



State Servants, Political Parties and Elections: Guidance for the 2008 Election Period

Issued by the State Services Commissioner

February 2008

This guidance identifies common principles and obligations for those who work in the State Services, to assist them during the lead-up to and in the period immediately after the 2008 General Election. It is also generally applicable in the case of mid-term elections, and remains current until superseded.

This publication replaces *State Servants, Political Parties and Elections: Guidance for the 2005 Election Period* published in 2005.

Section 4 lists other sources for reference. There are five Appendices which contain more specific guidance and information.

Further guidance can be found also on the SSC website: www.ssc.govt.nz.

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1 Introduction

A major characteristic of New Zealand's constitutional arrangements is that State sector agencies are apolitical. The actions of people working in the State Services must not detract from the ability of their agencies to work with the Government, regardless of the political parties which Ministers represent.

These requirements are unchanging. State servants have an ongoing responsibility to work in a politically neutral way. The work of government must be carried out impartially and in a manner which cannot be perceived by reasonable people as reflecting party interests. The commitment of agencies to their Ministers must be unaffected by any preference for a particular policy of any party.

In an election year, increased public attention can be expected, both to the way agencies carry out their functions and to the activities of their employees. This guidance explains how State servants must meet the continuing requirement for political neutrality in their work, and it identifies the responsibilities which have specific application in the lead-up to an election. Because of heightened community and media interest in politics at this time, it is important that State servants are careful about their obligations.

These obligations form part of the constitutional role of the State Services. They contribute to the maintenance of public confidence in New Zealand's democratic governance and the strengthening of the institutions of government.

1.1 Application

This guidance applies to those State Services agencies to whom the State Services Commissioner's advice and guidance mandate extends (i.e., all instruments of the Crown, including departments, corporations, agencies or other instruments; Crown entities; the Education service; and organisations listed in Schedule 4 of the Public Finance Act). The mandate does not include State-owned Enterprises, Crown Research Institutes or tertiary education institutions. However, the guidance contains good practice which may be helpful to those agencies, and also to others that may not be covered by the Commissioner's mandate.

1.2 Content

This guidance summarises agency roles during an election period and the period of government formation. The principles set out have general application at any time. It includes, as appendices, stand-alone guidance relating to particular responsibilities, such as briefings for incoming Ministers.

1.3 Impartiality

Agencies and their employees must:

- maintain the political neutrality required to work with current and future governments; and
- respect the authority of the government of the day.

These standards form part of the code of conduct for the State Services. The Standards of Integrity and Conduct (SSC 2007) are set out in Appendix 1.

In the lead-up to a general election, there can be an increased sensitivity in the relationships, expectations and interactions amongst State servants, Ministers, Members of Parliament (MPs), and political parties. State servants have to be able to effectively serve, and maintain the trust of, successive governments which may be drawn from different political parties. In an election year, State servants and State Services agencies must be particularly conscious of the need to be politically neutral.

The ordinary business of government must continue in an election year. A heightened awareness of the need to be seen to act with political neutrality does not mean that work of agencies is disrupted. What is required during an election period is that additional care is taken to ensure that activities, including media relations, advertising campaigns, responding to Official Information Act requests, interaction with MPs and electoral candidates, public speaking engagements, appointment processes, programme promotions and the release of discussion documents are not seen, in any way, as party political.

1.4 What is the election period?

The Cabinet Manual describes the election period as “... three months before the general election is due, or (if the period between the announcement of the election and polling day is less than three months) from the announcement of the election.” This is the period during which, in practice, restraints have tended to be applied on government decision-making.

It is, however, important for Ministers, departments, Crown entities and other State Services agencies to ensure that all significant matters that will require ministerial attention in the course of the election year are dealt with well in advance of a general election. In particular, departments and agencies in the wider State sector should consider the effect of a general election on the timing of any regular or annual processes that require ministerial decision or parliamentary action, on processes with statutory deadlines and on the passage of legislation.

1.5 Advice and support

State servants who are unsure how to deal with any issue relating to the election period should seek advice from a senior manager.

The State Services Commission also provides further guidance and support to agencies and staff. Please email election@ssc.govt.nz or telephone (04) 495 6600 and ask for the Trust and Values team.

2 Prior to a General Election

2.1 *Significant Decision Making by the Government before an Election*

Key points

- **The government has the right to govern until the election. The caretaker convention (see 3.1) does not apply during the pre-election period.**
- **Governments have, however, chosen to restrict their actions to some extent at this time.**
- **For further guidance, see Cabinet Circular CO (08)(3) *Government decisions and actions in the pre-election period*.**

In the period immediately before a general election, the government is not bound by the caretaker convention (see 3.1) unless the election has resulted from the government losing the confidence of the House. Successive governments, however, have chosen to restrict their actions to some extent at this time, in recognition of the fact that an election, and therefore potentially a change of government, is imminent. For example, significant appointments have been deferred, and some otherwise unexceptionable government advertising has been considered inappropriate during the election campaign, due to the heightened risk of perception that public funds are being used to finance publicity for party political purposes (see also 2.2).

Ministers and Cabinet are likely to have a reduced capacity for decision-making in the pre-election period, as Ministers may be occupied with the election campaign. Ministers' offices and agencies must therefore ensure that significant matters requiring ministerial attention are dealt with as far in advance of the election date as possible. Forward planning is essential.

See Cabinet Circular *Government decisions and actions in the pre-election period* CO (08) (3), the Cabinet Manual, and other material prepared by Cabinet Office prior to the 2008 election.

The Secretary of the Cabinet is available to advise on Cabinet decision-making processes during the election period.

2.2 *Communications*

Media Comment

Key point

- **Agencies and Ministers' offices need protocols to ensure that media enquiries are handled promptly, and by the person most appropriately placed to do so.**

An election year increases media interest in the activities of the Government and its agencies. There should be a clear understanding how to identify whether matters are primarily political or operational, and whether they are to be handled by the Minister or by the agency.

Those who are authorised to speak on behalf of an agency in the period before, during and after the election need to understand the sensitivity of the environment in which they are operating. Good protocols with Ministers' offices will help to ensure that enquiries from the media are handled promptly, and by the person most appropriately placed to do so.

Media releases by State Services agencies during the election period must be drafted with a critical appreciation of the scrutiny given at such time to the activities of the Government, its agencies and their employees.

Programme Launches

Key point

- **Agencies support Ministers who decide to launch initiatives during an election period, but care is needed to avoid being associated with the political aspects of any such event.**

During an election period, the launch of a new programme or initiative may take on a ‘party political’ character that would not be evident at other times. State servants should support Ministers as usual, but must take care to avoid association with the political aspects of any such event, or with the preparation of supporting material which has a party political character.

