



**A GUIDE**  
**ON**  
**KEY ELEMENTS**  
**OF**  
**MINISTERIAL RESPONSIBILITY**

**PRIME MINISTER**

**CANBERRA**

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## FOREWORD

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This *Guide* is intended as a source of quick reference for ministers, parliamentary secretaries and ministerial staff. It sets out in summary form the main principles, conventions and rules by which government at the Commonwealth level is conducted.

The *Guide* has been updated to:

- include the option of ministers relinquishing control of shares and similar interests by transferring control to an outside professional nominee or trust;
- include longstanding arrangements for the declaration of interests in the context of Cabinet discussions;
- add a new section on contact with lobbyists; and
- incorporate minor editorial changes.

The *Guide* does not seek to provide answers to questions of detail. It does, however, refer where necessary to other handbooks and guidelines which provide more comprehensive information.

(John Howard)



## **A GUIDE ON KEY ELEMENTS OF MINISTERIAL RESPONSIBILITIES**

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# **1. THE CONSTITUTIONAL AND LEGAL FRAMEWORK**

## **Distribution of Powers**

The framework for Australian government is set out in the Constitution, with Commonwealth functions separated broadly into legislative, judicial and executive. Executive power is vested primarily in the Governor-General acting with the advice of the Federal Executive Council. The Constitution provides that all ministers are Executive Councillors and the practice has been to appoint all parliamentary secretaries to the Council as well. As members of Parliament, ministers also take part in the exercise of legislative power, including in the introduction of proposed legislation to Parliament for consideration.

## **Ministers and Departments**

Acting on advice, the Governor-General appoints ministers, establishes departments, then formally allocates executive responsibility among ministers through the Administrative Arrangements Order published in the *Commonwealth Gazette*. The Order specifies the matters dealt with by each department of state and the legislation administered by each minister of state administering a department. In accordance with the Administrative Arrangements Order, most of the general executive powers of the Commonwealth are exercised by ministers or their departments without the direct involvement of the Governor-General or Executive Council. Many enactments also vest decision-making powers directly in ministers. However, some important powers, such as regulation-making and many appointments, are vested in the Governor-General in Council.

## **Cabinet**

While not mentioned in the Constitution, Cabinet is the central organ for collective consideration of issues by ministers. Although the recorded outcomes of Cabinet discussions are often referred to as decisions, the holder of legal authority to make the decision is often the Executive Council, an individual minister or an official with specific statutory powers.

## **Parliament**

Under the Australian system of representative government, ministers are responsible to Parliament. This does not involve ministers in individual liability for every action of public servants or even personal staff. It does however imply that ministers accept two major responsibilities: first for the overall administration of their portfolios, both in terms of policy and management; and secondly for carriage in the Parliament of their accountability obligations to that institution.

## **2. THE MINISTRY**

### **Portfolio Ministers**

Some ministerial portfolios have only one minister. In other cases, however, to enhance ministerial control over complex and diverse functions, more than one minister administers a portfolio. In those cases the Prime Minister will determine the minister who is to have ultimate responsibility for the portfolio (the portfolio minister).

The portfolio minister, subject to any general views of the Prime Minister, determines the matters that will be the responsibility of any other minister in the portfolio.

The portfolio minister is, subject to Cabinet, responsible for the direction of policy and the public presentation of it.

The portfolio minister represents the interests of the portfolio in Cabinet,

- but other ministers in the portfolio are entitled to bring forward submissions related to their allocated areas of responsibility; and to be present when Cabinet discusses those submissions.

The principles of collective responsibility set out in the Cabinet Handbook apply. In summary, they are:

- decisions of Cabinet are reached collectively and, other than in exceptional circumstances, bind all ministers as decisions of the government. In exceptional cases ministers who were not present for a discussion may, if they believe there are difficulties of which Cabinet would have been unaware, seek to re-open discussion;
- all ministers must give their support in public debate to decisions of the government; and
- ministers are expected to refrain from public comment on Cabinet committee decisions which are not operative until endorsed by the full Cabinet.

In the Parliament:

- the portfolio minister is ultimately accountable for the overall operation of his/her portfolio. Other ministers in the portfolio, however, also have a clear accountability for areas of responsibility allocated to them and are required to answer questions in relation to those areas; and
- with the agreement of the portfolio minister concerned, other ministers in the portfolio may also, in relation to the whole portfolio, take legislation through, and respond to matters of public importance.

The Prime Minister sets out his priorities and strategic direction for each portfolio in a letter sent to respective ministers shortly after they are appointed. This letter may also indicate in broad terms how the Prime Minister sees functions being shared by ministers in the portfolio.

### **Parliamentary Secretaries**

Parliamentary secretaries may also be appointed to help particular ministers deal with the heavy workload in a portfolio. They are not appointed under the Constitution to administer departments as ministers are, and do not answer parliamentary questions or represent ministers at Senate estimates hearings.

The duties parliamentary secretaries may undertake are allocated following consideration and discussion with the respective portfolio ministers. The duties carried out by a parliamentary secretary may include:

- policy development work in nominated areas of the portfolio;
- considering and signing replies to correspondence as appropriate;
- carriage of legislation in the Parliament;
- chamber duty;
- representing the minister at official engagements; and
- attending Executive Council meetings in accordance with arrangements coordinated by the Executive Council secretariat.

