Guidance for the 2014 Election Period: 
State Servants, Political Parties, and Elections 

Issued by the State Services Commissioner 
February 2014 

New Zealand Government
This guidance identifies common principles and obligations that will assist those who work in the State Services during the lead-up to, and in the period immediately after, the 2014 general election.

This guidance replaces *State Servants, Political Parties, and Elections: Guidance for the 2011 Election Period*. It remains current until superseded.

Section 4 lists other sources for reference. There are four appendices which contain more specific guidance and information.

Further guidance can also be found on the State Services Commission website at: [www.ssc.govt.nz/election-guidance](http://www.ssc.govt.nz/election-guidance).

**State Services Commission**  
**February 2014**

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1 Introduction

1.1 Purpose

This guidance identifies common principles and obligations that will assist those who work in the State services during the lead-up to, and in the period immediately after, the 2014 general election. The principles derive from the Standards of Integrity and Conduct for the State services. Attached to this document are four appendices providing stand-alone guidance relating to particular responsibilities, such as briefings for incoming Ministers.

1.2 Who this guidance applies to

This guidance applies to agencies within the State services that are subject to the State Services Commissioner’s mandate to provide advice and guidance on matters of integrity and conduct (State Sector Act 1988, s57(4)). This mandate does not include Crown Research Institutes (CRIs) or their subsidiaries. State-owned enterprises (SOEs) and tertiary education institutions (TEIs) are also outside the Commissioner’s mandate. Nevertheless, this guidance contains good practice that may be helpful to CRIs and their subsidiaries, SOEs, and TEIs, and also to other State sector agencies that are not covered by the Commissioner’s mandate.

1.3 Standards of integrity and conduct – political neutrality

A central element of New Zealand’s constitutional arrangements is that the State Services are politically neutral. The Standards of Integrity and Conduct for the State services (see Appendix 1) require State servants to:

- maintain the political neutrality required to enable us to work with current and future governments;
- carry out the functions of our organisation, unaffected by our personal beliefs
- support our organisation to provide robust and unbiased advice, and
- respect the authority of the government of the day.

In an election year, State servants should pay particular attention to these requirements.

A heightened awareness of the need for State servants to be seen to act with political neutrality does not mean that the work of agencies is disrupted. The ordinary business of government must continue in an election year. However, during an election period, additional care must be taken to ensure that the activities of State services agencies are not seen, in any way, as party political.

In an election year, increased public attention to the way agencies carry out their functions, and to the activities of their employees, can be expected. There can also be an increased sensitivity in the relationships, expectations, and interactions among State servants, Ministers, Members of Parliament (MPs), and political parties. This guidance explains how State servants must meet the continuing requirement for political neutrality in their work, and identifies the responsibilities that have specific application in the lead-up to an election.

This is particularly important with respect to activities such as media relations, advertising campaigns, responding to Official Information Act requests, interaction with MPs and electoral candidates, public speaking engagements, appointment processes, programme promotions, and the release of discussion documents.

The principles outlined in this guidance underpin the constitutional role of the State services. They contribute to the maintenance of public confidence in New Zealand’s democratic governance, and the strengthening of the institutions of government.
1.4 What is the election period?

The pre-election period refers to the three months before a general election. It is this period during which, increasingly, some restraints on government actions and decision making are expected to be applied. Much of the guidance in this document applies to the whole ‘election period’ – that is, from the start of the pre-election period until the new government is sworn in.

1.5 Advice and support

State servants who are unsure how to deal with any issue relating to the election period should seek advice, in the first instance, from their senior managers. The State Services Commission also provides guidance and support to agencies and staff. Please email election@ssc.govt.nz, or telephone (04) 495 6600 and ask for the Integrity team.
2 Prior to a general election

2.1 Government decisions and actions before an election

Key points

• The Government has the right to govern until the election. The caretaker convention does not apply during the pre-election period.

• However, governments have chosen to restrict their actions to some extent during previous pre-election periods.

In the period leading up to an election, the Government retains the right to govern. The Government is not bound by the caretaker convention (see section 3.1) in the pre-election period, unless the election has resulted from the Government’s loss of the confidence of the House.

Successive governments, however, have chosen to restrict their actions to some extent during pre-election periods, in recognition of the fact that a potential change of government may be imminent. For example, significant appointments have been deferred, and some otherwise unexceptionable government advertising has been considered inappropriate during election campaigns, due to the heightened risk of perception that public funds may have been used for party political purposes (see also section 2.2).

From a practical perspective, Ministers and Cabinet are likely to have a reduced capacity for decision making in the pre-election period, as Ministers may be occupied with the election campaign. Ministers’ offices and agencies must therefore ensure that significant matters requiring ministerial attention are dealt with as far in advance of the election date as possible.

The Secretary of the Cabinet is available to provide advice on decision making during the pre-election period.

2.2 Communications

Media comment

Key point

• Agencies and Ministers’ offices need to have protocols in place to ensure that media enquiries are handled promptly, by the person most appropriately placed to do so.

An election year increases media interest in the activities of government and its agencies. State servants need to know how to identify matters that are primarily either political or operational, and whether those matters are to be handled by the Minister or by the agency.

Those who are authorised to speak on behalf of an agency in the period before, during, and after an election need to understand the sensitivity of the environment in which they are operating. Good protocols with Ministers’ offices will help to ensure that enquiries from the media are handled promptly, by the person most appropriately placed to do so.

