



# Cabinet Office Circular

CO (08) 8

10 November 2008

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## Intended for:

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

## Enquiries:

*Rebecca Kitteridge, Secretary of the Cabinet and  
Clerk of the Executive Council*  
Ph 817 9744  
[rebecca.kitteridge@dpmc.govt.nz](mailto:rebecca.kitteridge@dpmc.govt.nz)

*Michael Webster, Deputy Secretary of the Cabinet*  
Ph 817 9751  
[michael.webster@dpmc.govt.nz](mailto:michael.webster@dpmc.govt.nz)

*Lison Harris, Legal Adviser*  
Ph 817 9741  
[lison.harris@dpmc.govt.nz](mailto:lison.harris@dpmc.govt.nz)

## Government decision making during the period of caretaker government

### Introduction

- 1 Following the general election on 8 November 2008, negotiations have commenced to establish the basis on which a National-led government will operate. The Prime Minister has indicated that, in accordance with the convention on caretaker government, the current administration will govern in a caretaker capacity until the formal swearing in of the new administration.
- 2 This circular provides guidance for Ministers, departments, and government agencies on:
  - 2.1 the application of the caretaker convention;
  - 2.2 taking decisions during the period of caretaker government;
  - 2.3 consultation with political parties during this period;
  - 2.4 Cabinet meetings; and
  - 2.5 guidance on the support from the state sector for negotiating parties.

All government agencies are expected to follow these guidelines.

- 3 For the purposes of this circular, “government agencies” means agencies in the state sector, including public service departments, other state services, agencies in the wider state sector (see [paragraphs 3.2-3.4](#) of the Cabinet Manual for a complete definition of the state sector), and other agencies within Ministers’ portfolios that do not form part of the state sector.
- 4 The State Services Commissioner will provide copies of this circular to agencies in the state sector, e.g. Crown entities (including tertiary education institutions), State Owned Enterprises, officers of Parliament, and organisations listed in the [4<sup>th</sup> Schedule](#) of the Public Finance Act 1989. Public service chief executives should forward copies of this circular to the heads of other agencies within their Ministers’ portfolios that do not form part of the state sector.
- 5 The guidance in this circular supplements the information in Cabinet Office circular “Constitutional Procedures after the General Election” (CO (08) 7), which was issued on 6 October 2008.

### **Application of caretaker convention**

- 6 Following the general election on 8 November 2008, negotiations have commenced to establish the basis on which a National-led government will operate.
- 7 The Prime Minister has indicated that, in accordance with the convention on caretaker government, the current administration will govern in a caretaker capacity until the formal swearing-in of the new administration.

### **Taking decisions during the period of caretaker government**

- 8 Until the National-led government has been sworn in, the incumbent Ministers and government will operate in accordance with the caretaker convention.

#### ***Key principles***

- 9 The key principles of the convention, as applied during the government formation period, are:
  - 9.1 The normal business of government, and the day to day administration of departments and other agencies in the state sector may continue as usual.
  - 9.2 Decisions taken before the start of the caretaker period may usually be implemented.
  - 9.3 Significant decisions, new policy, or changes to existing policy and actions with long-term implications should be deferred if possible.
  - 9.4 If it is not possible to defer decisions of that nature, the government will handle matters using temporary or holding arrangements that do not commit the government in the longer term.
  - 9.5 If neither deferral nor temporary arrangements are possible, the government is likely to undertake the political consultation necessary to establish whether the proposed action has the support of a majority of the House.

- 10 No hard and fast rules are possible. Ministers and chief executives may need to take into account various considerations (including political considerations), both on whether it is appropriate or necessary to proceed on a matter and how it should be handled.
- 11 The government formation talks are likely to result in agreements between parties, which will formalise the composition of the new government, and the basis on which it will operate. These agreements have in the past been made publicly available. From the time that agreements are reached to the time that the new government is sworn in, the incumbent government will undertake no new policy initiatives, and will act on the advice of the incoming government on any matter of such constitutional, economic or other significance that it cannot be delayed until the new government formally takes office. Situations of this kind are likely to be relatively short-lived, as the Constitution Act 1986 enables a swift transition between administrations.

