



Caretaker Conventions – Guidelines applying in Western Australia during the State General Election Period

2021

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1. Introduction

- 1.1. By convention, the Government assumes a 'caretaker' role in the period immediately before a State General Election as it is recognised that every general election carries the possibility of a change of government.
- 1.2. The caretaker period commences from the date of the issue of the writs for elections for the Legislative Assembly and continues until the election result is clear, or, in the event of a change of government, until the new government is formally sworn in.
- 1.3. In the caretaker period, efforts are made to ensure that decisions are not taken that would bind an incoming government and/or limit its freedom of action. The guidelines are applicable to all decisions made during the caretaker period, not just politically contentious issues.
- 1.4. The practices associated with the caretaker role are also directed at protecting the apolitical nature of the public sector and avoiding the use of government resources in a manner to advantage a particular party. The arrangements also aim to prevent controversies about the role of the public sector during an election campaign.
- 1.5. Generally, the arrangements are intended, wherever possible, to ensure that:
 - 1.5.1. Significant appointments are not made;
 - 1.5.2. Major policy decisions are not taken which would be likely to commit an incoming government (including the implementation of new policies or approval of major projects within government agencies);
 - 1.5.3. no commitments are made to major contracts or undertakings;
 - 1.5.4. electioneering is not undertaken through government advertising, publications or electronic communications;
 - 1.5.5. Members of Parliament do not undertake air travel at public expense for electioneering purposes; and
 - 1.5.6. public sector officers are not involved in party political activities.
- 1.6. These guidelines are intended to explain the conventions and practices in more detail and to provide guidance for the handling of business during the caretaker period. The conventions are neither legally binding nor inflexible 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, responsibility for observing the conventions ultimately rests with Chief Executive Officers or, in cases where they are involved, with the Premier and Ministers.

- 1.7. While the conventions and practices have developed primarily in the context of the relationship between Ministers and their agencies, other bodies, such as government trading enterprises, should observe them unless to do so would conflict with their legal obligations or compelling organisational requirements.
- 1.8. It is important to note that the conventions are directed to the taking of decisions. They do not apply to new policy promises that a government or opposition/s may announce as part of its election campaign.
- 1.9. Public sector officers are expected to comply with the conventions. The conventions build on principles of conduct set out in the *Public Sector Management Act 1994*; the Public Sector Commissioner's Instruction No. 7: Code of Ethics; and agency codes of conduct, which are applicable to public sector officers at all times.
- 1.10. 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, contact the Department of the Premier and Cabinet on 6552 5444 or email caretakerconventions@dpc.wa.gov.au

2. Significant Appointments and Contracts of Employment

- 2.1. Significant appointments and reappointments should be deferred during the caretaker period.
- 2.2. 'Significant' appointments and reappointments are generally regarded as positions classified at *Public Service and Government Officers General Agreement 2021* (PSGOGA) Level 8 and above (or equivalent). Appointments for positions classified at PSGOGA Level 8 or above are permitted where there is a strong public interest supporting an immediate appointment (e.g. where there is an urgent need) or where PSGOGA Level 8 is not a good guide of seniority in a particular profession (e.g. medical and legal professions).
- 2.3. When determining whether an appointment or reappointment is 'significant', consideration should be given to:
 - 2.3.1. the importance of the functions to be performed by the position;
 - 2.3.2. the classification of the position; and
 - 2.3.3. whether the proposed appointment is likely to be controversial.
- 2.4. Where the proper functioning of a public sector agency requires a significant position to be filled, acting arrangements or a short-term appointment should be used.

- 2.5. Where a decision needs to be made in relation to a reappointment and reappointment is proposed, the contract should be for a period ending no more than three months from the date of the election.
- 2.6. Where agencies are considering as to whether an appointment or reappointment above PSGOGA Level 8 or equivalent should proceed, advice should be sought from the Department of the Premier and Cabinet. The Department of the Premier and Cabinet will consult with the Public Sector Commission on such issues.