Media releases by State services agencies during election periods must be drafted with an appreciation of the scrutiny given at such times to the activities of the Government, its agencies, and their employees. As at all times of the year, they must be strictly factual and impartial.
Programme launches and events

Key points
- Agencies should continue to support Ministers with ‘business as usual’ initiatives during an election period.
- Particular care is needed around ceremonial events to avoid perceptions of being associated with any political aspects of such events.

There is no blanket restriction on Ministers wishing to launch programmes or initiatives in the lead up to the election. In general, the business of government should continue and State servants should support Ministers with ‘business as usual’ initiatives. However, the nature and timing of high profile ceremonial events (e.g. building openings or award ceremonies) must be carefully considered.

During an election period, there is a risk that public launches and events may take on a ‘party political’ character that would not be evident at other times. This is particularly so when Ministers and/or MPs are involved in the event. In general, State servants should support Ministers as usual, but must be vigilant in avoiding association with any political aspects of such events. Particular care must also be taken with the preparation of supporting material. All agency material must remain strictly impartial and factual to avoid any perceptions of being associated with any party political messages (see ‘advertising and publicity campaigns’ directly below).

State servants should consider whether the impartiality of their agency could be called into question if high profile events involving politicians are scheduled in the weeks immediately prior to the election. In some circumstances, where there is a high perception risk to the agency, it may be appropriate to defer the event until after the election.

Advertising and publicity campaigns

Key points
- Agencies are responsible for publicising government policies and services and this ‘business as usual’ activity continues during an election period.
- Restraint is required around publicity that may create a perception that government funds are being used to finance publicity for party political purposes
- Advertising or communications by State services agencies that could be regarded as encouraging voters to vote, or not vote, in a particular way are never acceptable.

Business as usual campaigns

Publicity and advertising are legitimate forms of governmental spending; there is no blanket restriction on communication campaigns during the election period. In general, campaigns that inform people of government policies and services or set out their entitlements and responsibilities do not need to stop during an election period.

Restraint in certain circumstances

However, in the run-up to an election, agencies should carefully consider the content and timing of their campaigns. Successive governments have exercised restraint around advertising campaigns to avoid any perception that funds are being used to finance publicity for party political purposes.

Communication campaigns or advertising undertaken during this period should be assessed for potential perceptions of ‘party political’ bias. Agencies should be aware that content, which
might be unexceptionable at other times, may take on a party political flavour in the lead up to an election.

Agencies should also carefully consider the timing of their campaigns. As the election date approaches, there should be a clear need by the recipients to receive the information at that time. For instance, it may not be appropriate during an election period to publicise programmes that do not come into effect for some time, particularly if the implementation of the programme is dependent on the election outcome.

**Guidelines for Government Advertising**

The Guidelines for Government Advertising are contained in Appendix B to the Cabinet Manual. They define government advertising 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”. The guidelines require government advertising to be presented in a manner that is:

- Accurate, factual, and truthful - Factual information should be outlined clearly and accurately. Any comment on, and analysis of that information, to amplify its meaning, should be indicated as such.
- Fair, honest and impartial - The material should be presented in unbiased and objective language, and in a manner free from partisan promotion of government policy and political argument.
- Lawful and proper - The material should comply with the law.

Agencies must comply with these long-standing principles regarding advertising and communications campaigns at all times, not simply during an election period.

It is never acceptable for agencies to encourage electors to vote (or not vote) for specified parties, policies, or candidates. All publicising of government policies and services must be managed in a way that avoids such perceptions.

### 2.3 State servants and politics

**Key points**

- **State servants have the same political rights and freedoms as other New Zealanders, but must maintain the political neutrality required to work with current and future governments.**
- **For most State servants, participation in party politics is not likely to affect the confidence that the Government has in their agency, or undermine the ability of that agency to work effectively with future governments.**
- **Senior State servants, and those who engage directly with Ministers, should exercise careful judgment when considering involvement in political activities.**
- **State servants may wish to discuss any active involvement in a political party with their managers to avoid any misunderstandings.**

**State servants’ participation in political activities, as individuals**

In general, State servants have the same political rights and freedoms as all other New Zealanders. However, they also have a concurrent responsibility to maintain the political neutrality required to work with current and future governments.

State servants must ensure that they do not confuse their political rights with their employment responsibilities. In short, State servants must keep their jobs out of their politics and their politics out of their jobs.
Membership of a political party is acceptable for most employees in the State services, as is helping with fundraising, assisting with leaflet drops, and taking part in other forms of support. However, State servants must exercise judgment when deciding what level of personal participation in political activities is appropriate. Senior State servants and State servants who have a close working relationship with Ministers should avoid active involvement in political activity if it could be perceived as conflicting with their political neutrality obligations.

State servants may wish to discuss with their managers any political activities in which they intend to be involved in a personal capacity. This may help to avoid any misunderstandings, and ensure that the relationship between employment responsibilities and the freedom to exercise civil rights is understood.

State servants involved with a political party, or who intend to comment publicly on political matters, need to be particularly careful that they do not:

- reveal advice given to Ministers
- disclose information they are not authorised to disclose
- criticise ministerial policy with which they have been professionally involved, or
- purport to express an agency view when they are giving their own view.

These principles apply at all times, but special care must be taken in an election period.

For further guidance see Political Neutrality Guidance and Understanding the code of conduct – Guidance for State servants.

Interaction with social media

Key points

- State servants should only contribute to social media, as agency representatives, with express approval.
- State servants who contribute to social media in a private capacity must avoid harming the reputation of their agencies or the State services.

Social media tools bring both benefits and risks to State services agencies. Because of a heightened interest in the actions of State servants and agencies during an election period, particular care must be taken to minimise the risks when using social media.

