



**Legislative Assembly** for the  
**Australian Capital Territory**

Select Committee on Caretaker  
Conventions

# Submission cover sheet

## Inquiry into Caretaker Conventions

Submission number: 03

Submitter: ACT Government

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**Andrew Barr MLA**

Chief Minister

Minister for Economic Development

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Mr Shane Rattenbury MLA

Chair

Select Committee on Caretaker Conventions

196 London Circuit

CANBERRA ACT 2601

Dear Mr ~~Rattenbury~~ *Shane*

Thank you for the opportunity to provide this submission on behalf of the ACT Government to the Select Committee— Inquiry into Caretaker Conventions.

Caretaker conventions are crucial to ensuring sustained governance, maintaining public sector neutrality, and upholding public confidence during electoral transitions. The ACT Government reaffirms its commitment to the Territory's legislative and administrative frameworks that have been developed in the context of Westminster conventions and practices. These frameworks have evolved and matured in response to the dynamic needs of the Territory and in alignment with best practices in other Westminster jurisdictions in Australia and abroad.

The attached submission addresses the Committee's terms of reference, offering analysis and a recommendation for further consideration. In particular, the submission outlines the risks associated with codification, provides insights into the operationalisation of caretaker conventions and explores opportunities for ongoing review of the guidance material provided and updating that material as appropriate.

The ACT Government remains committed to ensuring the Westminster principles are appropriately safeguarded and will be available to support the Committee's deliberations as required.

Yours sincerely



Andrew Barr MLA

Chief Minister

8 May 2025

**ACT Government**

# **Submission**

**Inquiry into Caretaker Conventions**

Chief Minister, Treasury and Economic Development Directorate

May 2025

## Contents

|                                                                                       |            |
|---------------------------------------------------------------------------------------|------------|
| <b>Executive Summary.....</b>                                                         | <b>3</b>   |
| <b>1. The ACT Context.....</b>                                                        | <b>4</b>   |
| <b>2. Public Sector Impartiality and Confidence.....</b>                              | <b>6</b>   |
| <b>3. Post election review and update of Caretaker Guidance .....</b>                 | <b>11</b>  |
| <b>Conclusion .....</b>                                                               | <b>122</b> |
| <b>Attachment A – ACT 2024 General Election Guidance on Caretaker Conventions ...</b> | <b>15</b>  |
| <b>Attachment B – Comparative Overview of Australian Caretaker Conventions .....</b>  | <b>17</b>  |
| <b>Attachment C – Recommended Literature for Select Committee Review .....</b>        | <b>18</b>  |

## Executive Summary

Caretaker conventions, grounded in Westminster principles, are essential to maintaining responsible and accountable governance. The primary function of caretaker conventions is to ensure executive continuity, safeguard public sector neutrality, and uphold democratic legitimacy during electoral periods.

In the Australian Capital Territory (the Territory), caretaker conventions operate within a legislative and administrative framework guided by the ACT Government General Election Guidance on Caretaker Conventions (the ACT Guidance). This guidance undergoes regular review, reflecting evolving best practice in contemporary governance standards, with a new version published prior to each ACT election.

This submission outlines the ACT Government's support for maintaining this flexible, principles-based approach which sees caretaker guidance material published rather than the codification of the caretaker conventions themselves. A review of the literature on parliamentary and government practice and procedure supports this position, highlighting the inherent limitations of codification, and in particular noting how codification limits adaptability during emergencies or unforeseen circumstances.

The Territory's particular governance structures, featuring a unicameral legislature and proportional Hare-Clark electoral system, can result in multi-party assemblies and extended post-election negotiations. Historical precedents such as the 2001, 2008, and particularly the 2020 General Election during the COVID-19 pandemic, highlight the necessity of flexible caretaker conventions to sustain administrative continuity and public confidence.

### Recommendation

1. That the Committee support the continued publication of the ACT Government General Election Guidance on Caretaker Conventions as a flexible, principles-based framework, aligning updates with best practices from other Westminster jurisdictions.

# 1. The ACT Context

## 1.1 Westminster Principles and Executive Government

The ACT Government operates within a Westminster parliamentary framework firmly grounded in principles of responsible government, constitutional stewardship, and executive accountability. These foundational principles are explicitly articulated in the *Australian Capital Territory (Self-Government) Act 1988 (Cth)* (the Self-Government Act), which delineates between legislative powers vested in the ACT Legislative Assembly and the responsibilities of the Executive.

The Territory's distinctive governance arrangements—a combination of a unicameral legislature and the proportional Hare-Clark electoral system—distinguishes it markedly from other Australian jurisdictions. Under the Hare-Clark system, electoral outcomes frequently yield diverse multi-party assemblies, minority governments, and extended periods of post-election negotiation during formation of government. Such complexities were evident during the caretaker period following the 2020 ACT General Election, where extended negotiations among parties highlighted the practical necessity of retaining adaptable, principles-based caretaker arrangements. The inherent flexibility of caretaker conventions effectively support administrative continuity, ensuring executive legitimacy, and sustained public confidence amid political negotiations.<sup>1</sup>

While the Self-Government Act establishes that Territory ministers retain legal authority during the caretaker period until a new Chief Minister is elected by the Assembly, it is through Westminster convention that ministers exercise this authority with considerable restraint.<sup>2</sup> Ministers avoid initiating new policy decisions, significant appointments, and/or commitments, as these actions could unduly bind incoming governments. This conventional restraint is central to maintaining public sector impartiality and democratic accountability during this period of the electoral cycle.

Within the context of the conventions that operate in Westminster parliamentary democracies, and relevantly to this Inquiry, the Territory maintains a robust legislative and administrative governance framework, including the *Electoral Act 1992*, *Financial Management Act 1996*, *Election Commitments Costing Act 2012*, *Public Sector Management Act 1994*, ACT Public Service Code of Conduct,<sup>3</sup> and the ACT Government Conflict of Interest Policy.<sup>4</sup> These legislative and policy frameworks collectively reinforce standards of transparency, accountability, and neutrality and form the basis for caretaker guidance in the Territory. The ACT Guidance<sup>5</sup> is regularly updated in line with contemporary governance guidance material reflecting evaluations from previous caretaker periods and any emerging guidance in other Westminster jurisdictions, and is republished prior to each Territory election.

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<sup>1</sup> Tiernan, A., & Menzies, J. (2014). *Caretaker conventions in Australasia: Minding the shop for government* (2nd ed.). ANU

<sup>2</sup> Twomey, A. (2018). *The veiled sceptre: Reserve powers of heads of state in Westminster systems*. Cambridge University Press.

<sup>3</sup> Public Sector Standards Commissioner. (2022). *ACT Public Sector Code of Conduct* (Policy No. 39/2022). Issued on May 20, 2022.

<sup>4</sup> ACT Government, Workforce Capability and Governance, CMTEDD. (2021). *Conflict of Interest Policy* (Policy No. 10/2021). Issued June 2021.

<sup>5</sup> ACT Government. (2024). *Guidance on Caretaker conventions 2024*.

## 1.2 Application of Caretaker Conventions

The ACT Government implements caretaker conventions in the context of a comprehensive legislative and administrative governance framework. This includes centralised oversight, risk management practices, and systematic post-election evaluations informing updates to the published guidance material. Collectively, these practices preserve public sector impartiality and responsible governance throughout electoral transitions.

The caretaker conventions, provided in the ACT Guidance (2024), apply to ministers, employees of ACT Public Service (the ACTPS) directorates and all other ACT Government agencies and entities. All ministers and public employees are expected to uphold the caretaker conventions, supported by the ACT Guidance, during the caretaker period.

In the Territory, the caretaker period is defined under the *Electoral Act 1992* as the time between the commencement of the pre-election period and the first sitting of the new Assembly. The Self-Government Act requires the Legislative Assembly to elect one of its members as Chief Minister on the first sitting day following the General Election. The Chief Minister then appoints ministers to form government, at which time the caretaker period ceases.

## 1.3 Other Relevant Matters During the Caretaker Period: Purpose and Timing – Pre-Election Budget Update (PEBU)

The *Financial Management Act 1996* (the FM Act) provides a statutory foundation for two fiscal mechanisms that are relevant leading up to a General Election in the Territory: the Budget Review and the Pre-Election Budget Update (PEBU).