### **3. CABINET**

#### **Cabinet Handbook**

The following is a general description of Cabinet and its procedures. More detailed information is set out in the *Cabinet Handbook* issued from time to time by the Prime Minister and available from the Cabinet Secretariat.

#### **Composition**

It is the Prime Minister who decides on the size of the Cabinet and who determines which ministers are to be included in the Cabinet.

#### **Collective Responsibility**

The principle of collective responsibility for the decisions which are taken in Cabinet is fundamental to effective Cabinet government. From this principle flows the convention that what is discussed in Cabinet and in particular, the views of individual ministers on issues before the Cabinet, are to remain entirely within the confidence of the members of Cabinet.

Similarly, the papers considered by Cabinet and the minutes recording the outcome of the Cabinet's deliberations are regarded as confidential to the government of the day. Separate procedures apply to the handling of Cabinet documents and the convention has been adopted by successive governments that the Cabinet papers (and deliberative documents generally) of a government are not available to its successors.

#### **Declaration of Interests**

Ministers attending Cabinet or Cabinet committee meetings must, in relation to the matters under discussion, declare any private interests held by them, or members of their immediate family of which they are aware, which give rise to, or are likely to give rise to, a conflict with their public duties. Generally, declarations should be made in all cases where an interest exists which could not be said to be shared with the rest of the community. Any such declarations will be recorded by Cabinet officers. It is then open to the meeting to excuse a minister from the discussion or to agree explicitly to his or her taking part.

Once a minister has made Cabinet aware of a particular private interest, it will not normally be necessary to declare that interest in subsequent Cabinet discussions. If a significant time has elapsed since a declaration and the interest is one that might not be well known to colleagues, the minister might declare the interest again when the relevant matter is under discussion.

Ministers' responsibilities in relation to their private interests are discussed in more detail in Chapter 5.

## **Committees**

It is usual for the Prime Minister to establish a number of committees of the Cabinet. Committees are commonly used for dealing with especially sensitive issues (for example, security and revenue; for testing potentially controversial developments where discussion in full Cabinet would be premature; for dealing with matters where there is a lot of detail to be dealt with (economic statements or budget outlays are an example); and where matters are relatively routine (for example the approval of the weekly government business programme by a Parliamentary Business Committee).

## **Meetings and Attendance by Ministers**

The Cabinet and its committees meet as and when required, consistent with the Prime Minister's wishes. Generally, Cabinet meets on a weekly basis and committees meet less frequently but may undertake periods of increased activity (for example in the preparation of the Budget or major policy statements).

Subject to unavoidable parliamentary or Executive Council commitments, attendance at meetings of the Cabinet or its committees takes priority over all other engagements and the Prime Minister should be informed if for any reason a minister is unable to attend.

## **Business**

Business comes before the Cabinet primarily by way of submissions and memorandums, but also as a result of correspondence to the Prime Minister.

Submissions are papers containing recommendations by the responsible minister(s) on action to be taken by the government. Departments will normally provide drafts of submissions for their ministers' consideration. Memorandums are submitted by departments to Cabinet for its information and do not include recommendations. Other matters may be brought forward only with the agreement of the Prime Minister and the general practice is for ministers to write to the Prime Minister explaining that the matter is urgent and is sufficiently straight-forward not to need the preparation of a Cabinet submission.

Appointments are also brought to the Cabinet by way of correspondence from the responsible minister to the Prime Minister.

Decisions on whether an item should be considered in Cabinet and what business should be considered at a particular meeting are taken by the Prime Minister.

## **Business Rules**

Various rules for the handling of business are determined by the Prime Minister and are set out in detail in the Cabinet Handbook. These relate to matters such as the content and presentation of papers for Cabinet, requirements for consultation with other ministers and their departments and deadlines for the lodgement of submissions in advance of meetings to ensure that ministers have sufficient opportunity to familiarise themselves with their content.

## **Minutes**

Cabinet officials take notes of the discussions that take place in Cabinet and its committees and produce minutes recording the outcome of those discussions. The minutes indicate the matters to which the Cabinet has agreed and the significant matters it has noted. They do not record the general arguments expressed or the views of individual ministers. Cabinet minutes are generally issued to all Cabinet ministers although there are some which are given a more limited distribution.

## **Committee Minutes**

The general practice is for minutes of committees (other than those of either a particularly sensitive or routine nature) to be submitted for endorsement at a later meeting of the Cabinet before they are accorded any final authority. Ministers not involved in a committee's deliberations who wish to address issues raised by the committee's decision in the Cabinet should give prior notice to the Prime Minister.

## **Cabinet Policy Unit**

The Cabinet Policy Unit provides the Prime Minister with advice on issues before the Cabinet and on the strategic policy directions of the government. Staff are employed under the *Members of Parliament (Staff) Act 1984* and are accountable directly to the Prime Minister. The head of the Cabinet Policy Unit is the Secretary to Cabinet.