The rules that apply when State servants interact with social media in an official capacity are the same as those that apply when communicating with news media or speaking at a conference. Most importantly, State servants should only act as representatives of their agencies if they have been given express permission to do so. Participation by agency representatives in social media fora during an election period should be limited to comment on operational matters and publishing factual information.

During an election period, State servants are entitled to participate, in a private capacity, in political activity via social media. The same rules apply as when participating in political activity in other ways (see above). State servants should ensure that it is clear to others that their contributions are made as private individuals, and not as representatives of their agencies.

Regardless of the medium being used, State servants are required, by the Standards of Integrity and Conduct for the State Services, to avoid activities, work or non-work, that may harm the reputation of their agencies or of the State services, and must not disclose any government material that that is not already publicly available.
One of the major challenges presented by social media is the overlap between what is personal and what is professional. Matters that State servants consider private can easily become public through social media, and permanently accessible. If in doubt, State servants should treat a social media forum as public, and behave in a manner that respects their obligation to maintain politically neutral State Services. See Principles for Interaction with Social Media.

Use of agency resources

Key points

- **Agency premises must not be used to display material or to carry out any activities that could reasonably be regarded as party political in nature.**
- **State servants must not use their agencies’ resources in ways that could be seen as breaching the principle of political neutrality.**

It is not appropriate for agencies’ premises or other resources to be used for electioneering. For example, material produced by political parties that promote party interests, or lobby for or against issues likely to feature in the election, must not be displayed on agency premises, vehicles, or websites.

An exception may be made for premises that are effectively public venues, and for which normal commercial terms are imposed. There is also provision in the Electoral Act 1993 for political parties to use State schools for election meetings.

State servants may use their office equipment and supplies only for the purpose of carrying out their jobs. Agency resources, such as photocopiers and email systems, must not be used to support the private political activities of individuals.

State servants should not provide their workplace contact details to political organisations. For example, sending or receiving party political material (for personal information) through an agency’s e-mail or internet facilities is likely to be perceived as undermining that agency’s impartiality.

Union activity in the workplace

Key points

- **Unions are entitled to carry out representational activities in an election period.**
- **Union material made available to State servants in their workplaces must not be visible to the public and must not represent political advertising.**

The representational activities of unions within government work sites during an election period are acceptable. The content, however, must not be in the nature of political party advertising, under the banner of the union. In an election period, it is appropriate for unions to share with their members the approach they are taking to party policies, and for their members to share this material with others who may be potential members. Any display of this type of election-related material must be on a space dedicated to the union, and in a staff-only area, to avoid any public misconceptions about purpose.

Subject to those conditions, neither the content and distribution, nor any consequent discussion in the work place of this type of union material, breaches the political neutrality obligations of State servants, provided that they do their jobs professionally and loyally, without letting their personal interests or views influence their advice or behaviour, and without bias towards one political party or another.
State Servants standing for election to Parliament

Key points

- State servants are entitled to put themselves forward for selection and, if chosen, stand for election to Parliament.
- State servants should discuss with their employer the implications of the candidacy, and come to an agreement on how it will be managed.
- The Electoral Act 1993 sets out which State servants must take leave from their positions if standing for Parliament.
- State servants not covered by the Electoral Act provisions should discuss with their employers whether they should take leave from their positions to preserve the political neutrality of the State Services.

State servants are entitled to stand for election to Parliament. At all times a balance should be reached that respects State servants’ freedoms of expression and association, and the public interest in having a politically neutral State services.

The Electoral Act 1993

The Electoral Act sets out requirements for some State servants with regard to being a candidate in an election. These State servants are those who are employees of Public Service departments, the New Zealand Police, the NZSIS, members of the Defence Force (other than those excluded under section 3(d) of the Electoral Act), the Education Service\(^1\), and the Cook Islands and Western Samoan Public Service. The requirements for these State servants are:

- The State servant must take leave of absence from his or her position for a period if standing for Parliament (s.52(2) of the Electoral Act).
- The minimum period for the leave of absence is the time between Nomination Day (i.e. the last day a person can be nominated to stand for election) and the first working day after Polling Day (s.52(3) of the Electoral Act). This period is approximately three and a half weeks.
- If the employer of a State servant standing as a candidate considers the candidacy will materially affect the employee’s ability to carry out his or her duties satisfactorily, the employer may decide that leave is to commence earlier than Nomination Day (s. 52(4) of the Electoral Act).
- If declared elected, the State servant will immediately be deemed to have vacated his or her position (s. 53(2) of the Electoral Act).
- If unsuccessful in the election, State servants may resume work on the first working day after Polling Day (s. 52(3) of the Electoral Act).

State servants who are not explicitly covered by the Electoral Act provisions (e.g., employees of statutory Crown entities, Crown entity companies, and organisations on the 4th Schedule of the Public Finance Act) should also consider the impact their candidacies may have on Ministerial and public confidence in the political neutrality of the State sector. Employers of such State servants may wish to consider whether the same processes around taking leave, as outlined in the Electoral Act, should be followed with respect to their employees.

In discussing with an employee who is not explicitly covered by the Electoral Act provisions whether it would appropriate for them to take a leave of absence, agencies should consider factors such as the agency’s role in the operations of government and the nature of the

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\(^1\) As defined in the State Sector Act 1988, this includes employees in the service of any state or integrated school, or any tertiary or other education institution, and registered teachers employed by any free kindergarten association.
employee’s position (e.g., seniority, degree of engagement with Ministers and level of responsibility for policy development or implementation). If elected to Parliament, State servants not covered by the Electoral Act should resign from their positions.

