



# CARETAKER CONVENTIONS

March 2019

**Government Division**

## Caretaker Conventions

*'I should also be glad if you would note that whilst continuing to take whatever action you deem necessary in connection with the ordinary administration of your Department, you should not make decisions on matters of policy or those of a contentious nature without first referring the matter to myself'*

Robert Menzies 1951



# Caretaker Conventions

The caretaker period commences on the dissolution of the House of Representatives. At that time the government assumes a caretaker role and, by convention, avoids:

- taking **major policy decisions** likely to commit an incoming government
- making **appointments of significance**
- entering **major undertakings or contracts**



Caretaker period ends when the result of the election is clear or, if there is a change of government, when the new government is sworn in.

# Caretaker Conventions

## Why do we have them?

- with the dissolution of the House, there is no popular chamber to which the Executive government can be responsible; and
- every general election brings with it the possibility of a change of government.



# Caretaker Conventions

They are conventions, NOT LAW, therefore:



- judgement
- precedent
- common sense

## Caretaker Conventions

Conventions do not prevent the ordinary day to day business of government

Governments can still take decisive action to deal with emergencies



# Caretaker Conventions – in practice

What is:

- a major policy?
- a significant appointment?
- a major contract or commitment?



## Caretaker Conventions – in practice

### Consultation with the Opposition:



- means Labor, not the Greens or Independents
- is done by Ministers and their offices
- does not mean agreement
- but is more than advice on what's been decided



## Caretaker Conventions – APS sensitivities



- Need to maintain apolitical status
- Adopts practices that support the conventions
- Avoids use of Commonwealth resources to advantage one political party over another

## Caretaker Conventions – in practice

- Policy advice generally comes to an end, but we can still provide factual data
- APS will still provide policy advice on urgent issues
- Advertising campaigns generally stop



## Caretaker Conventions – websites

- Election-related material goes on party websites
- APS supported sites generally only for non-controversial material



## Caretaker Conventions – some key issues



Procurement – Major contracts

International visits and negotiations



## Caretaker Conventions – pre-election consultation with Opposition

### ***PECO***

- Shadow ministers can request briefings from senior officials
- Up to Minister to agree
- Discussions confined to machinery of government and administrative issues – conducted by Secretaries
- Discussions are confidential

## Caretaker Conventions – further advice

- Guidance on PM&C website  
[www.pmc.gov.au](http://www.pmc.gov.au)
- PM&C phone and email hotlines  
[6271 5399](tel:62715399)  
[caretaker@pmc.gov.au](mailto:caretaker@pmc.gov.au)
- Senior contact officers in each department

## Caretaker Conventions

- Caretaker Conventions have been observed in Australia since at least 1940s. The first public record of caretaker conventions in Australia is in the form of a letter from Prime Minister Robert Menzies to his ministers at the outset of the 1951 double dissolution elections.
- Over the years, the process of reminding ministers and public servants about the caretaker conventions has evolved, to the point that PM&C publishes more detailed advice on the Conventions and their operations (most recent edition, 2018, available on PM&C website).

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- The caretaker period is a short period in the electoral cycle when government is conducted in a different way and begins when the House of Representatives is dissolved.
- Caretaker ends when the outcome of the election is clear or, if there is a change of government, when the new government is sworn in.
- During the caretaker period governments restrict their activities and the APS adopts practices that support the caretaker conventions and protect our apolitical nature.
- While the ongoing business of government continues, governments adopt practices which aim to ensure that their actions do not bind an incoming government or limit its freedom of action.

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- The Conventions recognise the fact that, after the House has been dissolved and the Parliament prorogued, there is no parliamentary mechanism for holding a government to account.
- It is also an acknowledgement that there is the possibility at every election of a change of government.

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- The conventions are not law, they are simply a set of protocols that have been accepted by successive governments.
- Governments could choose to ignore them, but it would be at considerable risk of controversy during an election period and afterwards. And to date we have seen no sign that any government has wanted to either dispense with them or water down.
- Because they are not laws, they operate through the application of judgement, precedent and common sense. Every caretaker query is different.
- As the way governments operate changes, different questions and issues are thrown up. What we try to do in PM&C is to look at the principles and practices associated with the conventions and apply them to individual circumstances, to reach the most common sense outcome that is likely to stand up to scrutiny.

