

Guidance During Election Periods



**Victorian
Public Sector
Commission**

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Index

- Purpose
- Behaviour expected during elections
- Standing for election
- Further information

Purpose

This guide reminds Victorian public sector employees of their obligations under the *Code of Conduct for Victorian Public Sector Employees (the Code)* and the *Constitution Act 1975* (Victorian Constitution) in an election period. It applies to federal, state and local government elections. This document should be read in conjunction with the *Victorian Public Sector Employees Standing for Election FAQs*.

Behaviour expected during elections

How do employees maintain public confidence during election periods?

It is critical that the public sector maintains the confidence of the Government, members of Parliament and the wider community at all times. This requirement is brought into sharper focus in the period leading up to and during election campaigns.

For the vast majority of employees, work will continue as normal during election periods. However, some may find themselves in situations where the election period could have a bearing on their actions.

The Code specifies the importance of being apolitical when dealing with Ministers, members of parliament, political parties and candidates (clause 2.2). These requirements are especially relevant during election periods. The Code also specifies how to deal with conflicts of interest (clause 3.7); limits the use of official information (clause 3.4) and resources (clause 5.3); and restricts the ability to make public comment (clause 3.5).

What if the employee is an active supporter or member of a political party?

It is important for employees who are members of a political party – or otherwise engaged in political activities – to avoid any actual, potential or perceived conflict of interest with their public sector employment. How they do this will depend on the nature of their employment and the nature of their political activities or associations.

Clearly, they must avoid engaging in political activities during work time, or using workplace facilities or resources for that purpose. They must also ensure that:

- their political activities do not influence or interfere with their performance at work
- they do not use any official information obtained through their employment in the public sector except for official purposes and in an approved manner
- when making any comment on Government activity that they are involved in or connected with as a public sector employee, they make it clear that they are expressing their own views and not making an official comment.

Can employees use work resources for election activities?

The Code requires public sector employees to use work resources and equipment efficiently and only for appropriate purposes as authorised by their employer (clause 5.3). In other words, employees must not use work resources to pursue their own private interests, including election related activities. For example, it is not appropriate to use the following public resources for election related activities:

- a work photocopier to print election flyers
- government vehicles. (vehicles that are leased as part of a remuneration package may be used for private purposes in accordance with the terms of the relevant agreement or policy)
- government-issued uniforms

- work telephones and email accounts for election purposes.

Public officials using public resources for private activities, including election related activities, may be in breach of the code of conduct, which could constitute misconduct, and may result in disciplinary action.

Standing for election

Victorian state or local government elections

Is an employee able to contest a state or local government election?

Under section 61 of the Victorian Constitution, public sector employees cannot be disqualified from standing for election for the Victorian Parliament by reason only of their employment in the Victorian public sector.

The *Charter of Human Rights and Responsibilities Act 2006* also gives employees the right to participate in public life, which includes the right to vote and to be elected at state and local government elections. The freedom of political activities as a candidate is not inhibited by the Code. An employee, however, must ensure that they remain apolitical during the course of performing their public duties.

What do employees need to do if they intend to contest a state or local government election?

To minimise the risk of an employee breaching their obligations under the Code, employees should inform their manager of their intention to stand as a candidate in a state or local government election as soon as possible after deciding to seek election. In many cases, this will mean informing their manager prior to seeking pre-selection. This will assist employees and managers to implement appropriate arrangements to balance obligations to the state with the right to run for office. The form of those arrangements will depend upon the nature of the employee's role in the public sector (such as their seniority or the extent to which they access sensitive information) and the level and timing of involvement they anticipate they will have in the election.



What do managers need to do if their employees intend to contest a state or local government election?

Managers should ensure that the employee has a copy of this guide, discuss the guide with the employee, and ensure that the employee understands their obligations under the Code. Managers should also explain that the Code applies to employees even if they take leave.

Managers should also notify an appropriate senior person in their organisation of an employee's intention to seek election, and agree on the arrangements to be put in place to balance the employee's obligations to the state with their right to run for office.

Is an employee required to resign if they intend to contest a state or local government election?

Public sector employees are not required to resign to contest a state or local government election.

If an employee does resign to contest a state or local government election, do they have the right to be reinstated?

The right to seek reinstatement through the Governor in Council under schedule 1, item 3 of the *Public Administration Act 2004* only applies to people who resign to contest a federal election.

Is an employee required to take leave during an election campaign?

There is no specific requirement that a public sector employee candidate take leave during an election campaign. If, however, it seems likely that the employee's involvement in the campaign will impact upon their ability to perform their duties as a public sector employee, they will need to discuss this with their manager and agree on the arrangements that will apply for the duration of the campaign.

If an employee is on leave, does the Code still apply to them?

The Code applies to public sector employees, even when they are on leave.



What happens if an employee is elected?

If a public sector employee is elected to the Legislative Council or the Legislative Assembly, the Victorian Constitution provides that they will cease to be employed by the State of Victoria. It is recommended therefore that as soon as the election result is known, the employee informs their employer if their candidature has been successful. If the employee has been successful, they must immediately formally resign.

Public sector employees are not required to resign if they are elected to local government, so long as they are able to continue properly performing their role as an employee. However:

- the obligations in the Code and the Victorian Constitution will continue to apply to such employees
- the employer's consent should be obtained before the employee commences duties as a local government official.

Public sector employees should discuss these obligations with their manager and agree on the arrangements that will apply while they hold both positions.

Local government councillors are also likely to have separate obligations at a local government level about how they manage their obligations as both a councillor and a public sector employee (e.g. requirements to avoid conflicts of interest arising under the *Local Government Act 1989* or local government policies), and will need to consider how these apply to their specific circumstances.

Federal elections

Is a Victorian public sector employee able to contest a federal election?

Employees must resign from the Victorian public sector before formally nominating as a candidate for the federal parliament with the Australian Electoral Commission. This is to ensure that their candidacy is valid under section 44(iv) of the Commonwealth Constitution. Managers who become aware that an employee is intending to nominate as a candidate should advise them of this requirement.

Taking leave will not be sufficient to meet Commonwealth Constitutional requirements. The High Court has ruled that a person who is on unpaid leave from a public sector

position is ineligible to contest a federal election.

If an employee does resign can they be reinstated?

It is possible for a person employed in the public service, the teaching service or the police force to be re-employed in their previous position by the Governor in Council. An application to be re-employed must be made within two months of the declaration of the poll. This application should be handled by Human Resources, in conjunction with the Department of Premier and Cabinet. It is not legally possible to extend the two month deadline.

Further information

What do managers and employees need to know about the Code?

The Code is based on the Victorian public sector values in the [Public Administration Act 2004](#). It is designed to assist employees maintain appropriate standards of behaviour at all times – not just during election periods and not just in relation to contact with members of parliament. Other requirements of the Code are also relevant to ensuring those standards are maintained and protected in an election period. Accordingly employees should be familiar with all sections of the Code.

Victorian public sector employers must develop and implement policies and procedures to support application of the Code. These will provide further support for employees.

Where should employees go if they have further questions?

If employees have any questions about any of the information contained in this guide, they should contact their manager or Human Resources. If the manager or Human Resources require further assistance regarding an employee's obligations under the Code, they should seek guidance from the Commission.

