

FACT SHEET 17

Executive Power - The Role of the Public Service in Making Government Work

The one part of the Executive Government that rarely gets mentioned in textbooks, but which is responsible for a large share of government work, is the public service.

What does the Constitution say about it?

Section 64 of the Constitution says that the 'Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish'. This means that the Governor-General, as advised by Ministers in the Executive Council, can use executive power to create public service departments.

Legislation is not required to establish these departments.

At Federation, the Governor-General was also empowered by section 67 to appoint all public servants, until Parliament was able to enact legislation that set out means for doing this. The Constitution also provided for the transfer of

'departments of the public service in each State' to the Commonwealth Government after the establishment of the Commonwealth, where those departments dealt with certain matters which under the Constitution, the Commonwealth was able to make laws about (sections 69- 70). The transferred departments included posts, telegraphs and telephones, and naval and military defence. The transfer included the employees and property of the departments (sections 84-85).

What is the relationship between the Public Service and the Government of the day?

In some countries, the public service changes each time the government changes, as each side appoints its own officers to give effect to its own policies. Australia, however, followed the United Kingdom model of having a permanent, 'apolitical' (i.e. non-political, impartial) public service.



Australian Parliament House
Source: iStock

Appointment to the Australian Public Service (the 'APS') was initially done by way of a competitive examination. These days, it is by merit selection. There is an independent Merit Protection Commissioner to address concerns about maintaining merit-based recruitment and promotions.

Public servants are required to comply with 'APS Values', which include giving frank and honest advice based upon the best available evidence, behaving in a professional, objective, innovative and efficient manner, and being respectful, ethical and accountable. The APS Values are set out in the Public Service Act 1999 (Cth). Public servants may generally be directed by Ministers in their exercise of government functions, to fulfil the Government's policies. But public servants must always obey the law and cannot be validly directed to act contrary to the law.

What is the composition of the Public Service?

The key part of the APS is its 'departments'. At the time of Federation they were: the Attorney-General's Department, the Defence Department, the External Affairs Department, the Home Affairs Department, the Trade and Customs Department and the Treasury. That number has expanded over time, although has also contracted in recent years with departments being combined into super-departments. As at 2023 there were sixteen Commonwealth departments. When the first Commonwealth Public Service Act came into force on 1 January 1903, there were already 11,374 Commonwealth public servants.

Included within the APS, in addition to departments, are the employees of various types of statutory and executive agencies. These include the Australian Human Rights Commission, the Australian Maritime Museum, the Australian Tax Office, Cancer Australia, the Australian Bureau of Statistics, Screen Australia, the Bureau of Meteorology, the National Archives of Australia and the National Mental Health Commission. Together, the departments and the statutory and executive agencies are described as 'agencies' under the Public Service Act 1999 (Cth).

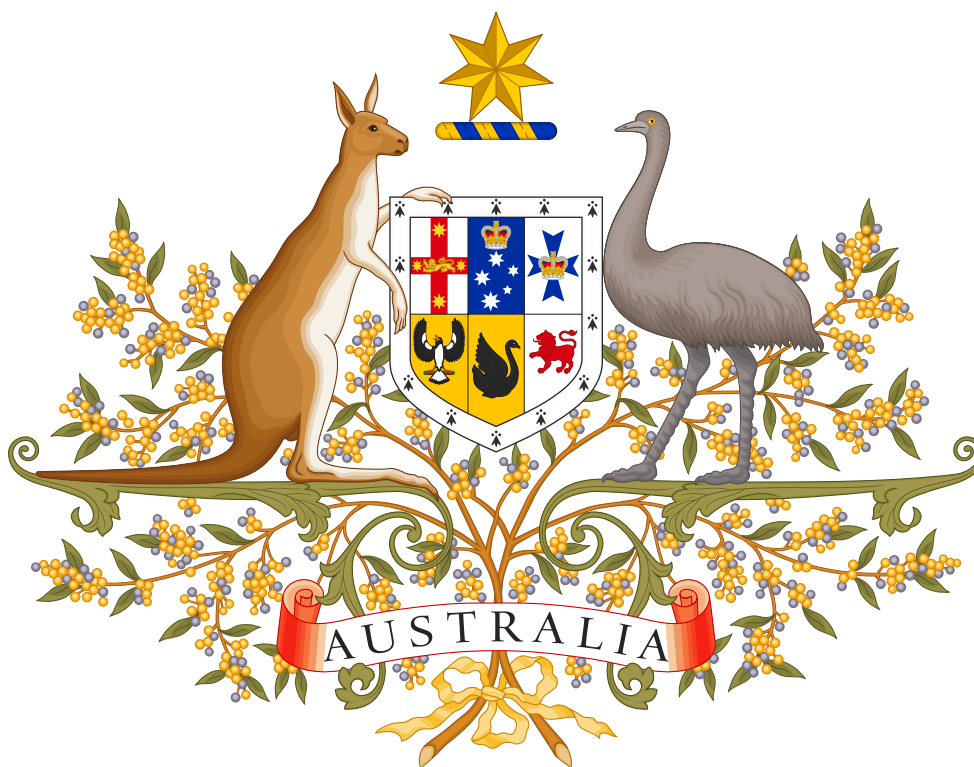
Public servants must ordinarily be Australian citizens, although the head of an agency may employ a person as a Commonwealth public servant who is a non-citizen, if they consider it appropriate to do so.



The Australian Flag
Source: IStock

Not all Commonwealth employees fall within the APS. There are some separate services, such as the Australian Defence Force, the Australian Federal Police, and the Parliamentary Service at the Commonwealth level.

In addition, there are separate bodies that are created by statute to be operated more independently from the Executive Government, such as the Australian Broadcasting Corporation, the Australian Sports Commission and the Australian National University, and there are other bodies that are created as companies to act in a commercial way, such as NBN Co Ltd and Snowy Hydro Ltd. They have a separate legal existence from the Commonwealth. For a chart of the different types of Commonwealth bodies, see here.



The Australian Coat of Arms
Source: Wiki Commons

What does the Public Service do?

The public service is the administrative or operational part of the Executive Government. It provides the administrative infrastructure for the government to operate. The functions of public servants range from administrative functions, such as the people who process pension payments and Medicare refunds, to the people who prepare policy ideas and draft bills to become laws. Public servants make recommendations to Ministers to exercise their powers in particular ways, or are themselves authorised to make decisions that affect people, such as the grant of visas or licences or various kinds of approvals.

Public servants include Australia's diplomats, who represent Australia overseas and negotiate treaties and trade deals, border officials who check the

entry of people and goods into Australia, lawyers who advise the Government on its compliance with the law and court challenges, scientists and medical officers who advise the Government on how it should respond to issues from climate change to pandemics, and various law enforcement officers, such as those who prosecute criminal offences or investigate workplace safety breaches.

Public servants provide services to members of the public and oversee other services that have been contracted out to private bodies. They support Ministers by providing research and advice on developing policies and they administer the government's taxing and spending of money.



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