

GUIDELINES ON THE CARETAKER CONVENTIONS AND THE OPERATIONS OF GOVERNMENT DURING THE CARETAKER PERIOD

State Election 2018

December 2017

CONTENTS

1	INTRODUCTION	1
	WHAT IS THE 'CARETAKER PERIOD'?	1
	NOTIFICATION OF CARETAKER PERIOD AND CONVENTIONS	1
	THE 'CARETAKER CONVENTIONS'	1
	APPLICATION OF THE GUIDELINES	2
	ENQUIRIES AND CONTACTS.....	2
2	MAJOR POLICY DECISIONS.....	4
3	SIGNIFICANT APPOINTMENTS	5
4	MAJOR CONTRACTS AND AGREEMENTS.....	7
5	CABINET AND EXECUTIVE COUNCIL MATTERS DURING CARETAKER PERIOD	9
	EXECUTIVE COUNCIL	9
	CABINET DOCUMENTATION	9
6	ONGOING WORK OF AGENCIES	11
	REQUESTS FROM MINISTERIAL OFFICES FOR INFORMATION	11
	LEGISLATION.....	11
	CORRESPONDENCE.....	12
	GRANTS.....	13
	TABLING OF AND RESPONSES TO REPORTS.....	13
7	AVOIDING INVOLVEMENT OF AGENCIES IN ELECTION ACTIVITIES.....	14
	POLITICAL PARTICIPATION BY TASMANIAN STATE SERVICE EMPLOYEES AND OFFICERS.....	14
	DEPARTMENTAL LIAISON OFFICERS	14
	CONTESTING ELECTIONS	15
	COMMUNICATIONS.....	15
	ADVERTISING AND INFORMATION CAMPAIGNS	16
	ACKNOWLEDGEMENT OF GOVERNMENT SUPPORT OR SPONSORSHIP	17
	ONLINE AND ELECTRONIC COMMUNICATIONS	17
	MEDIA STATEMENTS	19
	USE OF AGENCY RESOURCES AND PREMISES	19
8	CHARTER OF BUDGET RESPONSIBILITY	21
9	AGENCY PREPARATIONS FOR AFTER THE ELECTION	22
	POLICY DEVELOPMENT.....	22
	INCOMING GOVERNMENT BRIEFINGS.....	22
10	OTHER MATTERS	23
	FINANCIAL ENTITLEMENTS.....	23
	MINISTERIAL VEHICLES	23
	STATE VISITS	23
	MINISTERIAL OFFICE RECORDS	23
11	CONSULTATION BETWEEN NON-GOVERNMENT PARTIES AND AGENCY STAFF.....	25
12	RELEVANT LEGISLATION AND ASSOCIATED DOCUMENTS	26
	TASMANIAN LEGISLATION	26
	COMMONWEALTH LEGISLATION.....	26
13	LIST OF STATE SERVICE AGENCIES.....	26
	GOVERNMENT DEPARTMENTS	26
	STATE AUTHORITIES.....	26

I INTRODUCTION

What is the 'caretaker period'?

- 1.1 The period between the dissolution or expiration of the House of Assembly and the appointment of a new Government is known as the 'caretaker period'.
- 1.2 By convention, during the period preceding a general election for the House of Assembly, the Government assumes a 'caretaker role'.
- 1.3 The caretaker period recognises that:
 - with the expiration or dissolution of the House of Assembly, Executive Government cannot be held accountable to Parliament for its decisions in the normal manner; and
 - every general election carries the possibility of a change of government.
- 1.4 In general terms, the caretaker period begins at the time the House of Assembly is dissolved or expires and continues if there is a change of government, until the new government is appointed.

Notification of caretaker period and conventions

- 1.5 At the time of the dissolution or expiry of the House of Assembly, the Premier will write to Ministers advising them of their role as the caretaker government and providing them with a copy of these Guidelines.
- 1.6 The Secretary, Department of Premier and Cabinet, will write to all Tasmanian Heads of Agencies advising them of the commencement of the caretaker period and that the caretaker conventions are to apply to all agency activities. A letter will also be sent to all Government Business Enterprises and State Owned Companies advising them of their obligations during the caretaker period.
- 1.7 At the conclusion of the caretaker period, the Secretary, Department of Premier and Cabinet, will write to all Tasmanian Heads of Agencies, Government Business Enterprises, and State Owned Companies, advising them that the caretaker conventions no longer apply.

The 'caretaker conventions'

- 1.8 During the caretaker period, the business of government continues and ordinary matters of administration continue. The role of government agencies remains unchanged; the provision of all normal services should continue and statutory responsibilities are not affected.
- 1.9 Successive governments have followed a set of practices, known as the 'caretaker conventions', which aim to ensure that their actions do not inappropriately bind an incoming government and limit its freedom of action.

