



Legislative Assembly for the
Australian Capital Territory

Select Committee on Caretaker
Conventions

Submission cover sheet

Inquiry into Caretaker Conventions

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Secretary
Select Committee on Caretaker Conventions
Legislative Assembly for the ACT
GPO Box 1020
Canberra City ACT 2601

Submission—Office of the Legislative Assembly

Dear Secretary,

Thank you for the opportunity to make a submission to the committee concerning the caretaker conventions.

While I do not have a view as to whether additional obligations should be adopted in relation to the caretaker conventions, I wish to make a few brief points about the means by which any potential change might be implemented.

At their core, the caretaker conventions are shared norms that apply in the Westminster tradition that seek to ‘moderate the substantial advantages of incumbency by constraining the power of the political executive during the election campaign’.¹ The conventions acknowledge that while the levers of executive government must continue to operate effectively during an election period, decisions should not be taken that would improperly bind a future alternative government.²

The position is neatly summarised by Menzies and Tiernan:

Although the business of government continues, because of the potential for a change of government, caretaker arrangements require that no new policy decisions be taken, no major contracts be entered into and no significant appointments be made. Caretaker conventions are based on shared understandings of how politicians should behave: they are not law and are not adjudicated by the courts.³

The Commonwealth and each state and territory government produces written guidance as to how ministers and public servants ought to conduct themselves during the caretaker period. Among other matters, such material invariably includes guidance on how government information and briefings might be made available to shadow ministers or other non-executive members.⁴

¹ Menzies, Jennifer and Tiernan, Anne (2014) ‘[Caretaker Conventions in Australasia, Minding the Shop for Government](#)’, 2nd edition, Australian National University Press, Canberra, p 1.

² Ibid, p 13.

³ Ibid, p 1.

⁴ The Commonwealth’s [Guidance on Caretaker Conventions](#) document, includes separate guidelines, as tabled in the Senate on 5 June 1987, for pre-election consultation with the Opposition. Under the arrangement,

I understand that this inquiry takes place against a background in which there was a degree of dissatisfaction by non-government members about certain information not being provided in the lead up to the 2024 election.

I note that paragraph 2(a) of the committee's terms of reference raises the possibility of 'developing a continuing resolution for the operation of caretaker conventions in the ACTPS'.

It is, of course, open to the Assembly to express an opinion by way of a continuing resolution about any matter. However, it is important to point out that while orders and resolutions may operate to exercise the accepted powers, privileges and immunities of the Assembly, they are not a substitute for legislation where the intention is to impose broader legal obligations.

House of Representatives Practices states that:

Other than in relation to matters such as its power to send for persons, documents and records and its powers in regard to enforcing its privileges, decisions of the House alone have no legal efficacy on the outside world. The House, as a rule, can only bring its power of direction into play in the form of an Act of Parliament.⁵

The same principle applies to the Assembly.

Any broader scheme to legally regulate the conduct of ministers or ACTPS officials—including in relation to, for instance, obligations during an election period—is the domain of statutory provision.

A narrow requirement on ministers and officials around the provision of certain information in the lead up to an election would fall within the inherent powers of the Assembly and could be achieved by way of resolution. As an example: a resolution—whether continuing or ad hoc—requiring ministers or directors-general to provide a certain class of information to the Speaker for circulation to all members would, depending on its precise terms, be within the power of the Assembly. However, a resolution purporting to prohibit certain decisions, appointments, or policies during the caretaker period, would not have the force of law.

It is also open to the committee to recommend that the government amend its own caretaker guidance to better align with the Assembly's expectations around the disclosure

shadow ministers '...may be given approval to have discussion with appropriate officials of government departments'. The ACT Government's [Guidance on Caretaker Conventions](#) document makes provision for consultation by non-government members with agency officials upon a request to the relevant minister's office. The guidelines also advise that the government should consult with the opposition and cross bench about any unavoidable appointments and on policy decisions that potentially commit an incoming government and should seek the agreement of the opposition and the crossbench before entering into a major contract or undertaking that is unable to be deferred until after the election.

⁵ House of Representatives Practice, p 316. See also *Stockdale v. Hansard*.

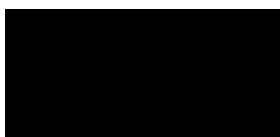
of significant financial and other information in the lead up to an election. Such an approach will not have the force of law.

In summary:

- If the committee apprehends that the primary mischief requiring attention is the need to ensure that certain kinds of information should be provided by the government to non-executive members prior to an election, this can be readily achieved by resolution (although it may also be legislated⁶).
- If the committee considers that there is some broader deficiency in pre-election or caretaker arrangements that should be remedied by the imposition of additional legal obligations on ministers or officials, legislation would be required.
- And finally, if the committee considers that there are aspects of the ACT Government's guidance on caretaker conventions that could be strengthened in certain areas, then such a recommendation could be put to government.

I wish the committee well in its deliberations.

Yours sincerely,



Tom Duncan
Clerk of the Legislative Assembly

1 May 2025

⁶ As an example, Div 2.2 of the *Financial Management Act 1996* provides that the Treasurer must prepare and notify on the Legislation Register a pre-election budget update.