



Cook Islands Public Sector Election Guide 2022

Introduction

Our General Elections will be held on Monday, 1 August 2022 where we will choose our 24 members of Parliament (MPs) to decide laws and policies. We must ensure that our country's elections are free, fair and reflect the true expression of the will of the people of the Cook Islands. As the Public Service Commissioner, it is my duty to remind public servants of the following 'standards' and 'rules' for all of us to follow during this time. Anyone aged 18 or over can vote, so long as they are registered and eligible. Public Service Sector employees as citizens have the right to participate in the democratic process, including the right to free speech and the right to choose whom they wish to support and vote for. These rights however, are limited and subject to public service and contractual responsibilities.

This Guide to the general election covers what it means to work in the Public Sector before and during an election. It recognises that Public Sector employees will be exercising their political rights and freedoms as voters in the election and have personal political interests. There is information on the pre-election period and Election Day. It looks at how these periods affect Government business and Government processes in particular, Public Sector employees and their involvement with election process. There is also information on where to get further help on election-related issues.

The Office of the Public Service Commissioner (OPSC) drew on the He Ārahitanga Pōtitanga Whānui General Election Guidance (State Services Commission New Zealand Government, 2020) and advice from the Cook Island Crown Law Office to put this Guide together.

Integrity and Conduct Obligations

The Cook Islands Government Code of Conduct and Political Neutrality Policies provide guidance for Public Sector employees on standards of conduct and to ensure that employees remain politically neutral. Both Policies apply to all Public Sector employees and Agencies and are covered under the following legislation:

- The Public Service Act 2009
- Employment Relations Act 2012
- Ministry of Finance and Economic Management Act 1995-96
- Public Expenditure and Review Committee and Audit Act 1995-96
- Cook Islands Constitution Act 1965
- Electoral Act 2004

The Cook Islands Government Code of Conduct states that examples of misconduct or serious misconduct include:

- Engaging in activities that undermine the confidence of members of the public in the neutrality of the Public Sector
- Personal attacks on the character of other employees, Members of Parliament, other Government stakeholders and members of the general public – in an official capacity
- Publicly criticizing Government Policies in an official capacity
- Misuse of public-funded resources and assets such as offices and school halls, equipment and supplies (phones), communication (emails) and motor vehicles
- Soliciting or accepting gifts, rewards or benefits in an official capacity which might actually or apparently compromise the integrity of the employee, department or the Public Sector
- Serious breaches of legislation, specifically the Public Service Act 2009, Ministry of Finance and Economic Management Act 1995-96 and the Public Expenditure and Review Committee Audit Act 1995-96
- Improper use or unauthorised disclosure of official and/or confidential information
- Corrupt practice which includes offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions of another person as determined by an investigation
- Coercive practice which involves impairing or harming or threatening to impair or harm, directly or indirectly, any person or the property of any person to improperly influence their actions

- Collusive practice to achieve and improper purpose, including influencing the actions of another person

WHAT DOES THIS MEAN?

It means that:

- Those in senior positions in the public service, like a Head of Ministry (HOM), Director, Chief Executive Officer (CEO), Executive Officer (EO), Government Representative (GR), Mayor, Director, etc. cannot use their position to influence or force any other person to vote or not to vote. They must not harass or bully their employees and any public servants in exercising their Constitutional rights and in particular, in respect of their right to vote.
- All public sector employees shall not participate in any actions during working hours that either relate to political campaigning or which may influence other people's votes.
- All public servants are free from any threats to their employment if they support a certain political party or candidate who is standing for a particular constituency.
- All employees, in the Cook Islands Public Sector must be professional, courteous, and treat everyone with respect and without pressure or harassment (Public Service Act 2009, Schedule 4).
- That all employees must not be discriminated against based on their belief or point of view (Employment Relations Act 2012 section 53-55).
- The Executive Officer under Part 3 of the Island Government Act must "... maintain appropriate standards of integrity and conduct among the employees of the Island Government."
- There will be zero tolerance by the Public Service Commissioner for any act or behavior or harassment such as intimidation or threats in the lead up to the 1 August 2022 General Elections.

Political neutrality obligations

In serving the Government of the day, Public Sector employee must be impartial and politically neutral. Political neutrality is a constitutional convention that supports the Government's trust in the Public Sector to work in an impartial way. Political neutrality helps to manage potential for conflict between the State services' policy advice role and the Government's decision-making and advocacy role.