- 1.10 While government business continues, as it applies to ordinary matters of administration, the caretaker conventions do affect some aspects of Executive Government. In summary, the conventions are that the Government avoids:
- making major policy decisions that are likely to commit an incoming government or limit its freedom to act;
 - making or renewing significant appointments; and
 - entering into major contracts or agreements.
- 1.11 There are also established conventions and practices associated with the caretaker conventions that are directed at:
- protecting the apolitical nature of the State Service¹;
 - preventing controversies about the role and work of the State Service during an election campaign; and
 - avoiding the use of government resources in a manner to advantage a particular party.
- 1.12 These Guidelines are intended to explain the conventions and practices in more detail and to provide guidance for the handling of business during the caretaker period. The conventions are neither legally binding nor hard and fast rules. Their application in individual cases requires sound judgement and common sense.
- 1.13 The Secretary, Department of Premier and Cabinet is able to provide information and advice to agencies, but responsibility for observing the conventions rests with Heads of Agencies and, in matters where they are involved, with the relevant Ministers.

Application of the Guidelines

- 1.14 The Guidelines in this document apply to all Tasmanian Government Ministers, Ministerial staff and all employees and officers of Tasmanian State Service agencies².
- 1.15 The relationship between Ministers and bodies that are not agencies under the *State Service Act 2000*, such as, Government Business Enterprises and State Owned Companies, varies from body to body. However, those bodies should observe the caretaker conventions and practices unless doing so would conflict with their legal obligations or compelling commercial/organisational requirements. The Secretary, Department of Premier and Cabinet, will write to the heads of these bodies advising them of the guidelines and the commencement of the caretaker period and that the caretaker conventions apply to their organisation.

Enquiries and Contacts

- 1.16 To ensure consistent application of the Guidelines, agencies should appoint a senior officer to be the initial contact for caretaker enquiries.

¹ Section 6 of the *State Service Act 2000* specifies that the State Service consists of Heads of Agencies, holders of prescribed offices, senior executives and employees.

² 'Agency' means a Government department or a State authority or other organisation specified in Column 1 of Schedule 1 of the *State Service Act 2000* - and which is reproduced in Section 13 of these Guidelines

Guidelines on the Caretaker Conventions

- I.17 Enquiries about the application of caretaker conventions should be directed, in the first instance, to appointed contact officers within agencies.
- I.18 If further advice is required in relation to particular issues that arise during the caretaker period, queries should be directed to the Secretary, Department of Premier and Cabinet, by email at kim.enkelaar@dpac.tas.gov.au.

2 MAJOR POLICY DECISIONS

- 2.1 Governments should avoid making and implementing major policy decisions during the caretaker period that are likely to commit an incoming government or limit its freedom to act.
- 2.2 Whether a particular policy decision qualifies as 'major' is a matter for judgment. Relevant considerations include:
 - the significance of the commitment in terms of policy and resources; and
 - whether the decision is a matter of contention between the Government and non-Government parties in the election campaign.
- 2.3 The conventions apply to the timing of the making of decisions that are likely to commit an incoming government, not to their announcement. Accordingly, the conventions are not necessarily contravened where decisions made before the calling of an election are announced during the caretaker period. Where possible, decisions about policies that have been agreed but not made public should be announced ahead of the caretaker period if their announcement is likely to cause controversy during the election campaign.
- 2.4 The conventions do not apply to promises on future policies that the party in government announces as part of its election campaign.
- 2.5 If circumstances require the Government to make a major policy decision during the caretaker period that would bind an incoming government, the relevant Minister, after agreement with the Premier, would usually consult the relevant Opposition³ spokesperson(s) beforehand. The requirement to consult does not require the Government to obtain the endorsement of non-Government parties.

Operational Note

- a Consultation by non-government parties or Members of Parliament with departmental officers must only occur with the express authorisation of the Premier. If a non-government party or Member makes direct contact with an agency they should be referred to the Premier's Chief of Staff. Appendix I provides more information about consultation with non-government parties.

³ In this document, the "Opposition" is the largest minority Party within the Parliament during the Caretaker period, willing to assume office in the event of a change of government either after an election or as a result of a loss of support for the Government in the House of Assembly. For more details see: <http://www.parliament.tas.gov.au/tpl/Backg/Premier-Leader.htm>

3 SIGNIFICANT APPOINTMENTS

- 3.1 Governments should defer making significant appointments during the caretaker period. As a rule, any significant appointments to commence after election day would not be offered in the caretaker period.
- 3.2 Significant appointments to be offered and made after the date of dissolution or expiry are deferred until after the election. Finalisation of selection processes that have started but not completed should also be deferred until after the caretaker period.
- 3.3 In considering whether an appointment qualifies as 'significant', the agency should consult with the Head of the State Service, and consider:
- the importance of the position; and
 - whether the proposed appointment would be likely to be controversial.
- 3.4 If deferring an appointment is impracticable, usually for continuity purposes or reasons associated with the proper functioning of an agency, or due to meeting contractual obligations, there are several options:
- an acting appointment can be made where permissible;⁴
 - a short term appointment can be made until shortly after the end of the caretaker period; or⁵
 - if those options are not practical, a full term appointment can be made and the relevant Minister, after agreement with the Premier, could consult the relevant Opposition spokesperson in such circumstances.
- 3.5 Governments should also defer making appointments to boards and committees during the caretaker period. If a board or committee experiencing a vacancy is able to operate legally and effectively with a quorum during the period, they should be encouraged to do so without the need for any new appointment.