Advertising and publicity campaigns

Key points

- **Agencies are responsible for promoting awareness of government policies and services but must avoid content which is party political in character. There are long-standing principles that should be followed, for instance, in the Guidelines for Government Advertising**
- **Advertising or communications by State Services agencies which could be reasonably regarded as encouraging voters to vote, or not vote, in a particular way are never acceptable. In addition, election advertising by those agencies is prohibited under the Electoral Finance Act 2007**
- **The Electoral Finance Act 2007 provides a definition of election advertising. Departments and other agencies should take a conservative approach, in order to avoid perceptions of public funds being used in ways that are contrary to the legislation.**

Guidelines for Government Advertising

The *Guidelines for Government Advertising* are contained in the Cabinet Manual (www.cabinetmanual.cabinetoffice.govt.nz/files/cabinet-manual-2008-appendix-b.pdf). They define government advertising as “any process for which payment is made from public funds for the purpose of publicising any policy, product, service, or activity provided at public expense by the government”. The guidelines require that government advertising should be presented in a manner which is:

- **Accurate, factual and truthful** - Factual information should be outlined clearly and accurately. Comment on and analysis of that information, to amplify its meaning, should be indicated as such.
- **Fair, honest and impartial** - The material should be presented in unbiased and objective language, and in a manner free from partisan promotion of government policy and political argument.
- **Lawful and proper** - The material should comply with the law.

Agencies must comply with this long-standing provision regarding advertising and communications campaigns at all times; not simply during an election year.

It is never acceptable for agencies to encourage electors to vote (or not vote) for specified parties, policies or candidates. All promotions must be managed in a way which avoids such perceptions arising.

Publicity and advertising are legitimate forms of government and parliamentary spending: communication campaigns that inform people of their rights and obligations do not need to stop. In the run-up to an election, however, agencies should particularly consider whether any of their communication campaigns or advertising could be perceived as ‘party political’, even if they might be unexceptionable at other times. For instance, material publicising programmes that do not come into effect for some time may be particularly sensitive.

Electoral Finance Act 2007

Under s.67(1) of the Electoral Finance Act 2007, the following individuals and agencies are prohibited from publishing, causing to be published or permitting to be published any election advertisement:

- a chief executive (however described) of a department of State or a Crown entity;
- a department of State;
- a Crown entity;
- a State enterprise, within the meaning of s.2 of the SOE Act 1986 or a Crown-owned company; and
- any other instrument of the Crown.

An “election advertisement” is defined in section 5 (1)(a) of the Act as any form of words or graphics, or both, that can reasonably be regarded as encouraging or persuading voters to vote (or not to vote):

- for one or more specified parties or candidates or for any combination of such parties and candidates; and/or
- for a type of party or for a type of candidate that is described or indicated by reference to views, positions or policies that are or are not held, taken or pursued (whether or not the name of a party or candidate is stated).

Overall approach

State Services agencies are encouraged to take a conservative approach, to ensure the responsibility for impartiality by the State Services is maintained and that activities are consistent with the law. In view of the interest shown in the new electoral finance legislation, material released by government agencies is likely to be subject to public scrutiny.

For further advice:

- contact the State Services Commission (election@ssc.govt.nz) or telephone (04) 495 6600 and ask for the Trust and Values team);
- see *Advertising and Communications – Further Guidance*, attached as Appendix 2;
- see *Guidelines for Government Advertising (Appendix 2, and the Cabinet Manual)*.

2.3 State servants and politics

Key points

- **State servants have the same political rights and freedoms as other New Zealanders but must maintain the political neutrality required to work with current and future governments.**
- **For most State servants, participation in party politics (or in a listed third party under the Electoral Finance Act) is not likely to affect the confidence which the**

Government has in their employing agency or undermine the ability of that agency to work effectively with future governments.

- **State servants taking part in political activities need to exercise judgment about what is appropriate.**
- **State servants must discuss any active involvement in a political party or a listed third party with their manager or chief executive.**

State servants' participation in political activities, as individuals

In general, State servants have the same political rights and freedoms as all other New Zealanders. However, they have a concurrent responsibility to maintain the political neutrality required to work with current and future governments.

Everyone working for a State Services agency must ensure they do not confuse their political rights with their employment responsibilities. They must exercise judgment when deciding what level of personal participation in political activities is appropriate (this may include participation in the work of other organisations if they become "listed third parties" under the Electoral Finance Act).

Membership of a political party or of a listed third party is acceptable for most employees in the State sector, as is helping with fundraising, assisting with a leaflet drop and taking part in other forms of support. However, senior State servants and/or State servants who have a close working relationship with Ministers should avoid these affiliations.

State servants need to discuss with their manager or chief executive any political activities in which they intend to be involved in a personal capacity, and to ensure they understand the relationship between their employment responsibilities and the freedom to exercise civil rights.

State servants involved with a political party or intending to comment publicly on political matters need to be particularly careful that they do not:

- reveal advice given to Ministers;
- disclose information they are not authorised to disclose;
- criticise ministerial policy with which they have been professionally involved; or
- purport to express an agency view when they are giving their own view.

The principles set out here apply at all times, but special care must be taken in the election period.

See *Understanding the code of conduct – Guidance for State servants*: www.ssc.govt.nz/code-guidance-stateservants; and

Political Neutrality Fact Sheet No. 2 Political Views and Participation in Political Activity www.ssc.govt.nz/political-neutrality-fact-sheet-2.

Use of Agency Resources

Key points

- **Agency facilities must not be used to display material or to carry out any activities that could reasonably be regarded as 'party political' in nature.**

- **State servants must not use the resources of their agency in ways that could be seen as breaching the principle of political neutrality.**

It is not appropriate for the premises or other resources of agencies to be used for electioneering. For example, posters or other material produced by political parties that promote that party or lobby for or against issues likely to feature in the election, must not be displayed on agency premises, vehicles, or websites.

An exception may be made for premises that are effectively public venues, and for which normal commercial terms are imposed. There is also provision in the Electoral Act for political parties to use State schools for election meetings.

Departments are party to a Partnership for Quality agreement between the Government and the Public Service Association, and many agencies have agreements with other employee groups.

The representational activities of these employee groups within work sites are acceptable. The content, however, must not be political party advertising under the banner of the employee group. In an election period, it is appropriate for these groups to share with their members the approach they are taking to party policies, and for their members to share this material with others who may be potential members. Any display of this type of election-related material must be on a space dedicated to the employee group and in a staff-only area to avoid any public misperceptions about purpose.

Subject to those conditions, neither the content and distribution, nor any consequent discussion in the work place of this type of employee group material, breaches the political neutrality obligations of State servants, provided they:

- do their job professionally and loyally, without letting their personal interests or views influence their advice or behaviour, and without bias towards one political party or another; and
- are not involved in party-political activities if these could be seen as compromising the political neutrality principle or undermining public trust in their agency.

If an employee group becomes a 'listed third party' under the Electoral Finance Act, there may be some implications for activities such as the distribution and display of material on agency premises.

An interpretation of the legislation is being sought. Once this is available, the SSC guidance will be revised to clarify the potential impact on agencies and chief executives.

State servants should be careful about providing their work place contact details to political organisations. For example, sending or receiving party political material (for personal information) through an agency's fax, e-mail or other on-line facilities is likely to be perceived as undermining that agency's impartiality.

State Servants Standing for Election

Key points

- **State servants are entitled to campaign for election to Parliament. They must notify their employer if they intend to seek selection as a candidate.**

- **The Electoral Act sets the minimum period during which State servants standing for election must take leave, but a more extended period of leave may be appropriate.**
- **More stringent provisions may apply where senior State servants wish to stand for Parliament.**

The Electoral Act 1993 allows State servants to stand for election to Parliament. Being a candidate is clearly a political activity, so any State servant seeking selection as a candidate must inform their employer of that intention.

