



**ACT**  
Government

**AUSTRALIAN CAPITAL TERRITORY**

**2020 GENERAL ELECTION**

# **GUIDANCE ON CARETAKER CONVENTIONS**

**August 2020**

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## 1. Introduction

It is the accepted practice of state, territory and Commonwealth governments in Australia that special operating arrangements apply in the period immediately before and after an election. This is known as the “Caretaker period”.

During the Caretaker period, the ongoing business of government service delivery and administration continues. However, successive Australian Capital Territory (ACT) Governments have followed a series of accepted practices, known as the “Caretaker conventions”, which aim to ensure that their actions do not bind an incoming government and limit its freedom of action.

In summary, the Caretaker conventions ensure that the government avoids:

- making major policy decisions that are likely to commit an incoming government;
- making significant appointments; and
- entering into major contracts or undertakings.

The Caretaker conventions also prescribe arrangements that reinforce the apolitical nature of the ACT Public Service by avoiding the use of Territory resources in a manner that advantages a particular political party. In so doing, they also aim to prevent controversies about the role of the public service distracting attention from the substantive issues in the election campaign.

The Caretaker conventions and this guidance apply to ministers and employees of ACT Public Service (ACTPS) directorates and all other ACT Government agencies and entities. All ministers and public employees are expected to uphold the Caretaker conventions as set out in these guidelines.

Members of the Legislative Assembly in all their dealings with staff of the Assembly and members of the ACT Public Service should extend professional courtesy and respect; and recognise the unique position of impartiality and the obligations of public service officials.

## 2. The Caretaker period

In accordance with the provisions of Section 100(1) of the *Electoral Act 1992* (the Electoral Act), the ACT is scheduled to hold a general election for the Legislative Assembly on Saturday, 17 October 2020.

In other jurisdictions it is accepted practice that the Caretaker period commences with the dissolution of the Parliament. This reflects that, after dissolution, there is no parliamentary chamber to which a government may be held accountable. However, in the ACT, where the Legislative Assembly is not dissolved until the day of a general election, the Caretaker period is defined differently.

The ACT’s Caretaker conventions apply from the beginning of the “election period” as defined by the Dictionary of the Electoral Act:

- election period**, in relation to an election, means the period -
- (a) beginning on the first day of the pre-election period; and

(b) ending when the result of the election is declared under section 189.

The “pre-election period” is defined as:

the period of 37 days ending on the end of polling day for an election.

In these guidelines, the term Caretaker period is used to describe the time between the commencement of the pre-election period and the first sitting of the new Assembly.

The *Australian Capital Territory (Self-Government) Act 1988* (Cth) requires the Legislative Assembly to elect one of its members as Chief Minister on the first sitting day following a general election. The Chief Minister then appoints Ministers to form the Government.

**In 2020, the Caretaker period begins at 12.00am on 11 September 2020 and ends with the election of the Chief Minister on the first sitting day of the Legislative Assembly following the election.**

### **3. Operations of the government**

The ordinary business of government service delivery and administration continues during the Caretaker period. However, the Caretaker conventions impact on a number of areas of government administration. In the first instance, officials should seek advice from their nominated official within their own directorate/agency if there are any queries about the impact of the Caretaker conventions on an area of government administration.

#### **3(a) Policy decisions**

The Cabinet does not normally meet during the Caretaker period.

The Government should avoid making and implementing new major policy decisions likely to commit an incoming government or limit its freedom to act. What constitutes a major decision is a matter of judgement, but relevant considerations include the significance of the decision in terms of policy and resources, and whether the decision is a matter of contention in the election campaign.

The implementation of policy decisions made before the Caretaker period comes into effect and ongoing service delivery efforts are not impacted by the restrictions. It is entirely appropriate that work continue on the implementation of initiatives announced and funded by the government of the day.

If circumstances require the Government to make a major policy decision during the Caretaker period that would potentially commit an incoming government, this decision should be taken in consultation with the relevant opposition and cross bench spokesperson.

The Government may announce during the Caretaker period new policy initiatives that it proposes to implement after the election, should the Government be returned.

### **3(b) Cabinet meetings**

The Cabinet does not normally meet during the Caretaker period. However, subject to the COVID-19 public health emergency (or another emergency), Security and Emergency Cabinet meetings will continue to meet as necessary during the Caretaker period. The Cabinet should avoid making major decisions likely to commit an incoming government or limit its freedom to act.

