



State Servants, Political Parties, and Elections: Guidance for the 2011 Election Period

Issued by the State Services Commissioner

May 2011

This guidance identifies common principles and obligations that will assist those who work in the State Services during the lead-up to, and in the period immediately after, the 2011 general election. It is also applicable, generally, to the conduct of State servants during mid-term elections.

This guidance replaces *State Servants, Political Parties, and Elections: Guidance for the 2008 Election Period*. It remains current until superseded.

Section 4 lists other sources for reference. There are five appendices which contain more specific guidance and information.

Further guidance can also be found on the State Services Commission website at: www.ssc.govt.nz/election-guidance.

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CONTENTS

1	Introduction	2
1.1	Application	2
1.2	Content	2
1.3	Impartiality	2
1.4	What is the pre-election period?	3
1.5	Advice and support	3
2	Prior to a general election	4
2.1	Significant decision making by the Government before an election	4
2.2	Communications	4
	Media comment	4
	Programme launches	5
	Advertising and publicity campaigns	5
2.3	State servants and politics	6
	State servants' participation in political activities, as individuals	6
	Interaction with social media	7
	Use of agency resources	7
	State servants standing for election	8
	Contact between State servants and Members of Parliament and political parties	10
	Attendance by State servants at caucus and caucus committee meetings	10
	Costing parties' policies prior to the election	10
	Pre-election Economic and Fiscal Update	11
2.4	Providing information	11
	Official Information requests	11
3	Following a general election	12
3.1	Caretaker convention	12
3.2	Forming a government	13
	Negotiations	13
3.3	Briefing a new Minister	13
	Purpose	14
	Content and format	14
4	Where to get more information	14
4.1	Publications	14
	Appendix 1: Standards of Integrity and Conduct for the State Services	16
	Appendix 2: Advertising and Communications – Examples	17
	Appendix 3: Guidelines for Costing Party Political Policies	19
	Appendix 4: Ombudsmen Report on Official Information Act Releases during an Election Period	21
	Appendix 5: Guidance on the preparation of briefings for incoming Ministers	24

1 Introduction

A major characteristic of New Zealand's constitutional arrangements is that State Services agencies are apolitical. The actions of State servants must not detract from the ability of their agencies to work with the Government, regardless of the political parties which Ministers represent.

These requirements are unchanging. State servants have an ongoing responsibility to work in a politically neutral way. The work of government must be carried out impartially, and in a manner that cannot be perceived as reflecting party interests. The commitment of agencies to their Ministers must be unaffected by any preference for or against a particular policy of any party.

In an election year, increased public attention to the way agencies carry out their functions, and to the activities of their employees, can be expected. This guidance explains how State servants must meet the continuing requirement for political neutrality in their work, and identifies the responsibilities that have specific application in the lead-up to an election.

These obligations form part of the constitutional role of the State Services. They contribute to the maintenance of public confidence in New Zealand's democratic governance, and the strengthening of the institutions of government.

1.1 Application

This guidance applies to those State Services agencies that are subject to the State Services Commissioner's mandate to provide advice and guidance on integrity and conduct (State Sector Act 1988, s. 6(ha)). This mandate does not include Crown Research Institutes (CRIs). State-owned enterprises (SOEs) and tertiary education institutions (TEIs) are also outside the Commissioner's mandate. Nevertheless, this guidance contains good practice that may be helpful to CRIs, SOEs, and TEIs, and also to other agencies that may not be covered by the Commissioner's mandate¹.

1.2 Content

This guidance summarises agency roles during an election period. The principles set out have general application at any time. The attached appendices provide stand-alone guidance and information relating to particular responsibilities, such as briefings for incoming Ministers.

1.3 Impartiality

Agencies and their employees must:

- maintain the political neutrality required to work with current and future governments; and
- respect the authority of the government of the day.

These obligations reflect the Standards of Integrity and Conduct for the State Services (the code of conduct), set out in Appendix 1.

¹ The section of this guidance on "State servants standing for Parliament" applies to a different subset, which does not align with the Commissioner's integrity mandate. This section sets out both the legal requirements applying to certain State servants standing for Parliament and provides advice to those to whom the legal requirements do not strictly apply (see section 2.3, p 8 for detail).

In the lead-up to a general election, there can be an increased sensitivity in the relationships, expectations, and interactions among State servants, Ministers, Members of Parliament (MPs), and political parties. State servants must be able to serve effectively, and maintain the trust of, successive governments that may be drawn from different political parties. During an election period, State servants and State Services agencies must be particularly conscious of the need to be politically neutral.

The ordinary business of government must continue in an election year. A heightened awareness of the need for State servants to be seen to act with political neutrality does not mean that the work of agencies is disrupted. During an election period, additional care must be taken to ensure that activities are not seen, in any way, as party political. This is particularly important with respect to activities such as media relations, advertising campaigns, responding to Official Information Act requests, interaction with MPs and electoral candidates, public speaking engagements, appointment processes, programme promotions, and the release of discussion documents.

1.4 What is the pre-election period?

The pre-election period refers to the three months before a general election. The 2011 general election will be held on 26 November 2011, which means that the pre-election period will commence around the end of August 2011. It is this period during which restraints on government decision making are expected to be applied.

1.5 Advice and support

State servants who are unsure how to deal with any issue relating to the election period should seek advice, in the first instance, from their senior managers.

The State Services Commission also provides further guidance and support to agencies and staff. Please email election@ssc.govt.nz, or telephone (04) 495 6600 and ask for the Integrity and Conduct team.

2 Prior to a general election

2.1 Significant decision making by the Government before an election

Key points

- **The Government has the right and responsibility to govern until the election. The caretaker convention does not apply during the pre-election period.**
- **However, governments have chosen to restrict their actions to some extent during previous pre-election periods.**
- **For further guidance, see Cabinet Office Circular (11) 2 *Government decisions and actions in the pre-election period*. www.dPMC.govt.nz/cabinet/circulars/co11/2.html**

In the period leading up to an election, the Government retains the right and responsibility to govern. Successive governments, however, have chosen to restrict their actions to some extent during pre-election periods, in recognition of the fact that a potential change of government may be imminent. For example, significant appointments have been deferred, and some otherwise unexceptionable government advertising has been considered inappropriate during election campaigns, due to the heightened risk of perception that public funds may have been used for party political purposes (see also section 2.2).

