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EC22-002635

The Hon Clare O'Neil MP  
Minister for Home Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister

On Tuesday 24 May 2022, the acting Prime Minister asked me to investigate the circumstances that led to the issuance of the public statement by the Joint Agency Task Force (JATF) Operation Sovereign Borders (OSB) concerning the interception of the Suspected Illegal Entry Vessel (SIEV) 915 on the day of the Federal Election, Saturday 21 May 2022. My report is enclosed. It assesses whether the actions taken by officials were in accordance with the *Guidance on Caretaker Conventions 2021*.

The *Guidance on Caretaker Conventions 2021* do not have the force of law and Departments and Agencies do not have the legal power to enforce their observance. It was for the responsible Minister to determine whether it was in the public interest for the details of the arrival and interception of SIEV 915 to be made public. In the absence of any statutory provisions governing the matter, the release of this information was a matter of administration in relation to which the Minister could give directions, having regard to their ministerial role.

The legitimate purposes for previous publications of interceptions have been considered to be for transparency and deterrence - particularly of the role publication plays in deterring the people smuggling trade. It was for the Minister to determine the purpose of the announcement.

The apolitical character of the public service was preserved in this instance by the refusal on the part of Departmental officials to amplify the public statement by sending it directly to journalists and to post it on social media. The transparency and deterrence effect was already available from the original public statement. Any domestic amplification was judged by officials to be primarily for political purposes. Accordingly, they declined the relevant requests.

Had ministerial instructions been given to the effect that the public statement was to be amplified, then a case could have been mounted that such action would have been contrary to the relevant provision of the *Public Service Act 1999* (for officials to act at all times apolitically), but this potential conflict between the exercise of ministerial authority and that provision in the Act did not arise as the requests to amplify were not pressed.

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In reviewing this matter, the Department of the Prime Minister and Cabinet may wish to give consideration to revising the relevant provisions of the Caretaker Conventions, in two material aspects:

- the caretaker conventions do not detract from ministerial authority, and officials are obliged at all times to follow lawful directions; and
- in the ordinary course, sensitive information that is potentially politically significant should not be released publicly during the caretaker period unless a threat to life exists or some other urgency concerning public safety and security is involved.

Your sincerely



**Michael Pezzullo AO**  
Secretary

1 June 2022

Enclosure:

1. Report – SIEV 915 and CJATF Public Announcement

Copied to:

Professor Glyn Davis AC, Secretary, Department of the Prime Minister and Cabinet  
General Angus Campbell AO DSC, Chief of Defence Force  
Peter Woolcott AO, Australian Public Service Commissioner  
Michael Outram APM, Commissioner, Australian Border Force

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# SIEV 915 and the Commander Joint Agency Task Force Operation Sovereign Borders public statement

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## Purpose

This report provides an overview of actions taken in relation to the issuing of a public [statement](#) by the Joint Agency Task Force (JATF) Operation Sovereign Borders (OSB) concerning the interception of the Suspected Illegal Entry Vessel (SIEV) 915 on the day of the Federal Election, Saturday 21 May 2022. The report assesses if the actions taken were in accordance with the *Guidance on Caretaker Conventions 2021*.

## Scope

The Department of Home Affairs (the Department) and Australian Border Force (ABF) officials were directed by the Home Affairs Secretary to provide details of all actions and engagements leading up to the issuance of the Commander of JATF OSB (CJATF OSB) public statement on 21 May 2022. This information has been captured in a chronology of events, provided at **Attachment A**. The report was developed through a desktop review of the chronology of events to determine if the Department's actions were consistent with the *Guidance on Caretaker Conventions 2021*.

## Joint Agency Task Force (JATF) Operation Sovereign Borders (OSB)

### Background

The JATF OSB was established on 18 September 2013 as a whole-of-government enterprise to combat maritime people smuggling. JATF OSB's mission is to protect the integrity of the Australian border and prevent loss of life at sea by denying an irregular pathway to settlement in Australia and deterring vulnerable people from attempting dangerous maritime ventures.

To achieve this mission, OSB is led by a two-star military Commander who coordinates the efforts of 16 contributing government agencies to ensure the delivery of six core effects – deterrence, disruption, detection, interception, return and resettlement.

The Australian Government's policy position on unauthorised maritime arrivals (UMAs) requires OSB to intercept any unauthorised vessel seeking to reach Australia and to return those on board to their point of departure or country of origin. People who cannot be safely returned are transferred to a regional processing country for further assessment of their protection claims, and potential resettlement in a third country.

### Commander JATF OSB – Accountabilities and Authorities

The Directive from the former Minister for Home Affairs to the CJATF OSB, provided at **Attachment B**, outlines the relevant accountabilities and authorities for OSB. The most recent Directive was signed by the former Minister for Home Affairs on 22 February 2022 and was acknowledged by Rear Admiral Justin Jones, CJATF OSB on 1 March 2022.

The Directive states that *'for all matters relating to OSB' the CJATF OSB is 'directly accountable to' and has a 'direct line of reporting for all operational matters to the Minister for Home Affairs'. The Directive also states that 'In cases where the situation, plan or outcomes are likely to affect other Departments and Agencies, you should also keep the heads of agencies for the different task groups informed on the matter'.*

The list of authorities outlined in the Directive includes directing the use of assets to detect and intercept SIEV's and are intended to support CJATF OSB in deploying and using resources and intelligence to efficiently and effectively disrupt and deter UMAs reaching Australia.

The Directive makes no reference to the mechanisms by which CJATF OSB is to notify or report to the Minister for Home Affairs on interceptions or operational activities, unless outcomes were unable to be achieved.

### OSB Public Information Protocols

Since the establishment of OSB, CJATF OSB has provided public advice on OSB activities related to the on-water reception and processing of UMAs.

This commenced as a weekly media stand-up and then transitioned to a weekly published update on the ABF Newsroom. Since 20 June 2014, this update has been completed on a monthly basis. The monthly update contains a summary of OSB operations that have occurred during the preceding calendar month, excluding either ongoing operational activities which would then be captured in aggregate reporting or operational activities considered too sensitive for public reporting.

Direction from the former Deputy Chief Executive Officer on 18 September 2013 via email to the then Chief Executive Officer, National Directors and National Managers was:

- No further issuance of SIEV arrival media releases.

Whole of Government Talking Points issued on 16 October 2013 provided the following advice:

- OSB is a military-led, border security operation, not an immigration management process. Information relating to activities associated with OSB will be provided to the public via regular media conferences. These conferences will provide an operational update on activities over the past week.
- Conferences will not provide advice to people smugglers about our procedures, on water activities, live operations, or boat turn-backs. No information about tactical and operational matters that may compromise current or future operations will be provided.
- This process will ensure procedures are followed deliberately, methodically and carefully in what will be a measured and safe approach.

At a press conference on Friday 15 November 2013, CJATF OSB Lieutenant-General Campbell explained why a strict public information protocol around OSB operational information had been implemented. The public information protocol described by the former CJATF included:

- Preserving the integrity of operations
- Not commenting on anything that would give an advantage to people smugglers, including:
  - Interception locations
  - Tactical manoeuvres
  - Capability
- Not undermining regional relationships necessary to deal with the problem
- Not endangering our own people.

It is important to note that these early protocols for media engagement and comment in relation to OSB have continued through to today.

Additionally, the Immigration Minister at the time, Scott Morrison MP authored an op-ed in the Daily Telegraph on 27 January 2014 where he stated:

*"The position we have taken on removing operationally sensitive information from public dissemination was flagged before the election and is a function of running a military-led border security operation. It is not business as usual, and that is the point."*

*"We are not going to reveal the posture of our border protection assets at sea, by revealing the time, place and intercepting vessel as the previous government did. Nor are we going to run a shipping news service for smugglers to use government information as proof of voyages for payment or to provide intelligence reports on client nationalities."*

## Issuing of Media Releases or Public Statements

No instances have been identified of the CJATF OSB publishing information about people smuggling ventures outside of the regular monthly update.