The Budget Review, outlined under section 20A of the FM Act, is required annually by 15 February. This review delivers updated fiscal information about previously stated financial policy objectives and strategies. It includes recent financial statements, prior financial-year outcomes, revised forward estimates for the current and subsequent three fiscal years, and details the assessment of fiscal strategies as required by section 11A of the FM Act.

The PEBU, governed by sections 20C and 20D of the FM Act, provides pre-General Election reporting. The Under Treasurer is required to publish a fiscal update at least 30 days before polling day, outlining the Territory's current financial position. The content requirements of the PEBU are formally articulated in a Notifiable Instrument (in 2024, NI2024-521), which is publicly available via the ACT Legislation Register, making the PEBU accessible to all stakeholders.

A review of the timing of the PEBU in relation to the electoral cycle may present an opportunity for improved alignment with broader fiscal reporting. As recently highlighted by the Chief Minister (Hansard, 4 March 2025, p. P250306)<sup>6</sup>.

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<sup>6</sup> Hansard (ACT Legislative Assembly). (2025, March 4). ACT Legislative Assembly Official Proceedings.

## 2. Public Sector Impartiality and Confidence

The ACT Public Service maintains a strong commitment to impartiality, which is essential for preserving public confidence and trust during electoral periods and is explicitly provided for in the objects of the *Public Sector Management Act 1994 (the PSM Act)*. Section 5 of the PSM Act states the main objects of the PSM Act are to:

1. establish and maintain an apolitical public sector with clear values, clear standards of conduct and a best practice focus; and
2. establish and maintain a public service that assists the Executive to meet the needs of the community and serves the community on behalf of the Executive; and
3. promote and uphold the public sector values, standards of conduct and best practice focus.

Consistent with Westminster principle of responsible government, the ACT Government implements comprehensive measures ensuring public servants act with neutrality and integrity, whilst appropriately assisting the Executive, throughout caretaker periods

This approach is implemented through defined governance frameworks, which include the ACT Government General Election Guidance on Caretaker Conventions (2024), the ACT Public Service Code of Conduct, and the Cabinet Handbook<sup>7</sup>. These frameworks collectively provide explicit guidance and ethical standards to support neutrality among public employees during election periods, whilst appropriately assisting the Executive meet the needs of the community and serving the community on behalf of the Executive.

Directors-general and agency heads have explicit responsibility for implementing caretaker conventions within their respective agencies, ensuring adherence to guidelines, proactively managing governance risks, and embedding professional standards of neutrality. Centralised advice, coordinated through the Head of Service via the Chief Minister, Treasury and Economic Development Directorate (CMTEDD), supports compliance with the caretaker conventions.

Leading up to the 2024 caretaker period, CMTEDD implemented several proactive measures to support impartiality and accountability within the ACTPS. These included disseminating updated caretaker guidance (the ACT Guidance), conducting targeted senior executive briefings, issuing communications, and providing centralised advisory support to agencies. These initiatives supported application of caretaker protocols, significantly mitigating governance risks and supported administrative continuity.

The Territory's broader integrity framework, including oversight bodies such as the ACT Electoral Commission, further reinforce transparency and impartiality. These institutions work collaboratively with the ACTPS performing essential oversight roles, ensuring accountability and maintaining public trust, during electoral periods.

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<sup>7</sup> Chief Minister, Treasury and Economic Development Directorate. (2023). *ACT Cabinet Handbook*. Issued December 2023.

This comprehensive governance approach aligns with approaches outlined in public administration literature.<sup>8 9</sup> The literature outlines that public trust and confidence in governmental impartiality is best achieved through leadership, ethical frameworks, and organisational culture, rather than via prescriptive legislative mandates.

## **2.1 Ministerial Briefing During the Caretaker Period**

Ministers are expected to manage routine government business during caretaker periods, explicitly refraining from initiating major policy decisions, significant appointments, or any new commitments likely to bind an incoming government. These principles are clearly articulated in the ACT Guidance, ensuring public sector neutrality and protecting the autonomy of future administrations.

Consistent with established Westminster principles and best practices from other Australian jurisdictions, the ACT Guidance outlines the nature and scope of information that can be provided to ministers. Briefings during the caretaker period are factual and aligned with maintaining administrative continuity.

Members of the senior executive service oversight and support adherence to these caretaker guidelines. Specifically, directorate senior executives routinely review and approve briefing materials provided to Ministers during the caretaker period to ensure consistency with the ACT Guidance. This structured oversight aligns with widely recognised governance standards.<sup>10 11</sup>

## **2.2 Handling Urgent Briefings or Decisions During Caretaker Periods**

The ACT Government's management of urgent decisions when under caretaker arrangements is guided by the ACT Guidance. This guidance adopts a framework aligned with other jurisdictions, outlining the criteria for decision-making that is consistent with the observation of a caretaker period prior to an election in a Westminster democracy. Decisions that necessitate immediate action during caretaker periods are generally limited to genuine emergencies, urgent public safety matters, or significant unforeseen events.

During the caretaker period, the Cabinet typically does not convene. However, in the event of an emergency, Security and Emergency Cabinet meetings may be held as required. In such circumstances, the Cabinet takes care to avoid making significant decisions that could bind an incoming government or restrict its ability to act freely.

The effectiveness and necessity of this flexible approach was evident during the caretaker period leading up to the 2020 ACT General Election, conducted amid the COVID-19 pandemic. Throughout this unprecedented public health emergency, the ACT Government managed urgent public health decisions, including extending emergency health declarations, during the caretaker period. These decisions followed rigorous

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<sup>8</sup> O'Flynn, J. (2007). From new public management to public value: Paradigmatic change and managerial implications. *Australian Journal of Public Administration*, 66(3), 353–366.

<sup>9</sup> Tiernan, A., & Menzies, J. (2007). *Caretaker conventions in Australasia: Minding the shop for government*. ANU E-Press.

<sup>10</sup> Tiernan, A., & Menzies, J. (2014). *Op cit*.

<sup>11</sup> Twomey, A. (2018). *Op cit*.

procedures involving bipartisan consultation, joint briefings, and transparent public communication, thereby upholding caretaker conventions and reinforcing impartiality and procedural integrity.

These experiences demonstrate the adaptability of the ACT Government's caretaker governance frameworks. The literature supports this principles-based flexibility, highlighting the capacity of non-statutory caretaker frameworks to accommodate unforeseen challenges effectively without undermining accountability, neutrality, or public confidence.<sup>12 13 14</sup>

In typical non-emergency election years, deviations from established caretaker practices are rarely required.

### 2.3 Briefings for Non-Government Parties and Candidates

The provision of briefings to non-government parties, members, and candidates by the ACT Public Service during caretaker periods presents several governance challenges. The ACT Guidance emphasises the importance of maintaining neutrality and operational efficiency by prioritising routine administrative functions and avoiding activities that might compromise impartiality. In addition, the PSM Act provides that the ACTPS assists the Executive, not other members of the Assembly or candidates in elections.

The ACT Government identifies several critical risks associated with permitting such briefings during caretaker periods. These include increased:

**Administrative Burden:** Previous experience, notably during the 2020 caretaker period, saw significant administrative increase arising from organising and responding to briefing requests from multiple political entities.

**Compromise of Public Service Neutrality:** Engagements with political entities during election periods pose inherent risks of compromising perceived and actual neutrality of the ACTPS, noting that the ACTPS is established to assist the Executive.

**Risk of Unequal Access:** Briefings to non-government parties and candidates may inadvertently result in uneven or inconsistent information dissemination, potentially affecting fairness and electoral impartiality and is inappropriate given the ACTPS is established to assist the Executive.

**Operational Disruption:** Managing briefing requests during caretaker periods risks operational disruption, diverting resources from essential public service functions at a time when maintaining administrative stability and continuity is paramount. Historically during election periods, the ACT can be under caretaker arrangements upwards of 40 days.

Additionally, briefing would cause further ongoing pressure on resources. Again, it is important to note that the ACTPS is established to assist the Executive.

