

Hawker Britton

Public Affairs Solutions

| **government** relations | **strategic** communications | **campaigns** |

Election Timetable and Procedures

Occasional Paper

19 July 2010

Hawker Britton Group Pty Ltd abn 79 109 681 405

tel +61 2 6295 8300 fax +61 2 6295 8400 Suite 2, 16 Bougainville Street MANUKA ACT 2603

Sydney | Canberra | Melbourne | Brisbane | Perth | Adelaide | Washington | Wellington

Contents

Introduction.....	2
Election timetable	3
The Caretaker Conventions	5
Background	5
The Caretaker Period	5
The purpose of Caretaker Conventions	5
Application of Conventions.....	5
Key Conventions.....	5
Charter of Budget Honesty and Other Policy Costings.....	10
Pre-Election Fiscal Outlook (PEFO).....	12

Introduction

This paper is intended as a general guide to some of the processes and procedures that take place during the lead up to a Federal Election.

These processes, such as the Caretaker Conventions, the Charter of Budget Honesty and the Pre-Election Fiscal Outlook, will be in operation prior to the 2010 Federal Election, however more specific details about timing particular to this election will be contained in additional paper when the details become available.

It is important to be aware, particularly when engaging with the Federal Government, departments and central agencies that these processes are in operation throughout the election period.

Election timetable

The following is a timetable for the election according to the Constitution and Commonwealth Electoral Act.1

	Minimum number of days	Maximum number of days
<p>Expiry or dissolution of House of Representatives</p> <p>The Prime Minister decides when an election is to be held and gets the approval of the Governor General. When this is done the Prime Minister can announce the intention to hold an election. The Governor General will then dissolve the House of Representatives and issue the writs for the election.</p>		
<p>Issue of writs</p> <p>Writs are issued within 10 days of dissolution of House of Representatives (<i>Constitution</i> s.32, <i>CEA</i> s.151) or Double Dissolution (<i>Constitution</i> s.12)</p>	<i>0 days</i>	<i>10 days</i>
<p>Close of rolls</p> <p>Rolls close at 8pm, 3 working days after issue of writs, but new names are not added after 8pm on day of issue of writ. (<i>CEA</i> ss.102 [4], 155)</p>	<i>0-3 days</i>	<i>13 days</i>
<p>Close of nominations</p> <p>The electoral writs must be issued before candidates can lodge a nomination for election. Nominations must be lodged by candidates by 12 noon on the date specified on the writs as close of nominations.</p> <p>Nominations close at 12 noon, between 10 & 27 days after issue of writs (<i>CEA</i> ss.156, 175).</p>	<i>10 days</i>	<i>37 days</i>
<p>Declaration of nominations</p> <p>Declaration of nominations is 24 hours after nominations close (<i>CEA</i> s.175)</p>	<i>11 days</i>	<i>38 days</i>
<p>Polling day</p>	<i>33 days</i>	<i>68 days</i>

1 Australian Electoral Commission [website], online at http://www.aec.gov.au/Elections/australian_electoral_system/Electoral_Procedures/Federal_Election_Timetable.htm.

<p>The day on which the majority of electors cast their vote at a polling place. It must be a Saturday and at least 33 days after the issue of the writs.</p> <p>Polling day is fixed between 23 & 31 days after the close of nominations (CEA s.157)</p>		
<p>Return of writs</p> <p>After the Senate polls are declared, the Australian Electoral Officer for each State and Territory returns the writ endorsed with the names of the successful candidates to the State Governor (or Governor-General in the case of the Territories).</p> <p>For the House of Representatives, the Electoral Commissioner endorses on the writ the name of each candidate elected for each division and returns the writs to the Governor-General.</p> <p>Writs must be returned within 100 days of their issue. (CEA s.159)</p>		<p>110 days</p>
<p>Meeting of Parliament</p> <p>New parliament meets within 30 days of the day appointed for the return of the writs (Constitution s.5)</p>		<p>140 days</p>

Note: The House of Representatives expires 3 years after its first meeting but can be dissolved earlier (Constitution s.28). Senators for the States serve terms of 6 years which are staggered so that half of the 72 Senators retire every 3 years. The terms of Senators for the Territories coincide with those of the House of Representatives.

