Government
of South Australia

Department of the Premier and Cabinet

Caretaker Conventions and Pre-Election Practices

A Guide for South Australian Government Agencies

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1. INTRODUCTION

In the period immediately preceding a State election the Government of the day assumes a 'caretaker role'. During this time, known as the caretaker period, successive Commonwealth and State Governments have accepted that special arrangements called caretaker conventions apply. The conventions are non-legal rules that guide political practice in areas on which the Constitution is silent. The caretaker conventions have been developed in recognition of the considerations that:

- with the dissolution of the House of Assembly, the Government of the day ceases to be responsible to the Parliament for its actions once Parliament has been dissolved; and
- every general election brings with it the possibility of a change of government, hence it should not take important actions, especially if they would commit an incoming government.

In summary, the conventions are intended that the government of the day:

- avoids major policy decisions that are likely to commit an incoming government;
- avoids making significant appointments;
- does not enter major contracts or undertakings;
- protects the apolitical nature of the public service; and
- does not use State resources in a manner to advantage a particular party.

This guide is based on the conventions established by the Australian Government Department of the Prime Minister and Cabinet, which have been adopted by most other states, including South Australia, in all recent elections. The guidelines are intended to explain the conventions and practices and provide guidance for the handling of business during the caretaker period.

The conventions are neither legally binding nor hard and fast rules. Their application in individual cases requires judgement and common sense. While the Department of the Premier and Cabinet is able to provide information and advice to agencies, the responsibility for observing the conventions ultimately rests with agency Chief Executives or, in cases where they are involved, with the Premier and Ministers.

While the conventions and practices have developed primarily in the context of the relationship between Ministers (including Assistant Ministers and Parliamentary Secretaries) and their departments, other bodies, such as statutory authorities, should also observe them unless to do so would conflict with their legal obligations or compelling organisational requirements.

To ensure the consistent application of these guidelines, agencies should appoint one or two senior officers to be the initial contact for inquiries. If further advice is required, agencies should contact the Executive Officer of the Caretaker Conventions Reference Group, [*It is suggested that this be Chris Christensen, Manager, Cabinet Coordination on telephone 8226 3661 or via email – christensen.chris@dpc.sa.gov.au)*]. This group, chaired by the Chief Executive, Department of the Premier and Cabinet, will deal with contentious matters that require detailed discussion.

2. THE CARETAKER CONVENTIONS

2.1 Timing of the Next Election

Section 28 of the *South Australian Constitution Act 1934* provides for fixed four-year terms of Government. A general election of members of the House of Assembly must be held on the third Saturday in March in the fourth calendar year after the calendar year in which the last general election was held. Therefore, the next state election will be held on 15 March 2014.

When an election is announced, the Premier will have asked the Governor to dissolve the House of Assembly and issue writs for the election as per section 47 of the *Electoral Act 1985*. The election may be called on any day between Monday, 20 January 2014 (for an election period of 54 days) and Saturday, 15 February 2014 (for an election period of 28 days). The writs are issued by the Governor. [*Should the Electoral (Miscellaneous) Amendment Bill be passed before the end of the year, the writs will be issued 35 days before polling day and this section will be updated accordingly*].

2.2 The Caretaker Period

By convention, the caretaker period starts when the writs for the election are issued. The caretaker period will run from the date of issue of the writs until the outcome of the election is clear. This provides the incumbent Government with flexibility in determining the length of the official election campaign.

The caretaker conventions continue to operate until the election result is clear or, in the event of a change of government, until the result is clear leading to the appointment of a new government.

Immediately after the announcement of an election, the Chief Executive of the Department of the Premier and Cabinet will write to all Chief Executives advising them formally that the caretaker period has begun.

2.3 Basic Conventions and Practices

The basic caretaker conventions require a government to avoid implementing major policy initiatives, making appointments of significance or entering into major contracts or undertakings during the caretaker period.

The basic conventions are directed to the taking of decisions, and not to policy announcements. The caretaker conventions do not apply to new policy promises which a government may announce as part of its election campaign.

Other established practices, usually regarded as being part of the caretaker conventions are mainly directed at ensuring that agencies avoid any partisanship during an election campaign. They address matters such as:

- the nature of requests that Ministers may make of their agencies;
- procedures for consultation by the Opposition with agency officers; and
- the continuation of Government advertising campaigns.

