

General Election 2023 delivery and monitoring arrangements

Date _____

19 April 2023

File reference

Timeframe

Note the roles and responsibilities of the Ministry and Electoral Commission in the delivery and management of the General Election 2023.

N/A

| Name | Position | Telephone | | 1st contact |
|--------------------|--|-------------------|-------|-------------|
| | | (work) | (a/h) | |
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☐ Noted ☐ Approved ☐ Overtaken by events
☐ Referred to: _____
☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office comments

Purpose

1. This briefing sets out of the roles and responsibilities of the Electoral Commission (Commission) and the Ministry of Justice (Ministry) in relation to the delivery, management and monitoring of the General Election 2023 (GE2023). The Commission and the Cabinet Office have been consulted on this briefing.

Ensuring the Commission's independence in the lead up to an election

2. The Commission's preparations for GE2023, to be held on 14 October 2023 are now well underway.
3. General elections are a significant part of our democratic form of government, with success not only measured by voter participation but also by a process that delivers a safe and trusted election.
4. The Commission must maintain its statutory independence and conduct elections in an impartial manner. The procedures outlined below will assist in maintaining, both in principle and practice, the independence and impartiality of elections.
5. In the period leading up to a general election, Ministers have full authority to exercise their ministerial responsibilities, consistent with the guidance set out in the Cabinet Manual on the pre-election period, right up until the day of the election. After an election, the incumbent government is still the lawful executive authority, but traditionally constrains its actions in accordance with the caretaker convention.
6. As the Minister responsible for the Commission you have responsibilities to oversee and manage the Crown's interests in, and relationship with, the Commission in a way that recognises their independent role and maintains the impartiality of the election. This includes how you exercise any statutory responsibilities given to you, and how you exercise functions and powers including:
 - a. giving directions to the Commission;
 - b. reviewing the operations and performance of the Commission;
 - c. requesting information from the Commission;
 - d. participating in the process of setting the Commission's strategic direction and performance expectations; and
 - e. monitoring the entity's performance.
7. It is important for public trust and electoral integrity throughout the delivery of GE2023 that constitutional conventions - particularly relating to political neutrality in electoral administration - are maintained.

8. The Public Service Commission has issued its General Election Guidance 2023 which reiterates the importance of the public sector maintaining political neutrality and doing the right thing during the election period. This ensures the public sector maintains the trust and confidence of both current and future governments, and the public.
9. The Commission is an Independent Crown entity, which means that it works independently from the government. To ensure that the Commission and the Ministry understand their roles and how they will work together while maintaining this independence, we have defined our respective roles and responsibilities in the document “*Principles to support an effective and trusting relationship*” (Appendix One). The document also provides clarity as to what you can expect from the Commission and Ministry in the months leading up to the election to ensure you are appropriately briefed but not compromised in discharging your ministerial responsibilities.

Roles of agencies in relation to GE2023

10. The Ministry holds dual roles in GE2023. Firstly, we are the lead department for electoral policy and legislation. Secondly, we are the monitoring department for the Commission under the Crown Entities Act 2004, and therefore assist you, as the responsible Minister, in setting performance expectations and monitoring performance.
11. In carrying out this role, we will keep you informed of progress in preparation and running of GE2023. In the majority of circumstances, updates will come from the Ministry, however there may be certain circumstances where the Commission will engage with you directly. These circumstances are outlined in paragraph 31.
12. The Ministry’s policy team has a long-standing arrangement to assist the Commission’s policy and legal team by providing some junior advisors in the lead up to the election. Seconded staff will assist the Commission¹ in the following ways:
 - a. providing advice and guidance to political parties, candidates and other election participants including advisory opinions;
 - b. providing advice to National Office and field staff on electoral issues;
 - c. responding to OIA requests, ministerial correspondence, public enquiries and complaints; and
 - d. processing candidate nominations.
13. The Electoral Act 1993 (Act) requires the Commission to act independently when delivering its statutory functions. As set out in the Electoral Act, the Commission’s objective is to administer the electoral system impartially, efficiently, effectively, and in a way that:
 - a. facilitates participation in parliamentary democracy;
 - b. promotes understanding of the electoral system and associated matters; and
 - c. maintains confidence in the administration of the electoral system.

¹ While seconded, policy staff work under the Commission’s independent mandate.