Operational Notes

- a Significant appointments will generally include those for heads or deputy heads of an agency, the head of a division or branch whose activities are deemed sensitive, members of statutory bodies and statutory office holders.
- b Offers of consecutive appointments for senior departmental officers are to be made in accordance with contractual obligations and are usually made at least six months, and no less than three months, prior to the expiry of an appointment. At the time an offer of consecutive appointment is made it is accompanied by a proposed instrument of appointment which is the basis of the new appointment. The offer and acceptance at this time constitutes a contractual arrangement to make the appointment.

⁴ Agencies should also check that contractual arrangements are in accordance with Section 21A of the *Tasmanian Acts Interpretation Act 1931*

⁵ Agencies should also check that contractual arrangements are in accordance with Section 21A of the *Tasmanian Acts Interpretation Act 1931*

Guidelines on the Caretaker Conventions

Instruments of appointment for consecutive appointments that have been accepted, but which are due to start in the caretaker period, should be signed by the relevant delegate or submitted to Executive Council, as is appropriate, prior to the commencement of the caretaker period.

4 MAJOR CONTRACTS AND AGREEMENTS

- 4.1 Governments should avoid entering into major contracts or undertakings during the caretaker period. This includes commitments and undertakings which could bind an incoming government.
- 4.2 When considering whether a contract or undertaking qualifies as 'major', agencies should consider:
- the monetary value of the commitment;
 - whether the commitment involves a routine matter of administration or if it implements or entrenches a policy, program or administrative structure which is politically contentious; and
 - whether the commitment requires ministerial approval.
- 4.3 If it is not possible to defer the commitment until after the caretaker period, for legal, commercial or other reasons
- the Minister, after agreement with the Premier, should consult the relevant Opposition spokesperson regarding the commitment; and
 - agencies should also ensure that new contracts entered into during the caretaker period include clauses providing for termination in the event of an incoming government not wishing to proceed.
- 4.4 Similarly, in the case of outstanding tender processes, agencies should inform potential tenderers about the implications of the election and the possibility that the tender might not be completed. If possible, new tender processes should not commence during the caretaker period.
- 4.5 The convention that the Government avoids entering into major commitments during the caretaker period extends to intergovernmental negotiations and agreements. The Government ordinarily seeks to defer such negotiations or adopts observer status until the end of the caretaker period.
- 4.6 If deferring involvement or adopting observer status is not feasible, the Government representatives should, if possible, limit their role to providing information on the Government's past position, without committing the incoming government to that position.
- 4.7 If it is necessary for the Government to participate fully in the negotiations, it should advise the other parties to the negotiations that any outcomes will need to be authorised by the incoming government, or it could seek the relevant Opposition spokesperson's agreement on negotiating positions.

Operational Notes

- a Where contracts have been entered into prior to the caretaker period, further agreements can be entered into during that period if:
 - these are subsidiary to that 'head contract', relating to matters already proceeding; or
 - penalties may be incurred for breach if further agreements are not entered into.
- b Generally, during the caretaker period, agency officials should attend meetings of ministerial councils and committees rather than Ministers or other members of Parliament.

5 CABINET AND EXECUTIVE COUNCIL MATTERS DURING CARETAKER PERIOD

- 5.1 The meetings of Cabinet and the Executive Council generally cease during the caretaker period and do not resume until the new government is formed (following the return of the writs).
- 5.2 If Cabinet does meet, any deliberations will be subject to the caretaker conventions.

Executive Council

- 5.3 It is usual for the Executive Council to meet immediately before the commencement of the caretaker period to approve any outstanding proposed regulations and other statutory rules if possible.
- 5.4 In exceptional circumstances, the Executive Council may convene during the caretaker period to handle urgent, non-controversial matters such as the remaking of regulations before they expire or urgent statutory appointments.

Cabinet Documentation

- 5.5 Successive governments have accepted the convention that Ministers do not seek access to documents recording the deliberations of Ministers in previous governments. Cabinet documents, in particular, are considered confidential to the government that created them. In this context, if there is a change of government at an election, departments should return all official Cabinet documents to the custody of the Cabinet and Executive Council Office in the Department of Premier and Cabinet.
- 5.6 Official Cabinet records include the originals of Cabinet Agendas, Cabinet Minutes, Cabinet Briefings and Cabinet Decisions.
- 5.7 The custodian of official Cabinet records is the Manager, Cabinet and Executive Council Office. The Cabinet Office is responsible for maintaining and archiving a complete set of original documents, and can arrange access to any material required to ensure continuity of Government business.
- 5.8 Cabinet documents remain the property of the Crown, and by convention all copies are destroyed at the end of the term of existing government or when a person ceases to be a Minister. Documents may be returned to the Cabinet Office for destruction. This ensures appropriate security arrangements are observed for Cabinet documents.
- 5.9 At the commencement of Caretaker period, the Secretary, Department of Premier and Cabinet, will issue a circular directing all Ministers, Ministerial Offices, and State Service Agencies to return to the Cabinet Office any copies they may still hold of official Cabinet records.
- 5.10 Written confirmation of the destruction, or return to the Cabinet Office, of all Cabinet documents should be provided to the Secretary, Department of Premier and Cabinet prior to the declaration of the polls.

- 5.11 In the event that the existing Government is returned, the copies will be returned to the relevant offices and agencies as required.
- 5.12 The Manager, Cabinet and Executive Council Office issues further procedural guidelines on the handling of Cabinet documents once the result of the election is known.