Cabinet Office is able to provide information and advice to agencies, but responsibility for observing the conventions and practices is ultimately the responsibility of agency Chief Executives or in cases where they are involved, with the Premier and Ministers. Where Ministers are in doubt about a particular matter, they should raise it with the Premier.

2.4 Conventions on Major Policy Decisions

Governments should avoid making major policy decisions during the caretaker period which could bind an incoming government. Relevant considerations about whether a policy decision is 'major' is a matter for judgement and include the significance of the decision in terms of policy and resources, but also whether the decision is a matter of contention between the Government and the Opposition in the election campaign.

The conventions apply to the making of decisions, not to their announcement. Accordingly, the conventions are not infringed where decisions made before dissolution are announced during the caretaker period. However, where possible, decisions should be announced ahead of dissolution if their announcement is likely to cause controversy. The conventions do not apply to promises about future policies announced as part of the election campaign.

In circumstances that require the Government to make a major policy decision during the caretaker period that would bind an incoming government, the Minister would usually consult the Opposition spokesperson beforehand.

2.5 Conventions on Major Contracts, Projects or Undertakings

Major new contracts, projects or undertakings within Government programs are normally deferred by Ministers. Consistent with the convention of avoiding major policy decisions, there is also a broad rule that Governments should avoid entering major contracts, projects and undertakings during the caretaker period. Relevant considerations about whether a contract, project or undertaking is 'major' should include the dollar value of the commitment, whether the commitment involves a routine matter of administration, is politically contentious, or could bind an incoming government.

Where the Government has previously announced its commitment to enter into a contract, project or undertaking and the substance of the terms have been agreed before the election is called, or the contract is in the nature of a collateral agreement into which the Government is obliged to enter, then the execution of that contract is viewed as an administrative act and is not captured by the caretaker convention.

Similarly, where the Government is obliged to enter into a contract (e.g. because of a collateral contract) the convention does not prevent this occurring. However, where there are still significant policy matters to be determined in respect of a contract and the contract is of real significance (either because of its subject matter, complexity, amount involved or political sensitivity) then it should not be executed during the election period.

If it is not possible to defer the commitment until after the caretaker period, for legal, commercial or other reasons, there are a number of options. The Minister could consult the relevant Opposition spokesperson regarding the commitment. Agencies could explain the implications of the election to the contractor and ensure that the contracts include clauses providing for termination in the event of an incoming government not wishing to proceed. Agencies could also advise potential tenderers about the implications of the election and the possibility that the tender might not be completed.

2.6 Significant Appointments, Contracts of Employment

During the caretaker period, the making of all significant appointments and contracts of employment should be deferred wherever possible during the caretaker period.

The judgement as to whether or not a particular appointment is 'significant' would include:

- the position's inherent importance and classification; and
- the degree to which the proposed appointment would be likely to be controversial.

Significant appointments which would commence after polling day should not made in the caretaker period. Appointments which would normally be made after the date of dissolution should generally be deferred until after the election.

When it is necessary for a significant appointment to be made during the caretaker period for reasons of operational functioning of the agency, either an acting appointment or a short term appointment for up to three months may be made. However, if a short term appointment is not practicable, an appointment may be made following consultation with the relevant Opposition spokesperson.

Vacancies may occur on government boards and committees during the caretaker period. As mentioned above, the caretaker conventions prohibit appointments of 'significance' during the caretaker period. If a board or committee experiencing a vacancy is able to operate legally and effectively with a quorum during the period, they should be encouraged to do so without the need for any new appointment.

If a 'non-significant' appointment is necessary, then short term appointments should be considered. A practical consideration is the fact that meetings of Cabinet and Executive Council will be infrequent during the election period.

3. EXECUTIVE GOVERNMENT DURING THE CARETAKER PERIOD

3.1 Cabinet and Executive Council

It is accepted practice that Ministers of the Crown continue in office during the caretaker period. It is also accepted practice that Cabinet and Executive Council continue to operate after the dissolution of Parliament. This is a reflection of the basic principle of the Westminster system of the separation of powers between the Parliament, the Executive and the Judiciary.

