



# CARETAKER CONVENTIONS AND PRE-ELECTION PRACTICES

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**Government of South Australia**  
Department of the Premier  
and Cabinet

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# 1. INTRODUCTION

## 1.1. The caretaker period

In the period immediately preceding an election, the government assumes a ‘caretaker’ role. This practice recognises that, when the House of Assembly is dissolved in order to call an election, the government cannot be held accountable for its decisions in the usual manner. It also recognises that every election brings with it the possibility of a change of government.

The caretaker period begins when the House of Assembly is dissolved and the writs are issued; it concludes when the outcome of the election is clear or, if there is a change of government, the new government is appointed.

In accordance with the *Constitution Act 1934*, the writs for the next general election in South Australia will be issued on **Saturday, 17 February 2018**, with the election held on Saturday, 17 March 2018.

## 1.2. The caretaker conventions

During the caretaker period, the business of government continues and ordinary matters of administration still need to be addressed. However, to avoid binding an incoming government and limiting its freedom of action, it is accepted that special arrangements – the caretaker conventions – are necessary. In summary, the conventions are that the government:

- Avoids major policy decisions that would bind an incoming government
- Avoids making significant appointments
- Does not enter into major contracts or undertakings.

There are also established practices associated with the conventions that are aimed at protecting the political neutrality of the public service and ensuring public resources are not used to advantage a political party.

The conventions are not legally binding, nor are they hard-and-fast rules – individual cases require judgement and common sense. While DPC can provide information and advice to agencies, responsibility for observing the conventions ultimately rests with agency chief executives and with the Premier and ministers.

The conventions are directed towards decisions or actions, not policy announcements. The caretaker conventions do not prevent the party in government from making policy announcements as part of its election campaign.

## 1.3. Application of this guide

This guide is based on the conventions established by the Department of the Prime Minister and Cabinet and adopted by most other states, including South Australia, in all recent elections. The guide is developed primarily in the context of the relationship between ministers and their departments, but should also be followed by other government bodies (except where this would conflict with their legal obligations).

The guide also sets out a number of important administrative practices and considerations for the caretaker period.

To ensure consistent application of the guidelines, each agency should appoint one or two officers to manage inquiries. If further advice is required, the nominated officer should contact the Manager, Cabinet Coordination, at [michael.brougham@sa.gov.au](mailto:michael.brougham@sa.gov.au) or on 8429 5107. Contentious matters requiring detailed consideration may be referred to the Caretaker Conventions Reference Group, chaired by the Chief Executive, DPC.



## 2. THE BASIC CARETAKER CONVENTIONS

### 2.1. Major policy decisions

During the caretaker period, governments should avoid making major policy decisions that could bind an incoming government. Whether a policy decision is major is a matter of judgement; consideration should include:

- The significance of the decision in terms of policy and resources, and
- 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 the *announcement* of decisions. A decision made before the caretaker period may still be announced after the caretaker period has begun. However, where possible, decisions should be announced before the caretaker period if their announcement is likely to cause controversy.

If there are circumstances that require the government to make a major policy decision during the caretaker period, and the decision will bind an incoming government, the responsible minister should consult with the Opposition spokesperson beforehand.

### 2.2. Major contracts, projects, or undertakings

Governments should avoid entering into major contracts, projects, or undertakings during the caretaker period. In deciding whether a contract, project, or undertaking is major, the government should consider:

- The value of the commitment
- Whether the commitment is a routine matter of administration
- Whether the commitment entrenches a policy that is politically contentious, and
- Whether the contract requires ministerial approval.

Where the government has previously announced its intention to enter into a commitment, and the terms of the commitment have been agreed before the caretaker period begins, the execution of the contract is viewed as an administrative act and is not captured by the caretaker conventions. Similarly, if the government is obliged to enter into a collateral contract, this is taken to be an administrative act.

If, for legal, commercial, or other reasons, it is not possible to defer a significant commitment until after the caretaker period, there are several options:

- The responsible minister could consult with the relevant Opposition spokesperson on the matter, explaining the reasons that the commitment cannot be deferred
- The agency could explain to the contractor the implications of the election and ensure that the contract includes clauses providing for termination in the event of a change of government, or
- Agencies could warn potential tenderers about the implications of the election and the possibility that the tender might not be completed.