From a practical perspective, Ministers and Cabinet are likely to have a reduced capacity for decision making in the pre-election period, as Ministers may be occupied with the election campaign. Ministers' offices and agencies must therefore ensure that significant matters requiring ministerial attention are dealt with as far in advance of the election date as possible.

The Government is not bound by the caretaker convention (see section 3.1) in the pre-election period, unless the election has resulted from the Government's loss of the confidence of the House.

The Secretary of the Cabinet is available to advise on Cabinet decision making processes during the pre-election period.

See Cabinet Circular (11) 2 *Government decisions and actions in the pre-election period*. www.dPMC.govt.nz/cabinet/circulars/co11/2.html

2.2 Communications

Media comment

Key point

- **Agencies and Ministers' offices need to have protocols in place to ensure that media enquiries are handled promptly, by the person most appropriately placed to do so.**

An election year increases media interest in the activities of government and its agencies. State servants need to know how to identify matters that are primarily political or operational, and whether those matters are to be handled by the Minister or by the agency.

Those who are authorised to speak on behalf of an agency in the period before, during, and after an election need to understand the sensitivity of the environment in which they are operating. Good protocols with Ministers' offices will help to ensure that enquiries from the media are handled promptly, by the person most appropriately placed to do so.

Media releases by State Services agencies during election periods must be drafted with an appreciation of the scrutiny given at such times to the activities of the Government, its agencies, and their employees.

Programme launches

Key point

- **Agencies support Ministers who decide to launch initiatives during an election period, but care is needed to avoid being associated with the political aspects of any such events.**

During an election period, the launch of a new programme or initiative may take on a ‘party political’ character that would not be evident at other times. State servants should support Ministers as usual, but must take care to avoid association with the political aspects of any such event, or with the preparation of supporting material which has a party political character.

Advertising and publicity campaigns

Key points

- **Agencies are responsible for publicising government policies and services, but must avoid content that is party political.**
- **Advertising or communications by State Services agencies that could be regarded as encouraging voters to vote, or not vote, in a particular way are never acceptable.**

Guidelines for Government Advertising

The *Guidelines for Government Advertising* are contained in the Cabinet Manual (www.cabinetmanual.cabinetoffice.govt.nz/files/cabinet-manual-2008-appendix-b.pdf). They define government advertising as “any process for which payment is made from public funds for the purpose of publicising any policy, product, service, or activity provided at public expense by the government”. The guidelines require government advertising to be presented in a manner that is:

- **Accurate, factual, and truthful** - Factual information should be outlined clearly and accurately. Comment on and analysis of that information, to amplify its meaning, should be indicated as such.
- **Fair, honest and impartial** - The material should be presented in unbiased and objective language, and in a manner free from partisan promotion of government policy and political argument.
- **Lawful and proper** - The material should comply with the law.

Agencies must comply with these long-standing principles regarding advertising and communications campaigns at all times, not simply during an election period.

It is never acceptable for agencies to encourage electors to vote (or not vote) for specified parties, policies, or candidates. All publicising of government policies and services must be managed in a way that avoids such perceptions.

Publicity and advertising are legitimate forms of governmental spending; communication campaigns that inform people of their rights and obligations do not need to stop during an election period. In the run-up to an election, however, agencies should carefully consider whether any of their communication campaigns or advertising could be perceived as ‘party political’, even if they might be unexceptionable at other times. Agencies should also consider

timing issues. For instance, it may not be appropriate during an election period to publicise programmes that do not come into effect for some time.

2.3 State servants and politics

Key points

- **State servants have the same political rights and freedoms as other New Zealanders, but must maintain the political neutrality required to work with current and future governments.**
- **For most State servants, participation in party politics is not likely to affect the confidence that the Government has in their agency, or undermine the ability of that agency to work effectively with future governments.**
- **Senior State servants, and those who engage directly with Ministers, should exercise careful judgment when considering involvement in overtly political activities.**
- **State servants may wish to discuss any active involvement in a political party with their managers to avoid any misunderstandings.**

State servants' participation in political activities, as individuals

In general, State servants have the same political rights and freedoms as all other New Zealanders. However, they have a concurrent responsibility to maintain the political neutrality required to work with current and future governments.

State servants must ensure that they do not confuse their political rights with their employment responsibilities. In short, State servants must keep their jobs out of their politics and their politics out of their jobs.

Membership of a political party is acceptable for most employees in the State **S**ervices, as is helping with fundraising, assisting with leaflet drops, and taking part in other forms of support. However, State servants must exercise judgment when deciding what level of personal participation in political activities is appropriate. Senior State servants and State servants who have a close working relationship with Ministers should avoid active involvement in political activity if it could be perceived as conflicting with their political neutrality obligations.

State servants may wish to discuss with their managers any political activities in which they intend to be involved in a personal capacity. This may help to avoid any misunderstandings, and ensure that the relationship between employment responsibilities and the freedom to exercise civil rights is understood.

State servants involved with a political party, or who intend to comment publicly on political matters, need to be particularly careful that they do not:

- reveal advice given to Ministers;
- disclose information they are not authorised to disclose;
- criticise ministerial policy with which they have been professionally involved; or
- purport to express an agency view when they are giving their own view.

These principles apply at all times, but special care must be taken in an election period.

For further guidance see *Political Neutrality Guidance*: www.ssc.govt.nz/political-neutrality-guidance ; and *Understanding the code of conduct – Guidance for State servants*, www.ssc.govt.nz/code-guidance-stateservants.

Interaction with social media

Key points

- **State servants should only contribute to social media, as agency representatives, with express approval.**
- **State servants who contribute to social media in a private capacity must avoid harming the reputation of their agencies or of the State Services.**

Social media tools bring both benefits and risks to State Services agencies. Because of a heightened interest in the actions of State servants and agencies during an election period, particular care must be taken to minimise the risks. Matters that State servants consider private can easily become public through social media, and permanently accessible.

The rules that apply when State servants interact with social media in an official capacity are the same as those that apply when communicating with news media or speaking at a conference. Most importantly, State servants should only act as representatives of their agencies if they have been given express permission to do so. Participation in social media fora during an election period should be limited to comment on operational matters and publishing factual information.