Precedent exists where the former Minister for Home Affairs would publish a media release rather than wait to publish in the monthly OSB update or have the Department release a statement. Examples include:

- 17 August 2016 – Former Minister for Home Affairs Peter Dutton - [People smuggling boat returned to Sri Lanka \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/newsroom/press-releases/2016/17-august-2016)
- 18 August 2016 – Former Minister for Home Affairs Peter Dutton - [Sri Lankan navy stops people smuggling venture to Australia \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/newsroom/press-releases/2016/18-august-2016)
- 27 July 2017 – Former Minister for Home Affairs Peter Dutton - [Opinion - Operation Sovereign Borders milestone \(homeaffairs.gov.au\)](https://www.homeaffairs.gov.au/newsroom/press-releases/2017/27-july-2017)

- 9 Sept 2018 – Former Minister for Home Affairs Peter Dutton - [Operation Sovereign Borders reinforced \(homeaffairs.gov.au\)](#)
- 14 Jan 2019 – Former Minister for Home Affairs Peter Dutton - [Malaysia disrupts maritime people smuggling venture \(homeaffairs.gov.au\)](#)
- 30 May 2019 – Former Minister for Home Affairs Peter Dutton - [People smuggling venture returned to Sri Lanka \(homeaffairs.gov.au\)](#)
- 2 March 2020 – Former Minister for Home Affairs Peter Dutton - [People smuggling venture intercepted \(homeaffairs.gov.au\)](#)

The above precedents demonstrate that the publication of an interception by way of a media release or public statement can occur to serve the legitimate purposes of deterring the people smuggling trade and for transparency.

The processes for developing and publishing a media release relating to OSB are outlined in: *Media releases & talking point's Standard Operating Procedure*, last updated March 2022 and the *Joint Agency Task Force OSB Talking Points*, last updated 14 April 2022, and were followed in these circumstances:

- following advice from the responsible Minister's Office of the requirement to issue a media release about a SIEV, Media and Communication Branch within the Department draft the media release, facilitate approval by CJATF OSB and provide to the responsible Minister's Office
- the responsible Minister's Office review draft and advise any changes
- Media and Communication Branch facilitate the publication of the final media release on the relevant website i.e. the agency-funded Ministerial website or a Departmental website.

Whilst the *Joint Agency Task Force OSB Talking Points* state that all media releases are attributed to the Minister for Home Affairs, in this instance the former Minister for Home Affairs' office directed the public statement be attributed to CJATF.

## Media Enquiries

Consistent with all media enquiries across the Department, OSB media enquiries are managed centrally through the Department's Media and Communication Branch.

Extant media talking points are used for enquiries and all responses provided to an enquiry are approved by CJATF OSB and provided to the Minister for Home Affairs' office for noting.

## Public Service Act 1999, Australian Public Service Commissioner's (APSC) Directions 2022

The public service is required to act with impartiality. This obligation is legislated for under the *Public Service Act 1999*, and expanded on under the *Australian Public Service Commissioner's Directions 2022*.

Part 1, Section 3 sets out the objects of the *Public Service Act 1999* which includes the establishment of an apolitical public service that is efficient and effective in serving the Government, the Parliament and the Australian Public.

Part 3, Section 10 sets out the APS Values of the *Public Service Act 1999* in particular, that the APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

Part 2, Section 12 of the *Australian Public Service Commissioner's Directions 2022* provide that the APS must incorporate and uphold the APS Values. Part 2, Section 17 refers to the obligation for the APS to be impartial by:

- serving the Government of the day with high quality professional support, irrespective of which political party is in power and of personal political beliefs
- ensuring that the individual's actions do not provide grounds for a reasonable person to conclude that the individual could not serve the Government of the day impartially.

## Guidance on Caretaker Conventions 2021

The *Guidance on Caretaker Conventions 2021*, provided at **Attachment C**, explains the conventions and practices of the caretaker period and provides advice for the appropriate handling of business by Australian

Government agencies during the caretaker period. The relevant caretaker period commenced on 11 April 2022, with the Federal election occurring on 21 May 2022.

The broad principles of the caretaker period are that the business of government is ongoing and matters of administration continue to be addressed. However, during the caretaker period, the Government avoids:

- making major policy decisions
- making significant appointments
- entering major contracts or undertakings.

Ministers continue to exercise non-delegable, non-compellable intervention powers, and can continue to seek factual material from agencies related to the day-to-day business of government, which should be supplied in the normal way.



## Evaluation

A review of the detailed chronology has been undertaken against the *Guidance on Caretaker Conventions 2021*. Findings are listed below by theme.

Para.	Excerpt from Caretaker Conventions	Were the Department's Actions Consistent with Caretaker Conventions?
<b>How to use Guidance on Caretaker Conventions</b>		
1.3	The conventions are not legally binding, nor hard and fast rules. Their application in individual cases requires judgment and common sense. The Department of the Prime Minister and Cabinet (PM&C) is available to provide information and advice to agencies on the application of the Guidance. However, responsibility for observing the conventions ultimately rests with agency heads or, in cases where they are involved, with the Prime Minister and ministers.	<p><b>Yes.</b></p> <p>All Departmental officials, including Australian Border Force acted in accordance with the Caretaker Conventions.</p> <p>It is the Minister's responsibility, as outlined in the <i>Statement of Ministerial Standards</i>, that Ministers must ensure that their staff are aware of and comply with the <i>Statement of Standards for Ministerial Staff</i>.</p>
<b>Major Policy Decisions</b>		
3.2	<p>The conventions apply to the making of decisions, not to their announcement. Accordingly, the conventions are not infringed where decisions made before the dissolution of the House are announced during the caretaker period.</p> <p>However, where possible, decisions should be announced ahead of dissolution if their announcement is likely to cause controversy, which may distract attention from the substantive issues in the election campaign. <u>Care should be taken to ensure that Australian Government resources are not used to make announcements that involve partisan activities.</u></p>	<p><b>Yes.</b></p> <p>The interception of SIEV 915 was made in line with existing arrangements for OSB activities including the Directive signed by the former Minister for Home Affairs and CJATF OSB.</p> <p>The public statement made in relation to the interception was an <u>announcement</u>, and not a <u>decision</u>. <u>nor was it an announcement about a decision.</u></p>
3.4	If circumstances require the Government to make a major policy decision during the caretaker period that would bind an incoming government, the minister would usually consult the Opposition spokesperson beforehand. In the past, for example, the Government has agreed to provide urgent financial assistance to drought-affected areas following consultation with the Opposition.	<p><b>Yes</b></p> <p>While public disclosure may not have been consistent with the usual timings of such releases, it did not involve the Department making a policy decision that is major, and it did not involve the Department binding an incoming Government to continue in that way.</p>
3.5	In circumstances when the responsible minister consults the Opposition, that consultation should involve an explanation of why the proposed action is considered necessary during the caretaker period and an opportunity to explore different courses of action. The Opposition should be provided with an appropriate amount of time to consider the issue. The minister should ensure the Opposition spokesperson is aware that their views are being sought. While the minister should consider any suggestions made by the Opposition, the minister is	<p>The interception of SIEV 915 was made in line with existing arrangements for OSB, and the former Government directed the Department to provide a briefing to the Opposition on the situation.</p> <p>While the formal Opposition briefing occurred after the public statement was published, the former Minister for Home Affairs' office confirmed they had been in direct contact with the Opposition office.</p>



Para.	Excerpt from Caretaker Conventions	Were the Department's Actions Consistent with Caretaker Conventions?
	not required to reach agreement with the Opposition before proceeding.	
<b>Internet, social media and Ministerial websites</b>		
Agency websites		
<b>7.4.4</b>	<p>Agencies should add only the following material to their websites during the caretaker period:</p> <ul style="list-style-type: none"> <li>• portfolio-related announcements consistent with usual practice (for example, a ministerial press release relating to a public health warning). This will require judgment within each individual agency.</li> <li>• purely factual material, including costings prepared and published under the Charter of Budget Honesty Act 1998 (please see section 7.7 of the Guidance for further information), and</li> <li>• information on existing policies and programs, unless the information includes negative references to the Opposition or other political statements.</li> </ul>	<p><b>Yes.</b></p> <p>Consistent with OSB's long standing arrangements, interventions and interceptions in Australia's maritime domain are brought to the attention of the public through the <a href="http://abf.gov.au">Australian Border Force Newsroom (abf.gov.au)</a>.</p> <p>The information published was a factual operational statement made under existing policy parameters.</p> <p>The public statement was made at the request of the former Minister for Home Affairs' office (following direction from the former Prime Ministers' office).</p> <p>These actions were consistent with the Minister for Affairs' constitutional role as administrator of the Department.</p>
Ministerial websites		
<b>7.4.7</b>	<p>When adding material to ministerial websites during the caretaker period:</p> <ul style="list-style-type: none"> <li>• agencies should only add material relating to matters of existing policy, or purely factual material. Agencies must not add material concerning future policies, election commitments, how-to-vote material or media releases and speeches that criticise opponents, promote the Government or pursue election issues.</li> <li>• agencies may choose to place a notice on the ministerial website advising that political and election-related material is not available on the website. The notice could refer visitors to the minister's party's website, or include a link to that website.</li> <li>• if the maintenance of the ministerial website has become the responsibility of the minister rather than the agency, ministerial staff may add any material to the website as long as there is no cost to the Australian Government. A notice must also be added to advise that, since the commencement of</li> </ul>	<p><b>N/A</b></p> <p>The public statement was published on the <a href="http://abf.gov.au">Australian Border Force Newsroom (abf.gov.au)</a> and was issued from CJATF OSB and not the former Minister for Home Affairs.</p>