### **3(c) Appointments**

The Government should generally avoid making appointments (e.g. to a statutory office or a board) during the Caretaker period. This includes appointments that will commence during the Caretaker period or after election day. Any new appointments to commence after the Caretaker period should be decided by the incoming government.

The Government and ministers should:

- (i) if possible, defer any appointment until after the Caretaker period (boards and committees should operate under quorum if possible); or
- (ii) if an appointment needs to be made for reasons of continuity, an appointment could be made for a short term only (up to six months) to carry through until after the Caretaker period or an acting appointment could be made; or
- (iii) if a short-term appointment is not practicable, an appointment could be made for the full term, following consultation with the Chief Minister and relevant opposition and cross bench spokesperson.

### **3(d) Contracts and undertakings**

The Government should avoid entering into major contracts or other undertakings during the Caretaker period, including tenders and intergovernmental negotiations and agreements, which could bind an incoming government or would be considered politically contentious. When considering whether a contract or undertaking qualifies as major, relevant considerations include:

- the dollar value of the commitment;
- whether the commitment involves a routine matter of administration or rather implements or entrenches a policy or program that is politically contentious;
- whether the commitment requires ministerial approval;
- the duration of the commitment; and
- the content and extent of other financial and non-financial obligations.

The Government may enter into contracts that relate to routine matters of administration, contracts that the Government has committed to and announced before the Caretaker period, subsidiary contracts or contracts that would result in a breach if signing was deferred. A routine matter may include tenders or contracts that pertain to services that an incoming government would ordinarily be expected

to continue to provide, or service or operations that would be expected to be delivered to maintain the operations of the Territory.

If a major contract or undertaking cannot be deferred until after the Caretaker period, the Government should seek the agreement of the relevant opposition and cross bench spokesperson before entering into the contract or undertaking. Alternatively, directorates and agencies should explain the implications of the election to the contractor and ensure that contracts include clauses providing for termination in the event of an incoming government not wishing to proceed.

Similarly, in the case of tenders, directorates and agencies should warn potential tenderers about the implications of the election and the possibility that the tender process might not be completed.

### ***3(e) Ministerial attendance at intergovernmental meetings***

Due to the unprecedented COVID-19 public health emergency it is appropriate for the Chief Minister to attend meetings of the National Cabinet and, if required, to seek relevant factual information to ensure the ACT is well positioned to respond to the emergency.

The Chief Minister will, to the extent possible, consult with the relevant opposition and crossbench spokesperson prior to any decision being taken that would bind an incoming government or advance a policy position. Where this is not practicable the Chief Minister will brief the opposition and crossbench spokesperson on the decision. Where possible, senior officials will attend the meeting in an observer capacity to ensure that the incoming government is fully informed of progress.

During the caretaker period Ministers do not generally represent the ACT in intergovernmental meetings. Where possible, postponement of such meetings should be requested until after the election. If postponement is not possible, senior officials should attend the meeting in an observer capacity to ensure that the incoming government is fully informed of progress. It is appropriate for officials to brief Ministers on the matters discussed and outcomes reached at such meetings during the Caretaker period.

Prior to the commencement of the caretaker period the Head of Service will write to jurisdictional counterparts advising them of the timing of the election and seeking their cooperation with intergovernmental arrangements during this period.

### ***3(f) Requests by ministers of directorates and agencies***

Ministers may seek factual information and information relating to day-to-day business of government from senior executive officials during the Caretaker period. It is inappropriate for officials to be involved in the incorporation of this material into information for party political purposes.

Directorates and agencies should generally not be asked to provide policy advice during the Caretaker period. There might, however, be circumstances where urgent issues arise that clearly require advice to be given to ministers in order to allow

responsible agency administration or to enable the government to protect the public interest.

To avoid controversy and claimed breaches of the apolitical and impartial nature of the ACTPS, it may be appropriate to also brief the opposition and crossbench or to decline a request for assistance if it requires the use of significant resources. If in doubt, advice should be sought from relevant officials within the directorates.

During the election period Directorates can continue to work internally on proposals and policy development, particularly where a proposal or policy is not controversial and is likely to proceed irrespective of the election outcome.

### **3(g) Commencement of legislation**

Legislation commences in accordance with provisions in the Legislation Act 2001. Most legislation commences automatically following notification in the legislation register. Generally, this occurs within 14 days after being passed in the Legislative Assembly.