3. Major Contracts, Undertakings and Policy Decisions

- 3.1. The broad rule is for the Government to avoid entering into major contracts or undertakings or making major policy decisions during the caretaker period, including commitments that would be politically contentious or likely to commit an incoming government. Major project approvals or policy decisions should be deferred unless there is appropriate consultation with the Opposition parties.
- 3.2. Whether a particular decision qualifies as 'major' is a matter for judgement. Relevant considerations include not only the significance of the decision in terms of policy and resources but also whether the issue is a matter of contention between the Government and Opposition parties in the election campaign.
- 3.3. If it is not possible to defer the commitment until after the caretaker period for legal, commercial or other reasons, further advice should be sought from the Department of the Premier and Cabinet.

4. Advertising, Publications and Information Campaigns

- 4.1. In general, government advertising, information campaigns and the distribution of publications, except work commissioned by the Western Australian Electoral Commission, are to be deferred during the caretaker period. However, exemption from this requirement may be sought from the Department of the Premier and Cabinet in respect of the following instances:
 - 4.1.1. advertisements relating to public inquiries;
 - 4.1.2. advertising of services provided by agencies; and
 - 4.1.3. community service announcements.

Exemption can be sought by completing the form available at Annexure 1 and lodging the form with the Department of the Premier and Cabinet. Such requests should be signed by an agency's Chief Executive Officer or Chief Employee.

- 4.2. Chief Executive Officers are authorised to approve the advertising/publication of information in the areas listed hereunder:
- 4.2.1. changes to statutes and delegated legislation;
 - 4.2.2. vacant positions which are of a minor professional, administrative or technical nature which accord with the provisions of clause 2 *Significant Appointments and Contracts of Employment* above;
 - 4.2.3. calling of tenders for minor works; and
 - 4.2.4. notices required pursuant to any statute.
- 4.3. No government agency should disseminate publications that advocate or criticise the election policies of any political party. Publications should not promote any politician or political candidate, including Ministers.
- 4.4. Agencies should avoid active distribution of material during the caretaker period if it promotes the Government's policies or emphasises the achievements of the Government or a Minister. Passive distribution of existing material, such as continued placement in an agency's offices or distribution of such material in response to requests is acceptable.
- 4.5. During the caretaker period, Ministers and agencies should restrict any media releases to administrative or operational information of high public interest and of a time sensitive nature (for example, health or emergency warnings). Ministers and agencies should seek approval from the Director General, Department of the Premier and Cabinet prior to the distribution of media releases. Approval can be sought by completing the form available at Annexure 2 and submitting to the Department of the Premier and Cabinet. In cases requiring the release of urgent after-hours public interest media information, agencies are permitted to release that information without application to the Department.
- 4.6. Should there be any doubt about any advertising or publication issues, the matter should be referred to the Department of the Premier and Cabinet.

5. Internet and Electronic Communications

- 5.1. During the caretaker period, agencies need to take additional steps to ensure that electronic resources are not used to support any particular political party. Agencies should therefore review their websites and any social media sites at the beginning of the caretaker period to ensure compliance with this clause.
- 5.2. Agency websites may retain material placed on the website before the commencement of the caretaker period. Exceptions might be recent Ministerial statements that criticise the Opposition or other parties in strong terms. Agencies should review the content of any icons and

links on their websites to ensure that they cannot be interpreted as promoting a particular government policy.