**Informing the employer**

Being a candidate is clearly a political activity with potential implications for the employing agency. The situation should be handled in a similar way to other potential conflicts of interest. Any State servant seeking selection as a candidate must declare this interest by informing his or her employer of the intention to seek selection. The manager should inform the Chief Executive, who may wish to inform the relevant Minister on a ‘no surprises’ basis.

**Managing any implications for the employing agency arising from the candidacy**

State servants should discuss the implications of a possible candidacy as early as possible with their employer. Doing so is particularly important for senior State servants and those who interact with Ministers. For these State servants, the implications may be more significant than for others.

Once the employer has been notified, the individual and the agency should discuss how to manage the implications. A useful first step may be to set up a meeting to explore any areas of conflict and how they will be handled. The employee may wish to involve their representative in any such discussions. It may be useful to record the discussion, and agreements reached, in writing to avoid any misunderstandings.

The discussion should address the practical implications of potential areas of conflict between the individual’s role and the political candidacy. Any agreements should reflect a balance between the individual’s right to stand as a candidate and their obligations to their employer as a State servant. These obligations include a duty to not harm the reputation of the agency or the State services, and to respect the authority of the government of the day.

**Key considerations in managing any implications of the candidacy**

When discussing candidacies, agencies and employees may wish to consider:

- the importance of balancing the employee’s right to stand for Parliament and the responsibility to maintain politically neutral State services
- the extent that the employee’s seniority, interaction with Ministers and/or their particular role in the agency is affected by the intention to stand for Parliament
- how any identified risks may be mitigated, including whether any changes should be made to the employee’s role to preserve impartiality
- the communication process for discussing or advising on matters relating to the candidacy, to ensure there are ‘no surprises’ for either party
- how the employee will continue to meet their obligations under the State Services Standards of Integrity and Conduct, including the importance of not divulging any government information that is not in the public domain
- how topics associated with the employing agency will be treated, that is, caution will need to be exercised by the employee around any policies with which he or she has been professionally involved
- the implications of an unsuccessful candidacy on the employee’s role post-election. The Electoral Act provides that if not elected, State servants can return to work. However, in rare cases, a change of duties may be required. This should be discussed before the election.
Contact between State servants, Members of Parliament and political parties

Key points

- Contact, in a work setting, between State servants and Members of Parliament is always sensitive, but can become more so during an election period.
- As at all times, requests by MPs or parliamentary candidates to visit agency premises should only be met with the prior approval of the Minister.

The sensitivity which always exists when MPs have contact with agency staff can increase during an election period. Particular issues can arise in operational branches of agencies when MPs are acting on behalf of their constituents. State servants should be sensitive to the fact that, during an election period, MPs may often have the dual role of advocating for a constituent and campaigning for re-election. Branch managers should contact their head offices if they are uncertain how to handle a specific case.

During an election period (as at other times of the year), any requests by MPs or parliamentary candidates for information or services over and above what would normally be provided to a member of the public (e.g. a visit to an agency’s premises or a substantial briefing) must be referred directly to the agency’s Chief Executive. The Chief Executive will refer the request to the relevant Minister and the request will be met only as agreed by the Minister.

Attendance by State servants at caucus and caucus committee meetings

Key points

- State servants should refer any requests relating to involvement in caucuses or caucus committees to their chief executives.

A State servant who is requested to attend a caucus meeting of a political party represented in the House, should not do so without first obtaining the agreement of his or her chief executive, and/or direction from the responsible Minister. State servants should not undertake work at the direction of caucuses, nor should they service caucuses or caucus committees. Any instructions that might emerge from caucus discussions should be given to the agency only by the responsible Minister.

Costing parties’ policies prior to the election

Key points

- Detailed provisions apply when an agency is requested to cost a party’s political policies.
- A written request by the Minister of Finance or another Minister is required before an agency undertakes any such costings.
- Guidelines on costings are attached as Appendix 3. Further advice will be made available on the Treasury’s website in due course.

It is the routine business of most agencies to cost policy options. However, agencies may be asked by their Ministers to cost the policies of parties in government, or to cost other parties’ policies where Ministers wish to use this information for partisan purposes, for example during election campaigns. Provisions have been designed to cover such situations to protect the political neutrality of the State Services, while providing Ministers with the information they require.

Costing the policies of any political party should only be undertaken following a written request from the Minister of Finance or another responsible Minister. The Minister is required to specify the proposals to be costed where there is any uncertainty about this. Any request for
costings made to an agency other than the Treasury is to be referred by the department, in the first instance, to the Office of the Minister of Finance.

State servants are otherwise prohibited from making broad assumptions about policies, or commenting on the merits of policies.

The Guidelines for Costing Party Political Policies are attached as Appendix 3. If State servants are uncertain about the application of this guidance, they should seek advice from their agency’s Treasury Vote Analyst or the Fiscal and State Sector Management Team at the Treasury.

Pre-election Economic and Fiscal Update

Key point

- Agencies must provide information requested by the Treasury to ensure that significant decisions and risks are included in the Treasury’s Pre-election Economic and Fiscal Update.

The Treasury prepares a Pre-election Economic and Fiscal Update, under the Public Finance Act 1989. The Update is normally published four to six weeks before an election. The Update must include ‘to the fullest extent possible’ information on all government decisions and circumstances that may materially affect the fiscal and economic outlook. Chief Executives and Chief Financial Officers are required to sign a Statement of Representation to confirm that they have notified the Treasury of all matters that may affect the fiscal and economic outlook.

The Public Finance Act sets rules around the timing of the Pre-election Economic and Fiscal Update but the exact date for release is at the discretion of the Minister of Finance. The Treasury will release detailed guidance and a timetable for the preparation of the Update via CFISNet in due course.2

2.4 Providing information

Official Information requests

Key points

- Official Information Act requests must be responded to in a timely and appropriate manner, regardless of an imminent election.