Thus, during the caretaker period, the normal business of Executive Government continues with the exception that by convention it is not considered appropriate for the Executive Government to undertake significant business as it might not be in accordance with the wishes of an incoming government and would not have the scrutiny of a House of Assembly.

Cabinet may continue to meet for routine matters which could not be classified as "major" undertakings, initiatives or appointments. It is also possible, where there is a need and where there is no infringement of the basic caretaker convention, for subordinate legislation and certain other matters to be approved by the Governor in Executive Council during the caretaker period. The agenda of Cabinet would also reflect this situation.

3.2 Cabinet Documents

Successive governments have accepted the convention that Ministers should not seek access to documents recording the deliberations of Ministers in previous governments. Cabinet documents, in particular, are considered confidential to the government that created them. In this context, all Cabinet documents (originals, copies or electronic versions), including files, submissions, and related documents should be returned to the custody of Chief Executives for storage until the result of the election is known. Each Chief Executive should advise the Deputy Chief Executive, Department of the Premier and Cabinet when they have accounted for all Cabinet documents and ensured they are securely stored.

Records made or received by a Minister or a Minister's Office in the conduct of business are official records, regardless of format, and must be managed in accordance with the *State Records Act 1997.* Information concerning the management and disposal of ministerial office records during the caretaker period and post-election can be obtained from State Records of South Australia at: http://www.text.archives.sa.gov.au/files/management_govrecords_caretakerperiod.doc

3.3 Legislation

All Bills which have been introduced in the Parliament but are yet to be passed automatically lapse when Parliament is dissolved.

It is the practice for Bills which have been passed through Parliament to be assented to by the Governor and, if necessary, proclaimed before the election is announced. At the same time subordinate legislation, including instruments made under Acts just assented to, may be approved by the Governor in Executive Council. Legislation that has already been assented to may be proclaimed during the caretaker period. Other than in exceptional circumstances, proclamations which have a commencement date after the date of the election are not made.

It is also possible, where there is a need and where there is no infringement of the basic caretaker conventions, for subordinate legislation and certain other matters to be approved by the Governor in Executive Council during the caretaker period.

3.4 Ministerial Standing Councils or Select Councils

When a Ministerial Council meeting is scheduled to take place during the caretaker period, the Minister concerned should be mindful of the caretaker conventions when

considering participation in the meeting. Ministers should ensure that any statements of policy position are made subject to the qualification that the Government is in a caretaker position and policy may be open to change.

Subject to the concurrence of the Ministerial Council, the Government may elect to send an official observer to the meeting (generally a senior public official).

Public sector officers, when attending inter-governmental meetings, should make it known that they are constrained by the caretaker conventions and confine themselves to seeking and providing information without making any policy commitments that might constrain an incoming government. No inter-governmental agreements should be signed during the caretaker period.

4. AGENCY OPERATIONS AND RELATIONSHIPS

4.1 Relationship between Agencies and Ministerial Offices

The aim is to ensure that agencies can continue to operate at 'arms length' from political activity while ensuring that the ongoing business of government continues to be addressed.

Public sector officers are expected to comply with the conventions. The conventions build on Part 3 of the *Public Sector Act 2009* – public sector principles and practices and the *Public Sector Code of Conduct* which sets out the standards of professional conduct expected of every public sector employee and applies at all times.

Agencies continue to deal with the ordinary business of government during the caretaker period. While agencies are concerned at all times to avoid partisanship and to serve whatever government is elected, it is especially important to ensure the impartiality and apolitical nature of the public sector during the caretaker period.

Ministers may continue to request factual material from agencies, during the caretaker period and material related to the day-to-day business of government is supplied to Ministers in the usual way.

To avoid controversy about the impartiality of the public sector it may be appropriate to request that all communications between a Minister's office and an agency pass through the Chief Executive's office or through some delegated senior staff who can discuss matters with the Minister or his/her senior staff.

Judgement is required with regard to the development of new policy initiatives. Departmental officers who feel there is a difficulty with a particular request from a Minister may raise the matter with their Chief Executive, who may consult with the Chief Executive of the Department of the Premier and Cabinet.