## **4. EXECUTIVE COUNCIL**

### **Constitutional Background**

Section 62 of the Constitution provides that:

There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

By virtue of section 63 of the Constitution, the Council is involved whenever the Constitution vests a power in the “Governor-General in Council”. The Council is also involved whenever legislation vests a power in the Governor-General.

### **Purpose**

The purpose of the Council is to provide the forum through which ministerial advice is provided to the Governor-General in the exercise of his powers.

The business undertaken by the Executive Council includes:

- the making of proclamations (notice given under an Act by the Governor-General of a particular matter such as the commencement of the Act on a specified day);
- the making of regulations and ordinances (under delegated authority under an Act);
- the making and terminating of appointment to statutory offices, boards, commissions, courts and tribunals;
- changes to the Administrative Arrangements Order, including the creation and abolition of government departments (Constitution section 64);
- the issuing of writs for the election of members of the House of Representatives (Constitution, sections 32 and 33), and senators for the territories (*Commonwealth Electoral Act 1918*, section 151);
- the authorisation of Australian entry into international treaties; and
- the commissioning of officers in the Defence Force and termination of those commissions.

## **Composition**

All ministers, and in recent years all parliamentary secretaries, are sworn in as Executive Councillors. Executive Councillors maintain that capacity for life although only Councillors who are ministers or parliamentary secretaries in the government of the day are summoned to attend council meetings.

## **Vice President**

A member of the ministry is appointed by the Governor-General to be Vice President of the Executive Council. The Vice President may from time to time be required to preside at Executive Council meetings.

## **Meetings**

Meetings of the Executive Council are held as required and at the Governor-General's convenience. Generally there is a meeting about every fortnight but where the need arises special meetings can be arranged at short notice.

The established practice is that two Executive Councillors are required to attend the meeting to provide a quorum. The meetings are generally presided over by the Governor-General, or in his absence, for example overseas, by the Administrator of the Government of the Commonwealth. In urgent circumstances, with the Governor-General's concurrence, a meeting may be presided over by the Vice President or, if he or she is unavailable, by the most senior minister available. Again, two Executive Councillors are also present to constitute a quorum.

Meetings are generally held at Government House, although they may be held elsewhere, (for example at Admiralty House in Sydney) if the circumstances require.

## **Attendance by Ministers and Parliamentary Secretaries**

All ministers (both within Cabinet and in the outer ministry) and also parliamentary secretaries are required to make themselves readily available on request to attend meetings of the Executive Council. A roster is generally developed for attendance at the more regular meetings. Where a special meeting is urgently required the onus falls on the minister seeking the meeting to arrange attendance by Councillors.

## **Papers**

Papers for Council meetings are prepared by departments. The Secretary to the Council, who is an officer of the Department of the Prime Minister and Cabinet, circulates them in advance to those attending the meeting.

The Governor-General may seek assurance from the Councillors attending that the recommendations being made are appropriate. Ministers and parliamentary secretaries should therefore familiarise themselves with the general nature of the matters being considered. Often questions requiring more detailed knowledge will be dealt with by the Secretary to the Executive Council, who may undertake to obtain further information for the Governor-General.

The practice at Executive Council meetings is for the Governor-General to refer to each of the matters raised and to seek the assurances of the Councillors attending that he should proceed on the recommendations that are in the papers. The Councillors both sign a schedule confirming this advice and the Governor-General signs the schedule indicating his approval of the advice received.

### **Announcement of Decisions before Executive Council Meetings**

Matters coming before the Council, particularly appointments, should not be announced in advance of the Council's meeting. In exceptional cases where it is considered imperative for there to be early announcement, the Governor-General's agreement would be sought by the Secretary to the Executive Council. Early announcements should always make it clear that what the minister is announcing is his/her intention **to recommend** the proposed action to the Governor-General.

### **Further Information**

Further information is included in the *Executive Council Handbook* available from the Cabinet Secretariat.

## 5. MINISTERIAL CONDUCT

It is vital that ministers and parliamentary secretaries do not by their conduct undermine public confidence in them or the government.

- Ministers must be honest in their public dealings and should not intentionally mislead the Parliament or the public. Any misconception caused inadvertently should be corrected at the earliest opportunity.
- Ministers should ensure that their conduct is defensible, and should consult the Prime Minister when in doubt about the propriety of any course of action.

Along with the privilege of serving as a minister or parliamentary secretary there is some personal sacrifice in terms of the time and energy that must be devoted to official duties and some loss of privacy. Although their public lives encroach upon their private lives, it is important that ministers and parliamentary secretaries avoid giving any appearance of using public office for private purposes.

The nature of their duties is such that they may need to have regard to the interests of members of their immediate families (to the extent that ministers know their interests) as well as their own when ensuring that no conflict or apparent conflict between interests and duties arises.