## 2.3. Significant appointments

Governments should avoid making significant appointments during the caretaker period, and should also avoid making appointments in advance of the caretaker period that will commence during the caretaker period or after the election. In considering whether an appointment is significant, the government should consider:

- The importance and classification of the position, and
- The degree to which the appointment is likely to be controversial.

If deferring the appointment is not practicable – usually for reasons associated with the proper functioning of an agency – there are several options:

- Make an acting appointment, where permissible
- Make a short-term appointment, ending shortly after the end of the caretaker period, or
- If these options are not practicable, the responsible minister could consult with the relevant Opposition spokesperson regarding a full-term appointment.

Agencies need to plan ahead for vacancies on boards and committees, particularly if these will occur close to the start of or during the caretaker period. If the board or committee continues to have a quorum and can operate effectively with a vacancy until after the election, it should be encouraged to do so.

Even for nonsignificant appointments, it is worth considering whether the appointment can be deferred until after the election or, if the appointment is necessary, making it for a short term.

If appointments are required, it should be borne in mind that meetings of Cabinet and Executive Council are generally not held during the caretaker period (see section 3).

## 3. EXECUTIVE GOVERNMENT DURING THE CARETAKER PERIOD

### 3.1. Cabinet and Executive Council

It is accepted practice that ministers continue in office during the caretaker period, and that Cabinet and Executive Council continue to operate after the dissolution of Parliament. Thus, during the caretaker period, the normal business of executive government continues, with the exception of matters covered by the conventions in section 2. However, Cabinet and Executive Council would not ordinarily meet during this period.

Nevertheless, although it is rare, Cabinet may continue to meet for routine matters that would not be classified as major undertakings, initiatives, or appointments. Where it is absolutely necessary, and where it does not infringe the caretaker conventions, subordinate legislation and certain other matters may also be approved by the Governor in Executive Council during this period. However, agencies should not assume that this will be possible and should plan ahead accordingly.

### 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, particularly to Cabinet documents. For this reason, at the beginning of the caretaker period, all Cabinet documents – including originals, copies, and drafts – 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 Chief Executive, DPC, when they have accounted for all Cabinet documents and have ensured that the documents are securely stored.

Ministers' offices must not retain copies of Cabinet documents during the caretaker period. If the government is returned, chief executives will return Cabinet records to the appropriate office, ensuring that ministers have the information necessary to resume their portfolio duties. If the government is not returned, it is the responsibility of chief executives to store or dispose of Cabinet documents in accordance with the *State Records Act 1997*.

The only exception to the requirement to return Cabinet documents is the Office of the Parliamentary Counsel. OPC retains Cabinet documents in order to continue working on projects that, according to the determination of OPC, can be progressed during the caretaker period. If there is a change of government, OPC will then return these documents to the relevant chief executive.

### 3.3. Other records

Records made or received by a minister or a minister's office in the conduct of business are official records and must be managed in accordance with the *State Records Act 1997*. Information concerning the management and disposal of records during the caretaker period, and after the election, can be obtained from [State Records SA](#).

### 3.4. Legislation

Bills that have been introduced to Parliament but have not passed automatically lapse when Parliament is dissolved.

Bills that have passed Parliament should be assented to before the writs are issued. If the Act needs to come into operation before the election, it is preferable that the proclamation be issued, along with any subordinate legislation, before the writs are issued. However, if absolutely necessary, Acts can be brought into operation during the caretaker period. As noted above, subordinate legislation can also be made at this time, if it is absolutely necessary and does not infringe the caretaker conventions.

During the caretaker period, Acts should not be proclaimed to come into operation after the election. If an Act needs to commence after the election, it should be left for the incoming government to proclaim.

### 3.5. Ministerial councils

Where 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 whether to attend. If a minister chooses to attend, any statements of policy position they make must be made subject to the qualification that the government is in caretaker mode and the policy position may be open to change.

Alternatively, it may be appropriate for an official observer, such as a senior public official, to attend in the minister's place (subject to the agreement of the ministerial council). Public officials attending intergovernmental meetings must make it known that they are constrained by the caretaker conventions and confine themselves to seeking and providing information.

