

ACT Public Servant Conduct during the 2022 Federal Government Election Period



Policy Number: 34/2022

Issued: 1 April 2022

Issued By: WhoG IRPSE, WCAG, CMTEDD

Purpose

1. These guidelines will assist ACT public servants in respect of their obligation to act impartially, particularly during the Federal Government pre-election (Caretaker) period. These guidelines are applicable to all ACT public servants.

Application

2. This document contains a set of whole-of-government guidelines issued by the Head of Service and applies to all public servants engaged under the *Public Sector Management Act 1994*.
3. For the purpose of these guidelines, public servants are defined as including executives, permanent officers, temporary employees and casual workers.

How do ACT public servants maintain public confidence during election periods?

4. It is important that the ACT Public Service maintains the confidence of the Government, members of the Legislative Assembly and the wider community at all times. An ACT public servant can participate in political campaigns, but their actions during a federal election caretaker period have the potential to create the perception of a lack of impartiality or be taken to indicate official support.
5. To avoid this, it is important that ACT public servants are aware of their behavioural obligations as an ACT public servant.

How can ACT public servants exercise their rights to political expression and participation during federal election periods?

6. As members of the community, ACT public servants have the right to political expression and participation. In their role as an ACT public servant, an ACT public servant must maintain a standpoint of neutrality and political impartiality.
7. To get this balance right, ACT public servants must be alert to whether any political activity that they engage in will adversely impact their ability to perform their official duties, give rise to a real or perceived conflict of interest or breach any other conduct requirements of the PSM Act.

Conflict of Interest

8. The ACT Public Service Code of Conduct specifically requires that ACT public servants need to be aware of any perceived or real conflicts of interest. This policy should be read in conjunction with the Conflict of Interest Policy.
9. Public servants are able to join a political party, engage in political debate or in non-political community activity including participating in political campaigns. However, they must not give the

impression that they are acting in an official capacity representing the ACTPS. A conflict of interest may arise where it is reasonably anticipated that these activities would impact adversely on their ability to perform their official duties and/or place them in conflict with the general obligations of ACT public servants outlined in section 9 of the PSM Act.

10. Division 2.1 of the PSM Act sets out the values, principles and conduct requirements that apply to an ACT public servant. The best practice principle requires an ACT public servant to work efficiently, collaboratively and in an accountable way and make fair and reasonable decisions. Expected conduct includes:
 - taking all reasonable steps to avoid conflicts of interest;
 - complying with laws and reasonable directions given by a person with the authority to do so;
 - treating all people courteously and making all reasonable efforts to help members of the public understand their rights and meet their obligations under the law;
 - doing their job with reasonable care, diligence, impartiality and honesty;
 - behaving in a way that upholds the integrity and reputation of the Service including not engaging in intimidating behaviour or applying improper influence, favouritism or patronage;
 - not using their job, information they gain in the course of doing their job or territory resources inappropriately; and
 - not disclosing any confidential information or making a comment that might reasonably be taken as official comment without the correct authority to do so.
11. Section 9(b) of the PSM Act requires an ACT public servant to act impartially. Under the PSM Act, ACT public servants 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 ACT public servants.
12. A perceived conflict of interest may exist if an ACT public servant's private interests appear, on reasonable grounds, to influence the performance of their official duties – even though there is no actual influence.
13. Political campaigning (including for another person or a party) and particularly nomination as a candidate may raise a real or perceived conflict for some ACT public servants. An ACT public servant seeking to participate in political campaigning should review the conflict of interest policy and assess whether their activities require discussion with their manager and/or submission of a Conflict of Interest Form.

Can ACT public servants engage in political debate?

14. ACT public servants are able to participate in a private capacity in public discussions and debates about community issues. However, ACT public servants 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.

15. ACT public servants wishing to utilise any form of social media should familiarise themselves with the Social Media Policy to ensure they understand the expected behaviour of an ACT public service on social media platforms.
16. Disclosing official information may result in disciplinary action under the PSM Act. ACT public servants 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, an ACT public servant 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.

Can ACT public servants campaign on behalf of a candidate?

