



Intended for

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

Government Decision Making during the Period of Caretaker Government

Introduction

- 1 Following the general election on 23 September 2017, negotiations to form a government are expected to commence shortly.
- 2 In accordance with the convention on caretaker government, the incumbent government will govern in a caretaker capacity until the appointment of the new government.
- 3 The declaration of the official election results is expected by 2.00 pm on Saturday 7 October, and the return of the writ and the declaration of successful list candidates by Thursday 12 October (or 4-5 days thereafter in the event of recounts).
- 4 This circular provides guidance for Ministers and government agencies¹ on:
 - 4.1 the application of the caretaker convention;
 - 4.2 taking decisions during the period of caretaker government;
 - 4.3 consultation with political parties during this period;
 - 4.4 Cabinet meetings;
 - 4.5 guidance on support from the State sector for negotiating parties.
- 5 The guidance in this circular supplements the information in Cabinet Office circular CO (17) 6 [*Constitutional Procedures after the Election*](#), issued on 8 August 2017.

¹ 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 3.3-3.5](#) 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.

Application of caretaker convention

- 6 Until the new government has been appointed, the incumbent government will operate in accordance with the caretaker convention.

Key principles

- 7 The key principles of the caretaker convention, as applied during the government formation period, are as follows (see further [paragraphs 6.21-6.40](#) of the Cabinet Manual):
- 7.1 there must always be Ministers in office to advise the Governor-General and to exercise the powers of executive government;
 - 7.2 the normal business of government, and the day-to-day administration of departments and other agencies in the State sector, may continue as usual;
 - 7.3 decisions taken before the start of the caretaker period may usually be implemented;
 - 7.4 significant decisions, new policy, or changes to existing policy and actions with long-term implications should, however, be deferred if possible;
 - 7.5 if it is not possible to defer decisions of that nature, the government should handle matters using temporary or holding arrangements that do not commit the government in the longer term;
 - 7.6 if neither deferral nor temporary arrangements are possible, the government should undertake the political consultation necessary to establish whether the proposed action has the support of a majority of the House of Representatives.
- 8 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.
- 9 The government formation negotiations 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.
- 10 The caretaker convention will continue to apply, in an amended form, between the conclusion of such agreements and the appointment of the new government (see [paragraphs 6.29 and 6.30](#) of the Cabinet Manual on this “second arm” of the caretaker convention). Further guidance will be issued about that at the appropriate point.

Ministers

- 11 Ministers should consider the following:
- 11.1 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 ministerial colleagues;
 - 11.2 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

- 12 Departments should consider the following:
- 12.1 the day-to-day administration of departments should continue during the caretaker period;
 - 12.2 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;
 - 12.3 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;
 - 12.4 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

- 13 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 will co-ordinate any consultation with other political parties on government business during the period of caretaker government.
- 14 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

- 15 Cabinet is scheduled to meet as usual during the caretaker period. This schedule is, however, tentative, and may change.
- 16 Cabinet has authorised a group of Ministers comprising the Prime Minister, Hon Paula Bennett, Hon Steven Joyce and Hon Gerry Brownlee, and the relevant portfolio Minister as appropriate, to have Power to Act to take decisions on any urgent matters arising that require Cabinet level decisions during the period of caretaker government [CAB-17-MIN-0456]. 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

- 17 The State Services Commissioner manages any involvement by officials in providing information to negotiating parties during the government formation process. Agencies should inform the State Services Commissioner immediately if approached directly by political parties for information to support negotiations.

- 18 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.

Distribution of circular and further guidance

- 19 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 [Schedule 4](#) and companies listed in [Schedule 4A](#) of the Public Finance Act 1989, the Reserve Bank of New Zealand, tertiary education institutions, State Owned Enterprises, and the Offices of Parliament.
- 20 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.
- 21 Further information on procedures during the government formation period is available as follows:
- 21.1 *Elections, Transitions and Government Formation*, [chapter 6](#) of the Cabinet Manual;
- 21.2 [*Constitutional Procedures after the Election*](#), CO (17) 6;
- 21.3 [*Negotiations between political parties to form a government: guidelines on support from the State sector*](#).
- 22 The Cabinet Office will issue further guidance as required during the government formation process.

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