

Practices, Procedures and Standards No. 3

CONTESTING FEDERAL, STATE AND LOCAL
GOVERNMENT ELECTIONS

Operative date: date of signature

Pursuant to Section 15(1)(b) of the *State Service Act 2000*, I hereby direct that the arrangements and requirements, set out in this Practices, Procedures and Standards document apply.



Signed:

Date..... 14 February 2024.....

Issued by the Director, State Service Management Office under delegation from the Head of the State Service.

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I. Purpose

- 1.1. To outline requirements relating to State Service employees and officers who nominate as candidates at Federal, State or Local Government elections.

2. Application

- 2.1. This Practices, Procedures and Standards is issued in accordance with Section 15 (1)(b) of the *State Service Act 2000* (the Act).
- 2.2. This Practices, Procedures and Standards applies to all State Service employees, (permanent or fixed term) appointed under section 37 of the Act and officers appointed under section 29 of the Act

3. Legislation and Related Documents

- 3.1 Commonwealth Legislation:

Commonwealth of Australia Constitution Act 1900

Commonwealth Electoral Act 1918

- 3.2 Tasmanian legislation and related documents:

Applicable Public Sector Awards

Constitution (State Employees) Act 1944

Crown Servants' Reinstatement Act 1970

Long Service Leave (State Employees) Act 1994

State Service Act 2000

State Service Regulations 2021

Tasmanian Electoral Act 2004

4. Date of Operation

These Practices, Procedures and Standards will take effect from the date of issue and will remain in force until varied or revoked.

5. Federal Elections

Are you required to resign to contest an election?

Yes. You have to resign to contest an election for either House of the Commonwealth Parliament prior to nominating.

Under Section 44 of the *Commonwealth of Australia Constitution Act 1900* you must resign from public employment ("an office of profit under the Crown") before contesting an election for a seat in the Federal Parliament or risk your election being declared invalid by a Court of Disputed Returns for not completing a valid nomination form (see High Court decision, *Sykes v. Cleary and others*, 1992).

It is recommended that you refer to Section 170(1)(b) of the *Commonwealth Electoral Act 1918* for completing a valid nomination.

When should you resign to contest an election?

You are entitled to normal leave entitlements (recreation leave, long service leave or leave without pay) for campaigning up until you resign.

The latest acceptable date to resign is the date formal nominations with the Australian Electoral Commission close. Resignation is to be no later than the hour before nominations close or before 12 noon on the nomination closing day¹.

It may be prudent to ensure resignation takes effect before nominating as a candidate. This responsibility is one for the employee or officer not the employer.

If you resign to contest an election, can you be reappointed if you are an unsuccessful candidate?

Yes. Provided you resigned not more than one month before nominations for that election closed, you can apply within two months of the declaration of the result of that election, to be reappointed to the position from which you resigned.

Heads of Agency are not obligated but have discretionary power to reappoint under Section 3(1) of the *Crown Servants' Reinstatement Act 1970*.

If you are reappointed you can elect to count your absence during the election (the period from the day on which your resignation took effect to the day before the day on which you are reappointed) as either leave without pay under Section 3(2) *Crown Servants' Reinstatement Act 1970*, or, if you become entitled by reason of your resignation to become a candidate, to an allowance under Section 20 of the *Long Service Leave (State Employees) Act 1994* and an allowance was paid under that Act, as long service leave under Section 3(3) *Crown Servants' Reinstatement Act 1970*.

Provided you apply for reappointment within two months of the declaration of the result of that election the break between resignation and reappointment does not break your continuity of service, for the purposes of calculation under the *Long Service Leave (State Employees Act) 1994*.

6. State Elections

6.1 Employees

If you are a State Service employee are you required to resign to contest a State election?

No. If you are a State Service employee (permanent or fixed term), appointed under section 37 of the Act, who wishes to become a candidate for election to either House of State Parliament, you do not have to resign prior to contesting a seat.

What provisions are available to employees for employees to contest an election?

You are entitled to leave of absence without pay for up to two months for the purpose of contesting a State election. This entitlement is covered under the provisions of Section 2(2)(b) of the *Constitution (State Employees) Act 1944*.