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<sup>12</sup> Tiernan, A., & Menzies, J. (2014). Op cit.

<sup>13</sup> Twomey, A. (2018). Op cit.

<sup>14</sup> Tiernan, A., & Menzies, J. (2007). Op cit.

Comparative analysis with other Australian jurisdictions<sup>15 16</sup> reinforces these concerns. Commonwealth and state guidelines similarly limit public sector briefings for opposition parties — or prohibit such briefings in the context of candidates — during caretaker periods. This approach effectively mitigates governance risks and preserves the operational effectiveness of public administration throughout electoral transitions. Providing briefings to candidates, members of the opposition and members of the cross bench is inconsistent with the ACTPS purpose of assisting the Executive branch of government and should only occur as outlined in the ACT Guidance.

## **2.4 Symmetry of Information During Post-Election Negotiations**

In the Territory, caretaker arrangements remain in effect until the formal election by the Legislative Assembly of a new Chief Minister, including throughout post-election negotiations. Due to the proportional Hare-Clark electoral system, the Territory often experiences multi-party Assemblies and extended negotiation periods following elections.

To support impartiality and transparency, the Territory's caretaker framework includes structured provisions under the *Election Commitments Costing Act 2012*. This Act outlines the statutory requirements for costing of election commitments. The complementary Guidelines for Costing Election Commitments 2024,<sup>17</sup> provide further procedural guidance for financial briefings prior to the caretaker period.

Consistent with established practices from previous ACT Election Commitment Costing periods and in accordance with the *Election Commitments Costing Act 2012*, ACT Treasury's engagement with ACT political parties in preparation for the 2024 General Election reflects the ACT Government's commitment to statutory obligations, procedural fairness and commitment to symmetry of information post-election.

### **ACT Government Consultation and Transparency Procedures**

In accordance with consultation processes, on 19 December 2023 a letter was emailed to each ACT political party leader, on behalf of the Under Treasurer, which included a copy of the Draft Guidelines for Costing Election Commitments 2024 (Draft Guidelines) and costing templates for consideration. This accompanied a request for any comments to be provided to Treasury by 19 February 2024.

- The Leader of the ACT Greens responded on 22 January 2024, advising that the party had reviewed the Draft Guidelines and accepted the proposed process for the 2024 Election.
- The Leader of the Liberal Party responded to the Deputy Under Treasurer on 6 March 2024, advising she had no comments on the Draft Guidelines.
- No response was received by the Labor Party.

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<sup>15</sup> Australian Government Department of the Prime Minister and Cabinet. (2024). *Guidance on Caretaker Conventions*.

<sup>16</sup> Department of Premier and Cabinet New South Wales. (2022). *Caretaker Conventions and Other Pre-election Practices*.

<sup>17</sup> ACT Treasury. (2024). *Guidelines for costing election commitments 2024*.

Following this consultation, the Guidelines for Costing Election Commitments 2024 were adopted, tabled by the Chief Minister on 16 May 2024, and were made publicly available on the ACT Election Commitment Costings 2024 website.

Letters were then provided via email to each ACT political party leader on behalf of the Under Treasurer which offered the opportunity to discuss the Election Commitment Costing process with Treasury officials on either 6 or 9 September 2024. A number of key documents were also provided to assist with the Election Commitment Costing process, including:

- Standard Costing Parameters 2024;
- Template – Request for costing an Election Commitment;
- Average Salary Costing Template; and
- The Guidelines.

For transparency purposes, all documents were also made publicly available on the website.

The offer to meet to discuss the election commitment costing processes was accepted by both the Labor Party and the ACT Greens with a confirmed date of 6 September 2024.

- Senior Treasury officials met separately with members of the Labor Party and the ACT Greens to discuss any queries regarding the Election Commitment Costing process. Subsequent to these meetings, the Deputy Under Treasurer emailed the Leader of the Labor Party and the Leader of the ACT Greens confirming the 2024 Standard Costing Parameters would be updated following the release of the 2024 Pre-Election Budget Update (PEBU).
- On 6 September, the Deputy Under Treasurer also emailed the Leader of the Liberal Party confirming the 2024 Standard Costing Parameters would be updated following the release of the PEBU and offered to meet on 9 September 2024 should the members of the Liberal Party wish to discuss the process. No briefing was held between Treasury and the Liberal Party.

In accordance with statutory requirements, the PEBU was released on 16 September 2024. Subsequent to this release, on 18 September 2024 a letter was emailed to each ACT political party leader on behalf of the Under Treasurer providing a copy of the updated Standard Costing Parameters 2024 which was then updated publicly on the website.

Other systematic processes related to symmetry of information operating in the 2024 caretaker period included the coordination of incoming government briefing by Policy and Cabinet Division within CMTEDD. Policy and Cabinet Division centrally coordinate the preparation and distribution of Incoming Government Briefs (IGBs) which are prepared by directorates and become available immediately following the election of the Chief Minister during the first sitting of the newly elected Legislative Assembly. The preparation and handling of IGBs is confidential, with centralised oversight

provided to support directorates to ensure adherence to caretaker principles. Oversight reduces risks related to perceptions of bias during government formation and transition periods and ensuring the apolitical nature of the ACTPS.

### 3. Post election review and update of Caretaker Guidance

The ACT Government maintains a structured and systematic approach to reviewing and updating as required the ACT Guidance. Following each general election, the ACTPS (coordinated by CMTEDD) undertakes an evaluation of the guidance's operational effectiveness. This evaluation involves consultation with stakeholders and examines operational and governance arrangements as well as a review of contemporaneous practice in other Westminster jurisdictions both in Australia and abroad.

In preparation for the next election cycle, updates and refinements commence approximately six months prior to the start of the caretaker period. The 2024 updates notably clarified guidance on official visits in the context of an expected visit from the King, informed by experiences during the 2020 caretaker period. This process also included a review of guidance provided in other Westminster jurisdictions to ensure any emerging trends or recommendations are considered for inclusion in guidance provided in the Territory.

These ongoing refinements reflect the ACT Government's commitment to maintaining the guidance's relevance, practicality, and responsiveness to evolving governance contexts.

#### 3.1 Comparative Analysis of Other Jurisdictions

Caretaker conventions in the Territory are closely aligned with principles adopted across other Australian jurisdictions.

While procedural details and operational guidelines differ slightly among jurisdictions, consistent overarching objectives include: safeguarding democratic legitimacy, preventing incoming governments from being bound by significant decisions of outgoing administrations, and maintaining public confidence in administrative integrity throughout electoral transitions.

A comparative overview of caretaker conventions in other Australian jurisdictions is provided at **Attachment B**.

#### 3.2 Additional literature

A selection of relevant literature provided at **Attachment C** outlines further research related to Westminster conventions, public sector impartiality and governance in proportional electoral systems. This material is intended to assist the Committee in considering the broader context in which caretaker conventions operate.

## Conclusion

The ACT Government reaffirms the vital role caretaker conventions play in preserving democratic legitimacy, institutional stability, and public sector impartiality. Grounded in Westminster principles and featuring guidance specifically tailored to accommodate the Territory's unicameral legislature and proportional Hare-Clark electoral system, these conventions have consistently demonstrated their effectiveness, most notably during complex electoral transitions such as the 2020 ACT General Election.

The ACT Government is strongly of the view that it is essential that the Territory retains the existing flexible, principles-based caretaker governance framework, underpinned by defined oversight mechanisms and regular administrative refinements to disseminated guidance material. This approach ensures ACT Guidance remains contemporary and responsive to evolving governance demands, effectively managing both routine electoral cycles and unforeseen emergencies.

