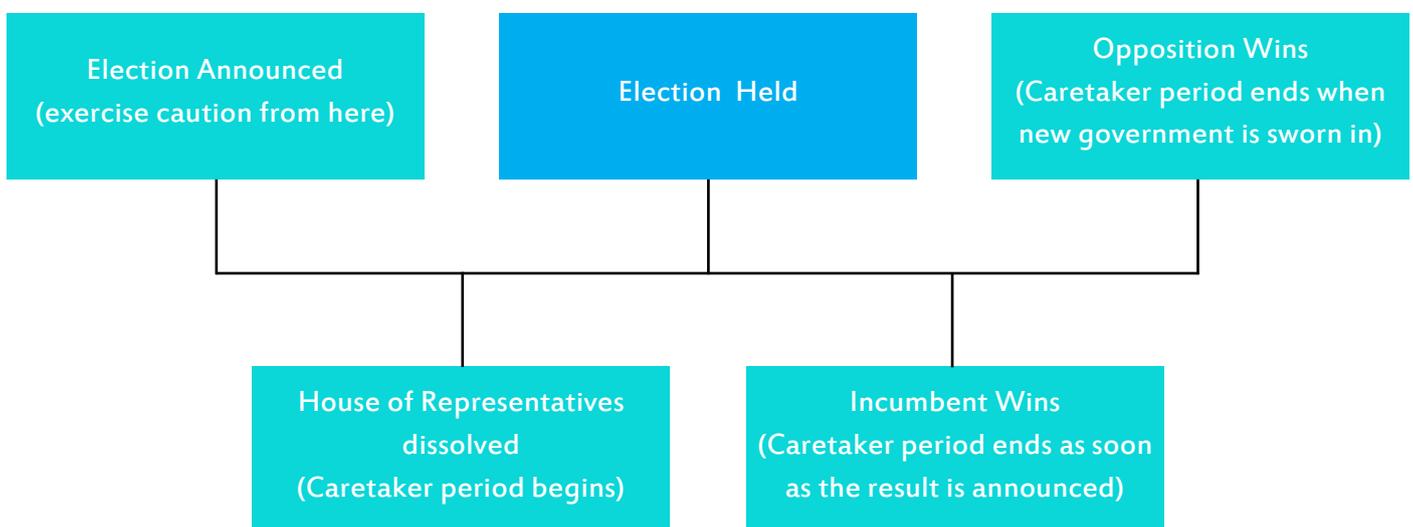


## Overview

In the lead up to an election, the incumbent government assumes a 'caretaker role' under the Caretaker Conventions, which aim to prevent the incumbent government from exploiting advantages as a result of their position in an election, or restraining an incoming government. The time period that the Caretaker Conventions apply is known as the Caretaker Period (CTP).

Caution should be taken once an election is called despite the CTP not officially starting until the House of Representatives is dissolved. If a decision must be made urgently, the responsible Minister should consult the Opposition and consider their suggestions. The Caretaker Conventions are not legally binding nor are they hard and fast rules, their application is on a case-by-case basis and requires judgement and common sense.

## Timeline of Events



## Fundamental Principles

The Caretaker Conventions seek to prevent the incumbent government from binding future governments to decisions that they may not agree with (i.e. significant appointments or major policy decisions) and using the public purse to promote their party.

## Scope of the Caretaker Conventions

### Major Policy Decisions

- Governments should avoid making major policy decisions during the CTP.
- The conventions apply to decisions not announcements. Announcements however, should be made prior to the start of the CTP.
- Care should be taken to ensure Commonwealth resources are not used to make announcements that involve partisan activities.

### Significant Appointments

- Defer making any significant or high level appointments during the CTP.
- If deferring is impractical, the Minister could:
  - Make an acting appointment;
  - Make a short-term appointment ending shortly after the CTP ends; or
  - Seek bipartisan support for a full term appointment.

### Major Contracts or Undertakings

- Governments should avoid entering any major contracts or undertakings during the CTP.
- If the decision cannot be deferred, bipartisan support may be sought regarding the commitment.
- Include clauses for termination in the event of an incoming government not wishing to proceed with an agreement.
- Regarding tenders, agencies should warn potential tenderers that the tender may be cancelled.

### International Negotiations and Visits

- Defer negotiations or adopt an observer status until the end of the CTP, this may include explaining to other parties the implications of the conventions.
- The government could provide information on its past position without committing the incoming government to that position.
- Advise other parties that any outcomes need to be authorised by the incoming government.
- The Prime Minister will determine if visits by foreign dignitaries should proceed. A better option is to delay or rearrange these visits.

### APS role in elections

- The APS must remain apolitical at all times.
- Ensure that Agency resources and Commonwealth funds are not used to advertise, promote or support the incumbent government.
- Ministers may continue to request factual material from agencies relating to the day-to-day business of government during the CTP.
- Monitor the use of agency resources during the CTP.

### 'Significant' and 'Major' decisions

The Caretaker Conventions are applied on a case-by-case basis and are a matter of judgement and the utilisation of common sense.

Assessment of what constitutes a 'Major' decision may take into consideration:

- The significance of the decision and the resources;
- The costs associated with the decision;
- Whether the decision is a matter of contention in the election campaign;
- Does the decision require ministerial approval; or
- For contracts and undertakings, does the commitment involve a routine matter of administration or does it implement or entrench a politically contentious policy, program or administrative structure.

Assessment of what constitutes a 'Significant' decision may take into consideration:

- The importance of the position; or
- Where the appointment would be likely to be controversial.

### At the commencement of the CTP, agencies should:

- Inform staff on the caretaker conventions and any internal arrangements relating to the conventions, including:
  - How correspondence is dealt with; and
  - Appointing one or two senior officers to be the initial contact for caretaker enquiries.
- In most instances, reject requests for policy advice from Ministers during the CTP.
  - Agencies may continue to proceed with policy development work during the CTP in order to advise the incoming government or if the matter is urgent.
- Ensure that Commonwealth resources are not being used for political messaging or supporting a particular political party including:
  - Resources are not used for anything relating to the election campaign or a political event;
  - Reviewing current arrangements for the distribution of publicly communicated materials;
  - Ensuring agency websites are apolitical (checking logos, icons and links);
  - Review agency contributions to Ministerial websites.
- Review and reconsider any significant

appointments or announcements, major contracts or policy decisions, and international negotiations and visits.

- Consider recalling Departmental Liaison Officers from Ministers' offices or review the need for their work.
- During business as usual activities and in correspondence, not mislead or assume that the government will or won't be returned to office.

### At the commencement of the CTP, Commonwealth Officials should exercise caution when:

- Speaking during the CTP, whether it is in an official or unofficial capacity.
- Declining to speak publicly on political issues if the issues are likely to be controversial.
- Ministers request information or assistance, especially when the request:
  - Requires significant resources;
  - Is clearly for use in the election campaign; or
  - Is for legal advice on issues affecting the Minister in his/her capacity as a candidate.
- Officials should not use agency resources or their positions to support particular issues or parties during the election campaign.
- Officials should not display political material while working.



Vince Sharma, Partner

Direct: +61 2 6196 5202

Mobile: +61 419 802 870

Email: vsharma@millsoakley.com.au



Heather Wilson, Special Counsel

Direct: +61 2 6196 5212

Mobile: +61 402 440 656

Email: hwilson@millsoakley.com.au



Paul Armarego, Special Counsel

Direct: +61 2 6196 5204

Mobile: +61 408 288 289

Email: parmarego@millsoakley.com.au