



Terms of Reference

Inquiry into Caretaker Conventions

At its meeting on Wednesday, 5 March 2025, the Assembly passed the following resolution:

That:

- (1) this Assembly notes that:
 - (a) sections 20C and 20D of the *Financial Management Act 1996*, which outlines the purpose and contents of the pre-election budget update, and specifically subsection 20D(1)(b) which states that “the purpose of a pre-election budget update for an election is...to give the electorate an accurate picture of the Territory’s financial position before the election”;
 - (b) sections 20C and 20D serve to ensure that there is a symmetry of information regarding the state of the ACT Government’s financial circumstances between the Cabinet, other members of the Government, other non-government Members of the Assembly, candidates for election, and the general public, during an election campaign and any post-election parliamentary negotiations;
 - (c) this is one of the legislated principles that underpins the Caretaker Conventions, which ensures that the ACT Public Service (ACTPS) both is and is seen to be apolitical. The provision of new information to a minister which departs from the assumptions of the pre-election budget update, without also briefing the leaders of other parties and any non-party Members, would necessarily be a breach of the Caretaker Conventions;
 - (d) during annual reports hearings on 20 February 2025, the Minister for Health advised that her office received preliminary activity data for July and August 2024 on 4 October 2024 from the Chief Executive Officer of Canberra Health Services, that the organisation was at risk of running above budget due to increased demand. This information was not provided to the representatives of other political parties or candidates. The preliminary data was tabled during annual report hearings along with the covering email;
 - (e) the 2024 *Guidance on Caretaker Conventions*, was authored and published by ACTPS, and provided by the ACTPS to the Members of the Legislative Assembly, and made publicly available by the ACTPS. The Caretaker Conventions set out the conventions for the ACTPS to follow during caretaker; and
 - (f) the 2024 *Guidance on Caretaker Conventions* provided advice on “Requests by Ministers of directorates and agencies” (section 3(f)) and “Consultation with public servants by the opposition and recognised parties in the Legislative Assembly” (section 4(f)). The Guidance did not include advice on the provision

of factual information to ministers or their offices on the public servant's own initiative;

- (2) a Select Committee on Caretaker Conventions be appointed to examine:
 - (a) the development of a continuing resolution for the operation of caretaker conventions in the ACTPS;
 - (b) ensuring universal confidence in the apolitical nature of the public sector in the lead up to and during election campaigns;
 - (c) ensuring symmetry of information between parties participating in post-election negotiations on confidence and supply (if applicable);
 - (d) the purpose and timing of pre-election budget updates under section 20D(1) of the *Financial Management Act 1996*, and broad availability of any relevant new information about the state of the ACT economy and government finances subsequent to its publication;
 - (e) the timing and processes governing how ministers and their non-government counterparts are provided with and/or consulted with where laws require that briefings be urgently provided, or decisions urgently sought;
 - (f) the ability for non-government parties, Members and candidates to seek briefings from the ACTPS, exclusive of ministers and their staff, on matters of facts and the machinery of government during a period of up to six months preceding the pre-election period;
 - (g) whether further clarity or guidance is needed in relation to what information the ACTPS may provide to ministers and their offices during the caretaker period;
 - (h) any relevant analysis or critique of the 2024 *Guidance on Caretaker Conventions* as published by the Chief Minister, Treasury and Economic Development Directorate;
 - (i) the detailed practices of caretaker conventions as adopted by the Commonwealth and other Australian states, including consideration of the length of the caretaker period; and
 - (j) any other relevant matter;
- (3) the Committee shall report to the Assembly by the last sitting day of 2025;
- (4) the Committee be composed of:
 - (a) one Member to be nominated by the Labor Party;
 - (b) one Member to be nominated by the Liberal Party;
 - (c) one Member to be nominated by the ACT Greens; and

- (d) Members of the Fiona Carrick Independents Party and Independents for Canberra Party may also nominate;
- (5) membership of the select committee to be notified in writing to the Speaker within two hours of this motion passing; and
- (6) the ACT Greens Party member shall be chair of the Committee.”