Cabinet Office

CO (24) 2

Circular

25 March 2024

Intended for

All Ministers
All Chief Executives
Chief of Staff, Office of the Prime Minister
Chief of Staff, Office of the Leader of the ACT Party
Chief of Staff, Office of the Leader of the New Zealand First Party
All Senior Private Secretaries
All Private Secretaries
Chief Parliamentary Counsel

National, ACT and New Zealand First Coalition Government: Consultation and Operating Arrangements

Introduction

1 This circular provides guidance for Ministers[1] and agencies on the consultation and operating arrangements agreed to by the Coalition Government, comprising the National Party, the ACT Party, and the New Zealand First Party.

2 Ministers and chief executives will be familiar with the coalition agreements:

2.1 Coalition Agreement New Zealand National Party & ACT New Zealand;

2.2 Coalition Agreement New Zealand National Party & New Zealand First;

3 The two agreements and the Cabinet Manual were endorsed by Cabinet on 28 November 2023 as the basis on which the Coalition Government will operate.

Summary of key points

4 The key points are:

4.1 The parties agree to work together in good faith and undertake best endeavours to achieve consensus on Cabinet decisions, with due consideration to the position of each party in the Coalition Government.

4.2 The relationships between the parties will be guided by the "no surprises" principle. Careful planning, timely consideration, and clarity about the roles of all concerned are key to making the arrangements work effectively.

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[1] All references to Ministers in this guidance also apply to Parliamentary Under-Secretaries.

4.3 All Ministers, Parliamentary Under-Secretaries, chief executives, and their respective offices need to be familiar with the two agreements and ensure that they have processes in place to implement them.

4.4 Ministers are responsible for ensuring that the parties to the coalition agreements are consulted and included as set out in the agreements.

4.5 Separately, Ministers are also expected to consult other relevant portfolio Ministers (from whichever party) before submitting papers that deal with significant or potentially controversial matters or that affect other Ministers' portfolio interests.

4.6 Political consultation between the parties will be coordinated by the Prime Minister's Chief of Staff and the Chiefs of Staff of the offices of the leaders of ACT and New Zealand First.

Collective responsibility

5 Government Ministers will operate in accordance with the convention of collective responsibility as set out in the Cabinet Manual. This means that once Cabinet makes a decision, Ministers must support it (unless "agree to disagree" provisions apply) regardless of their personal views and whether or not they were at the meeting concerned. Ministers are expected to show careful judgement and recognise distinction when referring to party policy that differs from government policy.

6 If parties have any concerns, then these must be raised in confidence as soon as possible and in good faith. The concerns should first be raised with Chiefs of Staff, and if they are unable to be resolved expeditiously, then the matter may be referred to party leaders for discussion. This process will be guided by the "no surprises" principle.

7 If the concerns continue to be unresolved, parties may decide to "agree to disagree" on an issue or policy, as provided for in the Cabinet Manual and coalition agreements. In such circumstances, the parties may express alternative views publicly and in Parliament. This will be determined in a case-by-case manner.

8 Any "agree to disagree" matters will be dealt with on a "no surprises" basis. Subject to the "agree to disagree" process, a Minister's support and responsibility for the collective government position must always be clear.

Confidentiality principle

9 The principle of confidentiality applies to all Ministers in relation to the discussion that takes place at Cabinet and Cabinet committee meetings, and the information contained in Cabinet material they receive.

10 Confidentiality applies to all Cabinet material that Ministers have access to unless it has been publicly released. Ministers should not use information that they have confidential access to for the purposes of public disagreement on issues where the coalition parties have "agreed to disagree".

Consultation

General

11 Timely consultation between portfolio Ministers and between parties is essential to the successful operation of the Cabinet decision-making system and the coalition agreements.

12 National, ACT, and New Zealand First have committed to work together in coalition government in good faith and with no surprises, reflecting appropriate notice and consultation on important matters, including the ongoing development of policy.

13 All Ministers must be consulted as appropriate in line with their portfolio responsibilities, no matter which party they represent. This should occur as part of normal government business and Cabinet processes.

14 Alongside the process of Ministerial portfolio consultation, political consultation will also occur where required. On some particularly significant or sensitive issues, the political consultation process between the parties may supersede the usual Ministerial portfolio consultation processes.

15 Timely consultation generally means five working days. More significant policy changes may require more time and should be raised with portfolio Ministers and parties early in the policy development process. A truncated process may be required in rare instances. It is possible for Ministerial consultation and party consultation to occur at the same time.

16 There will be some papers and appointments that do not meet the thresholds set out below, and therefore do not require consultation – although it is expected that this would be rare.

Ministerial consultation

17 As a general rule of Cabinet, Ministers should put before their colleagues the sorts of issues on which they themselves would wish to be consulted (Cabinet Manual, paragraph 5.11). Ministers should keep their colleagues informed about matters of public interest, importance, or controversy.

18 Ministers from all parties are expected to consult relevant Ministerial colleagues before submitting papers that deal with significant or potentially controversial matters, or that affect other Ministers' portfolio interests. Such consultation between portfolio Ministers is a key element of the Cabinet decision-making process and supports collective responsibility and a "no surprises" approach.