Para.	Excerpt from Caretaker Conventions	Were the Department's Actions Consistent with Caretaker Conventions?
	the caretaker period, the website is not being administered or funded by the agency.	
7.4.8	Ministerial media releases and alerts should be placed on the website of the minister's political party during the caretaker period. Where ministers determine a need to issue media releases and alerts in their own name through Australian Government agency-maintained and/or funded websites, these should be restricted to time-sensitive, administrative or operational information in the public interest (for example, public health warnings, travel advisories, military operations or counter terrorism alerts).	
Social media accounts		
7.4.11	The use and administration of social media accounts by agencies should observe the same practices that apply to ministerial websites, as set out in sections 7.4.6 to 7.4.10 of the Guidance. Externally-hosted, third-party engagement tools (for example, Facebook and Twitter) are inherently harder to control than the interactive functions of websites. For example, an agency may have a Facebook page which allows minimal moderation of the content that is posted to it, or a Twitter account which may be sent publicly-viewable messages containing political content.	<p><b>Yes.</b></p> <p>The public statement was not issued on a Departmental or ABF social media account.</p> <p>The Department's decision to refuse the direction from the former Minister for Home Affairs' office to release a statement via the ABF's Twitter account demonstrated consistent application of paragraph 7.4.12.</p> <p>Any legitimate purpose of either transparency or deterrence in publicising the interception had already been achieved by the first statement.</p> <p>The refusal from Departmental officials was to avoid any amplification of the public statement and to preserve the apolitical and impartial character of the public service as outlined in the <i>Public Service Act 1999</i> and <i>Australian Public Service Commissioner's Directions 2022</i>.</p>
7.4.12	<p>It may not be possible to completely prevent political material from being posted by members of the public to agency social media accounts operated by third-parties. At the start of the caretaker period, agencies should review the functions and settings of their social media accounts, and other similar online engagement tools, to identify ways to minimise political content associated with their presence (even if the content is not directly attributable to the agency). Actions to achieve this may include:</p> <ul style="list-style-type: none"><li>• not posting new content to the account for the duration of the caretaker period;</li><li>• disabling or opting for pre-moderation of comment sections, if possible, and closer monitoring of public contributions if not;</li><li>• posting a notice that the agency is operating in a caretaker period and cannot respond to political content.</li></ul>	

Para.	Excerpt from Caretaker Conventions	Were the Department's Actions Consistent with Caretaker Conventions?
Requests from Minister's Officers for Information		
7.6.1	Ministers may continue to <u>request factual material and information from agencies</u> during the caretaker period. Agencies should supply material relating to the day-to-day business of government to ministers in the usual way.	<p><b>Yes.</b></p> <p>The request and confirmation of information i.e. was a vessel intercepted, would likely constitute the definition of a 'request for factual material and information'. The confirmation of the interception likely <u>could not</u> have been declined, given it would not have required a significant use of resources to confirm the interception (as it was already known).</p> <p>Provision of factual material about vessel interception is ordinary business – which is necessary for the Minister for Home Affairs to provide direction about how the operation is to be handled.</p> <p>The Department's decision to refuse the direction from the former Minister for Home Affairs' office to release a statement to specific journalists was consistent with paragraph 7.6.2.</p> <p>Any legitimate purpose of either transparency or deterrence in publicising the interception had already been achieved by the first statement.</p> <p>The refusal from Departmental officials was to avoid any amplification of the public statement and to preserve the apolitical and impartial character of the public service as outlined in the <i>Public Service Act 1999</i> and <i>Australian Public Service Commissioner's Directions 2022</i>.</p>
7.6.2	<u>Ministers are ultimately responsible for determining the purpose for requesting material from agencies and how it is used during the caretaker period.</u> Consistent with the APS value of impartiality, it <u>may be appropriate for an agency to decline a request from a minister if it required the use of significant resources, and/or was clearly for use in the election campaign.</u> If in doubt, <u>agencies should discuss the purpose for which material is to be used with the minister or their senior staff before responding to a request.</u>	
7.6.3	In most instances, agencies should also decline requests from ministers' offices for policy advice during the caretaker period. However, there may be urgent domestic or international issues on which policy advice should be provided to enable responsible ongoing administration, or to protect Australia's interests. Requests for legal advice on issues affecting the minister in their capacity as a political candidate should be declined.	
7.6.4	Agencies can proceed with policy development work during the caretaker period so that they are in a position to provide advice to the incoming government, provided that contact with ministers' offices is not required	
Guidelines for Pre-Election Consultation with the Opposition (PECO)		
9.1.3	<p>The Guidelines are as follows:</p> <p>(i) The pre-election period is to date from three months prior to the expiry of the House of Representatives or the date of announcement of the House of Representatives election, whichever date comes first. It does not apply in respect of Senate elections only.</p> <p>(ii) Under the special arrangement, shadow ministers may be given approval to have discussions with appropriate officials of government departments. Party leaders may have other Members of Parliament or their staff members</p>	<p><b>N/A</b></p> <p>Briefing the Opposition on the operational matter did not occur under Pre-Election Consultation with the Opposition (PECO) arrangements.</p>

Para.	Excerpt from Caretaker Conventions	Were the Department's Actions Consistent with Caretaker Conventions?
	<p>present. A departmental secretary may have other officials present.</p> <p>(iii) The procedure will be <u>initiated by the relevant Opposition spokesperson making a request of the minister concerned who is to notify the Prime Minister of the request and whether it has been agreed.</u></p> <p>(iv) The discussions will be at the initiative of the non-government parties, not officials. <u>Officials will inform their ministers when the discussions are taking place.</u></p> <p>(v) Officials will not be authorised to discuss Government policies or to give opinions on matters of a party political nature. The subject matter of the discussions would relate to the machinery of government and administration. The discussions may include the administrative and technical practicalities and procedures involved in implementation of policies proposed by the non-Government parties. If the Opposition representatives raised matters which, in the judgment of the officials, sought information on Government policies or sought expressions of opinion on alternative policies, the officials would suggest that the matter be raised with the minister.</p> <p>(vi) The detailed substance of the discussions will be confidential but <u>ministers will be entitled to seek general information from officials on whether the discussions kept within the agreed purposes</u></p>	

## Conclusion

The *Guidance on Caretaker Conventions 2021*, as paragraph 1.3 confirms, are not legally binding, nor hard and fast rules. Their application in individual cases requires judgment and common sense. The responsibility for observing the conventions ultimately rests with agency heads or, in cases where they are involved, with the Prime Minister and ministers.

Based on the chronology of events, all Departmental officials received direction from ministerial staff acting on behalf of the Minister. It is the Minister's responsibility as outlined in the *Statement of Ministerial Standards*, paragraph 2.24 refers, that Ministers must ensure that their staff are aware of and comply with the *Statement of Standards for Ministerial Staff*.

The circumstances surrounding the issuance of the public statement in relation to SIEV 915 did not constitute a major policy decision, was not a significant appointment and did not bind an incoming government.

Notifying relevant Ministers of on-water issues is usual practice and necessary so that Ministers can give direction and consider exercising personal legislative powers. In the event of the declaration of a SIEV, it is routine to inform the Minister for Home Affairs. Releasing the information in the public domain, usually done after an operation, can be beneficial to support rapid strategic communication efforts to deter further ventures while current on-water matters are being resolved.

Whilst processes have been consistent with the *Guidance on Caretaker Conventions 2021*, there are a number of actions for noting.

All Departmental and ABF officials followed the direction of the former Minister for Home Affairs' office to publish a factual public statement on the interception of SIEV 915, however the refusal to amplify the public statement by posting it on social media and sending it directly to journalists indicates all actions were apolitical and in accordance with the *Public Service Act 1999* and *Australian Public Service Commissioner's Directions 2022* and did not breach the *Guidance on Caretaker Conventions 2021*.

