



OFFICE of the PUBLIC SERVICE COMMISSIONER
GOVERNMENT OF THE COOK ISLANDS
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CIRCULAR MEMORANDUM

Priority: Urgent
Date: 3 June 2022
Ref: 202205
To: Heads of the Public Service, Crown and Statutory Agencies
cc: CEOs of Ministerial Support Offices; Executive Officers, Island Governments
From: Carl Hunter, Public Service Commissioner
Re: General Elections 2022

Kia orana tatou katoatoa,

In light of the forthcoming general elections, appended to this Memo are some Principles that are applicable during the “caretaker period” and which apply to all Public Servants.

I encourage you and all your staff to familiarize yourselves with the CIGOV Political Neutrality Policy as well as the CIGOV Code of Conduct Policy which are both available on the shared L drive and to discuss this matter with your staff and monitor implementation during the relevant period. Any breaches must be reported immediately to Heads of Agencies or myself.

I would like to thank you for your full co-operation and support.

Meitaki maata.

A handwritten signature in blue ink, appearing to be 'CH', written over a large, stylized blue scribble.

Mr Carl Hunter
Public Service Commissioner



Office of the Public Service Commissioner
Paepae Ropi'anga o te Kavamani
GOVERNMENT OF THE COOK ISLANDS

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2 June 2022

PRINCIPLES APPLICABLE DURING THE CARETAKER PERIOD FROM THE DISSOLUTION OF PARLIAMENT UNTIL THE APPOINTMENT OF A NEW PRIME MINISTER OF THE COOK ISLANDS

Following the dissolution of Parliament by the Queen's Representative, the Government goes into 'Caretaker' mode.

During this period, the present Government under the leadership of the Prime Minister Hon Mark Brown and the Cabinet of Ministers appointed under section 13 of the Constitution of the Cook Islands sitting with the Queen's Representative pursuant to section 22 of the Constitution, will continue to be the lawful executive authority vested with all the powers, discretionary authority and responsibilities that go with and form part of executive office.

A. PRINCIPLES

As a matter of constitutional convention, there are certain principles that apply during this caretaker period, until the formation of a new Government:

- 1) Decisions taken and specific policy decided before the date of dissolution of Parliament may continue to be implemented and given effect to by the Government and the public sector and public servants;
- 2) The ordinary business of Governing and the operation of departments, instrumentalities, state owned entities and agencies of the public sector continue as normal;
- 3) However, where matters arise that would usually require decisions, concerning:
 - (a) Major issues of policy;
 - (b) Issues with long term implications that would be likely to limit the freedom of action of a new and incoming Government (for example signing or executing a major

contract or making important statutory or diplomatic appointments); acting or short term appointments may be considered on a case by case basis;

- (c) New policy initiatives or fundamental changes to existing policies;

Decisions relating to the above matters should:

(aa) be deferred if possible, until the political situation is resolved with the establishment of a new Government and or Cabinet; or

(bb) if deferral is not possible, be handled by way of temporary, interim or holding arrangements that do not commit the Government in the longer term (that is by extending a Board appointment or rolling over an existing employment contract); or

(cc) if neither deferral nor temporary arrangements are not possible, be made only after consultation with the Opposition.

If it is not possible to defer the commitment until after the election of a new Government for legal, commercial or other reasons, a Minister must consult the Prime Minister, and with his concurrence, the Leader of the Opposition, or Agencies could deal with the contractor and ensure that contracts include clauses providing for termination in the event of an incoming Government not wishing to proceed.

It should be noted, that this is a convention or practice borne out of prudence. It is not a strict legal requirement mandated by the Constitution of the Cook Islands. In every case, the Prime Minister's approval must be obtained before consultation with the Leader of the Opposition takes place, if at all.

All public servants are reminded of the need for strict adherence to the **Political Neutrality Policy** as well as the **Code of Conduct Policy** (April 2018).

B. PROPER USE OF PUBLIC RESOURCES

The deliberate use of public resources for electioneering or election related matters must be avoided as it could implicate the possible commission of a crime in some instances and compromise the neutrality of the public sector.

Public servants are reminded that under section 70 of the Constitution, all expenditure is to be in accordance with an appropriation by Parliament. Implicit in an appropriation is 'purpose', and the spending of public money directly on the election campaign of an incumbent Ministry or Minister is unlikely to meet the purpose intended by Parliament in its appropriations.

The 'policing' of section 70 is entrusted to various 'watchdog' bodies. For example, the Public Expenditure Review Committee and Audit Act 1995-96 (PERCA) requires checks that 'all

expenditure is properly authorised and correctly charged against the relevant appropriation by Parliament' (Section 27(1) (e) (ii) (B)).

The Ministry of Finance and Economic Management Act 1995-96 (MFEM) imposes a direct responsibility on each Head of Department who '...alone shall be responsible for ensuring that the moneys are expended for the purposes intended' (Section 39).

The MFEM Act goes on in section 64, to create the offence of doing, without reasonable excuse, 'any act for the purpose of procuring for that person or for any other person or organization

- (i) the improper payment of any public money or
- (ii) the improper use of a public resource'.

Although conventions of the Constitution are, by definition, not directly enforced by the Courts, it is quite possible that the Courts would lean towards interpretations of statutory language which conform with conventions, in much the same way as they do with international treaties.

Public servants should also bear in mind the 'treating' and 'bribery' provisions in Part 7 of the Electoral Act 2004, under which election petitions can be brought, if improper inducements are used by candidates to entice electoral support.

C. CONSULTATIONS

In any case of doubt, Ministers should consult the Prime Minister and the Cabinet.

In the case of public servants, it is advisable that they consult their departmental head, the Public Service Commissioner or Minister as may be appropriate or relevant. If in doubt, public servants should err on the side of caution. Final decisions concerning the caretaker principle rests with the Prime Minister.

For guidance about the application and interpretation of the caretaker principle and the decision making process during the caretaker period, Ministers, departments, Crown agencies and public servants should contact the Public Service Commissioner who may refer any matters to the Solicitor General, in the first instance.

It is not possible to prescribe hard and fast rules, as the situations in different cases and circumstances will vary widely.

Ultimately, public servants may need to take into consideration, various factors both on whether it is appropriate, necessary or ethical to proceed on a matter and on how it should be handled when the Government is in caretaker mode.