



# Cabinet Office Circular

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## **Enquiries:**

*Lison Harris Ph: 471 9741*

*lison.harris@dpmc.govt.nz*

*Rebecca Kitteridge, Ph: 471 9751*

*rebecca.kitteridge@dpmc.govt.nz*

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## **Government decisions and actions in the pre-election period**

### **Introduction**

- 1 This circular provides guidance on government decisions and actions during the pre-election period. It provides advice on:
  - 1.1 government decision-making generally during the pre-election period;
  - 1.2 making appointments in the pre-election period; and
  - 1.3 conducting government advertising campaigns during the election period.

### **Key points**

- 2 The key points are:
  - 2.1 The government has the right to govern until the election. The caretaker convention does not apply in the pre-election period.
  - 2.2 Successive governments, however, have exercised restraint in the pre-election period in two main areas:
    - 2.2.1 when making significant appointments; and
    - 2.2.2 when taking action that might result in government advertising campaigns being held during the election campaign.

## Right to govern until the election

- 3 The government has a three year mandate to govern. It is not bound by the caretaker convention during the pre-election period (unless the election has been caused by the government losing the confidence of the House mid-term – see paragraphs 4.16-4.31 of the *Cabinet Manual* for further information about the caretaker convention). This means that the government has full power to make decisions in the pre-election period.
- 4 Successive governments, however, have chosen to restrict their actions to some extent in the period immediately before a general election, in recognition of the fact that an election, and therefore potentially a change in government, is imminent. Restraint has, for example, been exercised in making significant appointments, and in relation to some government advertising (see paragraph 4.14 of the *Cabinet Manual*).
- 5 On some occasions in the past Ministers have sought advice about whether specific actions or decisions should be taken in the pre-election period. It is for the Prime Minister to make the final decision as to whether or not a decision or action should proceed during the pre-election period.
- 6 From a practical perspective, the election period can be a difficult time for Ministers to focus on big or difficult policy questions. A general election always results in a period of reduced decision-making capacity at the ministerial and Cabinet level, while Ministers are occupied with the election campaign. Chief executives should talk to their Ministers early in the year about the matters they wish to see advanced before the election, and agree on timeframes for getting the relevant papers to Ministers and Cabinet.

## Appointments in the pre-election period

- 7 It has been the practice for governments to exercise restraint in making significant appointments in the period (usually about three months) leading up to a general election. The latest date that the 2008 election can be held is 15 November. Accordingly, (unless an earlier date is announced) the period of restraint will start towards the middle of August.
- 8 The question of which appointments are significant requires a case-by-case assessment of factors such as the role of the board or position, and the significance of the sector. Appointments that are not considered to be significant may proceed in the usual way. The Cabinet Office is available to provide guidance and advice on precedents.
- 9 It would be helpful for Ministers to consider, at an early stage, the significant appointments within their portfolios that must be made in 2008. The post-election period (and particularly any caretaker government period) can also be a difficult time for Ministers to make appointments.
- 10 Ministers should therefore review the appointments that are due to expire during the period from middle of August to December, as well as any appointments that may need to be made to a newly established board during this time.
- 11 If a significant appointment falls due in the pre-election period or the immediate post-election period, the Minister responsible for the appointment should consider either:
  - 11.1 allowing the appointee to remain in office past the expiry date of his or her appointment (i.e. defer the appointment or reappointment decision), if the governing legislation allows that; or

- 11.2 if the governing legislation does not allow the appointee to continue in the position beyond the expiry date of the appointment, whether a short term appointment, reappointment or an acting appointment can be made.
- 12 All papers proposing short term or acting appointments or reappointments should be put to the Cabinet Appointments and Honours Committee (APH) and Cabinet in the usual way.

### **Government advertising**

- 13 During the election period, successive governments have chosen to avoid holding advertising campaigns that may create a perception that funds are being used to finance publicity for party political purposes (refer to paragraph 4.14 of the *Cabinet Manual* and the Guidelines for Government Advertising, which are set out in appendix two of the *Manual*). Ministers should be alert to this issue when making decisions that might result in government advertising campaigns during the election campaign.
- 14 The Electoral Finance Act 2007 prohibits “election advertising” by chief executives, departments, Crown entities, state enterprises, and any other instruments of the Crown, at all times. The State Services Commission’s *State Servants, Political Parties, and Elections: Guidance for the 2008 Election Period* provides guidance on this issue. The key point is that state servants and agencies should take a conservative approach to communication campaigns and advertising to ensure that the Act is not breached, particularly in the three-month period leading up to an election.

### **Further advice**

- 15 The Secretary of the Cabinet is available to provide advice on decisions and actions around election time. There is also helpful guidance about elections in chapter 4 of the *Cabinet Manual* (see [www.dpmc.govt.nz/cabinet/manual/4.html](http://www.dpmc.govt.nz/cabinet/manual/4.html)).
- 16 Further guidance will be issued by the Cabinet Office and the State Services Commission on election-related issues as the year progresses.

Diane Morcom  
Secretary of the Cabinet