

To All Chief Executives

Negotiations between political parties to form a Government: Guidelines on support from the State sector

Summary

- 1 This year's general election is the fifth to be held under MMP. There is a possibility under this electoral system that government formation negotiations will follow an election, and that the political parties involved will need information and analysis from the State sector to inform their discussions. Therefore with minor amendments, I am reissuing the guidance for the provision of this information, first published by the State Services Commissioner in 1996. For clarity, I have referred to myself in this guidance as the "State Services Commissioner".
- 2 The process set out in the guidelines applies not only to Public Service departments, but to other agencies in the State sector. The guidelines have been sent to Crown Entities (excluding School Boards of Trustees), State Owned Enterprises, and organisations listed in Schedule 4 of the Public Finance Act. If wider State sector agencies become involved, they are expected to contribute to the process, as required, through their relevant departments.
- 3 State sector agencies will provide information to assist in negotiations between political parties to form a government only when access to them has been authorised by the Prime Minister and by following the process set out in these guidelines.
- 4 Officials are not involved in or present during actual negotiations. Negotiations are a matter solely for the political parties involved in them.
- 5 In general, when assistance is sought and authorised, it will be provided to political parties in written form only. However, subject to the consent of the Prime Minister:
 - Face-to-face meetings can be arranged quickly between officials and those requesting information, to clarify what information and analysis is being sought.
 - Should negotiations reach a stage where there is agreement among parties to join together to form a government which will have the support of the House (the "preferred partner" stage), central agency representatives and senior State Servants, can, if the parties seek advice on matters related to the negotiations, provide comprehensive face-to-face advice on those matters
- 6 A summary of the process to be followed is set out below:
 - Threshold responsibility for granting access to State sector agencies rests with the Prime Minister (paragraph 12).
 - A group of senior officials from the central agencies will, together, oversee and manage any requests for information and analysis (paragraph 13).
 - The State Services Commissioner will be the central contact point for requests for information. Ministers will direct to the Prime Minister any requests they receive for access to State sector agencies, and departments or State sector agencies which receive

an approach from a political party for information will inform the State Services Commissioner (paragraph 16).

- The State Services Commissioner will keep the Prime Minister informed in general terms of the basis on which State sector assistance is provided, and the Prime Minister will inform individual Ministers on a similar basis of any request involving their agencies (paragraph 17).
- Political parties represented in the Government will also direct requests through the Prime Minister and the State Services Commissioner. Ministers will not approach their departments or agencies directly for information relating to the coalition negotiations (paragraph 18).
- There are two stages where face-to-face meetings may be sought and approved, to assist in the provision of information by the State sector agencies: the negotiations stage and the preferred partner stage (paragraphs 19 and 23).

Introduction

- 7 This guidance deals with the support that State sector agencies may provide to political parties involved in negotiations to form a government. Separate guidelines are provided in the Cabinet Manual 2008 and in [Cabinet Office Circular CO \(08\) 7 \(www.dPMC.govt.nz/cabinet/circulars/co08/7.html\)](http://www.dPMC.govt.nz/cabinet/circulars/co08/7.html) on the convention of caretaker government, which an incumbent government observes during the process of government formation.
- 8 Inter-party negotiations to form a government are the business of politicians. Negotiating parties may seek access to State sector agencies for information and analysis on issues that might form part of the agreement on which the government is to be based. There is a public interest in giving negotiating parties access to relevant information and resources before negotiations are completed, to enable them to test that the basis on which the government is formed is sound.
- 9 The systems described in these guidelines are designed to manage the contact officials have with this inherently political process, to safeguard their political neutrality and their ability to serve successive governments.

State Sector Agencies

- 10 Public Service chief executives should reinforce these expectations in any dealings with the heads of any State sector agencies within their areas of responsibility. The Government expects chairpersons and heads of State sector agencies to be familiar with these guidelines, and to abide by them. Non-Public Service agencies should be aware that they are not expected to have direct contact with political parties in the course of government formation but, if approached, should notify the chief executive of the department of their Responsible Minister, and the State Services Commissioner. The matter can then be taken up by the department and the State Services Commissioner, working in consultation with the agency.
- 11 Public Service chief executives should contact the State Services Commissioner with any problems or concerns about these arrangements

Authorising and Coordinating Access

- 12 It is a long-standing and basic principle in New Zealand that all contact between State sector agencies and political parties takes place only with the prior agreement of the government in office. Given the significance of the process of government formation,

the Prime Minister will have threshold responsibility for authorising access to the State sector during this period. The Prime Minister will formally determine when, and to whom, the resources of State sector agencies will be made available, to provide information and analysis on issues that arise in the process of forming a government. It is part of the responsibility of the incumbent caretaker government to facilitate the transition to a new government.