This information is from [.aec.gov.au](http://aec.gov.au).

The Caretaker Conventions

Special arrangements known as Caretaker Conventions apply to the Federal Government's administrative conduct during election campaigns. The Caretaker Conventions will apply during the 2010 Federal Election.

The Department of Prime Minister and Cabinet's (PM&C) *Guidance on Caretaker Conventions* (2010) is available online at <http://www.apsc.gov.au/values/conductguidelines4.htm>.

Background

Successive governments have accepted that, during the period preceding an election for the House of Representatives, the Government assumes a 'caretaker role'.

The Caretaker Period

The Caretaker Period commences when the Governor General, following a decision by the Prime Minister to hold an election, dissolves the House of Representatives. The Caretaker Period continues until the election result is clear or, if there is a change of government, until the new government is appointed.

The purpose of Caretaker Conventions

The Caretaker Period does not mean that the normal business of government ceases. During the caretaker period, the business of government continues and ordinary matters of administration are still attended to.

However, the Caretaker Conventions acknowledge two key issues that arise when an election is called:

- Once the House of Representatives has been dissolved, there is no longer a lower house to which the Executive Government can be held accountable;
- A change of Government is a possibility in every election.

The Caretaker Conventions are designed to ensure that the administrative actions of the incumbent government would not bind an incoming government or limit its freedom of action.

The Conventions are also designed to protect the apolitical nature of the public service and prevent Commonwealth resources from being used in election campaigns, or to advance the aims of a particular party.

Application of Conventions

The Conventions deal with issues such as requests from Ministers' offices for information or advice, the conduct of information campaigns and political participation by APS employees during the caretaker period.

The Conventions are recommended guidelines only. They are neither legally binding nor black-letter rules. As such, they require case-by-case judgement on their applicability.

Key Conventions

In summary, the key conventions encompass:

- major policy decisions;
- significant appointments;
- major contracts or undertakings;
- international negotiations and visits; and
- avoiding Australian Public Service (APS) involvement in election activities.

These are explored in greater detail below.

Major Policy Decisions

The Conventions recommend that major policy decisions that are likely to commit an incoming government to a certain policy direction should be avoided.

The Conventions do not include a specific definition of ‘major policy decision’, but they do outline considerations to take into account when making a determination, including:

- the significance of the decision in terms of resources; and
- whether the decision is a matter of contention between the Government and the Opposition.

It should be noted that the conventions only apply to the making of a decision, not to the announcement of decisions made prior to the commencement of the caretaker period. However, if a decision made prior to the dissolution of the House of Representatives is likely to cause controversy, the announcement should be made prior to the dissolution.

If circumstances arise that require a major policy decision that would bind an incoming government, it is recommended that the Minister concerned consult with the Opposition beforehand.

In relation to the passage of legislation, the Governor-General would generally agree to legislation that has passed through both houses, before the dissolution of the House. Proclamations can be made during the caretaker period, however this is generally avoided.

The Conventions do not apply to promises of future policies made by the parties as part of an election campaign.

Significant Appointments

The Conventions recommend that significant staffing appointments be deferred until the outcome of the election is known.

Once again, the definition of a ‘significant appointment’ is not explicit, rather the Conventions state that the Government should consider not only the importance of the position, but also whether the proposed appointment could be controversial, making it a matter of judgement for each department or agency head.

If deferring the appointment is not feasible because it would affect the functions of the agency, there are several options available, including:

- making an acting appointment where possible;
- making a short term appointment; and
- consulting the Opposition about the appointment.

Major Contracts or Undertakings

It is recommended that major contractual agreements or undertakings that would continue beyond the tenure of the incumbent government, thereby committing an incoming government, be postponed.

When considering whether the contract or undertaking is major, departments and agencies should consider:

- the dollar value of the agreement;
- whether the commitment is a routine matter of administration or if it entrenches a policy, program or administrative structure which is politically contentious; and
- whether the matter requires Ministerial approval.