During an election period, State servants are entitled to participate, in a private capacity, in political activity via social media. The same rules apply as when participating in political activity in other ways (see above). State servants should ensure that it is clear to others that their contributions are made as private individuals, and not as representatives of their agencies.

Regardless of the media being used, State servants are required, by the *Standards of Integrity and Conduct for the State Services*, to avoid activities, work or non-work, that may harm the reputation of their agencies or of the State Services, and must not disclose any government material that is not already publicly available.

State servants need to be aware that the line between public and private is sometimes blurry in respect of social media. If in doubt, State servants should treat a social media forum as public, and behave in a manner that respects their obligation to maintain politically neutral State Services.

See *Principles for Interaction with Social Media*: www.ssc.govt.nz/guidance-social-media-use.

Use of agency resources

Key points

- **Agency premises must not be used to display material or to carry out any activities that could reasonably be regarded as party political in nature.**
- **State servants must not use their agencies' resources in ways that could be seen as breaching the principle of political neutrality.**

It is not appropriate for agencies' premises or other resources to be used for electioneering. For example, material produced by political parties that promote party interests, or lobby for or

against issues likely to feature in the election, must not be displayed on agency premises, vehicles, or websites.

An exception may be made for premises that are effectively public venues, and for which normal commercial terms are imposed. There is also provision in the Electoral Act 1993 for political parties to use State schools for election meetings.

The representational activities of unions within work sites are acceptable. The content, however, must not be in the nature of political party advertising, under the banner of the union. In an election period, it is appropriate for unions to share with their members the approach they are taking to party policies, and for their members to share this material with others who may be potential members. Any display of this type of election-related material must be on a space dedicated to the union, and in a staff-only area, to avoid any public misconceptions about purpose.

Subject to those conditions, neither the content and distribution, nor any consequent discussion in the work place of this type of union material, breaches the political neutrality obligations of State servants, provided that they do their jobs professionally and loyally, without letting their personal interests or views influence their advice or behaviour, and without bias towards one political party or another.

State servants should not provide their work place contact details to political organisations. For example, sending or receiving party political material (for personal information) through an agency's e-mail or internet facilities is likely to be perceived as undermining that agency's impartiality.

State servants standing for election

Key points

- **State servants are entitled to campaign for election to Parliament. They must notify their employers if they intend to seek selection as candidates.**
- **Senior State servants wishing to stand for Parliament need to take particular care to manage the implications of their candidacies.**
- **The Electoral Act 1993 sets out which State servants are required by law to take leave from their positions from Nomination Day if standing for Parliament.**
- **State servants not covered by the Electoral Act provisions should discuss with their employers whether it may be desirable to take leave from their positions to preserve the political neutrality of the State Services.**

State servants are allowed to stand for election to Parliament. Being a candidate is clearly a political activity, so any State servant seeking selection as a candidate must inform his or her employer of the intention to seek selection. The reason for this is to preserve the important constitutional principle of politically neutral State Services.

In particular, senior State servants or those whose positions put them in regular contact with Ministers should discuss their intentions with their chief executives, board chairpersons, or the State Services Commissioner, even before making any decision to put their names forward for selection (for an electorate seat or on a party list). The rationale for this is that:

- Due to their seniority and the nature of their duties (particularly if those duties involve advice in politically contentious areas, organisational leadership, and/or management), perceived or real conflicts may need to be carefully managed.
- There may be some rare instances in which resignation, rather than taking leave, is the only appropriate approach if such a State servant wishes to stand for Parliament.
- Post-election, where a State servant's candidacy had been unsuccessful, it may be appropriate in rare circumstances for the State servant and his or her employer to consider duties different from those that the candidate had before taking leave.

The Electoral Act

The Electoral Act sets out requirements for some State servants with regard to being a candidate in an election. These State servants are those who are employees of Public Service departments, the New Zealand Police, the NZSIS, members of the Defence Force (other than those excluded under section 3(d) of the Electoral Act), the Education Service², and the Cook Islands and Western Samoan Public Service. The requirements for these State servants are:

- The State servant must take leave of absence from his or her position for a period if standing for Parliament (s.52(2) of the Electoral Act).
- The minimum period for the leave of absence is the time between Nomination Day (for the 2011 election, 1 November) and the first working day after Polling Day (s.52(3) of the Electoral Act).
- If the employer of a State servant standing as a candidate considers the candidacy will materially affect the employee's ability to carry out his or her duties satisfactorily, the employer may decide that leave is to commence earlier than Nomination Day (s. 52(4) of the Electoral Act).
- If declared elected, the State servant will immediately be deemed to have vacated his or her position (s. 53 of the Electoral Act).
- If unsuccessful in the election, State servants may resume work on the first working day after Polling Day (s. 53(2) of the Electoral Act).

State Servants not covered by the Electoral Act

State servants who are not explicitly covered by the Electoral Act provisions (e.g., employees of statutory Crown entities, Crown entity companies, and organisations on the 4th Schedule of the Public Finance Act) should also consider the impact their candidacies may have on Ministerial and public confidence in the political neutrality of the State sector. Employers of such State servants may wish to consider whether the same processes around taking leave, as outlined in the Electoral Act, should be followed with respect to their employees.

In determining whether an employee who is not covered by section 52 should take leave of absence, agencies may wish to consider factors such as the agency's role in the operations of government and the nature of the employee's position (e.g., seniority; degree of engagement with Ministers; level of responsibility for policy development or implementation; and level of influence on perceptions about the agency's ability to serve the government of the day and any future government).

If elected to Parliament, State servants who are not covered by the Electoral Act provision that deems them to have vacated their positions upon being elected, should realise that it is

² As defined in the State Sector Act 1988, this includes employees in the service of any state or integrated school, or any tertiary or other education institution, and registered teachers employed by any free kindergarten association.

inherently incompatible for any State servant to serve as an MP (part of the Legislature) while being employed by a government agency (part of the Executive). In accordance with the separation of powers, one cannot be employed concurrently in two branches of government. Therefore, such State servants should resign from their positions.

Contact between State servants and Members of Parliament and political parties

Key points

- **Contact, in a work setting, between State servants and Members of Parliament is always sensitive, but can become more so during an election period.**
- **State servants should follow their agencies' established protocols during an election period.**

The sensitivity which always exists when MPs have contact with agency staff can increase during an election period. Particular issues can arise in operational branches of agencies when MPs are acting on behalf of their constituents. State servants should be sensitive to the fact that, during an election period, an MP often may have the dual role of advocating for a constituent and campaigning for re-election. Branch managers should contact their head offices if they are uncertain how to handle a specific case.

