

## NATIONAL ELECTIONS: CARETAKER CONVENTIONS AND ARRANGEMENTS FOR TRANSITION

*Mike Codd\**

*Edited version of an address to AIAL seminar, Caretaker conventions and arrangements for transition, Canberra, 6 February 1996.*

We are here to talk about behaviour at both political and public service level in the caretaker period, and what happens in the transitional phase in welcoming and preparing for an incoming government. The behaviour in a caretaker period is governed by conventions, not by law. There is no legal impediment to the government that is in place right now, giving a direction, introducing a policy, spending money. They could, for example, make an appointment to the governorship of the Reserve Bank for another seven years and do so right now, legally. The fact that they do not generally do that kind of thing in a caretaker period, as I said, is entirely based on convention. The convention goes back quite a long time. I think the record shows, for example, Menzies writing to his ministers in 1951 just ahead of the election, asking that they take care not to take decisions in the period ahead without reference to him. You can track through other correspondence in elections after that, where gradually this set of conventions was refined, life became a little more complicated, and the conventions were

eventually set down in writing. The most extensive text on the subject coming from government, at least that I am aware of, is in the Prime Minister and Cabinet Annual Report for 1986-87 in a special article which gave a little bit of the history and explained what the conventions are, and I will be referring to some of that as I go on.

There are occasionally circumstances in which the force of the conventions might be supplemented in one way or another by some undertaking. Two examples have been used in the past. In the United Kingdom, Churchill, just after the Second World War, when the coalition government during the war time ended and there was a period before the election, gave undertakings to the Palace about actions that he would take while he was in caretaker mode ahead of those elections. Secondly, in Australia in November 1975 when the Governor-General invited Malcolm Fraser to form a government, he did so seeking first his undertaking to abide by certain conditions. Those conditions were not to take decisions or make appointments or take action that would commit an incoming government in the period that he was in caretaker mode. Where undertakings of that kind have been given, the force of the convention might be argued to be supplemented to some degree. But in the end, it is a matter of public response, public debate, public pressure if you like, above anything else, that ensures that the conventions are generally followed. That is to say, if they are not, people jump up and down, there is controversy about it, and generally politicians are sensitive to

---

\* *Mike Codd was Secretary to the Department of Prime Minister and Cabinet 1986 - 1992.*

that and will therefore acknowledge the conventions and seek to give effect to them.

Having given that brief introduction, what is the caretaker period? According to the literature, it dates from the dissolution of the House of Representatives, and goes through until the result is clear, or the new government is sworn in. If the result is clear and there is no change of government, then normal business starts again. If there is a change of government, then the period ends when the new government is appointed.

The literature also says, however, "it is also accepted that some care should be exercised in the period between announcement of the election and the dissolution". I will come back to that a little later on with some illustrations on that point.

The conventions as described are that first of all, decisions are not taken in this period which would bind an incoming government and limit its freedom of action. That means that caretaker governments are not supposed to enter major contracts or undertakings. Also, they are not meant to make long term appointments of significance. The practice has built up in the appointments area that if there is a vacancy coming up in a critical area, either the government makes an acting appointment if it can; or it makes a short term appointment, say for three months, that gets it over the period into the period of the incoming government; or it seeks the agreement of the Opposition, the relevant shadow minister, or opposition leader to proceed with a longer term appointment, and proceeds on that basis.

Next, it is said that the caretaker government should avoid implementing major policy initiatives. Now, as always with the wording of these sorts of conventions, it is not altogether clear what that means in practice. If you take, for

example, a government that has legislated for taxation cuts and they are to come in a phased fashion, and it decides to call an election and one of the refund points happens to be in the middle of the election campaign with dollops of money coming out to everybody, this is a policy that they not only declared some three years before, but the legislation has been through and the timing is all set, and this part of the implementation happens to fall during an election period. According to the language of the convention, this would be legitimate, but it would probably be a matter of some controversy nevertheless. So I think you will find with anything like this that the scope for debate about what is right or wrong is endless.

The next convention is that a caretaker government should avoid involving departmental officers in election activities. I will come back to that again because the precise meaning of that is not necessarily all that clear.

Next, the literature says government resources should not be directed to supporting a particular political party. One of the illustrations of that is advertising. I think you probably noticed the controversy in the New South Wales election period some time back about government advertising that went on in the lead up to the campaign itself, and perhaps during it. One illustration of that issue nationally was in the 1987 election when there were recruitment advertisements for the Department of Defence which featured Bob Hawke and Kim Beazley as the Prime Minister and Defence Minister at the time, and there were concerns raised about the profile that would give them during a campaign period, and the decision was taken to stop those advertisements during that period. Because of that and other examples, there now seems to be general acceptance of the view that profiling ministers, even if the advertisement is down to earth, just telling you about your social security benefits, is inappropriate during an election period if taxpayer

funded. Then the literature says about departmental operations that it is accepted practice for departments to decline requests for material or administrative assistance for purposes clearly related to the election, rather than the ongoing business of government. That relates back to the other stated convention that I mentioned: to avoid involving departmental officers in election activities. The thinking behind that is clear enough, but it is also accepted practice that during a caretaker period caretaker ministers who request factual material are entitled to get it. Whilst it is understood widely that public servants should not take factual material and convert it into a political speech for the caretaker minister, the requirement to provide factual material is understood and generally accepted. That can be quite an issue in some circumstances. For example, if there is a demand on the public service to provide reams of material on the impact of certain programs by electorate, that is clearly going to be used in the minister's office for election purposes. Some people in the public service who are asked to do that in a caretaker period would feel very uncomfortable about it. Again, it is a question of judgement about what is right and appropriate in the circumstances of the particular case. There is also the issue of costings of opposition policies, and the work that goes on on that front, but I will return to that subject later.