Where legislation requires a date to be fixed by a Minister:

- (1) A commencement date should not be fixed on a date falling within the Caretaker period unless the legislation is of a routine or non-contentious nature.
- (2) A commencement date should not be fixed on a date falling after the end of the Caretaker period and should be a matter addressed by the new government if such a date is necessary.

The Legislation Act 2001 also provides for the automatic commencement of legislation six months after its notification date if not commenced sooner. Where legislation is to be commenced by notice given by the Minister, such notice should be given prior to 11 September 2020.

### **3(h) Ministerial and public official attendance at the Select Committee on the COVID-19 pandemic response**

The Select Committee on the COVID-19 pandemic response was established on 2 April 2020. If the COVID-19 public health emergency declaration is still in force during the Caretaker period, this Select Committee may still be operational.

Where possible, Ministers will participate in Select Committee meetings to answer questions. Public officials will participate and only provide factual information to the Select Committee. It is appropriate for officials to brief Ministers on factual information in preparation for the Select Committee meetings.

Due to the security risks and vulnerabilities associated with the software application 'Zoom', if this platform is used for Select Committee meetings, Ministers and public officials will only participate in hearings by telephone. Cisco Webex is the endorsed, supported and secure meeting collaboration tool used across the government.

Under the MLA Code of Conduct, Members are required to act with integrity, honesty and diligence. In their dealings with staff of the Assembly and members of the ACT Public Service, MLAs are required to extend professional courtesy and respect and recognise the unique position of impartiality and the obligations of ACTPS officials.

### **3(i) Government boards and committees**

Government boards and committees may continue to meet if they are implementing decisions taken prior to 11 September 2020 and do not involve new, major or politically sensitive policy decisions that would bind an incoming government. This ensures continued delivery of services to the people of the ACT through the Caretaker period. Members of boards and committees should familiarise themselves with their conflict of interest obligations.

## **4. Operations of directorates and agencies**

During the Caretaker period, the ongoing obligation on directorates and agencies to act in an apolitical manner in keeping with the [Public Sector Management Act \(PSM Act\)](#) takes on added significance.

### **4(a) Ministerial correspondence**

Once the caretaker period commences, ministers will usually avoid signing any non-essential correspondence. When responding to essential correspondence ministers, directorates and agencies should follow existing processes.

Essential correspondence may include correspondence from Commonwealth or State and Territory ministers, Members of the Legislative Assembly, and declared or known candidates and correspondence which is necessary for day-to-day government service delivery and administration.

Some correspondence that would ordinarily be signed by ministers may need to be prepared for signature by the relevant Director-General, rather than be left to accumulate. Judgement is necessary in determining whether correspondence should be signed by the minister or the Director-General.

All other correspondence may be attended to by directorates and agencies, and the general principle is that correspondence should be answered rather than left to accumulate.

When preparing replies, for either the minister or Director-General, care should be taken to protect the public service from any perception of partisanship. Replies should not assume that the government will or will not be returned to office. References to any post-election matters should refer in neutral terms to the "incoming Government" and correspondence should not commit the Government to post-election action or imply that policy will continue if Government is re-elected. However, it is generally insufficient to say only that the matter is one for the incoming government.

Please note that responses to all inquiries from declared or known candidates prepared for signature by the relevant Minister should be the same as a response to any inquiry from a member of the public (i.e. candidates do not have any greater rights to information than a member of the public). However, as it would be expected that such a response will be used within a political context during the election campaign, it is appropriate that the relevant Minister is briefed on the request and response.

Correspondence on current government programs and services addressed to the Chief Minister, but falling outside his portfolio, will be referred to the relevant directorate for response by the Director-General.

#### **4(b) Cabinet documents**

Before the date of the election, directors-general and heads of agencies must ensure that all Cabinet documents, including electronic documents, are accounted for and securely stored so that, if there is a change of government, the documents can be returned promptly to the Cabinet Office for destruction in accordance with the provisions of the *Cabinet Handbook*. Alternatively, documents may be returned to Cabinet Liaison Officers and destroyed according to the guidelines given in the *Cabinet Handbook*, which can be found at <https://www.cmtedd.act.gov.au/policystrategic/cabinet/cabinet-office>

#### **4(c) Pre-election Budget update and policy costings**

The Under Treasurer is required under Section 20C(1) of the *Financial Management Act 1996*, to prepare a Pre-election Budget Update and provide it to the Parliamentary Counsel for notification at least 30 days before the polling day of an ordinary election.