14. The Commission runs every part of parliamentary elections. Some of its main responsibilities include:
- a. registering political parties and their logos;
 - b. guiding people to comply with electoral law;
 - c. helping the public to understand how to enrol and vote;
 - d. allocating funding to parties for election broadcasting;
 - e. running voting places;
 - f. counting and processing votes; and
 - g. publishing timely and accurate election results.

Electoral Commission's General Election preparations

15. To fulfil its responsibilities the Commission has established an internal programme board to oversee operational planning, preparations and delivery for GE 2023.
16. This year the Commission's preparations include a greater emphasis on security of the election event and maintaining trust in the process. This includes being alert to any threats to election integrity from breaches of the Electoral Act, from disinformation about the enrolment, voting and election process, to planning for how they deal with the impact of natural disaster, adverse weather conditions, cyber incident or any other disruption that might impact on voter participation. To support these objectives the Commission will be:
- a. updating and expanding the proactive information already provided;
 - b. promoting that information to the wider public;
 - c. encouraging parties and candidates to refer people to that information;
 - d. responding to mis or disinformation about the electoral process and how to participate in the election;
 - e. providing support to frontline staff to manage and respond to any issues that arise during voting;
 - f. working with key public sector agencies who have a response role should support be required to manage issues beyond the Commission's capacity.
17. Inter-agency support is co-ordinated through the National Security System and includes cross-agency risk identification and mitigation as well as shared scenario planning for the general election event.
18. The Commission is supported by two inter-agency groups, which replicates the governance arrangements in place for General Election 2020:
- a. The Senior Officials Committee (SOC) ensures practical on-the-ground support for the event as well as shared understanding and assurance. The Ministry's Deputy Secretary Policy will be on this committee.
 - b. The Risk and Security working group provides support in managing potential and actual disruption to the event. The Ministry's General Manager Resilience and Assurance will be on this working group.

19. These groups will be the primary means by which the Commission will facilitate other government agencies' inputs to the delivery and management of GE2023.

Communicating with political parties

20. The Commission's pre-election communications are generally provided to all registered parties via their party secretary, and include:
- a. providing regular updates to party secretaries in advance of key dates;
 - b. writing to parties at the start of each election year about applying for the broadcasting allocation (this is also notified in the Gazette);
 - c. writing to parties to review draft voting place locations; and
 - d. running an oral briefing for party secretaries on what the election will look like, an overview of rules around election advertising and expenditure, and what parties need to do for nomination of candidates etc.
21. The Commission will also establish a contact point within the Prime Minister's Office and the Office of the Leader of the Opposition including the contact details of key personnel, in the event that the Chief Electoral Officer needs to activate any of the emergency powers in the Electoral Act; for example to adjourn voting at a voting place due to an unforeseen or unavoidable disruption.
22. The Commission will continue to publish monthly enrolment figures on their website, including during the pre-election period. During the advance voting period it will also publish daily figures on the numbers that have voted at a nation-wide level.

Providing assurance of General Election delivery

23. The Ministry as the monitoring department is responsible for advising you as the responsible Minister on how the Commission is managing and delivering the election. We have developed the following criteria to assess against in our monitoring of the Commission:

| Domains | Criteria |
|-----------------------------------|--|
| Governance | Robust governance mechanisms are always in place. |
| Management | Programme management arrangements are robust with clear lines of accountability to the Senior Responsible Officer. |
| People | Permanent and temporary staff needed to deliver an election are recruited, trained and available to deliver services in all locations. |
| Risk and issues | Risks and issues are identified, reported on, and have sufficiently robust mitigations. |
| Operational delivery | All facilities, ICT and logistics required have been commissioned and are ready. |
| Financial Management and Planning | Costs for the General Election are tracked, reported on and within budget. |

24. The Ministry has several ways to gather information and monitor the Commission. In February the Ministry started meeting with Commission at least fortnightly, and this will be increased to weekly in the three months prior to GE2023 election day.
25. In addition to these regular meetings, the Commission will provide the Ministry with:
- a. copies of high-level programme progress reports produced either for their Programme Board or SOC;
 - b. copies of Operational GE2023 status updates;
 - c. information about any general election issues and risks that the Commission judges should be flagged with the Ministry; and
 - d. any final independent quality assurance reports produced in relation to management of the GE2023 programme.
26. The Ministry and the Commission already have a strong working relationship. With the processes outlined above, and the roles and responsibilities agreed and set out in Appendix One, we are confident in having advance visibility of any issues likely to materially impact the Commission's ability to successfully deliver GE2023.