The law requires any State servant who becomes a candidate to take leave for a period before the election. The minimum period is the time between Nomination Day (a maximum of 27 days before Polling Day) and the first working day after Polling Day. Someone included on a party list becomes a candidate on Nomination Day when the list is lodged with the Chief Electoral Officer.

If a State servant who is standing as a candidate seeks to campaign before Nomination Day, in a way that will materially affect their ability to carry out their duties satisfactorily, it will usually be appropriate to negotiate leave with their employing agency for the period of their campaign (s. 52(4) of the Electoral Act).

If declared elected, a State servant will immediately be deemed to have vacated their position. If unsuccessful, they may resume work on the first working day after Polling Day (s. 53(2) of the Electoral Act).

More stringent provisions may apply, on a case by case basis, where a senior State servant or a State servant whose position puts them in regular contact with Ministers wishes to stand for Parliament. Because of the nature of their duties (particularly advice, organisational leadership and management), it would be highly unlikely that a senior State servant, if unsuccessful, could maintain the same relationship of trust and confidence with their Minister that applied prior to their candidacy. For these reasons, before making any decision to put their name forward for selection (for an electorate seat or on a party list), a State servant should discuss the issues involved with their chief executive or board chair and, if necessary, the State Services Commissioner. There may be some instances in which resignation, rather than taking leave, is the only appropriate approach if such a State servant wishes to stand for Parliament.

Circumstances may arise where it would be appropriate for an employer to assign to a State servant whose candidacy had been unsuccessful, duties different from those they had before taking leave.

Contact between State servants and Members of Parliament and Political Parties

Key points

- **Contact, in a work setting, between State servants and Members of Parliament is always sensitive, but can become more so in an election year.**
- **State servants should follow established protocols during an election period.**

The sensitivity which always exists when MPs have contact with agency staff can increase in an election year. Particular issues can arise in operational branches of agencies when MPs are acting on behalf of their constituents. State servants should be sensitive to the fact that, in an election year, an MP often may have the dual role of advocating for a constituent and

campaigning for re-election. Branch managers should contact their head office if they are uncertain how to handle a specific case.

Apart from responding to constituency concerns raised by a local MP, contact in a work setting between State servants and representatives of political parties (within or outside the Government) should only take place during the election period with prior ministerial approval.

In a similar way, requests by MPs or by parliamentary candidates to visit agency premises during the election period should only be facilitated if the agency has obtained the prior approval of its Minister.

Attendance by State servants at Caucus and Caucus Committee meetings

Key points

- **State servants should refer to their chief executive any requests relating to involvement in caucuses or caucus committees.**

A State servant who is requested to attend a caucus meeting of a political party represented in the House, should not do so without first obtaining the agreement of their chief executive and/or direction from the responsible Minister. State servants should not undertake work at the direction of caucuses, nor should they service caucuses or caucus committees. Any instructions that might emerge from caucus discussions should be given to the agency only by the responsible Minister.

Costing Parties' Policies prior to the election

Key points

- **Detailed provisions apply when an agency is requested to cost a party's political policies.**
- **A written request by the Minister of Finance or another Minister is required before an agency undertakes any such costings.**
- **Guidelines on costings are attached as Appendix 3. Further advice is available from the Treasury.**

It is the routine business of most agencies to cost policy options. However, agencies may be asked by their Minister to cost the policies of parties in government, or to cost other parties' policies where Ministers wish to use this information for partisan purposes, for example during election campaigns. Provisions have been designed to cover such situations to protect State sector political neutrality, while providing Ministers with the information they require.

Costing the policies of any political party should only be undertaken following a written request from the Minister of Finance or another responsible Minister. The Minister is required to specify the proposals to be costed where there is any uncertainty about this. Any request for costings made to an agency other than the Treasury is to be referred by the department to the Office of the Minister of Finance in the first instance.

State servants are prohibited from making broad assumptions about policies or commenting on the merits of policies.

The Guidelines for Costing Party Political Policies are attached as Appendix 3. If State servants are uncertain over the application of this guidance, they should seek advice from their agency's Treasury Vote Analyst or the Fiscal Management Team at the Treasury.

Pre-election Economic and Fiscal Update

Key points

- **Agencies must provide information requested by the Treasury to ensure that significant decisions are included in the Pre-election Economic and Fiscal Update.**
- **Briefings to Ministers should be timed to ensure that significant decisions can be included in the Pre-election Economic and Fiscal Update.**

The Treasury prepares a *Pre-election Economic and Fiscal Update*, under the Public Finance Amendment Act 2004. It is normally published four to six weeks before the election. The Update must include ‘to the fullest extent possible’ information on all government decisions and circumstances that may materially affect the fiscal and economic outlook. Ministers should be briefed in time to ensure that significant decisions can be included in the Update.

The Treasury will publish further details and a timeframe when the 2008 election date has been announced.

2.4 Providing information

Official Information Requests

Key points

- **Official Information Act requests must be responded to in a timely and appropriate manner, regardless of an imminent election.**
- **The only reasons for withholding information are those specified in the Act.**

The Official Information Act 1982 provides for the release of government information to the public. To preserve the political neutrality of the State Services, agencies must handle information requests in a timely fashion, particularly during an election period.

Requests for information made by political parties in the election period should generally be treated in the same way as any other request for official information. However, the agency’s chief executive must be informed of any Official Information Act request received from an MP or a political party (including party research units) during this period. The chief executive may wish to consult with the responsible Minister about the request, but this must not be a justification for delaying a response.

If the Minister and the chief executive cannot agree whether particular information should be released, the request should be transferred to the Minister if those discussions indicate that the issues raised are more closely aligned to the role and functions of a Minister, because this:

“...is the only way in which the department can meet its constitutional duty to follow Ministerial direction and the obligation to comply with the Official Information Act...”.¹

If the request relates to a function in which an official is required by statute to act independently, no consultation is required with the Minister, though this does not diminish the need to keep the Minister informed.

In a previous election period, the Ombudsmen commented on the extreme importance of a well-informed electorate at the time of a general election. They reported critically about State servants who had become involved in assessing the political consequences of releasing information, rather than making a decision in a politically neutral manner. The Ombudsmen’s

1 From Cabinet Manual 2001, 6.34

concerns are set out in Appendix 4 (*Ombudsmen Report on Official Information Act Releases during an Election Period*).

The Official Information Act also applies to information or analysis provided to political parties that are seeking to form a government following the election. The State Services Commissioner should be advised of any such requests and the approach the agency intends to take. If necessary, the State Services Commissioner will coordinate responses (see section 3.2 of this guidance).