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**AUSTRALIAN CAPITAL TERRITORY**

**2024 GENERAL ELECTION**

# **GUIDANCE ON CARETAKER CONVENTIONS**

## TABLE OF CONTENTS

|                                                                                                                                    |           |
|------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <u><a href="#">1. Introduction</a></u>                                                                                             | <u>0</u>  |
| <u><a href="#">2. The Caretaker Period</a></u>                                                                                     | <u>0</u>  |
| <u><a href="#">3. Operations of the Government</a></u>                                                                             | <u>1</u>  |
| <u><a href="#">3(a) Policy decisions</a></u>                                                                                       | <u>1</u>  |
| <u><a href="#">3(b) Cabinet meetings</a></u>                                                                                       | <u>1</u>  |
| <u><a href="#">3(c) Appointments</a></u>                                                                                           | <u>1</u>  |
| <u><a href="#">3(d) Contracts and undertakings</a></u>                                                                             | <u>2</u>  |
| <u><a href="#">3(e) Ministerial attendance at intergovernmental meetings</a></u>                                                   | <u>2</u>  |
| <u><a href="#">3(f) Requests by Ministers of directorates and agencies</a></u>                                                     | <u>3</u>  |
| <u><a href="#">3(g) Commencement of legislation</a></u>                                                                            | <u>3</u>  |
| <u><a href="#">3(h) Government boards and committees</a></u>                                                                       | <u>3</u>  |
| <u><a href="#">4. Operations of Directorates and Agencies</a></u>                                                                  | <u>4</u>  |
| <u><a href="#">4(a) Ministerial correspondence</a></u>                                                                             | <u>4</u>  |
| <u><a href="#">4(b) Cabinet documents</a></u>                                                                                      | <u>5</u>  |
| <u><a href="#">4(c) Pre-election budget update and policy costings</a></u>                                                         | <u>5</u>  |
| <u><a href="#">4(d) Incoming government briefs</a></u>                                                                             | <u>5</u>  |
| <u><a href="#">4(e) Directorate Liaison Officers</a></u>                                                                           | <u>5</u>  |
| <u><a href="#">4(f) Consultation with public servants by the opposition and recognised parties in the Legislative Assembly</a></u> | <u>6</u>  |
| <u><a href="#">4(g) Publications and advertising campaigns</a></u>                                                                 | <u>6</u>  |
| <u><a href="#">4(h) Government use of electronic communication</a></u>                                                             | <u>7</u>  |
| <u><a href="#">4(i) The use of government agency offices, facilities, or assets</a></u>                                            | <u>8</u>  |
| <u><a href="#">4(j) Approval of grants</a></u>                                                                                     | <u>9</u>  |
| <u><a href="#">4(k) Response to Parliamentary Committee reports</a></u>                                                            | <u>10</u> |
| <u><a href="#">4(l) Annual reports and State of the Service report</a></u>                                                         | <u>10</u> |
| <u><a href="#">4(m) Public sector ethical requirements</a></u>                                                                     | <u>10</u> |
| <u><a href="#">5. Further Information</a></u>                                                                                      | <u>10</u> |
| <u><a href="#">6. Amendments or Further Advice</a></u>                                                                             | <u>11</u> |
| <u><a href="#">Appendix 1</a></u>                                                                                                  | <u>12</u> |
| <u><a href="#">GUIDELINES FOR THE BEHAVIOUR OF PUBLIC EMPLOYEES WISHING TO PARTICIPATE ACTIVELY IN THE POLITICAL PROCESS</a></u>   | <u>12</u> |
| <u><a href="#">Purpose</a></u>                                                                                                     | <u>12</u> |
| <u><a href="#">Application</a></u>                                                                                                 | <u>12</u> |
| <u><a href="#">Principles</a></u>                                                                                                  | <u>12</u> |
| <u><a href="#">Government Boards and Committees</a></u>                                                                            | <u>16</u> |
| <u><a href="#">Legislative Reference</a></u>                                                                                       | <u>16</u> |

## 1. Introduction

Special operating arrangements apply in the period immediately before and after an election. This is known as the “caretaker period”.

During the caretaker period, the ongoing business of government service delivery and administration continues. However, successive Australian Capital Territory (ACT) Governments have followed a series of accepted practices, known as the “Caretaker Conventions”, which aim to ensure that their actions do not bind an incoming government and limit its freedom of action.

The Caretaker Conventions ensure that the government avoids:

- making major policy decisions that are likely to commit an incoming government;
- making significant appointments; and
- entering into major contracts or undertakings.

The Caretaker Conventions also prescribe arrangements that reinforce the apolitical nature of the ACT Public Service (ACTPS) by avoiding the use of Territory resources in a manner that advantages a particular political party. In so doing, they also aim to prevent controversies about the role of the public service distracting attention from the substantive issues in the election campaign.

The Caretaker Conventions and this guidance apply to ministers, employees of ACTPS directorates and all other ACT Government agencies and entities. All ministers and public employees are expected to uphold the Caretaker Conventions as set out in these guidelines.

Members of the Legislative Assembly in all their dealings with staff of the Assembly and members of the ACTPS should extend professional courtesy and respect and recognise the unique position of impartiality and the obligations of public service officials.

## 2. The Caretaker Period

In accordance with the provisions of Section 100(1) of the [Electoral Act 1992](#) (the Electoral Act), the ACT is scheduled to hold a general election for the Legislative Assembly on Saturday, 19 October 2024.

The ACT’s Caretaker Conventions apply from the beginning of the “**election period**” as defined by the Dictionary of the Electoral Act. The **election period**, in relation to an election, means the period:

- (a) beginning on the first day of the pre-election period; and
- (b) ending when the result of the election is declared under section 189.

The “**pre-election period**” is defined as the period of 37 days ending on the end of polling day for an election.

In these guidelines, the term caretaker period is used to describe the time between the commencement of the pre-election period and the first sitting of the new Assembly.

The *Australian Capital Territory (Self-Government) Act 1988* (Cth) requires the Legislative Assembly to elect one of its members as Chief Minister on the first sitting day

following a general election. The Chief Minister then appoints Ministers to form the Government.

**In 2024, the caretaker period begins at 12:00 am on 13 September 2024 and ends with the election of the Chief Minister on the first sitting day of the Legislative Assembly following the election.**

### **3. Operations of the Government**

The ordinary business of government service delivery and administration continues during the caretaker period. However, the Caretaker Conventions impact on a number of areas of government administration. In the first instance, officials should seek advice from their nominated official within their own directorate/agency if there are any queries about the impact of the Caretaker Conventions on an area of government administration.

#### **3(a) Policy decisions**

The Cabinet does not normally meet during the Caretaker period.

The Government should avoid making and implementing new major policy decisions likely to commit an incoming government or limit its freedom to act. What constitutes a major decision is a matter of judgement, but relevant considerations include the significance of the decision in terms of policy and resources, and whether the decision is a matter of contention in the election campaign.

The implementation of policy decisions made before the caretaker period comes into effect and ongoing service delivery efforts are not impacted by the restrictions. It is entirely appropriate that work continue on the implementation of initiatives announced and funded by the government of the day.

If circumstances require the Government to make a major policy decision during the caretaker period that would potentially commit an incoming government, this decision should be taken in consultation with the relevant opposition and cross bench spokesperson.

The Government may announce during the caretaker period new policy initiatives that it proposes to implement after the election, should the Government be returned.

#### **3(b) Cabinet meetings**

The Cabinet does not normally meet during the caretaker period. However, subject to an emergency, Security and Emergency Cabinet meetings will continue to meet as necessary during the caretaker period. The Cabinet should avoid making major decisions likely to commit an incoming government or limit its freedom to act.

#### **3(c) Appointments**

The Government should generally avoid making appointments (e.g. to a statutory office or a board) during the Caretaker period. This includes appointments that will commence during the Caretaker period or after election day. Any new appointments to commence after the Caretaker period should be decided by the incoming government.

The Government and ministers should:

- (i) if possible, defer any appointment until after the Caretaker period (boards and committees should continue to operate under quorum if possible); or
- (ii) if an appointment needs to be made for reasons of continuity, an appointment could be made for a short term only (up to six months) to carry through until after the Caretaker period or an acting appointment could be made; or
- (iii) if a short-term appointment is not practicable, an appointment could be made for the full term, following consultation with the Chief Minister and relevant opposition and cross bench spokesperson.