Keeping you informed of delivery progress and risks

27. For the most part there are no changes from business as usual in the way the Commission and Ministry engage with you in the period leading up to GE2023. Between now and 14 October 2023, you will continue to receive quarterly performance reports from the Commission, as well as an annual report. You will also participate in the Commission's strategic direction through feeding back on its Statement of Performance Expectations 2023/24, a draft of which you will receive at the end of April 2023.
28. You may also continue to meet with the Commission to discuss its performance as well as electoral policy and legislation. However, we recommend that no meetings are scheduled in the 3-month pre-election period commencing 14 July 2023, unless necessary under paragraph 31.
29. Additionally, the Ministry will update you via regular reporting and at the officials meeting. These updates will present you with high level progress on GE2023 delivery reflecting the information provided by the Commission and regular discussions held with them.
30. Any election status updates produced by the Commission will also be made available to all political parties.
31. In the event of identification of any significant issues, e.g., unmanageable cost pressures or workforce constraints, that may impact the successful delivery of GE2023, it may be necessary for the Commission's Board to brief you directly. The Commission will discuss the approach to any such briefings with the Ministry. We will also consider whether the briefings and/or information may need to be disseminated to all political parties to maintain election impartiality.
32. On any other unforeseen and significant matters, the Secretary for Justice will exercise his judgement in reporting to you.

Proactive Release

33. In keeping with openness and transparency, the Ministry intends to proactively release this briefing alongside the protocols on our website, following your noting of the paper.

Recommendations

34. It is recommended that you:

1. **Note** the roles and responsibilities of the Ministry and Electoral Commission in the delivery and management of the General Election 2023.

NOTED



Andrew Kibblewhite

Secretary for Justice

Date: 19/04/2023

APPROVED / SEEN / NOT AGREED



Hon Kiri Allan

Minister of Justice

Date: 30/04/23

Appendix One: Agreed principles to support an effective and trusting relationship

Principles to support an effective and trusting relationship

Purpose

The Ministry of Justice (MOJ) and the Electoral Commission (Commission) have agreed to operate in an open and collaborative manner with each other and adopt the 'no surprises' convention in respect of each other, wherever practicable recognising the roles and responsibilities outlined below. This includes being briefed or forewarned on sensitive or critical matters that are to be raised with the Minister and/or expected to land in the public sphere, consulting on key accountability documents and responding to requests for information in a timely and transparent way.

Clear roles and responsibilities

Both parties will fulfil their critical roles and responsibilities so that they:

- have a shared understanding of their roles and responsibilities between the parties, in line with relevant legislation
- meet all statutory accountabilities, and
- adhere to the "no surprises" convention.

Refer to:

1. Appendix A for summary of key roles and responsibilities; and
2. Appendix B for roles and responsibilities in delivering General Election 2023.

Both parties will respect their individual roles and the role of the Minister and central agencies (such as the Treasury).

Principles

1. Understanding and respect for roles and responsibilities

The Commission and the Ministry understand and recognise the roles and responsibilities of each other (as outlined in Appendix A) and that of the Minister and central agencies.

This includes the Ministry understanding the Commission's need to act independently in certain cases, due to the nature of its role.

This also includes the Commission supporting the Ministry's role as an effective monitor on behalf of the Government by providing information and support in a timely manner.

This also recognises the Ministry's role in providing trusted advice to the Minister of Justice and central agencies. This should be done while ensuring the Commission is appropriately involved in, and informed of, any advice and discussions – understanding that in some cases it is not appropriate for the Commission to be involved. The Commission recognises the Ministry's lead role in providing policy advice on electoral matters and will ensure that policy matters are directed to the Ministry and that any recommendations the Commission makes about legislative change align with the 'no surprises' convention.

In furtherance of this principle each agency will make available the opportunity to induct key members of the other agency in their operations so they can have better understanding of the context each agency operates under.

The Commission and Ministry will meet regularly to continue to develop an effective and trusting relationship.

2. No surprises

It is agreed that as soon as practical each agency will advise the other when matters of significance arise, particularly where those matters relate to the performance of agencies, are controversial or may become the subject of public debate. The form of this advice will differ depending on the circumstances, such as the instances where the Commission or the Ministry needs to act independently for compliance or policy reasons – in these cases any public release would be the form of the notification.