The Political Neutrality Policy applies to the Public Sector at all times, including in relation to elections, by-elections and referendums. While Public Sector employees have the same rights of political expression as other members of the public, employees must respect other people's rights and interests in the workplace. Chatting about politics or policy in a private conversation with interested colleagues is acceptable in general but more overt, politically partisan, conduct may not be. For example, it is not appropriate to:

- Express their personal views in a way that could be taken as a comment in their official capacity rather than as a private citizen
- Engage in personal attacks or make comment on individual Members of Parliament
- Criticize Government policy with which they have been professionally involved with or which they are required to implement
- Reveal advice given to Ministers or use and/or reveal information they are not authorised to
- Disclose information and/or which is not readily available to the general public

Acting responsibly means that employees will advise their Manager if they receive emails from political parties at work, and not respond to or forward emails from political parties to other staff or agencies. Employees must treat everyone, including political parties, fairly and equally and avoid the perception of discrimination based on their political views or affiliations. Public funds and publicly funded Agency resources must not be used for political purposes. For example, using a work printer to copy political party material is not allowed.

Working in a politically neutral way means that employees cannot work for, nor service, political entities such as party caucuses and caucus committees as part of their work as Government officials. As a public servant, they can only attend a caucus meeting of a political party represented in the House at the direction of, or with the consent of the Minister, and with the consent of their Head of Ministry or Agency.

Ministerial Support Office staff

Like other employees, Ministerial Support staff must not use official resources for political party purposes or undertake electioneering work for Ministers. Ministerial staff employed by the Public Sector are bound by the *Code of Conduct Policy* and are not required to be politically neutral in providing political advice to the Minister.

Political activity and the media

Public Sector employees are free to talk to the media and use social media in their private lives, in the same way as other citizens. The political neutrality obligations and your Agency policies apply to all media communications outside work as with other forms of communication. There must be a clear separation between an employee's work role and their personal use of media.

While some aspects of social or other media may be outside a user's control, employees are expected to take reasonable care that their media communications do not undermine the political neutrality of the Public Sector.

Maintaining political neutrality in a work role means separating personal political comments in any media, including on social media, from work life. For example, employees must not link their personal political comments to their LinkedIn work profile.

As with other types of behaviour, private activity in the media, including social media use, will only be a concern to an employer if it harms the employment relationship in some way. Trust and confidence will be affected by media use that involves unlawful conduct, a breach of the Code of Conduct or that otherwise brings the employer into disrepute.

Using Social Media, Internet, Electronic Communications and Advertising

Social Media

Private comments can become public on social media, so it always pays to think before posting material online and to exercise good judgement when sending a post.

It is never a good idea to air workplace grievances online or be disrespectful of others when using social media.

If someone is unsure about what is acceptable they may want to talk to their Manager, and HR advisor at their workplace or the OPSC.

Social media posts are covered by the Electoral Act 1993 rules on political advertising. Political comments made by individuals who express their views on their own website or through social media are exempt from the rules, as long as they do not make or receive payment in relation to the publication of those views.

Internet and electronic communications

Public Sector employees must not use the government ICT network for distribution of campaign materials, ensure that Agency ICT resources are not used to support any particular political party and must report any evidence of misuse of government ICT resources to the Public Service Commissioner.

Advertising

Public Sector resources are not used for political gain of any person or political party. Public Sector employees should not be involved in the printing and distribution of political material or undertake activities that promote political parties. Any evidence of misuse of Government resources must be reported to the relevant Head of Ministry or the Public Service Commissioner. As all political advertising is prohibited on Election Day; no person can post any new political messages on Election Day.

Media comment

When corresponding with the media, agencies must take care to ensure that:

- Communications material is factual and politically neutral
- The Minister is kept informed
- Information and advice requests are handled promptly and by the most appropriate person, entity, or Minister.

Employees need to identify whether issues are primarily political or operational, and whether they are handled by the Minister or by the Agency. Political matters relate to the functions of the Minister. Ministers are responsible for determining and promoting policy, defending policy decisions, and answering in the House on both policy and operational matters.

HOM's, CEO's, EO's, GR's and Mayors, etc., are responsible for operational matters. Ministers are generally not involved in departments' day-to-day operations.

Public Sector Agency Responsibilities

Staff policy and processes

Providing a positive, open and politically neutral working environment provides a foundation for supporting staff and respecting employee's individual rights and freedoms.

Public Sector HOM's, CEO's, EO's, GR's and Mayors, etc., are responsible for the integrity and conduct of their staff and maintaining the Agency's political neutrality over the election period.

