



SG No. 12 of 2022

**IN THE MATTER OF THE VALIDITY OF THE APPOINTMENT OF
MR MORRISON TO ADMINISTER THE DEPARTMENT OF INDUSTRY,
SCIENCE, ENERGY AND RESOURCES**

OPINION

I. INTRODUCTION AND SUMMARY

1. On 12 April 2021, the former Prime Minister, the Hon Scott Morrison MP, wrote to the Governor-General of the Commonwealth of Australia (the **Governor-General**) to recommend that the Governor-General “appoint me, as Prime Minister, to administer the Department of Industry, Science, Energy and

Resources” (**DISER**).¹ Mr Morrison advised the Governor-General that this appointment would allow him “to be the responsible Minister for matters within that Portfolio, if and when required”.

2. Mr Morrison enclosed with his letter a document headed “Appointment of Minister of State”, with space for the Governor-General’s signature. That document was in the following terms:

I, DAVID JOHN HURLEY, Governor-General of the Commonwealth of Australia, pursuant to sections 64 and 65 of the Constitution, hereby direct and appoint [Mr Morrison], a member of the Federal Executive Council, to administer the DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES.

3. The Governor-General, acting on Mr Morrison’s advice, executed the instrument in those terms on 15 April 2021 (**Instrument of Appointment**).
4. In a short submission dated 12 April 2021, the Department of the Prime Minister and Cabinet had advised Mr Morrison that he did not need to subscribe an oath of office in relation to the above appointment, and no such oath was in fact subscribed.
5. I am instructed that, after the Instrument of Appointment was executed by the Governor-General, “[n]o further action was taken by the Department [of the Prime Minister and Cabinet] in relation to this appointment. That is, no announcement was made, the Instrument [of Appointment] was not published, no change was made to the Ministry List which is tabled in Parliament, and no gazettal was pursued”. I have not been briefed with any information concerning whether the lack of any notification was the result of a direction from Mr Morrison, or for some other reason.

¹ Now the Department of Industry, Science and Resources.

6. Media reporting suggests that the Hon Keith Pitt MP, who administered DISER concurrently with Mr Morrison, was unaware of the above appointment for a period of some months. It also suggests that the Cabinet as a whole, the Parliament and the public were not aware of the appointment until about one week ago.
7. At various times between March 2020 and May 2021, Mr Morrison was also appointed by the Governor-General to administer four other departments. Those appointments likewise were not made public and, in some cases, apparently, were not known to the Ministers who administered the relevant departments concurrently with Mr Morrison or to the Secretaries of those departments. I have not been asked to express any opinion in respect of those appointments.
8. The question upon which my advice is sought, and my short answer to it, is as follows:

Question: Was Mr Morrison validly appointed to administer the Department of Industry, Science, Energy and Resources on 15 April 2021?

Answer: Yes. The Governor-General, acting on the advice of the Prime Minister, has power under s 64 of the Constitution to appoint an existing Minister of State, including the Prime Minister, to administer an additional department of State. The Governor-General has no discretion to refuse to accept the Prime Minister's advice in relation to such an appointment. Nor is there any constitutional or legislative requirement for notification of such an appointment as a condition of its validity, or for the Minister to subscribe another oath or affirmation following such an appointment. Accordingly, Mr Morrison was validly appointed to administer DISER on 15 April 2021.

That said, the fact that the Parliament, the public and the other Ministers who thereafter administered DISER concurrently with Mr Morrison were not informed of Mr Morrison's appointment was inconsistent with the conventions and practices that form an essential part of the system of responsible government prescribed by Ch II of the Constitution. That is because it is impossible for Parliament and the public to hold Ministers accountable for the proper administration of particular departments if the identity of the Ministers who have been appointed to administer those departments is not publicised. That conclusion does not depend on the extent to which Mr Morrison exercised powers under legislation administered by DISER, because from the moment of his appointment he was responsible for the administration of the department.

The existing practices by which appointments under s 64 of the Constitution are notified to the Parliament and the public are deficient. I propose various mechanisms by which those practices could be improved at the end of this opinion.

II. CONSIDERATION

(a) Constitutional context

9. Chapter II of the Constitution “establishes and sustains the Executive Government of the Commonwealth”.² Within Ch II, s 61 vests the executive power of the Commonwealth in the Queen and makes it “exercisable by the

² *McCloy v New South Wales* (2015) 257 CLR 178 at [105] (Gageler J).