This includes (but is not limited to) advice from either agency to the Minister and central agencies (such as budget meetings with the Treasury), communications in the public sphere and strategic risks relating to the performance of the Commission.

3. Consult with other party

When preparing advice, each agency will, wherever practicable, consult the other agency to ensure a shared understanding of key matters, seek feedback and improve the quality of advice.

If input or information is required, that request will be made as soon as possible to give the other agency as much time as practical to prepare the information. Once advice is at a near final state, but before final approval, it will be shared with the other agency with as much time as possible to provide feedback, with a minimum of one working day. If less than a day is needed then that should be negotiated on a case-by-case basis and signalled as early as possible in the process.

4. Agree to disagree

The Commission and the Ministry acknowledge that their advice or perspective on electoral matters will, in some cases, not align. In those situations, staff from both agencies need to discuss the issue, preferably in person, and escalate as necessary. If agreement is unable to be reached, each side understands that they may respectfully agree to disagree, and that this will be signalled to the Minister.

5. Copies of final advice

Once the advice is finalised and sent to the Minister's office, a copy of the final advice, a summary of the advice or verbal update (in that descending order) will be provided to the other agency unless confidentiality is required. Key actions and messages from meetings will be communicated under the "no surprises" convention.

Appendix A – Roles and Responsibilities

| Party | Role | Understanding of responsibility |
|----------------------|---|---|
| Electoral Commission | <p>Independent Crown entity</p> <p>Carry out provisions of Electoral Act 1993 and part 6 of Broadcasting Act 1989</p> <p>Board is the primary monitor of the Crown entities performance</p> | <p>Understands its responsibilities in relation to the Electoral Act 1993, the Crown Entities Act 2004 and other relevant legislation</p> <p>Understands that despite being legally separate from the Crown, it is part of the state sector and owned by the Crown</p> <p>Board understands its role as governor of the entity and primary monitor of entity performance</p> <p>Supports Ministerial engagement with the chair and board on priorities and understands its own role in commenting on any matter in support of the Minister's role</p> |
| Ministry of Justice | <p>Departmental monitoring agency</p> <p>Provide policy advice</p> | <p>Provides trusted advice to the Minister of Justice and central agencies, ensuring the Commission is kept appropriately involved and informed.</p> <p>Understands the role in representing a wider set of sector and system interests and in commenting on any matter in support of the Minister's role</p> <p>Recognises the primacy of the board's role as monitor of entity performance</p> <p>Understands the constraints on Ministerial and department intervention in the entity's statutorily independent functions</p> |

Appendix B: Roles and responsibilities in delivering General Election 2023

Purpose

1. This document clarifies the roles and responsibilities of the Electoral Commission (Commission) and the Ministry of Justice (Justice) in relation to the delivery, management and monitoring of the General Election 2023 (GE2023). It also clarifies communications with the Minister of Justice about GE2023.
2. This document should be read in conjunction with the Appropriation Accountability MoU agreed between the Commission and Justice and other protocols, when published on the Electoral Commission website.

Objective

3. The objective of this document is to ensure that both agencies are clear about their contribution in the delivery of GE2023 and that constitutional conventions - *particularly relating to political neutrality in electoral administration* - are maintained. It also provides clarity as to what can be expected from the Commission and Ministry in the months leading up to the election to ensure the Minister of Justice is appropriately briefed but not compromised in meeting their ministerial responsibilities.

Roles of agencies in relation to GE2023

Ministry of Justice

4. The Ministry holds dual roles in the delivery of GE2023:
 - being the lead department for electoral policy and legislation.
 - acting as the monitoring department for the Commission under the Crown Entities Act 2004, and therefore assisting the responsible Minister in setting performance expectations and monitoring performance.
5. In the first role, the Ministry primarily acts to aid the Commission to deliver. In the latter, the Ministry acts to assure that the Commission delivers what it is accountable for doing i.e., delivering GE2023.

Electoral Commission

6. The statutory objective of the Commission is to administer the electoral system impartially, efficiently, effectively, and in a way that:
 - facilitates participation in parliamentary democracy;
 - promotes understanding of the electoral system; and
 - maintains confidence in the administration of the electoral system.
7. The Electoral Act requires the Commission to act independently when delivering its statutory functions.
8. The Commission's Board is accountable for the delivery of GE2023 to the Minister of Justice and Parliament.

