

# Aboriginal and Torres Strait Islander Elected Body - Guidance for elected ACT Public Service employees



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## Purpose

1. The purpose of this guidance is to provide advice to ACT Public Service (ACTPS) employees who are members of the Aboriginal and Torres Strait Islander Elected Body (Elected Body) and their supervisors on the treatment of remuneration and leave to attend meetings, hearings and other activities for the Elected Body.

## Application

2. This advice applies to all ACT public servants who are elected to the Elected Body and their supervisors.

## Background

3. The *Aboriginal and Torres Strait Islander Elected Body Act 2008* (the Act) provides for members to be elected and hold office on a part-time basis.
4. The Remuneration Tribunal determines the remuneration, allowances and other entitlements for members of the Elected Body. The Remuneration Tribunal has determined annual fees for the Chair, Deputy Chair and members of the Elected Body, which is set out in its Determination for Part-time Public Office Holders.
5. The Remuneration Tribunal Determination for Part-time Public Office Holders provides that public servants who serve as a Part-time Public Office Holder are not entitled to receive remuneration, allowances or entitlements provided to Office Holders, unless in exceptional circumstances.
6. Exceptional circumstances may be decided by the Chief Minister, Treasury and Economic Development Directorate.
7. Under the *Public Sector Management Act 1994* (PSM Act) there is a general principle that the obligation of the public servant to their ACTPS employment has primacy over secondary employment, interests or engagements. These obligations continue if a public servant becomes a member of the Elected Body.
8. Where a public servant is a member of the Elected Body, they have dual obligations relating to both their employment with the ACTPS, and to their role on the Elected Body.
9. Division 2.1 of the PSM Act sets out the values, principles and conduct requirements that apply to a public servant. Section 9 provides that public servants must do their job with reasonable care and diligence, impartiality and honesty. It also provides that public servants must not improperly use a Territory resource or behave in a way that is inconsistent with the public sector values or undermines the integrity and reputation of the service. All ACTPS employees are also bound by the [ACT Public Service Code of Conduct](#), which provides guidance on the sorts of behaviours expected of employees consistent with section 9 of the PSM Act. Failing to act in a way that is consistent with section 9 of the PSM Act may be misconduct.
10. The Code of Conduct for ATSIEB members (Schedule 1 of the *Aboriginal and Torres Strait Islander Elected Body Regulation 2017*) provides that members must act honestly and fairly in exercising the member's functions under the Act. It also provides that members must not improperly use a territory

resource and must use public resources in an open and accountable way. A member may be removed from the Elected Body if the member contravenes the Code of Conduct.

## Remuneration or paid leave

11. As a part-time public office holder, members of the Elected Body are entitled to the annual fee determined by the ACT Remuneration Tribunal unless they are a public servant.
12. The Deputy Director-General, Workforce Capability and Governance, Chief Minister, Treasury and Economic Development Directorate has determined that there are exceptional circumstances for public servants who are members of the Elected body to receive the annual fee determined by the Remuneration Tribunal. However, this only applies where the employee takes leave without pay from their ACT Public Sector employment to attend meetings, hearings and other activities of the Elected Body.
13. The ACTPS Enterprise Agreements provide an entitlement for paid leave for attending representative meetings in the capacity of an elected representative of the Aboriginal and Torres Strait Islander peak body unless the employee accepts any fee for attendance at the meeting.
14. Employees of the Elected Body may choose to accept the annual fee determined by the Remuneration Tribunal or receive paid leave from their ACTPS employment to attend meetings, hearings or other activities of the Elected Body. Employees are not entitled to receive both the annual fee and paid leave from their ACTPS employment.
15. If the employee accepts the annual fee, leave associated with their work with the Elected Body will be granted without pay.
16. Applications for 'Other Leave' for attending representative meetings in the capacity of an elected representative of the Aboriginal and Torres Strait Islander peak body (paid or unpaid) must be submitted through the Commercial Services and Infrastructure Group website. The leave will count as service for all purposes.

## Responsibilities

17. On commencement with the Elected Body, the employee must advise their supervisor and the Secretariat if they are accepting the annual fee determined by the Remuneration Tribunal.
18. If the employee accepts the annual fee determined by the Remuneration Tribunal, the employee must apply for leave without pay to attend meetings, hearings and other activities for the Elected Body.
19. If the employee accepts the annual fee determined by the Remuneration Tribunal, the employee's supervisor must ensure that the employee's time at meetings, hearings or other activities for the Elected Body is taken as leave without pay.
20. If the employee chooses to take paid leave, the employee's supervisor must ensure that the employee's requests for leave are recorded and monitored to ensure the employee is using the leave to attend meetings, hearing and other activities for the Elected Body.
21. Accepting the annual fee and taking paid leave from the ACTPS employment may be classified as misconduct and attract disciplinary action under clause H6 of the relevant ACTPS Enterprise Agreements for non-executive employees and section 47 of the *Public Sector Management Standards 2016* for executives.

## Key Legislative and Other Provisions

22. The relevant legislation, policy and employment arrangements underlying this operational guidance are:
- ACT Remuneration Tribunal Determination, as varied from time to time ([Determination 13 of 2020, Part-time Public Office Holders](#))
  - [ACTPS Enterprise Agreements](#), Section F25 and Item 3, Annex D - Other Leave
  - [Public Sector Management Act 1994](#), particularly section 9 (Public sector conduct)
  - ACT Public Service Code of Conduct
  - [Aboriginal and Torres Strait Islander Elected Body Act 2008](#)
  - [Aboriginal and Torres Strait Islander Elected Body Regulation 2017](#)

## Further Information

23. For further information please contact Senior Director, Whole of Government Industrial Relations and Public Sector Employment Group, Workforce Capability and Governance Division at the Chief Minister, Treasury and Economic Development Directorate.

## Review

24. This policy advice is due for review before the term of each Elected Body, or earlier where there are changes that affect the operation of this policy advice.

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## Approval Authority

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On behalf of the Head of Service  
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