If it is not possible to defer the contract or agreement, the following options are available:

- The Minister may consult the Opposition.
- Agencies could explain the implications of an election to the contractor and ensure that contracts include clauses allowing for the termination of the agreement in the event of a change in Government.
- Agencies should warn potential tenderers of the possibility that the tender may be delayed.

International Negotiations and Visits

The guidelines contained in the Conventions relating to participation in international negotiations and visits recognise that the normal operations of foreign governments will continue, regardless of Australian election campaigns.

Generally, all international negotiations should be suspended or deferred, or Australia should adopt observer status.

If deferment or observer status is not possible or appropriate, the Government should limit its involvement to the provision of information on its past position, without committing the incoming government to that position.

Visits by foreign dignitaries that involve government hospitality should also be deferred. If this is not possible the dignitaries should be advised of the constraints the election may place on government involvement, especially Ministers, during the visit.

Avoiding Australian Public Service (APS) involvement in election activities

Advertising and Information Campaigns

The Conventions recommend that Finance and PM&C review all advertising campaigns at the beginning of the caretaker period and recommend whether they should continue or be deferred. Bipartisan agreement is sought for campaigns that are to continue.

- Campaigns that highlight the role of particular Ministers or address issues that are a matter of contention between the parties are normally discontinued.
- Campaigns that are of an operational nature, such as defence force recruiting campaigns or public health campaigns, usually continue.

Agencies are advised to avoid active distribution of printed material such as newsletters during the caretaker period if it promotes Government policies or emphasises the achievements of the Government or a Minister.

It should be noted that the conduct of information campaigns during the election period is regulated by legislation – the Broadcasting Services Act 1992 and the Commonwealth Electoral Act 1901. Broadly, the legislation requires any advertisement or literature which is actively distributed and contains material likely to affect voting to identify the person who authorised the material and, in the case of printed matter, the name and address of the printer.

Internet and Electronic Communications

The Australian Government Information Management Office (AGIMO) provides guidance on the content and maintenance of agency and ministerial websites. See [://webpublishing.agimo.gov.au/Ministerial_Websites](http://webpublishing.agimo.gov.au/Ministerial_Websites).

Essentially, agencies must ensure that their resources are not used to support any particular political party, mainly by not adding material concerning future policies, election commitments, how-to-vote material or media releases and speeches that criticise opponents, promote the Government or pursue election issues. As a general rule during the caretaker period, ministerial media releases and alerts should be placed on the website of the relevant political party.

Use of Agency Premises

The Caretaker Conventions outline the circumstances under which Commonwealth property may be used during an election campaign. These can be summarised as follows.

- Functions that would normally be held or which would be logically held in a government office may proceed, but it is recommended that an Opposition spokesperson be invited to attend.
- It would be inappropriate to use the venue for activities which may engage public servants in political debate or require political comment.
- The use of the venue should not unreasonably disrupt the normal functions of the office.

Political Participation by Australian Public Service (APS) Officers

Consistent with the APS Values in the *Public Service Act 1999* and the APS Code of Conduct, the Caretaker Conventions recommend that APS officials should not use their positions or agency

resources to support particular issues or parties during the election campaign. The Conventions recommend that officials need to exercise judgment if they are scheduled to speak at public functions during the caretaker period.

Requests from Ministers' Offices for Information

Because information provided by departments to Ministers could be used to promote election promises or support party specific promotions, requests for factual information are also governed by the Conventions.

Ministers may continue to request factual material from agencies during the caretaker period and material relating to the day-to-day business of government is supplied to Ministers without restriction.

However, the Conventions recommend that it may be appropriate to decline a request for assistance if it required the use of significant resources and was clearly for use in the election campaign .

Departmental Liaison Officers

Given Department Liaison Officers (DLOs) are APS employees provided by agencies to assist Ministers, the Conventions recommend that they should avoid assisting Ministers in ways that could create a perception that they are being used for party political purposes.

