

STATE ELECTION CARETAKER CONVENTIONS

2010

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I INTRODUCTION

- I.1 By convention, during the period preceding an election for the House of Assembly, the government assumes a 'caretaker role'. This practice recognises that, with the dissolution of the House, the Executive cannot be held accountable for its decisions in the normal manner, and that every State election carries the possibility of a change of government.
- I.2 The caretaker period begins at the time the House of Assembly is dissolved and continues until the election result is clear or, if there is a change of government, until the new government is appointed.
- I.3 During the caretaker period, the business of government continues and ordinary matters of administration still need to be addressed. The role of government agencies remains unchanged, the provision of all normal services should continue and statutory responsibilities are not affected.
- I.4 However, 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.
- I.5 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;
 - making significant appointments; and
 - entering major contracts or undertakings.
- I.6 There are also established conventions and practices associated with the caretaker conventions that are directed at protecting the apolitical nature of the state service, preventing controversies about the role and work of the State Service during an election campaign, and avoiding the use of State Government resources in a manner to advantage a particular party.
- I.7 The conventions and practices have developed primarily in the context of the relationship between Ministers and their portfolio departments. The relationship between Ministers and other bodies, such as statutory authorities, government business enterprises and State-owned companies, varies from body to body. However, those bodies should also observe caretaker conventions and practices unless to do so would conflict with their legal obligations or compelling organisational requirements.
- I.8 The following notes 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 judgement and common sense.

CARETAKER CONVENTIONS

The Secretary, Department of Premier and Cabinet is able to provide information and advice to agencies, but responsibility for observing the conventions ultimately rests with heads of agency and, in matters where they are involved, with the relevant Ministers.

2 MAJOR POLICY COMMITMENTS

- 2.1 Governments avoid making major policy decisions during the caretaker period that are likely to commit an incoming government. Whether a particular policy decision qualifies as 'major' is a matter for judgment. Relevant considerations include not only the significance of the commitment in terms of policy and resources, but also whether the decision is a matter of contention between the Government and opposition parties in the election campaign.
- 2.2 The conventions apply to the making of commitments, not to their announcement. Accordingly, the conventions are not necessarily contravened where commitments made before the calling of an election are announced during the caretaker period. However, where possible, commitments 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.
- 2.3 The conventions do not apply to promises on future policies that the party in government announces as part of its election campaign.
- 2.4 If circumstances require the Government to make a major policy commitment during the caretaker period that would bind an incoming government, the relevant Minister, after agreement with the Premier, would usually consult the Opposition spokesperson beforehand.

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 Head of the Premier's Office.

3 SIGNIFICANT APPOINTMENTS

- 3.1 Governments 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. Appointments, to be made after the date of dissolution, are deferred until after the elections. Finalisation of selection processes that have started but not completed should also be deferred until after the caretaker period.
- 3.2 In considering whether an appointment qualifies as 'significant', the agency should consider not only the importance of the position, but also whether the proposed appointment would be likely to be controversial. However significant appointments will include those for head or deputy head of agency, the head of a division or branch whose activities are deemed sensitive, membership of statutory bodies and statutory office holders.
- 3.3 If deferring an appointment is impracticable, usually for continuity purposes or reasons associated with the proper functioning of an agency, there are several options:
- An acting appointment can be made where permissible;
 - Make a short term appointment until shortly after the end of the caretaker period; or
 - If those options are not practicable, the relevant Minister, after agreement with the Premier, could consult the relevant Opposition spokesperson regarding a full term appointment.

4 MAJOR LEGAL OR INTERGOVERNMENTAL COMMITMENTS

4.1. CONTRACTS OR UNDERTAKINGS

- 4.1.1 Governments avoid entering into major contracts or undertakings during the caretaker period. When considering whether a contract or undertaking qualifies as 'major', agencies should consider the monetary value of the commitment and also whether the commitment involves a routine matter of administration or rather implements or entrenches a policy, program or administrative structure which is politically contentious. A further consideration is whether the commitment requires ministerial approval.
- 4.1.2 If it is not possible to defer the commitment until after the caretaker period, for legal, commercial or other reasons, there are a number of options. The Minister, after agreement with the Premier, could consult the relevant Opposition spokesperson regarding the commitment. Agencies could 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.
- 4.1.3 Similarly, in the case of outstanding tender processes, agencies should warn 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.

