



Intended for

- All Ministers
- All Chief Executives
- Chief of Staff, Office of the Prime Minister
- Chief of Staff, Office of the leader of the ACT Party
- Chief of Staff, Office of the leaders of the Maori Party
- Chief of Staff, Office of the leader of the United Future Party
- All Senior Private Secretaries
- All Private Secretaries
- Chief Parliamentary Counsel

National-led Administration: Consultation and Operating Arrangements

Introduction

- 1 This circular provides guidance on the consultation and operating arrangements that have been developed to implement and support the agreements between the National Party and the ACT Party, the Maori Party, the United Future Party and the Green Party.
- 2 Ministers and Chief Executives will be familiar with the agreements between the National Party and support parties:
 - 2.1 the confidence and supply agreement with the ACT Party
[http://www.national.org.nz/files/agreements/National-Act_Agreement.pdf (PDF, 90.43 KB)];
 - 2.2 the relationship and confidence and supply agreement with the Maori Party
[http://www.national.org.nz/files/agreements/National-Maori_Party_agreement.pdf (PDF, 58.41 KB)]; and
 - 2.3 the confidence and supply agreement with the United Future Party
[http://www.national.org.nz/files/agreements/National-UF_agreement.pdf (PDF, 54.22 KB)].
- 3 The relationships between the National Party and support parties are based on good faith and a “no surprises” approach. Careful planning, timely consultation and clarity about the roles of all concerned are key to making the arrangements work effectively.
- 4 In addition to the agreements with support parties, the National Party has a memorandum of understanding with the Green Party, which establishes a framework within which the parties can engage on policy and legislation of common interest
[www.beehive.govt.nz/sites/all/files/MOU_National_Party_and_Green_Party_0.pdf (PDF, 47KB)].

Collective responsibility and support party Ministers

- 5 The Cabinet Manual notes that the principle of collective responsibility underpins the system of Cabinet government. It reflects democratic principle: the House expresses its confidence in the collective whole of government, rather than in individual Ministers. Similarly, the Governor-General, in acting on ministerial advice, needs to be confident that individual Ministers represent official government policy.
- 6 Collective responsibility applies differently in the case of support party Ministers. Support party Ministers are only bound by collective responsibility in relation to their own respective portfolios. When support party Ministers speak about the issues in their portfolios, they speak for the government and as part of the government. When the government takes decisions within their portfolios, they must support those decisions, regardless of their personal views and whether or not they were at the meeting concerned. When support party Ministers speak about matters outside their portfolios, they may speak as political party leaders or members of Parliament rather than as Ministers, and do not necessarily support the government position.
- 7 In public, support party Ministers should be clear about the capacity in which they are speaking (as a Minister or as the leader of a political party or a MP), particularly if disagreeing with government decisions outside their portfolio.
- 8 When support party Ministers represent the government internationally, they speak for the government on all issues that foreign governments may raise with them in their capacity as Ministers.
- 9 Further information on collective responsibility can be found in chapter 5 of the Cabinet Manual [<http://www.cabinetmanual.cabinetoffice.govt.nz/node/64#5.22>].

Cabinet and Cabinet committees

- 10 Support party Ministers are not members of Cabinet. From time to time, support party Ministers and other Ministers outside Cabinet may seek the Prime Minister's agreement to attend Cabinet when significant matters within their portfolios are being addressed.
- 11 Support party Ministers are members of various Cabinet committees [<http://www.dpmc.govt.nz/cabinet/circulars/co09/4.html>]. When a support party Minister is a member of a Cabinet committee, he or she receives the agenda and all papers, and attends meetings in the same way as other members of that committee. As noted above, support party Ministers are bound by collective responsibility in respect of their own portfolios, but they are bound by confidentiality in respect of everything else (the content of papers and the discussion at any Cabinet and committee meetings). Once government decisions have been announced, support party Ministers are free to disagree with those decisions in areas outside their portfolios, but they must still maintain confidentiality in relation to the content of the papers and discussions.
- 12 For committees where they are not members, support party Ministers will receive copies of any papers relevant to their portfolios, and may attend committee meetings for those items.
- 13 On some issues outside their portfolios, support party Ministers may decide to opt out by not receiving papers or being involved in discussions, so as to remove themselves completely from the decision-making process on an important issue of differentiation.

Consultation

General

- 14 Timely consultation between portfolio Ministers and between parties is essential to the successful operation of the Cabinet decision-making system, and is a specific expectation of the agreements with support parties.
- 15 It is the responsibility of the lead portfolio Minister to ensure that timely consultation occurs. Managing the consultation process may take some time. Ministers and officials should factor the time required for consultation into their planning on each issue.
- 16 When a support party Minister is being consulted, it is important to identify the capacity in which that consultation is taking place. It should be clear to all involved whether the Minister's views are being sought as a portfolio Minister, or as a representative of his or her party.
- 17 If there is any uncertainty about consultation matters, Ministers should liaise with the Prime Minister's office. The Cabinet Office is also available for advice to Ministers' offices and departments on Cabinet consultation processes.

