

## COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT INFORMATION SHEET:

### PUBLIC SECTOR EMPLOYEES CONTESTING STATE OR FEDERAL ELECTIONS

Please note that the following information is issued as guidance only and not as legal advice on the topic. Persons who are potentially affected should obtain their own legal advice should they be standing for election.

#### STATE ELECTIONS

**For South Australian public sector employees contesting the South Australian State election, the following information relates to the requirements to be complied with if you are a successful candidate in an Electorate or the Legislative Council.**

In order to fully comply with the requirements of section 45(2) of the *Constitution Act 1934*, South Australian public sector employees will need to have notified of the resignation from their public sector employment to the Chief Executive, agency head, or delegate in the agency they are employed in, and had such resignation acknowledged on the day prior to the declaration of the poll for their Electorate or the Legislative Council (or at an earlier date if they so choose).

Candidates can work up until the Election Day, and thereafter if the result in their Electorate is unclear. The Declaration of the poll for Electorates and the Legislative Council takes place in the days, and sometimes weeks, following the election (unless there is only one candidate in a House of Assembly Electorate at close of nominations).

South Australian public sector employees contesting elections also need to be aware that if they do not resign from their public sector employment whilst campaigning, this may give rise to potential conflict of interest between their private interests and their obligations as a public sector employee, real or potential. Candidates (or those assisting a candidate) cannot campaign (or assist with a campaign) during normal working hours without having had leave formally approved and/or use public resources in association with campaigning.

All public sector employees should be aware of their obligations under the *Public Sector (Honesty and Accountability) Act 1995* and the Code of Ethics for the South Australian Public Sector.

In accordance with section 66 of the *Public Sector Act 2009* (PS Act), if an employee who has resigned to contest an election (provided that the notice periods within the PS Act are complied with) is unsuccessful (not elected) the employee will be entitled to be reengaged as an employee in the agency they were last substantively employed in should they apply within two months after the return of the writ for the election. They are not to be subjected to a period of probation, and are to be reemployed at the same remuneration level, with the period away from the workplace being treated as leave without pay. The onus is on the candidate/employee to ensure they comply with requirements under the PS Act.

#### FEDERAL ELECTIONS

**Please note that the requirements for a Federal election are different than for a State election.** In short, any person who holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth, shall be incapable of being chosen or of sitting as a Senator or a Member of the House of Representatives (please refer to section 44 of the *Commonwealth of Australia Constitution Act*).

The Candidates Handbook issued by the Australian Electoral Commission (<http://www.aec.gov.au/Elections/candidates/files/candidates-handbook.pdf>) advises that *“if you are a Commonwealth, state or territory public servant [public sector employee] and wish to nominate for election to the Commonwealth Parliament, you should resign before nomination in order to comply with the Constitution”*.

Thus, a public sector employee desiring to stand for election in the House of Representatives or Senate of the Commonwealth Parliament must ensure they have effectively resigned from their public sector employment before nominating for election.

The other ethical and access considerations mentioned under the *State Elections* heading are also applicable in the context of federal elections, and section 66 of the PS Act also applies to unsuccessful candidates.