- 5.3. Agencies should not add material to their websites during the caretaker period unless it can be demonstrated that there is a clear public interest in doing so. Material that can be added may include:
 - 5.3.1. necessary portfolio related announcements, if that is the usual practice. The definition of 'portfolio related' will require judgement in each agency. By way of example, election promises should not be placed on an agency website but a media release relating to a public health warning might be appropriate;
 - 5.3.2. purely factual material; and
 - 5.3.3. essential updates on existing policies and outputs, unless the information includes electioneering material or attacks on political opponents.
- 5.4. Agencies should not publish material on their websites that advocates or criticises the election policies of any political party or candidate or which promotes any politician or political candidate, including Ministers.
- 5.5. In the case of Ministerial websites (including the Leader of the Opposition's website), the Department of the Premier and Cabinet will continue to maintain and fund the maintenance of the website during the caretaker period. Material placed on a Minister's website before the caretaker period may be retained, as may links between the Minister's and his/her agencies' websites.
- 5.6. In relation to the addition of new material to Ministerial websites and social media platforms administered by public sector agencies:
 - 5.6.1 Only necessary material relating to matters of existing policy or purely factual material can be added. Material concerning future policies, election commitments or media releases and speeches that criticise opponents, promote the Government or pursue contentious issues cannot be added.
 - 5.6.2 The Department of the Premier and Cabinet will place a notice on the Ministerial websites indicating that election related material is not available on the website.
- 5.7 Websites and social media platforms maintained for Members of Parliament and administered by public sector agencies using public funds must not be used for electioneering purposes. Notices referring visitors to the parties' websites and social media platforms or links to those websites and platforms are permissible.
- 5.8 Electronic bulletin boards, social media sites and email systems provided by agencies should not be used for electioneering purposes. Information from political parties and election material, whether

produced by an individual or organisation, should not be published or distributed using agency systems.

6. Travel

- 6.1. During that portion of the caretaker period from the issue of the writs for elections for the Legislative Assembly until the close of polling on election day, no Member of Parliament shall travel by air at the expense of the State, except:
- the Premier;
 - the Deputy Premier;
 - the Leader of the Opposition in the Legislative Assembly;
 - Members of Parliament nominated by the Premier or the Deputy Premier to attend official functions;
 - Members of Parliament nominated by the Leader of the Opposition in the Legislative Assembly to attend official functions;
 - a Minister travelling to respond to an emergency or disaster where the presence of the Minister is necessary or desirable;
 - any Minister or Member of Parliament in the course of a journey to or from a destination outside the State;
 - any Member of Parliament, so entitled, travelling between the Member's electorate and Perth, or within that Member's electorate; and
 - any Member of Parliament utilising an entitlement determined by the Salaries and Allowances Tribunal.
- 6.2. The Premier, Deputy Premier, Leader of the Opposition in the Legislative Assembly, or a Member of Parliament nominated to represent them at an official function, may be accompanied by their spouse.
- 6.3. The Premier, Deputy Premier, Leader of the Opposition in the Legislative Assembly, or a Member of Parliament nominated to represent them at an official function, may be accompanied by members of their staff, if necessary, to assist them in the performance of their duties.
- 6.4. Travel under this provision shall be by regular passenger transport airline services, unless there is no scheduled service operating at a reasonably convenient time. In such cases, a charter may be used.

- 6.5. If it is considered appropriate by the Premier, Deputy Premier, or Leader of the Opposition in the Legislative Assembly, Members of Parliament may accompany them, or a nominated Member, on a charter flight at no cost provided vacant seats are available and such travel does not increase charter costs.
- 6.6. If it is considered appropriate by the Premier, Deputy Premier, or Leader of the Opposition in the Legislative Assembly, media representatives or candidates who are not Members of Parliament may accompany them, or a nominated Member, on a charter flight. Where media representatives or candidates who are not Members of Parliament travel on charter flights, they shall be charged for the cost of their travel on the following basis:

$$\text{Cost of Travel} = \frac{\text{Hourly Charter Rate} \times \text{No. of Hours Passenger on the Charter}}{\text{Seat Capacity of Charter Aircraft}}$$

- 6.7. The Parliamentary Travel Allowance should not be used for campaign or electioneering travel during the period that begins on the day after the day a writ or writs are issued for a general or conjoint election pursuant to the *Electoral Act 1907* and ends on the day of the poll.