The purpose of the Pre-election Budget Update is to give the electorate an accurate picture of the Territory's financial position before the election. The Budget update should support an assessment of the government's financial performance against its financial policy objectives and strategies.

The Budget update must include budget estimates for the Territory, general government sector and public trading enterprise sector for the financial year in which the election is to be held and for each of the next three financial years.

The *Election Commitments Costing Act 2012* prescribes a process for the leader of a registered party with one or more Members of the Legislative Assembly (MLA) or an MLA who is not a member of a registered party to request the costing of publicly announced election commitments (section 5(1)). The costing period extends from one week after the last Assembly sitting day prior to the election and ends on the first Assembly sitting day after the election, which overlaps the Caretaker period. This process allows for political party leaders and independent MLAs to formally request costings of their election commitments to be undertaken by public officials (Treasury, with input from relevant directorates) under the Act and does not otherwise affect the operation of the Caretaker Conventions or these Guidelines. The *Guidelines for Costings of Election Commitments* are available at: <http://apps.treasury.act.gov.au/electioncostings>.

#### **4(d) Incoming government briefs**

The Chief Minister, Treasury and Economic Development Directorate is responsible for coordinating incoming government briefs in the lead-up to the election. One set of briefing papers will be developed in preparation for a returned government, and a second set is developed for a newly elected government taking office. Separate guidance on this process will be issued by the Head of Service in the lead up to the election.

#### **4(e) Directorate Liaison Officers**

Directorate Liaison Officers (DLOs) are ACTPS employees rather than Legislative Assembly Members (Staff) Act 1989 employees. Generally, DLOs are provided by directorates to facilitate liaison between Ministers' offices and directorates. The requirements for that work should be reviewed at the commencement of the Caretaker period. If there is ongoing work of a liaison nature during the Caretaker period, DLOs may remain with the Ministers' offices or be located in the Directorate to continue their role. They should avoid assisting Ministers in any way that could create a perception that they are being used for party political purposes.

#### **4(f) Consultation with public servants by the opposition and recognised parties in the Legislative Assembly**

It is accepted custom and practice in the Territory that MLAs and/or their staff are to contact the appropriate Minister or Minister's office whenever seeking information on particular issues and not directly approach public officials or directorate/agencies.

In the pre-election period, the following practices apply.

- Any consultation that non-Government members wish to undertake with agency officials is to be initiated through the relevant Minister's office. The relevant Minister is to notify the Chief Minister of any request and whether it has been granted. Agency officials should not initiate any consultation.
- The subject matter of discussions should generally focus on the machinery of government and administration. Agency officials may comment on the practicalities of implementing and administering the policies that have been proposed by the relevant member. Agency officials are not to discuss government policies or offer opinions on matters of a party political nature, including merits of any party's policy.
- To ensure an incoming government can continue the critical response to the COVID-19 emergency without disruption, it is appropriate for Directors-General to provide factual updates to non-government members on the impact of the COVID-19 emergency on the Territory.
- The detailed substance of the discussion is to be kept confidential between the agency officials and the member(s) with whom they meet. Ministers are, however, entitled to be informed that the discussions have taken place and to seek assurances that the discussions were kept within the agreed purposes.

#### **4(g) Publications and advertising campaigns**

During the Caretaker period, directorates must continue to adhere to the provisions of the *Government Agencies (Campaign Advertising) Act 2009*. Directorate and agency publications and advertising material should proceed only if they constitute a normal operational requirement of ongoing and routine service delivery (e.g. public health announcements or road closure notices). In such cases, publications or advertising material should not include photographs and/or statements of a minister.

Prior to the beginning of the Caretaker period, individual directorates should review arrangements for the distribution of all advertising material, including any internal or external newsletters, content published via directorate social media channels or proactive pitches to media. Directorates should avoid active distribution of material during the Caretaker period if it promotes government policies or emphasises the achievements of the government or a minister. Any such campaigns in market before the Caretaker period must cease when the Caretaker period commences.

There are strict requirements governing the publication of “electoral matter”. Electoral matter includes any material in printed or electronic form, that is intended or likely to affect voting in an election. This includes all printed publications, websites, signage, emails as well as social media posts and videos. In the case of government agency publications, these do not require authorisation as electoral matter if they include as a minimum on the cover and/or title page the agency name and the ACT Government logo or the following requirements:

- the name of the directorate or agency publishing the material;
- the Canberra Coat of Arms or the City of Canberra; and
- the words ‘ACT Government’.