3 Following a General Election

3.1 Caretaker Convention

Key points

- **Following an election, the incumbent government is the lawful executive authority until a successor administration is sworn in.**
- **Governments in this situation have constrained their actions in accordance with the ‘caretaker convention’.**
- **The Cabinet Manual provides guidance on the application of the caretaker convention and other aspects of transitions following an election. Further advice is available from the Secretary of the Cabinet if required.**

On occasion, it may be necessary for a government to remain in office for some period, on an interim basis, when it has lost the confidence of the House, or (after an election) until a government is sworn in following the government formation process. During such periods the incumbent government is still the lawful executive authority, with all the powers and responsibilities that go with executive office. However, governments in this situation have traditionally constrained their actions until the political situation is resolved, in accordance with what is known as the convention on caretaker government.

There are two arms to the caretaker convention:

- (a) where it is not clear who will form the next government;
- (b) where it is clear who will form the next government, but they have not yet taken office.

There are two circumstances in which the government would see itself bound by the caretaker convention:

- (c) **After a general election**, one of the arms of the caretaker convention applies until a new administration is sworn in.
- (d) **If the government has clearly lost the confidence of the House**, the caretaker convention guides the government’s actions until a new administration takes office, following either negotiations between the parties represented in the current Parliament or a general election.

Details about these principles, for example, making decisions that may have long-term implications, are set out in the chapter on elections and government formation contained in the Cabinet Manual: www.cabinetmanual.cabinetoffice.govt.nz/6 .

The Secretary of the Cabinet is available to provide advice to Ministers and agencies about the application of the caretaker convention. Ultimately the Prime Minister determines how a matter should be dealt with during this period.

3.2 Forming a Government

Negotiations

Key points

- **The government formation process is a political one. State servants have very limited involvement in any negotiations by political parties to form a government.**

- **Any request (which arises in the course of negotiations) from a political party for information from, or access to, an agency must be referred by the agency's chief executive to the State Services Commissioner.**
- **The Prime Minister decides whether agency staff may provide information or technical support to political parties involved in government formation negotiations.**
- **If the Prime Minister approves the costing of potential coalition parties' policies, the work must be developed in conjunction with the Treasury.**

The formation of a Government is an inherently political process, for example, negotiations between political parties on possible coalition arrangements. The incumbent Prime Minister is responsible for authorising access to the resources of agencies during the government formation period. The State Services Commissioner manages any involvement by State servants during this period, to ensure the political neutrality of the State Services is not put at risk. Other central agencies may be involved where necessary.

State servants who are approached by political parties or MPs (including incumbent Ministers) seeking information from or access to their agency during the government formation process, must refer the request to the State Services Commissioner, through their chief executive. The State Services Commissioner will coordinate requests with the Prime Minister. Ministers also will refer similar requests to the Prime Minister.

Chairs and heads of Crown entities and agencies in the wider State sector are not expected to have direct contact with political parties during the course of government formation. If approached, they should notify the chief executive of the department of the responsible Minister concerned.

Information or technical support to political parties on specific questions, for the purposes of government formation negotiations, will be made available only if authorised by the incumbent (caretaker) Prime Minister. Where authorised, the State Services Commissioner will be the point of contact for both receiving and responding to requests for assistance. The material should be confined to providing information and analysis on the practical implications of a proposal being considered by the political party concerned; it is not to initiate policy proposals or discussions. Agencies will provide the required material to the State Services Commissioner.

Because information which assists the process of government formation is likely to be highly sensitive, any agency involvement should be limited to a small number of senior officials.

Following an election, agencies may be asked to cost party policies as part of the information and advice sought during the negotiations between political parties to form a government. Such a request must also be referred to the State Services Commissioner. If authorised, any costing of policies for political parties engaged in negotiations to form a government must be developed in consultation with the Treasury. Departments should seek guidance from their Treasury contacts if there is any uncertainty about how any economic or fiscal analysis should be carried out; see: <http://www.treasury.govt.nz/publications/guidance/costingpolicies/> .

The Guidelines for Costing Party Political Policies (Appendix 3) cover the situation where a Minister requests a department to cost party policies prior to an election: they do not apply in a post-election situation.

When negotiations between political parties reach an advanced stage, central agencies and senior officials may – with the consent of the Prime Minister, and the oversight of the State Services Commissioner – offer to provide comprehensive advice in person about any matters of concern to those involved.

For further guidance see the State Services Commissioner's circular to departmental chief executives: www.ssc.govt.nz/negotiations, and the relevant chapter of the Cabinet Manual.

3.3 Briefing a New Minister

Key points

- **Concise briefings must focus on the immediate needs of the Minister taking on a portfolio. The briefing is not intended to be a detailed analysis of the portfolio or of policy issues.**
- **Briefings are confidential to the Minister, but are subject to the provisions of the Official Information Act 1982.**
- **Guidance on briefing an incoming Minister is set out in Appendix 5.**
- **Agencies must follow this guidance to ensure the needs of Ministers are met.**

The Cabinet Manual states that when a new Minister is appointed (which does not only occur at an election time), the chief executive of the department concerned must ensure that the Minister is briefed on the department and the portfolio as soon as he or she takes up office.

Purpose

The briefing is prepared for an incoming Minister only, and should be written solely to meet the Minister's needs. An agency should also use its briefing to indicate how it will engage with the Minister during the term of the Government.

Content and format

The briefing should be short, reflecting the time pressures on the incoming Minister; normally between five and 50 pages, depending on the size and complexity of the agency. In developing the briefing and deciding on the amount of detail required, the agency must take account of the Minister's prior involvement with and knowledge of the portfolio, the Government's priorities including coalition agreements and support arrangements, and whether there has been a change of Government.

As the Minister is the audience for the briefing, it should be prepared in the same format as normal departmental advice to the Minister. Briefings are not required to be commercially printed.

The briefing is confidential to the Minister. Although recent practice has been for briefings to be released publicly by the Minister, this should not be assumed. Any briefing is subject to the provisions of the Official Information Act.

The full text of *Guidance on the preparation of briefings for incoming Ministers* is at Appendix 5.

4 Where to get more information

State servants who are unclear about how to deal with particular obligations of agencies in an election period should first approach their senior management.

Central agencies can also provide assistance:

- State Services Commission – regarding the obligations of agencies and their employees, and providing information to support negotiations to form a government. Email: election@ssc.govt.nz.
- Department of Prime Minister and Cabinet – regarding the operation of Government, constitutional matters, including caretaker convention issues, briefings for incoming Ministers and the provisions of the Cabinet Manual.
- The Treasury – regarding the Pre-election Economic and Fiscal Update and costing of party political policies.

4.1 Publications

Standards of Integrity and Conduct for the State Services (Code of Conduct)

The code of conduct, issued by the State Services Commissioner, came into force on 30 November 2007 in most State Services agencies (excluding School Boards of Trustees). It comprises 18 standards grouped under the headings of Fair, Impartial, Responsible and Trustworthy. Agencies subject to the code must have in place policies and procedures that are consistent with the code.

The *Code of Conduct* is attached as Appendix 1.