6 ONGOING WORK OF AGENCIES

- 6.1 During the caretaker period, Executive Government continues to operate and Ministers remain in authority. Agencies continue to operate during the caretaker period, dealing with the ordinary business of government.
- 6.2 While agencies avoid political partisanship at all times, the circumstances of an election campaign require special attention to the need to ensure the impartiality and apolitical nature of the State Service, and its continuing ability to serve whatever government is elected.
- 6.3 If there is any doubt about whether agency work constitutes a 'political matter', the Head of Agency may seek advice from the Secretary, Department of Premier and Cabinet, by email at kim.enkelaar@dpac.tas.gov.au.

Requests from Ministerial Offices for Information

- 6.4 Material relating to the day to day business of government is supplied to Ministers in the usual way. Ministers are entitled to request, and should continue to be provided with, factual material. The purpose to which such material is put is for Ministers to determine. However if it is clear that the information will be used for party-political purposes it should be declined.
- 6.5 It may be appropriate for an agency to decline a request for information if it requires the use of significant resources or is clearly for use as part of the election campaign (for example, requests for information to be used in Ministerial speeches or event briefs). If in doubt, the Head of Agency should discuss with the Minister or his/her senior staff the purpose for which the material is to be used.
- 6.6 In most instances, agencies should decline requests for policy advice during the caretaker period. There might, however, be urgent issues that require the provision of policy advice to Ministers to allow responsible ongoing administration or to protect the State's interests and to enable the Government to respond appropriately in the public interest.
- 6.7 Requests for legal advice on issues affecting the Minister⁶ in his or her capacity as a candidate should be declined.
- 6.8 Agencies can proceed with policy development work during the caretaker period so that they are in a position to provide advice to the incoming government, provided that contact with Ministerial Offices is not required.

Legislation

- 6.9 Bills that have passed both Houses of Parliament should, if practical, be assented to by the Governor before the dissolution or expiry of the House of Assembly, but may lawfully be assented to subsequently.

⁶ All Ministers of the Crown and Parliamentary Secretaries.

- 6.10 Legislation can be proclaimed during the caretaker period but, other than in exceptional circumstances, proclamations that have a commencement date after the date of the election are not made.

Correspondence

- 6.11 Once the caretaker period commences, Ministers will usually avoid signing non-essential correspondence.
- 6.12 Correspondence may be attended to by agencies in the usual way. When preparing replies, care should be taken to protect the State Service from any perception of partisanship.
- 6.13 Some correspondence that would ordinarily be signed by Ministers may need to be prepared for signature by the Head of Agency, rather than be left to accumulate. Judgment is necessary in determining whether significant correspondence should be signed by the Minister or the Head of Agency. Whatever the decision, the caretaker conventions apply.

Operational Notes

- a Although Ministers may continue to sign correspondence, the time they have available for this during the election campaign will be limited. In any event, Ministers would usually sign only essential correspondence that is necessary for day-to-day government service delivery and administration.
- b The general principle is that correspondence should be answered rather than left to accumulate. In cases where no issue of policy arises, for example in relation to the preparation of replies to routine incoming correspondence, departmental replies for signature by the Head of Agency should be prepared.
- c Replies should not assume that the Government will or will not be returned to office. Any reference to post election action should be in terms of the 'incoming government'. It may be appropriate in some cases to include a sentence along the lines -

“The Government is currently operating in caretaker mode. The matter you raise will be referred to the incoming government.”
- d Letters requiring explanation of current policy should be answered without committing a government to post election action.
- e To avoid confusion, and as a matter of courtesy, members of the House of Assembly who are standing for re-election should continue to be addressed as 'MP' until they resign. Newly elected members should be addressed as 'MP' as soon as they are sworn in.
- f Members who are not standing for re-election should not be addressed as 'MP' following the dissolution of the House of Assembly.⁷

⁷ Please note there are special conventions for the use of the prefix Honourable. For more details see: <http://www.parliament.tas.gov.au/tpl/InfoSheets/LifeHonourable.htm>

Grants

- 6.14 The payment of grants which were approved prior to the caretaker period can proceed but should be forwarded to the grant recipient by the relevant agency rather than by a Minister or another member of the Government.
- 6.15 During the caretaker period, commitments should not be made in respect of grant applications received during the period or which were lodged before commencement of the period but are awaiting decision.

Tabling of and Responses to Reports

- 6.16 Responses to outstanding Parliamentary committee reports should be taken up with the incoming government. Agencies may, however, undertake appropriate preparatory work so that they are in a position to provide early advice to the incoming government.
- 6.17 Reports of an administrative nature, such as annual reports, can be delivered during the caretaker period. However, where a report contains information that is likely to be controversial, consideration should be given to whether delivery should be deferred until after the caretaker period.
- 6.18 Agencies should seek advice from the Office of the Solicitor-General if there are statutory timeframes that need to be considered during the caretaker period.