7. Operations of Public Sector Agencies and Relationships with Ministers

- 7.1. The normal business of government should continue but public sector agencies should avoid partisanship and ensure the impartiality of the public sector. Communication arrangements between Ministerial offices and agency officers should continue to be in accordance with section 74 of the *Public Sector Management Act 1994*.
- 7.2. Material concerning the day-to-day business of public sector agencies should be supplied to Ministers in the usual way.
- 7.3. Ministers should sign only the necessary minimum of correspondence during the caretaker period. Departmental officers or Ministerial staff can respond to some correspondence normally signed by Ministers.
- 7.4. Ministers may choose not to attend intergovernmental meetings, meetings of Ministerial councils and the like. Public sector officers, when attending such 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.
- 7.5. Decisions regarding the awarding of grants and donations should generally not be made during the caretaker period. However, payments of grants and donations approved prior to the caretaker period can proceed. Payment should be forwarded to recipients by departmental officers, and not Ministers or other members of the Government.

- 7.6. Under the *Government Financial Responsibility Act 2000*, the Under Treasurer is to release a Pre-Election Financial Projections Statement within 10 days after the Legislative Assembly is dissolved.

8. Legislation

- 8.1. Bills introduced into the Legislative Assembly but not passed will lapse when the Legislative Assembly is prorogued, and then dissolved.
- 8.2. Bills that have completed their passage through Parliament will be presented for Royal Assent, notwithstanding the prorogation of both Houses of Parliament.
- 8.3. Bills assented to may be proclaimed where they come into operation during the caretaker period.

9. Executive Council

- 9.1. The Executive Council will continue to meet during the caretaker period but will only consider necessary and routine matters of government administration.

10. Cabinet and COVID-19

- 10.1. Cabinet (including any sub-committees) will not normally meet during the caretaker period, however, subject to the COVID-19 state of emergency (or another emergency), Cabinet and the Security and Emergency Committee of Cabinet will continue to meet as necessary. The Cabinet should avoid making major decisions likely to commit an incoming government or limit its freedom to act, except as is necessary to act for a limited period of time on the advice of the Chief Health Officer or State Emergency Co-ordinator. Any deliberations and decisions by Cabinet during the caretaker period must be made in the context of these caretaker conventions.
- 10.2. Due to the unprecedented COVID-19 state of emergency it is appropriate for the Premier to continue to sit on National Cabinet, hold or attend regular meetings and/or briefings in relation to the COVID-19 state of emergency, and make decisions as required to ensure Western Australia is positioned to respond to the emergency.
- 10.3. On operational COVID-19 related matters within the existing *Easing of interstate border controls in Western Australia - Trigger Points for Reviewing Border Controls* provided by the Chief Health Officer, the Premier will ensure the Opposition spokesperson is briefed on any decisions made.
- 10.4. With regard to other non COVID-19 related decisions, the Premier will ensure to the extent possible, to consult with the Opposition party spokesperson prior to any decision being taken that would bind an incoming government or advance a policy decision. Where this is not

practicable, the Premier will ensure the Opposition party spokesperson is briefed of the decision.

- 10.5. Successive governments have accepted the convention that Ministers do not seek access to documents recording the deliberations of previous governments. Agencies should ensure that all Cabinet documents are adequately secured throughout the caretaker period and after any change of government.