Charter of Budget Honesty and Other Policy Costings

Particular issues arise in relation to policy costings during the caretaker period. The costing of Government and Opposition election commitments by the Treasury and the Department of Finance and Deregulation (Finance) is regulated by the *Charter of Budget Honesty Act 1998*. The Secretaries of the Treasury and Finance issue guidelines under the Act before, or at the beginning of, the Caretaker Period. The guidelines are available at [://www.finance.gov.au/publications/charter_of_budget_honesty.html](http://www.finance.gov.au/publications/charter_of_budget_honesty.html).

The Act provides for the Secretaries of the Treasury and Finance to prepare costings of publicly announced Government and Opposition election commitments during the caretaker period.

The Act does not apply to:

- costings outside the caretaker period;
- costings by agencies other than Treasury or Finance during the caretaker period. Ministers can request costing information from other agencies in accordance with longstanding practice. Where necessary, those agencies may seek advice from Treasury and Finance on strictly factual issues and costing methodology, but Treasury and Finance in providing such factual advice will not thereby be endorsing or confirming costings. Any such costings must not be presented as costings under the Charter of Budget Honesty; and
- costing of minor party and independents' commitments during the caretaker period. Ministers can request any agency, including Treasury and Finance, to provide costing information in relation to these commitments. Any requests to Treasury and Finance should go through the offices of the Treasurer and the Minister for Finance.

Pre-Election Consultation with the Opposition

In 1976, the Government tabled Guidelines providing for pre-election consultation with the Opposition in order to assist in the transition between administrations in the event that an election results in a change of government.

Under the arrangements, Shadow Ministers may be given permission to conduct discussions with departmental officials.

The current version of the Guidelines was presented to the Senate on 5 June 1987 and is reprinted below.

7.5.2 The Guidelines are distinct from the caretaker conventions and commence on a different date. They apply as soon as an election for the House of Representatives is announced or three months before the expiry of the House of Representatives, whichever occurs first.

7.5.3 The Guidelines are as follows:

- (i) The pre-election period is to date from three months prior to the expiry of the House of Representatives or the date of announcement of the House of Representatives election, whichever date comes first. It does not apply in respect of Senate elections only.
- (ii) Under the special arrangement, Shadow Ministers may be given approval to have discussions with appropriate officials of Government departments. Party Leaders may have other Members of Parliament or their staff members present. A Departmental Secretary may have other officials present.
- (iii) The procedure will be initiated by the relevant Opposition spokesperson making a request of the Minister concerned who is to notify the Prime Minister of the request and whether it has been agreed.
- (iv) The discussions will be at the initiative of the non-Government parties, not officials. Officials will inform their Ministers when the discussions are taking place.
- (v) 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 implementation of policies proposed by the non-Government parties. If the Opposition representatives raised matters which, in the judgment of the officials, sought information on Government policies or sought expressions of opinion on alternative policies, the officials would suggest that the matter be raised with the Minister.
- (vi) The detailed substance of the discussions will be confidential but Ministers will be entitled to seek from officials general information on whether the discussions kept within the agreed purposes.

Pre-Election Fiscal Outlook (PEFO)

The *Charter of Budget Honesty Act 1998* requires the Secretaries of the Treasury and Finance to release a pre-election report that provides updated information on the economic and fiscal outlook.

The Pre-election Economic and Fiscal Outlook (PEFO) report must be released publicly within ten days of the issue of the writ for a general election.

The PEFO report contains:

- updated Commonwealth budget sector and Commonwealth general government sector fiscal estimates for the current financial year and the following three financial years including a summary of measures since Budget and MYEFO;
- the economic and other assumptions that have been used in preparing those updated fiscal estimates;
- discussion as to the sensitivity of those updated fiscal estimates to changes in economic and other assumptions; and
- an updated statement of the risks, quantified where feasible, that may have a material effect on the fiscal outlook, including contingent liabilities; publicly announced Government commitments that are not yet included in the fiscal outlook; and Government negotiations that have yet to be finalised.