### **3(d) *Contracts and undertakings***

The Government should avoid entering into major contracts or other undertakings during the caretaker period, including tenders and intergovernmental negotiations and agreements, which could bind an incoming government or would be considered politically contentious. When considering whether a contract or undertaking qualifies as major, relevant considerations include:

- the dollar value of the commitment;
- whether the commitment involves a routine matter of administration or rather implements or entrenches a policy or program that is politically contentious;
- whether the commitment requires ministerial approval;
- the duration of the commitment; and
- the content and extent of other financial and non-financial obligations.

The Government may enter into contracts that relate to routine matters of administration, contracts that the Government has committed to and announced before the caretaker period, subsidiary contracts or contracts that would result in a breach if signing was deferred. A routine matter may include tenders or contracts that pertain to services that an incoming government would ordinarily be expected to continue to provide, or service or operations that would be expected to be delivered to maintain the operations of the Territory.

If a major contract or undertaking cannot be deferred until after the caretaker period, the Government should seek the agreement of the relevant opposition and cross bench spokesperson before entering into the contract or undertaking. Alternatively, directorates and agencies should explain the implications of the election to the contractor and ensure that contracts include clauses providing for termination in the event of an incoming government not wishing to proceed.

Similarly, in the case of tenders, directorates and agencies should warn potential tenderers about the implications of the election and the possibility that the tender process might not be completed.

### **3(e) *Ministerial attendance at intergovernmental meetings***

During the caretaker period ministers do not generally represent the ACT in intergovernmental meetings. Where possible, postponement of such meetings should be requested until after the election. If postponement is not possible, senior officials should

attend the meeting in an observer capacity to ensure that the incoming government is fully informed of progress. It is appropriate for officials to brief Ministers on the matters discussed and outcomes reached at such meetings during the caretaker period.

Prior to the commencement of the caretaker period the Head of Service will write to jurisdictional counterparts advising them of the timing of the election and seeking their cooperation with intergovernmental arrangements during this period.

### **3(f) Requests by Ministers of directorates and agencies**

Ministers may seek factual information and information relating to day-to-day business of government from senior executive officials during the caretaker period. It is inappropriate for officials to be involved in the incorporation of this material into information for party political purposes.

Directorates and agencies should generally not be asked to provide policy advice during the caretaker period. There might, however, be circumstances where urgent issues arise that clearly require advice to be given to ministers in order to allow responsible agency administration or to enable the government to protect the public interest.

To avoid controversy and claimed breaches of the apolitical and impartial nature of the ACTPS, it may be appropriate to also brief the opposition and crossbench or to decline a request for assistance if it requires the use of significant resources. If in doubt, advice should be sought from relevant officials within the directorates.

During the election period directorates can continue to work internally on proposals and policy development, particularly where a proposal or policy is not controversial and is likely to proceed irrespective of the election outcome.

### **3(g) Commencement of legislation**

Legislation commences in accordance with provisions in the [Legislation Act 2001](#). Most legislation commences automatically following notification in the Legislation Register. Generally, this occurs within 14 days after being passed in the Legislative Assembly.

Where legislation requires a date to be fixed by a Minister:

- (i) a commencement date should not be fixed on a date falling within the caretaker period unless the legislation is of a routine or non-contentious nature; and
- (ii) a commencement date should not be fixed on a date falling after the end of the caretaker period and should be a matter addressed by the new government if such a date is necessary.

The *Legislation Act 2001* also provides for the automatic commencement of legislation six months after its notification date if not commenced sooner. Where legislation is to be commenced by notice given by a minister, such notice should be given prior to 13 September 2024.

### **3(h) Government boards and committees**

Government boards and committees may continue to meet if they are implementing decisions taken prior to 13 September 2024 and do not involve new, major, or politically

sensitive policy decisions that would bind an incoming government. This ensures continued delivery of services to the people of the ACT through the caretaker period. Members of boards and committees should familiarise themselves with the Guidance on Caretaker Conventions 2024 and their conflict of interest obligations.

## **4. Operations of Directorates and Agencies**

During the caretaker period, the ongoing obligation on directorates and agencies to act in an apolitical manner in keeping with the [Public Sector Management Act 1994 \(PSM Act\)](#) takes on added significance.

### **4(a) Ministerial correspondence**

Once the Caretaker period commences, ministers will usually avoid signing any non-essential correspondence. When responding to essential correspondence, Ministers, directorates, and agencies should follow existing processes.

Essential correspondence may include correspondence from Commonwealth or State and Territory Ministers, Members of the Legislative Assembly, and declared or known candidates and correspondence which is necessary for day-to-day government service delivery and administration.

Some correspondence that would ordinarily be signed by ministers may need to be prepared for signature by the relevant director-general, rather than be left to accumulate. Judgement is necessary in determining whether correspondence should be signed by the Minister or the Director-General.

All other correspondence may be attended to by directorates and agencies, and the general principle is that correspondence should be answered rather than left to accumulate.

When preparing replies, for either the minister or director-general, care should be taken to protect the public service from any perception of partisanship. Replies should not assume that the government will or will not be returned to office. References to any post-election matters should refer in neutral terms to the “incoming Government” and correspondence should not commit the Government to post-election action or imply that policy will continue if the current ACT Government is re-elected. However, it is generally insufficient to say only that the matter is one for the incoming government.

Please note that responses to all inquiries from declared or known candidates prepared for signature by the relevant Minister should be the same as a response to any inquiry from a member of the public (i.e., candidates do not have any greater rights to information than a member of the public). However, as it would be expected that such a response will be used within a political context during the election campaign, it is appropriate that the relevant Minister is briefed on the request and response.

Correspondence on current government programs and services addressed to the Chief Minister, but falling outside his portfolio, will be referred to the relevant directorate for response by the Director-General.

#### **4(b) Cabinet documents**

Before the date of the election, directors-general and heads of agencies must ensure that all Cabinet documents, including electronic documents, are accounted for, and securely stored so that if there is a change of government, the documents can be returned promptly to the Cabinet Office for destruction in accordance with the provisions of the *Cabinet Handbook*. Alternatively, documents may be returned to Cabinet Liaison Officers and destroyed according to the guidelines given in the *Cabinet Handbook*, which can be found at <https://www.cmtedd.act.gov.au/policystrategic/cabinet/cabinet-office>

#### **4(c) Pre-election budget update and policy costings**

The Under Treasurer is required under Section 20C(1) of the [Financial Management Act 1996](#), to prepare a Pre-election Budget Update and provide it to the Parliamentary Counsel for notification at least 30 days before the polling day of an ordinary election.

The purpose of the Pre-election Budget Update is to give the electorate an accurate picture of the Territory's financial position before the election. The budget update should support an assessment of the government's financial performance against its financial policy objectives and strategies.

The budget update must include budget estimates for the Territory, general government sector and public trading enterprise sector for the financial year in which the election is to be held and for each of the next three financial years.

The [Election Commitments Costing Act 2012](#) prescribes a process for the leader of a registered party with one or more Members of the Legislative Assembly (MLA) or an MLA who is not a member of a registered party to request the costing of publicly announced election commitments (section 5(1)). The costing period extends from one week after the last Assembly sitting day prior to the election and ends on the first Assembly sitting day after the election, which overlaps the Caretaker period. This process allows for political party leaders and independent MLAs to formally request costings of their election commitments to be undertaken by public officials (Treasury, with input from relevant directorates) under the Act and does not otherwise affect the operation of the Caretaker Conventions or these Guidelines. The *Guidelines for Costings of Election Commitments* are available at: <https://www.treasury.act.gov.au/electioncostings>.

#### **4(d) Incoming government briefs**

The Chief Minister, Treasury and Economic Development Directorate (CMTEDD) is responsible for coordinating incoming government briefs in the lead-up to the election. One set of briefing papers will be developed in preparation for a returned government, and a second set is developed for a newly elected government taking office. Separate guidance on this process will be issued by the Head of Service in the lead up to the election.

#### **4(e) Directorate Liaison Officers**

Directorate Liaison Officers (DLOs) are ACTPS employees rather than [Legislative Assembly Members \(Staff\) Act 1989](#) employees. Generally, DLOs are provided by directorates to facilitate liaison between Ministers' offices and directorates. The requirements for that work should be reviewed at the commencement of the caretaker period. If there is ongoing

work of a liaison nature during the caretaker period, DLOs may continue to provide this support. DLOs should avoid assisting ministers in any way that could create a perception that they are being used for party political purposes. It is recommended that DLOs who continue to provide liaison assistance during the caretaker period work from a Government work location or from home rather than the Minister's office. DLOs may continue to receive the DLO allowance through the caretaker period.