- Ministers (this and subsequent references to ministers should be read as including parliamentary secretaries) must not engage in any professional practice or in the daily work of any business. They must not accept retainers or income from personal exertion other than that laid down as their remuneration as ministers and parliamentarians. Notes on the meaning of “personal exertion” are included in the explanatory notes which the Prime Minister sends out with statements of interests forms.
- Ministers are required to resign directorships in public companies and may retain directorships in private companies only if any such company operates, for example, a family farm, business or portfolio of investments, and if retention of the directorship is not likely to conflict with the minister’s public duty (eg, a minister should question the retention of a directorship in a company in which share holdings extend beyond the minister’s own family).
- Ministers are required to divest themselves, or relinquish control, of all shares and similar interests in any company or business involved in the area of their portfolio responsibilities. The transfer of interests to a spouse or dependent family member, or to a nominee or trust, is not an acceptable form of divestment. Ministers may transfer control to an outside professional nominee or trust providing the minister or immediate family exercises no control on the operation of the nominee or trust.

- Ministers are not precluded from making investments on the stock markets or other financial and trading markets, but they should not operate as traders and should exercise careful personal judgment in respect of transactions.
- Ministers are required to make statements of interests in accordance with arrangements determined by the Prime Minister. The Prime Minister writes to ministers outlining these arrangements.

Ministers should perform their public duties not influenced by fear or favour - that is, by any expectation that they will benefit or suffer as a consequence.

- Ministers should not accept any benefit where acceptance might give an appearance that they may be subject to improper influence (eg because the giver has or seeks to have a contractual relationship with government or has any other special interest in government decisions).
- Ministers may accept benefits in the form of gifts, sponsored travel or hospitality only in accordance with the relevant guidelines (provided by the Prime Minister when he writes to ministers about their statements of interests).

Ministers should not exercise the influence obtained from their public office, or use official information, to gain any improper benefit for themselves or another.

- Particular attention needs to be paid to ensuring that the scope for adverse comment is minimised if it is proposed to appoint someone who is the close relative or associate of a minister.
- Subject to provisions in legislation or other formal documents relating to the establishment of government bodies or positions, government appointments are to be made on the basis of merit, taking into account the skills, qualifications, experience and any special qualities required of the person to be appointed.
- If the approving authority (which may be Cabinet or a minister) is satisfied that this condition is demonstrably met, then spouses, parents, children or other close relatives of ministers, parliamentarians, ministerial staff or heads of departments or agencies should not be discriminated against in selection processes on account of family relationships.
- There is a longstanding practice that ministers do not appoint close relatives to positions in their own offices. In addition, close relatives of a minister should not be appointed to any other minister's office irrespective of the level of the position, except with the specific approval of the Prime Minister. And a minister's close relative should not be appointed to any position in an agency in that minister's own portfolio if the appointment is subject to the agreement of the minister or Cabinet.
- Appointment proposals should identify the elements of merit, skills, qualifications, experience and special qualities on which they are based.

Ministers are provided with facilities at public expense in order that public business may be conducted effectively. Their use of these facilities should be in accordance with this principle. It should not be wasteful or extravagant. As a general rule, official facilities should be used for official purposes. The distinction between official and personal conduct is not always clear (eg, in relation to the provision of hospitality/entertainment and use of car transport) but ministers should ensure that their actions are calculated to give the public value for its money and never abuse the privileges which, undoubtedly, are attached to ministerial office.

### **Contact with Lobbyists**

Ministers and parliamentary secretaries will be approached by individuals and organisations, acting on their own behalf or on behalf of others, whose purpose is to seek to influence (lobby) government on a variety of issues.

Ministers and parliamentary secretaries should ensure that dealings with lobbyists are conducted so that they do not give rise to a conflict between public duty and private interest.

In dealing with a lobbyist who is acting on behalf of a third party, it is important to establish who or what company or what interests that lobbyist represents so that informed judgements can be made about the outcome they are seeking to achieve.

Where representations are being made on behalf of a foreign government or the agency of a foreign government, special care needs to be exercised as foreign policy or national security considerations may apply. It may be appropriate in certain cases to advise the office of the Minister for Foreign Affairs of representations received.

## **6. MINISTERS' RELATIONS WITH DEPARTMENTS**

The Australian Public Service (APS) exists to provide advice to the government, and give effect to its policies. The Service is based on a number of important principles, including: high standards of honesty, integrity and conduct; equitable service to the public; provision of frank and comprehensive advice to ministers; a strong emphasis on responsiveness to the government, the Parliament and the community; party-political impartiality; and staffing based on merit.

It is important that there be trust between ministers and public servants, and each must contribute to the establishment and maintenance of the trust. Ministers should be scrupulous in avoiding asking public servants to do anything that the APS principles do not permit, and in particular should not ask them to engage in activities which could call into question their political impartiality.

Ministers will obtain advice from a range of sources, but primarily from their private office and from their departments. There is clearly no obligation on ministers to accept advice put to them by public servants, but it is important that advice be considered carefully and fairly. It is not for public servants to continue to press their advice beyond the point where their ministers have indicated that the advice, having been fully considered, is not the favoured approach. Public servants should feel free, however, to raise issues for reconsideration if they believe there are emerging problems or additional information that warrant fresh examination.

### **Accountability**

The secretary of a department is, pursuant to the Public Service Act, responsible "under the minister" for the general working of the department and for advising the minister in all matters relating to the department.

