



Time to tighten the caretaker conventions

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Governments in Australia have many advantages when they go into an election: with some limits the prime minister gets to choose the time of the poll; the government has by definition the numbers in the House of Representatives, resulting in more staff and more resources in the form of government allowances; government advertising can be ramped up and slanted to favour the political party; and budgets can deliver the sweeteners to buy key voters.

But governments can't do anything they please. There are laws and conventions which limit their actions. The caretaker conventions, which have evolved over the years, are designed in part to ensure that the party in government does not abuse its position to help get re-elected. The conventions come into force once an election is called and parliament is dissolved. They are not law but they *are* written and are publicly available on the Department of the Prime Minister and Cabinet (PM&C) website.

Broadly the conventions are that the government avoids:

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

The 12 page guidelines posted on the PM&C's website go on to provide detailed advice on such things as government advertising and the employment of department liaison officers in ministers' offices. Sir Robert Menzies is credited with formally and explicitly initiating the guidelines in Australia in the 1950s. Both sides of politics accept the need for them and similar conventions are also accepted in other parliamentary democracies such as Canada and New Zealand.

Because they are merely conventions there is no court to oversee the conventions' operation and ensure that the government does the right thing. The opposition may complain about breaches but can do little or nothing about them. In recent elections complaints have mostly been about advertising and the abuse of government resources.

The internet has added a complication to the process that Menzies could not have foreseen. Departments today are providing instant on-going information on government policies and programs. But to achieve a fair democratic contest, during the caretaker period, they must avoid taking a partisan position. In the end it is up to the public servants, and in particular the heads of departments, to make the conventions work. They are the ones who have to stand up to a demanding minister or ministerial chief of staff.

No systematic study has ever been conducted on how well the conventions are applied in practice although a host of information on the difficult issues must be held in the Department of Prime Minister and Cabinet, where departments take their tricky questions to get a resolution or, at the very least, third-party, high level support for the position they have taken.

Application of the conventions depends in part on the principles and backbone of those who run departments. Take two actual examples: some years back as a head of corporate communications in a department I was confronted by a deputy secretary concerned about a newspaper report. The report singled out our department for having a link to the minister's party's website where the minister's press statements were being posted. The newspaper alleged that our department was the only one with such a link and the deputy secretary wanted the link removed immediately and the person responsible reprimanded.

When I enquired and found out that we were not alone, and that the Department of Prime Minister and Cabinet itself had exactly the same sort of link, his concern evaporated. But within days he was back on the phone. Was it true that I had rejected a request from the Minister's office to put a new policy on shipbuilding up on the department's site? 'Yes', I said, 'That is directly in breach of the caretaker guidelines. We can't do it'.

The guidelines said that agencies should not add material concerning future policies or election commitments. The deputy secretary was in a panic. He had been confronted by the Minister's senior adviser who was not going to take no for an answer. The deputy

secretary instructed me to put the policy up. In true bureaucratic form I asked for the instruction in writing.

An investigation ensued. The in-confidence shipbuilding review had been completed and delivered to the Minister in June. Government consideration had been scheduled for 31 August but the election announcement had intervened.

With the election now called, the Prime Minister wanted to make an announcement in response to the review and planned to make the review, which supported his position, public. Not surprisingly, Prime Minister and Cabinet concluded that the report should be placed on the department website. And, with the receipt of the written instruction, so it was.

In 2004 the rules governing department internet sites were still not clear, as indicated by the fact that departments adopted entirely different approaches. Some took the position that they could not post ministerial speeches and press releases during the caretaker period, while others continued to provide this service for their minister.

DFAT, for example, continued to post ministerial press releases and transcripts for Alexander Downer, while other departments stopped posting material with even the vaguest political touch. This produced the amusing situation where the transcript of a joint press conference with Mr Downer and the Prime Minister Mr Howard, was posted on the DFAT site but was not posted on the Prime Minister's site. The head of PM&C, Dr Peter Shergold, adopted the most cautious approach of all in his own sphere and did not even post some of his own speeches delivered before the election was called.

It is to be hoped that early in the year when the expected review of the conventions is carried out, there will be changes to ensure that the guidelines themselves are clear and emphasise the democratic principles required to make the election as fair as can reasonably be expected.

Nevertheless their proper operation will still be dependent on the public servants who will make judgments on precisely what they mean and how they apply. The guidelines should therefore give the least possible room to manoeuvre to those who might otherwise be influenced by political bias or their estimate of who is going to win the election.