

FACT SHEET 16

Executive Power – The powers of Ministers and their limits

We see Ministers a lot in the news. They are often announcing things and the media pays attention to what they say. But what do Ministers actually do and what powers do they have?

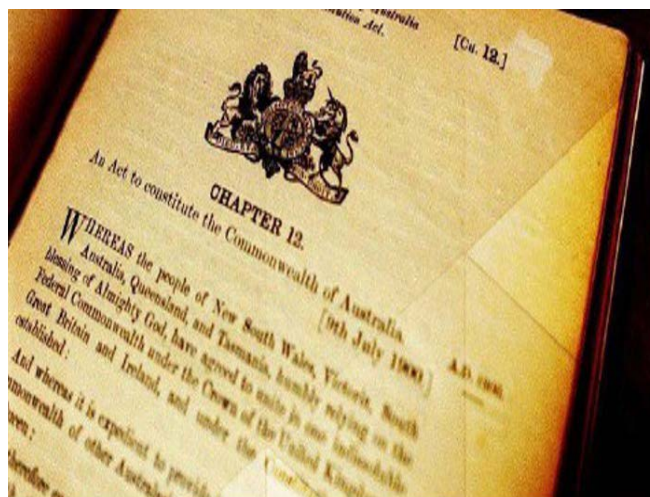
What does the Constitution say?

Section 64 of the Australian Constitution says that Commonwealth Ministers are appointed by the Governor-General to administer government departments. The Governor-General makes the appointments on the advice of the Prime Minister. A Minister must be a member of either House of Parliament, or become a member within 3 months of taking office.

A Minister, or combination of ministers, is usually responsible for running a government department. The Foreign Affairs Minister, for example, is in charge of the Department of Foreign Affairs and Trade (alongside other Ministers). The Attorney-General is in charge of the Attorney-General's Department and the Treasurer is in charge of the Treasury (again, together with other Ministers). Sometimes a Minister will have more than one ministerial role. For example, the Finance Minister may also be the Minister for the Public Service and the Minister for Women. The Minister for Employment and Workplace Relations may also be the Minister for the Arts.

Each Minister may have within their 'portfolio', or area of responsibility, statutory and non-statutory 'portfolio bodies' for which he or she is responsible to Parliament. For example, the Attorney-General is responsible for the Australian Law Reform Commission, the Australian Human Rights Commission, and the Office of the Commonwealth Ombudsman, amongst numerous other bodies.

Senior Ministers are included in the Cabinet, which is the central decision-making body of the government, while the other Ministers form the 'Outer Ministry', and are only invited to attend Cabinet if needed.



The Australian Constitution
Source: Wiki Commons

The Ministry also includes more junior 'Assistant Ministers' (also known as parliamentary secretaries), who assist more senior Ministers in the performance of their duties. This is often seen as a training ground for politicians to advance to more senior ministerial roles.

Ministers (and their equivalent in the Opposition, who are known as 'Shadow Ministers') are also sometimes called 'front-benchers', because they sit on the front benches in the Houses of Parliament, closest to the table in the centre of the chamber.



Statement of Ministerial Standards



What do Ministers actually do?

Ministers exercise powers that are given to them by statutes (which are laws passed by Parliament). A statute might give a Minister a power to appoint people to a committee, or to grant a license or permission to do something, or to make certain rules, or set certain fees.

Ministers also provide advice to the Governor-General.

Ministers also have some executive discretion, including to direct their departments on how to give effect to the government's policies, as long as they do so within the law. If a new law is needed to authorise action by the Minister or the Department, or to approve the spending of money, then the Minister seeks the approval of Cabinet for a bill to be drafted, and if approval is given, the Minister presents the bill to Parliament and seeks to get it passed into law.

Ministers are responsible to Parliament for how they exercise their powers. They are questioned at 'Question Time' when Parliament is sitting. Ministers who are Senators can also be quizzed more closely by 'Senate Estimates' committees, which examine how government money is spent.

Are there limits on Ministers' powers or can they do what they like?

There are many limits on the powers of Ministers. First, they must obey the Constitution. A minister cannot perform an act that would breach the Constitution.

Second, they have to obey the law. If a statute sets out how a power is to be exercised, or the extent of the power, then the Minister can't go beyond that. So, if an Act says that the Minister may direct an organisation with respect to the policies and practices that it follows, but that any direction must be in writing and published, then any directions by the Minister must be in writing and published.

Third, the Minister must obey legal rules about making decisions fairly. These rules, which form part of administrative law, are enforced by the courts when they are asked to review ministerial decisions. Ministers must not act for an improper purpose or in an irrational manner. They must take into account relevant considerations and must not take into account irrelevant considerations. They must behave in a manner that is fair to those affected by the decision. This includes not acting in a biased manner or a way that may be perceived as biased. They must not act at the direction of



Australian Parliament House
Source: iStock

someone else or in any way that constitutes an abuse of power. If Ministers break these rules of decision-making, the courts may rule that their decisions are invalid and have to be re-made.

Commonwealth Ministers are also subject to a Code of Conduct for Ministers. It says that a ministerial office is an office of 'public trust'. The people of Australia are therefore '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 they are not biased or influenced by any advantage that they might get from making the decision.

The Code of Conduct for Ministers also says that Ministers must accept accountability for the exercise of their powers and that they must observe 'fairness in making official decisions – that is, to act honestly and reasonably, with consultation as appropriate..., taking proper account of the merits of the matter, and giving due consideration to the rights and interests of the persons involved, and the interests of Australia.'

This is how Ministers are supposed to behave. There are many important limits on their powers, with which they need to comply.



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