#### **4(f) Consultation with public servants by the opposition and recognised parties in the Legislative Assembly**

It is accepted custom and practice in the Territory that MLAs and/or their staff are to contact the appropriate minister or minister's office whenever seeking information on particular issues and not directly approach public officials or directorate/agencies.

In the pre-election period, the following practices apply.

- Any consultation that non-government members wish to undertake with agency officials is to be initiated through the relevant Minister's office. The relevant Minister is to notify the Chief Minister of any request and whether it has been granted. Agency officials should not initiate any consultation.
- The subject matter of discussions should generally focus on the machinery of government and administration. Agency officials may comment on the practicalities of implementing and administering the policies that have been proposed by the relevant member. Agency officials are not to discuss government policies or offer opinions on matters of a party political nature, including merits of any party's policy.
- The detailed substance of the discussion is to be kept confidential between the agency officials and the member(s) with whom they meet. Ministers are, however, entitled to be informed that the discussions have taken place and to seek assurances that the discussions were kept within the agreed purposes.

#### **4(g) Publications and advertising campaigns**

During the caretaker period, directorates must continue to adhere to the provisions of the [Government Agencies \(Campaign Advertising\) Act 2009](#). Directorate and agency publications and advertising material should proceed only if they constitute a normal operational requirement of ongoing and routine service delivery (e.g., public health announcements or road closure notices). In such cases, publications or advertising material should not include photographs and/or statements of a minister.

Prior to the beginning of the caretaker period, individual directorates should review arrangements for the distribution of all advertising material, including any internal or external newsletters, content published via directorate social media channels or proactive pitches to media. Directorates should avoid active distribution of material during the caretaker period if it promotes government policies or emphasises the achievements of the government or a minister. Any such campaigns in market before the caretaker period must cease when the caretaker period commences.

There are strict requirements governing the publication of "electoral matter". Electoral matter includes any material in printed or electronic form, that is intended or likely to affect

voting in an election. This includes all printed publications, websites, signage, emails as well as social media posts and videos. In the case of government agency publications, these do not require authorisation as electoral matter if they include as a minimum on the cover and/or title page the agency name and the ACT Government logo or the following requirements:

- the name of the directorate or agency publishing the material;
- the Canberra Coat of Arms or the City of Canberra; and
- the words 'ACT Government'.

As the ACT Government logo contains two of the three requirements, it is important to ensure that the ACT Government logo and the name of the directorate or agency appears on the publication to meet all of the requirements. These items do NOT need to appear together. Some examples of documents and digital communications items that comply with this requirement can be found [here](#).

Because the definition of electoral matter is quite broad and the publication requirements above are not particularly difficult, the ACT Government Solicitor has recommended that every ACT Government printed, and digital publication complies with the requirements.

#### Election signage

The use of temporary signs to promote candidates and parties is subject to compliance with the Public Unleased Land (Moveable Signs) Code of Practice 2019 and section 292 of the *Electoral Act 1992* (Dissemination of unauthorised electoral matter). Non-compliant signs will be removed by authorised officers and impounded.

Further guidance can be obtained from the ACT Electoral Commissioner or the [Electoral Commission website](#).

#### **4(h) Government use of electronic communication**

##### Publishing on Directorate/Agency website and other digital channels.

Directorates and agencies should ensure all media releases, as well as social and digital content and interactions with audiences on social media channels during the caretaker period are:

- matters of public interest;
- relate only to the day-to-day business of the directorate or agency;
- cannot reasonably be construed as being for political purposes; and
- contain only factual information.

Agency websites may retain material placed on the website before the commencement of the caretaker period. However, directorates and agencies should review content to ensure that this material cannot be interpreted as promoting a government policy. Ministerial messages should be removed.

Directorates and agencies should only add material (including media releases) to their websites during the caretaker period that is:

- in the public interest;

- of a routine, operational and apolitical nature;
- purely factual; and
- is about existing policies and programs.

Media releases with overtly partisan content, announcing new policy or criticising non-government parties must not be posted to government websites during the caretaker period.

If agency websites contain links to websites outside the act.gov.au domain, directorates and agencies should consider the need for clear exit messages.

#### Electoral Act requirements for Directorate/Agency websites.

In order to avoid the need for authorisation as electoral matter, agency websites must conform to the requirements in the *Electoral Act 1992* for government publications, as outlined above under “Publications and Advertising Campaigns”.

Electronic bulletin boards and email systems provided by directorates and agencies must not be used to publish or distribute political material. Material from political parties and “how to vote” material must not be displayed.

Any interactive functions of websites within the act.gov.au domain – such as discussion groups, chat rooms or blogs that allow unmoderated comment or debate – should be moderated during the caretaker period. Words along the following lines might be appropriate:

“In the period preceding an election for the ACT Legislative Assembly, the ACT Government assumes a caretaker role. It is important during that time that ACT Government resources are not used to communicate political material. As this website is hosted by the [Directorate/Agency], the site will be moderated from the beginning of the caretaker period on 13 September 2024 until after the election to ensure that political material is not placed on the site.”

From 13 September 2024, all directorate and agency websites must contain the following text in the header of their home page:

“On 13 September 2024, the ACT Government assumed a caretaker role, with an election to be held 19 October 2024. Information on this website will be published in accordance with the Guidance on Caretaker Conventions until after the election and conclusion of the caretaker period.”

#### **4(i) The use of government agency offices, facilities, or assets**

##### For announcements/media conferences

There may be occasions where agency premises, facilities (such as schools or hospitals) or assets (such as buses) can be appropriately used during the caretaker period by political parties for public events, such as media conferences or where they are the obvious place for a function. For example, this may include unveiling an education policy at a public school or a transport policy in front of a bus.

Reasonable assistance may be provided by a directorate or agency to facilitate such events to the extent they ensure the safe operation of such an event noting that the operations of the workplace or service should not be impacted. This must be applied even-handedly to Government and non-government parties. During the Caretaker period requests to access ACT Government premises, facilities or assets should be made to, and approved by, the Director-General of the relevant directorate and follow usual processes for such requests.

#### Party-political publications or electoral materials

ACT Government premises or assets may be used as the backdrop for political advertising or policy material by government and non-government parties (e.g., photography or filming), noting that appropriate permission needs to be obtained from any individual that appears in the material prior to publication. It is not appropriate for official resources to be utilised and the operations of the site should not be impacted.

It is important that the impartiality of ACT public servants is not compromised through their appearance in party political material. With this in mind, it may be more appropriate for actors to be used in place of public officials in political advertising or electoral campaigns.

#### Official functions and other visits

In the case of official functions (e.g., the opening of a new building or facility) involving the use of directorate or agency resources, relevant non-government spokespersons should be given the opportunity to be present.

Where a Minister is invited to attend an official function during the Caretaker period, and is unable to attend, it is appropriate that another minister be invited to attend. It is not appropriate that non-minister Members of the Legislative Assembly, or political candidates, replace an invited Minister to attend an official function.

Ministerial visits to directorates and agencies for consultations should relate to the conduct of routine government business in accordance with the Caretaker Conventions. Where candidates other than the Chief Minister or Ministers seek to visit premises or facilities, directorates and agencies should as far as possible be even-handed in their responses and assistance to the current ACT Government and opposition. During the caretaker period requests to access ACT Government premises should be made to, and approved by, the Director-General of the relevant directorate and follow usual processes for such requests.

It is not appropriate that the use of agency premises extend to such activities as engaging public servants in political dialogue or using public servants for logistical support for political functions. Nor should the use of premises unreasonably disrupt the normal operations of the offices or places of work concerned.

#### **4(j) Approval of grants**

During the caretaker period, commitments must not be made in respect of grant applications either received during the period or lodged before commencement of the period but awaiting decision.

