



## Contesting state or federal elections

The following information applies to all public sector employees and is guidance only. It should not be used as a substitute for legal advice. Employees considering running for election at the state or federal level are responsible for ensuring they understand their obligations and should obtain their own independent legal advice.

Obligations differ depending upon whether an employee is running for a state election or a federal election.

### GLOSSARY

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**Declaration of the poll:** a formal statement of the result of an election for a particular electorate. The timing of this will vary from electorate to electorate, as it is influenced by factors such as the speed of counting, the closeness of the vote, whether preferences will impact the result, level of postal voting etc.

**Writs:** a formal, legal document issued by the Governor to the Electoral Commissioner fixes various details of the election including date of election, nominations, and closure of electoral rolls. For a general election, the writ is issued 28 days prior to the date fixed for the election. The writ is returned to the Governor or Speaker by the Electoral Commissioner following the election result being determined and declared for each district.

**Caretaker period:** the period following the dissolution of the House of Assembly and the issuing of the writs for an election, until the new Premier is sworn-in, or the Government is returned. During this period state public sector employees must take steps to avoid binding an incoming government and limiting its freedom of action. Conventions include avoiding making major policy decisions, significant appointments, or entering major contracts or undertakings.

### STATE ELECTIONS

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#### Eligibility to be a member of Parliament

A public sector employee will be ineligible to hold office under section 45(2) of the *Constitution Act 1934* (i.e. to be a Member of Parliament) unless they have resigned by no later than the day prior to the **declaration of the poll** for their electorate or the Legislative Council.

If a public sector employee is contesting a state election but during counting it is clear they will not be successful, there is no requirement for them to resign.

#### Employment of a candidate during election campaign

The election campaign formally starts with the issuing of **writs**, which also triggers **caretaker conventions** for the public sector.

An employee may take leave with or without pay during the caretaker period to enable them to devote more time to campaigning. This ensures their duties are not compromised by campaigning in a private capacity during working hours.



# Information Sheet

There is no obligation on the public sector employee to resign earlier than the day before the declaration of poll, however it is common for an employee to resign before the issuing of writs (i.e before the caretaker period commences).

Employees who choose to continue performing their duties during an election campaign must consider their obligations under the Code of Ethics for the South Australian Public Sector and the *Public Sector (Honesty and Accountability) Act 1995*, and whether there may be a conflict of interest between their private interests and their obligations as a public sector employee while they are campaigning. They must be able to satisfy their employer and the general public that their duties have been discharged properly during the election campaign. They must also not use their role to influence decision-making which may enhance their prospects at election.

Candidates may work up to election-day, and immediately following election if the result of their electorate remains unclear.

## **FEDERAL ELECTIONS**

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Requirements for a federal election are different to those for a state election.

### **Eligibility to run as a candidate**

A person cannot nominate for the Senate or the House of Representatives if they are disqualified by section 44 of the Constitution. These disqualifications include holding an office of profit under the Crown, which includes holding employment as a public sector employee in any state or territory. Any employee seeking to contest federal election must therefore resign before nomination.

Interested candidates should access the [Australian Electoral Commission Candidate Information Hub](#) for further information.

## **REAPPOINTMENT FOLLOWING STATE OR FEDERAL ELECTION**

Section 66 of the *Public Sector Act 2009* entitles former employees who have resigned to contest a state or federal election to be reinstated.

An employee who resigns to contest election and is subsequently unsuccessful will be reappointed in the agency in which they were last substantively employed at the same remuneration level and without probation, provided:

1. the resignation takes effect no more than 1 month before the issuing of writs, and
2. applicable notice periods have been complied with, and
3. the former employee applies to be reengaged within 2 months after the return of the **writ** for the election.

An employee being reappointed in these circumstances will be considered to have been on leave without pay for the duration of their resignation.