7 AVOIDING INVOLVEMENT OF AGENCIES IN ELECTION ACTIVITIES

Political Participation by Tasmanian State Service employees and officers

- 7.1 Agency staff have the same rights as other members of the community to engage in the political process, including political dialogue online, except where these activities impact adversely on their ability to perform their official duties to the standard required under the State Service Act and/or place them in conflict with the general obligations as Tasmanian State Service employees and officers.
- 7.2 The State Service Principles articulated in the State Service Act assert that the 'State Service is apolitical, performing its functions in an impartial, ethical and professional manner'.
- 7.3 The State Service Code of Conduct requires agency staff, when acting in the course of their State Service employment, to:
- behave in a way that upholds the State Service principles;
 - behave in a way that does not adversely affect the integrity and good reputation of the State Service;
 - maintain confidentiality about dealings and information acquired in the course of employment;
 - disclose and take reasonable steps to avoid conflicts of interests in connection with State Service employment; and
 - use Tasmanian Government resources in a proper manner.
- 7.4 At no time should Tasmanian State Service employees and officers (other than those formally seconded to Ministerial, parliamentary or electorate offices) engage in activities of a political nature while on duty. Extra care is required during the caretaker period to ensure impartiality. The specific requirements relating to Departmental Liaison Officers are provided in the following section.

Departmental Liaison Officers

- 7.5 Where Departmental Liaison Officers (DLOs) have been provided by agencies to assist Ministerial Offices with necessary liaison work with agencies, the need for that work should be reviewed at the commencement of the caretaker period.
- 7.6 If there is ongoing work of a liaison nature during the caretaker period, DLOs may remain with Ministerial Offices. However, DLOs are Tasmanian State Service employees and, in accordance with the State Service Principles outlined in the State Service Act, are apolitical. Therefore, DLOs are to avoid assisting, or participating in, Ministers' political activities.

Operational Notes

- a Tasmanian State Service employees and officers need to exercise judgement if they are scheduled to speak at public functions during the caretaker period. In the case of controversial issues, Tasmanian State Service employees and officers should decline invitations to speak in the first instance. However if they do accept, they should explain to the organiser that the Government is in caretaker mode and that their presentation will be limited to factual issues and matters of administration. Tasmanian State Service employees and officers should avoid publicly explaining or promoting policies during the caretaker period.
- b Where a Head of Agency is concerned that there may be, or may appear to be, a conflict between an employee's duties and his or her involvement in political activities, the issue should be discussed with the employee. Individual circumstances including the classification of the employee; his or her capacity to influence government decision-making; the extent to which he or she deals directly with Ministers and other Members of Parliament; and the extent to which they represent the Government in public will be relevant considerations in the settling of an appropriate course of action.
- c Other matters for discussion could include the:
 - extent to which the intended behaviour impairs the employee's ability to exercise impartial decision making or maintain public confidence in the integrity, impartiality and neutrality of the Tasmanian State Service;
 - extent to which the intended behaviour might involve the use of information obtained through official duties or amount to unauthorised public comment; and
 - use of any official facilities, including the Tasmanian State Service employees and officers time during work hours.

Contesting Elections

- 7.7 Employees and officers wishing to contest the State election should review *'Practices, Procedures and Standards No. 3 – Contesting Federal, State and Local Government Elections'* issued by the State Service Management Office in the Department of Premier and Cabinet.
- 7.8 See also Section 11 – Consultation between non-Government Parties and agency staff.

Communications

- 7.9 Agencies should carefully monitor their communications activity during the caretaker period to ensure that the material:
 - is of public interest;
 - relates only to the day-to-day business of the agency; and
 - cannot reasonably be construed as being for political purposes.

7.10 Some communications during the caretaker period are regulated by legislation including:

- the Tasmanian *Electoral Act 2004* (Division 5 of Part 6), which deals with advertising and other campaign material;
- the Tasmanian *Charter of Budget Responsibility Act 2007* (see 8.1 to 8.4);
- the Commonwealth *Broadcasting Services Act 1992* (Section 42 and Schedule 2), which deals with radio and television broadcasts; and

The Broadcasting Services Act defines 'political matter'. Very broadly, to be deemed political matter, the matter must, when viewed objectively, be able to be characterised as participation in the political process or as an attempt to influence or comment upon that process.⁸ An advertisement dealing with an issue that falls within this broad definition of political matter must comply with the provisions of the Broadcasting Services Act.

Operational Notes

- a Prior to the likely start of the caretaker period, agencies should review all communications material that is likely to be running during the caretaker period, to assess the appropriateness of content of current material and introduce guidelines for future material. Communications material to review includes:
 - advertising campaigns, including radio, print, television and online;
 - online platforms, including websites, intranets and third-party platforms such as social media; and
 - other publications.
- b Campaigns can continue if they are:
 - operational in nature, such as public health or road safety campaigns; and
 - appropriately authorised in accordance with legislation (see 7.10).
- c Material that is considered operational should not include photographs of and/or political statements by a Minister. Passive distribution of material, such as continued placement in the agency's offices or distribution in response to requests is acceptable.

Advertising and Information Campaigns

7.11 During the caretaker period Tasmanian Government campaigns should not:

- promote the policies or achievements of the Government;
- highlight the role of particular Ministers; or
- relate to issues that are a matter of contention between the Government and non-Government parties.