4.2 Correspondence

The arrangements for handling correspondence during the caretaker period are a matter for individual agencies. In the Department of the Premier and Cabinet the practice is to answer general correspondence during the caretaker period rather than

leave it to accumulate. However, Ministers usually sign only the necessary or routine correspondence.

It is desirable that judgement be used in determining whether correspondence of significance should be signed in this period by the Minister or by the Chief Executive. Care is taken when preparing departmental replies not to assume that one party or another will form the Government after the election. References to post election action are in terms of the 'incoming Government'. Correspondence that requires an explanation of Government policy should not commit the Government to post-election action or imply that the policy will continue if the Government is re-elected.

To avoid confusion, and as a matter of courtesy, members of the House of Assembly who are standing for re-election should continue to be addressed as 'MP' until it is known whether they have been re-elected. Newly elected members should be addressed as 'MP' as soon as it is known that they are elected. Members who are not standing for re-election should not be addressed as 'MP' following the dissolution of the House of Assembly.

4.3 Access to Public Servants by Members of Parliament

At all times public servants should preserve the traditional principle of political impartiality of public employees and the need to maintain the confidentiality of government business matters where necessary.

Access to public servants by Members of Parliament should normally proceed through application to the relevant Minister. Guidelines and fact sheets on this topic are available from the Office of Public Employment and Review at: http://www.oper.sa.gov.au/page-375

During the caretaker period, public servants should not discuss the affairs of Government with a Shadow Minister unless agreed by the Minister after consultation with the Premier. The procedure will be initiated by the relevant Opposition spokesperson making a request of the Minister concerned, who will notify the Premier of the request and whether it has been agreed. Officials will inform their Ministers when any approved discussions are taking place and party leaders may have other Members of Parliament or their staff members present at the discussions.

Officials will not be authorised to discuss Government policies or to give opinions on matters of a party political nature. The subject matter of the discussions would relate to the machinery of Government and administration. The discussions may include the administrative and technical practicalities and procedures involved in implementing policies proposed by the Opposition parties.

Should the Opposition representatives raise matters which, in the judgement of the officials, seek information on Government policies or seek expressions of opinion on alternative policies, the officials would suggest that the matters be raised with the Minister.

4.4 Public Servants in Ministers' Offices

Generally, public servants must not be seen to be supporting particular issues or parties during the election campaign. Proper lines of supervision and support for

public servants working in Ministers' offices are essential to avoid potential conflicts of interest. For this reason it is entirely proper if the normal reporting relationships of public servants to Ministers and ministerial staff is changed by Chief Executives during the caretaker period, following consultation with Ministers.

4.5 Public Speaking Engagements

Public servants need to exercise judgement if they are scheduled to speak at public functions during the caretaker period. In the case of controversial issues, officials should decline invitations to speak. In the case of non-controversial issues, officials may speak but should explain that the Government is in caretaker mode and that they will limit their statements to factual issues and matters of administration. Officials should avoid publicly explaining or promoting policies during the caretaker period

4.6 Use of Government Premises

While there should be no difficulty with the responsible use, by all parties campaigning in an election, of agency premises that are normally open to the public, it is most important during an election campaign that public servants not become caught up in party political activity. For that reason, it is not appropriate that premises be used as logistical support for political functions.

In the case of official functions involving the use of agency resources, it would generally be appropriate for the Opposition spokesperson, member or candidate, to be given the opportunity to be present and for agencies to, as far as possible, be even-handed in their responses and assistance to all parties. Any such functions should not be allowed to unreasonably disrupt the normal operations of the agency concerned.

4.7 Official Visits

Dignitaries whose visits are scheduled for the caretaker period or shortly afterwards should be advised of the election announcement and any changes in arrangements, including the reduced availability of Ministers and the possibility of a change of government. It would be normal for any official visits already scheduled and now falling within the caretaker period to be cancelled or postponed. No formal letters of invitation to overseas dignitaries should be issued during the caretaker period.

The Premier will, if necessary determine whether visits by dignitaries involving government hospitality should proceed during the caretaker period. Appointments for dignitaries to meet with the Premier, Ministers and the Leader of the Opposition are generally cancelled. An appointment with the relevant Chief Executive could be arranged as an alternative.