No intergovernmental agreements should be signed during the caretaker period.

## 4. AGENCY OPERATIONS AND RELATIONSHIPS

### 4.1. Relationship between agencies and ministerial offices

Agencies continue to deal with the ordinary business of government during the caretaker period, but need to take extra care to ensure the impartiality and apolitical nature of the public sector.

Ministers may continue to request factual information from agencies during this time, and material related to the routine business of government can continue to be supplied to ministers in the usual way. However, agencies must be careful to avoid the perception of partisanship and must ensure that their resources are not used to advantage any political party.

To avoid controversy about the impartiality of the public sector, chief executives may consider it appropriate to request that all communications between their agencies and ministerial offices during the caretaker period be directed through the chief executive's office or through delegated senior staff.

Judgement is required where agencies are called upon to develop new policy proposals during the caretaker period. If a departmental officer has concerns with a particular request from a minister, these concerns should be raised with the relevant chief executive, who may consult with the Chief Executive, DPC.

### 4.2. Correspondence

The arrangements for handing correspondence during the caretaker period are a matter for individual agencies. The practice in DPC is to answer general correspondence, rather than let it accumulate.

During the caretaker period, ministers would usually only sign correspondence where it is routine or an immediate response is absolutely necessary. Judgement should be used in determining whether the minister should sign significant correspondence or whether it should be signed by the relevant chief executive.

When preparing replies, care must be taken not to assume that one party or another will form government after the election. References to action to be taken after the election must be made in terms of 'the incoming government', and correspondence that requires an explanation of government policy should not commit the government to action after the election or imply that a policy will continue.

When addressing correspondence to Members of Parliament, 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 have been elected. Members who are not standing for re-election should not be addressed as 'MP' following the dissolution of Parliament.

### 4.3. Access to public servants by Members of Parliament

Public servants must at all times preserve the traditional principle of the political impartiality of the public service as well as the confidentiality of government business matters.

Access to public servants by MPs should normally proceed through application to the relevant minister. Guidelines on this are available from the [Office for the Public Sector](#).

During the caretaker period, as at other times, public servants should not discuss the affairs of the government with a shadow minister or opposition member unless permitted to do so by the relevant minister after consultation with the Premier. Public servants must advise their minister when such a discussion is to take place, and party leaders may have other MPs or their staff present at the discussions.

Discussions between public servants and the opposition would normally be limited to the machinery of government and administration. They may include the administrative and technical practicalities involved in implementing policies proposed by the opposition. Public officials are not authorised to discuss government policies or to give opinions on matters of a party political nature. Should the opposition representatives raise matters which, in the judgement of an official, seeks information on government policies or expressions of opinion on alternative policies, the official should suggest that the representative raise the matter with the minister.

### 4.4. Public servants in ministers' offices

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 duty. For this reason, it may be appropriate for normal reporting relationships of public servants to ministers and ministerial staff to be changed by chief executives during the caretaker period, following consultation with the relevant minister.

### 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, public servants should decline invitations to speak. On 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

It is not appropriate that government premises be used as logistical support for political functions. However, all candidates in an election are able to access or appear at government premises that are ordinarily open to the general public.

For official functions involving the use of agency resources, it would generally be appropriate for the relevant opposition spokesperson, member, or candidate to be given the opportunity to present.

## 4.7. Official visits

Official visits should not be scheduled during the caretaker period, and any that have been scheduled should be cancelled or postponed. No formal letters of invitation to overseas dignitaries should be issued during the caretaker period.

If a visit cannot be postponed, it will generally not be appropriate for a dignitary to meet with the Premier, ministers, or the Leader of the Opposition. Meetings with chief executives may be arranged as an alternative. If a visit not of a political nature is scheduled, it may proceed, but advice of this should be provided to the Premier, including the reasons why the visit should go ahead.

## 4.8. Hospitality

Generally, official functions of a formal nature, such as luncheons or dinners hosted by the Premier or a minister, should not be held during the caretaker period. Where a function is held, agencies need to exercise care to avoid the perception that the function is for electioneering or party political purposes.

## 4.9. Credit cards

Use of credit cards linked to agency budgets must be strictly controlled during the caretaker period. Special care should be taken with entertainment expenses.