Delivering GE2023

9. The Commission holds primary responsibility for the preparation and delivery of GE2023. To fulfil these responsibilities the Commission has established an internal Programme Board to oversee their operational delivery programme.
10. The Commission is also aided by Senior Officials Committee (SOC) chaired by the Deputy Chief Executive, Strategy, Governance and Development, to ensure effective coordination in support of GE2023 processes across the Commission and government agencies. The Ministry is represented on this committee by the Deputy Secretary, Policy.
11. At the operational/delivery level, the Deputy Chief Electoral Officer chairs the Risk and Security working group. The Ministry is represented on this by the General Manager, Resilience and Assurance Services.
12. The Ministry of Justice policy team may second up to six policy advisors in the lead up to the election to the Commission. Staff support the Commission in the following ways, assisting with:
 - advice and guidance to political parties, candidates and other election participants including advisory opinions,
 - advice to National Office and field staff on electoral issues,
 - responding to OIA requests, ministerials, public enquiries and complaints, and
 - candidate nominations.
13. The Chief Electoral Officer is wholly responsible to the Commission's Board for delivery and reporting on any issues and risks. Any issues or risks related to government agency coordination are discussed and resolved at the SOC.

Assuring GE2023 delivery

14. In the normal course of the Ministry's monitoring approach, the Commission provides quarterly reports to the Minister, as well as an Annual Report. The Minister also endeavours to meet regularly with the Commission's Board. This continues in the lead up to GE2023. These arrangements provide an opportunity to convey high level information about the Commission's progress in preparing for GE2023. The requirements and deadlines for regular accountability reporting are set out in variations to the Appropriation Accountability MOU.
15. The Ministry also during its routine monitoring holds monthly meetings with the Commission, along with ad hoc engagement as necessary in line with the no surprises principle.
16. Relationship leads from the Ministry and Commission will increase their engagement to at least fortnightly from February 2023, and weekly from the three months prior to GE2023 election day. Justice will use this engagement to monitor and to inform assessment of the Commission's progress against the criteria for readiness (see below).
17. In the lead up to GE2023, the Commission will provide to the Ministry monitoring team:
 - Copies of high-level programme progress reports produced either for the Programme Board or SOC.
 - Copies of dashboards produced for GE2023 operational activities (in 2020 these covered Dashboards covering the following: enquiries, recruitment, enrolment, and voting).

- Information about any general election issues and risks that the Commission judges should be flagged with the Ministry.
- Any final independent quality assurance reports produced in relation to management of the GE2023 programme.

18. The Ministry monitoring team will update the Minister of Justice as needed via regular reporting and at the officials meeting. These updates will present high level progress with GE2023 delivery and important matters of interest to the Minister, having regard to the Commission's independence and to avoid any appearance that parties in government have an advantage.

19. Any matter that risks the appearance of such a conflict of interest or is likely to interfere in constitutional conventions will come from the Secretary for Justice to the Minister of Justice. Any such matters that the Commission identifies should be escalated from the Chief Electoral Officer to the Secretary for Justice or their delegate in the first instance.

20. In the event of any major risks to the successful delivery of GE2023, it may be necessary for the Commission's Board to brief the Minister of Justice directly. The Commission will discuss the approach to any such briefings with the Ministry of Justice. The Secretary for Justice or a delegate will be expected to be present at any meetings between the Board and the Minister.

Readiness Criteria

The following criteria will form the basis of the Ministry's assessment of the Commission's progress and readiness for running GE2023. They are intended as a guide to inform the Ministry's assessment rather than strictly met.

| Domains | Criteria |
|-----------------------------------|--|
| Governance | Robust governance mechanisms are always in place. |
| Management | Programme management arrangements are robust with clear lines of accountability to the Senior Responsible Officer. |
| People | Permanent and temporary staff needed to deliver an election are recruited, trained and available to deliver services in all locations. |
| Risk and issues | Risks and issues are identified, reported on, and have sufficiently robust mitigations. |
| Operational delivery | All facilities, ICT and logistics required have been commissioned and are ready. |
| Financial Management and Planning | Costs for the General Election are tracked, reported on and within budget. |