

FACT SHEET 13

Executive Power Overview

What is executive power?

Executive power is the power exercised by the 'Executive', which is often known as 'the government'. It includes the power to run government programs (such as the job-seeker program), spend public money and exercise decision-making powers (such as granting or refusing visas or deciding to close the international borders). These powers will often be given to government ministers or public servants by laws passed by the Parliament.

Some powers have also historically been held by certain officials, such as the Governor-General. They include the power to enter into treaties and the power to dissolve Parliament for an election.

Who makes up the Executive?

While the Parliament exercises legislative power and the courts exercise judicial power, it is less clear who exercises executive power. This is because the Executive is comprised of different layers with different functions. There is the formal layer, comprised of the Sovereign and the Governor-General. There is a leadership layer, comprised of the Prime Minister and other Ministers, who make significant policy decisions and give directions. Then there is the practical layer, comprised of public servants, officials and government agencies, which implement policies and government programs.

The Sovereign: When the Constitution was written, Queen Victoria was the Sovereign, so the Constitution refers throughout to 'the Queen'. But it also says that this means Queen Victoria's successors as Queen or King - i.e. whoever happens to be the King or the Queen Regnant (a reigning Queen, as opposed to the wife of a King) at any particular time.



The Crown
Source: Wiki Commons

In 2022, Queen Elizabeth II, the Queen of Australia, died and King Charles III succeeded her as King of Australia. So the word 'Queen' in the Constitution now needs to be read as meaning 'King'.

On its face, the Constitution seems to give the King some important powers – but in reality most of them are exercised by the Governor-General as the King's representative, and even the King's few remaining powers, such as appointing the Governor-General, are exercised 'on the advice' of the Prime Minister.

This means that the Prime Minister advises the King what to do in exercising his powers. While the King ultimately acts as his Prime Minister advises, he may seek to persuade a Prime Minister to change his or her mind and give different advice.



Prime Minister of Australia Anthony Albanese. The Albanese Government was elected in May 2022
 Source: Wiki Commons

The Governor-General: Under the Constitution and Acts of Parliament the Governor-General appears to have many powers, including the power to enter into treaties and make regulations. But again, nearly all those powers are exercised ‘on the advice’ of the Minister responsible for the subject area.

The Governor-General may look very closely at that advice, and point out if there are errors in it or may raise concerns about it. However, like the King, he or she will almost always ultimately act upon ministerial advice.

There are some powers, however, known as the ‘reserve powers’, which may be exercised by the Governor-General without ministerial advice or against the wishes of ministers.

The reserve powers are exercised very rarely, but it is important that they exist. Knowing they are there is usually enough to ensure that governments obey the relevant constitutional rules which are mainly rules that have developed as a matter of practice over the centuries, known as conventions.

Ministers: Executive power is often exercised by Ministers. These are Members of Parliament who belong to the party or coalition of parties that won the election and formed the Government. They are appointed by the Governor-General on the advice of the Prime Minister. They advise the Governor-General, through a body known as the Federal Executive Council.

Ministers make their most important decisions in another body known as the Cabinet. This is a collection of the most senior Ministers who meet regularly to make important decisions together for the running of the country.

Ministers are also in charge of public service Departments and agencies, such as the Department of Education, Skills and Employment and the Department of Foreign Affairs and Trade. Ministers often instruct public servants about what the government is aiming to achieve – known as its ‘policies’ – and the means by which those policies should be put into practice. It is then the public servants who actually do the work to make that happen.



The office of the Department of Education | Canberra
Source: CEFA

While Ministers have lots of powers, those powers are limited by the Constitution and the law. Ministers must obey the Constitution and laws passed by Parliament. This is an important part of the 'rule of law'. The Government cannot excuse itself from the application of the law.

Ministers must also obey laws developed by the courts (known as the 'common law').

The courts have established rules about how decisions should be made. They must not be made for an improper purpose. Ministers must take into account relevant factors and ignore irrelevant ones (such as their private interests). Ministers must not act in a manner that is biased. They must not abuse their powers. If Ministers breach these rules, their decisions can be overturned by the courts and they can be required to re-make the decision in accordance with the law.

Ministers should also obey a 'Code of Conduct for Ministers'. It says that the Australian people are 'entitled to expect that, as a matter of principle, Ministers will act with due regard for integrity,

fairness, accountability, responsibility, and the public interest'. The Code of Conduct also says that 'Ministers must ensure that they act with integrity – that is, through the lawful and disinterested exercise of the statutory and other powers available to their office'. The word 'disinterested' here does not mean 'bored', but rather that Ministers are not biased or influenced by any advantage that they might get from making the decision.

Ministers are 'responsible' to Parliament. This means that they are accountable to Parliament. They can be questioned in 'Question Time' each day when a House of Parliament is sitting and they can also be questioned by parliamentary committees. They must explain the actions of their Departments to the Parliament and account for anything that went wrong under their supervision.

Public servants: Public servants are the employees of the government. Most of them are permanently employed in the 'Australian Public Service' and they implement policies of whoever is in government. It is important that public servants are not politically biased and are appointed according to their merit (i.e. who is the best person to do the job), rather than because they support one political side or the other. This way, the Australian Public Service can build up experience and skills so that it serves the Australian people better, without having to change all its members every time the government changes.

Public servants must obey a code of conduct. While they can be instructed by Ministers, like everyone, they cannot be required to disobey the law or the Constitution.

There are many people and bodies that exercise executive power, but all of them should be accountable to the people and are required to act in accordance with the law.



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