Political Neutrality Fact Sheets

- *Political Neutrality: Fact Sheet 1 - What is 'Political Neutrality' and What Does it Mean in Practice?* (www.ssc.govt.nz/political-neutrality-fact-sheet-1)
- *Political Neutrality: Fact Sheet 2 - Political Views and Participation in Political Activities.* (www.ssc.govt.nz/political-neutrality-fact-sheet-2)
- *Political Neutrality: Fact Sheet 3 - The Relationship Between the Public Service and Ministers.* (www.ssc.govt.nz/political-neutrality-fact-sheet-3)
- *Political Neutrality: Fact Sheet 4 - The Relationship Between the State Servants and MPs.* (www.ssc.govt.nz/political-neutrality-fact-sheet-4)
- *Political Neutrality: Fact Sheet 5 - For Staff Who Interact with the Public* (www.ssc.govt.nz/political-neutrality-fact-sheet-5)

Officials and Select Committees

Officials and Select Committees - Guidelines explain the relationship between State servants (which for this purpose includes the board members of Crown entities) and select committees. They include guidance on State servants acting as witnesses or advisers; the obligation to provide free and frank answers to select committees; protection available to State servants who appear before select committees; and the rights and constraints of State servants who wish to appear in a personal capacity. See www.ssc.govt.nz/officials-and-select-committees-2007

Cabinet Manual

This is the key guide to central government decision-making. It is a primary source of information on constitutional and procedural matters, and also includes material on elections and government formation. A revised edition of the Cabinet Manual is due to be released in April 2008. See www.cabinetmanual.cabinetoffice.govt.nz/

CabGuide

This replaces the Step by Step Guide, as guidance for officials on Cabinet and Cabinet committee processes. It helps departments and Ministers' offices meet Cabinet's requirements for developing and presenting proposals to Cabinet: see www.cabguide.cabinetoffice.govt.nz

Cabinet Office Circulars

The Cabinet Office issues circulars from time to time throughout the election period, providing guidance on various procedural and constitutional issues; for instance CO (08) (3).

See www.dpmc.govt.nz/cabinet/circulars/index.html

The Standing Orders of the House of Representatives

These are the rules used by the House of Representatives to govern its own procedures. It also contains guidance on topics such as post-election procedures and the notification of party details.

See <http://www.parliament.nz/NR/rdonlyres/078D6043-9E03-4D87-93BA-A6BB84ACC063/6619/standingorders20095.pdf>

Electoral Act 1993

See

http://www.legislation.govt.nz/act/public/1993/0087/latest/DLM307519.html?search=qs_act_Electoral+Act&sr=1

Electoral Finance Act 2007

See <http://www.legislation.govt.nz/act/public/2007/0111/latest/DLM1092810.html>

Appendix 1: Standards of Integrity and Conduct

We must be fair, impartial, responsible and trustworthy.

The State Services is made up of many organisations with powers to carry out the work of New Zealand's democratically elected governments.

Whether we work in a department or in a Crown entity, we must act with a spirit of service to the community and meet the same high standards of integrity and conduct in everything we do.

We must comply with the standards of integrity and conduct set out in this code. As part of complying with this code, our organisations must maintain policies and procedures that are consistent with it.

For further information see www.ssc.govt.nz/code

Fair

We must:

- treat everyone fairly and with respect
- be professional and responsive
- work to make government services accessible and effective
- strive to make a difference to the well-being of New Zealand and all its people.

Impartial

We must:

- maintain the political neutrality required to enable us to work with current and future governments
- carry out the functions of our organisation, unaffected by our personal beliefs
- support our organisation to provide robust and unbiased advice
- respect the authority of the government of the day.

Responsible

We must:

- act lawfully and objectively
- use our organisation's resources carefully and only for intended purposes
- treat information with care and use it only for proper purposes
- work to improve the performance and efficiency of our organisation.

Trustworthy

We must:

- be honest
- work to the best of our abilities
- ensure our actions are not affected by our personal interests or relationships
- never misuse our position for personal gain
- decline gifts or benefits that place us under any obligation or perceived influence
- avoid any activities, work or non-work, that may harm the reputation of our organisation or of the State Services.

Appendix 2: Advertising and Communications – Further Guidance

Principles

Agencies should take account of the following principles when considering the appropriateness of advertising and communications campaigns at any time; not just during an election year.

From *Standards of Integrity and Conduct*, a code of conduct for the State Services issued by the State Services Commissioner:

“Impartial: We must maintain the political neutrality required to enable us to work with current and future governments.”

The guidance accompanying the code says “A major characteristic of New Zealand's constitutional arrangements is that public sector organisations are apolitical. It is important that in the State Services we do nothing that will detract from the ability of our organisations to work with the Government, regardless of the political parties Ministers may represent. Our responsibility to the Government is to work in a politically neutral manner”.

From *State Servants, Political Parties and Elections: Guidance for the 2008 Election Period*, issued by the State Services Commissioner in February 2008

Publicity and advertising are legitimate forms of government and parliamentary spending: communication campaigns that inform people of their rights and obligations do not need to stop.

It remains important in an election year for agencies to do things such as informing people of their rights (e.g. eligibility for a programme) or their obligations (e.g. road safety). On the other hand there may not be an immediate need (e.g. starting a campaign to publicise a new programme that is not due to commence until well after a General Election). In those circumstances, it could be appropriate to delay the advertising until after the General Election.

From the Cabinet Manual (Guidelines for Government Advertising)

“Government advertising should deal with matters in which the government has direct responsibility. The objective of the advertising may be to:

- inform the public of proposed/new/revised/existing government policies;
- inform the public of government services available to them;
- advise the public of new/revised/existing entitlements or responsibilities;
- encourage the public to adopt certain kinds of social behaviour generally regarded as being in the public interest (e.g. road safety advertising).”

“Government advertising should be presented in a manner which is:

- Accurate, factual, truthful - Factual information should be outlined clearly and accurately. Comment on and analysis of that information, to amplify its meaning, should be indicated as such.
- Fair, honest, impartial - The material should be presented in unbiased and objective language, and in a manner free from partisan promotion of government policy and political argument.
- Lawful, proper - The material should comply with the law.”

“Justification and Accountability - Governments are accountable to Parliament for the use they make of all public funds. Government advertising should be undertaken only where there is an identified and justifiable information need by the intended recipients.”

From the Electoral Finance Act 2007

The State Services Commissioner takes the view that advertising or communications by State Services agencies that contravene the principles of sections 5 and 67 of the Electoral Finance Act are unacceptable at any time.

What is advertising?

Agencies should adopt a broad definition of advertising for the purposes of this guidance. Government advertising and communications may include media releases, letters and other forms of correspondence, material published on the Internet, discussion forums or lists, and more recent technologies such as blogs, wikis and social networking sites.

Government advertising

The Cabinet Manual (*Guidelines for Government Advertising*) defines government advertising as “any process for which payment is made from public funds for the purpose of publicising any policy, product, service, or activity provided at public expense by the government”. (see: www.cabinetmanual.cabinetoffice.govt.nz/appendix-b)

The guidelines state that government advertising may be in the form of:

- printed matter such as parliamentary papers, discussion and consultative documents, booklets, pamphlets, and posters;
- audio-visual material such as films and video-tapes; or
- advertisements and sponsored features in the press, on radio, and on television.