19 It is the responsibility of the lead portfolio Minister when submitting Cabinet papers to ensure that timely consultation occurs with Ministers who have portfolio responsibilities affected by the matters in the Cabinet papers that they are submitting. Managing the consultation process takes time. Ministers and officials should factor the time required for consultation into their planning on each issue.

20 When a Minister from another party is being consulted, it is important to identify the capacity in which that consultation is taking place. It should be clear to all involved whether the Minister's views are being sought as a portfolio Minister, or as a representative of their party.

Party consultation and overall coordination

21 Consultation between parties will be undertaken on all significant policy proposals[2] and government appointments, and other sensitive or controversial issues – including implementation of the coalition agreements.

22 All legislative proposals must first be consulted between National, ACT, and New Zealand First to ensure that there is sufficient parliamentary support for them to proceed.

23 Ministers and their staff should seek feedback on proposals via other parties' Chiefs of Staff. The parties will work together and in good faith to reach agreement on specific policy and legislative initiatives where not specifically agreed in the coalition agreements.

24 In the interests of maintaining an overview of the party consultation being undertaken, Ministers and staff in Ministers' offices will inform both the Prime Minister's office and relevant party leader's office of any sensitive or potentially complex issues that require party consultation at an early stage in the process.

25 The overall oversight of consultation between the parties is the responsibility of the Prime Minister, supported by his Chief of Staff working with the ACT Chief of Staff, and the New Zealand First Chief of Staff.

26 In some circumstances, depending on the issue under consideration, the process for consultation between the parties may supersede the usual Ministerial consultation processes when it becomes clear that the issue would be better dealt with through consultation between party leaders' offices.

27 If there is any uncertainty about party consultation matters, Ministers should liaise with both the Prime Minister's office and relevant party leader's office.

Consultation on government appointments

28 At an early stage in the process, Ministers should seek nominations from other parties for government appointments, directly with their own party and through the other parties' respective Chiefs of Staff.

29 Ministers should also consult other relevant portfolio Ministers on proposed government appointments as appropriate, such as where there is a statutory requirement to consult a Minister on an appointment, or consult with other Ministers to seek nominations to ensure an appropriate level of representativeness of the proposed appointments (e.g. with the Minister for Women and the Minister for Māori Development).

30 As with all other Cabinet committees, National, ACT and New Zealand First will each have representation on the Cabinet Appointments and Honours Committee (APH).

[2] This includes significant regulatory proposals.

Consultation on legislation before submission to the Cabinet Legislation Committee (LEG) and Cabinet

31 All proposals involving proposed legislation must be consulted between the parties to ensure that there is sufficient parliamentary support to proceed with the proposal. Although consultation will have been undertaken at the policy development stage, further consultation needs to occur at the draft bill stage.

32 This consultation involves two levels:

32.1 Firstly, the consultation that is undertaken at agency and Ministerial portfolio level on a draft bill should occur in the usual way to ensure that relevant agency and Ministerial portfolio interests have been considered.

32.2 Secondly, political consultation between the parties should also be undertaken to confirm support for the bill. Ministers' offices should advise all Chiefs of Staff of upcoming draft bills. Papers seeking approval for the introduction of bills should not be submitted to LEG until the Minister's office has received confirmation from other parties that there is support for the bill to proceed.

33 Ministers and agencies need to allow sufficient time for these consultation processes. No assumptions should be made on the timing of the passage of legislation. Where agencies are aware that timing is critical in relation to particular bills (e.g. for fiscal reasons) they should advise their Minister so that the matter can be raised with the Leader of the House as appropriate.

Coordination of government announcements

34 Government announcements will be coordinated by the Prime Minister's office.

35 Ministers' offices should keep the Prime Minister's office informed of all proposed announcements and speeches.

Role of agencies

36 Agencies are not expected to play any direct part in the consultation between the parties, as that is a matter to be determined by Ministers and the Prime Minister's office. Contact between agency officials, and other Ministers, government caucuses or other parliamentary parties should take place only with the prior approval of the relevant Minister.

37 Agencies may be called on to support Ministers in their consultation with other parties and caucuses. Officials should obtain clear instructions from their Minister on the nature of the contact (i.e., whether they will be supporting a briefing, or a process of consultation or negotiation by Ministers).

38 Agencies may, on occasion, be asked by their Minister to meet representatives of other parliamentary parties without the Minister present. On such occasions, all those at the meeting should clearly understand that officials are able to provide only a briefing on the issues. As a matter of practice, agencies are advised to keep a record of the substance of any such meeting and consider providing that record to all those who attended the meeting as well as to the Minister. It is also expected that a representative of the relevant portfolio Minister's office or the Prime Minister's office will attend these meetings.

39 Arrangements should be in place between Ministers' offices and the agencies for which they are responsible, to ensure that agencies are informed when the consultation process has been completed and action can be taken to implement the decisions.

Further advice

40 Ministers' offices concerned about the application of the guidance in this circular should discuss their concerns with the Prime Minister's Chief of Staff or the respective party leader's office in the first instance, or with the Cabinet Office.

41 Agencies that have questions about the application of the guidance should discuss them with their Minister's office in the first instance, or with the Cabinet Office.

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