¹ The Federal Election Timetable contains information relating to the dates and time writs are issued. Nomination as a candidate commences during normal business hours from the date of writs for election opens until 12 noon on the day nominations close.

You can also request to access your paid leave entitlements (where available) if you wish to take leave, subject to Head of Agency approval.

What if you are not elected?

You can either complete the scheduled period/s of leave with or without pay, or make a request to the Head of Agency to return to work at an earlier date. A decision to allow you to return early is at the discretion of the Head of Agency.

Your entitlements on return to State Service employment following any period of leave without pay in excess of 20 working days in a year have exclusion limits (in relation to calculating length of service, leave entitlements and salary progression).

Section 11(3)(d) of the *Long Service Leave (State Employees) Act 1994* and Regulations 22(3) and 24(4) of the *State Service Regulations 2021* specify the conditions for your return.

Note: The provisions of this section relating to employees also apply to Prescribed Officers appointed under section 31(b) of the State Service Act.

Note: The expiry date of an appointment for fixed-term employees whether expressed or implied is not extended due to any period of leave or absence due to contesting an election.

What if you are elected?

If elected, Section 2(2) of the *Constitution (State Employees) Act 1944* provides that service as a State Service employee will cease and employment will terminate.

6.2 Officers

If you are a State Service Officer are you required to resign to contest a State election?

Yes. You are required to resign your employment as an State Service Officer (other than a Prescribed Officer) if you contest a state election.

Where you hold an office created under Section 29 of the State Service Act (i.e. a Head of Agency, Senior Executive Office, or Equivalent Specialist Office) and become a candidate at an election for members of either House of State Parliament you are taken to have vacated that office on becoming such a candidate (*State Service Act (Section 31(5))*) once nominations have closed and you are formally recognised as a candidate.

There is no specific legislation providing for the reappointment of an officer after their resignation to contest an election

Note - If you are a Prescribed Officer, appointed to an office contained in Schedule 1 of the State Service Regulations, the provisions of section 6.1, Employees, apply.

Officers with right to reappointment

Section 31(11) and Section 31(12) of the State Service Act make provision for a person appointed as an officer who was, immediately prior to being an officer, a permanent employee in the State Service, and whose appointment is terminated, or a consecutive appointment not offered, to elect within 14 days after the termination or expiration to be reappointed as a permanent employee.

If you are eligible for such reappointment after vacating your office as an officer you can exercise the right to reappointment as a permanent employee. As a permanent employee you can access the provisions in clause 6.1 of this PPS once your reappointment as an employee has been progressed by the Head of the State Service. Should you then be elected, service as a State Service employee will cease in accordance with clause 6.1.

If you are not eligible for reappointment, your employment with the State Service terminates through your resignation of employment on contesting the state election in accordance with s31(5) of the Act.

Where an officer has, or has indicated their intent to, become a candidate, the agency should consult with the Director SSMO in terms of the application of this PPS to individual circumstance.

7. Local Government Elections

There are no legislative requirements relating to employment for State Service employees and officers wishing to nominate as candidates in local government elections.

Candidates in local government elections are entitled to leave in accordance with the *State Service Act 2000* and applicable Public Sector Awards.

Are you required to resign if you are a successful candidate?

No, however if elected you must be mindful of avoiding any potential conflict of interest and ensuring you comply with the State Service Principles and Code of Conduct, contained in the *State Service Act 2000* (Section 7(1) and Section 9 respectively), at all times.

8. Intending Candidate Resources

The sites listed below contain key resources for candidates including the 'election timetable' relating to Issue and Return of Writs, 'Information for Candidates Handbook' to calculate key dates for nomination and extracts from relevant legislation relating to employment for Holders' of an office of profit under the Crown, State Public Servants and Government Contractors.

Employees and Officers are advised that this document is designed to be used only as a guide and it is recommended that you obtain your own independent legal advice if in any doubt about whether the provisions of the legislative basis and related documents apply to you.

[Tasmanian Electoral Commission website \(TEC\)](#)

[Australian Electoral Commission website \(AEC\)](#)