



PARLIAMENT OF NEW SOUTH WALES

Joint Standing Committee on Electoral Matters

Supplementary questions: Public Service Association of NSW

- 1) Office of profit under the Crown – Have you been aware of any of your members that perceive an actual or suggested blockage to their running for Parliament due to their being employed by the Crown? Do you think this is suppressing the ability of a large sector of the community from potentially running for office?
- 2) Are you aware of people who are working from front line Government or community sectors being adversely affected and members reporting cases of employers threatening loss of employment or curtailing of future job opportunities due to their nomination with a particular party?

PSA in Response

The PSA notes that state government employees do not have the same inhibitions on running for office in a State Election as for a Federal election. Except where expressly mentioned, we are talking specifically about State government employees running for office in the state of New South Wales.

Prior to 2012 the Public Service and Employment Management Act (PSEM) required public servants to take unpaid leave from the time of their nomination after the issuing of the writs till the result of the election was declared. They would then either resign to take up their seat or return to work.

Under the Government Sector Employment Act (GSE), and specifically section 71, enacted in 2012 employers have been required to grant paid leave as well as unpaid leave to the candidate to cover this period.

As this period, under both acts, was dealt with by leave there is no issue around adverse action or detrimental impact. Indeed, the clause is now written as a requirement of the employer to grant the leave period. It is treated as just another reason why an employee may utilise their legislated leave entitlements.

It is worth noting that section 72 of the GSE deals just as effectively with the greater requirements upon Crown employees running for Federal office. Although it is necessary for an employee to resign from their employment, the clause has an automatic reinstatement provision where the candidate is unsuccessful, and includes protections around role and pay.

The general provisions in NSW affecting Public Servants running for office have now been in place for many years and work well, when adhered to. Unfortunately, recent experience informs us that in some instances this is not the lived experience of candidates who come from the Government sector.

As an example of how the system should work; we know of a public servant who, during the 2015 election, notified their Agency that they intended to be a candidate. Management brought in legal to meet with the candidate and go through their rights and responsibilities. They then wished them luck and discussed leave arrangements for the member. The whole process was professional and designed to protect both the candidate and the Agency.

By comparison; during the recent 2023 election one of our members notified their work that they had decided to run. They were immediately stood down without pay and had their work phone and laptop reclaimed. They were then referred for investigation for breaching the code of conduct by not declaring their membership of a political party, informed they would be on leave without pay until the investigation was completed and that they would have to resign when their candidacy nomination was submitted at the issuing of the writs. Despite PSA intervention, the candidate felt totally unsupported and decided to resign immediately so they could focus on their run for office.

Although the above example is the extreme example, there is no doubt that candidates have found it increasingly difficult to navigate what should be an uncomplicated process.

We note the following trends which we feel have influence this shift:

- A massive drop in the institutional knowledge of middle management and HR/IR groups due to employee turnover and the policies of the former government;
- this lack of experience probably combined with the recent controversies at the Federal level over the provisions around candidates not holding Offices of profit under the Crown – even though these are different for state elections – to create an atmosphere of fear within Agencies;
- the invasion of Public Sector Agencies into a Public Servant's private life through the mechanism of Codes of Conduct; and
- a general politicisation of the Public Sector by the former government where Senior Executives believe they are there to do the bidding of the current government rather than implementing policies in the Public interest.

To fix issues of this type, we don't believe legislative change is required. As mentioned above, the legislation is straight forward, efficient and fit for purpose. Instead, the change needs to be one of attitude by government Agencies.

We would hope that the government makes changes to the way the Senior Executive are engaged to restore their political independence and integrity.

We would suggest the efforts already underway by the government to rebuild the public service will allow a more informed response by middle management to disclosures of this type, and lead to a more professional, and legally correct, response by Agencies.

Finally, we would encourage a thorough review of how Codes of Conduct are used to attempt to regulate public servants. The harassment of candidates is the clear and obvious end product of a system that has slowly but surely restricted public servants from freely expressing both their right to freedom of association and their inferred right to political free speech while employed by the NSW government.

We thank you for the opportunity to respond to this committee.

