



**Intended for**

- All Ministers
- All Chief Executives
- All Senior Private Secretaries
- Speaker of the House of Representatives
- Chief Parliamentary Counsel
- Controller and Auditor-General
- Chief Ombudsman
- Official Secretary, Government House

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## Government decision making during the period of caretaker government

### Introduction

- 1 Negotiations have commenced to establish the basis on which a successor administration will operate following the general election on 26 November 2011. The Prime Minister has indicated that, in accordance with the convention on caretaker government, the current administration will govern in a caretaker capacity until the formal appointment of the new administration.
- 2 This circular provides guidance for Ministers and government agencies on:
  - 2.1 the application of the caretaker convention;
  - 2.2 taking decisions during the period of caretaker government;
  - 2.3 consultation with political parties during this period;
  - 2.4 Cabinet meetings; and
  - 2.5 guidance on the support from the state sector for negotiating parties.
- 3 The guidance in this circular supplements the information in Cabinet Office circular [Constitutional Procedures after the Election](#) (CO (11) 05), which was issued on 22 September 2011.

### Application of caretaker convention

- 4 Until the successor administration has been appointed, the incumbent Ministers and government will operate in accordance with the caretaker convention.

### Key principles

- 5 The key principles of the convention, as applied during the government formation period, are:

- 5.1 There must always be Ministers in office to advise the Sovereign and exercise the powers of executive government.
  - 5.2 The normal business of government, and the day to day administration of departments and other agencies in the state sector should continue as usual.
  - 5.3 Decisions taken before the start of the caretaker period may usually be implemented.
  - 5.4 Significant decisions, new policy, or changes to existing policy and actions with long-term implications should be deferred if possible.
  - 5.5 If it is not possible to defer decisions of that nature, the government will handle matters using temporary or holding arrangements that do not commit the government in the longer term.
  - 5.6 If neither deferral nor temporary arrangements are possible, the government is likely to undertake the political consultation necessary to establish whether the proposed action has the support of a majority of the House.
- 6 No hard and fast rules are possible. Ministers and chief executives may need to take into account various considerations (including political considerations), both on whether it is appropriate or necessary to proceed on a matter and how it should be handled.
  - 7 The government formation talks are likely to result in agreements between parties, which will formalise the composition of the new government, and the basis on which it will operate. These agreements have in the past been made publicly available.
  - 8 The caretaker convention will continue to apply, in an amended form, between the time that the parties sign agreements and the time the new government is appointed (see paragraphs [6.24 and 6.25 of the Cabinet Manual](#)). Further guidance will be issued about that at the appropriate point.

### **Ministers**

- 9 Ministers should consider the following:
  - 9.1 During the caretaker period, matters may arise that would normally require a decision by a Minister or Cabinet. To ascertain how the caretaker convention applies to the decision, Ministers may seek advice from their officials or from the Cabinet Office. Ministers should discuss significant or difficult decisions concerning the caretaker convention with the Prime Minister and/or their Cabinet colleagues.
  - 9.2 In cases where any doubt arises as to the application of the caretaker convention, Ministers should consult the Prime Minister. Final decisions concerning the caretaker convention rest with the Prime Minister.

### **Departments**

- 10 Departments should consider the following:
  - 10.1 The day to day administration of departments should continue during the caretaker period.
  - 10.2 Issues arising within departments that have caretaker convention implications should be referred to the caretaker Minister, who will decide (in consultation, if appropriate,

with ministerial colleagues and/or the Prime Minister) how the convention applies and how the decision should be handled.

- 10.3 Departments should be ready to provide advice to the Minister (if required), to assist the Minister in deciding on the application of the caretaker convention, and the options for handling the decision.
- 10.4 On rare occasions, caretaker convention issues may arise in relation to matters that, under statute, fall solely within the decision making authority of a chief executive or statutory officer. Where appropriate, chief executives and statutory officers should observe the principles of the caretaker convention when making those decisions.

### **Consultation with political parties**

- 11 Where consultation with other political parties on matters of government business is required, it must be discussed in advance with the Prime Minister or Cabinet. The Chief of Staff in the Prime Minister's Office (Wayne Eagleson) will co-ordinate any consultation with other political parties on government business during the period of caretaker government.
- 12 Officials should alert their Minister's office at an early stage to any issue that may require such consultation. Ministers' offices should in turn notify the Chief of Staff in the Prime Minister's Office.

### **Cabinet meetings**

- 13 Cabinet is scheduled to meet as usual during the caretaker period. However, this schedule is tentative and may change.
- 14 The Prime Minister, Hon Bill English, Hon Gerry Brownlee and Hon Simon Power, in consultation with the relevant portfolio Minister(s), have been authorised by Cabinet to take decisions on any urgent or necessary business arising during the period of caretaker government [CAB Min (11) 37/33]. Any such decisions will be taken by the group of Ministers in the context of the caretaker convention.

### **Guidance on support from the state sector**

- 15 The State Services Commissioner manages any involvement by officials in providing information to negotiating parties during the government formation process. The State Services Commission has issued guidance in relation to this process, entitled [Negotiations between Political Parties to Form a Government: Guidelines on Support from the State Sector](#). It is expected that all government agencies will follow the process set out in the guidelines.

### **Application to government agencies**

- 16 All government agencies are expected to follow these guidelines. For the purposes of this circular, "government agencies" means agencies in the state sector, including Public Service departments, other state services, agencies in the wider state sector (see [paragraphs 3.2-3.4](#) of the Cabinet Manual for a complete definition of the state sector), and other agencies within Ministers' portfolios that do not form part of the state sector.
- 17 The State Services Commissioner will provide copies of this circular to agencies in the state sector, including non-Public Service departments, statutory Crown entities, Crown entity companies, organisations listed in the [4<sup>th</sup> Schedule](#) of the Public Finance Act 1989, the Reserve Bank, tertiary education institutions, State Owned Enterprises, and the offices of

Parliament. Public Service chief executives should forward copies of this circular to the heads of other agencies within their Ministers' portfolios that do not form part of the state sector.

## Guidance

- 18 Information on procedures during the government formation period is as follows:
  - 18.1 Elections, transitions and government formation, [chapter 6](#) of the Cabinet Manual;
  - 18.2 [Constitutional procedures after the general election](#), CO (11) 05;
  - 18.3 [Negotiations between political parties to form a government: Guidelines on support from the state sector](#).
- 19 For further advice on caretaker issues, please contact the Cabinet Office (contact details immediately below).
- 20 The Cabinet Office will issue further guidance as required during the government formation process.

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