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<b>Intended for</b>	All Ministers All Chief Executives All Senior Private Secretaries Speaker of the House of Representatives Clerk of the House of Representatives Chief Parliamentary Counsel Controller and Auditor-General Chief Ombudsman Official Secretary, Government House
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## Government Decisions and Actions in the Pre-election Period

*This circular has been updated to reflect the election date announced by the Prime Minister on 17 August 2020.*

### Introduction

- 1 As announced by the Prime Minister on 17 August 2020, the 2020 general election is now to be held on **Saturday, 17 October 2020**. The “pre-election period” is generally regarded as being the three months before a general election. The pre-election period commenced this year on 19 June 2020, and continues to apply to government decisions and actions in the lead up to the 17 October election.
- 2 This circular provides guidance on government decisions and actions during the pre-election period. It covers:
  - 2.1 government decision-making generally during the pre-election period;
  - 2.2 making appointments in the pre-election period;
  - 2.3 conducting government advertising campaigns during the pre-election period;
  - 2.4 the provision of information by the state services in the pre-election period.

### Summary

- 3 The government continues to have full power to govern until the election. The caretaker convention does not apply in the pre-election period.
- 4 Successive governments, however, have exercised restraint in the pre-election period in two main areas:
  - 4.1 when making significant appointments;

- 4.2 when taking action that might result in government advertising campaigns being held during the pre-election period.

### **Right to govern until the election**

- 5 The government has a three-year mandate to govern. It is not bound by the caretaker convention during the pre-election period (see Chapter 6 of the [Cabinet Manual](#) for further information about the caretaker convention). This means that the government continues to have full power to make decisions in the pre-election period. Cabinet continues to meet up until the election to consider government business.
- 6 Successive governments have, however, chosen to restrict their actions to some extent in the period immediately before a general election in two areas: in making significant appointments, and in relation to some government advertising (see Chapter 6 of the [Cabinet Manual](#)). This is in recognition of the fact that an election, and therefore potentially a change in government, is imminent.
- 7 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 (including a significant appointment) should proceed during the pre-election period.
- 8 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. It is important for Ministers, departments, and other state sector agencies to ensure that all significant matters that will require ministerial attention in the course of the election year are dealt with well in advance of a general election. Chief executives should talk to their Ministers in the earlier part of the year about the matters that Ministers wish to see advanced before the election, and agree on timeframes for getting the relevant papers to Ministers and to Cabinet.
- 9 The Cabinet Office can assist with advice in this area.

### **Appointments in the pre-election period**

- 10 It has been the practice for governments to exercise restraint in making significant appointments in the pre-election period. Whether or not a particular appointment is “significant” is a matter of judgement. There is no “blanket ban” on the making of such appointments. Rather a case-by-case assessment is required, taking into account factors such as:
- 10.1 the public profile of the position or organisation;
  - 10.2 whether the organisation has a significant strategic or decision-making role;
  - 10.3 whether the organisation controls significant assets or funds;
  - 10.4 whether the organisation is an executive body, as opposed to an advisory or technical one.
- 11 It would be helpful if Ministers were able to consider, at an early stage, the significant appointments within their portfolios that are due to commence during the pre-election period. The post-election period (and particularly any caretaker government period) can

also be a difficult time for Ministers to make appointments. Officials should therefore review the appointments that will need to be made by their Minister during the period from July to late 2020, including appointments to a newly established board during this time.

- 12 If a significant appointment falls due in the pre-election period, or in the immediate post-election period, the Minister responsible for the appointment should consider either:
  - 12.1 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 or other relevant rules allow that; or
  - 12.2 if the governing legislation or other relevant rules do not allow the appointee to continue in the position beyond the expiry date of the appointment, whether a short term appointment, a reappointment, or an acting appointment can be made.
- 13 These principles apply to significant appointments that commence during the pre-election period, even if decisions on the particular appointment are to be made before the pre-election period commences.
- 14 All papers proposing appointments during the pre-election or the immediate post-election period, including short term or acting appointments or reappointments, should be put to the Cabinet Appointments and Honours Committee and Cabinet in the usual way. Appointments that are not considered to be significant may proceed in the usual way.
- 15 The Cabinet Office is available to provide guidance and advice on precedents, and on the process to be followed if an appointment to a significant position is proposed.

### **Government Advertising**

- 16 During the pre-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 (see Chapter 6 of the [Cabinet Manual](#) and the [Guidelines for Government Advertising](#)). Ministers and officials should be alert to this issue when making decisions that might result in government advertising campaigns during the pre-election period.
- 17 Government advertising is defined as “any process for which payment is made from public funds for the purpose of publicising any policy, product, service, or activity provided at public expense by the government”.
- 18 The State Services Commission is able to provide advice to officials in this area.

### **Provision of information by the state services in the pre-election period**

- 19 The neutrality of the public service and other agencies in the state sector must be protected throughout the pre-election period. Particular care should be taken to ensure the appropriate use of officials for policy development purposes in the lead-up to a general election (see Chapter 6 of the [Cabinet Manual](#)). Policy work carried out by officials for a Minister should not be used to develop party political material or be labelled as party policy. A “government policy” should generally be confirmed through the Cabinet and Cabinet committee decision-making process and then announced by the Minister in his or her official capacity.

- 20 Once government decisions have been announced, however, they can appear in party political material used in an election campaign, as long as they are identified as government decisions.
- 21 Political party policies that have not been worked on by officials or been the subject of government decisions may, of course, appear in party political material used in the election campaign. Such policies must not, however, be labelled “government policies”.

### **Further advice**

- 22 The Secretary of the Cabinet is available to provide advice on decisions and actions around election time.
- 23 Further guidance will be issued by the Cabinet Office and SSC on election-related issues as the year progresses.

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