- The only reasons for withholding information are those specified in the Act.

The Official Information Act 1982 provides for the release of government information to the public. To preserve the political neutrality of the State services, agencies must handle information requests in a timely fashion, particularly during an election period.

Requests for information made by political parties during an election period should generally be treated in the same way as any other request for official information. However, the agency’s chief executive must be informed of any Official Information Act request received from an MP or a political party (including party research units) during an election period. The chief executive may wish to consult with the responsible Minister about the request. In such cases, the agency should consider whether it is necessary to extend the timeframe for making a decision on the request using section 15A of the Act. Extensions should not, however, be sought just because the information may prove embarrassing to the agency, Minister or the government at the particular time.

Chapter 8 of the Cabinet Manual includes guidance on the release of official information, including the involvement of Ministers in a release. An agency may consult its Minister about

2 CFISNet is the Crown Financial Information System. It is a secure website designed by the Treasury to collect forecast and actual information from government departments, Crown entities and State-owned enterprises.
any request for official information received. An agency should consult its Minister if the request relates to Cabinet material (as this is related to his or her activities as a Minister), and if it intends to release any information that is particularly sensitive or potentially controversial.

Upon being consulted, a Minister may take the view that information that an agency considers should be released, should not be released. In such cases, agencies should consider whether there is an obligation to transfer the request to the Minister under section 14 of the Act. The obligation to transfer will arise where the requested information is held by the Minister (but not the agency) or is more closely connected with the Minister’s functions. In the absence of these circumstances, the decision is the agency’s to make.

If a request relates to a function in which an official is required by statute to act independently, no consultation is required with the Minister, but this does not diminish the need to keep the Minister informed.

In a previous election period, the Office of the Ombudsmen commented on the extreme importance of a well-informed electorate at the time of a general election. The Ombudsmen were critical about State servants who had become involved in assessing the political consequences of releasing information, rather than making a decision in a politically neutral manner.

The Official Information Act also applies to information or analysis provided by agencies to political parties that are seeking to form a government following the election. The State Services Commissioner should be advised of any such requests and the approach the agency intends to take. If necessary, the State Services Commissioner will coordinate responses (see section 3.2 of this guidance).

3 Following a general election

3.1 Caretaker convention

Key points

- Following an election, the incumbent government is the lawful executive authority until a successor administration is sworn in.
- Governments in this situation have traditionally constrained their actions until the political situation is resolved, in accordance with the ‘caretaker convention’.

On occasion, it may be necessary for a government to remain in office for an interim period when it has lost the confidence of the House, or (after an election) until a government is sworn in following the government formation process. During such periods the incumbent government is still the lawful executive authority, with all the powers and responsibilities that go with executive office. However, governments in this situation have traditionally constrained their actions until the political situation is resolved, in accordance with what is known as the convention on caretaker government.

The caretaker convention has implications for decision making during this period. The principles that apply depend on whether or not it is clear which party or parties will form the next government. In general, new policy initiatives and significant or controversial issues should not be taken during this period. For advice about the application of the caretaker convention in particular circumstances see chapter 6 of the Cabinet Manual.

The Secretary of the Cabinet is available to provide advice to Ministers and agencies about the application of the caretaker convention. Ultimately, the Prime Minister determines how a matter should be dealt with during this period.
3.2 **Forming a government**

**Negotiations to form a government**

**Key points**

- The government formation process is a political one. State sector employees have limited involvement in any negotiations by political parties to form a government.
- Only the Prime Minister may authorise access by a political party to State sector agencies.
- The State Services Commissioner is the contact point and facilitator between political parties and State sector agencies.

The formation of a government is an inherently political process. Political parties may be expected to negotiate with respect to possible coalition or support arrangements. The incumbent Prime Minister is responsible for authorising assistance from agencies during the government formation period. The State Services Commissioner coordinates the involvement of State servants during this period, to ensure that the political neutrality of the State Services is not put at risk.

If a State sector agency receives a direct request for information or assistance from a political party (including parties represented in the government), it should refer the request to the State Services Commissioner and notify the relevant Public Service department (if applicable). Ministers must refer such requests to the Prime Minister. Further information is published in standalone guidance *Negotiations between Political Parties to Form a Government: Guidelines on Support from the State Sector*.

3.3 **Briefing a new Minister**

**Key points**

- Concise briefings must focus on the immediate needs of a new Minister taking on a portfolio. The briefings are not intended to be detailed analyses of the portfolio, or of policy issues.
- Briefings are confidential to the Minister, but are subject to the provisions of the Official Information Act 1982.
- Standalone guidance on briefing an incoming Minister is set out in Appendix 4.

Chapter 3 of the Cabinet Manual contains information on briefing incoming Ministers. It states that when a new Minister is appointed (which may also occur at times other than post-election), the chief executive of the department concerned must prepare a written briefing for the Minister, to give the Minister sufficient information to meet his or her initial requirements.

**Purpose**

The briefing is prepared for an incoming Minister only, and should be tailored to meet the Minister’s needs. An agency should also use its briefing to indicate how it will engage with the Minister during the term of the Government.

**Timing**

Departments should not provide incoming Ministers with a briefing until Ministers have been sworn in. Briefings should take account of decisions arising out of the government formation process. This means that the briefing would not be finalised until that process is complete.

