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**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

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## Government Decision Making during the Period of Caretaker Government

### Introduction

- 1 Following the general election on 14 October 2023, negotiations to form a government are expected to commence shortly.
- 2 In accordance with the convention on caretaker government, the Prime Minister has indicated that the incumbent government will govern in a caretaker capacity until the appointment of the new government.
- 3 The declaration of the official election results is expected by 2.00 pm on Friday 3 November, and the return of the writ and the declaration of successful list candidates by Thursday 9 November (or 4-5 days thereafter in the event of recounts).
- 4 This circular provides guidance for Ministers and public sector agencies<sup>1</sup> on:
  - 4.1 the application of the caretaker convention;
  - 4.2 taking decisions during the period of caretaker government;
  - 4.3 consultation with political parties during this period;
  - 4.4 Cabinet meetings;
  - 4.5 guidance on support from the public sector for negotiating parties.
- 5 The guidance in this circular supplements the information in Cabinet Office circular CO (23) 8 [\*Constitutional Procedures after the Election\*](#), issued on 31 August 2023.

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<sup>1</sup> For the purposes of this circular, “public sector” has the meaning in paragraph 3.5 of the Cabinet Manual 2023.

## Application of caretaker convention

- 6 Until the new government has been appointed, the incumbent government will operate in accordance with the caretaker convention.

### Key principles

- 7 The key principles of the caretaker convention, as applied during the government formation period, are as follows (see further [paragraphs 6.21-6.40](#) of the Cabinet Manual):
- 7.1 there must always be Ministers in office to advise the Governor-General and to exercise the powers of executive government;
  - 7.2 the normal business of government, and the day-to-day administration of departments and other agencies in the public sector, may continue as usual;
  - 7.3 decisions taken before the start of the caretaker period may usually be implemented;
  - 7.4 significant decisions, new policy, or changes to existing policy and actions with long-term implications should, however, be deferred if possible;
  - 7.5 if it is not possible to defer decisions of that nature, the government should handle matters using temporary or holding arrangements that do not commit the government in the longer term;
  - 7.6 if neither deferral nor temporary arrangements are possible, the government should undertake the political consultation necessary to establish whether the proposed action has the support of a majority of the House of Representatives.
- 8 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.
- 9 The government formation negotiations 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.
- 10 The caretaker convention will continue to apply, in an amended form, between the conclusion of such agreements and the appointment of the new government (see [paragraphs 6.29 and 6.30](#) of the Cabinet Manual on this “second arm” of the caretaker convention). Further guidance will be issued about that at the appropriate point.

### Ministers

- 11 Ministers should consider the following:
- 11.1 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. Ministers should discuss significant or difficult decisions concerning the caretaker convention with the Prime Minister and/or their ministerial colleagues;
  - 11.2 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.

**Public sector agencies**

- 12 The day-to-day administration of public sector agencies should continue during the caretaker period.
- 13 Public service agencies should consider the following:
- 13.1 issues arising within public service agencies that have caretaker convention implications should be referred to the caretaker 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;
  - 13.2 public service agencies 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;
  - 13.3 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.
- 14 The statutory provisions governing decision-making within Crown entities, state-owned enterprises, and other public sector agencies impose different obligations from those applicable to decision-making within public service agencies and non-public service departments. However, Crown entities, state-owned enterprises, and other public sector agencies should apply the principles of the caretaker convention to decision-making during the caretaker period, as far as possible taking into account their legal obligations and statutory functions and duties. These agencies should discuss with their Ministers any issues with caretaker convention implications.

**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 will co-ordinate any consultation with other political parties on government business during the period of caretaker government.
- 16 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 decision-making**

- 17 Cabinet has authorised a group of Ministers comprising the Prime Minister, the Deputy Prime Minister, Hon Kelvin Davis, 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-23-MIN-0429]. Any such decisions will be taken by the group of Ministers in the context of the caretaker convention.
- 18 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.

## Guidance on support from public sector agencies

- 19 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.
- 20 Requests for information or support from the public sector by political parties involved in 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.
- 21 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 public 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

- 22 Public Service chief executives should forward copies of this circular to the heads of relevant public sector agencies within their Ministers' portfolios.
- 23 Further information on procedures during the government formation period is available as follows:
  - 23.1 [Chapter 6](#) of the Cabinet Manual, *Elections, Transitions and Government Formation*;
  - 23.2 Cabinet Office Circular, [Constitutional Procedures after the Election](#), CO (23) 8;
  - 23.3 [Standards for providing information to political parties during negotiations to form a government](#).
- 24 The Cabinet Office will issue further guidance as required during the government formation process.

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