⁸ Information Sheet: *Producing a TVC containing Political Matter including Election Material*, Free TV Australia. www.freetv.com.au

- 7.12 Some communications during the caretaker period are regulated by legislation. In broad terms, legislation (see 7.10) requires any advertisement or literature actively distributed during an election campaign to identify the person who authorised the materials and the name and address of the printers.

Operational Notes

- a. Tasmanian Government television and radio advertisements are always required to conclude with an authorisation tag that says “Authorised by the Tasmanian Government, Hobart.” During the caretaker period, authorisations must also acknowledge the speaker: “Spoken by... [name speakers individually]”. Agencies should consider applying similar authorisations to press advertising and new printed material to be published and distributed during the caretaker period.

Acknowledgement of Government support or sponsorship

- 7.13 During the caretaker period, Tasmanian Government support or sponsorship may be provided to events or programs that are operational in nature.
- 7.14 The Tasmanian Government should not provide support to programs or events that:
- promote the policies or achievements of the Government;
 - highlight the role of particular Ministers; or
 - relate to issues that are a matter of contention between the Government and non-Government parties.

Operational Notes

- a. The application of the caretaker conventions to communication materials that are produced by third parties but supported, sponsored or endorsed by Tasmanian State Service agencies should be considered on a case-by-case basis.
- b. Agencies should take into account the terms and conditions of State Service agency support and whether the agency has any control or influence over the content and functions of the communications. If necessary, an agency could request that the Government logo or other indication of support be removed for the duration of the caretaker period.

Online and Electronic Communications

- 7.15 Online platforms, social media platforms or other electronic communications either hosted or managed by agencies, should remain apolitical during a caretaker period.

Operational Notes – agency-managed websites

- a. Prior to the likely start of the caretaker period, agencies should review all agency-managed websites, online platforms and social media platforms to identify any material that requires removal upon the commencement of the caretaker period.
- b. Agencies should check the wording of any icons and links on their online platforms to ensure that they cannot be interpreted as promoting a Government policy or

achievement. It is also recommended that profiles of Ministers be removed.

- c. If agency platforms contain links to sites outside the tas.gov.au domain with political content, agencies should consider the need for entry/exit messages, such as, “You are now leaving the website of [X]. The website you are entering is not maintained or funded by the Government of Tasmania.”
- d. On agency-managed social media platforms, any “likes” or “follows” that link to political candidates, members or sites, should be removed.
- e. In most cases, agency-managed online platforms may retain material placed on them before the commencement of the caretaker period.
- f. Agencies should only add the following material to their platforms during the caretaker period:
 - portfolio-related announcements, if that is the usual practice. This will require judgement within each agency, but, as an example, a ministerial press release relating to a public health warning might appropriately be added;
 - agency-related announcements of a routine, apolitical nature if that is the usual practice (e.g. bushfire safety message);
 - purely factual material; and
 - information on existing policies and programs, unless the information includes attacks on non-government parties or members or other political material.
- g. Agencies should not add to the platform any material that contains, or links to, political material, such as:
 - ministerial announcements relating to election promises;
 - any political information, including information that contains attacks on non-government parties or members, or other political material; and
 - information that contains links to political material or pages.

Operational Notes – Ministerial platforms

- a. In the case of Ministerial platforms that are maintained by agencies, agencies may continue to maintain or fund the maintenance of the website during the caretaker period if that was the practice prior to the caretaker period.
- b. Material placed on the Minister’s platform before the caretaker period may be retained, as may links between the Minister’s and agency’s websites.
- c. Agency staff should only add to Ministerial platforms material relating to matters of existing policy or purely factual material. They should not add material that could be construed as being political, including material concerning future policies, election commitments or issues, how-to-vote material or media releases and speeches that criticise non-government parties or members, or promote the Government.

- d. If an agency-maintained/funded ministerial website contains links to sites outside the tas.gov.au domain, such as political party websites or social media accounts or personal Ministerial platforms, the links should be removed or an appropriate entry/exit message included. Such messages could be along the lines of “You are now leaving the website of [X]. The website you are entering is not maintained or funded by the Government of Tasmania.”

Operational Notes – online moderation

- a. Where the functionality of online platforms or social media pages allows comment, debate or promotion of opinions, agencies should consider the following measures, using judgement to decide what is appropriate for a particular page:
 - allowing comments with a moderating statement that advises that the Government is in a caretaker role and that any political comments or material will be deleted;
 - disabling comments and not posting new material during the caretaker period; or
 - limiting comment functionality, pre-moderating comments before publishing or closer monitoring of public contributions.
- b. If functions are disabled or minimised, a statement should be included that advises of the Government's caretaker role, and of the measures taken on the platform to limit political activity. For example:

“The Tasmanian Government has assumed a caretaker role in the lead up to election for the Tasmanian House of Assembly. It is important during this time that Tasmanian Government resources are not used to communicate political material. As such, this website/function is unavailable/will be moderated from the beginning of the Caretaker Period until after the election to ensure political material is not placed on the site.”

Media Statements

- 7.16 Media statements issued by agencies during a caretaker period should only relate to the day-to-day business of the agency or legislative requirements, and must only contain factual information.
- 7.17 Media statements and responses to media queries issued by agencies during a caretaker period do not require formal approval by Ministerial Offices, however should be provided to the Government Media Office for information.