Apart from responding to constituency concerns raised by local MPs, contact in a work setting between State servants and representatives of political parties (within or outside the Government) should only take place during the election period with prior ministerial approval.

As at other times of the year, requests by MPs or by parliamentary candidates to visit agency premises during an election period should only be facilitated if the agency has obtained the prior approval of its Minister.

Attendance by State servants at caucus and caucus committee meetings

Key points

- **State servants should refer any requests relating to involvement in caucuses or caucus committees to their chief executives.**

A State servant who is requested to attend a caucus meeting of a political party represented in the House, should not do so without first obtaining the agreement of his or her chief executive, and/or direction from the responsible Minister. State servants should not undertake work at the direction of caucuses, nor should they service caucuses or caucus committees. Any instructions that might emerge from caucus discussions should be given to the agency only by the responsible Minister.

Costing parties' policies prior to the election

Key points

- **Detailed provisions apply when an agency is requested to cost a party's political policies.**
- **A written request by the Minister of Finance or another Minister is required before an agency undertakes any such costings.**
- **Guidelines on costings are attached as Appendix 3. Further advice will be made available from the Treasury in due course.**

It is the routine business of most agencies to cost policy options. However, agencies may be asked by their Ministers to cost the policies of parties in government, or to cost other parties' policies where Ministers wish to use this information for partisan purposes, for example during election campaigns. Provisions have been designed to cover such situations to protect the political neutrality of the State Services, while providing Ministers with the information they require.

Costing the policies of any political party should only be undertaken following a written request from the Minister of Finance or another responsible Minister. The Minister is required to specify the proposals to be costed where there is any uncertainty about this. Any request for costings made to an agency other than the Treasury is to be referred by the department, in the first instance, to the Office of the Minister of Finance.

State servants are prohibited from making broad assumptions about policies, or commenting on the merits of policies.

The Guidelines for Costing Party Political Policies are attached as Appendix 3. If State servants are uncertain about the application of this guidance, they should seek advice from their agency's Treasury Vote Analyst or the Fiscal Management Team at the Treasury.

Pre-election Economic and Fiscal Update

Key point

- **Agencies must provide information requested by the Treasury to ensure that significant decisions and risks are included in the Treasury's Pre-election Economic and Fiscal Update.**

The Treasury prepares a *Pre-election Economic and Fiscal Update*, under the Public Finance Amendment Act 2004. The Update is normally published four to six weeks before an election. The Update must include 'to the fullest extent possible' information on all government decisions and circumstances that may materially affect the fiscal and economic outlook. Chief Executives and Chief Financial Officers are required to sign a Statement of Representation to confirm that they have notified the Treasury of all matters that may affect the fiscal and economic outlook.

The Public Finance Act sets rules around the timing of the *Pre-election Economic and Fiscal Update* but the exact date for release is at the discretion of the Minister of Finance. The Treasury will release detailed guidance and a timetable for the preparation of the *Update* via CFISNet in due course.³

2.4 Providing information

Official Information requests

Key points

- **Official Information Act requests must be responded to in a timely and appropriate manner, regardless of an imminent election.**
- **The only reasons for withholding information are those specified in the Act.**

The Official Information Act 1982 provides for the release of government information to the public. To preserve the political neutrality of the State Services, agencies must handle information requests in a timely fashion, particularly during an election period.

³ CFISNet is the Crown Financial Information System. It is a secure website designed by the Treasury to collect forecast and actual information from government departments, Crown entities and State-owned enterprises.

Requests for information made by political parties during an election period should generally be treated in the same way as any other request for official information. However, the agency's chief executive must be informed of any Official Information Act request received from an MP or a political party (including party research units) during an election period. The chief executive may wish to consult with the responsible Minister about the request. In such cases, the agency should consider whether it is necessary to extend the timeframe for making a decision on the request using section 15A of the Act. This will avoid the agency possibly defaulting on the request unintentionally on the 20th working day and exposing itself to a complaint that the request has been deemed to be refused.

Chapter 8 of the Cabinet Manual includes guidance on the release of official information, including the involvement of Ministers in a release. An agency may consult its Minister about any request for official information received. An agency should consult its Minister if the request relates to Cabinet material (as this is related to his or her activities as a Minister), and if it intends to release any information that is particularly sensitive or potentially controversial.

Upon being consulted, a Minister may take the view that information that an agency considers should be released, should not be released. In such cases, agencies should consider whether there is an obligation to transfer the request to the Minister under section 14 of the Act. The obligation to transfer will arise where the requested information is held by the Minister (but not the agency) or is more closely connected with the Minister's functions. In the absence of these circumstances, the decision is the agency's to make.

If a request relates to a function in which an official is required by statute to act independently, no consultation is required with the Minister, but this does not diminish the need to keep the Minister informed.

In a previous election period, the Office of the Ombudsmen commented on the extreme importance of a well-informed electorate at the time of a general election. The Ombudsmen reported critically about State servants who had become involved in assessing the political consequences of releasing information, rather than making a decision in a politically neutral manner. The Ombudsmen's concerns are set out in Appendix 4 (*Ombudsmen Report on Official Information Act Releases during an Election Period*).

The Official Information Act also applies to information or analysis provided to political parties that are seeking to form a government following the election. The State Services Commissioner should be advised of any such requests and the approach the agency intends to take. If necessary, the State Services Commissioner will coordinate responses (see section 3.2 of this guidance).

3 Following a general election

3.1 Caretaker convention

Key points

- **Following an election, the incumbent government is the lawful executive authority until a successor administration is sworn in.**
- **Governments in this situation have constrained their actions in accordance with the 'caretaker convention', as described in the Cabinet Manual**

On occasion, it may be necessary for a government to remain in office for an interim period when it has lost the confidence of the House, or (after an election) until a government is sworn in following the government formation process. During such periods the incumbent government is

still the lawful executive authority, with all the powers and responsibilities that go with executive office. However, governments in this situation have traditionally constrained their actions until the political situation is resolved, in accordance with what is known as the convention on caretaker government.