The payment of grants approved prior to the caretaker period can proceed but should be forwarded by the directorate or agency rather than by a Minister or another member of the government.

Directorates and agencies should advise potential applicants at the beginning of a grants process or as soon as practicable by 30 August 2024 about the implications of the election and the possibility that the grant application might not proceed by using a disclaimer message.

#### **4(k) *Response to Parliamentary Committee reports***

Responses to outstanding parliamentary committee reports should be taken up with the incoming government. Directorates and agencies may, however, undertake appropriate preparatory work and consultation at the agency level so that they are in a position to provide early advice to the incoming government.

#### **4(l) *Annual reports and State of the Service report***

The [Annual Reports \(Government Agencies\) Act 2004](#) contains specific provisions about tabling and presenting annual reports and the State of the Service report in an election year.

The 2023-24 reporting period coincides with the caretaker period, which commences on 13 September 2024 and ends when the result of the election is declared. Following an election, annual reports are tabled on second sitting day of the new Assembly.

The Assembly Coordination team, within Policy and Cabinet Division, CMTEDD will advise reporting entities of the embargo dates once the dates for the sitting periods of the new Assembly have been agreed.

Annual reports must **not** be published on a reporting entity's website until after annual reports have been tabled in the Legislative Assembly.

Refer to [Annual Reports \(Government Agencies\) Directions 2024](#) for guidance.

For further information, contact the CMTEDD Policy and Cabinet Division (ph. 6205 0543).

#### **4(m) *Public sector ethical requirements***

The general obligations of public employees are prescribed in section 9 of the *PSM Act*. During the caretaker period, the usual obligations on officials continue to apply, but the levels of scrutiny are likely to be higher.

Appendix 1 provides advice on appropriate standards of conduct for public sector officials seeking to actively participate in the political process, including guidance on how to manage real or perceived conflict of interests and the public perception of impartiality in public sector employees when participating in the political process.

## **5. Further Information**

Where ministers require further clarification of these guidelines, they should seek advice from the Chief Minister.

Where directors-general require further clarification of these guidelines, they should seek advice from the Head of Service or the Deputy Director-General, Office of Industrial Relations, and Workforce Strategy. Individual directorates should establish internal processes for staff seeking further information on the Caretaker Conventions.

General inquiries regarding the caretaker period arrangements and their application can be directed to:

Deputy Director-General, Office of Industrial Relations and Workforce Strategy, Chief Minister, Treasury, and Economic Development Directorate

[ACTPSElectionQueries@act.gov.au](mailto:ACTPSElectionQueries@act.gov.au)

## **6. Amendments or Further Advice**

The Guidance on Caretaker Conventions may be amended in the lead up or during the caretaker period to clarify requirements in this document.

## Appendix 1

### GUIDELINES FOR THE BEHAVIOUR OF PUBLIC EMPLOYEES WISHING TO PARTICIPATE ACTIVELY IN THE POLITICAL PROCESS

#### Purpose

1. These guidelines will assist ACT public sector agencies, public employees and members of government boards and committees in respect of their obligation to act impartially, particularly during the ACT pre-election (caretaker) period. These guidelines are applicable to all ACT public employees including statutory office holders.

#### Application

2. This guidance applies to all public employees including executives and board and committee members.

#### Principles

3. Public employees, as members of the community, have a right to political expression and participation. At the same time, they serve the government of the day, and the community must have public confidence in the integrity, impartiality, and political neutrality of the ACTPS.

#### Public employees

4. A 'public employee' is defined in the *Legislation Act 2001* as:
  - (a) a public servant; or
  - (b) a public sector member.
  - (c) a person employed by a Territory instrumentality.

#### Conflicts of interest

5. Public employees are able to join a political party, engage in political debate or in non-political community activity except where these activities impact adversely on their ability to perform their official duties and/or place them in conflict with the general obligations of public employees in section 9 of the *PSM Act*.
6. The [ACT Public Service Code of Conduct 2022](#) specifically requires that public servants need to be aware of any perceived or real conflicts of interest.
7. An apparent conflict of interest may exist if a public employee's private interests appear, on reasonable grounds, to influence the performance of their official duties – even though there is no actual influence.
8. While all elements of section 9 of the *PSM Act* apply, the particular focus in the context of an upcoming election is whether political involvement places the public employee at risk of an actual or potential conflict of interest. Importantly, section 9(b) of the *PSM Act* requires a public employee to act impartially. Under the *PSM Act*, public employees must disclose and deal with any conflict of interest, either real or perceived. The conflict must be resolved having regard to the primary importance of the public duty of public employees. Active campaigning (including for another person or a party) and particularly

nomination as a candidate would usually raise a real or perceived conflict for most public employees.

#### Resignation and campaign leave for election candidates

9. One option for a public employee running as a candidate is to resign from their position. This is to avoid conflict of interest and mitigate any suggestion that they have failed to fulfil their duty as a public employee. Refer to paragraph 24 below for information on resignation and re-appointment provisions.
10. Campaign leave, or the use of recreation or long service leave entitlements, may be granted to election candidates who are not executives or statutory office holders.
11. The Head of Service (or delegate) may grant Campaign Leave, which is without pay, under the provisions of the relevant enterprise agreement to enable an officer or employee who is employed under the *PSM Act* to campaign for election (excluding executives). The maximum period of leave that may be granted for this purpose is three months. The period of leave does not count as service for any purpose.

#### Role of manager

12. Where a manager is concerned that there may be, or may appear to be, a conflict between an employee's duties and their involvement in political activities, the issue should be discussed with the employee. Managers are responsible for resolving any issues about the status of public employees who are taking a politically active role in the election, in particular those public employees who are election candidates.
13. The circumstances of each situation, such as the seniority of the position held by the candidate, the prominence of their government job in the community, their duties and capacity to influence government decision-making, must be considered by the relevant manager. Importantly, the manager should consider whether:
  - the conflict or perceived conflict impairs the public employee's ability to exercise impartial decision making or maintain public confidence in decision making;
  - the campaign involves improper use of information obtained through official duties or is unauthorised public comment; and
  - the campaign involves the use of any official facilities, including the candidate's time during work hours.
14. Where a conflict is identified, the manager must ensure that the public employee either:
  - ceases involvement in the conflicting interest or activity – such as, political campaigning or other political activity; or
  - withdraws from the specific conflicting work interest, activity or task and takes action to separate themselves from the relevant work area or duty.
15. In many cases the only way that a real or perceived conflict can be resolved for an election candidate is for the public employee to undertake other duties, take leave or resign. There are special re-employment and re-appointment powers in respect of unsuccessful election candidates who are employed under the *PSM Act* who resign to contest the election (refer to paragraph 24 below).

16. A public employee who wishes to campaign on behalf of a candidate or a political party may apply for leave. Approved leave will to some extent address the issue of impartiality as it will demonstrate that the public employee has taken some steps to separate political activity from their public service duties, particularly during the pre-election period.
17. A public employee who wishes to contest the election or campaign on behalf of a candidate or political party should submit a formal application for approval under the [Second Jobs and Volunteering Policy](#). This will enable a comprehensive assessment of potential conflicts and appropriate remedial action to be taken.

#### Executives and full-time statutory office holders

18. Executives and full-time statutory office holders are senior officials who hold important positions in government employment and the public sector and in the community . Executives and full-time statutory office holders have a significant capacity to influence government and ministerial decision-making. For these public employees who are, or are intending to be, election candidates, there is no other appropriate course than to resign. Executives are able to seek re-appointment if they are unsuccessful candidates at the election (see paragraph 24).
19. An executive or full-time statutory office holder should carefully consider whether it would be appropriate to become involved in political campaigning for another person or a party. In such circumstances the use of leave may not be a satisfactory resolution to the apparent conflict given the principles of impartiality and political neutrality that are essential elements of an executive's relationship with the government.
20. Executives and statutory office holders should take the opportunity to update their Declarations of Private Interests if they intend to campaign on behalf of a candidate.