11. Consultation by Members of Parliament and Political Candidates with Public Sector Officers

- 11.1. Members of Parliament and political candidates may wish to seek consultations with appropriate public sector officers. This clause does not apply to the costing of election commitments by public sector officers. For guidance in relation to costing of election commitments, refer to clause 12. The following practices and guidelines come into operation at the commencement of the caretaker period:
 - 11.1.1 The procedure must be initiated by an approach by the relevant Member of Parliament or political candidate through the appropriate Minister. The Minister shall refer the request to the relevant Chief Executive Officer. Public sector officers should not instigate discussions.
 - 11.1.2 The Chief Executive Officer should notify the Minister, in writing, of the details of when the discussions will take place. The Minister should then advise the Premier of the discussions.
 - 11.1.3 Public sector officers are not authorised to discuss government policies or to give opinions on matters of a party political nature. The subject matter of the discussions must be restricted to the machinery of government and administration. The discussions may include the administrative and technical practicalities and procedures involved in the implementation of policies proposed by the non-government parties.
 - 11.1.4 Public sector agencies will be represented in such discussions by the Chief Executive Officer or his/her nominated representative and appropriate officers with relevant expertise.
 - 11.1.5 The detailed substance of the discussions will be confidential but Ministers will be entitled to seek general information on whether the discussions kept within the agreed purposes.
 - 11.1.6 Any requests for consultation that involve an unreasonable amount of work by a public sector agency may properly be denied.
- 11.2. As part of the process of preparing the way for any incoming government, public sector agencies may prepare general briefing

papers on the implications of major stated policies to present to incoming Ministers subsequent to the election.

12. Public Sector costing of Election Commitments

- 12.1. Major political parties may seek public sector costings of election commitments from the Under Treasurer.
 - 12.1.1 Political parties are regarded as 'major political parties' where they comprise at least five Members of Parliament.
 - 12.1.2 All such requests must be provided in writing by the Leader of the party, and must be addressed to the Under Treasurer.
 - 12.1.3 The policy to be costed must have been publicly announced by the requesting party at the time of seeking the Under Treasurer's costing determination.
 - 12.1.4 Requests for costing should not exceed more than two pages, and must clearly describe the policy to be costed together with any available assumptions or summary financial information.
 - 12.1.5 Requests for costing cannot be made until the pre-election Financial Projections Statement has been released pursuant to the requirements of the *Government Financial Responsibility Act 2000*.
 - 12.1.6 Costing requests must be lodged no later than **5.00pm on Friday, 5 March 2021**. Late requests will not be costed.
- 12.2 The Under Treasurer will publicly release all costing advice.
 - 12.2.1 The Under Treasurer's costing advice will be made available within three working days of the written costing request, and will be published on a publicly accessible website.
 - 12.2.2 All costings must show the impact of the request, and any previous requests, on the key financial aggregates outlined in the Pre-election Financial Projections Statement.
 - 12.2.3 The Under Treasurer's costing advice must summarise any additional assumptions made by the Under Treasurer in completing the published costing.
 - 12.2.4 In preparing costing advice, the Under Treasurer may seek information from other public sector agencies.
 - 12.2.5 Where a costing cannot be made, the Under Treasurer is to publicly release a statement indicating that a costing cannot be provided and outlining the reasons for this.

13. Visits by Members of Parliament and Political Candidates to Government Facilities

- 13.1. Where Members of Parliament or political candidates wish to visit government facilities for campaigning purposes, the Chief Executive Officer must be notified and that officer, or a nominated representative, will accompany the Members or political candidates during the visit.

14. Political Participation by Public Sector Officer

- 14.1 Public sector officers who wish to stand for election should refer to the Public Sector Commission website and seek independent legal advice regarding their rights and obligations.
- 14.2 Subject to 14.3, public sector officers should not use agency resources or their positions to support particular political parties during the election campaign. The provisions of *the Public Sector Management Act 1994*; the Public Sector Commissioner's Instruction No. 7 Code of Ethics and each agency's code of conduct should act as a guide to officers in performing their functions during the caretaker period.
- 14.3 Whilst a public sector officer's right to be involved in public life, including participation in political parties, is acknowledged the underlying principle is that such participation should not interfere with the performance of the officer's functions and government resources should not be used to this end.
- 14.4 It is recognised that Ministerial officers, appointed under the *Public Sector Management Act 1994* to assist political office holders, may become involved in activities of a party political nature when undertaking functions specified by the political office holder.
- 14.5 Public sector officers should refrain from making public comments in their official capacity about the policy commitments of any political party or candidate. Officers are required to uphold the apolitical nature of the public sector at all times but this is particularly important during the caretaker period.
- 14.6 Public sector officers 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.

