



Instructor Guidance Note— Effect of elections and caretaker period

Drafting work during the caretaker period

1 The caretaker period for an election begins when the House of Representatives is dissolved and continues until the election result is clear or, if there is a change of government, the new government is appointed by the Governor-General.

2 During the caretaker period, OPC continues to undertake limited Bill and instrument drafting work in accordance with the caretaker conventions. Drafting resources in this period are often extremely limited, even in relation to legislation that the caretaker conventions would allow OPC to continue drafting. This is to allow OPC to undertake significant projects to build drafting and instructing capacity both within OPC and across the APS. The caretaker conventions generally have less of an impact on the drafting of instruments than they do on Bills.

3 Instructing agencies should not assume that there will be continuous drafting availability in OPC during the caretaker period when determining timeframes for legislative projects. Within the limited drafting resources that are available, any drafting undertaken will be to ensure the business of government continues and ordinary matters of administration are addressed in accordance with caretaker conventions. First Parliamentary Counsel can advise whether particular drafting work might be able to be undertaken by OPC during the caretaker period.

4 If OPC indicates that there is sufficient capacity for drafting work to progress on a Bill or instrument, the agency concerned should write to OPC setting out the reasons why the proposed legislation falls within the caretaker conventions, with supporting evidence (particularly of bipartisan support) where appropriate. It is preferable if the communication is signed off at SES Band 1 level or higher.

Bills still before the Parliament

5 When the House of Representatives is dissolved, all introduced Bills still before the Parliament lapse.

Policy authority

6 If there is a change of government after the election, all previously given policy authorities are regarded as having expired.

Instructor Guidance Note—Effect of elections and caretaker period

7 If the previous government is returned at the election, policy authorities that were current immediately before the election will generally be treated as having survived the election. As a result, any Bill that has lapsed may be reintroduced without further policy authority if no substantive changes are made to it. New authority is not needed for formal changes, such as changing the year in the Bill's short title. However, any changes of substance require new policy authority. If there is any doubt about the scope of policy authority, instructors should check with the Parliamentary Affairs and Legislation Section of the Department of the Prime Minister and Cabinet (**PM&C**).

8 There is an alternative procedure to reintroduction, in which a lapsed Bill may instead be restored to the notice paper. However, this can only be done in limited circumstances and rarely happens.

Royal Assent and Proclamations

9 There may be Bills that have been passed by both Houses of the Parliament that are still being prepared for Royal Assent when an election is announced. The *Guidance on Caretaker Conventions* published by PM&C states that Bills that have passed both Houses of Parliament should be assented to before the dissolution of the House of Representatives. OPC will therefore do everything it can appropriately do to ensure that all such Bills are assented to before dissolution.

10 There may also be Acts that have received the Royal Assent but that depend for their commencement on Proclamations that have not yet been made. The *Guidance on Caretaker Conventions* states that legislation can be proclaimed during the caretaker period but that, other than in exceptional circumstances, Proclamations which have a commencement date after the date of the election should not be made.

Making and lodging instruments during the caretaker period

11 The question whether an instrument can or should be made during the caretaker period is affected by the caretaker conventions, and agencies should therefore consider the *Guidance on Caretaker Conventions*. OPC cannot provide advice on this.

12 The Federal Register of Legislation's (the **FRL**) lodgement facility is available for lodgements during the caretaker period.

13 If an instrument is made during the caretaker period and lodged for registration on the FRL, OPC is required to ensure that it is registered and made available to the public.

ExCo meetings before and during the caretaker period

14 A special Executive Council (**ExCo**) meeting may be held after the announcement of an election, but before the start of the caretaker period, to deal with outstanding appointments and matters of an urgent nature.

Instructor Guidance Note—Effect of elections and caretaker period

15 ExCo meetings are infrequent during the caretaker period and are held only when required and with the agreement of the Governor-General. If an instrument needs to be considered during the caretaker period, please contact the ExCo Secretariat to ensure the instrument can be considered before providing instructions. The Secretariat can be contacted on (02) 6271 5779 or email exco@pmc.gov.au.

Tabling and disallowance of legislative instruments during the caretaker period

16 OPC will continue to lodge new legislative instruments for tabling with the Table Offices during the caretaker period. However, tabling will not occur until the first sitting day of the new Parliament.

17 Legislative instruments that were tabled before the caretaker period will resume their disallowance period on the first sitting day of the new Parliament.

18 However, if a notice of motion to disallow a legislative instrument was given for an instrument, but was not dealt with by the previous Parliament, the motion automatically lapses and the instrument is taken to have been tabled on the first sitting day of the new Parliament: see section 42 of the *Legislation Act 2003*.

More information

- *Guidance on Caretaker Conventions* published by the Department of the Prime Minister and Cabinet

The purpose of Instructor Guidance Notes is to assist agencies with general legislative drafting issues and preparing drafting instructions for Bills and instruments. The series is intended to be a starting point for instructors' own engagement with the matters covered. Instructor Guidance Notes are not statements of official policy and are not intended to be a comprehensive statement of the law. This Instructor Guidance Note should not be relied on as a substitute for legal advice.