Party consultation

- 18 The agreements with the ACT Party, the Maori Party and the United Future Party set out the broad areas where the National-led government is expected to consult with support parties. These are:
 - 18.1 the legislative programme and key legislative measures;
 - 18.2 major policy issues;
 - 18.3 broad budget parameters.
- 19 In addition to these broad areas, the agreement with the Maori Party provides for consultation on government appointments. It is the responsibility of each portfolio Minister to undertake consultation with the Maori Party on upcoming appointments at an early stage in the nomination and selection process. Consultation should also be undertaken with other support parties.
- 20 Each of the support parties is represented on the Cabinet Appointments and Honours Committee (APH). Membership of APH does not in itself satisfy the requirement for early consultation on potential candidates for appointment. Such consultation (including requests for nominations) should occur well in advance of the submission of a proposal to APH.
- 21 The agreement with the ACT Party provides that ACT should be consulted on policy issues and legislative measures to which ACT is likely to be particularly sensitive. Again, it is the responsibility of each portfolio Minister to ensure that such issues are identified and that the consultation occurs in a timely fashion.
- 22 Support party Ministers are responsible for undertaking consultation with the National Party caucus on policy within their portfolios where appropriate.
- 23 The confidence and supply agreements provide that formal consultation is managed between the Prime Minister's office and the offices of the leaders of support parties. Regular coordination meetings are held between the Prime Minister's office and each of the support

parties. Ministers and staff in Ministers' offices are expected to inform the Prime Minister's office of any sensitive or potentially complex issues that require consultation, at an early stage in the process.

- 24 The memorandum of understanding with the Green Party establishes a framework within which the parties can engage on policy and legislation of common interest, and identifies areas of agreed work. Overall coordination of the relationship with the Green Party is undertaken by the Prime Minister's Office. Those portfolio Ministers responsible for any areas of agreed work are also responsible for managing consultation with the Green Party. Ministers should keep the Prime Minister's office informed of any major proposals that are to be the subject of consultation with the Green Party.

Ministerial consultation

- 25 As a general rule in respect of Cabinet, Ministers should put before their colleagues the sorts of issues on which they themselves would wish to be consulted. Ministers should keep their colleagues informed about matters of public interest, importance, or controversy.
- 26 Ministers are expected to consult relevant ministerial colleagues before submitting papers that deal with significant or potentially controversial matters, or that affect other Ministers' portfolio interests. Such consultation between portfolio Ministers is a key element of the Cabinet decision-making process, and supports collective responsibility and a "no surprises" approach.
- 27 Consultation **with** and **by** support party Ministers in their capacity as portfolio Ministers should occur in the usual manner.
- 28 It is not sufficient to consult with support party Ministers in their roles as portfolio Ministers and assume that means the Minister's party has also been consulted. Ministers and staff in Ministers' offices should be explicit about the capacity in which they are seeking comment from a support party Minister, and build in time in the consultation process for party consultation, where required.

Caucus consultation

- 29 It is expected that National Party Ministers will consult with and inform the government caucus on appropriate policy issues. Ministers should utilise the formal weekly caucus meetings, relevant caucus committees, and informal caucus channels.
- 30 It is expected that the majority of government appointments will be discussed with the government caucus after consideration by APH and Cabinet, and from time to time nominations may be sought from caucus early in the appointment process. Where a support party Minister is the responsible Minister for a particular appointment, the (National Party) Associate Minister or a Minister with a closely related portfolio should take the proposed appointments to the government caucus.
- 31 The involvement of support party caucuses is a decision for each party leader. Portfolio Ministers will consult with party leaders on particular policy proposals and legislation, and party leaders will take decisions about caucus consultation requirements for their parties.

Noting consultation in Cabinet papers

- 32 In submitting papers for Cabinet and committees, Ministers should, in addition to indicating consultation with the government caucus, draw attention to those issues on which consultation with support parties or other parties has taken place or will be needed.
- 33 The information should be included in the current CAB 100 consultation form [<http://cabguide.cabinetoffice.govt.nz/tools/forms>], submitted with each paper. Where appropriate the Cabinet paper may include further detail. The Minister presenting the paper at the Cabinet committee should be fully informed on consultation that has taken place or that is required.

Legislation

- 34 Departments should be mindful that advancing legislation is a matter for Ministers to discuss with other parties. Support for legislation, other than confidence and supply measures, is negotiated on a case by case basis. No assumptions should therefore be made on the timing of the passage of such legislation. Where departments are aware that timing is critical in relation to particular bills (eg for fiscal reasons) they should advise their Minister so that the matter can be raised with the Leader of the House as appropriate.

Role of Departments

- 35 Departments are not expected to play any direct part in the consultation between the National Party, and other political parties. That is a matter to be determined by Ministers and the Prime Minister's office. Contact between departmental officials, and other Ministers, caucus or other parliamentary parties should take place only with the prior approval of the relevant Minister.
- 36 Departments may be called on to support Ministers in their consultation with the support parties, caucuses and other parliamentary parties. Officials should obtain clear instructions from their Minister on the nature of the contact (i.e. whether they will be supporting a briefing, or a process of consultation or negotiation by Ministers).
- 37 Departments may on occasion be asked by their Minister to meet representatives of other parliamentary parties without the Minister present. On such occasions all those at the meeting should clearly understand that officials are able to provide only a briefing on the issues. As a matter of practice, departments are advised to keep a record of the substance of any such meeting and consider providing that record to all those who attended the meeting as well as to the Minister. A representative of the Minister's office should attend any such meetings.
- 38 Cabinet decisions that are still subject to the outcome of consultation with the support parties, or with the government caucus or other parliamentary parties, should be implemented only when the consultation process is complete. In planning the implementation of proposals, departments need to allow sufficient time for this consultation to take place.
- 39 Arrangements should be in place between Ministers' offices and the departments (or agencies) for which they are responsible, to ensure that departments are informed when the consultation process has been completed and action can be taken to implement the decisions.

Further Advice

- 40 Ministers' offices or departments concerned about the application of the guidance in this circular to particular papers or issues should discuss them with the Prime Minister's Chief of Staff, Wayne Eagleson, or with the Cabinet Office.

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