Where a visit that is non-political is scheduled, it could proceed and advice must be provided to the Premier regarding these circumstances and the desirability and practicability of the visit continuing or being postponed.

4.8 Hospitality

Agencies should exercise care in hosting official functions during the election period and particularly during the caretaker period, to avoid any perception that the function

is for electioneering or party political purposes. Generally, official functions of a formal nature, i.e. luncheons, dinners and receptions hosted by the Premier or Ministers, should not be initiated during the caretaker period.

Hospitality associated with annual community events that fall within the caretaker period can proceed on the basis that invitations have been issued prior to the commencement of the caretaker period. Any proposed additions or amendments to the guest list for these events should be referred to the Chief Executive for consideration.

Advice on all official ministerial functions may be obtained from the Director, Office of External Relations, Department of the Premier and Cabinet, on telephone 8463 6387.

4.9 Credit Cards

Access to credit cards charged to agency budgets should be strictly monitored during the caretaker period and their use strictly controlled. Special care should be taken with entertainment expenses.

5. GOVERNMENT INFORMATION AND ELECTRONIC COMMUNICATIONS

5.1 Agency Telephone Answering Messages

During an election campaign the Government's promotional material is subjected to greater scrutiny than normal. This includes the telephone answering messages attached to agency numbers. Depending on the matters raised during the election campaign, some of these messages may be considered as electoral advertisements ('calculated to affect the outcome of the election') within the meaning of the *Electoral Act 1985*. They should therefore be reviewed and changed, if necessary, for the duration of the election period.

5.2 Advertising and Promotions

During the caretaker period, agencies should take additional steps to ensure that agency resources are not used to support any particular political party. It is not appropriate that electoral advertising material be funded from agency budgets.

At the beginning of the caretaker period, individual agencies should review all advertising campaigns and promotions and recommend whether these should continue or be deferred. Campaigns or promotions that highlight the role of particular Ministers or address issues that are a matter of contention between the political parties are normally discontinued. Advertising or promotional campaigns that do not overtly favour the party in government and are of an operational nature, such as advertising of services provided by agencies and community service announcements, usually continue.

Agencies should also review arrangements for the distribution of printed material, including newsletters. Agencies should avoid active distribution of material during the caretaker period if it promotes Government policies or emphasises the achievements of the Government or a Minister. Extra focus should be given to the question of whether government advertising campaigns or promotions may be regarded as

unduly favouring the party in government. Publications and advertising material that can reasonably be construed as being for party political purposes should not be used.

Government Communications Advice (GCA) can provide advice on advertising and promotions during the caretaker period. For further information link to the GCA website: www.sa.gov.au/strategiccommunications or telephone the Government Communications Unit on (08) 8204 9184.

5.3 Agency Websites

During the caretaker period, agencies need to take additional steps to ensure that agency resources are not used to support any particular political party. Agencies should review their websites and any social media sites at the beginning of the caretaker period to ensure compliance.

Agency websites may retain material placed on the website before the commencement of the caretaker period in most cases. Exceptions might be recent ministerial statements that criticise the Opposition in strong terms. Agencies should check the wording of any icons and links on their websites to ensure that they cannot be interpreted as promoting a Government policy.

In relation to the addition of material agencies should add only the following material to their websites during the caretaker period:

- portfolio-related announcements, if that is the usual practice (e.g., election promises should not be placed on an agency website, but a ministerial press release relating to a public health warning might appropriately be added).
- purely factual information.
- essential updates on existing policies and programs, unless the information includes attacks on the political opponents or other political material.

If an agency website contains links to websites outside the sa.gov.au domain, agencies should consider the need for entry/exit messages e.g. “You are now leaving the website of [X]. The website you are entering is not maintained or funded by the State of South Australia”.

Advertising and promotion on an agency website is subject to the same provisions as advertising in any media. GCA can provide advice on appropriate use of websites during the caretaker period. For further information link to the GCA website: www.sa.gov.au/strategiccommunications or telephone the Government Communications Unit on (08) 8204 9184.

5.4 Ministerial Websites

Ministers have an obligation to ensure that political material is not contained on publicly funded websites.

