

AUSTRALIAN CAPITAL TERRITORY -

2001 GENERAL ELECTION

GUIDELINES ON ARRANGEMENTS TO APPLY IN THE PRE- AND POST-ELECTION PERIOD

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Issued by:

Chief Minister's Department
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1. Introduction

In accordance with the provisions of Section 100(1) of the *Electoral (Amendment) Act 1997*, the Australian Capital Territory is scheduled to hold a general election for the Legislative Assembly on Saturday, 20 October 2001.

For many years, governments at both the State/Territory and Commonwealth levels have accepted that special arrangements apply with regard to the operation of government in the “caretaker” period immediately before and after an election. By convention, governments ensure that decisions are not taken during that period that would bind an incoming government contractually, or in other ways limit its freedom of action.

Successive ACT governments have adopted similar arrangements. Adherence to the election period arrangements, which have no legal standing, is ultimately the responsibility of the Chief Minister. The Chief Minister strongly supports adherence to these longstanding conventions, and has approved these guidelines.

The following guidelines apply to all ACT Government Ministers and to all officers of ACT Government departments and agencies.

2. The Election Period

It is accepted practice in the Australian system of government that the period during which the caretaker conventions apply commences from the time of the dissolution of the Parliament. The caretaker conventions cease to apply when the election result is clear or, in the event of a change of Government, when the new Government is appointed. The caretaker conventions recognise that:

- (i) during the election period, there is no parliamentary chamber to which the Executive is accountable; and
- (ii) every general election brings with it the possibility of a change of government.

The system of government in the ACT is unique in Australia. Under section 100(1)(b) of the *Electoral Act 1992*, the ACT has fixed three-year terms of parliament. Under section 10 of the (Commonwealth) *Australian Capital Territory (Self-Government) Act 1988*, the term of a member of the Legislative Assembly ends on the polling day for the next general election, unless ended earlier by resignation or disqualification, or by dissolution of the Assembly. Dissolution occurs only in extraordinary circumstances prescribed in section 16 of the *Australian Capital Territory (Self-Government) Act 1988*. Thus, the timing of the commencement of the election period in the case of the ACT is not normally based on a date of dissolution of its parliament, as is the case in other jurisdictions in Australia.

Under section 3 of the ACT's *Electoral Act 1992*:

“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 in section 3 as:

“...the period of 37 days ending on the expiration of polling day for an election”.

Thus, in relation to the 2001 ACT general election, the “pre-election period” begins on 14 September 2001 and ends on 20 October 2001.

The “election period” begins on 14 September 2001 and ends on the date of the declaration of the result of the election as per section 189 of the Electoral Act 1992.

As far as ACT Ministers and officers of ACT Government departments and agencies are concerned, the caretaker conventions and arrangements apply for the whole of the election period.

3. Operations of the Government

The business of government continues during the election period. However, the caretaker conventions in effect during this period impact on a number of areas of government administration. These areas are:

(a) Policy Decisions

The Government should not take major policy decisions likely to commit an incoming government.

This restriction would not apply to the *implementation* of major policy decisions taken and announced before the caretaker arrangements came into effect. Also, the Government may, of course, announce during the election period new policy initiatives that it proposes to implement after the election, should the Government be returned to office.

(b) Appointments

The Government should avoid making appointments of any significance during the election period.

Ministers should:

- (i) if possible, defer the appointment until after the election period;
- (ii) if an appointment needs to be made for reasons of continuity, appoint for a short term only to carry through until after the election period; or

- (iii) if a short-term appointment is not practicable, appoint for the full term, following consultation with appropriate non-Government party leaders/Members.

(c) Contracts and Undertakings

The Government should avoid entering into major contracts or other undertakings during the election period that are likely to commit an incoming government.

This restriction includes commitments that would be politically contentious. If a major contract or undertaking cannot be deferred until after the election period, the Government should seek the agreement of non-Government party leaders/Members before entering into the contract or undertaking.

(d) Ministerial Attendance at Intergovernmental Fora during an Election Period

Ministers, whilst they retain their office and title during the pre-election period, would not generally represent the ACT in intergovernmental fora unless it is unavoidable. Where possible, Ministers and agencies should seek postponement of such meetings until after the election. If postponement is not possible, a senior departmental officer should attend the meeting in an observer capacity to ensure that the ACT is fully informed of progress, briefing the Minister on return.

The usual practice is for the Chief Executive of the Chief Minister's Department to write to jurisdictional counterparts advising them of the timing of the ACT Election and seeking their cooperation with intergovernmental arrangements during this period.

(e) Requests by Ministers of Departments and Agencies

Ministers may seek a wide range of factual information during the pre-election period, some of which may be incorporated into Ministerial speeches or political publications. It is appropriate for the public service to provide factual information to Ministers provided that they take no active part in the incorporation of this material into information of a party political nature.