If portfolios have been allocated but the incoming Ministers have not yet been formally appointed, chief executives may in limited circumstances, offer to brief new Ministers on their portfolio responsibilities. This should be done only with the knowledge of the incumbent Minister, the State Services Commissioner and, where appropriate, the Prime Minister.
Content and format
The full text of Guidance on the preparation of briefings for incoming Ministers is set out at Appendix 4. The briefing should be short – normally between five and 50 pages – to reflect the time pressures on the incoming Minister. In developing the briefing and deciding on the amount of detail required, the agency must take into account the Minister’s prior involvement with and knowledge of the portfolio, the Government’s priorities including coalition agreements and support arrangements, and whether there has been a change of government.

As the Minister is the audience for the briefing, it should be prepared in the same format as normal departmental advice to the Minister. Briefings should not be commercially printed.

The briefing is confidential to the Minister. Although recent practice has been for briefings to be released publicly by the Minister, this should not be assumed. Any briefing is subject to the provisions of the Official Information Act.

4 Where to get more information on election year issues
State servants who are unclear about how to deal with particular obligations of agencies during an election period should first approach their senior management. The following agencies can also provide assistance:

- State Services Commission – regarding the obligations of agencies and their employees, and providing information to support negotiations to form a government. Email: election@ssc.govt.nz.
- Department of the Prime Minister and Cabinet – regarding the operation of government, constitutional matters, including caretaker convention issues, briefings for incoming Ministers, and the provisions of the Cabinet Manual.
- The Treasury – regarding the Pre-election Economic and Fiscal Update and costing of party political policies.

4.1 Publications
Standards of Integrity and Conduct for the State Services (code of conduct)
The code of conduct, issued by the State Services Commissioner, has been applied to all Public Service departments, to statutory Crown entities (including District Health Boards), to Crown entity companies (excluding Crown Research Institutes), and to a number of subsidiary companies of Crown entities. The code of conduct is attached as Appendix 1.

Cabinet Manual
This is the key guide to central government decision making. It is a primary source of information on constitutional and procedural matters, and includes material on elections and government formation. See www.cabinetmanual.cabinetoffice.govt.nz/.

Political Neutrality Guidance
The State Services Commissioner has set out some general principles on political neutrality, which should guide the actions and decisions of State servants and employers in this area. See www.ssc.govt.nz/political-neutrality-guidance.

Officials and Select Committees
Officials and Select Committees - Guidelines explain the relationship between State servants (which for this purpose includes the board members of Crown entities) and select committees. They include guidance on State servants who act as witnesses or advisers; the obligation to provide free and frank answers to select committees; protection available to State servants who appear before select committees; and the rights and constraints of State servants who

**CabGuide**

This replaces the Step by Step Guide as guidance for officials on Cabinet and Cabinet committee processes. It helps departments and Ministers' offices meet Cabinet's requirements for developing and presenting proposals to Cabinet: see www.cabguide.cabinetoffice.govt.nz

**Cabinet Office Circulars**

The Cabinet Office issues circulars from time to time throughout an election period, providing guidance on various procedural and constitutional issues. See www.dpmc.govt.nz/cabinet/circulars/index.html

**The Standing Orders of the House of Representatives**

These are the rules used by the House of Representatives to govern its own procedures. They also contain guidance on topics such as post-election procedures and the notification of party details. See www.parliament.nz/en-NZ/PB/Rules/StOrders/

**Electoral Act 1993**

Appendix 1: Standards of Integrity and Conduct for the State Services

STANDARDS OF INTEGRITY & CONDUCT
A code of conduct issued by the State Services Commissioner under the State Sector Act 1988, section 57

WE MUST BE FAIR, IMPARTIAL, RESPONSIBLE & TRUSTWORTHY

The State Services is made up of many organisations with powers to carry out the work of New Zealand’s democratically elected governments.

Whether we work in a department or in a Crown entity, we must act with a spirit of service to the community and meet the same high standards of integrity and conduct in everything we do.

We must comply with the standards of integrity and conduct set out in this code. As part of complying with this code, our organisations must maintain policies and procedures that are consistent with it.

For further information see www.ssc.govt.nz/code

FAIR
We must:
- treat everyone fairly and with respect
- be professional and responsive
- work to make government services accessible and effective
- strive to make a difference to the well-being of New Zealand and all its people.

IMPARTIAL
We must:
- maintain the political neutrality required to enable us to work with current and future governments
- carry out the functions of our organisation, unaffected by our personal beliefs
- support our organisation to provide robust and unbiased advice
- respect the authority of the government of the day.

RESPONSIBLE
We must:
- act lawfully and objectively
- use our organisation’s resources carefully and only for intended purposes
- treat information with care and use it only for proper purposes
- work to improve the performance and efficiency of our organisation.

TRUSTWORTHY
We must:
- be honest
- work to the best of our abilities
- ensure our actions are not affected by our personal interests or relationships
- never misuse our position for personal gain
- decline gifts or benefits that place us under any obligation or perceived influence
- avoid any activities, work or non-work, that may harm the reputation of our organisation or of the State Services.
Appendix 2: Advertising and Communications – Examples

The following hypothetical examples help illustrate the application of the principle of political neutrality to agency communications during an election period.

**Example 1**
During an election period, an agency undertakes a communications campaign to publicise its achievements since a certain date (which coincides with the election of the current party in government).

Issues:
- The advertising may not meet the Cabinet Manual objectives for government advertising of informing about government policy, entitlements or desired behaviour.
- By linking advertising to the date at which the current party in government was elected to power, particularly if it focuses on new entitlements or increased funding during that period, such advertising could create a perception of political bias. It could be seen to be influencing voters and thus in breach of long-standing principles.