This does not mean that ministers bear individual liability for all actions of their departments. Where they neither knew, nor should have known about matters of departmental administration which come under scrutiny it is not unreasonable to expect that the secretary or some other senior officer will take the responsibility.

Ministers do, however, have overall responsibility for the administration of their portfolios and for carriage in the Parliament of their accountability obligations arising from that responsibility. They would properly be held to account for matters for which they were personally responsible, or where they were aware of problems but had not acted to rectify them.

Ministers' direct responsibility for actions of their personal staff is, of necessity, greater than it is for their departments'. Ministers have closer day-to-day contact with, and direction of the work of, members of their staff. Furthermore, ministerial staff do not give evidence to parliamentary committees, their actions

are not reported in departmental annual reports, and they are not normally subject to other forms of external scrutiny, such as administrative tribunals.

Ministerial staff provide important links between ministers and departments when the minister is unable to deal with departmental staff personally, and add essential political dimensions to advice coming to ministers. A close and productive relationship between a minister's staff and the department maximises the minister's effectiveness. Ultimately, however, ministers cannot delegate to members of their personal staff their constitutional, legal or accountability responsibilities. Ministers therefore need to make careful judgements about the extent to which they authorise staff to act on their behalf in dealings with departments.

### **Departmental Secretaries**

The Public Service Act provides that the Governor-General in Council appoints departmental secretaries, in accordance with recommendations from the Prime Minister. The Prime Minister's recommendation follows receipt of a report on the filling of the position from the Secretary to the Department of the Prime Minister and Cabinet (or, in the case of that department, the Public Service Commissioner). Before preparing his report, the Secretary (or Commissioner) is required to consult the relevant minister(s). Cabinet usually considers proposed appointments of secretaries.

Ministers and departmental secretaries have complementary roles. The strength of the relationship between minister and head of department, in terms of clarity of understanding of the minister's priorities and the free exchange of ideas, can be a significant factor in the achievement of portfolio goals. It is therefore incumbent upon both to maximise the opportunities that flow from productive working arrangements.

Secretaries are appointed for fixed terms, usually five years. They are eligible for re-appointment or for appointment to another position of secretary, but all appointments and re-appointments and their associated terms and conditions are entirely at the discretion of the government. The government is able to terminate a secretary's appointment before the expiry of the term, but this step would not be taken lightly as termination involves formal action by the Prime Minister under the Public Service Act and the payment of compensation.

### **Senior Executive Service (SES)**

Recruitment to and within the SES is merit-based. The Public Service Commissioner makes all SES appointments after receiving recommendations of the departmental secretary, who in turn receives reports from a selection advisory committee. These procedures are designed to protect the merit principle and the ongoing political impartiality of the senior ranks of the APS.

## 7. ADMINISTRATIVE DECISION-MAKING BY MINISTERS

### Background

Ministers may have to account for the exercise of their administrative powers, not only to Parliament (or its committees) and the Auditor-General, but also at law. The courts may review the legality of administrative decisions or actions taken by ministers. Some decisions can be reviewed on the merits by tribunals. The Ombudsman, while excluded from investigating a minister's own actions, can and often does investigate the adequacy of advice on which that action is based.

Review of decisions can be initiated by individuals or organisations whose interests are affected, including by "special interest" groups. Many decisions will have sufficient commercial, environmental or other consequences to make such challenges likely if there is any doubt about the soundness of the decision-making process or the decision itself. Any legal challenge can have acute implications in terms of lost opportunities, delay and additional cost. Adverse decisions by courts also often give rise to public criticism.

### Statutory Decision-Making by Ministers

The grounds for challenging administrative decisions made under legislation are set out comprehensively in the *Administrative Decisions (Judicial Review) Act 1977*. They give a clear indication of the basic requirements for decision-making. In essence:

- each decision needs to be within the scope of the power provided by the legislation;
- the procedure for reaching the decision needs to meet basic standards of fairness, allowing all sides to present their cases, and must also comply with any special requirements set by the legislation;
- each decision needs to be made on the merits of the case, with the decision-maker unbiased and acting in good faith; and
- conclusions must be soundly based in reason, in particular they must reflect a proper understanding of the law, draw on reasonable evidence for findings of fact, take account of all relevant considerations and not take account of irrelevant considerations.

Ministers clearly need to have careful regard to the legalities of each decision, with recourse to professional legal advice where appropriate:

- It may not be sufficient to adopt the same approach as has been adopted in the past - changing circumstances may lead to challenges affecting processes which have previously gone uncontested.

- The process for making complex or sensitive decisions needs to allow plenty of time for due process including proper consultation - starting too late may lead to pressure for shortcuts which involve legal risk.
- The decision-making process needs to be carefully documented to allow for statements of reasons to be prepared or for the defence of a decision on review. All relevant documentation may need to be disclosed in the course of review processes, or in some cases in response to requests under the *Freedom of Information Act 1982*.
- Although government policy can be, and often is, an important factor considered in making statutory decisions, it is important to recognise that policy does not of itself have the force of law. Should there be any inconsistency between the application of the policy and the legal requirements for making the decision, the legal requirements prevail.