4.2 INTERGOVERNMENTAL NEGOTIATIONS

- 4.2.1 The convention that the Government avoids entering into major commitments during the caretaker period gives rise to particular issues in the context of intergovernmental negotiations and agreements. The Government ordinarily seeks to defer such negotiations or adopts observer status until the end of the caretaker period.
- 4.2.2 If deferring involvement or adopting observer status is not feasible, the Government should if possible limit its role to providing information on its past position, without committing the incoming government to that position.
- 4.2.3 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 Opposition parties' agreement to negotiating positions.

5 ONGOING WORK OF THE STATE SERVICE

5.1 REQUESTS FROM MINISTERIAL OFFICES FOR INFORMATION

- 5.1.1 During the caretaker period, executive government continues to operate and Ministers remain in authority. The Minister's statutory responsibilities, especially those with time limits, are not affected except to the extent that any decision that is within the discretion of the Minister must be considered in the context of the caretaker conventions.
- 5.1.2 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 or other material, including information to be incorporated in speeches, and to be briefed on issues. The purpose to which such material is put is for Ministers to determine. However, to avoid controversy in the election period about claimed breaches of the apolitical and impartial values of the State Service, it may be appropriate for an agency to decline a request for unusual information if it requires the use of significant resources and is clearly for use as part of the election campaign. 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.
- 5.1.3 In most instances, agencies should decline requests for policy advice during the caretaker period. There might, however, be urgent issues on which policy advice should clearly be provided to Ministers to allow responsible ongoing administration or to protect the State's interests. Requests for legal advice on issues affecting the Minister in his or her capacity as a candidate should be declined.
- 5.1.4 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 Ministers' offices is not required.
- 5.1.5 Otherwise the normal work of the State Service including operational and other activities, continues without interruption. The caretaker conventions apply in respect of any decisions and special care should be taken with public consultation.

5.2 LEGISLATION

- 5.2.1 Bills that have passed both Houses of Parliament should, if practicable, be assented to by the Governor before the dissolution of the House of Assembly, but may lawfully be assented to subsequently.
- 5.2.2 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.
- 5.2.3 Where there is a need and where there is no breach of the caretaker conventions, the Executive Council may approve regulations and other statutory rules during the caretaker period. However, Executive Council meetings are infrequent during the caretaker period and are only held, with the Premier's approval, when required by the amount of business.

5.3 CORRESPONDENCE

- 5.3.1 Judgment is necessary in determining whether significant correspondence should be signed by the Minister or head of agency. Whatever the decision, the caretaker conventions apply.

Operational Notes

- a Although Ministers 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.
- 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 matter you raised is one which will be taken up with the incoming government."
- d Letters requiring explanation of current policy should, if possible, be answered without committing a government to post election action or implying that the policy will continue if the Government is re-elected.
- 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 it is known whether they have been re-elected. Newly elected members should be addressed as 'MP' as soon as it is known that they are elected.

Members who are not standing for re-election should not be addressed as 'MP' following the dissolution of the House of Assembly.

5.4 GRANTS

- 5.4.1 The payment of grants which were approved prior to the caretaker period can proceed but should be forwarded by the Department rather than by a Minister or another member of the Government.
- 5.4.2 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.

5.5 TABLING OF AND RESPONSES TO REPORTS

- 5.5.1 Responses to outstanding Parliamentary committee reports should be taken up with the incoming government. Agencies may, however, undertake appropriate preparatory work and consultation at the agency level so that they are in a position to provide early advice to the incoming government.
- 5.5.2 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 AVOIDING INAPPROPRIATE INVOLVEMENT OF THE STATE SERVICE IN ELECTION ACTIVITIES

6.1 COMMUNICATIONS

6.1.1 Advertising and Information Campaigns

- 6.1.1.1 The Government may decide to curtail some government advertising campaigns, depending on their nature. As a general rule campaigns which promote the Government or highlight the role of particular Ministers or which address issues that are controversial between the major political parties would normally be discontinued. Campaigns that are non-contentious such as road safety or public health campaigns, usually continue. The Premier should be consulted if there is some doubt about a particular campaign.
- 6.1.1.2 Agencies should avoid active distribution of material during the caretaker period if it promotes government policies or emphasises the achievements of the Government or a Minister
- 6.1.1.3 The application of the caretaker conventions to communication materials that are produced by third parties but supported, sponsored or endorsed by Government agencies should be considered on a case-by-case basis, taking into account the terms and conditions of Government agency support and whether the Government 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.
- 6.1.1.4 Some communications during the caretaker period are regulated by legislation. In broad terms, the legislation requires any advertisement or literature actively distributed during an election campaign, which could be construed as affecting voting intentions, to identify the person who authorised the materials and the name and address of the printers.