Staff policies play an important role in informing staff about what they need to know at work, including how to conduct themselves appropriately. Staff policies will be consistent with this Guide, including respecting employees' individual rights and freedoms.

Useful and relevant staff policies will cover the significant issues that can come up for staff in an election year. This includes social media use, dealing with Government information, advising the Minister appropriately, and notifying and managing outside work interests.

Policy and processes must not only be useful and relevant, it is just as important that they are regularly communicated to staff. Operating robust, fit for purpose, staff policies and processes is an important part of business planning.

Public Sector employees standing for Parliament

Public servants who are running for election **MUST** resign from their job prior to confirming their nomination as a candidate for election.

Government Advertising

Government advertising is when public funds are used to publicize a Government policy, product, service or activity.

During the pre-election period, employees must be alert to the heightened political sensitivity around government advertising and any perceived risk that Government funds are being used to pay for publicity for political parties.

Deferring some advertising in the pre-election period may be sometimes appropriate. The risk that public funds may appear to be used to fund political advertising has to be considered in the light of continuing Government business as usual.

Examples of business-as-usual activity includes publicity and advertising campaigns that inform people about Government services or that set out the public's entitlements and responsibilities, such as road safety campaigns.

Being politically neutral also applies to communications within an Agency. For example, political material, whether it's for the general election or preferences in referendum voting, must not be displayed on Agency premises, vehicles, websites, or emailed from the Agency.

Government advertising applies to both Ministers and the Public Sector public communications, including:

- Publicity for Ministerial or official announcements
- Information about services
- Paid publicity campaigns or launches
- Information about consultations.

Public funds must never be used for party political purposes in Government communications. All Government communications material, including advertising and publicity campaigns, must deal only with matters that the Government has direct responsibility for, such as informing the public about Government policies or services, advising the public of their entitlements or responsibilities, or encouraging the public to adopt some kinds of behaviour that is in the public interest (e.g., road safety advertising).

Advertising must be:

- Be accurate, factual, truthful, fair, honest, and impartial
- Use unbiased and objective language that is free from partisan promotion of Government policy or political argument
- Be lawful and proper
- Be undertaken only where there is an identified and justifiable need for information.

Using Public Funds and Resources

It is never appropriate to use an Agency's public funds or publicly funded resources for political purposes. For example, using a State services agency's vehicle to transport Ministers to a political event, or using Agency funds to cater for an event the Minister is hosting for political party colleagues.

Public Sector Agency's premises should never be used to host political activity. Like the public, political parties can hire premises that are public venues.

Public servants outside work

Rights, freedoms and responsibilities Political interests

Many employees have their own political views and support particular political parties. Being politically neutral at work does not generally stop you from being politically active outside work, such as attending political party meetings or delivering pamphlets.

In general, there is nothing wrong in having interests or activities outside work that may create a conflict with your Agency role, so long as they are identified and appropriately managed. However, there may be circumstances where it is difficult to reconcile the interest with performing the particular role. The Public Service Commissioner can provide assistance in these situations.

Employees who express their political views in their own time are unlikely to breach their employer's political neutrality obligations provided that they don't identify their opinions with their Agency; give the impression they are speaking on behalf of their Agency; or use confidential government information for political purposes.

Public Sector employees have the same rights as other Cook Islanders. Like other Cook Islanders, employees are strongly supportive of good Government and care about the issues affecting Cook Islanders.

Public Sector employees who are very senior; have regular, direct contact with Ministers; represent their Agency; work in a Minister's office or provide advice to Ministers on an issue that is the subject of political activity will need to exercise careful judgement when considering political involvement. Their profile and engagement with Ministers and the public, make it more likely that their political activity could affect public confidence in the political neutrality of their Agency. The Public Service Commissioner can provide assistance in these situations.

The greater the seniority and influence, the less appropriate that visible or public political activity outside work may be. Employees who work in top

tier positions, including senior Agency management and specialist positions, must take particular care about public perceptions when outside work. There are no hard and fast rules around the level of political activity that employees can engage in outside work.

There are some things to think about in engaging in any political activity outside work that might impact the employment relationship. Whether a particular political interest or activity might impact on a work role, and whether it can be managed, may depend on the:

- Seniority of the role
- Nature of the role
- Visibility of the political activity
- Substance of the political activity.

Complaints or Concerns

Any complaints or concerns relating to the breach of what has been outlined above can be lodged to the Office of the Public Service Commission at telephone 29 421 or email: pscinfo@cookislands.gov.ck. (During Office hours 8am-4pm, Monday to Friday).