When the request was made to publish the public statement there was no evidence to suggest that officials were aware of the Liberal Party planning to tweet and SMS the message *"BREAKING – Aust Border Force has intercepted an illegal boat trying to reach Aus. Keep our borders secure by voting Liberal today. <https://vote.liberal.org.au>".*

Authorising Officer
Approved by:
Sophie Sharpe Group Manager Executive and International
Date: 31 May 2022
Cleared on 31 May 2022, through:
Commissioner, ABF
Commander, JATF OSB
A/Commander, JATF OSB
General Counsel



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## Attachment A: Chronology – Events in the lead up to the issuance of the CJATF media statement

Time [AEST]	Action/Event	Further Information/References
21 May 2022		
11:09am	The Secretary directed the Department to “ <i>keep an eye out for any chatter on social media or worse any leaks to the media. It could become a very late election issue</i> ”.	
11:58am	The Minister for Home Affairs’ Office (MHAO) notified CJATF’s Office that the Prime Minister’s Office (PMO) has asked to publish a statement in relation to the interception of the vessel. The Department began drafting a statement.	
11:59am	MHAO advised CJATF of the requirement to issue a statement in relation to the interception of the vessel.	MHAO used words to the effect of “ <i>the Prime Minister wants a statement</i> ”.
12:02pm	MHAO advised CJATF of the requirement of the statement to be completed within 15 minutes.	
12:08pm	CJATF advised the Department that the PMO (via the MHAO) directed that CJATF urgently publish a statement confirming a vessel has been intercepted.	
12:11pm	The Department contacted MHAO to seek clarification on whether a ministerial statement or CJATF statement was required and to confirm the clearance process.	

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Time [AEST]	Action/Event	Further Information/References
	MHAO confirmed the direction was for a CJATF statement and that it was to happen urgently, with clearance from MHAO.	
12:21pm	The Secretary advised the Department that <i>"the Prime Minister's CoS advised that, subject to MHA direction, the Opposition is to be briefed".</i> The Secretary directed the Department <i>"to liaise with the MHA Office. Briefing should be led by the ABF Commissioner and CJATF after MHA approval has been received"</i> .	Note: the Secretary was directed the above by the Prime Minister's CoS at 12.17pm via phone call. The phone call was in relation to the Opposition briefing under the caretaker conventions. There was no reference to an OSB media statement. The Secretary advised the Prime Minister's CoS that as the briefing related to an operational matter, it was for the MHA to approve any briefing to the Opposition. The Prime Minister's CoS advised he would ensure that happened.
12:27pm	The Department contacted MHAO to begin arranging the Opposition briefing.	
12:31pm	MHAO contacted the Department to ask why the statement was taking so long. The Department explained that there was no existing template for CJATF and that there were changes to the initial draft, which required internal approval. The MHAO requested to see the statement while the correct template was being prepared.	
12:32pm	The Secretary advised the Department that the <i>"Opposition has asked MHA for a briefing before any statement is made. That's for MHA to determine"</i> .	
12:33pm	The Department sought confirmation from MHAO of the Secretary's direction for the Opposition to be briefed before the statement is released. MHAO advised that <i>"Yes. It's ok."</i> and the MHAO was <i>"in contact with them about it now"</i> [referencing the Opposition] and reconfirmed that the statement is to be urgently published.	
12:34pm	The Department provided the draft statement to MHAO for review.	Draft statement provided to MHAO:  <i>A vessel has been intercepted in likely attempt to enter Australia.</i>  <i>The Australian Government's policy remains unchanged. We will intercept any vessel seeking to reach Australia illegally and to safely return those on board to their point of departure or country of origin</i>

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Time [AEST]	Action/Event	Further Information/References
		<p><i>Measures and safeguards are in place to enable actions and activities to be undertaken in accordance with Australian domestic law and Australia's obligations under international law.</i></p> <p><i>The overriding priority for all agencies involved in Operation Sovereign Borders is the safety of all persons involved, including potential illegal immigrants and vessel crews as well as Australian personnel.</i></p> <p><i>In line with long standing practice, no further comment will occur with ongoing operational matters.</i></p> <p><i>RADM Justin Jones, CSC, RAN</i></p> <p><i>Commander – Joint Agency Task Force Operation Sovereign Borders</i></p>
12:38pm	<p>MHAO provided the Department with an updated statement.</p> <p>In addition, MHAO requested for the statement to be emailed to a list of journalists identified by them.</p> <p>The Department advised that this was not likely a possibility and not something that has been done in the past, but would confirm and revert.</p>	<p>Edits from MHAO are underlined as follows:</p> <p><i>A vessel has been intercepted in <u>a likely attempt to illegally enter Australia from Sri Lanka</u>.</i></p> <p><i>The Australian Government's policy remains unchanged. We will intercept any vessel seeking to reach Australia illegally and to safely return those on board to their point of departure or country of origin.</i></p> <p><i>Measures and safeguards are in place to enable actions and activities to be undertaken in accordance with Australian domestic law and Australia's obligations under international law.</i></p> <p><i>The overriding priority for all agencies involved in Operation Sovereign Borders is the safety of all persons involved, including potential illegal immigrants and vessel crews as well as Australian personnel.</i></p> <p><i>In line with long standing practice, <u>we will make</u> no further comment.</i></p> <p><i>RADM Justin Jones, CSC, RAN</i></p> <p><i>Commander – Joint Agency Task Force Operation Sovereign Borders</i></p>
12:39pm	CJATF approved the changes to the statement.	

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Time [AEST]	Action/Event	Further Information/References
12:44pm	The Department relayed the direction from MHAO to the Secretary about emailing journalists. The Secretary directed this is not to occur.	
12:47pm	The Department advised MHAO of the Secretary's position. MHAO directed that the statement be urgently published on the website and requested that the ABF tweet the statement.  The Department declined to tweet and advised that arrangements would be made to publish the statement.	
12:48pm	The Secretary provided a direction to the Department <i>"under no circumstances is the Department to drop the story to selected journalists. The release once cleared is to be posted to our news and media site – no more and no less"</i> .	
1:00pm	The Department finished loading the statement into the website for publishing.	<i>Note: it takes a few minutes before it goes live.</i>
1:03pm	MHAO followed up with the Department in relation to publishing the statement immediately.	Note: the follow up occurred via text exchange as follows. <i>"Is it live?? PM is speaking" [MHAO]</i> <i>"I'm refreshing" [Department]</i> <i>"So are we. What on earth is the issue?" [MHAO]</i> <i>"It always takes a few mins to go live – I have no idea how it works but we can't influence it. We are calling IT." [Department]</i> <i>"A lot of people are furious." [MHAO]</i> <i>"Nothing we can do. Legitimately nothing. So my sincere apologies." [Department]</i>
1:03pm	The Prime Minister began doorstep press conference. The Prime Minister was asked about the statement at <b>1:06pm</b> . His response ended at <b>1:07pm</b> .	Text from official transcript: <i>JOURNALIST: "Reports have just dropped now that a vessel has been intercepted in an attempt to illegally enter Australia from Sri Lanka. What do you, what's your response to that?"</i> <i>PRIME MINISTER: "Well, I can confirm that, that there has been an interception of a vessel en route to Australia. That vessel has been</i>

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Time [AEST]	Action/Event	Further Information/References
		<p><i>intercepted in accordance with the policies of the Government and they're following those normal protocols.</i></p> <p><i>And I can simply say this. I've been here to stop this boat. But in order for me to be there to stop those that may come from here, you need to vote Liberal and Nationals today. And in the interests of full transparency, in the middle of an election campaign, the Labor Party was advised of this and a statement is being issued by the Border Protection authorities."</i></p>
1:09pm	The statement appeared on the website.	Link: <a href="https://abf.gov.au">Illegal maritime venture intercepted (abf.gov.au)</a>
1:13pm	MHAO advised the Department that the MHA approved the briefing of the Opposition. MHAO advised that the Opposition Spokesperson will advise of the timing, however to expect the briefing within the next 15 minutes. The Department advised teleconference details would be arranged.	
1:15pm	The Department contacted CJATF to provide details of Opposition briefing.	
1:17pm	MHAO advised the Department that the Opposition briefing occur at <b>1:30pm</b> .	
1:21pm	MHAO advised the Department they would also attend the Opposition briefing as it was not a Pre-Election Consultation with the Opposition (PECO) briefing.	
1:45pm	The Department advised CJATF that MHAO and the Opposition Spokesperson were on stand-by, awaiting CJATF availability.	Note: CJATF seemed to be in a secure area and unable to be contacted by phone.
2:07pm	The Department advised MHAO that CJATF had been located and asked whether the Opposition briefing could occur at <b>2:15pm</b> .	
2:18pm	MHAO confirmed to the Department that the Opposition briefing could occur at <b>2:30pm</b> .	
2:26pm	CJATF commenced Opposition briefing.	A verbal confirmation of attendance at the Opposition briefing did not occur, however speakers included:

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Time [AEST]	Action/Event	Further Information/References
		<ul style="list-style-type: none"><li>• Opposition Spokesperson</li><li>• CJATF</li><li>• MHAO</li></ul> <p>The Department was also in attendance.</p>
3:03pm	<p>The Department identified screenshots on Twitter of the LiberalNSW text spam text message: "BREAKING – Aust Border Force has intercepted an illegal boat trying to reach Aus. Keep our borders secure by voting Liberal today. <a href="https://vote.liberal.org.au">https://vote.liberal.org.au</a>" (note: the link does not go to the statement, it goes to a liberal party political page).</p> <p>The Department shared a screenshot of the spam text message with the Secretary and CJATF.</p>	

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MS21-002668  
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**MINISTERIAL DIRECTIVE 01/2022**  
**TO**  
**REAR ADMIRAL JUSTIN JONES, CSC, RAN**  
**COMMAND OF JOINT AGENCY TASK FORCE OPERATION SOVEREIGN BORDERS**

**INTRODUCTION**

1. The Australian Government has directed a military-led Joint Agency Task Force (JATF) to combat unauthorised maritime arrivals and people-smuggling, and to provide greater border protection through a multi-dimensional campaign approach titled Operation Sovereign Borders (OSB). The OSB Mission, coordinated by the JATF, is to deny any illegal maritime pathway to settlement in Australia and deter potential illegal immigrants from attempting illegal journeys by sea in order to protect the integrity of the Australian border and prevent the loss of potential illegal immigrant lives at sea.

**PURPOSE**

2. The purpose of this Directive is to outline your accountabilities and authorities for OSB.

**BACKGROUND**

3. The Government directed the establishment of the JATF in 2013. The JATF was directed to achieve its objectives through the establishment of discrete Task Groups, at the time:
  - a. Disruption and Deterrence Task Group (DDTG) led by the Australian Federal Police;
  - b. Detection, Interception & Transfer Task Group (DITTG) led by Maritime Border Command; and
  - c. Offshore Detention & Assessment Task Group, and Return, Remove, Resettlement Task Group (now known as Regional Processing, Return and Resettlement Task Group), led by the Department of Home Affairs.
4. The JATF Commander was to develop a multi-dimensional counter people smuggling strategy to meet the Government's intent. This strategy would be the key initial deliverable of the JATF Commander to the Minister for Immigration and Border Protection, now Minister for Home Affairs.
5. Defence planning assumed that the establishment of the JATF was a temporary crisis response measure that will be tasked to 're-establish control of Australia's border [security] and restore



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faith in our immigration system'. The Government has since indicated that JATF OSB will continue and will be resourced and staffed commensurate with the level of risk.

### REPORTING CHAIN

6. For all matters relating to OSB you are directly accountable to and have a direct line of reporting for operational matters to the Minister for Home Affairs. In cases where the situation, plan or outcomes are likely to affect other departments and agencies, you should also keep the heads of agencies for the different task groups informed on the matter.
7. The JATF is resourced through the agreed contributions of multiple agencies and task group heads remain accountable to their agency heads. For the Department of Home Affairs contribution you are responsible to the Australian Border Force Commissioner. The Secretary of the Department of Home Affairs (the Department), is the Accountable Authority for the Department under the Public Governance, Performance and Accountability Act 2013, and is responsible for the governance and control of the Department's operations.

### AUTHORITIES

8. You have the authorities to:
  - a. Direct assets to detect and intercept suspected illegal entry vessels.
  - b. Request assistance from the supporting agencies to gain intelligence, disrupt and deter persons from organising or embarking on illegal maritime migration to Australia.
  - c. Engage directly, in consultation with the Secretary for the Department of Foreign Affairs and Trade, with foreign governments and Australian representatives overseas to support development and strengthening of Australia's relationships with foreign counterparts in disrupting illegal maritime ventures to Australia before they depart.
9. You are accountable, to me, for:
  - a. Ensuring that all available assets are being utilised to disrupt people from embarking on illegal maritime migration to Australia.
  - b. Ensuring that the DITTG is effective and efficient in operation to meet the OSB mission.
  - c. Working with the AFP to ensure that the DDTG is effective and efficient in operation to meet the OSB mission.
  - d. Working with the Department to ensure an ongoing regional processing capability that provides access to protection claims assessment and durable migration pathways, aiding the deterrence effect for OSB.
  - e. Providing a report, annually in the months proceeding the end of each financial year, on the status of OSB and the outlook for the next year.
10. If at any time your accountabilities become unclear, or you are unable to achieve outcomes relevant to the JATF OSB, you are to formally notify me, and provide details of mitigations, including required resources.

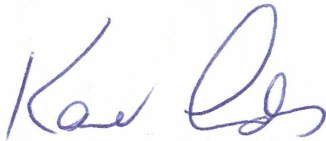
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### IMPLEMENTATION

11. This Directive is effective immediately and will remain extant until amended or withdrawn by me.
12. This Directive is to be reviewed by 01 October 2022 or if arrangements significantly change.

### ACKNOWLEDGEMENT

13. You are to acknowledge receipt of this Directive by signing and returning Annex A within 14 days of issue.



**The Hon Karen Andrews MP**  
Minister for Home Affairs

22 February 2022

#### **Annex:**

A. Acknowledgement of Directive

#### **Distribution:**

Secretary, Department of Home Affairs  
Commissioner, Australian Border Force  
Secretary, Department of Defence  
Chief of the Defence Force  
Commissioner, Australian Federal Police  
Deputy Secretary, Strategy and National Resilience, Department of Home Affairs



**ACKNOWLEDGEMENT OF MINISTER FOR HOME AFFAIRS DIRECTIVE**

I acknowledge receipt of Ministerial Directive 01/2022 and will comply with the instructions detailed within.



Justin JONES CSC  
Rear Admiral, Royal Australian Navy  
Commander Joint Agency Task Force Operation Sovereign Borders  
7 March 2022

*Annex is to be submitted to the Departmental Liaison Office ([DLO@homeaffairs.gov.au](mailto:DLO@homeaffairs.gov.au))*



Australian Government

Department of the Prime Minister and Cabinet

# Guidance on Caretaker Conventions 2021

**Note:** The advice in this document is identical in most respects to the Guidance that was issued in 2018. The document has been reformatted to meet contemporary style guide and online accessibility requirements.

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# 1. HOW TO USE THE GUIDANCE ON CARETAKER CONVENTIONS

- 1.1 The *Guidance on Caretaker Conventions* is intended to explain the conventions and practices of the caretaker period in more detail, and to provide advice for the appropriate handling of business by Australian Government agencies during this period.
- 1.2 The conventions and practices have developed primarily in the context of the relationship between ministers\* and their departments (and executive agencies since the commencement of the [Public Service Act 1999](#)). The relationship between ministers and other Australian Government entities and bodies, such as statutory authorities and government companies, varies depending on the specific body. All bodies should observe the conventions and practices, unless doing so would conflict with their legal obligations or compelling organisational requirements.
- 1.3 The conventions are not legally binding, nor hard and fast rules. Their application in individual cases requires judgment and common sense. The Department of the Prime Minister and Cabinet (PM&C) is available to provide information and advice to agencies on the application of the Guidance. However, responsibility for observing the conventions ultimately rests with agency heads or, in cases where they are involved, with the Prime Minister and ministers.
- 1.4 To ensure the consistent application of the Guidance, and to minimise the number of requests for advice to PM&C, agencies should appoint one or two senior officials to be the initial internal contact for caretaker enquiries.
- 1.5 If further advice is required in relation to particular matters that arise during the caretaker period, agencies should contact Government Division in PM&C on (02) 6271 5399 or [caretaker@pmc.gov.au](mailto:caretaker@pmc.gov.au).

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\* All references to ministers should be read as including parliamentary secretaries (also known as assistant ministers).

## 2. BACKGROUND AND OVERVIEW OF CARETAKER CONVENTIONS

2.1 Successive governments have accepted that, during the period preceding an election for the House of Representatives (the House), the government assumes a 'caretaker role'. This practice recognises that, with the dissolution of the House, the Executive cannot be held accountable for its decisions in the normal manner, and that every general election carries the possibility of a change of government.

2.2 Dissolution is the term used for the action of ending a Parliament or a House of the Parliament. Under the Australian Constitution, only the Governor-General has the power to take such action. By convention, the Governor-General takes this action only on the advice of the Prime Minister of the day.<sup>1</sup>

2.3 **The caretaker period begins at the time the House is dissolved.** Once dissolved, the House no longer exists and elections for the full membership of a new House are held at a general election. The caretaker period continues until the election result is clear or, if there is a change of government, until the new government is appointed.