(f) Commencement of Legislation

During the election period, a Minister may, by gazettal, and with the approval of the Chief Minister, approve the commencement of legislation that has been passed in the Legislative Assembly.

4. Operations of Departments and Agencies

During the election period, the ongoing obligation on departments and agencies to act in an apolitical manner in keeping with ACT public sector requirements, takes on added significance. The election period affects a department's or agency's usual activities in several ways:

(a) *Provision of Information and Advice to Ministers*

A department or agency should continue to provide information and advice concerning the day-to-day business of government to Ministers. Accordingly, factual material should be provided if requested by a Minister, even if it might be drawn upon for use in speeches or other material for the election campaign. Provided that the material is strictly factual, the use to which it is put is a matter for the Minister.

Strictly factual analysis of opposition policies, in terms of practical implementation, for example, costing, can be undertaken, but departments and agencies need to exercise the utmost care not to become involved in critiquing the policy. Having regard to the potential sensitivity of such requests, and consistent with the advice of the ACT Commissioner for Public Administration on this issue, chief executives of departments and agencies should refer such requests to the Chief Executive, Chief Minister's Department for decision.

(b) *Ministerial Correspondence*

Ministers would usually sign only the necessary minimum of correspondence. Any correspondence beyond this necessary minimum should be prepared for signature by Chief Executives or their delegates, rather than allowing the correspondence to accumulate for an incoming Minister.

In preparing correspondence, departments and agencies should avoid using language that might be construed as implying any particular outcome of the election. References to post-election action should be expressed in terms of "the incoming Government".

(c) *Consultation with Public Servants by Non-Government Parties*

In order to ensure a smooth transition in the event of a change of government, there may need to be consultation between the leaders of the non-government parties and departmental officers during the election period.

For such consultations to occur, leaders of non-government parties should request the relevant Minister to grant access to departmental and agency officers. The Minister should notify the Chief Minister, and the relevant Chief Executive, of any such request and whether the request was granted.

The subject matter of the discussions between departmental and agency officers and non-government parties should be restricted to matters relating to the machinery of government and government administration, and may include advice on the administrative and technical practicalities and procedures involved in implementing policies already proposed by the parties. Officers are not authorised to discuss Government policies or to provide opinions on alternative policies or other party-political matters.

Officers are to inform Ministers, through their Chief Executive, of when the discussions are to take place.

(d) Cabinet Documents

Before the date of the election, the Chief Executives of departments and agencies must ensure that all Cabinet 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.

(e) Publications and Advertising Campaigns

During the election period, departmental and agency publications and advertising material should proceed only if they constitute a normal operational requirement of the department or agency. In such cases, publications and advertising material should not include photographs and/or statements of a Minister.

Departments and agencies should carefully monitor their media releases during the election period to ensure that the material is of public interest, relates only to the day-to-day business of the department or agency, and cannot reasonably be construed as being for political purposes.

5. Further Information

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

Where Chief Executives require further clarification of these guidelines, they should seek advice from the Chief Executive of the Chief Minister's Department.

Other inquiries regarding the election period arrangements and their application can be directed to:

Robert Webb
Cabinet Office
Chief Minister's Department
Telephone 6205 50463
Fax 62051093
E-mail robert.webb@act.gov.au

Other guidelines and information on arrangements that apply in the election period are:

- “Guidance on Public Sector Ethical Requirements During the Pre-Election Period Including the Operation of Boards and Committees”, issued by the Commissioner for Public Administration. These guidelines assist ACT public sector agencies, public employees and members of Government boards and committees to manage their ethical obligations during the pre-election period. The guidelines are available on the ACT Government web site or from the Director, Public Sector Management Group on 620 76136 or the Manager, Employment Framework, Chief Minister's Department on 62076207.

- “Publication of Electoral Matter by ACT Government Agencies” – advice provided in a letter to all Chief Executives (and copied to all staff) by the ACT Electoral Commissioner on 26 February 2001. This advice relates to the laws applying to publication of electoral matter by agencies in the six months leading up to an election. Questions about the authorisation of electoral material or any other aspect of the electoral process can be directed to the Commission on 62050236.
- “Guidance on the approach to requests from Ministers for material which might be used in the election” – a letter dated 13 June 2001 to agency heads from the ACT Commissioner for Public Administration. This letter also includes advice regarding requests from Ministers for analysis and costing of opposition policies. A copy of the letter is available on the ACT Government web site or from the Cabinet Office (see above) or from the Director, Public Sector Management Group on 620 76136 or the Manager, Employment Framework, Chief Minister's Department on 62076207.

Sandra Lambert
Acting Chief Executive
Chief Minister's Department

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