In the case of television and radio, an “authorisation tag” must appear immediately after the commercial. This is already a requirement under the *Tasmanian Government Style Guide and Logo Policy*. Note that during caretaker, authorisations should also acknowledge the speaker (ie “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.

6.1.2 Internet and Electronic Communications

- 6.1.2.1 During the caretaker period, agencies need to ensure that agency resources are not used to support any particular political party. Agencies should review their websites at the beginning of the caretaker period accordingly.

- 6.1.2.2 Agency websites may retain material placed on the website before the commencement of the caretaker period in most cases. Exceptions might be recent ministerial statements that criticise non-government parties or members in strong terms.
- 6.1.2.3 Agencies should add only the following material to their websites during the caretaker period:
- Portfolio-related announcements, if that is the usual practice (the definition of portfolio-related will require judgement within each agency, but, as examples, election promises should not be placed on an agency website, but 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 (eg public health warning, 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.
- 6.1.2.4 If agency websites contain links to websites outside the tas.gov.au domain with political content, agencies should consider the need for entry/exit messages.
- 6.1.2.5 In the case of ministerial websites, 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. Material placed on the Minister's website before the caretaker period may be retained, as may links between the Minister's and agency's websites. In relation to the addition of material:
- Agency staff should add to ministerial websites only material relating to matters of existing policy or purely factual material. They should not add material concerning future policies, election commitments, how-to-vote material or media releases and speeches that criticise opponents, promote the Government or pursue election issues; and
 - Agencies may also wish to place a notice on the ministerial website noting that election-related material is not available on the website. The notice could refer visitors to the government party's website, or include a link to that website.
- 6.1.2.6 If an agency-maintained/funded ministerial website contains links to websites outside the tas.gov.au domain, such as political party websites, agencies should give particular attention to the need to include appropriate entry/exit messages. 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'.
- 6.1.2.7 Interactive sites and features that allow comment, debate or promotion of opinions, such as discussion groups, forums, chat rooms and blogs, should cease or be moderated for political content during the caretaker period.

6.1.2.8 Agencies should consider an acknowledgement statement such as: “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.”

6.1.3 Media Statements

6.1.3.1 Agencies should carefully monitor their media releases during the caretaker period to ensure that the material is of public interest, relates only to the day-to-day business of the department or agency, and cannot reasonably be construed as being for political purposes.

Operational Notes

- a Some communications during the caretaker period are regulated by legislation: The *Tasmanian Electoral Act 2004*, the *Commonwealth Broadcasting Services Act 1992* (Section 42 and Schedule 2) deals with radio and television broadcasts and the *Commonwealth Electoral Act 1901* (Section 328) deals with printed material.
- b The *Broadcasting Services Act 1992* 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 (*Producing a TVC containing Political Matter including Election Material*, Free TV Australia, accessed 22 December 2009). 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*.
- c At the beginning of the caretaker period, agencies should review all:
 - **advertising campaigns:** to assess whether they should continue to or be deferred;
 - **internets and intranets:** to assess the appropriateness of current material and introduce guidelines for future material; and
 - **publications:** to assess the content and arrangements for the production and distribution of printed material, including newsletters.
- d Campaigns can continue if they:
 - are operational in nature, such as public health campaigns and
 - are appropriately authorised (see paragraphs a and b).
- e 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.

- f It is prudent for agencies to do an audit of agency-managed websites prior to the likely start of the caretaker period so they are able to quickly identify any material that requires removal.
- g Agencies should check the wording of any icons and links on their websites to ensure that they cannot be interpreted as promoting a Government policy. It is also recommended that profiles of Ministers be removed.
- h Agency staff should only upload material to Ministerial websites that is factual or relates to existing policies. Material about election promises or material that criticises opposition parties or policies should not be uploaded to web sites by agency staff.
- i If a Minister's site is linked to external sites, such as a party-political website, an exit message should be used to make it clear to the user that they are leaving a Government site.
- j If a Minister's website is personal and not maintained by the agency, the Minister might consider placing a disclaimer on the website to the effect that no State Government resources are being used to communicate political material. Agencies should remove links to personal Ministerial websites or ensure users understand they are linking to a non-government website by providing a clear entry/exit message.
- k State Servants should not use government email, faxes etc to distribute political material. This action would be a breach of the State Service Code of Conduct (see section 6.3).