**Example 2**
It is three months until the General Election. The opposition party has criticised a government policy, but the criticisms are regarded as being based on incorrect information. The agency involved considers the criticism misleads the public, and decides to make a media statement to correct the misinformation.

Issues:
- This situation requires careful consideration. Although the agency is setting out to correct misinformation, that may be better to come from the Minister rather than the agency. The agency may get drawn into a political situation and may breach existing principles.

**Example 3**
An agency is responsible for a new programme which, if the current government is re-elected, will come into effect in April of the year following the election. It wants to start early with publicity so that all those who would be entitled to benefits under the programme are aware of it. The advertising will commence in October, which is one month before the general election.

Issues:
- In this situation, it would appear prudent to delay the campaign until after the General Election, particularly as the implementation of the programme may be dependent on the election outcome. That will reduce any risk that the campaign is seen as not politically neutral.

**Example 4**
A New Zealand sporting team wins a major international competition. An agency which provided funding to that sport plans an advertising campaign to highlight that government support contributed to the success. It is two months until the General Election.

Issues:
- The advertising may not meet the Cabinet Manual objectives; ie, that advertising should inform about government policy, entitlements or desired behaviour.
Appendix 3: Guidelines for Costing Party Political Policies

Costings of the policies of any political party should be provided by State servants only at the written request of the Minister of Finance or a Minister responsible for a portfolio. A request from a member of a Minister's staff is not sufficient authority in itself.

Handling requests

Any request for costings made to a government department other than the Treasury is to be referred to the Office of the Minister of Finance in the first instance. The agency’s chief executive is responsible for receiving any request, assigning any tasks, and seeing that the costs and any accompanying material conform to the guidelines, and that any response is made in writing (under the signature of the chief executive, or where appropriate, its authorised senior officer) to the Minister who made the request.

If a request covers the work of more than one department, the departments concerned need to be absolutely clear about the allocation of tasks to co-ordinate effort and resources, and work in close co-operation with each other. The procedures to be followed should be conveyed in writing.

Requests for costings of policies or proposals of political parties are to be documented in full. All workings, correspondence, sources, procedures and decisions must be recorded, together with a record of the resources used in preparing a political costing. Only those directly involved in the actual costings should be privy to the exercise.

Undertaking costings

Costings should be limited to factual data readily available in the Treasury or other agencies and should contain:

- no additional commentary, such as the merits or otherwise of the policy proposal
- no value judgements, or subjective assumptions
- no unsubstantiated or unreasonable technical assumptions - it should be clearly stated if the assumptions could lead to more than one possible costing
- a clear explanation of all sources, and of any assumptions made.

If there is any doubt as to the nature or basis of the request, clarification must be sought from the Minister of Finance or the Minister concerned.

All responses should be drafted on the understanding that they may be requested and released under the Official Information Act 1982.

In some instances it may be appropriate to have the costings done by a qualified external expert. This should be made clear in reporting to the Minister concerned.

The convention between Ministers and agencies in these circumstances is that Ministers will not require or use information on costings in a way which might damage the neutrality of the State services, and its ability to serve successive governments.

Note: These rules should not be applied where agencies are required to provide costings:

- to assist Ministers to make a decision about whether or not to exercise the Financial Veto under Standing Orders 316-320: these will be required as part of the normal business of government. See: www.dpmc.govt.nz/cabinet/circulars/co07/2.html or
- during a period of negotiation between political parties to form a government following an election. Requests for costings arising during this process should be dealt with in terms of the SSC guidance on Negotiations Between Political Parties to Form a
Government: Guidelines on Support from the State Sector. The 2014 version of these guidelines will be available on the SSC website in due course.

The Treasury will release further information in due course. Agencies that require additional advice or guidance on costing political party policies should contact their Treasury Vote Analyst or the Fiscal and State Sector Management Team.
Appendix 4: Guidance on the preparation of briefings for incoming Ministers

**Requirement**

The Cabinet Manual requires that, when a new Minister is appointed, the chief executive of the department concerned must ensure that, as soon as the Minister takes up office, he or she is briefed on the department and the portfolio.

The briefing process is likely to include formal documents as well as meetings and other communications, happening over a number of weeks.

This guidance covers both the initial briefing that has tended to be called the Briefing to the Incoming Minister (BIM) and subsequent briefings, both verbal and written. The provisions in this guidance will also apply when a new Minister is appointed to a portfolio during the term of a Government.

**Audience**

The briefing is for an incoming Minister only, and should be written accordingly.

It is essential that agencies take account of the Minister’s prior knowledge, and the Government’s priorities including the content of coalition or support agreements. Within the briefing, agencies should also think about how they are going to engage with the Minister over the term of the Government, and set the scene for this.

The briefing is confidential to the Minister. Recent practice has been for the BIM or initial briefing to be released publicly by the Minister. This should not be assumed. The normal provisions for material requested under the Official Information Act apply to any request for briefings made under that Act. Ministers, not agencies, should decide whether to publicly release all or part of any such briefings.

**Outcome of briefing an incoming Minister**

The briefing process should give the Minister a good understanding of:

- the organisation and responsibilities of the agency concerned
- major policy, and implementation of current programmes
- initial actions and decisions the Minister will need to take, and
- the Minister’s responsibilities, including details of boards, commissions, tribunals and similar entities.

The purpose of the initial briefing is to give new Ministers sufficient information to meet their initial requirements, but is not intended to be a detailed analysis of the portfolio or of policy issues. The briefing is part of a wider process: Ministers will be able to call for a fuller briefing on issues of interest and importance to them during that process. This allows the initial briefing to be wide ranging, enabling the Minister to see the breadth of the portfolio, while still being concise.

