

THE DEPARTMENT OF
THE PRIME MINISTER AND CABINET

CANBERRA, A C T 2600

OFFICE OF THE SECRETARY

21 July 1993

Senator Barney Cooney
Chairman
Senate Select Committee on Matters
Arising from Pay Television Tendering Processes
Parliament House
CANBERRA ACT 2600



Dear Senator Cooney

The Prime Minister has asked me to reply to your letter of 6 July 1993 inviting him and his Department to lodge a submission on your Committee's reference.

I have recently forwarded to you a copy of the paper *Accountability in the Commonwealth Public Sector* which was launched by the Prime Minister on 1 July. I have also sent you a copy of the statement *Performance and Accountability in the Public Service* made by the Prime Minister on that occasion. The Prime Minister does not wish to add to those remarks.

Your letter made particular mention of the role of a Minister during the caretaker period of an election. Your Committee's terms of reference allude to the question whether there is any different responsibility which might attach to the role of a Minister during the caretaker period. I think the following comments on that matter may be of assistance to you.

By way of background I attach a copy of a special article published in this Department's 1986-87 Annual Report which outlines the caretaker conventions and gives some relevant background to them.

The practice adopted for this year's election, based on what has been done for many past elections, was that the Government noted the conventions in a meeting of the Ministry held just before the dissolution of the House of Representatives and I wrote to my colleagues drawing the conventions to their attention. A copy of that letter is attached.

The main purpose of the caretaker arrangements is to enable governments to avoid the controversy that would inevitably accompany decisions taken immediately before an election of a kind which would limit the options available for an incoming government. In the main, their effect is to defer the taking of

decisions which are likely to have continuing effect and where some delay can be accommodated. Whether or not a particular decision should be taken during the caretaker period is ultimately a matter for considered judgement by a Minister consulting with colleagues and the Prime Minister if the matter so requires. This Department provides advice drawing on basic principles and precedents.

Sometimes it is not practical for a decision to be deferred until after an election. In these cases, especially if the matter is potentially controversial, adherence to the convention would require the Government to seek ways of minimising the long term effect of the decision or reducing the potential for controversy. For example, where a new appointment cannot be delayed it may be appropriate to make the appointment for a short period, or consult the Opposition before making a longer term appointment.

For the most part, the caretaker conventions will apply with similar force whether the matter is normally dealt with by Ministers or by officials. Generally, if the effect of the convention is that a particular matter should await the outcome of the election, then that will be the case whether or not the matter is one which would normally be dealt with by a Minister or a public servant.

The conventions do not of course effect any formal or legal change in the respective responsibilities of Ministers and public servants during the caretaker period. Ministers still retain their overall responsibility for their departments and constitutionally remain in charge of them until the swearing in of the new ministry. Statutory powers required to be exercised by the Minister personally will still have to be dealt with by him or her. Matters requiring consideration by the Executive Council will still have to be the subject of a recommendation from the Minister. There is generally very little Executive Council business during the election period, for example only two meetings were held during the 1993 election period, dealing with some ten items.

The conventions do, however, have the effect of reducing the level of contact between Ministers and departments by requiring that matters upon which departments would normally provide a full range of services, such as policy development and implementation of major policy changes, are suspended while the caretaker period continues.

This in its turn serves to reduce the scope for controversy about the role of the Public Service in providing support to the Government during election campaigns.

Your Committee would also, of course, recognise the plain fact of elections, that all those involved are extremely busy, out of Canberra, and quite legitimately preoccupied with campaigning. It would be quite unrealistic to assume otherwise and the Public Service responds to that fact by doing all it can to avoid unnecessarily taking up Ministers' time. Senior officials exercise even more judgement than usual about what they should draw to Ministers'

attention, what matters can be deferred, and what matters it would be appropriate for them to take decisions on themselves. The Public Service for its part has its own separate task of ensuring that it is ready to serve the Incoming Government of the electorate's choice.

Against that background, I think it would be fair to conclude that while the caretaker conventions do not of themselves change the nature of ministerial responsibility, the need for clear distinctions between the Government, the Public Service and election activities, and the general circumstances of election periods will have the effect of reducing Ministers' direct involvement in the affairs of their departments and their knowledge of departmental activities during that period.

Your letter sought a departmental contact officer. Martin Bonsey, Acting First Assistant Secretary, Government Division can be contacted on 271 5761.

Yours sincerely

signed 21 July 93.

M S Keating



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CANBERRA, ACT 2600

OFFICE OF THE SECRETARY

Telephone (06) 271 5200

Facsimile (06) 271 5935

«permhead»
«title»
«department»
«address»

Dear «salutation»

The Governor-General has agreed to the Prime Minister's recommendation that he dissolve the House of Representatives on Monday 8 February 1993 and that an election for the House of Representatives and half the Senate be held on Saturday 13 March 1993.

I attach, for your information, a copy of a note concerning the handling of business during the election period which I have circulated to officers of my Department. It includes a summary of the caretaker conventions, which it is planned will be noted at a Ministry meeting on Monday. I have also attached a copy of the special article on caretaker conventions and other pre-election practices, published in this Department's 1986-87 annual report.

Any enquiries or requests for further information may be addressed, in the first instance, to

- Bill Blick (telephone 271 5761)
First Assistant Secretary
Government Division, or
- Philippa Horner (telephone 271 5532)
Assistant Secretary
Legal and Administrative Review Branch.

Paragraph 18 of the circular states that all Cabinet documents should be back in the Cabinet Office by c.o.b. Friday 5 March 1993. This instruction applies to this Department. Within your own organisation, I suggest you arrange the return of Cabinet documents from your Divisions to your Cabinet Liaison Officer, for custody on behalf of the Cabinet Office until the result of the election is known. Cabinet Office (Peter Jackson, 271 5328) should be notified when this has been done.

A matter not dealt with in the departmental circular, but which I need to mention, concerns the position of Departmental Liaison Officers (DLOs) in ministers' offices.

These officers are provided by departments to assist ministers' officers with necessary liaison work. Insofar as there is ongoing work of that kind for them during the campaign I see no difficulty with them remaining with ministers' offices. They are, however, public servants and not Members of Parliament (Staff) Act employees. As such it is important that they understand that their duties do not extend to assisting in ways which could lead to allegations that public servants are being employed for party political purposes.

Yours sincerely

M S Keating
8 February 1993