

NATIONAL ELECTIONS: CARETAKER CONVENTIONS AND ARRANGEMENTS FOR TRANSITION

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There are two topics in a sense that we were asked to talk about. One was the caretaker period, and very, very closely related is the question of the preparation for the incoming government. As Mike Codd said, one of the uses of the caretaker period is that of important preparation for an incoming government. It is the one time when a public servant can genuinely anticipate a change of government. Indeed, the whole focus of a lot of our activity during this period is just that - anticipating, in the very literal meaning of that word, a change of government. So the relationship between the two things is very close. Usually, when we talk about the caretaker period, the first thing that comes to mind is the caretaker conventions. Now I would like to touch on a couple of things about the caretaker conventions fairly quickly.

Mike referred to the 1986-87 Department of Prime Minister and Cabinet (PM&C) Annual Report, and I guess that it is the bible for most of us in terms of the convention period and, to rephrase it, the conventions. It is called, in fact, the caretaker conventions, and interestingly other pre-election practices - I think that is

a titillating sort of description of it - but from my point of view it is very much the other pre-election practices that are interesting, because basically the conventions themselves, what are known as the basic conventions, are pretty well understood, I think. We run into problems from time to time, as Mike said, about advertising, but that has been largely clarified. The good thing about this, of course, is that being conventions, they are growing, they are developing, they are changing. A recent change, I think, has been that one about advertising, where it has become much more clear, what the ground rules for that are. But the basic conventions were, in fact, in the form of guidelines for the handling of government business, incorporated in the Senate Hansard of 5 June 1987, p 3668. But they do cover the major policy decisions likely to commit an incoming government, that includes appointments of significance, entering into major undertakings or contracts and, I stress very clearly, those words "major significance" - "major". They are not the small things, they are the big things that are caught by the conventions. But, again as Mike has made very clear, that is a matter of judgement, and I guess that is where we come in, and the other processes come in and I will mention those in a moment.

The advertising campaigns I mentioned, consultations with officials by the Opposition, gets a very long mention in those guidelines. Interestingly, in respect of those in the guidelines themselves, there is a definition of the pre-election period, and this is described as being from three months prior to the expiry of

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the House of Representatives, or the date of the announcement of the House of Representatives election, whichever is first. So there is automatic time running in terms of that one convention. I have been unable to find that that question of three months before applies as a matter of established practice to any other of the conventions.

As I said, it is major and significant things that we are talking about. However, the tabled conventions are not the end of the story. There are described in that PM&C history and description of it, "the other established practices". They are usually regarded as part of the conventions, but certainly they are not to be found or referred to in that summary of guidelines which was tabled in the Senate.

To quote from the PM&C Annual Report again, "they are mainly directed at ensuring that Departments avoid any partisanship in the special circumstances of an election campaign, and that government resources are not directed to supporting a particular political party". Now, depending on your minister at the time, they love it. Like hell they love it! It is a real question of interface there, and it is quite a difficult situation for public servants, and I think genuinely for ministers, who are not used to coming up against those sorts of conventions. To paraphrase them, if I may, I suppose you would say that basically during the convention period as public servants we do not provide policy advice, we do not develop new policies, we can, of course, provide advice on the impacts of existing policies, and indeed may have to on occasions because things may be going wrong. It is still the government - let me emphasise that very strongly - the government is still the government and we are still public servants working for that government. I will come back to that in a moment because I think it is a very important point.

We seek to ensure that no use is made of official facilities to promote the political

party. We seek to ensure that as far as possible, in terms of our involvement anyhow, there is no electoral advantage to be gained from what we do. But we do, on the more positive side, continue to provide factual information and material. Mike referred to that and some of the problems that arise from it. I guess from my point of view the first test for me in that situation is, would I provide it to the Opposition, if I would then I have no problems at all. If I would not, then you go further into it, and I will come back to the mechanics of that in a moment.