### **Ministers**

- 12 Ministers should consider the following:
- 12.1 During the caretaker period, matters may arise that would normally require a decision by a Minister or Cabinet. To ascertain how the caretaker convention applies to the decision, Ministers may seek advice from their officials or from the Cabinet Office, if required. Ministers should discuss significant or difficult decisions concerning the caretaker convention with the Prime Minister and/or their Cabinet colleagues.
- 12.2 In cases where any doubt arises as to the application of the caretaker convention, Ministers should consult the Prime Minister. Final decisions concerning the caretaker convention rest with the Prime Minister.

### **Departments**

- 13 Departments should consider the following:
- 13.1 The day to day administration of departments should continue during the caretaker period.
- 13.2 Issues arising within departments that have caretaker convention implications should be referred to the incumbent Minister, who will decide (in consultation, if appropriate, with ministerial colleagues and/or the Prime Minister) how the convention applies and how the decision should be handled.
- 13.3 Departments should be ready to provide advice to the Minister (if required), to assist the Minister in deciding on the application of the caretaker convention, and the options for handling the decision.
- 13.4 On rare occasions, caretaker convention issues may arise in relation to matters that, under statute, fall solely within the decision making authority of a chief executive or statutory officer. Where appropriate, chief executives and statutory officers should observe the principles of the caretaker convention when making those decisions.

**Other agencies in the state sector**

- 14 Cabinet expects that other agencies in the state sector will apply the principles of the caretaker convention to decision making during the caretaker period, as far as is possible (taking into account their legal obligations and statutory functions and duties).

**Consultation with political parties**

- 15 Where consultation with other political parties on matters of government business is required, it must be discussed in advance with the Prime Minister or Cabinet. The Chief of Staff in the Prime Minister's Office (Heather Simpson) will co-ordinate any consultation with other political parties on government business during the period of caretaker government.
- 16 Departmental officials should alert their Minister's office at an early stage to any issue that may require such consultation. Ministers' offices should in turn notify the Chief of Staff in the Prime Minister's Office.

**Cabinet meetings**

- 17 There will be no further Cabinet or Cabinet committee meetings of the current government.
- 18 The Prime Minister, the Deputy Prime Minister, Hon Jim Anderton, Hon Phil Goff, and Hon Annette King, in consultation with the relevant portfolio Minister(s), have been authorised by Cabinet to take decisions on any urgent or necessary business arising during the period of caretaker government. Any such decisions will be taken by the group of Ministers in the context of the caretaker convention.

**Guidance on support from the state sector**

- 19 The State Services Commissioner manages any involvement by officials in providing information to negotiating parties during the government formation process. The Commission has issued guidance in relation to this process, entitled "Negotiations between Political Parties to Form a Government: Guidelines on Support from the State Sector", see [www.ssc.govt.nz/negotiations](http://www.ssc.govt.nz/negotiations). It is expected that all government agencies will follow the process set out in the Guidelines.

**Further guidance**

- 20 Further information on procedures during the government formation period is as follows:
- 20.1 Elections, transitions and government formation, chapter 6 of the Cabinet Manual, available at [www.dpmc.govt.nz/cabinet/manual/index.html](http://www.dpmc.govt.nz/cabinet/manual/index.html).
- 20.2 Constitutional procedures after the general election, CO (08) 7, available at [www.dpmc.govt.nz/cabinet/circulars/co05/7.html](http://www.dpmc.govt.nz/cabinet/circulars/co05/7.html).
- 20.3 Negotiations between political parties to form a government: Guidelines on support from the state sector, available at [www.ssc.govt.nz/negotiations](http://www.ssc.govt.nz/negotiations).

- 21 For further advice on caretaker issues, please contact Rebecca Kitteridge or Michael Webster in the Cabinet Office.
- 22 The Cabinet Office will issue further guidance as required during the government formation process.

Rebecca Kitteridge  
Secretary of the Cabinet