The caretaker convention has implications for decision making during this period. For advice about the application of the caretaker convention see chapter 6 of the Cabinet Manual: www.cabinetmanual.cabinetoffice.govt.nz/6. The Secretary of the Cabinet is available to provide advice to Ministers and agencies about the application of the caretaker convention. Ultimately, the Prime Minister determines how a matter should be dealt with during this period.

3.2 Forming a government

Negotiations

Key points

- **The government formation process is a political one. State servants have limited involvement in any negotiations by political parties to form a government.**
- **Further detail will be provided, closer to the election period, on State Services agencies' procedures for dealing with requests for information, or access to agencies, during this post-election period of negotiation.**

The formation of a government is an inherently political process. For example, political parties may be expected to negotiate with respect to possible coalition arrangements. The incumbent Prime Minister is responsible for authorising access to agencies during the government formation period. The State Services Commissioner coordinates the involvement of State servants during this period, to ensure that the political neutrality of the State Services is not put at risk.

The State Services Commissioner will issue guidance, closer to the election, to chief executives on dealing with requests for information during the process of negotiation. This page will be updated at that time.

3.3 Briefing a new Minister

Key points

- **Concise briefings must focus on the immediate needs of a new Minister taking on a portfolio. The briefings are not intended to be detailed analyses of the portfolio, or of policy issues.**
- **Briefings are confidential to the Minister, but are subject to the provisions of the Official Information Act 1982.**
- **Guidance on briefing an incoming Minister is set out in Appendix 5.**
- **Agencies must follow this guidance to ensure that the needs of Ministers are met.**

Chapter 3 of the Cabinet Manual contains information on briefing incoming Ministers. It states that when a new Minister is appointed (which may occur at times other than post-election), the chief executive of the department concerned must prepare a written briefing for the Minister, to give the Minister sufficient information to meet his or her initial requirements.

Purpose

The briefing is prepared for an incoming Minister only, and should be tailored to meet the Minister's needs. An agency should also use its briefing to indicate how it will engage with the Minister during the term of the Government.

Content and format

The briefing should be short – normally between five and 50 pages – to reflect the time pressures on the incoming Minister. In developing the briefing and deciding on the amount of detail required, the agency must take into account the Minister's prior involvement with and knowledge of the portfolio, the Government's priorities including coalition agreements and support arrangements, and whether there has been a change of government.

As the Minister is the audience for the briefing, it should be prepared in the same format as normal departmental advice to the Minister. Briefings should not be commercially printed.

The briefing is confidential to the Minister. Although recent practice has been for briefings to be released publicly by the Minister, this should not be assumed. Any briefing is subject to the provisions of the Official Information Act.

The full text of *Guidance on the preparation of briefings for incoming Ministers* is at Appendix 5.

4 Where to get more information

State servants who are unclear about how to deal with particular obligations of agencies during an election period should first approach their senior management.

Central agencies can also provide assistance:

- State Services Commission – regarding the obligations of agencies and their employees, and providing information to support negotiations to form a government. Email: election@ssc.govt.nz.
- Department of the Prime Minister and Cabinet – regarding the operation of government, constitutional matters, including caretaker convention issues, briefings for incoming Ministers, and the provisions of the Cabinet Manual.
- The Treasury – regarding the Pre-election Economic and Fiscal Update and costing of party political policies.

4.1 Publications

Standards of Integrity and Conduct for the State Services (code of conduct)

The code of conduct, issued by the State Services Commissioner, has been applied to all Public Service departments, to statutory Crown entities (including District Health Boards), to Crown Entity companies (excluding Crown Research Institutes), and to a number of subsidiary companies of Crown entities. The code of conduct is attached as Appendix 1.

Political Neutrality Guidance

The State Services Commissioner has set out some general principles on political neutrality, which should guide the actions and decisions of State servants and employers in this area. See www.ssc.govt.nz/political-neutrality-guidance.

Officials and Select Committees

Officials and Select Committees - Guidelines explain the relationship between State servants (which for this purpose includes the board members of Crown entities) and select committees. They include guidance on State servants who act as witnesses or advisers; the obligation to provide free and frank answers to select committees; protection available to State servants who appear before select committees; and the rights and constraints of State servants who wish to appear in a personal capacity. See www.ssc.govt.nz/officials-and-select-committees-2007

Cabinet Manual

This is the key guide to central government decision making. It is a primary source of information on constitutional and procedural matters, and includes material on elections and government formation. See www.cabinetmanual.cabinetoffice.govt.nz/

CabGuide

This replaces the Step by Step Guide as guidance for officials on Cabinet and Cabinet committee processes. It helps departments and Ministers' offices meet Cabinet's requirements for developing and presenting proposals to Cabinet: see www.cabguide.cabinetoffice.govt.nz

Cabinet Office Circulars

The Cabinet Office issues circulars from time to time throughout an election period, providing guidance on various procedural and constitutional issues. See www.dPMC.govt.nz/cabinet/circulars/index.html

The Standing Orders of the House of Representatives

These are the rules used by the House of Representatives to govern its own procedures. They also contain guidance on topics such as post-election procedures and the notification of party details.

See www.parliament.nz/en-NZ/PB/Rules/StOrders/

Electoral Act 1993

See

www.legislation.govt.nz/act/public/1993/0087/latest/DLM307519.html?search=qs_act_Electoral+Act&sr=1

Appendix 1: Standards of Integrity and Conduct for the State Services

We must be fair, impartial, responsible and trustworthy.

The State Services is made up of many organisations with powers to carry out the work of New Zealand's democratically elected governments.

Whether we work in a department or in a Crown entity, we must act with a spirit of service to the community and meet the same high standards of integrity and conduct in everything we do.

We must comply with the standards of integrity and conduct set out in this code. As part of complying with this code, our organisations must maintain policies and procedures that are consistent with it.

For further information see www.ssc.govt.nz/code

Fair

We must:

- treat everyone fairly and with respect
- be professional and responsive
- work to make government services accessible and effective
- strive to make a difference to the well-being of New Zealand and all its people.

Impartial

We must:

- maintain the political neutrality required to enable us to work with current and future governments
- carry out the functions of our organisation, unaffected by our personal beliefs
- support our organisation to provide robust and unbiased advice
- respect the authority of the government of the day.