#### Candidates

21. Subject to other requirements of public employees set out above, a public employee may be a candidate for election to the Legislative Assembly. However, sections 103 and 104 of the *Electoral Act 1992* provide that a person is not qualified to take a seat if they hold public office or employment.
22. Candidates for election to the Assembly are provided with information by the ACT Electoral Commission. This includes advice that it is necessary for public employees to resign under the *Electoral Act 1992* before the official declaration of results if they have been successfully elected after the count of votes. The Electoral Commissioner suggests that candidates seek their own advice on whether resignation is necessary in their particular case and the appropriate time to resign.
23. Public employees seeking to contest elections other than those for the ACT Legislative Assembly should investigate whether similar restrictions exist in the relevant jurisdiction. In particular, candidates for the Federal election must resign before they are nominated due to constitutional eligibility requirements.
24. Public employees employed under the *PSM Act* who resign to contest an election and are not elected, may be re-employed in, or re-appointed to the ACT Public Service under sections 131 for SES members, section 136 for officers and section 139 of the *PSM Act*. To be re-employed or re-appointed, the former public

employee must have resigned no earlier than six months before nominations for the election closed (any resignation for these purposes must occur on or after 24 March 2024), been an unsuccessful candidate and applied for re-employment or re-appointment no later than two months after the election result has been declared.

#### Public comment and disclosure of official information

25. Public employees may participate in a private capacity in public discussions and debates about community issues. However, public employees have a duty to consider whether personal comments and statements could:

- be mistaken for an official comment;
- involve the use of official information not publicly available;
- constitute a conflict of interest; or
- undermine public confidence in the employee's ability, or that of their agency, to carry out official functions fairly and impartially.

26. Disclosing official information may result in disciplinary action under the *PSM Act*. Public employees should also be aware that disclosure or misuse of official information may constitute 'corrupt conduct' under the [Integrity Commission Act 2018](#) and potentially of the [Crimes Act 1900 \(ACT\)](#). Under section 9 of the *PSM Act*, a public employee must not disclose information obtained during the course of their duties unless they:

- have the proper authority to do so in the course of their duties;
- are required to do so by law; or
- are giving evidence in court.

#### Fund raising and canvassing

27. Where a public employee chooses to become involved in campaigning for candidates for political office (for example, by handing out how-to-vote information or other canvassing for votes) then they should avoid giving any impression that such activities are undertaken other than in a private capacity. They should not, for example, wear an ACT Public Service uniform or display work related material.

#### Wearing of party political badges, or other display of political material

28. It is generally not appropriate to display political badges or other material at work. Public employees should be aware of their responsibility to contribute to a harmonious working environment and the display of political material while on duty or at work has the potential to disrupt those relationships and undermine public confidence in public service impartiality.

29. Where a public employee's duties involve public contact, the displaying of political material at work is inappropriate as this is likely to create the impression of official endorsement of the political material or, in some circumstances, create doubt as to whether certain matters are being dealt with in a politically neutral manner.

#### Use of official facilities and equipment

30. Public employees must not use official facilities for promotion of any political party. The use of official facilities includes use of meeting rooms, the use of government telephones, facsimile machines, e-mail, computers, and photocopiers. Any

electioneering activity or other political activity that involves expense to a directorate or agency is likely to constitute a breach of section 9 of the *PSM Act*.

## **Government Boards and Committees**

### Conflicts of interest

31. Members of boards and committees should provide an undertaking that they are not subject to a conflict between their personal or financial interests and those of the board or committee. In these circumstances, the member undertakes to advise the chairperson or the minister immediately if a real or perceived conflict of interest occurs during the membership. Pre-election political activity by a board member may create a conflict of interest. In such circumstances it would generally be expected that the member either resign or stand down for the duration of the election campaign.

### Candidates

32. Refer to paragraphs 22 and 23 above as similar arrangements apply for board and committee members. Sections 103 and 104 of the *Electoral Act 1992* provide that a person is not qualified to take a seat in the Assembly if he or she holds a remunerated statutory office or appointment or is otherwise employed by a government or a government body. Each member must seek their own advice about whether their appointment falls within this provision.

## **Legislative Reference**

[\*Electoral Act 1992\*](#)

[\*Public Sector Management Act 1994\*](#)

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## Attachment B – Comparative Overview of Australian Caretaker Conventions

This table provides an overview of guidance and guidelines on caretaker conventions across all Australian jurisdictions.

| Jurisdiction                 | Caretaker Conventions                                                                                                    | Issuing Authority                                           |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|
| Australian Capital Territory | <a href="#">ACT 2024 General Election Guidance on Caretaker Conventions</a>                                              | Chief Minister, Treasury & Economic Development Directorate |
| Commonwealth of Australia    | <a href="#">Guidance on Caretaker Conventions 2024</a>                                                                   | Dept. of the Prime Minister and Cabinet                     |
| New South Wales              | <a href="#">Guidance Note Caretaker Conventions 2023 State Election</a>                                                  | Dept. of Premier & Cabinet NSW                              |
| Victoria                     | <a href="#">Guidelines on the Caretaker Conventions 2022</a>                                                             | Dept. of Premier & Cabinet VIC                              |
| Queensland                   | <a href="#">2024 State General Election Guidelines on the Caretaker Conventions</a>                                      | Dept. of Premier & Cabinet QLD                              |
| Western Australia            | <a href="#">2025 Caretaker Conventions: Guidelines applying in Western Australia</a>                                     | Dept. of Premier & Cabinet WA                               |
| South Australia              | <a href="#">Guide to Caretaker Conventions and Pre-election Practices 2021</a>                                           | Dept. of Premier & Cabinet SA                               |
| Tasmania                     | <a href="#">Guidelines on the Caretaker Conventions and the Operations of the Government During the Caretaker Period</a> | Dept. of Premier & Cabinet TAS                              |
| Northern Territory           | <a href="#">Public sector employees and elections</a>                                                                    | Office of the Commissioner for Public Employment            |

### Attachment C – Recommended Literature for Select Committee Review

1. Blore, K. (2024). The first 'caretaker' government. *Australasian Parliamentary Review*, 39(2), 35–55. [https://www.aspg.org.au/wp-content/uploads/2024/11/The\\_First\\_Caretaker\\_Government\\_39-2.pdf](https://www.aspg.org.au/wp-content/uploads/2024/11/The_First_Caretaker_Government_39-2.pdf)

The first 'caretaker' government," traces the historical origins and evolution of the caretaker convention, emphasising its crucial role in ensuring governmental accountability during transitional periods. The article offers an analysis of the convention's development from the late 19th century to the present day.

2. Rhodes, R. A. W., Wanna, J., & Weller, P. (Eds.). (2009). *Comparing Westminster*. Oxford University Press.  
This book explores the Westminster systems of government across Australia, Britain, Canada, New Zealand, and South Africa. The book examines key features such as centralisation in cabinet government, ministerial responsibility, and the role of a non-partisan public service.
3. Tiernan, A., & Menzies, J. (2007). *Caretaker conventions in Australasia: Minding the shop for government*. ANU E-Press. Retrieved from <http://library.oapen.org/handle/20.500.12657/33802>  
The 2007 first edition of "Caretaker Conventions in Australasia: Comparative Perspectives" provides a comprehensive analysis of caretaker conventions across various Australasian jurisdictions. The book explores the origins, application, and significance of caretaker conventions in ensuring responsible government during election periods. It highlights the differences and similarities in how caretaker conventions were observed in Australia and New Zealand in mid-2000, offering insights into their impact on public administration and governance at that time.
4. Tiernan, A., & Menzies, J. (2014). *Caretaker conventions in Australasia: Minding the shop for government* (2nd ed.). ANU Press. <https://press.anu.edu.au/publications/series/anzsog/caretaker-conventions-australasia>  
The second edition of "Caretaker Conventions in Australasia: Minding the Shop for Government" provides an updated and comprehensive analysis of caretaker conventions in Australasian jurisdictions. This edition expands on the first by including recent trends, and new case studies, particularly from the federal elections. It also addresses the complexities of government formation post-election and the management of caretaker conventions during this period.
5. Twomey, A. (2018). *The veiled sceptre: Reserve powers of heads of state in Westminster systems*. Cambridge University Press.  
Chapter six outlines the constitutional origins of caretaker conventions, responsible government and principle of restraint.