- 13 All contact by departments with negotiating parties will be coordinated by the following officials:
 - a. The State Services Commissioner, who has an overall responsibility to ensure that the neutrality of the State sector is not placed at risk, will act as the main contact point for receiving or responding to requests from political parties.
 - b. The Chief Executive of Department of the Prime Minister and Cabinet, who will work with departments to coordinate the practical preparation of information requested by political parties.
 - c. The Secretary to the Treasury, who is likely to be involved in most requests for information and advice from a fiscal or economic perspective.
 - d. The Secretary of the Cabinet, who, as Clerk of the Executive Council, is responsible for facilitating the constitutional processes associated with the transition between administrations.
- 14 The State Services Commissioner will also seek to establish a central contact point with each political party which requests information, to ensure the clear communication of requests and responses.
- 15 During the government formation process, to facilitate the transition between administrations, the Clerk of the Executive Council provides impartial support to the Governor General, including liaison with party leaders on behalf of the Governor General and with the knowledge of the Prime Minister. This contact with the party leaders will take place separately from the processes, outlined in these guidelines, for providing information on policy issues.
- 16 Ministers will direct to the Prime Minister any requests they receive for access to State sector agencies. Departments or State sector agencies which receive a direct approach from a political party for information to assist negotiations should inform the State Services Commissioner of the request immediately.
- 17 The State Services Commissioner will ensure that the Prime Minister is regularly informed, in general terms, of the basis on which assistance is being provided to political parties. He will not disclose to the Prime Minister the details of the information being sought, nor the substance of the response, unless the request is from the Prime Minister's party. The Prime Minister will inform individual Ministers on a similar basis of any request involving their agencies.
- 18 In normal circumstances, a party in government is able - through Ministers - to seek policy advice directly from departments. In the course of government formation, however, to protect the State sector from any suggestion of improper political activity, the practice is that Ministers do not make requests directly to their departments or State sector agencies for information or analysis to be used in negotiations between political parties on the formation of a new government. They will direct such requests through the Prime Minister and the State Services Commissioner, in the same way as other political parties.

The Type and Level of Support to be Provided

- 19 Political parties develop and agree to policies. When they are negotiating to form a coalition or minority government, they may seek information on the effects of modifying or combining policies that have been presented to the electorate in the course of the election campaign, and the details of their implementation.
- 20 The provision of information and analysis to support the process of government formation is likely to be highly sensitive and will require careful judgment and discretion. Only a small group of very senior officials in affected State sector agencies should be involved. The Chief Executive of the State sector agency providing information is responsible for ensuring that material is appropriately prepared before it is sent to the State Services Commissioner as the main contact point for responding to a request (paragraph 13).
- 21 Responses to requests should be confined to providing information and analysis on the practical implications of the proposals being considered by the party. They should not initiate policy proposals or discussions. The goal is to respond to questions with clear, soundly based information and analysis, provided swiftly and constructively. In responding to requests:
- State sector agencies should provide as full an answer as possible in terms of information and analysis.
 - Where it makes sense to do so in the context of the request for information, the historical context and rationale for the existing policy setting in that area should be explained, to explain better the implications of change.
 - Any practical implications should be elaborated upon, to the point that their significance and priority is evident.
 - State sector agencies should aim to specify clearly the key assumptions and implications on which the practicability of a proposal depends.
 - If a request for information on a particular topic is unclear, State sector agencies should notify the State Services Commissioner, so that he can clarify the intent of the request with the originator. The State Services Commissioner may then seek the Prime Minister's consent for a face-to-face meeting to take place as quickly as possible between the officials concerned and those requesting the information. The meeting is to be attended by the departmental chief executive (or the chief executive's nominee) and, (if required by the chief executive) the official who can best impart the relevant information. Either a political party or a departmental chief executive may raise the need for such a meeting with the State Services Commissioner. Representatives from central agencies will attend meetings, in order to ensure that the politically neutral reputation of the State sector is supported and that subsequent responses prepared by State sector agencies are consistent with the guidance, on target and coordinated with those of other State sector agencies.
- 22 Providing information and analysis during the government formation process may involve departments in the costing of party policies. Costings 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 general Guidelines for Costing Party Political Policies, published by the State Services Commission, which cover the situation where a Minister requests a department to cost party policies for partisan purposes, do not apply.

“Preferred partner” stage

- 23 Face to face contacts between officials and political parties may also be arranged, should negotiations reach a stage where there is agreement among parties to join together to form a government that will have the support of the House (the “preferred partner” stage). If the parties wish to seek advice on matters related to the negotiations, central agency representatives and senior State Servants may, with the consent of the Prime Minister, offer to provide comprehensive face-to-face advice on those matters.

Application of the Official Information Act 1982

- 24 The Official Information Act 1982 will apply to information or analysis provided to political parties negotiating to form a government.
- 25 The State Services Commissioner will coordinate all releases of information or analysis provided to negotiating parties under these arrangements, consulting with relevant State sector agencies as to whether the information they have provided should be released or withheld. Releases may be managed on an *ad hoc* basis or by a single coordinated release, depending on the nature of the information and the volume of requests.

Other Means by Which Political Parties May Seek Information

- 26 There are existing channels by which political parties may seek information from State sector agencies if they do not wish to use the process for access described in these guidelines.
- 27 Parties may choose to request information from Ministers or State sector agencies under the Official Information Act 1982. All responses to requests for information must, as usual, be handled in accordance with the requirements of the Act. Given the political environment in which the request would be made, State sector agencies should take extra care to ensure that requests are handled properly and promptly, to avoid any suggestion of political bias in their response or that their delay has impeded the process of a new government being formed.
- 28 If Parliament has been summoned and the House has met, Members may be able to seek information through parliamentary questions. Questions should continue to be handled in the usual way but, for the same reasons, again with an awareness of the political context in which the request may have arisen.

Conclusion

- 29 The role of State sector agencies in providing support for political parties negotiating to form a government is now established after four general elections under MMP. It calls for careful management and common sense. It must be handled carefully, and with a full appreciation of the risks, if the political neutrality and ability of the State sector to serve successive governments is to be safeguarded.

Yours sincerely



Iain Rennie
State Services Commissioner