Election advertising

Section 5 (1) of the Electoral Finance Act 2007 defines election advertising as any form of words and/or graphics that can reasonably be regarded as encouraging or persuading voters to vote (or not to vote):

- for one or more specified parties or candidates or for any combination of such parties and candidates; and/or
- for a type of party or for a type of candidate that is described or indicated by reference to views, positions or policies that are or are not held, taken or pursued (whether or not the name of a party or candidate is stated).

Who is covered?

The State Services Commissioner’s *State Servants, Political Parties and Elections: Guidance for the 2008 Election Period* provides guidance to agencies for whose employees the Commissioner has a mandate to provide advice and guidance on integrity and conduct (section 6 (ha) of the State Sector Act 1988). This includes all employees within the State Services, except Crown Research Institutes. The State Services is defined in the State Sector Act 1988 and includes departments, Crown entities (but not tertiary education institutes), Crown entity companies, Crown entity subsidiaries, and agencies listed in the 4th schedule to the Public Finance Act.

Section 67 of the Electoral Finance Act 2007 lists the organisations which may not publish election advertisements. It is a broader group than the Commissioner's mandate, i.e.:

- the chief executive (however described) of a department of State or a Crown entity;
- a department of State;
- a Crown entity;
- a State enterprise (within the meaning of section 2 of the State Owned Enterprises Act 1986) or a Crown owned company; and
- any other instrument of the Crown.

This guidance should also be useful for agencies which are not covered by the Commissioner's mandate, but which make decisions about publicly-funded advertising and communications activity.

When does care need to be exercised?

The guidance set out in the *Guidelines for Government Advertising* and in the State Services Commissioner's *State Servants, Political Parties and Elections: Guidance for the 2008 Election Period* applies on an ongoing basis. Agencies should take account of the following time periods when considering the appropriateness of advertising:

Ongoing

It is never acceptable practice for State Services agencies to use public funds in a way that could be seen as encouraging or persuading voters to vote (or not vote) for one or more specified parties or candidates. Under the Electoral Finance Act 2007, such a practice may also be illegal.

The Electoral Finance Act 2007 prohibits State servants and agencies from publishing, or causing or permitting to be published any "election advertisement". A conservative approach should be taken, to ensure that the Act is not breached. However, the normal business of government should continue as noted below.

In the immediate election period, i.e. the three month period before the General Election

Although the Electoral Finance Act does not prescribe a regulated period in relation to election advertising, agencies are encouraged to exercise "escalating caution" as the time gets closer to an election. Something that may at other times be regarded as innocuous might take on a different aspect if issued close to an election. Agencies may need to consider whether some planned advertising or communications activities are necessary during this time, or whether they should be deferred.

Application of this guidance

The application of these principles in any particular case requires careful consideration of the relevant facts, and the application of good judgement.

Advice may be sought from the State Services Commission (election@ssc.govt.nz) and the Office of the Auditor-General. This will not constitute approval or clearance of material for compliance with legislation or guidelines: in all cases the obligation to comply with the law and to adhere to the principles of neutrality belongs to the agency and its board or chief executive.

The Electoral Commission and the Chief Electoral Officer may, under section 70 of the Electoral Finance Act, report to the Police if they believe an offence has been committed under the election advertising provisions.

The use of the ‘All of Government’ branding does not, of itself, constitute election advertising.

Examples

The following hypothetical examples help illustrate the application of these principles.

Example 1

During an election year, an agency undertakes a communications campaign to publicise its achievements since a certain date (which coincides with the election of the current party in government).

Issues:

- The advertising may not meet the Cabinet Manual objectives for government advertising of informing about government policy, entitlements or desired behaviour.
- By linking advertising to the date at which the current party in government was elected to power, particularly if it focuses on new entitlements or increased funding during that period, such advertising could create a perception of political bias. It could be seen to be influencing voters and thus in breach of long-standing principles as well as the Electoral Finance Act. This aspect may require further consideration and legal advice.

Example 2

An agency has promoted a community health and safety week initiative, with associated advertising, at the same time every year for the past eleven years. This year the initiative is due to occur two months before the likely date of the General Election. Activities planned include awards to those who have contributed most over the past year to the objectives sought.

The Minister concerned suggests to the agency that the promotion should be postponed, to avoid any perception of it being considered a ‘political’ activity. A Member of Parliament from the governing political party is a member of an association strongly linked to the initiative and will receive an award.

Issues

- There are good objective reasons for continuing the planned week-long initiative; the normal business of government should continue, and it has occurred at this time of year every year. Care will be needed with the design and content of advertising associated with the initiative.
- However, careful consideration is required as to whether the Member of Parliament should receive an award, and thus be associated with the week, this close to an election.

Example 3

It is three months until the General Election. The opposition party has criticised a government policy, but the criticisms are regarded as being based on incorrect information. The agency involved considers the criticism misleads the public, and decides to make a media statement to correct the misinformation.

Issues

- This situation requires careful consideration. Although the agency is setting out to correct misinformation, that may be better to come from the Minister rather than the agency. The agency may get drawn into a political situation and may breach existing principles and/or the Electoral Finance Act.
- This example highlights the fact that media statements by an agency are included in the definition of advertising.

Example 4

An agency is responsible for a new programme which, if the current government is re-elected, will come into effect in April of the year following the election. It wants to start early with publicity so that all those who would be entitled to benefits under the programme are aware of it. The advertising will commence in October, which is one month before the general election.

Issues

- In this situation, it would appear prudent to delay the campaign until after the General Election, particularly as the implementation of the programme may be dependent on the election outcome. That will reduce any risk that the campaign is seen as not politically neutral.

Example 5

A New Zealand sporting team wins a major international competition. An agency which provided funding to that sport plans an advertising campaign to highlight that government support contributed to the success. It is two months until the General Election.

Issues

- The advertising may not meet the Cabinet Manual objectives; ie, that advertising should inform about government policy, entitlements or desired behaviour.

Appendix 3: Guidelines for Costing Party Political Policies

Costings of the policies of any political party should be provided by State servants only at the written request of the Minister of Finance or a Minister responsible for a portfolio. A request from a member of a Minister's staff is not sufficient authority in itself.

Handling requests

Any request for costings made to a government department other than the Treasury is to be referred to the Office of the Minister of Finance in the first instance. The agency's chief executive is responsible for receiving any request, assigning any tasks, and seeing that the costs and any accompanying material conform to the guidelines, and that any response is made in writing (under the signature of the chief executive, or where appropriate, its authorised senior officer) to the Minister who made the request.

If a request covers the work of more than one department, the departments concerned need to be absolutely clear about the allocation of tasks to co-ordinate effort and resources, and work in close co-operation with each other. The procedures to be followed should be conveyed in writing.

Requests for costings of policies or proposals of political parties are to be documented in full. All workings, correspondence, sources, procedures and decisions must be recorded, together with a record of the resources used in preparing a political costing. Only those directly involved in the actual costings should be privy to the exercise.

Undertaking costings

Costings should be limited to factual data readily available in the Treasury or other agencies and should contain:

- no additional commentary, such as the merits or otherwise of the policy proposal;
- no value judgements, or subjective assumptions;
- no unsubstantiated or unreasonable technical assumptions - it should be clearly stated if the assumptions could lead to more than one possible costing;
- a clear explanation of all sources, and of any assumptions made.

