



Intended for

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

Circular – Constitutional Procedures after the Election

Introduction

- 1 In January this year the Cabinet Office issued guidance on government decision making in the pre-election period.¹ That guidance noted that the government has the right to govern as usual until the election. As in previous election years, the government has chosen to exercise restraint in respect of significant appointments and government advertising.
- 2 This circular provides guidance on the constitutional procedures that will apply *after* the general election. It includes key dates, a summary of the transition process between administrations, and references to other guidance material.
- 3 All Ministers, Ministers' offices, and public sector agencies are expected to follow this guidance.
- 4 For the purposes of this circular, "public sector" has the meaning in [paragraph 3.5](#) of the Cabinet Manual 2023.

¹ [Government Decisions and Actions in the Pre-election Period](#), Cabinet Office Circular CO (26) 1.

Key dates

- 5 The key dates in the immediate post-election period are as follows:

7 November 2026	Polling day.
27 November 2026	Declaration of official results
3 December 2026	The day fixed for the return of the writ: formal announcement of successful constituency candidates. The return of the writ is followed by a declaration of the successful list MPs. The return of the writ must be postponed until the completion of any recount, and may be postponed in anticipation of any application for a recount.
14 January 2027	Parliament must meet by this day. The opening of Parliament involves the Commission Opening (day 1) and the State Opening (day 2), including the Speech from the Throne. The new government may bring this date forward.

- 6 Other dates, such as the appointment ceremony for Ministers and the full resumption of government business, will not be known until after the election.

The caretaker convention

- 7 After polling day, the Prime Minister is likely to indicate that the incumbent government will operate in accordance with the caretaker convention until the political situation is resolved and the new administration has been appointed (see [paragraphs 6.21 to 6.40](#) of the Cabinet Manual about decision making during periods of caretaker government and the role of public service agencies in that process).
- 8 During the caretaker period, Ministers continue to hold full executive authority and are entitled to receive the same level of support that they normally receive from the agencies for which they are responsible, including being advised and getting information for the purposes of administering government business within their portfolios.
- 9 Ministers should, however, ensure that any requests that they make for advice or information from their officials are for the purposes of their portfolio responsibilities and not for party political purposes (including negotiations to form a government).
- 10 In summary, there are two arms to the caretaker convention:

10.1 Where it is not clear who will form the next government:

- 10.1.1 the normal business of government, and the day to day administration of public sector agencies may continue as usual;
- 10.1.2 decisions taken and specific policy determined before the start of the caretaker period may usually be implemented;
- 10.1.3 decisions on significant issues, new policy or changes to existing policy, and issues with long-term implications should be deferred if possible. If

deferral is not possible, short-term solutions should be sought. If this is not feasible, decisions should be made after consultation with other parties.

No hard and fast rules are possible. The practical consequences of this restraint may vary according to the political context. Ministers may need to take into account various considerations, in determining whether it is appropriate or necessary to proceed on a matter, and how it should be handled.

- 10.2 Where it is clear who will form the new government, but they have not yet taken office, the government continues in caretaker mode until Ministers are formally appointed. The outgoing government should undertake no new policy initiatives and should act on the advice of the incoming government on any significant constitutional, economic or other issue that cannot be delayed until the new government formally takes office – even if the outgoing government disagrees with the course of action proposed. Situations of this kind are likely to be relatively short-lived, as a swift transition between administrations is enabled by New Zealand’s constitutional arrangements.

Decision making in the period immediately after the election

- 11 Cabinet and individual Ministers may be constrained in their decision making during this period in accordance with the caretaker convention. Further information will be provided at that time on practical arrangements for Cabinet decision making after the election.

Ministers who are not returned as members of Parliament

- 12 Current Ministers continue with their existing responsibilities after the election, until new Ministerial appointments are made or their responsibilities are reassigned. Ministers who are not returned as MPs may continue in office as caretaker Ministers for a period, but must leave office at the end of the day after the day on which the Electoral Commission declares the elected list candidates in accordance with section 193(5)(a) of the Electoral Act (see [section 6\(2\)\(b\) of the Constitution Act 1986](#)).

Government formation

- 13 It is possible that, following the general election, two or more parties will negotiate to form a new government.

Guidance on support from public service agencies

- 14 While inter-party negotiations to form a government are the business of politicians, negotiating parties may seek access to public service agencies for information and analysis on issues that might form part of any coalition, support or other agreement. The process for seeking such information or analysis is set out in [Schedule 3](#) of the Public Service Act 2020.
- 15 The Public Service Commissioner manages any involvement by officials in the government formation process. Political parties involved in negotiations to form a government must make a request for information to the Commissioner directly.²
- 16 The Commissioner sets standards for public service agencies to follow when processing a request made for access to information or analysis during this period. All public service

² Public Service Act 2020, schedule 3, clause 17(3).

agencies must comply with those standards, unless otherwise agreed by the Commissioner.³ It is expected that all agencies in the public sector observe the guidance, including by referring any requests received from political parties involved in negotiations to form a government to the Public Service Commissioner for the coordination of a response.