2.4 During the caretaker period, the business of government continues and ordinary matters of administration still need to be addressed. However, successive governments have followed a series of practices - the 'caretaker conventions' - which aim to ensure that their actions do not bind an incoming government and limit its freedom of action.

2.5 In summary, the conventions are that the government avoids:

- making **major policy decisions** that are likely to commit an incoming government (please see [section 3](#) for further information);
- making **significant appointments** (please see [section 4](#) for further information); and
- entering into **major contracts or undertakings** (please see [section 5](#) for further information).

These conventions also apply in the context of **negotiations and engagements with international governments and dignitaries** (please see [section 6](#) for further information).

2.6 The conventions support practices that are intended to preserve the apolitical nature of the Australian Public Service (APS) and avoid the use of Australian Government resources in a manner that may advantage a particular political party. Please see [section 7 – Avoiding APS Involvement in Election Activities](#) – for further information.

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<sup>1</sup> [Infosheet 18 - Parliament of Australia \(aph.gov.au\)](#)

### 3. MAJOR POLICY DECISIONS

- 3.1 During the caretaker period, governments avoid making major policy decisions that are likely to commit an incoming government. Whether a particular policy decision qualifies as 'major' is a matter for judgement. Relevant considerations include the significance of the decision in terms of policy and resources, but also whether the decision is a matter of contention between the Government and Opposition in the election campaign.
- 3.2 The conventions apply to the making of decisions, not to their announcement. Accordingly, the conventions are not infringed where decisions made before the dissolution of the House are announced during the caretaker period. However, where possible, decisions should be announced ahead of dissolution if their announcement is likely to cause controversy, which may distract attention from the substantive issues in the election campaign. Care should be taken to ensure that Australian Government resources are not used to make announcements that involve partisan activities.
- 3.3 The conventions do not apply to promises on future policies that the party in government announces as part of its election campaign.
- 3.4 If circumstances require the Government to make a major policy decision during the caretaker period that would bind an incoming government, the minister would usually consult the Opposition spokesperson beforehand. In the past, for example, the Government has agreed to provide urgent financial assistance to drought-affected areas following consultation with the Opposition.
- 3.5 In circumstances when the responsible minister consults the Opposition, that consultation should involve an explanation of why the proposed action is considered necessary during the caretaker period and an opportunity to explore different courses of action. The Opposition should be provided with an appropriate amount of time to consider the issue. The minister should ensure the Opposition spokesperson is aware that their views are being sought. While the minister should consider any suggestions made by the Opposition, the minister is not required to reach agreement with the Opposition before proceeding.
- 3.6 Please see [section 9](#) of the Guidance for advice regarding the guidelines for **pre-election consultation with the Opposition**.

### 4. SIGNIFICANT APPOINTMENTS

- 4.1 Governments defer making significant appointments during the caretaker period. When determining if an appointment qualifies as 'significant', agencies should consider the importance of the position and whether the proposed appointment is likely to be controversial.
- 4.2 Sometimes deferring an appointment is not possible for reasons associated with the proper functioning of an agency. In this scenario, the following options should be considered:
- the minister could make an acting appointment, where permissible;

- the minister could make a short-term appointment until shortly after the end of the caretaker period; or
- if those options are not possible, the minister could consult the relevant Opposition spokesperson regarding a full-term appointment. Please see [section 3.5](#) of the Guidance for further information.

## 5. MAJOR CONTRACTS OR UNDERTAKINGS

5.1 Governments avoid entering major contracts or undertakings during the caretaker period. When determining whether a contract or undertaking qualifies as ‘major’, agencies should consider:

- the dollar value of the commitment
- whether the commitment is a routine matter of administration
- whether the commitment implements or entrenches a policy, program or administrative structure which is politically contentious; and
- if the commitment requires ministerial approval.

5.2 If it is not possible to defer the commitment until after the caretaker period, for legal, commercial or other reasons, there are a number of options:

- The minister could consult the relevant Opposition spokesperson regarding the commitment. Please see [section 3.5](#) of the Guidance for further information.
- Agencies could also explain the implications of the caretaker period to the contractor and ensure that contracts include clauses providing for termination in the event that an incoming government does not wish to proceed.
- Similarly, in the case of tenders, agencies should communicate with potential tenderers about the implications of the caretaker period and the possibility that the tender might not be completed.

## 6. INTERNATIONAL NEGOTIATIONS AND VISITS

6.1 The convention that the Government avoids entering major commitments during the caretaker period also applies in the context of international negotiations. The Government ordinarily seeks to defer such negotiations or adopts observer status until the end of the caretaker period. If other parties to the negotiations are not familiar with the concept of caretaker conventions, the Government may need to explain the constraints they impose.

6.2 If deferring involvement or adopting observer status is not possible, the Government may choose to limit its role to providing information on its past position, without committing the incoming government to that position. If it is necessary for the Government to participate fully in the negotiations, it should advise the other parties to the negotiations that any outcomes will need to be authorised by the incoming



government. Alternatively, the Government could seek the Opposition's agreement to negotiating positions. Please see [section 3.5](#) of the Guidance for further information.

- 6.3 The Prime Minister will determine whether visits by foreign dignitaries involving government hospitality should proceed during the caretaker period. Dignitaries whose visits are scheduled during the caretaker period, or shortly afterwards, should be advised of the election announcement and any related changes in arrangements. This may include the reduced availability of ministers and the possibility of a change of government.

## 7. AVOIDING APS INVOLVEMENT IN ELECTION ACTIVITIES

### 7.1 Political Participation by Officials

- 7.1.1 The [APS Values](#) set out in the [Public Service Act 1999](#) include the value of being 'Impartial', which states that "The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence".

- 7.1.2 The [APS Code of Conduct](#) (the Code) requires officials to:

- disclose, and take reasonable steps to avoid, any conflicts of interests (real or apparent) in connection with their employment
- use Australian Government resources in a proper manner, and
- refrain from making improper use of their position to gain, or seek to gain, a benefit or advantage for themselves or any other person.

Further information on the [APS Values and Employment Principles](#) is available on the Australian Public Service Commission's (APSC) website.

- 7.1.3 Officials should not use Australian Government resources or their positions to support particular issues or parties at any time. The APSC's publication, [APS Values and Code of Conduct in Practice](#), especially the sections on 'Working with the Government and the Parliament', 'Managing information', 'Employees as citizens' and 'Using Commonwealth Resources', provides further guidance.

- 7.1.4 Officials should exercise judgment if they are scheduled to speak at public functions during the caretaker period. In general, officials should:

- decline invitations to speak on controversial issues, and
- avoid publicly explaining or promoting Government policies.

Officials may choose to speak on non-controversial issues but should explain that the Government is in caretaker mode and that they will limit their statements to factual issues, and matters of administration.

- 7.1.5 **Individual public servants who engage online** in either a professional or personal capacity during the caretaker period should review the publication [Social media: Guidance for Australian Public Service Employees and Agencies](#), available on the Australian Public Service Commission's website.

## 7.2 Departmental Liaison Officers

- 7.2.1 Departmental Liaison Officers (DLOs) are APS employees provided to assist ministers' offices to undertake necessary liaison work with agencies. As DLOs are not ministerial staffers employed under the [Members of Parliament \(Staff\) Act 1984](#), they must avoid assisting ministers in ways that could create a perception that they are being used for party political purposes, including and especially during the caretaker period.
- 7.2.2 If there is ongoing liaison work required during the caretaker period, DLOs may remain with ministers' offices. The need for this work should be reviewed by agencies at the commencement of the caretaker period.

## 7.3 Advertising and Information Campaigns

- 7.3.1 The Department of Finance and PM&C review all advertising campaigns at the beginning of the caretaker period. This informs recommendations to the Government about whether those campaigns should continue or be deferred. Bipartisan agreement is sought for campaigns that are recommended to continue. In general, campaigns that:
- highlight the role of particular ministers or address issues that are a matter of contention between the political parties contesting the election are **normally discontinued**.
  - are operational by nature, such as Australian Defence Force recruiting or public health campaigns, **usually continue**.
- 7.3.2 At the beginning of the caretaker period, agencies should review their individual arrangements for the distribution of publicly communicated material, such as newsletters. Agencies should avoid active distribution of material if it promotes Government policies or emphasises the achievements of the Government or a minister. Passive distribution of material, such as continued placement in the agency's offices or distribution in response to requests, is acceptable.
- 7.3.3 The conduct of advertising and information activities during the election period is regulated by legislation. Schedule 2 of the [Broadcasting Services Act 1992](#) deals with radio and television broadcasts and Part XXA of the [Commonwealth Electoral Act 1918](#) deals with a wide range of communications containing 'electoral matter' including all publicly communicated material. Broadly, the legislation requires all political communications that are broadcast by television and radio, printed material, social media, voice calls (including robocalls) and text messaging to be authorised.

