election, the conditions of re-appointment pertaining to federal, state, or territory elections do not apply.

## 5. Part 3: post-election processes, including new administrative arrangements

### 5.1. Introduction

So far, these guidelines have outlined matters that public sector employees need to remember in the lead up to an election. However, there are processes that can start once the results of an election are known and a new government is sworn in. Some public sector employees may find themselves seconded to a ministerial office or former ministerial staffers may find themselves returning to the public sector. At other times, there may be changes to the structure and number of government departments. Some of these are set out below.

### 5.2. Public sector employees seconded to a ministerial office

All ministerial Officers (ministerial Advisers, Personal Assistants, ministerial Assistants, senior ministerial Advisers, and Communication Advisers) are employed under the Contracts Act 1978 and are funded by the appropriate minister's Office. However, Departmental Liaison Officers remain employees of their agency and are not employed under the Contracts Act.

Although ministerial officers are not legally bound by the PSMEA, in the interests of appropriate standards of conduct they are expected to familiarise themselves with the Act and in particular with Part 1A, which

sets out the Public Sector Principles and Employment Instruction 12 (Code of Conduct) made under that Act.

Public sector employees who took leave without pay to work in the office of a minister may find that their work in the ministerial office comes to an end as a consequence of their minister losing office. Unlike candidates for election in either the Legislative Assembly or the Commonwealth parliament, these employees can return to their former agencies, if their party loses office. If their party wins the election, they must make a fresh application for leave without pay for the next term of the Legislative Assembly

When a public sector employee applies for leave without pay to work in a ministerial office, the contract has an expiry date of the next election.

Ministerial staff who are not public sector employees have no right of return to the public sector. They would need to apply for jobs and win them on merit.

### 5.3. New administrative arrangements order

In the event that there are changes to the current list of agencies (amalgamation and/or realignment of agencies), this will be enacted through a new Administrative Arrangements Order. The current Administrative Arrangements Order can be found on the NT Legislation Database.

### 5.4. Management of changes arising from new administrative arrangements

There is a requirement under the Fair Work Act 2009 that employees must be consulted for any major changes. Major change includes the following:

- where the changes may result in the termination of employment of employees
- major change to the composition, operation or size of the CEO's workforce or to the skills required of employees
- the elimination or diminution of job opportunities (including opportunities for promotion or tenure)
- the alteration of hours of work
- the need to retrain employees
- the need to relocate employees to another workplace or
- the restructuring of jobs.

Each public sector enterprise agreement provides details on the process to be undertaken, and the principles to be observed, during a period of substantial organisational change. All [Enterprise Agreements](#) can be found on the OCPE website.

Depending on the extent of changes outlined in the Administrative Arrangements Orders there may or may not be a requirement to undertake consultation. Where consultation is required, CEOs will adopt fair and orderly processes in line with the enterprise agreement which are consistent with the following principles:

- Employees and the relevant union(s) are to be consulted about the process.

- Any work reorganisation and job redesign will, where appropriate, be undertaken taking into account the views of employees within the affected work unit.
- Any newly created or redesigned jobs will, where necessary, be promptly evaluated through the Job

Evaluation System or other relevant classification review system.

The procedures for filling of vacancies as a result of substantial change can be found in [Employment Instruction Number 1](#).

## 6. Further information

Any queries arising out of or in relation to this guide should be referred to the Employee Relations Division of the Office of the Commissioner for Public Employment, to 8999 4282 or to [enquiries.ocpe@nt.gov.au](mailto:enquiries.ocpe@nt.gov.au)