Responsible

We must:

- act lawfully and objectively
- use our organisation's resources carefully and only for intended purposes
- treat information with care and use it only for proper purposes
- work to improve the performance and efficiency of our organisation.

Trustworthy

We must:

- be honest
- work to the best of our abilities
- ensure our actions are not affected by our personal interests or relationships
- never misuse our position for personal gain
- decline gifts or benefits that place us under any obligation or perceived influence
- avoid any activities, work or non-work, that may harm the reputation of our organisation or of the State Services.

Appendix 2: Advertising and Communications – Examples

The following hypothetical examples help illustrate the application of the principle of political neutrality to agency communications during an election period.

Example 1

During an election period, an agency undertakes a communications campaign to publicise its achievements since a certain date (which coincides with the election of the current party in government).

Issues:

- The advertising may not meet the Cabinet Manual objectives for government advertising of informing about government policy, entitlements or desired behaviour.
- By linking advertising to the date at which the current party in government was elected to power, particularly if it focuses on new entitlements or increased funding during that period, such advertising could create a perception of political bias. It could be seen to be influencing voters and thus in breach of long-standing principles.

Example 2

An agency has promoted a community health and safety week initiative, with associated advertising, at the same time every year for the past eleven years. This year the initiative is due to occur two months before the likely date of the General Election. Activities planned include awards to those who have contributed most over the past year to the objectives sought.

The Minister concerned suggests to the agency that the promotion should be postponed, to avoid any perception of it being considered a ‘political’ activity. A Member of Parliament from the governing political party is a member of an association strongly linked to the initiative and will receive an award.

Issues

- There are good objective reasons for continuing the planned week-long initiative; the normal business of government should continue, and it has occurred at this time of year every year. Care will be needed with the design and content of advertising associated with the initiative.
- However, careful consideration is required as to whether the Member of Parliament should receive an award, and thus be associated with the week, this close to an election.

Example 3

It is three months until the General Election. The opposition party has criticised a government policy, but the criticisms are regarded as being based on incorrect information. The agency involved considers the criticism misleads the public, and decides to make a media statement to correct the misinformation.

Issues

- This situation requires careful consideration. Although the agency is setting out to correct misinformation, that may be better to come from the Minister rather than the agency. The agency may get drawn into a political situation and may breach existing principles.

Example 4

An agency is responsible for a new programme which, if the current government is re-elected, will come into effect in April of the year following the election. It wants to start early with publicity so that all those who would be entitled to benefits under the programme are aware of it. The advertising will commence in October, which is one month before the general election.

Issues

- In this situation, it would appear prudent to delay the campaign until after the General Election, particularly as the implementation of the programme may be dependent on the election outcome. That will reduce any risk that the campaign is seen as not politically neutral.

Example 5

A New Zealand sporting team wins a major international competition. An agency which provided funding to that sport plans an advertising campaign to highlight that government support contributed to the success. It is two months until the General Election.

Issues

- The advertising may not meet the Cabinet Manual objectives; ie, that advertising should inform about government policy, entitlements or desired behaviour.

Appendix 3: Guidelines for Costing Party Political Policies

Costings of the policies of any political party should be provided by State servants only at the written request of the Minister of Finance or a Minister responsible for a portfolio. A request from a member of a Minister's staff is not sufficient authority in itself.

Handling requests

Any request for costings made to a government department other than the Treasury is to be referred to the Office of the Minister of Finance in the first instance. The agency's chief executive is responsible for receiving any request, assigning any tasks, and seeing that the costs and any accompanying material conform to the guidelines, and that any response is made in writing (under the signature of the chief executive, or where appropriate, its authorised senior officer) to the Minister who made the request.

If a request covers the work of more than one department, the departments concerned need to be absolutely clear about the allocation of tasks to co-ordinate effort and resources, and work in close co-operation with each other. The procedures to be followed should be conveyed in writing.

Requests for costings of policies or proposals of political parties are to be documented in full. All workings, correspondence, sources, procedures and decisions must be recorded, together with a record of the resources used in preparing a political costing. Only those directly involved in the actual costings should be privy to the exercise.

Undertaking costings

Costings should be limited to factual data readily available in the Treasury or other agencies and should contain:

- no additional commentary, such as the merits or otherwise of the policy proposal;
- no value judgements, or subjective assumptions;
- no unsubstantiated or unreasonable technical assumptions - it should be clearly stated if the assumptions could lead to more than one possible costing;
- a clear explanation of all sources, and of any assumptions made.

If there is any doubt as to the nature or basis of the request, clarification must be sought from the Minister of Finance or the Minister concerned.

All responses should be drafted on the understanding that they may be requested and released under the Official Information Act 1982.

In some instances it may be appropriate to have the costings done by a qualified external expert. This should be made clear in reporting to the Minister concerned.

The convention between Ministers and agencies in these circumstances is that Ministers will not require or use information on costings in a way which might damage the neutrality of the State Services, and its ability to serve successive governments.

Note: These rules should not be applied where agencies are required to provide costings:

- to assist Ministers to make a decision about whether or not to exercise the Financial Veto under Standing Orders 316-320: these will be required as part of the normal business of government. See: www.dPMC.govt.nz/cabinet/circulars/co07/2.html or

- during a period of negotiation between political parties to form a government following an election. Requests for costings arising during this process should be dealt with in terms of the SSC guidance on *Negotiations Between Political Parties to Form a Government: Guidelines on Support from the State Sector*. The 2011 version of these guidelines will be available on the SSC website in due course.

The Treasury will release further information in due course. Agencies that require additional advice or guidance on costing political party policies should contact their Treasury Vote Analyst or the Fiscal Management Team.

Appendix 4: Ombudsmen Report on Official Information Act Releases during an Election Period

The following extracts are from the Report of The Ombudsmen/Te Kaitiaki Mana Tangata, for the year ended 30 June 1991, pp 16-19.

Issues arising from investigations under the Official Information Legislation

Release of information prior to a General Election

The Chief Ombudsman's investigation into the release of "Prime Ministerial Briefing Papers - Bank of New Zealand Data" ... highlighted the need for access to reliable economic information prior to a general election. ...