- 7.3.4 The Australian Electoral Commission’s website hosts further [guidance on the electoral communications and authorisation requirements](#).
- 7.3.5 The Australian Communications and Media Authority’s website hosts further [guidance on the broadcasting and communication of political and election matters](#).

## 7.4 Internet and Electronic Communications

- 7.4.1 The Digital Transformation Authority’s website hosts [guidance on the content and maintenance of agency and ministerial websites](#). Agencies are expected to ensure that the websites they maintain are consistent with the guidance at all times.
- 7.4.2 During the caretaker period, agencies need to take additional steps to ensure that Australian Government resources are not used to support any particular political party. Agencies should review their websites and online engagement tools at the beginning of the caretaker period, as outlined in [sections 7.4.3 to 7.4.13](#).

### Agency Websites

- 7.4.3 In most cases, **agency websites** may retain material placed on the website before the commencement of the caretaker period. Exceptions may include recent ministerial statements that include negative references to the Opposition. Agencies should check the wording of any icons and links on their websites to ensure that they cannot be interpreted as promoting Government policy.
- 7.4.4 Agencies should add only the following material to their websites during the caretaker period:
- portfolio-related announcements consistent with usual practice (for example, a ministerial press release relating to a public health warning). This will require judgment within each individual agency.
  - purely factual material, including costings prepared and published under the [Charter of Budget Honesty Act 1998](#) (please see [section 7.7](#) of the Guidance for further information), and
  - information on existing policies and programs, unless the information includes negative references to the Opposition or other political statements.

If agency websites contain links to websites outside the ‘gov.au’ domain, agencies should consider the need for entry/exit messages. Please see [section 7.4.10](#) of the Guidance for further information.

- 7.4.5 The interactive functions of websites within the gov.au domain which allow unmoderated comment or debate (for example in discussion groups, chat rooms or blogs) should be moderated by agencies during the caretaker period. Agencies may choose to provide a disclaimer to this effect:

Example text: *“In the period preceding an election for the House of Representatives, the Australian Government assumes a caretaker role. It is important during that time that Australian Government resources are not*

*used to communicate political material. As this website is hosted by the [Department of ...], the site will be moderated from the time the House of Representatives is dissolved until after the election to ensure that political material is not placed on the site.”*

## Ministerial Websites

- 7.4.6 Agencies do not need to withdraw existing IT services provided to ministers’ offices during the caretaker period. If agencies are managing **ministerial websites**, they may also continue to fund and/or otherwise maintain the website if that was the practice prior to the caretaker period. Material placed on the minister’s website before the caretaker period may be retained, including links between the minister’s and agency’s websites.
- 7.4.7 When adding material to ministerial websites during the caretaker period:
- agencies should only add material relating to matters of existing policy, or purely factual material. Agencies must not add material concerning future policies, election commitments, how-to-vote material or media releases and speeches that criticise opponents, promote the Government or pursue election issues.
  - agencies may choose to place a notice on the ministerial website advising that political and election-related material is not available on the website. The notice could refer visitors to the minister’s party’s website, or include a link to that website.
  - if the maintenance of the ministerial website has become the responsibility of the minister rather than the agency, ministerial staff may add any material to the website as long as there is no cost to the Australian Government. A notice must also be added to advise that, since the commencement of the caretaker period, the website is not being administered or funded by the agency.
- 7.4.8 Ministerial media releases and alerts should be placed on the website of the minister’s political party during the caretaker period. Where ministers determine a need to issue media releases and alerts in their own name through Australian Government agency-maintained and/or funded websites, these should be restricted to time-sensitive, administrative or operational information in the public interest (for example, public health warnings, travel advisories, military operations or counter terrorism alerts).
- 7.4.9 If the minister’s website is personal and not maintained by the agency, the minister may consider placing a disclaimer on the website to the effect that no Australian Government resources are being used to communicate political material.
- 7.4.10 If an agency-maintained and/or funded ministerial website contains links to websites outside the ‘gov.au’ domain, such as political party websites, agencies should include appropriate entry/exit messages:

Example text: *“You are now leaving the website of [insert agency name here]. The website you are entering is not maintained or funded by the Australian Government”.*

## Social Media Accounts

- 7.4.11 The use and administration of **social media accounts** by agencies should observe the same practices that apply to ministerial websites, as set out in sections [7.4.6 to 7.4.10](#) of the Guidance. Externally-hosted, third-party engagement tools (for example, Facebook and Twitter) are inherently harder to control than the interactive functions of websites. For example, an agency may have a Facebook page which allows minimal moderation of the content that is posted to it, or a Twitter account which may be sent publicly-viewable messages containing political content.
- 7.4.12 It may not be possible to completely prevent political material from being posted by members of the public to agency social media accounts operated by third-parties. At the start of the caretaker period, agencies should review the functions and settings of their social media accounts, and other similar online engagement tools, to identify ways to minimise political content associated with their presence (even if the content is not directly attributable to the agency). Actions to achieve this may include:
- not posting new content to the account for the duration of the caretaker period;
  - disabling or opting for pre-moderation of comment sections, if possible, and closer monitoring of public contributions if not;
  - posting a notice that the agency is operating in a caretaker period and cannot respond to political content.
- 7.4.13 **Intranet, e-mail and other similar internal communication systems** provided by agencies should not be used to publish political material. Material related to political parties and how-to-vote material produced by any organisation should not be displayed using these systems, or in agencies’ physical premises.

## 7.5 Use of Agency Premises

- 7.5.1 There may be appropriate occasions where agency premises can be used by political parties during the caretaker period for public events, such as media conferences, or where they are the obvious place for a function (for example, the opening of a building by a minister). The use of premises should not unreasonably disrupt the normal operations of the agency.
- 7.5.2 In the case of official party functions being held on agency premises, it would be appropriate for the Opposition spokesperson, member or candidate to be given the opportunity to be present. Where candidates, other than the Prime Minister or ministers, seek to visit premises or facilities, agencies should be fair and equal in their responses and assistance to both the Government and Opposition.

- 7.5.3 While all parties campaigning in an election may responsibly use agency premises that are normally open to the public, it is not appropriate for this use to extend to activities that may engage APS employees in political dialogue, or as logistical support for political functions (please see [section 7.1](#) of the Guidance for further information).
- 7.5.4 Ministerial visits to agencies to undertake consultation is permissible for the conduct of routine government business, in accordance with the caretaker conventions.

## 7.6 Requests from Ministers' Offices for Information

- 7.6.1 Ministers may continue to request factual material and information from agencies during the caretaker period. Agencies should supply material relating to the day-to-day business of government to ministers in the usual way.
- 7.6.2 Ministers are ultimately responsible for determining the purpose for requesting material from agencies and how it is used during the caretaker period. Consistent with the APS value of impartiality, it may be appropriate for an agency to decline a request from a minister if it required the use of significant resources, and/or was clearly for use in the election campaign. If in doubt, agencies should discuss the purpose for which material is to be used with the minister or their senior staff before responding to a request.
- 7.6.3 In most instances, agencies should also decline requests from ministers' offices for policy advice during the caretaker period. However, there may be urgent domestic or international issues on which policy advice should be provided to enable responsible ongoing administration, or to protect Australia's interests. Requests for legal advice on issues affecting the minister in their capacity as a political candidate should be declined.
- 7.6.4 Agencies can proceed with policy development work during the caretaker period so that they are in a position to provide advice to the incoming government, provided that contact with ministers' offices is not required.

## 7.7 Charter of Budget Honesty and Other Policy Costings

- 7.7.1 The costing of Government and Opposition election commitments by The Treasury and the Department of Finance is regulated by the [Charter of Budget Honesty Act 1998](#) (the Act). The Secretaries of Treasury and Finance issue [Policy Costing Guidelines](#) under the Act around the commencement of the caretaker period.

