

Elections - Public Sector Employees Contesting Elections

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Functional Sub group Personnel/Workforce - Conduct and ethics
Personnel/Workforce - Conditions of employment
Personnel/Workforce - Leave

Summary This Policy outlines the provisions for staff contesting Federal and State elections including responsibilities as set out under the NSW Health Code of Conduct.

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Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Public Health System Support Division, Community Health Centres, Government Medical Officers, NSW Ambulance Service, NSW Dept of Health, Public Health Units, Public Hospitals

Audience This policy applies to all staff of the NSW Health Service and the DoH

Distributed to Public Health System, Community Health Centres, Dental Schools and Clinics, Government Medical Officers, Health Associations Unions, Health Professional Associations and Related Organisations, NSW Ambulance Service, NSW Department of Health, Public Health Units, Public Hospitals, Tertiary Education Institutes

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Status Active

Director-General

Compliance with this policy directive is mandatory.

PUBLIC SECTOR EMPLOYEES CONTESTING ELECTIONS

This Policy applies to staff of the NSW Health Service and the Department of Health.

1. PUBLIC SECTOR EMPLOYEES CONTESTING STATE ELECTIONS

The provisions for staff contesting State elections are contained in section 102 of the *Public Sector Employment and Management Act 2002*.

Any staff member of the NSW Health Service or the Department of Health intending to contest a State election must in the first instance notify the Director-General of NSW Health or delegate (in most cases the Chief Executive of the relevant Health Service).

Where a staff member is nominated for election to the Legislative Assembly or Legislative Council, they are to be granted leave of absence until the day on which the result of the election is declared. If the person is elected, then he/she is required to resign from their NSW Health Service or Department of Health position.

To avoid any real or potential conflict of interest between political interest and public employment, it would be preferable for staff members to take leave for election campaigning purposes from and including the day of nomination for the election.

Unless the staff member is entitled to leave with pay (and duly applies for such leave), any leave of absence is to be leave without pay.

2. PUBLIC SECTOR EMPLOYEES CONTESTING FEDERAL ELECTIONS

The conditions under which staff may contest Federal elections are prescribed by Section 44(iv) of the Commonwealth of Australia Constitution Act, which states:

"Any person who ... holds any office of profit under the Crown ... shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives."

This has been interpreted to mean that Government employees must resign from their positions before they can nominate for election to the Commonwealth Parliament. Staff intending to contest a Federal election must, in the first instance, notify the Director-General or delegate.

The last day of service must be no later than the day prior to the closing date for nominations.

Section 103 of the *Public Sector Employment and Management Act 2002* provides that a staff member who resigns to contest a Federal election and fails to be elected, is entitled to be re-appointed to a position not lower in remuneration than the former position, provided:

- a. The resignation took effect not earlier than 3 months before the date of the election;
- b. The resignation stated an intention to contest the election; and
- c. The employee makes written application for re-appointment within 2 months of the declaration of the poll.

Where a person is re-appointed, the period between the dates of resignation and re-appointment is to be regarded as leave without pay and the person is taken to have never resigned from the NSW Health Service or the Department of Health.

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The monetary value of recreation or long service leave credits paid on resignation may be:

- a. Retained or
- b. Applied in whole or part to the period of leave without pay or
- c. Refunded to re-establish leave credits

according to the preference of the person concerned.

3. THE NSW HEALTH CODE OF CONDUCT

Staff contesting Federal Elections

In addition to the legislative provisions outlined above, former staff contesting Federal elections must adhere to the provisions of the NSW Health Code of Conduct (Policy Directive PD2005_626) relating to the conduct of former staff members.

Staff contesting State Elections

Staff contesting State elections are required to adhere to the requirements of the NSW Health Code of Conduct, with particular attention being given to the following provisions:

- Avoiding conflicts of interest
- Avoiding the misuse of official information or resources and
- The conduct of former staff members (where the staff member resigns to take up a position in a State Parliament).

Staff contesting Local Elections

No statutory provisions exist for staff contesting local elections however they are required to adhere to the requirements of the NSW Health Code of Conduct, with particular attention being given to the following provisions:

- Avoiding conflicts of interest
- Undertaking duties in a politically neutral manner and
- Avoiding the misuse of official information or resources.

Robyn Kruk
Director-General