The General Election also raised some other issues. For example, we [the two Ombudsmen] both experienced difficulties in getting officials to whom requests were made for information to co-operate in meeting time frames related to the date of the General Election. The maximum time frames of the Official Information Act were used extensively to avoid releasing politically sensitive information required by various individuals, Members of Parliament and special interest groups for the election campaign. This very undesirable practice failed to appreciate the constitutional importance of ensuring that the electorate was well informed before it committed itself to selecting the parliamentarians from whom a government would be formed. What concerned us was that officials with a duty under the Act to release all information unless there was good reason to withhold in terms of the legislative criteria, exceeded their mandate and became involved in assessing political consequences of release, rather than making the decision in a politically neutral manner.

While it is argued by some that the State Sector Act may have affected the constitutional notion of a politically neutral Public Service, we believe that it is improper for officials, expected by the public to be neutral, to use official authority or influence to attempt to interfere with, or affect, the result of a General Election.

Regard was often had by officials to the likely political consequences of releasing the information held by the organisation when assessing the time frames imposed by the Act. Evidence was available to show that, notwithstanding that the information could not be withheld in terms of the provisions of the Act, its release could be delayed beyond the General Election date by invoking the full legal 20 working day time limit, and by attempting to use fallacious reasons for extending those time frames.

Two examples show the nature of the problem we faced.

The Chief Ombudsman received a request from an Opposition Member of Parliament for a review of a decision taken by a departmental official to extend the time frame for responding for a further 20 working days, to enable the official to consult with Ministers on the release of the information sought. The information was readily available. The Member's request to the department was made on 10 September and appeared to be passed around between officers for some days, eventually arriving with the officer authorised to release around 1 October. The request was then held by that officer until 10 October, when he notified to the Member of Parliament an extension of 20 working days to 7 November (the General Election took place on 27 October), ostensibly on the grounds of the need to consult with Ministers.

When the Chief Ombudsman reviewed the extension he considered it was unreasonable as there had clearly been sufficient time after initial receipt for the department to consult with Ministers. (It could not transfer the request to the Minister in terms of section 14(b) of the Act because it did not meet the test of being more closely connected with the functions of the Minister.) Apart from the need for consultation being questionable, the department was well aware from the nature of the information that the Member of Parliament required a response before the General Election. In attempting to justify the extension of time to the Chief Ombudsman, the Chief Executive said the matter was potentially quite sensitive and that it would be unfair not to consult. The Chief Ombudsman did not disagree with this (providing the Chief Executive made the final decision and not the Minister), but already plenty of time had elapsed during which consultation could have taken place. The Chief Executive then went on to say in justification of the need to consult, *The release of such information at this time could adversely affect the Government's electoral prospects*. Nowhere in the Act is this a withholding provision and, apart from the question of whether the Chief Executive as a non political official was entitled to make this assessment, it was not appropriate to use the pretence of needed consultation to extend the time for a reply well beyond the Election date when there had already been plenty of time for consultation to take place.

Believing that deliberate procrastination was taking place, the Chief Ombudsman held that the extension was unreasonable and that the decision on release should be given by 24 October. It is gratifying to report that the department met that date and released the information requested to the Member of Parliament with few deletions. However, it probably arrived too late to meet the objectives of the Member who requested it.

The Ombudsman had a similar example. An urgent request was made to the department on 17 September for statistical data required by a special interest group to test before the General Election whether an announced policy and expectations of the then government were achievable in practice. The department refused the request on 28 September and the Ombudsman received a letter asking for review on 2 October. On 19 October the Ombudsman by fax, on grounds fully set out, expressed the opinion, subject to the Chief Executive's final comments, that the request for information should not have been refused. The department was urged to release the information straight away if the opinion was agreed to, and otherwise to advise the reasons for disagreement by 3pm on Wednesday, 24 October. By facsimile message dated 23 October, but not sent till 2.47pm on 24 October, the department stated it did not wish to disagree with the Ombudsman's opinion, but would prefer to release the information in response to a formal recommendation. The Ombudsman was told that on receipt of the formal recommendation the statistics would be released to the requestor.

A formal recommendation to release was faxed early on the morning of 25 October. The following day, the last working day before the General Election, the Ombudsman was made aware by the requestor that the Department was unlikely to release the information that day. Immediate inquiries established that, contrary to the undertaking given, the information had been sent to the Minister because it was regarded as protocol to get the Minister's approval for release of possibly sensitive information. There had been ample time when the department first received the request to consult the Minister. The Ombudsman pointed out that any consultation should have been carried out in accordance with section 15(5) of the Official Information Act in the course of making a decision on the release of the information. Furthermore, she pointed out that the Act did not provide for veto or approval by a Minister after a recommendation had been made, and that the way this matter had been handled by the Department could be seen to be unduly obstructive and to have frustrated the principles, purposes and procedures of the Official Information Act.

These examples were not unique in that difficult period. What surprised us was that officials appeared to not appreciate the significance of the need for speedy decisions, and the extreme importance of a well-informed electorate at the time of a General Election. While an inward looking perspective is understandable at such a time, we did think that professional public officials would recognise the importance of one of the purposes of the Official Information Act to the effectiveness of a General Election. That purpose bears repeating here because it is so relevant to a General Election:-

4(a) To increase progressively the availability of official information to the people of New Zealand in order-

(i) To enable their more effective participation in the making and administration of laws and policies; and

*(ii) To promote the accountability of Ministers of the Crown and officials,-
and thereby to enhance respect for the law and to promote the good government of New Zealand. “*

Appendix 5: Guidance on the preparation of briefings for incoming Ministers

Requirement

The Cabinet Manual requires that, when a new Minister is appointed, the chief executive of the department concerned must ensure that, as soon as the Minister takes up office, he or she is briefed on the department and the portfolio.

The briefing process is likely to include formal documents as well as meetings and other communications, happening over a number of weeks.

This guidance covers both the initial briefing that has tended to be called the Briefing to the Incoming Minister (BIM) and subsequent briefings, both verbal and written. The provisions in this guidance will also apply when a new Minister is appointed to a portfolio during the term of a Government.

Audience

The briefing is for an incoming Minister only, and should be written accordingly.

It is essential that agencies take account of the Minister's prior knowledge, and the Government's priorities including coalition agreements and support arrangements. Within the briefing, agencies should also think about how they are going to engage with the Minister over the term of the Government, and set the scene for this.