There are, of course and I think it is worth mentioning, some legislative requirements that may impinge on the use of official facilities, and indeed even the provision of factual information and material. Mike mentioned the case of providing material which has been long published and may be in bulk in the department and is required by the minister's office. Now most ministers' offices are clever enough not to tell us what they want it for, and I guess we are clever enough, if it is within the bounds of reason, not to ask too much about what it is wanted for. So there is a bit of give and take in that, and I think that is sensible, and it has been the case in every election that I have been involved in. Certainly, if it was excessive, then I think the issue would arise. But there are legislated things which may impact on that. I have in mind, particularly, the Electoral Act and perhaps the Broadcasting Act. But there are probably many other pieces of legislation which do or may have impact. I say "may" because in some areas I think we are moving into new ground. Some of you would know my Department has been heavily involved in developing a thing called the Community Information Network which is a computer-based network which we provide to the community at large and which has access to the Internet and is also a means of communication between people. I am unclear - and I have not asked my colleagues in the Attorney-General's Department yet to tell me the answer - of

my responsibilities if that started to be used for material which might be described as political material. There are a number of issues there, and again I make the point that conventions develop, and I guess that we are going to have to develop some conventional approaches to those sorts of things. It may be that we will develop hard law approaches to that, I do not know. It is probably the subject of a separate and different discussion.

In the spirit of the conventions and recognising a reduced government load, that is, that basically ministers do not deal with a lot of the correspondence, a lot of the detailed day to day work that they would normally deal with during the parliamentary term, they hand that over in a sense to us, or to the Parliamentary Secretary as the case may be, and we get much more involved in dealing with parliamentary inquiries, the day to day sort of run of the mill stuff, which normally would go to the minister's office or through the minister's office to the minister and would be dealt with there. Because that load drops off, and also because the day to day running of government diminishes, and for other reasons, not just because of the self-denying conventions that we have talked about, we draw back from ministers' offices. Our departmental staff that may be there to assist ministers do not withdraw entirely, because we still recognise that there is a load of work to be carried, but significantly, we draw back resources to the minimum that is sensible in terms of that ongoing government commitment.

Now Mike made the point and I would emphasise it very strongly, that all of those things that I tried to describe and all the things that Mike described, are at the discretion of the government, and they are subject to the overriding demands of continuing effective government. So if at any stage a situation arose where it was necessary to provide policy advice, even new policy advice, because of the exigencies of the situation, there would

be no doubt that it would be our role to provide that advice and to perform that advice at the request of the government.

I think it is a very healthy thing that despite the general nature of these conventions, and as we both tried to describe they are very general in their formulation and their application, they have been observed and have been relatively free from any significant controversy. I mean, the advertising one certainly created some issues, but the conventions were able to meet that and by and large I think that the spirit of the conventions is adhered to - which I think has something to do with the fact that the House of Representatives is no longer available to review the decisions of government during this period. I think that is also an influence on the way in which they have developed. You will be glad to know that all of those decisions that we have to make are not solely on my shoulders, I can turn to the Prime Minister's Department for help, because as I said earlier, they are in fact the custodians of the conventions in a very real sense and they do provide guidance and assistance to the Parliament in the difficult issues that do arise.

I think that one of the problems that we have, and why we need the Prime Minister's Department (apart from their general wisdom) is because these practices are not uniform across departments. Different departments will adopt differing attitudes in terms of the way in which they interpret and apply the conventions. In my own case, I sat down with my minister's staff and my minister when it became fairly obvious that the election was imminent, and we discussed my views on the conventions, and reached fairly quick approval from the minister about how we should apply them. I think that would be generally the case for most of my colleagues, some of whom are in this room, that they would sit down and reach agreement about how they apply the conventions. That is fine, until suddenly the minister finds that what he