### **Delegation of Statutory Powers**

Many statutory powers vested primarily in ministers may be delegated to departmental officers or others. While the delegate will take direct responsibility for individual decisions taken under delegated power, the minister may still be held to account for the overall adequacy of the decision-making arrangements and the achievement of acceptable standards. A minister who has issued a delegation may still exercise the power personally in appropriate cases, but cannot dictate the outcome where a decision is made by a delegate:

- Ministers should consider carefully the structure of proposed delegations, the level to which particular functions are to be devolved and the general arrangements for ensuring delegates are equipped to perform the task. Any classes of decision to be handled at particularly senior level, or by the minister personally, should be identified.
- In some cases there may be scope for general guidance to delegates in the form of policy statements or guidelines provided they are consistent with the legislative scheme.
- A minister may ask to be notified promptly of decisions made under delegation. This may be particularly important where the decision could attract public comment to which the minister might be expected to respond.

### **Non-Statutory Decisions**

While the paragraphs above deal specifically with decisions made under legislation, non-statutory decisions, such as a decision under the executive power to award a contract on behalf of the Commonwealth following a tender process, may also be subject to legal challenge. As with statutory decisions, care should be taken to ensure the decision-making process and the decision made are sound in law. Ministers should seek professional legal assistance about the decision-making process and ensure adequate time is allowed for all necessary steps.

## **Policy Changes**

A minister's role in administering portfolio legislation includes development of proposals for policy change. This may involve proposing amendments to portfolio legislation. Notwithstanding proposals for legislative change, administrative powers need to be exercised on the basis of the existing legislation until the proposed change becomes law.

## **Further Information**

Further information on the particular decision-making functions in each portfolio and their legal framework is available from each department. Legal advice on the application of administrative law requirements to particular decisions can also be obtained through the department, with the Attorney-General's Department or external legal advisers involved as appropriate.

## 8. FACILITIES AND SERVICES FOR MINISTERS

Ministers are provided with support primarily from four sources: Ministerial and Parliamentary Services within the Department of Finance and Administration, their own portfolio department, the Parliamentary Departments and the Protective Security Coordination Centre. The division of responsibility for services is described below.

### **Department of Finance and Administration – Ministerial and Parliamentary Services Group**

Ministerial and Parliamentary Services (MAPS) has responsibility for:

- payment of the ministerial salary component (the senator or member's salary component is paid by the relevant parliamentary department);
- payment of travelling allowance;
- the provision of all travel within Australia by the minister, staff, spouse or nominee and dependent children;
- the cost of a private plated vehicle in the minister's electorate;
- the cost of the minister's official overseas visits including personal staff and spouse (but excluding departmental staff and hospitality of a personal nature);
- electorate office accommodation and office requisites for the minister and electorate staff;
- additional ministerial office accommodation - either in the capital city or the electorate;
- the minister's information delivery service entitlement (formerly postage entitlement) as a senator or member;
- management of office accommodation in the ministerial wing of Parliament House including parking in the basement car park;
- the supply of standard furniture and equipment in the ministerial wing;
- authorisation of the removal of any equipment from the ministerial wing;
- security policy within the ministerial wing;
- provision and maintenance of the secure communications network (ministerial communications network);
- the operation of COMCAR (costs are a charge to portfolio departments);
- payment of salaries and allowances of ministerial staff employed under the *Members of Parliament (Staff) Act 1984*; and
- computer and other training for electorate staff.

MAPS has offices in Canberra, the ministerial wing of Parliament House and the capital city of each State and the Northern Territory.

## **Portfolio Departments**

A minister's department is responsible for:

- the costs of official cars, including any private plated vehicle in Canberra, for the minister and spouse;
- additional furniture and equipment, (including computer equipment), for the minister's offices both in the ministerial wing and in the Minister's home State or Territory;
- salary and other costs of a departmental liaison officer;
- stationery and office requisites for the Parliament House office, separate ministerial office in the capital city and a joint ministerial/electorate office;
- relief arrangements for personal staff absences of less than 12 weeks;
- postage for use in relation to ministerial duties;
- the costs of official residential telephone and fax services and telephone charge cards for the minister;
- portfolio-related hospitality overseas;
- official hospitality within Australia (including when a staff member represents the minister);
- mobile telephones for the minister and staff;
- membership fees of business organisations related to portfolio or ministerial functional responsibilities;
- the provision of semi-official residential telephone services and telephone charge cards for senior ministerial staff nominated by the minister; and
- payment of conference and training fees for ministerial staff, as well as any membership of airline lounges.

## **Parliamentary Departments**

The parliamentary departments are responsible for:

- payment of the senator or member's salary and electorate allowance; and
- the standard issue of facilities and equipment in the ministerial suite in Parliament House, namely telephones, two computers linked to the Parliament House network and a facsimile machine.

## **Protective Security Coordination Centre**

The Protective Security Coordination Centre, Attorney-General's Department, is responsible for personal security, residential security and security of personnel in offices outside Parliament House.

## 9. MINISTERIAL STAFF CONDUCT

Ministers (and parliamentary secretaries) are responsible for the conduct of members of their staff (including consultants), who act at the minister's direction and, to the extent that they have the minister's authorisation, take action on his or her behalf. For this reason, the rules of conduct applying to members of staff are in many respects similar to those applying to ministers.