The briefing is confidential to the Minister. Recent practice has been for the BIM or initial briefing to be released publicly by the Minister. This should not be assumed. The normal provisions for material requested under the Official Information Act apply to any request for briefings made under that Act. Ministers, not agencies, should decide whether to publicly release all or part of any such briefings.

Outcome of briefing an incoming Minister

The briefing process should give the Minister a good understanding of:

- the organisation and responsibilities of the agency concerned;
- major policy, and implementation of current programmes;
- initial actions and decisions the Minister will need to take; and
- the Minister's responsibilities, including details of boards, commissions, tribunals and similar entities.

The purpose of the initial briefing is to give new Ministers sufficient information to meet their initial requirements, but is not intended to be a detailed analysis of the portfolio or of policy issues. The briefing is part of a wider process: Ministers will be able to call for a fuller briefing on issues of interest and importance to them during that process. This allows the initial briefing to be wide ranging, enabling the Minister to see the breadth of the portfolio, while still being concise.

An exception to this is where immediate decisions are required, and thus a full discussion of the issue may be called for.

Timing

The briefing process should occur:

- over a number of weeks following a general election after a Minister is appointed (whether or not the Minister held that portfolio in the previous Government)
- when a new Minister is appointed during the term of a Government. Agencies must be able to provide a briefing at short notice.

Chief executives should seek an early opportunity to discuss the process for on-going engagement with the Minister, and how the agency can best meet the Minister's needs.

A briefing which follows a general election should take account of decisions arising out of the government formation process. This means that the briefing would not be finalised until that process is complete.

Departments should not provide incoming Ministers with a briefing until Ministers are sworn in. If portfolios have been allocated but the incoming Ministers have not yet been formally appointed, chief executives may, with the knowledge of the incumbent Minister and the State Services Commissioner, offer to brief new Ministers on their portfolio responsibilities.

Associate Ministers

All briefings should be prepared for the portfolio Minister who will, other than in exceptional circumstances, authorise the department to provide copies to any Associate Ministers.

Length

The initial briefing should be short, reflecting the time pressures on the incoming Minister. A briefing should normally be between five and 50 pages in length, depending on the size and complexity of the department.

The amount of detail included in a briefing will vary depending on whether the Minister concerned has had any prior involvement with the portfolio, and whether there has been a change of Government.

Format

As the Minister is the audience for the briefing, it should be prepared in the same format as normal departmental advice to the Minister. Briefings do not need to be commercially printed.

Consultation

Other Agencies

In some cases, departments will need to consult with other departments or agencies in preparing their Minister's briefing material, for instance if there are inter-departmental processes for developing strategies or policies.

Central Agencies

Departments should seek advice from the central agencies as they plan and draft their briefings, particularly on matters that relate to central agencies e.g. industrial relations, machinery of government, significant fiscal risks.

Crown entities

Ministers are likely to expect briefings from some Crown entities, especially those with significant policy and operational responsibilities.

Crown entity briefings should be driven by Ministers' needs and monitoring departments should facilitate the briefing process. Where Crown entities do produce briefings, they should follow the Cabinet Manual and this guidance.

Content

The briefing process should cover the following information, as outlined in the Cabinet Manual:

Organisation and responsibility of the agency

Aim: to provide the incoming Minister with an overview of key information relating to the department

This is factual information, which should include organisational structures, a brief note about senior staff, an outline of the department's main roles, and a schedule of the main legislation it administers. It is an opportunity to make the Minister aware of significant risks within the department or portfolio, and to advise the Minister whether the agency concerned has any statutorily independent functions.

It is important to note that the briefing process does not substitute for other Cabinet processes. For example, policy proposals with fiscal implications will require to be delivered subsequently through the Budget process including consultation with related agencies and, in particular, central agencies.

Some departments will need to provide more information than others because of their size and scope. However the content and level of detail must take into account the competing demands on a new Minister's time.

Major policy and implementation issues

Aim: to provide the incoming Minister with an overview of the breadth of policy issues and implementation issues with which he or she will need to be familiar during their ministerial term

The aim should be to give the new Minister a snapshot of major policy issues within the portfolio. The briefing should take into account the Minister's and the Government's priorities and interests, as well as the Minister's existing knowledge of the portfolio and of the department or agency concerned. The outline of these issues in a briefing that follows a general election will need to take into account relevant election manifestoes, and decisions taken or positions reached as a result of coalition agreements and negotiations on support arrangements.

More detailed descriptions and suggested options can be provided later when a particular matter is submitted to a Minister for decision.

A broad environmental scan of future challenges is important to a Minister. This can be provided during the briefing process when the Minister has more time to consider it, rather than including it in the initial briefing. Providing in-depth advice or making recommendations on policy options in the briefing may constrain the advice contained while not necessarily being in line with Ministers' expectations or immediate needs. The briefing process should not

be used to promote Budget proposals – these should be advanced through the normal Government Budget processes.

Public servants have an obligation to serve the government of the day. Ministers set the objectives they want to achieve and departments advise on ways of achieving those objectives and an assessment of different options. Departments also have an obligation to provide free and frank advice, which will assist their Minister and the Government when setting policy.

Pending decisions or actions

Aim: to provide the incoming Minister with detailed information on pending decisions including analysis of options

At this early stage of a Minister's term, it is suggested that this part of the briefing focuses on decisions that are likely to be required no more than six months out, including recommendations for draft legislation (taking into account relevant election manifestoes, coalition agreements and support arrangements). Judgement is required on the content and amount of detail. A balance is needed between ensuring a new Minister is well-informed, and giving advice before the department has had the chance to engage the Minister and learn the new Government's policies for this area.

Terms of reference, membership and terms of office

Aim: to provide the incoming Minister with an overview of his or her responsibilities in relation to all entities including terms of reference, membership and terms of office of all boards, commissions, tribunals and similar entities

Departments need to keep this information up to date in any case, to ensure the board appointment processes they administer for their Minister are robust.

For some departments, this will represent a considerable amount of detailed information because of the number of entities for which the Minister has responsibility. In some cases this may be summarised, with the detailed information provided later in the briefing process when it is more convenient for the Minister.

Some appointments are likely to be an immediate priority and thus should be highlighted in the briefing. This arises because significant appointments that are due in the final months of a Government and during the Government formation period are delayed until the new Government is in place.