In the present literature there is no general principle stated from which these various conventions have been derived. But I suggest that if you look through the stated conventions, you can self-select two fundamental principles which must underlie them. One is the fostering and maintenance of a bipartisan, professional, career public service. The second is that in a robust democracy the incumbent should not be advantaged in an election period by access to taxpayer funded resources. This second might be characterised as giving each party to an election a "fair go". If these are indeed the

two main principles underlying the conventions, how far should they be taken? This is a matter for legitimate debate. Let me give you an illustration from the Fraser government period. The Prime Minister, some of you may recall, wanted to put out a monthly glossy called "The Government Record" and it was to be a collection of major policy statements by the government, in Parliament, outside of Parliament, a record of the government's achievement. There was a mailing list of some thousands of opinion leaders right around the country, all the media of course, business leaders and so on. The first draft of this document contained, as well as factual information and statements of the government's policy position, a good deal of rhetoric criticising the Opposition, explaining how the then Opposition had gotten the country into such a mess. It turned this into, in effect, a political document. The issue was raised with Mr Fraser - was it appropriate for taxpayers' money to be used to produce a document of that character and distributed that widely. The decision was taken by the Fraser government that that was not appropriate and an official had to edit this document each month, taking out all the polemics.

This is an interesting example, partly because it occurred not in a caretaker period but in the normal course of government. Thus it illustrates that the boundary that some people draw around "what is the caretaker period, when does it start" is capable of considerable extension. It may therefore be argued that the fundamental principles that the caretaker conventions are trying to address apply much more widely than in the caretaker period.

The second illustration I want to give about how far these principles should go is on costing - costing of opposition policies. As far as I know, the practice that the Public Service develops official versions of the costs of opposition policies began in 1972 in the McMahon/Whitlam

election period. In that election there were some rather sweeping policy pronouncements by Mr Whitlam and the intention was get some official costs out which would frighten the electorate and would be 'believed because they came from the Treasury (as it then was). Well that exercise was done, Mr McMahon used those figures, and in the end they probably didn't have much impact on the result. Subsequently, and from both sides of the political fence, it has become standard practice to get the Public Service to do costings as a matter of course. In fact, it is not just during the election period, now. Whenever the Opposition puts out a policy, whether or not it is something as major as Fightback, well ahead of an election period, the official estimates are done and out they come and are used as something of a political football. In practice, these days there are so many other estimates around that the electorate is probably thoroughly confused, bemused, unimpressed by all of this, so in practice it probably does not matter. In principle, I think it is open to question whether the resources, during a caretaker period particularly, of the Public Service should be used for that kind of exercise. I saw it happening in the McMahon/Whitlam election period and felt uncomfortable, and I still feel uncomfortable about this practice.

So these and some of the other examples I referred to earlier, like legislated tax cuts; what sort of advertisements it is appropriate to keep running at taxpayer expense during an election period - these are areas of fine judgement. In the end the judgement needs to be made by the political leadership, and if necessary debated publicly. The role of the public service, however, is to be conscious of these conventions and of the underlying rationale for them, and to bring them to notice whenever they feel there is an issue of sensitivity or judgement, and make sure that the judgement is made in the knowledge of the implications, in

terms of past standards and likely public reaction.

*Moving on to the issue of arrangements for transition, in most departments, and certainly in Prime Minister and Cabinet in this caretaker period, it is both a busy period and a fascinating period. As most of you would know, the preparations for an incoming government are extensive. In the case of the Prime Minister's Department, you have books on what happens immediately after the election, the procedures that need to be followed for swearing in of ministers, when Parliament has to be recalled, cabinet arrangements, machinery of government issues. There is a book that gets prepared on just those issues for both sides. Then there is a book on policy that is the first set of advice to the incoming government about what needs to be done to implement the policy that they have announced, any issues or difficulties that are seen with it, advice on how to take the necessary steps to get it advanced, and so on. And then there is a volume which is an information volume, that tells them what the latest budget deficit is, what other information they may need to know about the situation in Sri Lanka and so on. So, there are these huge volumes prepared and ready to hand over on the Sunday after the election, if the result is clear, to whoever it is. And the ones that are not lucky and do not win the election, those volumes do not get trashed, they get put on a file somewhere, but they do not ever see the light of day.*

*I would call that the routine practice that goes on during this period. There is also not-so-routine practice, at least in my experience, and I imagine that it applies in other departments as well. This is an opportunity for public servants with ideas that they harbour - how to improve government in one way or another - to produce those ideas to an incoming government and say "well, you didn't announce this but here is an idea - what do you think about this?". The politicians*

are away electioneering, so you have the luxury of a little bit of time to sit down and think these things through. One illustration of that is the birth of what is now called COAG, the Council of Australian Governments. The reform program proceeding under that umbrella is something that was put forward in 1987 to Mr Hawke after the election. There was a paper that analysed the history of inter governmental arrangements in Australia, and what were seen to be some of the problems in the arrangements as they then stood, micro-reform issues and so on, and what sort of steps might be taken, what process followed to try to advance reform in that area. That was examined by Mr Hawke and his office and indeed by two other ministers at the time at his request, and there was some interest in it as an idea, but it was finally decided that the time was not right to advance such an agenda. Three years later, in 1990 after the election, the idea was put forward again and was accepted on that occasion.

The final point I want to make in relation to transition is its immediacy, especially when there is a change of government. A well-known example is what John Menadue did on 11 November 1975 when he learned that a commission had been given to Malcolm Fraser. He had to switch immediately and go across and start providing professional advice to the Prime Minister of the day. The whole Department who had been engaged until that morning, assiduously working on Whitlam government policy and programs, suddenly switched and started working for the caretaker government.