Further advice on matters covered below is available in the handbook, *Ministerial Staff Entitlements*, produced by MAPS in the Department of Finance and Administration.

Members of staff must divest themselves, or relinquish control, of sensitive interests such as shares or similar interests in any company or business involved in the area of their ministers' portfolio responsibilities. The transfer of interests to a spouse or dependent family member or to a nominee or trust is not an acceptable form of divestment. Staff may transfer control to an outside professional nominee or trust providing the staff member or immediate family exercises no control on the operation of the nominee or trust.

Like ministers, members of staff should take care to avoid conflicts of interests if they make investments on the stock markets or other financial and trading markets.

A member of staff must have no involvement in any outside employment or in the daily work of any business, and must not retain any directorship in a company, without the express agreement of the employing minister.

Members of staff should not contribute to the activities of interest groups or bodies involved in lobbying the government, if there is any possibility that a conflict of interests or the appearance of such a conflict may arise. They are required to disclose membership of professional and recreational associations where any conflict or the appearance of a conflict of interests may arise.

At the time of commencing their employment, ministerial consultants and members of ministers' staff (including electorate officers) are required to complete statements of private interests on forms supplied by MAPS. The employing minister endorses the statement in writing after satisfying him or herself that there is no conflict of interests. The signed and endorsed statement is retained in the minister's office. Access should be strictly limited, and when a statement is updated or when a person ceases to be employed by a minister, the earlier statement should be destroyed.

The MAPS handbook sets out circumstances in which members of staff may be obliged to declare that they or their ministers have an interest in a matter under consideration.

Gifts, sponsored travel or hospitality should not be accepted if acceptance could give rise to a conflict of interests or the appearance of such a conflict.

On some occasions a member of staff may incur hospitality expenses at the minister's direction. Any claim for reimbursement should be endorsed by the minister indicating that the staff member was acting as directed and in accordance with the hospitality guidelines.

## **10. PARLIAMENTARY BUSINESS**

### **Parliamentary Questions**

There are two kinds of parliamentary questions requiring written answers:

- questions on notice which appear on the Notice Paper printed each day Parliament is sitting; and
- further information on a question without notice.

### **Questions on Notice**

The Parliamentary Questions Officer in each department examines the Notice Papers each day Parliament is sitting for new questions asked of ministers.

A draft response is then submitted to the minister for clearance. Once cleared, it is returned to the department where it is processed for lodging with the relevant Table Office.

### ***Time constraints***

Each house has set time limits for management of answers to questions on notice. Senate Standing Order 74 allows a senator who has not received an answer to a question on notice within 30 days to seek an explanation from the minister for the delay and move that the Senate take note of the explanation. House of Representatives standing order 150 allows a member who has not received an answer to a question on notice within 60 days to request that the Speaker write to the minister concerned, seeking a reason for the delay.

Irrespective of such limits, it is in the interest of ministers to respond to questions in a timely manner, and for answers to cover particular points raised in the questions, so that the need for follow-up questions is minimised.

### **Questions without Notice**

In general, questions asked at question time are answered fully by ministers.

From time to time, a minister may undertake to provide further information. This undertaking is regarded as taking the question (whether in part or in whole) “on notice”. The minister may provide the further information or answer:

- by letter to the member/senator concerned (a response conveyed in this way will not appear in Hansard); or
- by having it delivered to the Clerk in accordance with the normal question on notice process (a response conveyed in this way will appear in Hansard); or
- by leave at the end of question time or at another early opportunity (the response will automatically be recorded in Hansard; in the Senate it is also possible to seek leave to have the answer incorporated).

## **Corrections**

Any answer found to be incorrect should be corrected as soon as the error is found, using the procedures of the chamber concerned.

More detailed information relating to Parliamentary questions can be found in the *House of Representatives Practice*, 3<sup>rd</sup> edition, pp 499-525 and *Australian Senate Practice*, 8th edition, pp468-482.

## **Legislation Process**

Legislation is often required to give effect to policy changes. Ministers should:

- at an early stage give clear instructions to their department on the policy direction, bearing in mind that:
  - Cabinet approval is required for major policy issues, and
  - the Prime Minister's approval is to be sought for matters with minor policy implications;
- give authority to the department for the necessary legislation to be drafted;
- when legislation impacts on other portfolios, initiate consultation with relevant ministers throughout the development of the legislation, and take their views into account;
- when legislation amends Acts for which other ministers are responsible, seek the formal agreement of the relevant minister to the policy and text of the amendments;
- allow adequate time to clear the legislation, the explanatory memorandum and the second reading speech before introduction into Parliament;
- take into account the general practice that a bill is introduced in one sitting for debate in the next; and
- whenever possible, be present in the chamber to guide the legislation through the various stages of debate.

The minister should be present in the chamber during the debate of his/her bill. If the minister's absence at the time of the debate is unavoidable, the minister should ensure that a duty minister or a parliamentary secretary is sufficiently briefed on the detail of the legislation in order to guide the bill through the Parliament in the minister's stead.