Use of Agency Resources and Premises

- 7.18 Agency employees and others must not use agency resources or their positions to support particular issues or parties during the election campaign.
- 7.19 Use of government email, faxes or other electronic systems to publish or distribute political material may be a breach of the State Service Code of Conduct.

- 7.20 Material from political parties and how-to-vote material, whether produced by a political party or any other organisation, must not be displayed within the precincts of government buildings, or on other Crown property or vehicles. This includes Electorate Offices, where displaying posters and other political campaign material promoting the incumbent candidate is not permitted.
- 7.21 Government premises that are normally open to the public may be used as the backdrop for political advertising or policy material by government and non-government parties (e.g. photography or filming) provided that no official resources are used, operations of the site are not unreasonably impacted and employees/officers are not involved.
- 7.22 In the case of official functions involving the use of agency resources, it would generally be appropriate for any relevant non-Government party spokespersons to be given the opportunity to be present.
- 7.23 Ministerial visits to agencies for meetings or other consultation would be consistent with the conduct of routine government business, in accordance with the caretaker conventions.

Operational Notes

- a. The approval for the use of any particular premises by political parties for public events rests with the relevant Head of Agency. If unsure about a request, staff should discuss with the appropriate Head of Agency.
- b. While responsible use of agency premises that are normally open to the public is acceptable by all parties campaigning in an election, it is most important during an election campaign that:
 - State Service employees and others not become involved in party political activity during a visit to Government facilities;
 - the impartiality of agency employees is not compromised through their appearance in party political material e.g. photos, vision. The wearing of uniforms or other identifying material should not occur;
 - State Service employees and others are not engaged in political dialogue;
 - State Service employees and others are not used for logistical support for political functions.

8 CHARTER OF BUDGET RESPONSIBILITY

- 8.1 The costing of Government and Opposition parties⁹ policies by the Department of Treasury and Finance is regulated by the *Charter of Budget Responsibility Act 2007*.
- 8.2 The Secretary, Department of Treasury and Finance issues detailed Guidelines for Costing Election Policies in accordance with the requirements of the Charter of Budget Responsibility Act. The Guidelines are available at www.treasury.tas.gov.au.
- 8.3 The Charter provides a framework to improve fiscal policy outcomes by requiring, amongst other things, a process for costing the election policies of parties represented in the House of Assembly.
- 8.4 During the caretaker period,¹⁰ the Charter of Budget Responsibility Act provides for the Secretary, Department of Treasury and Finance to:
 - prepare costings of publicly announced Government policies, at the request of the Premier; and
 - prepare costings of publicly announced Opposition party policies, at the request of the Leader of an Opposition party.

⁹ The Charter of Budget Responsibility Act refers to 'Opposition parties', for that reason this section refers to non-Government parties as 'Opposition parties'. For more information see: <http://www.treasury.tas.gov.au/Documents/State-Election-2014-Costing-Guidelines.pdf>

¹⁰ The Charter of Budget Responsibility Act refers to the 'election costing period'. The 'election costing period' commences with the dissolution or expiry of the House of Assembly. However unlike the caretaker period, the election costing period ends with the close of polls.

9 AGENCY PREPARATIONS FOR AFTER THE ELECTION

Policy development

- 9.1 Agencies can, during the caretaker period, continue to work internally on proposals and policy development that could, if approved by the incoming government, be implemented after the election.
- 9.2 Particularly where a proposal is not controversial and is likely to proceed irrespective of the election outcome (for example, statutory reviews), agencies should take the necessary steps to ensure that they will be in a position to advise the incoming government on the proposal and, if approval is given to do so, to proceed to implement the proposal after the election.
- 9.3 Agencies should also prepare briefing papers and plans for the publicly announced policies and commitments made by the Government and the Opposition, to present, as appropriate, to incoming Ministers after the election.

Incoming Government Briefings

- 9.4 It is usual during the caretaker period for agencies to prepare briefing material for an incoming Premier on their composition, administration and major current issues. The Director, Policy Division, Department of Premier and Cabinet co-ordinates these briefings from a whole-of-government perspective.
- 9.5 Agencies should also prepare portfolio specific briefing packages for their new Minister, including the election commitment briefings referred to in paragraph 9.3.

10 OTHER MATTERS

Financial Entitlements

- 10.1 During the caretaker period, agency provision of entitlements for Ministers and their staff should be assessed on a case-by-case basis. Agencies should not cover claims relating to the election campaign or a political event, as these costs are to be borne by the respective political party. Examples of claims that would not be covered include requests for additional laptop computers or mobile telephones for Ministers or their staff unless there was a demonstrable official purpose.
- 10.2 Claims relating to the management of essential government business can be covered in the normal way; for example, primarily in connection with their Ministerial duties.
- 10.3 In the case of claims that cover a combination of government and political business, partial reimbursement can be granted to cover government activities.

Ministerial Vehicles

- 10.4 Use of Ministerial cars and drivers remain available during the caretaker period for official purposes but not for private use.

State Visits

- 10.5 The Premier will, if necessary, determine whether visits by foreign dignitaries involving government hospitality should proceed during the caretaker period. In any case, dignitaries whose visits are scheduled for the caretaker period or shortly afterwards should be advised of the election announcement and any changes in arrangements, including the reduced availability of Ministers and the possibility of a change of government. Details of any requests for Official Visits should be directed to the Manager (Protocol), Communications and Protocol Unit, Department of Premier and Cabinet.