17. Yes, but this must be balanced with responsibilities as an ACT public servant. In their own time, ACT public servants may choose to (including but not limited to):
 - participate in political campaigns or canvassing including doorknocking, letterboxing, phone polling and other volunteer campaign activities;
 - engage in political debate and making comment in a private capacity including on social media platforms; and
 - participate in rallies and events.
18. In undertaking these types of activities, an ACT public servant must avoid creating the impression that they are acting in their role as an ACT public servant. Accordingly, ACT public servants should not engage in a political activity while:
 - identifying themselves as an ACT public servant, including by placing that information on social media profiles where political activities could be reasonably linked to their employment;
 - wearing any kind of work uniform/lanyard;
 - giving the impression that they are speaking on behalf of the government and/or the Directorate for which they work.
19. An ACT public servant who wishes to campaign on behalf of a candidate or a political party in addition to time outside their working hours, may apply for an appropriate leave type – such as Annual Leave or Long Service Leave. Please note that Campaign Leave is only accessible to candidates, not those campaigning on behalf of candidates or parties. Approved leave will, to some extent, address the issue of impartiality as it will demonstrate that the ACT public servant has taken some steps to separate political activity from their public service duties, particularly during the pre-election period.

Executives and senior officers

20. An executive 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.
21. Similarly, a public servant holding a senior officer role should also carefully consider whether their particular role in the ACTPS could be perceived as being influenced by their political activities and

consider whether the use of leave would be appropriate where they are seeking to undertake prominent campaign duties.

22. Executives should take the opportunity to update their Declarations of Private Interests if they intend to campaign on behalf of a candidate.

What is expected workplace conduct during the federal election period?

23. Expectations of workplace conduct during federal election periods are the same as at other times. ACT public servants must not participate in political activities during working hours unless they are on approved leave.
24. It is generally not appropriate to display political badges or other material at work. ACT public servants 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.
25. Where an ACT public servant'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.

Can ACT public servants use work resources for election activities?

26. ACT public servants 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.

Use of Official Premises, Facilities and Equipment

27. ACT Government premises such as schools, hospitals and bus depots may be used as the backdrop for political advertising or policy material by local and federal government and non-government parties (e.g., photography or filming) provided that no official resources are utilised, the operations of the site are not unreasonably impacted, and it is undertaken on a case-by-case basis. It is important that the impartiality of ACT public servants is not compromised through their appearance in party political material of this sort. With this in mind it may be more appropriate for actors to be used in place of officials.
28. There may be occasions where agency premises, facilities (such as schools or hospitals) or assets (such as buses) can be appropriately used by political parties for public events, such as media conferences or where they are the obvious place for a function. 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 and that the operations of the workplace or service are not impacted.
29. Access to some ACT government premises may be subject to COVID-19 health measures. All visitors must comply with current COVID-19 restrictions on ACT government premises in consultation with the relevant Directorate.
30. It is not appropriate that the use of ACT Government premises extend to such activities as engaging ACT public servants in political dialogue or using ACT public servants for logistical support for political

functions. Nor should the use of premises unreasonably disrupt the normal operations of the offices concerned.

31. Requests for use of or access to ACT Government premises, facilities or assets should be considered by the Director-General (of the relevant directorate).

Campaign for Election Leave (Leave without Pay)

32. Campaign Leave, or the use of Annual Leave or Long Service Leave entitlements, may be granted to prospective election candidates who are not executives or statutory office holders.
33. Executives are able to utilise their Annual Leave or Long Service Leave entitlements for the purposes of campaigning for an election, but do not have an entitlement to Campaign Leave.
34. 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). This leave is available for use to campaign for election, before formal nomination, at which stage an ACT public servant must resign, as per Section 44 of the Australian Constitution (see below).
35. The leave can be granted for a maximum period of three months and is to be taken without pay. Periods of leave to campaign for election will not count as service for the calculation of other entitlements including recognition of prior service.
36. ACT public servants wishing to access leave without pay to campaign for their election to the Commonwealth Parliament must do so prior to their formal nomination as a candidate because they will need to resign in order to be eligible to nominate. Leave entitlements, including LWOP under the campaign for election provision, are no longer accessible upon an ACT public servant's resignation. All accrued and unpaid eligible entitlements will be paid out at the next available pay day following resignation.

What is the role of a manager?