- 7.7.2 The Act provides for the Secretaries of Treasury and Finance to prepare costings of publicly announced Government and Opposition election commitments during the caretaker period. The Act does not apply to:
- costings outside the caretaker period
  - costings by agencies other than The Treasury or Finance during the caretaker period, and
  - costing of minor party and independents' commitments during the caretaker period.
- 7.7.3 Ministers can request costing information from other agencies in accordance with longstanding practice. Where necessary, agencies may seek advice from Treasury and Finance on strictly factual issues and costing methodology. Treasury and Finance do not endorse or confirm costings through the provision of this advice to agencies, and costings of this nature must not be presented as costings under the Charter of Budget Honesty.
- 7.7.4 Ministers can also request any agency, including Treasury and Finance, to provide costing information in relation to minor parties' and independents' commitments. Any requests of this nature to Treasury and Finance should go through the offices of the Treasurer and the Minister for Finance.
- 7.7.5 The [Parliamentary Service Amendment \(Parliamentary Budget Officer\) Act 2011](#) establishes the Parliamentary Budget Office (PBO) as a separate Parliamentary Department, and the Parliamentary Budget Officer as an independent statutory office holder. The PBO may prepare policy costings on request both during and outside of caretaker periods.
- 7.7.6 **During caretaker period**, authorised members of Parliamentary parties and independent members can request policy costings of their publicly announced policies.
- The PBO can provide policy costings to Parliamentary parties with fewer than five members and to independent members (policy costings are not available to these groups under the Charter of Budget Honesty).
  - The requests and costings must be publicly released.
  - The Treasury and Finance are not authorised to prepare a Parliamentary party's policy costing during a caretaker period if a member of that party has already requested the PBO to prepare a costing of the same (or a substantially similar) policy, and vice versa, during the same caretaker period. This is to prevent duplicate costings being undertaken.
- 7.7.7 **Outside of a caretaker period**, Senators and Members of the House can request policy costings. These requests and the costings can be kept confidential outside of a caretaker period, if directed by the requestor.
- 7.7.8 The Australian Parliament House website hosts [further information on the role and operations of the PBO](#).



## 8. RELATED MATTERS

### 8.1 Tabling of and Responses to Reports

- 8.1.1 Responses to outstanding parliamentary committee reports should be deferred during the caretaker period for action by the incoming government. Agencies may continue to undertake appropriate preparatory work and consultation at the agency level so that they are in a position to provide advice to the incoming government.
- 8.1.2 Reports of an administrative nature, such as annual reports, can be tabled out of session during the caretaker period. However, where a report contains information that is likely to be controversial, consideration should be given to whether tabling should be deferred for action by the incoming government.
- 8.1.3 The PM&C website provides further advice in the [Tabling Guidelines](#).

### 8.2 Correspondence

- 8.2.1 The arrangements for handling correspondence during the caretaker period are a matter for individual agencies. In PM&C, the practice is to answer general correspondence during the caretaker period rather than leave it to accumulate. However, ministers usually sign only the necessary minimum of correspondence during the caretaker period. Some correspondence is prepared for signature by ministerial staff or departmental officers instead.
- 8.2.2 When preparing replies, care should be taken to protect the APS from perceptions of partisanship. Replies should not assume that the Government will or will not be returned to office. References to post-election action are in terms of the 'incoming government'. Correspondence that requires an explanation of Government policy should not commit the Government to post-election action or imply that the policy will continue if the Government is re-elected. Within PM&C it has not been considered sufficient to state only that the matter is one for the incoming government, although a reply might include these words to avoid any implication of continuing policy.
- 8.2.3 To avoid confusion, and as a matter of courtesy, members of the House of Representatives who are standing for re-election should continue to be addressed as 'MP' until it is known whether they have been re-elected. Newly-elected members should be addressed as 'MP' as soon as it is known that they are elected. Members who are not standing for re-election should not be addressed as 'MP' following the dissolution of the House of Representatives.

- 8.2.4 The same rules apply to senators for the Northern Territory and the Australian Capital Territory, except that territory senators who are not standing for re-election should be addressed as 'Senator' until the day of the election.
- 8.2.5 The terms of state senators expire and begin on 30 June and 1 July respectively, regardless of the date the election is held. Therefore, state senators who are not standing for re-election should continue to be addressed as 'Senator' until their terms expire.

## 8.3 Resources for Ministers

- 8.3.1 During the caretaker period, the provision of Australian Government resources for ministers and their staff should be assessed by agencies on a case-by-case basis. Agencies must not cover claims relating to the election campaign or a political event, as these costs are to be borne by the respective political party. For example, claims that would not be covered include requests for additional laptop computers, tablets or mobile telephones for ministers or their staff, unless there was a demonstrable official purpose.
- 8.3.2 Claims relating to the management of essential government business can be covered by agencies; for example, to support ministers attending an urgent Cabinet meeting or primarily in connection with their ministerial duties.
- 8.3.3 In the case of claims that cover a combination of official government and political business, agencies can grant a partial reimbursement to cover government business.
- 8.3.4 Ministers' claims for travel allowance, including during the caretaker period, are governed by the [Parliamentary Business Resources Act 2017](#) (the Act). Ministers must ensure that all of their travel expense claims meet the obligations prescribed by the Act, including that the travel is for the dominant purpose of their parliamentary business in accordance with the [Parliamentary Business Resources \(Parliamentary Business\) Determination 2017](#) and is value for money.
- 8.3.5 Guidance in relation to public resources for ministers that are administered by the [Ministerial and Parliamentary Services Division of the Department of Finance](#) and the [Independent Parliamentary Expenses Authority](#) are available from each agency's respective website.

## 8.4 Legislation

- 8.4.1 Bills that have passed both Houses of Parliament should be assented to by the Governor-General before the dissolution of the House of Representatives. There is at least one instance – involving a Bill passed in the 1930s – where a Bill received assent after dissolution. However, questions have been raised about the

constitutional validity of Acts that receive assent in the period between dissolution and the opening of the new Parliament.

- 8.4.2 Legislation can be proclaimed during the caretaker period. Proclamations which have a commencement date after the date of the election are generally not made, other than in exceptional circumstances.
- 8.4.3 The Executive Council usually meets immediately before the dissolution of the House to approve regulations and ordinances, including those made under Acts just assented to by the Governor-General. Where there is no infringement of the basic caretaker conventions, the Executive Council may approve regulations and ordinances during the caretaker period. However, meetings are infrequent during the caretaker period and are held only when required and with the agreement of the Governor-General.

## 8.5 Cabinet Documents

- 8.5.1 Successive governments have accepted the convention that ministers do not seek access to documents recording the deliberations of ministers in previous governments. Cabinet documents are considered confidential to the government that created them. In this context, all Cabinet documents, including files, Submissions, Memoranda, Business Lists, Minutes (decisions) and matters that were considered without submission (under-the-line items) should be returned to the custody of the Cabinet Liaison Officer in the Parliamentary Business Section, or equivalent, in each agency, for storage until the result of the election is known.
- 8.5.2 The Cabinet Liaison Officer should advise the Cabinet Division in PM&C when they have accounted for all documents and ensured they are securely stored.
- 8.5.3 The Cabinet Division of PM&C may issue further procedural guidelines on the handling of Cabinet documents at the commencement of the caretaker period and is the appropriate contact for further advice on such matters. Advice on the security and handling of Cabinet documents is set out in the [Cabinet Handbook](#) hosted on the PM&C website.

## 9. GUIDELINES FOR PRE-ELECTION CONSULTATION WITH THE OPPOSITION

- 9.1.1 In 1976, the Government tabled Guidelines providing for pre-election consultation with the Opposition. The Guidelines are intended to ensure a smooth transition if an election results in a change of government. The current version of the Guidelines was presented to the Senate on 5 June 1987 and is re-printed at [section 9.1.3](#) of the Guidance.

9.1.2 The Guidelines are distinct from the caretaker conventions and commence on a different date. They apply as soon as an election for the House of Representatives is announced or three months before the expiry of the House, whichever occurs first.

9.1.3 The Guidelines are as follows:

- (i) The pre-election period is to date from three months prior to the expiry of the House of Representatives or the date of announcement of the House of Representatives election, whichever date comes first. It does not apply in respect of Senate elections only.
- (ii) Under the special arrangement, shadow ministers may be given approval to have discussions with appropriate officials of government departments. Party leaders may have other Members of Parliament or their staff members present. A departmental secretary may have other officials present.
- (iii) The procedure will be initiated by the relevant Opposition spokesperson making a request of the minister concerned who is to notify the Prime Minister of the request and whether it has been agreed.
- (iv) The discussions will be at the initiative of the non-government parties, not officials. Officials will inform their ministers when the discussions are taking place.
- (v) Officials will not be authorised to discuss Government policies or to give opinions on matters of a party political nature. The subject matter of the discussions would relate to the machinery of government and administration. The discussions may include the administrative and technical practicalities and procedures involved in implementation of policies proposed by the non-Government parties. If the Opposition representatives raised matters which, in the judgment of the officials, sought information on Government policies or sought expressions of opinion on alternative policies, the officials would suggest that the matter be raised with the minister.
- (vi) The detailed substance of the discussions will be confidential but ministers will be entitled to seek general information from officials on whether the discussions kept within the agreed purposes.