If there is any doubt as to the nature or basis of the request, clarification must be sought from the Minister of Finance or the Minister concerned.

All responses should be drafted on the understanding that they may be requested and released under the Official Information Act 1982.

In some instances it may be appropriate to have the costings done by a qualified external expert. This should be made clear in reporting to the Minister concerned.

The convention between Ministers and agencies in these circumstances is that Ministers will not require or use information on costings in a way which might damage the neutrality of the State Services, and its ability to serve successive governments.

Note: These rules should not be applied where agencies are required to provide costings:

- to assist Ministers to make a decision about whether or not to exercise the Financial Veto under Standing Orders 312-317: these will be required as part of the normal business of government. See: www.dpmc.govt.nz/cabinet/circulars/co07/2.html; or

- during a period of negotiation between political parties to form a government following an election. Requests for costings arising during this process should be dealt with in terms of the SSC circular on *Negotiations Between Political Parties to Form a Government: Guidelines on Support from the State Sector*. See: www.ssc.govt.nz/negotiations

Agencies who require additional advice or guidance on costing political party policies should contact their Treasury Vote Analyst or the Fiscal Management Team.

Appendix 4: Ombudsmen Report on Official Information Act Releases during an Election Period

The following extracts are from the Report of The Ombudsmen/Te Kaitiaki Mana Tangata, for the year ended 30 June 1991, pp 16-19.

“Issues arising from investigations under the Official Information Legislation

Release of information prior to a General Election

The Chief Ombudsman's investigation into the release of "Prime Ministerial Briefing Papers - Bank of New Zealand Data" ... highlighted the need for access to reliable economic information prior to a general election. ...

The General Election also raised some other issues. For example, we [the two Ombudsmen] both experienced difficulties in getting officials to whom requests were made for information to co-operate in meeting time frames related to the date of the General Election. The maximum time frames of the Official Information Act were used extensively to avoid releasing politically sensitive information required by various individuals, Members of Parliament and special interest groups for the election campaign. This very undesirable practice failed to appreciate the constitutional importance of ensuring that the electorate was well informed before it committed itself to selecting the parliamentarians from whom a government would be formed. What concerned us was that officials with a duty under the Act to release all information unless there was good reason to withhold in terms of the legislative criteria, exceeded their mandate and became involved in assessing political consequences of release, rather than making the decision in a politically neutral manner.

While it is argued by some that the State Sector Act may have affected the constitutional notion of a politically neutral Public Service, we believe that it is improper for officials, expected by the public to be neutral, to use official authority or influence to attempt to interfere with, or affect, the result of a General Election.

Regard was often had by officials to the likely political consequences of releasing the information held by the organisation when assessing the time frames imposed by the Act. Evidence was available to show that, notwithstanding that the information could not be withheld in terms of the provisions of the Act, its release could be delayed beyond the General Election date by invoking the full legal 20 working day time limit, and by attempting to use fallacious reasons for extending those time frames.

Two examples show the nature of the problem we faced.

The Chief Ombudsman received a request from an Opposition Member of Parliament for a review of a decision taken by a departmental official to extend the time frame for responding for a further 20 working days, to enable the official to consult with Ministers on the release of the information sought. The information was readily available. The Member's request to the department was made on 10 September and appeared to be passed around between officers for some days, eventually arriving with the officer authorised to release around 1 October. The request was then held by that officer until 10 October, when he notified to the Member of Parliament an extension of 20 working days to 7 November (the General Election took place on 27 October), ostensibly on the grounds of the need to consult with Ministers.

When the Chief Ombudsman reviewed the extension he considered it was unreasonable as there had clearly been sufficient time after initial receipt for the department to consult with Ministers. (It could not transfer the request to the Minister in terms of section 14(b) of the Act because it did not meet the test of being more closely connected with the functions of the Minister.) Apart from the need for consultation being questionable, the department was well aware from the nature of the information that the Member of Parliament required a response before the General Election. In attempting to justify the extension of time to the Chief Ombudsman, the Chief Executive said the matter was potentially quite sensitive and that it would be unfair not to consult. The Chief Ombudsman did not disagree with this (providing the Chief Executive made the final decision and not the Minister), but already plenty of time had elapsed during which consultation could have taken place. The Chief Executive then went on to say in justification of the need to consult, *The release of such information at this time could adversely affect the Government's electoral prospects*. Nowhere in the Act is this a withholding provision and, apart from the question of whether the Chief Executive as a non political official was entitled to make this assessment, it was not appropriate to use the pretence of needed consultation to extend the time for a reply well beyond the Election date when there had already been plenty of time for consultation to take place.

Believing that deliberate procrastination was taking place, the Chief Ombudsman held that the extension was unreasonable and that the decision on release should be given by 24 October. It is gratifying to report that the department met that date and released the information requested to the Member of Parliament with few deletions. However, it probably arrived too late to meet the objectives of the Member who requested it.

The Ombudsman had a similar example. An urgent request was made to the department on 17 September for statistical data required by a special interest group to test before the General Election whether an announced policy and expectations of the then government were achievable in practice. The department refused the request on 28 September and the Ombudsman received a letter asking for review on 2 October. On 19 October the Ombudsman by fax, on grounds fully set out, expressed the opinion, subject to the Chief Executive's final comments, that the request for information should not have been refused. The department was urged to release the information straight away if the opinion was agreed to, and otherwise to advise the reasons for disagreement by 3pm on Wednesday, 24 October. By facsimile message dated 23 October, but not sent till 2.47pm on 24 October, the department stated it did not wish to disagree with the Ombudsman's opinion, but would prefer to release the information in response to a formal recommendation. The Ombudsman was told that on receipt of the formal recommendation the statistics would be released to the requestor.

A formal recommendation to release was faxed early on the morning of 25 October. The following day, the last working day before the General Election, the Ombudsman was made aware by the requestor that the Department was unlikely to release the information that day. Immediate inquiries established that, contrary to the undertaking given, the information had been sent to the Minister because it was regarded as protocol to get the Minister's approval for release of possibly sensitive information. There had been ample time when the department first received the request to consult the Minister. The Ombudsman pointed out that any consultation should have been carried out in accordance with section 15(5) of the Official Information Act in the course of making a decision on the release of the information. Furthermore, she pointed out that the Act did not provide for veto or approval by a Minister after a recommendation had been made, and that the way this matter had been handled by the Department could be seen to be unduly obstructive and to have frustrated the principles, purposes and procedures of the Official Information Act.

These examples were not unique in that difficult period. What surprised us was that officials appeared to not appreciate the significance of the need for speedy decisions, and the extreme importance of a well-informed electorate at the time of a General Election. While an inward looking perspective is understandable at such a time, we did think that professional public officials would recognise the importance of one of the purposes of the Official Information Act to the effectiveness of a General Election. That purpose bears repeating here because it is so relevant to a General Election:-

4(a) To increase progressively the availability of official information to the people of New Zealand in order-

(i) To enable their more effective participation in the making and administration of laws and policies; and

(ii) To promote the accountability of Ministers of the Crown and officials,-

and thereby to enhance respect for the law and to promote the good government of New Zealand. “

Appendix 5: Guidance on the preparation of briefings for incoming Ministers

Requirement

The Cabinet Manual requires that, when a new Minister is appointed, the chief executive of the department concerned must ensure that, as soon as the Minister takes up office, he or she is briefed on the department and the portfolio.