has agreed with you is not necessarily what is being done by somebody else. Let me give you an example. Because Social Security is a large Department with some 300 regional and area outlets, we are in a constant process of opening offices. They are pretty high visibility things, they are in local electorates, they are usually in high demand by local representatives wanting to be the officiator of the opening. The Opposition likes to be there if it can be. We get a lot of publicity out of those sorts of openings, which is very good for our purpose, but notwithstanding the advantage to us, because of the spirit of the conventions, we do not open any offices during the formal convention period - we just stop opening offices. It does not mean they do not operate, but we do not have that formal public opening. That is a decision we take. Other departments take a different view. That creates some tensions when it becomes known. Local members say "if I can do it with department X why can't I do it with department Y, and I really need those extra few votes that I might get from that" or whatever they say. We have pursued the line of no openings and it is a line which I personally believe is entirely appropriate and proper and I am glad to say that my minister has shown no real signs of changing his view on the propriety of that either.

There are those sorts of tensions, and indeed I think it is true to say that not only are there different approaches between departments, in a lot of departments there are different approaches within the department, depending sometimes on the particular views of the officer responsible. But because you can over-emphasise these conventions, you can be over zealous about appearing to be pure, let me give you another illustration. When the election was formally announced we, in consultation with PM&C, went through our advertising program and cut those things which were clearly out of the bag. But much to my surprise my staff came with the very firm recommendation that we should stop telling people about their

right to maternity allowance because the government was, in fact, making an announcement about maternity allowance. We did, actually, change the wording so that we did not give too much credit in any one direction but the obligation on us to advise our customers of their entitlements does not change during the period. There is a real issue about departments getting too carried away with the purity and zealotry of their role. I think that is something we have to watch too.

I mentioned the role of PM&C and that has been very helpful. We do have pretty constant reference to Bill Blick and his people, we do not always agree with them, sometimes we do not think they understand the program significance of what is happening or the reality of the situation we are in, and we of course always have a resort higher up the line, either to Mike Keating or eventually to the Prime Minister if it is a real issue - and it is the Prime Minister at the end of the day, acting on advice, who makes the decision.

Just so you do not get carried away with Mike's description of that relaxed period that we are all having at this time, let me make it quite clear that these conventions and their applications are a pain in the neck. They really do create a very significant workload.

Can I just echo again some of Mike's comments about the preparation for an incoming government. Can I go back to that relationship issue. It is really a question of gaining and maintaining trust in a very large way. We do not know who is going to be in government. We have to maintain the trust we have, or hope we have, with the existing government, but we have also got to be in a position through our actions to gain the trust and the confidence of the potential government. A lot of the caretaker period conventions, of course, are designed to achieve that. There is a significant policy development role going in the sense that

we are watching very carefully what the Opposition is saying, and indeed what the Government is saying, because from here on in we do not have too much notice of what some of the government's new policies might be - in fact some of them have already caught us a little bit by surprise - and so we are looking pretty constantly at the way the Government and the Opposition are developing their policies in order to prepare those tomes which Mike described. From our point of view, we prepare basically three. We prepare one in the event that the Government gets back and we get the same minister and that is a bit of a snap. Well, it is except for what Mike said - this is the opportunity to advance some new ideas. To say "we did all that, but there is a new opportunity so let's see if we can't take it". So there is a policy development role going on all the time, trying to build on what has been achieved. Then of course there is the Government returned with a different minister. Well you start the guessing game right about now - "if he/she goes there, where will he/she go, and if he/she goes there who will I get" - so you try and start matching up against the sorts of people that you think you might get, but basically that is not too bad. Then, of course, there is the ultimate issue of a new Government coming in, and of course it is constant reference to what Mr Howard or Mr Costello is saying at any given moment. Those policy issues cover the portfolio-specific issues, the sorts of policies we want. They certainly cover cross-portfolio issues. We are desperately interested in what they are saying about DPIE or HARD or DEET or whoever, in order to catch the nuances of the way policy might develop, and of course that relates to, and is directly affected by, the machinery of government changes that might be suggested or intimated during the process. So it is time for preparing those sorts of documents, but in summarising this slightly, it is a terrific time to focus your staff, to focus the people in the department towards the next round, towards the next set of objectives to be achieved, and towards

how we might go about achieving those objectives.