As the ACT Government logo contains two of the three requirements, it is important to ensure that the ACT Government logo and the name of the directorate or agency appears on the publication to meet all of the requirements. These items do NOT need to appear together. Some examples of documents and digital communications items that comply with this requirement can be found [here](#).

Because the definition of electoral matter is quite broad and the publication requirements above are not particularly difficult, the ACT Government Solicitor has recommended that every ACT Government printed and digital publication complies with the requirements.

#### **Election signage**

The use of temporary signs to promote candidates and parties is subject to compliance with the Public Unleased Land (Moveable Signs) Code of Practice 2019 and section 292 of the Electoral Act 1992 (Dissemination of unauthorised electoral matter). Non-compliant signs will be removed by authorised officers and impounded.

Further guidance can be obtained from the ACT Electoral Commissioner or the [Electoral Commission’s website](#).

#### **4(h) Government use of electronic communication**

##### Publishing on Directorate/Agency website and other digital channels.

Directorates and agencies should ensure all media releases, as well as social and digital content and interactions with audiences on social media channels during the Caretaker period are:

- matters of public interest;
- relate only to the day-to-day business of the directorate or agency;
- cannot reasonably be construed as being for political purposes; and
- contain only factual information.

Agency websites may retain material placed on the website before the commencement of the Caretaker period. However, directorates and agencies should review content to ensure that this material cannot be interpreted as promoting a government policy. Ministerial messages should be removed.

Directorates and agencies should only add material (including media releases) to their websites during the Caretaker period that is:

- in the public interest;
- of a routine, operational and apolitical nature;
- purely factual; and
- is about existing policies and programs.

Media releases with overtly partisan content, announcing new policy or criticising non-government parties must not be posted to government websites during the Caretaker period.

If agency websites contain links to websites outside the act.gov.au domain, directorates and agencies should consider the need for clear exit messages.

##### Electoral Act requirements for Directorate/Agency websites.

In order to avoid the need for authorisation as electoral matter, agency websites must conform to the requirements in the *Electoral Act 1992* for government publications, as outlined above under “Publications and Advertising Campaigns”.

Electronic bulletin boards and email systems provided by directorates and agencies must not be used to publish or distribute political material. Material from political parties and “how to vote” material must not be displayed.

Any interactive functions of websites within the act.gov.au domain – such as discussion groups, chat rooms or blogs that allow unmoderated comment or debate – should be moderated during the Caretaker period. Words along the following lines might be appropriate:

“In the period preceding an election for the ACT Legislative Assembly, the ACT Government assumes a Caretaker role. It is important during that time that ACT Government resources are not used to communicate political material. As this website is hosted by the [directorate/agency], the site will be moderated from the beginning of the Caretaker period on 11 September

2020 until after the election to ensure that political material is not placed on the site.”

From 11 September 2020, all directorate and agency websites must contain the following text in the header of their home page:

“On 11 September 2020, the ACT Government assumed a Caretaker role, with an election to be held 17 October 2020. Information on this website will be published in accordance with the Guidance on Caretaker conventions until after the election and conclusion of the caretaker period.”

#### **4(i) *The use of government agency offices, facilities or assets***

##### **For announcements/media conferences**

There may be occasions where agency premises, facilities (such as schools or hospitals) or assets (such as buses) can be appropriately used during the Caretaker period by political parties for public events, such as media conferences or where they are the obvious place for a function. For example, this may include unveiling an education policy at a public school or a transport policy in front of a bus.

Reasonable assistance may be provided by a directorate or agency to facilitate such events to the extent they ensure the safe operation of such an event noting that the operations of the workplace or service should not be impacted. This must be applied even-handedly to the Government and non-government parties. During the Caretaker period requests to access ACT Government premises, facilities or assets should be made to, and approved by, the Director General of the relevant directorate and follow usual processes for such requests.

##### **Party-political publications or electoral materials**

ACT Government premises or assets may be used as the backdrop for political advertising or policy material by government and non-government parties (e.g. photography or filming), noting that appropriate permission needs to be obtained from any individual that appears in the material prior to publication. It is not appropriate for official resources to be utilised and the operations of the site should not be impacted.

It is important that the impartiality of ACT public servants is not compromised through their appearance in party political material. With this in mind, it may be more appropriate for actors to be used in place of public officials in political advertising or electoral campaigns.