## 5. GOVERNMENT INFORMATION AND ELECTRONIC COMMUNICATIONS

### 5.1. Advertising and promotions

Agencies should take additional care during the caretaker period to ensure that agency resources are not used to support any particular political party. Electoral advertising must not be funded from agency budgets.

At the beginning of the caretaker period, agencies should review their advertising campaigns and promotions and consider whether these should be placed on hold until after the election. Advertising or promotional campaigns that do not overtly favour the party in government and are of an operational nature, such as community service announcements or advertisements for agency services, can continue. However, campaigns or promotions that highlight the role of particular ministers or address issues that are a matter of contention between political parties would normally be discontinued.

Agencies should also review printed material such as flyers and newsletters. Agencies should avoid active distribution of material that promotes government policies or emphasises the achievements of the government. Publications and advertising material that could be reasonably construed as being for party political purposes should not be used.

### 5.2. Agency websites

As with advertising and promotions, agencies need to take additional care during the caretaker period to ensure that their resources are not used to support any particular party. Agencies should review their websites and social media presence at the beginning of the caretaker period to ensure they cannot be interpreted as promoting the government.

In most cases, material on websites will be apolitical and can be retained, but exceptions might include ministerial statements that criticise the opposition or material that promotes government policies or achievements.

Agencies should only add information to their sites during the caretaker period where the information is factual and apolitical. Updates on existing policies and programs might be added, for instance, but should not include praise for the government or criticism of political opponents. Election promises should not be announced or promoted on government websites.

### 5.3. Ministerial websites

Ministers must ensure that political material is not published on publicly funded websites.

Agencies may continue to maintain and fund the maintenance of ministerial websites during the caretaker period, and material placed on the site before the caretaker period may remain. However, care must be taken with adding new material during the caretaker period. Material relating to existing policies and to factual matters may be added, but the site should not be used to announce future policies and election commitments, publish how-to-vote cards, to promote the government, or to criticise opponents.

Media releases and alerts by ministers during the caretaker period should generally be published on the website of their political party. The exception is factual, administrative, or operational releases, such as health warnings or other public service announcements.

Ministerial staff (that is, staff of the minister who are not public servants) may maintain websites that are the responsibility of the minister, provided that they are not publicly funded. It may be appropriate for such sites to include a statement to the effect that the site is not maintained by the government and is not publicly funded.

Government websites that host unmoderated discussion forums should be moderated during the caretaker period to remove any communication of political material. While debate of ideas is appropriate, obvious political campaigning through government sites should be deleted. A statement should be included stating that the site will be moderated during the caretaker period.

#### **5.4. Social media and email**

Social media sites maintained by the government should not be used to support a political party, publish political material, or engage in electioneering. If ministers or other candidates wish to campaign through social media, this needs to be done through a personal account not maintained by public servants.

Email accounts provided by the government must not be used to support a particular party, disseminate political material, or engage in electioneering.

#### **5.5. Answering messages and hold messages**

Telephone answering messages and messages played while customers are on hold should be reviewed to ensure they do not promote government policies.

## 6. PUBLIC SERVANTS CONTESTING ELECTIONS

### 6.1. Public servants contesting elections

The *Constitution Act 1934* prevents an employee or officer of the Crown from being elected to Parliament. To be validly elected, an employee must ensure they have resigned, and their resignation has been acknowledged, on the day before the declaration of the poll for their electorate (or for the Legislative Council, if they are standing for the upper house). Employees can of course choose to resign at an earlier date.

Employees who do not resign while campaigning must be aware that this gives rise to a potential conflict of interest, whether real or perceived. They must ensure that they do not campaign during ordinary working hours unless they are on formally approved leave. They must not use agency resources in association with campaigning.

Where an employee resigns to contest an election and is not successful, they are entitled to be re-engaged as an employee of the agency within two months of the return of the writ for the election. They must be re-engaged at the same remuneration level, with the break in service treated as leave without pay.

The Office for the Public Sector has produced [a fact sheet for public sector employees contesting elections](#) that contains further detail.

### 6.2. Public servants assisting a candidate

Public servants who wish to assist a political candidate with their campaign must not do so during ordinary working hours unless they are on formally approved leave. They must not use agency resources to campaign on behalf of a political candidate.