



# General Election 2017

## State Servants standing for election to Parliament

### Key points

- ▶ State servants are entitled to put themselves forward for selection and, if chosen, stand for election to Parliament.
- ▶ State servants should consider discussing with their employer how their candidacy will impact on the workplace and State servants whose candidacy is confirmed should inform their employer.
- ▶ The Electoral Act 1993 sets out which State servants must take leave from their positions if standing for Parliament.
- ▶ State servants not covered by the Electoral Act provisions should consider discussing with their employers whether they will seek to take leave from their positions to preserve the political neutrality of the State services.
- ▶ State servants who are campaigning must not divulge confidential agency information, purport to speak on behalf of their agency, reveal advice given to Ministers, or use their agency's resources.

### Further Guidance

- The Electoral Commission provides comprehensive guidance for Parties and Candidates here:  
<http://www.elections.org.nz/parties-candidates>
- You should seek advice, in the first instance, from your managers. The State Services Commission also provides further guidance and support. Please email [election@ssc.govt.nz](mailto:election@ssc.govt.nz), or telephone (04) 495 6600 and ask for the Election Guidance Team.

### The Electoral Act 1993

State servants are entitled to put themselves forward for selection and, if chosen, stand for election to Parliament. At all times a balance should be reached that respects State servants' freedoms of expression and association, and the public interest in having a politically neutral State services.

The Electoral Act sets out requirements for some State servants with regard to being a candidate in an election. These State servants are those who are employees of Public Service departments, the New Zealand Police, the NZSIS, members of the Defence Force (other than those excluded under section 3 of the Electoral Act), the Education Service<sup>1</sup> and the Cook Islands and Western Samoan Public Service. The requirements for these State servants are:

- ▶ The State servant must take leave of absence from his or her position for a period if standing for Parliament (section 52(2) of the Electoral Act).<sup>2</sup>

1 As defined in the State Sector Act 1988, this includes employees in the service of any state or integrated school, or any tertiary or other education institution, and registered teachers employed by any free kindergarten association.

2 There are some exceptions for staff of a university or a university college or a technical institute or a community college or a teachers college may continue to teach or supervise the studies of students at that university or university college or technical institute or community college or teachers college who are preparing for an examination and may engage in marking the examination papers of such students, and may receive remuneration in respect of such teaching, supervision, and marking (refer to section 52(5)).



- ▶ The minimum period for the leave of absence is the time between Nomination Day (i.e. the last day a person can be nominated to stand for election, that in the 2017 General Election is 29 August 2017) and the first working day after Polling Day (section 52(3)).
- ▶ If the employer of a State servant standing as a candidate considers the candidacy will materially affect the employee's ability to carry out his or her duties satisfactorily, the employer may decide that leave is to commence earlier than Nomination Day (section 52(4)).
- ▶ During the stand-down period, a State servant can use any paid annual leave that they are entitled to (section 52(5)).
- ▶ If declared elected, the State servant will immediately be deemed to have vacated his or her position (section 53(2)).
- ▶ If unsuccessful in the election, the State servant may resume work on the first working day after Polling Day (section 52(3)).

There is no statutory requirement to take leave for State servants who are not explicitly covered by the Electoral Act provisions (e.g. employees of statutory Crown entities, Crown entity companies, and organisations on the 4th Schedule of the Public Finance Act, companies on Schedule 4A of the Public Finance Act). These State servants should also consider the impact their candidacies may have on Ministerial and public confidence in the political neutrality of the State sector and whether they will seek to take leave from their position at some point during the campaign period

Employers of such State servants may wish to consider whether the same processes around taking leave, as outlined in the Electoral Act, should be followed with respect to their employees. In discussing with an employee who is not explicitly covered by the Electoral Act provisions whether it would be appropriate for them to take a leave of absence, agencies should consider factors such as the agency's role in the operations of government and the nature of the employee's position (e.g. seniority, degree of engagement with Ministers and level of responsibility for policy development or implementation). If elected to Parliament, State servants not covered by the Electoral Act should resign from their positions.

### **Informing the employer**

Being a candidate is clearly a political activity with potential implications for the employing agency. State servants should consider discussing with their employer how their candidacy will impact on the workplace. Any State servant confirmed as a candidate should immediately inform his or her employer. The manager should inform the Chief Executive.

### **Implications for the employing agency arising from the candidacy**

State servants should consider discussing the implications of their candidacy with their employer as early as possible after that candidacy is confirmed. Doing so is particularly important for senior State servants and those who interact with Ministers. For these State servants, the implications may be more significant than for others.

Once the employer has been notified, the individual and the agency should discuss any implications for the employing agency and the workplace. The employee should be informed of their right to representation in any such discussions.

The discussion should address the practical implications of potential areas of conflict between the individual's role and the political candidacy. Any agreements should be informed by the individual's right to stand as a candidate and their obligations to their employer as a State servant and the agency's obligation to respect the political rights of the employee as an individual.

### **Key considerations in responding to a candidacy**

When discussing candidacies, agencies and employees may wish to consider the following points to ensure there is no confusion between the employee and the agency:

- ▶ the importance of the employee's right to stand for Parliament and the responsibility to maintain politically neutral State services
- ▶ the extent that the employee's seniority, interaction with Ministers and/or their particular role in the agency is affected by the intention to stand for Parliament
- ▶ how any identified risks may be mitigated, including whether any changes should be made to the employee's role to preserve impartiality
- ▶ the importance of the employee continuing to meet their obligations e.g. caution will need to be exercised on the campaign trail so that the State servant does not reveal advice given to Ministers, does not disclose any information that is confidential, and does not purport to express an agency view when giving a personal view, and
- ▶ the implications of an unsuccessful candidacy on the employee's duties or role post-election. The Electoral Act provides that if not elected, State servants can return to work. However, in rare cases a change of duties or role may be required.