



Intended for

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

Government Decision Making during the Period of Caretaker Government

Introduction

- 1 Following the general election on 17 October 2020, the Leader of the Labour Party has announced that she is able to lead a government that has the support of a majority of the House.
- 2 In accordance with the convention on caretaker government, the incumbent government will govern in a caretaker capacity until the appointment of the new government. Current Ministers will continue in office during this transitional period.
- 3 The declaration of the official election results is expected by 2.00 pm on Friday 6 November, and the return of the writ and the declaration of successful list candidates by Thursday 12 November (or 4-5 days thereafter in the event of recounts).
- 4 This circular provides guidance for Ministers and government agencies¹ on:
 - 4.1 the application of the caretaker convention;
 - 4.2 taking decisions during the period of caretaker government;
 - 4.3 Cabinet meetings;
 - 4.4 role of Ministers
 - 4.5 guidance on support from the State sector for any negotiating parties.
- 5 The guidance in this circular supplements the information in Cabinet Office circular CO (20) 5 [*Constitutional Procedures after the Election*](#), issued on 31 August 2020.

¹ 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 3.3-3.5](#) 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.

Application of caretaker convention

- 6 The incumbent government is still the lawful executive authority, with all the powers and responsibilities that go with executive office. Until the new government has been appointed, the incumbent government will operate in accordance with the second limb of the caretaker convention (“clear outcome”).
- 7 During this time, 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 (see Cabinet Manual, [paragraphs 6.29 – 6.30](#)).
- 8 In practice this means that during this period:
 - 8.1 the normal business of government and the day-to-day administration of departments and other agencies in the state sector may continue;
 - 8.2 should any urgent, significant matters that require Cabinet-level attention arise before the new administration is sworn in, they should be considered by Cabinet or the group of senior Ministers authorised by Cabinet to take such decisions during the caretaker period, who will act on the advice of the incoming government;
- 9 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.
- 10 In cases where any doubt arises as to the application of the caretaker convention, Ministers should consult the incumbent Prime Minister. Final decisions concerning the caretaker convention rest with the Prime Minister.

Cabinet meetings

- 11 Cabinet is not currently scheduled to meet during the caretaker period.
- 12 Cabinet has authorised a group of Ministers comprising the Prime Minister, the Deputy Prime Minister, Hon Kelvin Davis and Hon Grant Robertson, and the relevant portfolio Minister as appropriate, to have Power to Act to take decisions on any urgent matters arising that require Cabinet level decisions during the period of caretaker government [CAB-20-MIN-0392]. Any such decisions will be taken by the group of Ministers in the context of the caretaker convention.
- 13 The Cabinet Office should be advised of any issues that need to be considered by the group of Ministers with Power to Act during the caretaker period.

Role of Ministers

- 14 During the caretaker period, incumbent Ministers continue to hold full executive authority, and are entitled to receive the same level of support that they normally receive from the departments and agencies for which they are responsible, including being advised and getting information for the purposes of administering government business within their portfolios.

- 15 Portfolio responsibilities may change following the completion of the government formation process. Agencies should not assume, therefore, that an existing Minister will retain a certain portfolio or that a party spokesperson for a certain portfolio will be appointed as the Minister for that portfolio.

Guidance on support from the State sector

- 16 The Public Service Commissioner manages any involvement by officials in providing information to negotiating parties during the government formation process, in accordance with the process set out in the Public Service Act 2020.
- 17 Requests for information or support from the State sector by political parties involved in any negotiations must be made to the Commissioner. Agencies should inform the Public Service Commissioner immediately if approached directly by political parties for information to support negotiations.
- 18 The Public Service Commissioner has set standards in relation to this process, entitled [*Standards for providing information to political parties during negotiations to form a government*](#). The standards are mandatory for Public Service agencies and functional Chief Executives. However, all State sector agencies are expected to observe the standards when dealing with requests for information or analysis from political parties in the government formation negotiations, and to involve their monitoring department (where relevant).

Distribution of circular and further guidance

- 19 The Public Service Commissioner will provide copies of this circular to relevant agencies in the State sector, including non-Public Service departments, statutory Crown entities, Crown entity companies, organisations listed in [Schedule 4](#) and companies listed in [Schedule 4A](#) of the Public Finance Act 1989, the Reserve Bank of New Zealand, tertiary education institutions, State Owned Enterprises, and the Offices of Parliament.
- 20 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.
- 21 Further information on procedures during the government formation period is available as follows:
- 21.1 [Chapter 6](#) of the Cabinet Manual, *Elections, Transitions and Government Formation*;
 - 21.2 Cabinet Office Circular, [Constitutional Procedures after the Election](#), CO (20) 5;
 - 21.3 [Standards for providing information to political parties during negotiations to form a government](#).

- 22 The Cabinet Office will issue further guidance as required during the government formation process.

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