An exception to this is where immediate decisions are required, and thus a full discussion of the issue may be called for.

**Timing**

The briefing process should occur:

- over a number of weeks following a general election after a Minister is appointed (whether or not the Minister held that portfolio in the previous Government)
when a new Minister is appointed during the term of a Government. Agencies must be able to provide a briefing at short notice.

Chief executives should seek an early opportunity to discuss the process for on-going engagement with the Minister, and how the agency can best meet the Minister's needs.

A briefing which follows a general election should take account of decisions arising out of the government formation process. This means that the briefing would not be finalised until that process is complete.

Departments should not provide incoming Ministers with a briefing until Ministers are sworn in. If portfolios have been allocated but the incoming Ministers have not yet been formally appointed, chief executives may, with the knowledge of the incumbent Minister and the State Services Commissioner (and where appropriate the Prime Minister), offer to brief new Ministers on their portfolio responsibilities.

**Associate Ministers**

All briefings should be prepared for the portfolio Minister who will, other than in exceptional circumstances, authorise the department to provide copies to any Associate Ministers.

**Length**

The initial briefing should be short, reflecting the time pressures on the incoming Minister. A briefing should normally be between five and 50 pages in length, depending on the size and complexity of the department.

The amount of detail included in a briefing will vary depending on whether the Minister concerned has had any prior involvement with the portfolio, and whether there has been a change of Government.

**Format**

As the Minister is the audience for the briefing, it should be prepared in the same format as normal departmental advice to the Minister. Briefings do not need to be commercially printed.

**Consultation**

**Other Agencies**

In some cases, departments will need to consult with other departments or agencies in preparing their Minister's briefing material, for instance if there are inter-departmental processes for developing strategies or policies. In addition, where issues span more than one agency, a co-ordinated approach to briefing Ministers involving agencies across a sector should be considered.

**Central Agencies**

Departments should seek advice from the central agencies as they plan and draft their briefings, particularly on matters that relate to central agencies e.g. industrial relations, machinery of government, significant fiscal risks.

**Crown entities**

Ministers are likely to expect briefings from some Crown entities, especially those with significant policy and operational responsibilities.

Crown entity briefings should be driven by Ministers’ needs and monitoring departments should facilitate the briefing process. Where Crown entities do produce briefings, they should follow the Cabinet Manual and this guidance.
Content

The briefing process should cover the following information, as outlined in the Cabinet Manual:

Organisation and responsibility of the agency

**Aim: to provide the incoming Minister with an overview of key information relating to the department**

This is factual information, which should include organisational structures, a brief note about senior staff, an outline of the department’s main roles, and a schedule of the main legislation it administers. It is an opportunity to make the Minister aware of significant risks within the department or portfolio, and to advise the Minister whether the agency concerned has any statutorily independent functions.

It is important to note that the briefing process does not substitute for other Cabinet processes. For example, policy proposals with fiscal implications will require to be delivered subsequently through the Budget process including consultation with related agencies and, in particular, central agencies.

Some departments will need to provide more information than others because of their size and scope. However the content and level of detail must take into account the competing demands on a new Minister’s time.

Major policy and implementation issues

**Aim: to provide the incoming Minister with an overview of the breadth of policy issues and implementation issues with which he or she will need to be familiar during their ministerial term**

The aim should be to give the new Minister a snapshot of major policy issues within the portfolio. The briefing should take into account the Minister’s and the Government’s priorities and interests, as well as the Minister’s existing knowledge of the portfolio and of the department or agency concerned. The outline of these issues in a briefing that follows a general election will need to take into account relevant election manifestoes, and decisions taken or positions reached as a result of government formation negotiations.

More detailed descriptions and suggested options can be provided later when a particular matter is submitted to a Minister for decision.

A broad environmental scan of future challenges is important to a Minister. This can be provided during the briefing process when the Minister has more time to consider it, rather than including it in the initial briefing. Providing in-depth advice or making recommendations on policy options in the briefing may constrain the advice contained while not necessarily being in line with Ministers’ expectations or immediate needs. The briefing process should not be used to promote Budget proposals – these should be advanced through the normal Government Budget processes.

Public servants have an obligation to serve the government of the day. Ministers set the objectives they want to achieve and departments advise on ways of achieving those objectives and an assessment of different options. Departments also have an obligation to provide free and frank advice, which will assist their Minister and the Government when setting policy.

Pending decisions or actions

**Aim: to provide the incoming Minister with detailed information on pending decisions including analysis of options.**
At this early stage of a Minister’s term, it is suggested that this part of the briefing focuses on decisions that are likely to be required no more than six months out, including recommendations for draft legislation (taking into account relevant election manifestoes, coalition agreements and support arrangements). Judgement is required on the content and amount of detail. A balance is needed between ensuring a new Minister is well-informed, and giving advice before the department has had the chance to engage the Minister and learn the new Government’s policies for this area.

**Terms of reference, membership and terms of office**

*Aim: to provide the incoming Minister with an overview of his or her responsibilities in relation to all entities including terms of reference, membership and terms of office of all boards, commissions, tribunals and similar entities*

Departments need to keep this information up to date in any case, to ensure the board appointment processes they administer for their Minister are robust.

For some departments, this will represent a considerable amount of detailed information because of the number of entities for which the Minister has responsibility. In some cases this may be summarised, with the detailed information provided later in the briefing process when it is more convenient for the Minister.

Some appointments are likely to be an immediate priority and thus should be highlighted in the briefing. This arises because significant appointments that are due in the final months of a Government and during the Government formation period are delayed until the new Government is in place.