37. Where a manager is concerned that there may be, or may appear to be, a conflict between an ACT public servant's duties and their involvement in political or non-political activities, the issue should be discussed with the ACT public servant and if appropriate, a Conflict of Interest Disclosure Form should be completed.
38. The circumstances of each situation, such as the seniority of the position held by the ACT public servant, 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.
39. In reviewing a Conflict of Interest Disclosure Form, the manager should consider whether:
 - the conflict or perceived conflict impairs the ACT public servant's ability to exercise impartial decision making or maintain public confidence in decision making;
 - the campaign or other non-political activity involves improper use of information obtained through official duties or is unauthorised public comment; and
 - the campaign or other non-political activity involves the use of any official facilities, including the candidate's time during work hours.
40. Where a conflict is identified, the manager must ensure that the ACT public servant either:
 - ceases involvement in the conflicting interest or activity – such as, political campaigning or other non-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.

41. In many cases the only way that a real or perceived conflict can be resolved for an election candidate is for the ACT public servant 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.

Standing for election: Can an ACT public servant contest a Federal Government election?

42. Candidates for the Federal election must resign before they are nominated due to constitutional eligibility requirements (see below).
43. Any ACT public servant who is standing for a seat in the House of Representatives or the Senate should follow the procedures set out below.
44. Please note that the procedures outlined below are intended to be a guide, and that candidates should seek their own independent advice in relation to candidature and point of any resignation from the ACTPS.
45. In addition, the Australian Electoral Commission provides a Candidate's Handbook which contains essential information for candidates standing for election for the Senate and the House of Representatives.

Do ACT public servants need to resign from the ACTPS if they wish to contest a Federal Election?

46. Yes. Under Section 44 of the Australian Constitution, a person cannot nominate for the Senate or the House of Representatives if they are a public servant. This means that an ACT public servant must first resign before nominating as a candidate in the Federal election.
47. The requirement to resign and its timing varies across different jurisdictions and is a complex area. It is strongly recommended a potential candidate take independent legal advice to ensure the relevant laws are complied with.

What do ACT public servants need to know before resigning

48. ACT public servants should be aware that resigning will result in a termination of their employment and employment relationship with the ACT Public Service. This means that in their final payment they will receive entitlements such as base pay; unused annual leave; long service leave entitlements where applicable; and leave loading. If the public servant does not want their leave entitlements paid out at the time of their resignation, they should discuss this with their HR team who will liaise with Workforce Capability and Governance within the Chief Minister, Treasury and Economic Development Directorate.

Re-appointment of unsuccessful election candidates

49. ACT public servants 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, 136 or 139 of the PSM Act. To be re-employed or re-appointed, the former ACT public servant must have resigned no earlier than six months before nominations for the election closed, been an unsuccessful

candidate and applied for re-employment or re-appointment no later than two months after the election result has been declared.

50. ACT public servants considering standing as a candidate in a federal election should seek independent legal advice before they resign on how to re-join the ACT Public Service in the event that their candidature is unsuccessful.

Statutory office holders

51. While statutory office holders are not bound by this guidance, it may provide assistance in setting benchmarks for reviewing circumstances where a perceived or actual conflict of interest may occur, so members remain impartial in their role. For further information they should refer to the [Governance Principles – Appointments, Boards and Committees](#).

Other legislative requirements

52. The Australian Electoral Commission provides guidance on the qualification and eligibility requirements under section 44 of the Australian Constitution for candidates for the Senate or the House of Representatives.
53. ACT public servants are encouraged to obtain independent legal advice if they are in any doubt whether the provisions of the above Acts apply to them.

Further information

54. For further information, please contact DDGWCAG@act.gov.au.

Review

55. This policy is due for review 3 years from the last issued or reviewed date, or earlier where there are changes that affect the operation of the policy.

Document name: Guidelines: ACT Public Servant Conduct during the 2022 Federal Government Election Period	Prepared by: Industrial Relations and Public Sector Employment
Policy Number: 34/2022	Feedback to: eba@act.gov.au
Issue Date: 1 April 2022	Review Date: 1 April 2025

Approval Authority

Dr Damian West
Deputy Director-General
Workforce Capability and Governance Division
Chief Minister, Treasury and Economic Development Directorate
On behalf of the Head of Service
10 April 2022