Agencies may continue to maintain and fund the maintenance of ministerial websites during the caretaker period if that was the practice prior to the caretaker period. Material placed on the Minister’s website before the caretaker period may be

retained, as may links between the Minister's and agency's websites. In relation to the addition of material:

- agencies should add to ministerial websites only material relating to matters of existing policy or purely factual material. No material should be added concerning future policies, election commitments, how-to-vote material or media releases and speeches that criticise opponents, promote the Government or pursue election issues;
- agencies may also consider placing a notice on the ministerial website noting that election-related material is not available on the website; and
- Ministerial staff who maintain websites that are the responsibility of the Minister rather than the agency, may add material to the website as long as there is no cost to the State and a notice is added to the effect that since the commencement of the caretaker period the website is neither the responsibility of nor a cost to the agency.

As a general rule during the caretaker period, ministerial media releases and alerts should be placed on the website of the relevant political party. Where Ministers determine a need to issue media releases and alerts through agency-maintained/funded websites in their own name, these should be restricted to administrative or operational information of high public interest and of a time-sensitive nature, e.g., health warnings, counter terrorism alerts, travel advisories.

If the Minister's website is personal and not maintained by the agency, the Minister might consider placing a disclaimer on the website to the effect that no State resources are being used to communicate political material.

If an agency-maintained/funded ministerial website contains links to websites outside the sa.gov.au domain, such as political party websites, agencies should give particular attention to the need to include appropriate entry/exit messages. The messages could be along the lines of: "You are now leaving the website of [X]. The website you are entering is not maintained or funded by the State of South Australia".

Interactive functions of websites within the sa.gov.au domain such as discussion groups, chat rooms or blogs which allow unmoderated comment or debate should be moderated during the caretaker period. A message similar to the following might be considered: "In the period preceding the election, the Government of South Australia assumes a caretaker role. It is important during this time that South Australian Government resources are not used to communicate political material. As this website is hosted by the [Department of…..], the site will be moderated from the time of the issuing of the writs until after the election to ensure that political material is not placed on the site".

5.5 Social Media Sites, Electronic Bulletin Boards and E-Mail Systems

Social media sites are online services and tools used for publishing, sharing and discussing information. They can include forums, blogs, wikis, social networking sites and other websites that allow users to upload and share content.

Social media sites, electronic bulletin boards and e-mail systems provided by agencies should not be used to support any particular political party, publish political material or for electioneering purposes.

Material from political parties and how-to-vote material from any organisation, should not be published or distributed using these agency systems. Wording and icons used on these media should be checked to ensure that they cannot be interpreted as promoting a Government policy.

GCA can provide advice on appropriate use of social media, bulletin boards and email during the caretaker period. For further information link to the GCA website: www.sa.gov.au/strategiccommunications or telephone the Government Communications Unit on (08) 8204 9184.

6. PUBLIC SERVANTS CONTESTING AN ELECTION

The *Commissioner for Public Employment Fact Sheet: Contesting Elections* provides information on the employment options for public servants contesting an election. This information is available on the Office of Public Employment and Review website at: http://files.oper.sa.gov.au/files/fact-sheet-officers-contestingv2.pdf

The *Constitution Act 1934* precludes any officer or employee of the Crown from being elected to the South Australian Parliament. The Act states that the resignation of a public servant must be effective before the date of declaration of the poll. However, if they are the only candidate for a seat, they will be declared as elected without a poll, on the day of nomination. Public servants intending to contest an election should therefore ensure that their resignation is effective before the date of declaration of the poll and may also wish to seek permission to lodge a provisional resignation, effective on the day nominations close, which takes effect only if they are the sole candidate.

For the purposes of contesting an election a public servant may choose to resign at an earlier date, apply for leave or electioneer in their own time. However, employees should note that if they do not resign from the public service while electioneering they are potentially in a position of conflict of interest. Departmental property and time must not be used for campaigning purposes.

Where an employee has chosen to resign in order to contest an election and is not successful, section 66 of the *Public Sector Act 2009* provides that if the notice requirements in the Act are complied with, the employee must be re-engaged as an employee of the agency within two months after the return of the writ for the election and the break in service will be taken as leave without pay.

REFERENCES

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