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# Caretaker Conventions

*Federal Election 2004*

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## Introduction

This paper examines the special arrangements, known as Caretaker Conventions, which apply to the Australian Federal Government's administrative conduct during the election campaign.

It should be noted that the information provided in this paper is not exhaustive and while every effort has been made to ensure accuracy at the time of print – Hawker Britton does not guarantee the accuracy of all information.

## Further Information

Online information on the Caretaker Conventions is available from the following websites:

- <http://www.dpmc.gov.au/docs/caretaker.cfm>
- <http://www.agimo.gov.au/practice/guidance>
- <http://www.ozpolitics.info/rules/cc.htm>
- <http://www.agimo.gov.au/practice/guidance>
- <http://www.apsc.gov.au/values/conductguidelines.htm>

## Background

An indication of the importance of the caretaker conventions was seen prior to the 2001 election. As part of the Tampa refugee issue, the Australian and Papua New Guinean Governments signed a binding agreement, under which the Papua New Guinea agreed to receive the asylum seekers. The agreement was finalised just half an hour before the caretaker conventions commenced.

## 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 conventions remain in place until the outcome of the election is clear. If there is a change in government, the conventions remain in place until the new government is appointed.

## Purposes of Conventions

The caretaker period does not mean that the normal business of government ceases. Ordinary administrative matters 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; and
- a change of government is a possibility in every election.

The conventions are designed to ensure that the administrative actions of the incumbent government are not binding on 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 being used in election campaigns, or to advance the aims of a particular party.

## Application of Conventions

The conventions apply to the relationships between ministers, parliamentary secretaries and their departments and executive agencies.

It is the departments or agencies who are responsible for observing the conventions, with ministerial responsibility for upholding the conventions restricted to matters in which they are specifically involved.

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

### 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 are silent regarding the definition of a major policy decision, but they do outline considerations to take into account when making a determination. These include:

- 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 which 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, which 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 as part of an election campaign.

### Significant Appointments

It is recommended 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 judgment 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 Contractual Agreements

It is recommended that major contractual agreements or undertakings that would continue beyond the tenure of the existing administration, 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 not proceed.

## 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.

If the government must participate fully, it should advise the other parties that any decisions made will need to be authorised by the incoming government or it should seek the opposition's agreement on a negotiating 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.

## Australian Public Service Election Conduct

In accordance with the *Public Service Act 1999* and the Code of Conduct which applies to Australian public servants, departments and officials should not use Commonwealth resources or their position within the agency to support particular issues or parties during an election campaign.

The caretaker conventions in this context attempt to protect the apolitical nature of the public service. The convention guidelines relate to three broad areas of department and agency operations:

- printed and electronic communications;
- use of government offices and premises; and
- requests from ministers offices.

## Information Campaigns

Information campaigns conducted during the election period are regulated under the *Broadcasting Services Act 1992* and the *Commonwealth Electoral Act 1901*. In board terms the legislation requires any advertisement or literature actively distributed during an election campaign, which is likely to affect voting intentions, to identify the person who authorised the materials and the address of the printers.

In accordance with these regulations, the caretaker conventions recommend that the Government Communications Unit (within the Department of Prime Minister and Cabinet) review all advertising campaigns, printed materials and electronic communications at the beginning of the caretaker period, deciding on a case-by-case basis whether campaigns should be suspended.

## Use of Government Offices and 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 which 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; and
- the use of the venue should not unreasonably disrupt the normal functions of the office.

## Requests from the Ministers Office

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.

Information relating to the normal running of the department or administration of the ministerial portfolio is not restricted, but requests that would require significant expenditure or drain on resources, or constitute legal advice, should be refused.

## Pre-Election Consultation with the Opposition

These guidelines are designed to assist in the transition between administrations in the event that an election results in a change of government.

They are distinct from the caretaker conventions and commence on a different date. The guidelines are applied as soon as the election is announced or three months before the expiry of the House of Representatives, whichever comes first.

The guidelines do not apply on occasions where only the senate is due for election.

Under the arrangements, shadow ministers may be given permission to conduct discussions with departmental officials.

Permission to hold the discussions is provided by the minister following a request by a non-government party and notification of the Prime Minister. Officials are not authorised to discuss government or party political matters, but instead cover the machinery of government and its administration.

## Hawker Britton

Hawker Britton was founded in 1997 by Bruce Hawker and David Britton, former chief of staff and senior media adviser respectively to Premier Bob Carr. From its initial office in Sydney, has grown in the ensuing six years to have five offices in Australia; Sydney, Melbourne, Adelaide, Perth, Brisbane, and three located internationally; Washington, Wellington and London.

Hawker Britton is Australia's only national and international public affairs company providing advice on managing government relations, strategic communications and campaigns.

The firm boasts a wide range of clients in a variety of industries, including banking and finance, film and entertainment, information technology and telecommunications, primary industries, property development, health care and health technology, transport and infrastructure, construction and mining, water and environment, sport, hospitality and gaming.

Of Hawker Britton's current clients, 23 are in the *BRW Top 100* list of Australian companies and five are large multi-nationals.

### Government Relations

Key services in Government Relations include:

- High-level strategic advice on all areas of government
- Expertise in infrastructure developments
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### Strategic Communications

Hawker Britton's Strategic Communications include:

- Media and issues management
- Crisis management
- Media training
- Stakeholder communications
- Reputation management

### Campaigns

Key Campaigning services include:

- Community campaigns and consultation
- Corporate and association elections
- Public affairs campaigns
- Corporate campaigns

Hawker Britton brings to the corporate boardroom a unique approach to strategy and campaigns, borne out of corporate and political experience. Our specialist consultants are drawn from the ranks of former ministers, members of parliament, chiefs of staff, and senior policy and media advisers. Corporate clients appreciate our political and strategic communications heritage and the value that it brings to corporate planning.

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