The role of the Governor-General

- 17 By convention, the Governor-General's role in the government formation process is to ascertain where the confidence of the House of Representatives lies, based on the political parties' public statements, so that a government can be appointed. It is not the Governor-General's role to form the government or to participate in any negotiations (although the Governor-General may wish to talk to party leaders if the talks have no clear outcome).
- 18 The Governor-General will, by convention, abide by the outcome of the government formation process in appointing a government. The Governor-General will also accept the political decision as to which individual will lead the government as Prime Minister.
- 19 During the government formation process, the Clerk of the Executive Council provides official, impartial support to the Governor-General, including liaising with party leaders as required on the Governor-General's behalf.

Appointment of new government and allocation of portfolios

- 20 Once the outcome of any government formation process is known, the timing and arrangements for the transition from one administration to the next depend on a number of practical matters, including the allocation of portfolios. Portfolio responsibilities will not formally change until the resignation of the current Ministers and the appointment of new Ministers by the Governor-General. Portfolio scope and allocations reflect the priorities of the government of the day. Agencies should not assume, therefore, that an existing Minister will retain a certain portfolio or that a party spokesperson for a certain portfolio will be appointed as the Minister for that portfolio.
- 21 In practice there is usually a period of some days between the formation of a new government and the new ministry taking office. Current Ministers continue in office, in a caretaker capacity, until new appointments are made (subject to [section 6\(2\)\(b\) of the Constitution Act](#) – see paragraph 12 above).
- 22 A full appointment ceremony is usually held when a government is formed after an election, even when the composition of the government has not changed greatly. The ceremony formally marks the formation and commencement of a new administration, and marks the end of the caretaker period.

Briefing the incoming government

- 23 Each new Minister will receive a Briefing for the Incoming Minister (BIM) in respect of each of their portfolios. The portfolio or lead Minister may authorise the public service agency to provide copies to any Associate Ministers. The briefing process is likely to include formal documents as well as meetings and other communications, happening over a number of weeks.
- 24 Public sector agencies that are not part of the public service would normally brief the incoming government through the relevant public service agency. If an agency considers it

³ Public Service Act 2020, schedule 3, clause 20.

appropriate to brief a Minister separately, it is expected that the agency will comply with the rules that apply to public service agencies concerning the timing, content, and release of BIMs. If a separate briefing is provided, the agency should provide a copy of it to their monitoring agency.

Content

- 25 Guidance on the content of BIMs is set out in [paragraphs 3.18 to 3.23](#) of the Cabinet Manual, and in [Chapter 7](#) of the Public Service Commission's *General Election Guidance*.

Timing

- 26 BIMs are usually provided to new Ministers following their appointment (that is, after the appointment ceremony). The incumbent Prime Minister may, however, wish to authorise the provision of BIMs to incoming Ministers once portfolio allocations have been announced through the Ministerial List. The Secretary of the Cabinet will inform chief executives of any such authorisation from the Prime Minister.
- 27 Agencies must inform the incumbent Minister and the Public Service Commissioner before providing BIMs in such cases. The incumbent Minister continues to hold full executive authority until the incoming Minister has been appointed.
- 28 If government formation negotiations have concluded and there is to be a change of government, but portfolio allocations have not yet been announced, chief executives may, *in cases of great urgency*, provide advice to the incoming government through the Prime Minister-designate. This advice may be given only after the express consent of the incumbent Prime Minister has been obtained and a process has been agreed with the Public Service Commissioner.

Distribution of circular and further guidance

- 29 Public service chief executives should forward a link to this circular to the heads of relevant public sector agencies within their Ministers' portfolios.
- 30 Further information on constitutional procedures after the election is available as follows:
- 30.1 The [Department of the Prime Minister and Cabinet website](#), including:
- 30.1.1 *Elections, Transitions, and Government Formation*, [Chapter 6](#) of the Cabinet Manual;
 - 30.1.2 *Briefing for Incoming Ministers*, [paragraphs 3.18 to 3.23](#) of the Cabinet Manual;
 - 30.1.3 [Government Decisions and Actions in the Pre-election Period](#), Cabinet Office Circular CO (26) 1;
 - 30.1.4 [Management of Parliamentary Business after the Dissolution of Parliament](#), Cabinet Office Circular CO (26) 4.

- 30.2 The website of the [Public Service Commission](#), including [General Election Guidance and Standards: Providing information to political parties during negotiations to form a government](#).
- 31 Following the election, the Cabinet Office will issue [circulars](#) on the practical requirements for decision making in the post-election period.

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