15. Hospitality

- 15.1 Agencies should exercise care in hosting official functions during the election period to avoid any perception that the function is for electioneering or party political purposes.
- 15.2 In the case of official functions involving the use of agency resources at which a Minister or representative will be present, it may be appropriate for the Opposition parties' spokesperson/s, Members of Parliament or political candidates to be given the opportunity to be present.
- 15.3 Consideration should be given to deferring official visits by dignitaries from outside Western Australia, particularly where there is an expectation that agreements will be signed or negotiations concluded.

16. Public Records

- 16.1 All official documents are to be maintained in accordance with the provisions of the *State Records Act 2000*. The provisions of the *Department of the Premier and Cabinet Records Keeping Plan 2018* also apply to the handling of Ministerial office records.

17. State Coat of Arms and State Government Badge

- 17.1 The State Coat of Arms may be used by the Government and the Opposition for purposes associated with their official functions, including correspondence sent pursuant to 7.3.

Version to be used for official functions:



- 17.2 Any government advertisements including those authorised by Chief Executive Officers under 4.2 or any advertising authorised under 4.1 by the Department of the Premier and Cabinet must include the State Coat of Arms or the State Government Badge.

State
Coat of
Arms



State
Government
Badge



Government of **Western Australia**
Department of **Your Dept Name here**

18. Amendments or further enquiries

- 18.1 The caretaker conventions may be amended in the lead up or during the caretaker period due to the changing nature of the COVID-19 state of emergency.
- 18.2 All enquiries concerning these arrangements should be referred in the first instance to the Department of the Premier and Cabinet - telephone 6552 5444 or email caretakerconventions@dpc.wa.gov.au.

ANNEXURE 1
**DEPARTMENT OF THE PREMIER
AND CABINET**

DPC use only: Request No:.....

**REQUEST FOR APPROVAL TO ADVERTISE OR PUBLISH DURING STATE
GENERAL ELECTION PERIOD 2021**

Department/Agency: _____

Contact Person: _____

Telephone: _____ Email: _____

Subject: _____

Advertising or Publication Commences: ____ / ____ / ____ ends ____ / ____ / ____ (dates inclusive)

Where advertising through an advertising agency is proposed, the following information is required:

Creative Agency: _____

Advertising Media: _____

Nominated CUA Contractor: _____

Please explain why an exemption should be granted:

Please note: A concept or copy of the advertising/publication for which exemption is requested must accompany all applications. CDs, DVDs and PDFs are also acceptable.

Declaration:

I certify that the advertising material/publication that is the subject of this application does not advocate or criticise the election policies of any political party, nor does it personally promote any Member of Parliament (including a Minister) or political candidate.

Chief Executive Officer: _____ Date: / / _____

This form may be

1. emailed to caretakerconventions@dpc.wa.gov.au; or

2. posted to: Ms Megan Inglis
Department of the Premier and Cabinet
Level 4, Dumas House
2 Havelock Street
WEST PERTH WA 6005

This form is also available on the website for the Department of the Premier and Cabinet

www.wa.gov.au

ANNEXURE 2

DPC use only: Request No:.....

DEPARTMENT OF THE PREMIER AND CABINET
REQUEST FOR APPROVAL TO ISSUE MEDIA RELEASE DURING STATE
GENERAL ELECTION PERIOD 2021

Department/Agency: _____

Contact Person: _____

Telephone: _____ Email: _____

Subject: _____

Proposed date of release: ____ / ____ / ____

Please explain why it is necessary to issue the media release:

Please note: A copy of the media release must be attached.

Declaration:

I certify that the media release that is the subject of this application does not advocate or criticise the election policies of any political party nor does it personally promote any Member of Parliament (including a Minister) or political candidate.

Chief Executive Officer: _____ Date: ____ / ____ / ____

This form may be emailed to caretakerconventions@dpc.wa.gov.au

This form is also available on the Department of the Premier and Cabinet website at www.wa.gov.au