As there is likely to be pressure on the legislation programme, it is important that ministers develop a forward plan of legislation for their portfolio and allocate the appropriate priority to bills they wish to have included on the programme for a particular sittings. More detailed information on the procedures and process involved in the preparation of legislation programmes can be found in the *Legislation Handbook* issued by the Department of the Prime Minister and Cabinet.

In order to facilitate effective management of the legislation programme, ministers should nominate a senior member of his/her office as a legislation contact officer to liaise with his/her department and with the Parliamentary Liaison Officer in both chambers to ensure ministers' priorities for the preparation and debate of legislation are adequately taken into account, and to assist the orderly presentation and flow of legislation.

## **11. MINISTERIAL CORRESPONDENCE**

As a matter of routine, ministers receive correspondence from other ministers, Premiers, federal members of parliament and senators, State and Territory members of parliament, constituents, organisations, political groups and the general public, including children.

It is open to ministers to determine how they prefer to have their ministerial correspondence handled. For example, ministers might decide that mail received from their constituents would be handled differently from mail received from the general public. It is not possible or desirable in most portfolios for ministers to answer all correspondence personally.

Some general points of principle in handling ministerial correspondence are:

- it is the expectation of the people who write to ministers that they will receive a reply, however brief;
- correspondence should be handled expeditiously and, where a timely reply is not possible, an interim acknowledgment giving reasons for the delay should be sent;
- replies should contain an expression of genuine appreciation of the correspondence and make specific reference, however minimal, to at least some of the key points or issues raised; and
- replies should be signed by someone at an appropriate level.

It would be normal for departments to have in place procedures for the handling of ministerial correspondence. Ministers should consult with their departments at an early stage to indicate any personal preferences they might have in the handling of ministerial correspondence.

## 12. OVERSEAS TRAVEL

Ministers may need to travel overseas for a variety of reasons, for example to undertake negotiations and discussions with overseas counterparts, to put Australia's view at international meetings, to represent Australia on significant occasions and to gain first hand experience in areas of relevance to Australia.

The Prime Minister is responsible for approval of official overseas travel by all ministers, their spouses and their staff.

He writes to ministers, normally twice a year, asking for advice about travel proposed over the following twelve months. If a proposal receives his approval in principle, it is placed on the programme of visits for the year and the minister is advised to write seeking confirmation of his approval three weeks before the date of departure. Guidance on making travel arrangements is available from MAPS in the Department of Finance and Administration.

In developing proposals, ministers should take the following into account:

- proposals should include only the highest priority visits, where the purpose of the visit and involvement at ministerial level can be clearly and publicly demonstrated as essential;
- the duration of absences and the costs of visits should be kept to a minimum;
- priorities should be set and visits minimised through consultation within and across portfolios. Wherever possible, ministers who regularly attend international meetings should tie their other essential travel in with these meetings;
- absences should be planned around parliamentary sitting periods, Cabinet and other (eg Budget) commitments;
- where there is more than one minister in a portfolio, no more than one should be absent overseas at any one time.

Ministers are entitled to be accompanied by their spouses during official visits. The government will meet the cost of fares, accommodation and meal expenses incurred by spouses during official visits.

Ministers are on duty full-time when travelling overseas, although their itineraries may include rest days:

- if a minister is accompanied overseas by children or any family member other than the spouse, it must be at the minister's own expense and the presence of others should not be allowed to interfere with the minister's capacity to attend to business;

- ministers may request approval to take leave while overseas, but the period on leave must not be excessive and the visit must be clearly defensible in terms of the official business undertaken. All costs associated with a minister's leave are to be met by the minister.

Ministers are normally entitled to be accompanied by one staff member during official visits. Additional staff support is rarely required.

## ADDENDUM

*A Guide on Key Elements of Ministerial Responsibility* was last revised in December 1998. Since then changes have been made to the following matters referred to in the *Guide*.

### 1. Parliamentary secretaries

Since March 2000 parliamentary secretaries have been appointed under s.64 of the Constitution; that is, in the same way that ministers are appointed. Throughout the *Guide*, references to ministers should be read as including parliamentary secretaries.

However, the change in the way in which parliamentary secretaries are appointed did not change their role, and the list of duties at the end of Chapter 2 is still current.

The only exception is that, while standing orders in both chambers continue to provide that parliamentary secretaries may not take parliamentary questions, parliamentary secretaries in the Senate may now represent House ministers at Senate estimates hearings.

### 2. Appointment of departmental secretaries

The procedure for appointing departmental secretaries outlined in Chapter 6 is no longer current.

Under the *Public Service Act 1999*, departmental secretaries are appointed by the Prime Minister.

### 3. Ministerial staff

Chapter 9 discusses ministerial staff conduct, noting that further advice is available from *Ministerial Staff Entitlements*, a handbook produced by the Department of Finance and Administration's Ministerial and Parliamentary Services Group (MAPS).

With the adoption of a Certified Agreement, *Ministerial Staff Entitlements* is no longer published. Ministers and parliamentary secretaries should refer to the relevant sections of two other MAPS handbooks, *Ministers of State: Entitlements* and *Parliamentary Secretaries: Entitlements*.

December 2001