##### **Official functions and other visits**

In the case of official functions (for example the opening of a new building or facility) involving the use of directorate or agency resources, relevant non-government spokespersons should be given the opportunity to be present.

Ministerial visits to directorates and agencies for consultations should relate to the conduct of routine government business in accordance with the Caretaker conventions. Where candidates other than the Chief Minister or Ministers seek to visit premises or facilities, directorates and agencies should as far as possible be even-handed in their responses and assistance to the government and opposition.

During the Caretaker period requests to access ACT Government premises should be made to, and approved by, the Director General of the relevant directorate and follow usual processes for such requests.

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 or places of work concerned.

#### **4(j) Approval of grants**

During the Caretaker period, commitments must not be made in respect of grant applications either received during the period or lodged before commencement of the period but awaiting decision.

The payment of grants approved prior to the Caretaker period can proceed but should be forwarded by the directorate or agency rather than by a minister or another member of the government.

Directorates and agencies should advise potential applicants at the beginning of a grants process or as soon as practicable by 30 August 2020 about the implications of the election and the possibility that the grant application might not proceed by using a disclaimer message.

#### **4(k) Response to Parliamentary Committee reports**

Responses to outstanding parliamentary committee reports should be taken up with the incoming government. Directorates and agencies may, however, undertake appropriate preparatory work and consultation at the agency level so that they are in a position to provide early advice to the incoming government.

#### **4(l) Annual reports and State of the Service report**

The *Annual Reports (Government Agencies) Act 2004* contains specific provisions about tabling and presenting annual reports and the State of the Service report in an election year.

The 2019-20 reporting period coincides with the Caretaker period, which commences on 11 September 2020 and ends when the result of the election is declared. Following an election, Annual reports have been previously been tabled on second sitting day of the new Assembly.

This year, due to the impact of the COVID-19 health emergency on the ACTPS, the Chief Minister has agreed to 2019-2020 annual reports being presented to the Assembly on 18 December 2020. Requests to access this extension of time under section 14 of the Annual Reports Act must be sought before the last day of sitting prior to the pre-election period/Caretaker period.

The Assembly and Government Business team within Policy and Cabinet Division, CMTEDD will advise reporting entities of the embargo dates once the dates for the sitting periods of the new Assembly have been agreed.

Annual reports must **not** be published on a reporting entity's website until after the annual reports have been tabled in the Legislative Assembly.

Refer to [Annual Reports \(Government Agencies\) Directions 2019](#) for guidance.

For further information, contact the CMTEDD Policy and Cabinet Division (ph. 6205 0543).

#### **4(m) Public sector ethical requirements**

The general obligations of public employees are prescribed in section 9 of the PSM Act. During the Caretaker period, the usual obligations on officials continue to apply, but the levels of scrutiny are likely to be higher.

Appendix 1 provides advice on appropriate standards of conduct for public sector officials seeking to actively participate in the political process, including guidance on how to manage real or perceived conflict of interests and the public perception of impartiality in public sector employees when participating in the political process.

## **5. Further information**

Where ministers require further clarification of these guidelines, they should seek advice from the Chief Minister.

Where directors-general require further clarification of these guidelines, they should seek advice from the Head of Service or the Deputy Director-General, Workforce Capability and Governance. Individual directorates should establish internal processes for staff seeking further information on the caretaker conventions.

General inquiries regarding the Caretaker period arrangements and their application can be directed to:

Deputy Director-General  
Workforce Capability and Governance  
Chief Minister, Treasury, and Economic Development Directorate  
[DDGWCA@act.gov.au](mailto:DDGWCA@act.gov.au);

## **6. Amendments or further advice**

The Guidance on Caretaker conventions may be amended in the lead up or during the Caretaker period due to the changing nature of the COVID-19 public health emergency. In addition, further advice may be provided to clarify requirements in this document.

# **Appendix 1 - GUIDELINES FOR THE BEHAVIOUR OF PUBLIC EMPLOYEES WISHING TO PARTICIPATE ACTIVELY IN THE POLITICAL PROCESS**

## **Purpose**

1. These guidelines will assist ACT public sector agencies, public employees and members of government boards and committees in respect of their obligation to act impartially, particularly during the ACT pre-election (Caretaker) period. These guidelines are applicable to all ACT public employees including statutory office holders.

## **Application**

2. This guidance applies to all public employees including executives and board and committee members.

## **Principles**

3. Public employees, as members of the community, have a right to political expression and participation. At the same time, they serve the government of the day and the community must have public confidence in the integrity, impartiality and political neutrality of the ACTPS.