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- The conventions do not prevent the ordinary day to day business of government:
  - benefits are paid
  - programs are administered etc



- Neither do the conventions prevent governments from taking decisive action to deal with an emergency or protect the national interest:
  - during the 2004 election period the government had to deal with the embassy bombing in Jakarta
  - in 2001, decisions flowing from collapse of Ansett
  - in 1998 it was the Longford Gas explosion in Victoria

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- So how do we decide what a major policy decision is, what a significant appoint is, and what's a major contract?
- Whether a policy is major depends on its importance, its cost, whether it is contentious between the parties and whether it could be easily reversed if there is a change of government.
- The convention that the Government avoids entering major commitments during the caretaker period gives rise to particular issues in the context of international negotiations.
  - The Government ordinarily seeks to defer such negotiations or adopts observer status until the end of the caretaker period. The other parties to the negotiations, however, may not be familiar with the concept of caretaker conventions and the Government may need to explain the constraints they impose.

- If decisions have to be taken (e.g. to protect national interest; urgent drought assistance), expectation under conventions that the Opposition will be consulted – in some past cases they didn't and there was controversy.
- In the Conventions there is no definition of significant appointment – as a rule of thumb, if it's an appointment that is considered by Cabinet or approved by the Governor-General, it would probably be considered significant. If a position must be filled, there are options – fill on a temporary basis or for a very short time or consult the Opposition.
- For major contracts or commitments, the considerations are dollar value and the degree of contention between parties – e.g. a small contract in an area of policy contention would still be problematic.
- Another element to consider is whether the contract might be purely administrative as opposed to implementing or entrenching policy. If it can't be deferred consider consultation, appropriate termination clauses, advice to tenderers.

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- I've mentioned that there decisions the government can take if there is consultation with the Opposition. That consultation is done by Ministers and their offices.
- It does not mean they have to agree to the proposed course of action. But it should be more than a phone call saying "this is happening".
- Ministers should explain why a decision has to be made immediately, be prepared to explore different approaches and take account of the Opposition's views.
- In the end, though, the Government is still the Government and it has the right to make the decision that it considers best protects the national interest.

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- The election and caretaker period is a sensitive time for the APS and we adopt practices that protect our apolitical nature so that we can serve a Government of a different complexion if that's the outcome of the election.
- The Public Service Act includes APS Values, which came into effect in 2013 – one of which is **impartiality**.
- Clearly inappropriate for Commonwealth resources to be used to advantage one party over another in the context of an election campaign – PM&C fields lots of caretaker questions about public events using departmental resources.

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- Also avoids the government having to deal with distracting accusations of politicisation of the APS during the campaign.
- But there's no restriction on providing factual information – for ministers to decide how to use it. However it might be appropriate to decline the request if it involved the use of significant resources and was clearly for use in an election campaign.
- Detailed advice in guidance about the use of agency premises by parties. Publicly funded events eg openings of building might still occur but opposition should be invited.
- Most government advertising will terminate during the campaign. PM&C and Finance will recommend which non-contentious campaigns could continue (eg defence recruitment, anti-smoking are examples).

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- The guidance contains a section about what to do with information on departmental websites during the Caretaker period.
  - For example, the PMs website has had a message on it about no information being added during the campaign.
- The goal again is to ensure that commonwealth resources not used to advantage the government of the day.
- No political material should be placed on websites that are funded or maintained by departments or agencies.
- The maintenance of ministerial websites is covered in details in the guidance notes. In general the use of social media by departments should observe the same practices as apply to ministerial websites.

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- A bit about international.

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- There's an associated consultation period known as Pre-Election Consultation with the Opposition.
- Pre-election period is separate from caretaker – commences when election is announced or 3 months prior to expiry of House, whichever comes first.
- Under these arrangements the Opposition can ask ministers to have confidential briefings from officials. Up to Minister to agree
- Discussions confined to machinery of government and administrative issues – conducted by Secretaries. Discussions are confidential

## Slide

- So I urge everyone to read the Guidance on PM&C website.
- There's a team of staff in Government Division who are answering Caretaker questions - email address is [caretaker@pmc.gov.au](mailto:caretaker@pmc.gov.au) and the phone number is 6271 5399.
- Most Departments also have a senior official who will be the point of contact for each department.