6.2 USE OF AGENCY PREMISES

- 6.2.1 There may be occasions where agency premises can appropriately be used during the caretaker period by political parties for public events, such as media conferences, or where they are the obvious place for a function. In the case of official functions involving the use of agency resources, it would generally be appropriate for the Opposition spokesperson, and other non-government Members or candidates to be given the opportunity to be present.
- 6.2.2 While there should be no difficulty with the responsible use, by all parties campaigning in an election, of agency premises that are normally open to the public, it is most important during an election campaign that public servants not become caught up with party political activity. For that reason, it is not appropriate that use of premises extend to such activities as engaging public servants in political dialogue, or using public servants for logistical support for political functions. Nor, of course, should use of premises unreasonably disrupt the normal operations of the offices concerned.
- 6.2.3 Ministerial visits to agencies for consultations would, of course, be in order for the conduct of routine government business, in accordance with the caretaker conventions.

6.3 POLITICAL PARTICIPATION BY STATE SERVANTS

- 6.3.1 State servants must not use agency resources or their positions to support particular issues or parties during the election campaign. 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. Web pages and e-mail systems provided by agencies should not be used to publish or transmit political material.
- 6.3.2 State servants need to exercise judgment if they are scheduled to speak at public functions during the caretaker period. In the case of controversial issues, officials should decline invitations to speak. In the case of non-controversial issues, state servants may speak, but should explain that the Government is in caretaker mode and that they will limit their statements to factual issues and matters of administration. State servants should avoid publicly explaining or promoting policies during the caretaker period.

Operational Notes

- a The State Service Principles articulated in the *State Service Act 2000* assert that the 'State Service is apolitical, performing its functions in an impartial ethical and professional manner'. The State Service Code of Conduct requires state servants:
- When acting in the course of their State Service employment, to behave in a way that upholds the State Service principles;
 - To behave in a way that does not adversely affect the integrity and good reputation of the State Service;
 - To disclose and take reasonable steps to avoid conflicts of interests in connection with State Service employment; and
 - To use Tasmanian Government resources in a proper manner.
- b State Servants Standing for Election
- An officer of the State Service who is a candidate for election to either House of State Parliament must vacate the office on becoming a candidate, ie when nominations have closed, and the person is formally recognised as a candidate.
 - An employee of the State Service who is a candidate for election to either House of State Parliament does not have to resign prior to contesting a seat.
 - An employee who is a candidate is entitled to leave without pay for a period of up to two months for the purpose of contesting an election - Section 2(2)(b) of the *Constitution (State Employees) Act 1944*.

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- An employee who is a candidate retains normal entitlements to other classes of leave which may be taken as part of, instead of, or in addition to the above leave in any desired combination, and in broken periods, and subject to normal conditions. Annual recreation leave for electioneering before nominations have closed may also be granted. Whilst on leave without pay to contest an election, care should be taken by the employee to ensure compliance with the Code of Conduct provisions as outlined in Section 9 of the *State Service Act 2000*.
- If elected, the *Constitution (State Employees) Act 1944* provides that service as an employee of the State Service is automatically terminated.

7 OTHER MATTERS

7.1 FINANCIAL ENTITLEMENTS

- 7.1.1 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.
- 7.1.2 Claims relating to the management of essential government business can be covered in the normal way; for example, to support Ministers attending Cabinet meetings or primarily in connection with their Ministerial duties.
- 7.1.3 In the case of claims that cover a combination of government and political business, partial reimbursement can be granted to cover government activities.

7.2 GOVERNMENT FUNDED VEHICLES

- 7.2.1 Use of Ministerial cars and drivers, or other government vehicles by Ministers or other members of the Parliament remain available during the caretaker period for official purposes but not for private use.

7.3 STATE VISITS

- 7.3.1 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 State Protocol Officer, Department of Premier and Cabinet.

7.4 AGENCY BRIEFINGS

- 7.4.1 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 coordinates these briefings. Agencies should also prepare portfolio specific briefing packages for their new Minister.

7.5 POST ELECTION - CABINET DOCUMENTS

- 7.5.1 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, all Cabinet documents, including Agendas, Minutes and Decisions should be returned to the custody of the Cabinet Office.
- 7.5.2 The Manager, Cabinet Office issues further procedural guidelines on the handling of Cabinet documents once the result of the election is known.