The briefing process is likely to include formal documents as well as meetings and other communications, happening over a number of weeks.

This guidance covers both the initial briefing that has tended to be called the Briefing to the Incoming Minister (BIM) and subsequent briefings, both verbal and written. The provisions in this guidance will also apply when a new Minister is appointed to a portfolio during the term of a Government.

Audience

The briefing is for an incoming Minister only, and should be written accordingly.

It is essential that agencies take account of the Minister's prior knowledge, and the Government's priorities including coalition agreements and support arrangements. Within the briefing, agencies should also think about how they are going to engage with the Minister over the term of the Government, and set the scene for this.

The briefing is confidential to the Minister. Recent practice has been for the BIM or initial briefing to be released publicly by the Minister. This should not be assumed. The normal provisions for material requested under the Official Information Act apply to any request for briefings made under that Act. Ministers, not agencies, should decide whether to publicly release all or part of any such briefings.

Outcome of briefing an incoming Minister

The briefing process should give the Minister a good understanding of:

- the organisation and responsibilities of the agency concerned;
- major policy, and implementation of current programmes;
- initial actions and decisions the Minister will need to take; and
- the Minister's responsibilities, including details of boards, commissions, tribunals and similar entities.

The purpose of the initial briefing is to give new Ministers sufficient information to meet their initial requirements, but is not intended to be a detailed analysis of the portfolio or of policy issues. The briefing is part of a wider process: Ministers will be able to call for a fuller briefing on issues of interest and importance to them during that process. This allows the initial briefing to be wide ranging, enabling the Minister to see the breadth of the portfolio, while still being concise.

An exception to this is where immediate decisions are required, and thus a full discussion of the issue may be called for.

Timing

The briefing process should occur:

- over a number of weeks following a general election after a Minister is appointed (whether or not the Minister held that portfolio in the previous Government)
- when a new Minister is appointed during the term of a Government. Agencies must be able to provide a briefing at short notice.

Chief executives should seek an early opportunity to discuss the process for on-going engagement with the Minister, and how the agency can best meet the Minister's needs.

A briefing which follows a general election should take account of decisions arising out of the government formation process. This means that the briefing would not be finalised until that process is complete.

Departments should not provide incoming Ministers with a briefing until Ministers are sworn in. If portfolios have been allocated but the incoming Ministers have not yet been formally appointed, chief executives may, with the knowledge of the incumbent Minister and the State Services Commissioner, offer to brief new Ministers on their portfolio responsibilities.

Associate Ministers

All briefings should be prepared for the portfolio Minister who will, other than in exceptional circumstances, authorise the department to provide copies to any Associate Ministers.

Length

The initial briefing should be short, reflecting the time pressures on the incoming Minister. A briefing should normally be between five and 50 pages in length, depending on the size and complexity of the department.

The amount of detail included in a briefing will vary depending on whether the Minister concerned has had any prior involvement with the portfolio, and whether there has been a change of Government.

Format

As the Minister is the audience for the briefing, it should be prepared in the same format as normal departmental advice to the Minister. Briefings do not need to be commercially printed.

Consultation

Other Agencies

In some cases, departments will need to consult with other departments or agencies in preparing their Minister's briefing material, for instance if there are inter-departmental processes for developing strategies or policies.

Central Agencies

Departments should seek advice from the central agencies as they plan and draft their briefings, particularly on matters that relate to central agencies e.g. industrial relations, machinery of government, significant fiscal risks.

Crown entities

Ministers are likely to expect briefings from some Crown entities, especially those with significant policy and operational responsibilities.

Crown entity briefings should be driven by Ministers' needs and monitoring departments should facilitate the briefing process. Where Crown entities do produce briefings, they should follow the Cabinet Manual and this guidance.

Content

The briefing process should cover the following information, as outlined in the Cabinet Manual:

Organisation and responsibility of the agency

Aim: to provide the incoming Minister with an overview of key information relating to the department

This is factual information, which should include organisational structures, a brief note about senior staff, an outline of the department's main roles, and a schedule of the main legislation it administers. It is an opportunity to make the Minister aware of significant risks within the department or portfolio, and to advise the Minister whether the agency concerned has any statutorily independent functions.

It is important to note that the briefing process does not substitute for other Cabinet processes. For example, policy proposals with fiscal implications will require to be delivered subsequently through the Budget process including consultation with related agencies and, in particular, central agencies.

Some departments will need to provide more information than others because of their size and scope. However the content and level of detail must take into account the competing demands on a new Minister's time.

Major policy and implementation issues

Aim: to provide the incoming Minister with an overview of the breadth of policy issues and implementation issues with which he or she will need to be familiar during their ministerial term

The aim should be to give the new Minister a snapshot of major policy issues within the portfolio. The briefing should take into account the Minister's and the Government's priorities and interests, as well as the Minister's existing knowledge of the portfolio and of the department or agency concerned. The outline of these issues in a briefing that follows a general election will need to take into account relevant election manifestoes, and decisions taken or positions reached as a result of coalition agreements and negotiations on support arrangements.

More detailed descriptions and suggested options can be provided later when a particular matter is submitted to a Minister for decision.

A broad environmental scan of future challenges is important to a Minister. This can be provided during the briefing process when the Minister has more time to consider it, rather than including it in the initial briefing. Providing in-depth advice or making recommendations on policy options in the briefing may constrain the advice contained while not necessarily being in line with Ministers' expectations or immediate needs. The briefing process should not

be used to promote Budget proposals – these should be advanced through the normal Government Budget processes.

Public servants have an obligation to serve the Government of the day. Ministers set the objectives they want to achieve and departments advise on ways of achieving those objectives and an assessment of different options. Departments also have an obligation to provide free and frank advice, which will assist their Minister and the Government when setting policy.

Pending decisions or actions

Aim: to provide the incoming Minister with detailed information on pending decisions including analysis of options

At this early stage of a Minister's term, it is suggested that this part of the briefing focuses on decisions that are likely to be required no more than six months out, including recommendations for draft legislation (taking into account relevant election manifestoes, coalition agreements and support arrangements). Judgement is required on the content and amount of detail. A balance is needed between ensuring a new Minister is well-informed, and giving advice before the department has had the chance to engage the Minister and learn the new Government's policies for this area.

Terms of reference, membership and terms of office

Aim: to provide the incoming Minister with an overview of his or her responsibilities in relation to all entities including terms of reference, membership and terms of office of all boards, commissions, tribunals and similar entities

Departments need to keep this information up to date in any case, to ensure the board appointment processes they administer for their Minister are robust.

For some departments, this will represent a considerable amount of detailed information because of the number of entities for which the Minister has responsibility. In some cases this may be summarised, with the detailed information provided later in the briefing process when it is more convenient for the Minister.

Some appointments are likely to be an immediate priority and thus should be highlighted in the briefing. This arises because significant appointments that are due in the final months of a Government and during the Government formation period are delayed until the new Government is in place.