Ministerial Office Records

- 10.6 Originals of agency records including Minutes, Briefings, reports, advice and correspondence which have been forwarded to a Minister should be returned to the agency. All other records held in a Minister's Office that relate to the functioning and exercise of the Ministerial Office are subject to the *Archives Act 1983* and should be disposed of under *Disposal Authorisation No. 2339 – Functional records of Ministers of the Crown*. This does not include private personal records, party-political records or records that a Minister or Parliamentary Secretary may hold in their capacity as a Member of the House of Assembly or Legislative Council.
- 10.7 At the commencement of the Caretaker period, the Secretary, Department of Premier and Cabinet, will issue a circular directing all Ministerial Offices, and State Service agencies (see section 13) to follow proper record management procedures to ensure agency records are retrieved and/or destroyed as appropriate.
- 10.8 Physical copying of agency records, or retention of records through electronic means, is strictly prohibited.

- 10.9 These directions also apply to drafts and unsigned Cabinet documents provided by agencies to Ministerial Offices.
- 10.10 Details about the management and disposal of state government records are prescribed under the *Archives Act 1983* and in the Tasmanian Archive and Heritage Office's *Disposal Authorisation No. 2339*.
- 10.11 Under the *Disposal Authorisation No. 2339 (01.01.02)*, copies of agency records held in the Minister's Office include the following:
- correspondence that is referred to the agency for action;
 - copies of replies to correspondence prepared by agency staff;
 - replies to Parliamentary Questions, including background and other briefing notes, prepared for the Minister by agency staff; and
 - briefing notes prepared by the agency on the request of the Minister for purposes other than submission to Cabinet.
- 10.12 The records management branches of agencies are responsible for retrieving and destroying relevant records from their relevant Ministers and Parliamentary Secretaries. For matters specifically relating to official Cabinet Records, please refer to Section 3, Cabinet and Executive Council Matters during the Caretaker Period.
- 10.13 Further advice on Ministerial records management can be sought from the Manager, Records and Information Management, Department of Premier and Cabinet.

II CONSULTATION BETWEEN NON-GOVERNMENT PARTIES AND AGENCY STAFF

- 11.1 Consultation between Heads of Agencies and non-government parties may occur during the caretaker period under strictly controlled conditions.
- 11.2 Leaders of non-government parties may make a request for consultation with agency staff through the Premier. Approval may be given by the Premier for non-government party representatives to have discussions with appropriate agency staff. Agency staff should not involve themselves in these discussions unless approval has been given by the Premier.
- 11.3 A non-government representative may have other Members of Parliament or staff present at such meetings. A Head of Agency or his/her representative may have other Tasmanian State Service employees and officers present. It is not appropriate for Ministerial Office staff to be present.
- 11.4 The request for consultation is to be at the initiative of the non-government parties, not Tasmanian State Service employees and officers. The Head of Agency is to ensure that his or her Ministers are informed when the discussions are taking place. Heads of Agencies are to ensure that Tasmanian State Service employees and officers authorised to conduct or attend briefings have a proper understanding of the matters likely to be raised at such briefings.
- 11.5 Tasmanian State Service employees and officers are not authorised to discuss the Government's policies or to give opinions on matters of a party political nature. The subject matter of the discussions should relate to the machinery of government and administration. The discussions may include the administrative and technical practicalities and procedures involved in implementation of policies proposed by the non-government parties. If the non-government representatives raise matters which, in the judgement of the agency staff, seek information on the Government's policies or expressions of opinion on alternative policies, the Tasmanian State Service employees and officers are to suggest that these matters be raised with the relevant Minister or the Premier.
- 11.6 The detailed substance of the discussions will be confidential but Ministers will be entitled to seek general information from Tasmanian State Service employees and officers on whether the discussions kept within agreed purposes and these Guidelines.

12 RELEVANT LEGISLATION AND ASSOCIATED DOCUMENTS

Tasmanian Legislation

- *Archives Act 1983*
 - *Disposal Authorisation No. 2339 – Disposal Schedule for Functional Records of Ministers of the Crown*
 - *State Records Guideline No. 9 – Managing Ministerial Records*
- *Constitution Act 1934*
- *Charter of Budget Responsibility Act 2007*
- *Electoral Act 2004*
- *State Service Act 2000*
 - *Practices, Procedures and Standards No. 3 – Contesting Federal, State and Local Government Elections*

Commonwealth Legislation

- *Broadcasting Services Act 1992*

13 LIST OF STATE SERVICE AGENCIES

Government Departments

Department of Education
Department of Health and Human Services
Department of Justice
Department of Police, Fire and Emergency Management
Department of Premier and Cabinet
Department of Primary Industries, Parks, Water and Environment
Department of State Growth
Department of Treasury and Finance
Tasmanian Audit Office

State Authorities

Integrity Commission
Macquarie Point Development Corporation
Port Arthur Historic Site Management Authority
Tasmanian Dairy Industry Authority
Tasmanian Health Service
TasTAFE
The Public Trustee
Tourism Tasmania