### Public employees

4. A 'public employee' is defined in the *Legislation Act 2001* as:
  - (a) a public servant; or
  - (b) a public sector member.
  - (c) a person employed by a Territory instrumentality.

### Conflicts of interest

5. Public employees are able to join a political party, engage in political debate or in non-political community activity except where these activities impact adversely on their ability to perform their official duties and/or place them in conflict with the general obligations of public employees in section 9 of the PSM Act.
6. The ACT Public Service Code of Conduct (2013) specifically requires that public servants need to be aware of any perceived or real conflicts of interest.
7. An apparent conflict of interest may exist if a public employee's private interests appear, on reasonable grounds, to influence the performance of their official duties – even though there is no actual influence.
8. While all elements of section 9 of the PSM Act apply, the particular focus in the context of an upcoming election is whether political involvement places the public employee at risk of an actual or potential conflict of interest. Importantly, section 9(b) of the PSM Act requires a public employee to act impartially. Under the PSM Act, public employees must disclose and deal with any conflict of interest, either real or perceived. The conflict must be resolved having regard to the primary importance of the public duty of public employees. Active campaigning (including for another person or a party) and particularly

nomination as a candidate would usually raise a real or perceived conflict for most public employees.

#### Resignation and campaign leave for election candidates

9. One option for a public employee running as a candidate in the election is to resign from their position. This is to avoid conflict of interest or any suggestion that they have failed to fulfil their duty as a public employee. Refer to paragraph 24 below for information on resignation and re-appointment provisions.
10. Campaign leave, or the use of recreation or long service leave entitlements, may be granted to election candidates who are not executives or statutory office holders.
11. The Head of Service (or delegate) may grant Campaign Leave, which is without pay, under the provisions of the relevant enterprise agreement to enable an officer or employee who is employed under the PSM Act to campaign for election (excluding executives). The maximum period of leave that may be granted for this purpose is three months. The period of leave does not count as service for any purpose.

#### Role of manager

12. Where a manager is concerned that there may be, or may appear to be, a conflict between an employee's duties and their involvement in political activities, the issue should be discussed with the employee. Managers are responsible for resolving any issues about the status of public employees who are taking a politically active role in the election, in particular those public employees who are election candidates.
13. The circumstances of each situation, such as the seniority of the position held by the candidate, the prominence of their government job in the community, their duties and capacity to influence government decision-making, must be considered by the relevant manager. Importantly, the manager should consider whether:
  - the conflict or perceived conflict impairs the public employee's ability to exercise impartial decision making or maintain public confidence in decision making;
  - the campaign involves improper use of information obtained through official duties or is unauthorised public comment; and
  - the campaign involves the use of any official facilities, including the candidate's time during work hours.
14. Where a conflict is identified, the manager must ensure that the public employee either:
  - ceases involvement in the conflicting interest or activity – such as, political campaigning or other political activity; or
  - withdraws from the specific conflicting work interest, activity or task and takes action to separate themselves from the relevant work area or duty.

15. In many cases the only way that a real or perceived conflict can be resolved for an election candidate is for the public employee to undertake other duties, take leave or resign. There are special re-employment and re-appointment powers in respect of unsuccessful election candidates who are employed under the PSM Act who resign to contest the election (refer to paragraph 24 below).
16. A public employee who wishes to campaign on behalf of a candidate or a political party may apply for leave. Approved leave will to some extent address the issue of impartiality as it will demonstrate that the public employee has taken some steps to separate political activity from their public service duties, particularly during the pre-election period.
17. A public employee who wishes to contest the election or campaign on behalf of a candidate or political party should submit a formal application for approval for secondary employment. This will enable a comprehensive assessment of potential conflicts and appropriate remedial action to be taken.

#### Executives and full-time statutory office holders

18. Executives and full-time statutory office holders are senior officials who hold special positions in government employment and the public sector and in the community in general. Executives and full-time statutory office holders have a significant capacity to influence government and ministerial decision-making. For these public employees who are, or are intending to be, election candidates, there is no other appropriate course than to resign. Executives are able to seek re-appointment if they are unsuccessful candidates at the election (see paragraph 24).
19. An executive or full-time statutory office holder should carefully consider whether it would be appropriate to become involved in political campaigning for another person or a party. In such circumstances the use of leave may not be a satisfactory resolution to the apparent conflict given the principles of impartiality and political neutrality that are essential elements of an executive's relationship with the government.
20. Executives and statutory office holders should take the opportunity to update their Declarations of Private Interests if they intend to campaign on behalf of a candidate.

