

Victorian Public Sector Employees Standing for Election FAQs



Victorian
Public Sector
Commission

We're reviewing this material and will update it soon for the 2022 federal and state elections.

This document answers some frequently asked questions Victorian public sector employees (and their managers) may have about standing for pre-selection or election in local government, Victorian state or federal elections. This document should be read in conjunction with the *Code of Conduct for Victorian Public Sector Employees* (the Code of Conduct) and the Victorian Public Sector Commission's (VPSC's) *Guidance During Election Periods*.

Can Victorian public sector employees stand for election?

Employees have a right to stand for election under the *Charter of Human Rights and Responsibilities Act 2006* (Vic). They must balance this right with their obligations under the Code of Conduct, *Public Administration Act 2004* and the *Constitution Act 1975* (Vic).

Are there different requirements for local government, state and federal elections?

Local government, state and federal elections are run in different ways but employees' obligations while standing for election under the Code of Conduct remain the same.

Some common election conventions, such as the timing and duration of pre-selection processes, caretaker periods or campaign length, will differ depending on the type of election. It is a candidate's responsibility to inform themselves of the timing, administrative requirements and any other issues concerning the election in which they run.

Do Victorian public sector employees have to resign if they stand for election?

Federal, state and local government elections all have different requirements for candidates and it is each candidate's responsibility to make sure they are aware of

and comply with all requirements.

- **State and local government elections**

There is no requirement for Victorian public sector employees standing in state or local government elections to resign.

- **Federal elections**

Section 44 of the Australian Constitution prevents anyone 'holding an office of profit under the Crown', including Victorian public sector employees, from standing for election in a federal election^[1]. A Victorian Public Service employee who resigns to stand in a federal election has the right to seek reinstatement through the Governor in Council, under schedule 1, item 3 of the Public Administration Act 2004. Public sector employees employed under other Acts should check their employment conditions to determine whether they have a right to seek reinstatement.

What obligations do Victorian public sector employees have under the Code of Conduct?

The Code of Conduct applies to all employees, including some contractors and consultants^[2], who are candidates.

Examples of employee obligations under the Code of Conduct include an obligation to:

- maintain the public's trust by avoiding conduct in their public duties and private life that may adversely affect their standing as a public official or that may bring their employer or the public sector into disrepute (clause 3.9);
- in the course of their work, remain apolitical and avoid participating in activities that support a political party or independent candidate (clause 2.2);
- manage any conflict of interest that cannot be avoided in accordance with their employer's policies and procedures (clause 3.7);
- use official information only for its official purpose and in an approved manner (clause 3.4);
- only make a comment in their private or personal capacity providing that:
 - it does not relate to any government activity that they are involved in or connected with as a public sector employee;
 - it is clear that the opinions are their own;
 - their personal comments do not compromise their ability to perform their public sector role in an unbiased

manner (clause 3.5);

- only use work resources (including physical, financial, technological and intellectual property and equipment) for appropriate purposes as authorised by their employer (clause 5.3);
- report any workplace behavior that violates any law, rule or regulation or represents corrupt conduct or mismanagement of public resources, or is a danger to public health, safety or the environment, to their manager or to Human Resources (clause 3.6); and
- ensure that all other paid or volunteer employment activities do not conflict with their public sector role and obtain approval to engage in any other paid employment (clause 3.8).

What arrangements can be put in place to accommodate a Victorian public sector employee who is standing for election?

Employees must:

- disclose their candidacy to their manager to minimise any situations that could lead to a breach of the Code of Conduct; and
- discuss with their manager how their candidacy relates to their public sector duties and whether the employee's involvement in campaigning will impact on their ability to perform their duties as a public sector employee.

Following discussion, suitable arrangements should be put in place to ensure that the obligations of employees are properly satisfied.

Any arrangements should take into account all relevant factors, including:

- the nature of the employee's role in the public sector;
- the employee's access to confidential/sensitive information; and
- the timing of the employee's election campaign, and the time commitment required.

Examples of suitable arrangements could include:

- annual or long service leave on half or full pay;
- unpaid leave;



- modification to duties; and/or
- temporary transfer or secondment to another role.

The arrangement should be confirmed in writing by the employee's manager and provided to Human Resources.

The Code of Conduct will continue to apply to all employees, including during the campaign period, and irrespective of whether they are on leave during this period.

How can Victorian public sector employees comply with the Code of Conduct while standing for election?

Employees must, at all times, behave in an apolitical manner in relation to their official duties. Employees who are candidates must take special care to meet their obligations under the Code of Conduct. Amongst other things, employees who are candidates must ensure that:

- they do not campaign at work, for example by putting up posters, leaving flyers in breakout areas, sending out emails or having a meet and greet at their employer's office or while on duty;
- they do not use government resources or equipment (including IT or phone systems) in any way to further their candidacy;
- they do not ask colleagues to assist them with their campaign while acting in any official capacity;
- they do not publicly support or criticise the policies of any political party or candidates while at work or acting in any official capacity; and
- they do not campaign while wearing an official uniform.

What happens if a Victorian public sector employee breaches their obligations under the Code of Conduct?

Failure to comply with the employee's obligations, including any breach of the Code of Conduct, could lead to disciplinary action up to and including termination of employment.



Does an employee have a right to have a matter reviewed?

An employee has a right to have an unfair or unreasonable decision reviewed. This includes:

- not granting an employee time off to participate in an election campaign or to serve as a Councillor;
- declining an employee's request for reinstatement within two months following a federal election; or
- the process used in a misconduct investigation and the determination of a proportionate disciplinary outcome.

Where can employees seek further information?

Information about the *Code of Conduct* and *Guidance During Election Periods* is available from the Victorian Public Sector Commission (Phone: 03 9651 1321, email: info@vpsc.vic.gov.au, website: vpsc.vic.gov.au)

[1] Further information is available on the Australian Electoral Commission website: <http://www.aec.gov.au/Elections/candidates/overview.htm>

[2] Clause 1.4 of the *Code of conduct for Victorian public sector employees* specifies the circumstances under which contractors and consultants are bound by the Code of Conduct.