#### Candidates

21. Subject to other requirements of public employees set out above, a public employee may be a candidate for election to the Legislative Assembly. However, sections 103 and 104 of the *Electoral Act 1992* provide that a person is not qualified to take a seat if they hold public office or employment.
22. Candidates for election to the Assembly are provided with information by the ACT Electoral Commission. This includes advice that it is necessary for public employees to resign under the *Electoral Act 1992* before the official declaration of results if they have been successfully elected after the count of votes. The Electoral Commissioner suggests that candidates seek their own advice on whether resignation is necessary in their particular case and the appropriate time to resign.

23. Public employees seeking to contest elections other than those for the ACT Legislative Assembly should investigate whether similar restrictions exist in the relevant jurisdiction. In particular, candidates for the Federal election must resign before they are nominated due to constitutional eligibility requirements.
24. Public employees employed under the PSM Act who resign to contest an election, and are not elected, may be re-employed in or re-appointed to the ACT Public Service under sections 131 for SES members, section 136 for officers and section 139 of the PSM Act. To be re-employed or re-appointed, the former public employee must have resigned no earlier than six months before nominations for the election closed (any resignation for these purposes must occur on or after 17 April 2020), been an unsuccessful candidate and applied for re-employment or re-appointment no later than two months after the election result has been declared.

#### Public comment and disclosure of official information

25. Public employees may participate in a private capacity in public discussions and debates about community issues. However, public employees have a duty to consider whether personal comments and statements could:
- be mistaken for an official comment;
  - involve the use of official information not publicly available;
  - constitute a conflict of interest; or
  - undermine public confidence in the employee's ability, or that of their agency, to carry out official functions fairly and impartially.
26. Disclosing official information may result in disciplinary action under the PSM Act. Public employees should also be aware that disclosure or misuse of official information may constitute 'corrupt conduct' under the Integrity Commission Act 2018 and potentially of the Crimes Act 1900 (ACT). Under section 9 of the PSM Act, a public employee must not disclose information obtained during the course of their duties unless they:
- have the proper authority to do so in the course of their duties;
  - are required to do so by law; or
  - are giving evidence in court.

#### Fund raising and canvassing

27. Where a public employee chooses to become involved in campaigning for candidates for political office (for example, by handing out how-to-vote information or other canvassing for votes) then they should avoid giving any impression that such activities are undertaken other than in a private capacity. They should not, for example, wear an ACT Public Service uniform or display work related material.

#### Wearing of party political badges, or other display of political material

28. It is generally not appropriate to display political badges or other material at work. Public employees should be aware of their responsibility to contribute to a harmonious working environment and the display of political material while on

duty or at work has the potential to disrupt those relationships and undermine public confidence in public service impartiality.

29. Where a public employee's duties involve public contact, the displaying of political material at work is inappropriate as this is likely to create the impression of official endorsement of the political material or, in some circumstances, create doubt as to whether certain matters are being dealt with in a politically neutral manner.

#### Use of official facilities and equipment

30. Public employees must not use official facilities for promotion of any political party. The use of official facilities includes use of meeting rooms, the use of government telephones, facsimile machines, e-mail, computers and photocopiers. Any electioneering activity or other political activity that involves expense to a directorate or agency is likely to constitute a breach of section 9 of the PSM Act.

### **Government boards and committees**

#### Conflicts of interest

31. Members of boards and committees should provide an undertaking that they are not subject to a conflict between their personal or financial interests and those of the board or committee. In these circumstances, the member undertakes to advise the chairperson or the minister immediately if a real or perceived conflict of interest occurs during the membership. Pre-election political activity by a board member may create a conflict of interest. In such circumstances it would generally be expected that the member either resign or stand down for the duration of the election campaign.

#### Candidates

32. Refer to paragraphs 22 and 23 above as similar arrangements apply for board and committee members. Sections 103 and 104 of the *Electoral Act 1992* provide that a person is not qualified to take a seat in the Assembly if he or she holds a remunerated statutory office or appointment or is otherwise employed by a government or a government body. Each member must seek their own advice about whether their appointment falls within this provision.

### **Legislative reference**

*Electoral Act 1992*

*Public Sector Management Act (1994)*

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