Governor-General as the Queen’s representative”.³ The remainder of Ch II largely concerns the architecture by which that executive power is exercised by the Executive Government. It is necessary to examine that architecture closely for the purposes of this advice.

10. Section 62 of the Constitution establishes the Federal Executive Council to advise the Governor-General. The advice of that body is required as a condition of the exercise of certain powers that the Constitution vests in the “Governor-General in Council”.⁴ Section 62 also provides that the members of the Federal Executive Council “shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during [the Governor-General’s] pleasure”. By clearly established convention, the Governor-General exercises that power on the advice of the Prime Minister.⁵
11. Section 64 of the Constitution, headed “Ministers of State”, provides:

The Governor-General may appoint officers to administer such departments of State of the Commonwealth as the Governor-General in Council may establish.

Such officers shall hold office during the pleasure of the Governor-General. They shall be members of the Federal Executive Council, and shall be the Queen’s Ministers of State for the Commonwealth.

Ministers to sit in Parliament

After the first general election no Minister of State shall hold office for a longer period than three months unless he is or becomes a senator or a member of the House of Representatives.

³ See s 2 of the Constitution, which provides for the appointment by the Queen of a Governor-General to be “Her Majesty’s representative in the Commonwealth”.

⁴ See s 63 of the Constitution.

⁵ See Republic Advisory Committee, *An Australian Republic: The Options* (1993), Appendix 7 at 282. See also Department of the Prime Minister and Cabinet, *Federal Executive Council Handbook 2021* (2021) at [13].

12. The closing words of the first paragraph of s 64 implicitly empower the Governor-General in Council to “establish” “departments of State of the Commonwealth”. On 1 January 1901, that power was exercised to establish the original seven departments of State.⁶ Since then, the Governor-General in Council has established, abolished and renamed departments on many occasions.⁷ With respect to each department of State, the matters dealt with by that department, and the legislation administered by the Minister or Ministers who administer that department, are set out in an Administrative Arrangements Order (AAO) that is periodically issued by the Governor-General in Council. I return to the significance of the AAO in the discussion below.
13. In addition to the power to “establish” departments of State, the first paragraph of s 64 also vests in the Governor-General the power to appoint officers to “administer” those departments. The second paragraph of s 64 provides that those officers become, by reason of such an appointment, “Ministers of State for the Commonwealth”.
14. The power to appoint Ministers to administer departments of State is vested by s 64 in the Governor-General alone.⁸ However, there is no doubt that the Governor-General is bound to follow the Prime Minister’s advice in the exercise of that power. That is a very clear constitutional convention.⁹ While the

⁶ Commonwealth, *Gazette*, No 1, 1 January 1901 at 4.

⁷ See, eg, Commonwealth, *Gazette*, No 28, 15 March 1971 at 1873 (abolishing the Prime Minister’s Department and the Department of the Cabinet Office and establishing the Department of the Prime Minister and Cabinet); Commonwealth, *Gazette*, No C2017G01401, 22 December 2017 (renaming certain departments of State with effect from 20 December 2017).

⁸ The power to appoint Ministers is not vested in the Governor-General in Council, and therefore is not required to be exercised on the advice of the Federal Executive Council. As to the explanation for that distinction, see Quick and Garran, *The Annotated Constitution of the Australian Commonwealth* (1901) at 707.

⁹ See Constitutional Commission, *Final Report of the Constitutional Commission* (1988), vol 1 (**Constitutional Commission Report**) at [2.178]; The Parliament of the Commonwealth of Australia, *Executive Government: Report of the Advisory Committee to the Constitutional Commission* (Parliamentary Paper No 303/1987) (**Executive Government Report**) at 37 and 110 (reproducing the Resolution adopted at the Australian Constitutional Convention at Brisbane in 1985, Practice G). See also Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (2018) at 29 (pt 3); Winterton, *Monarchy to Republic: Australian Republican*

Governor-General has certain reserve powers that may be exercised without or contrary to advice, the power to appoint Ministers (other than the Prime Minister) is not one of them.¹⁰ Indeed, the convention that the Governor-General act upon advice except in circumstances where the reserved powers are enlivened is itself a vital component of the system of responsible government.¹¹ Accordingly, in circumstances where Mr Morrison clearly advised the Governor-General to appoint him to administer DISER,¹² and given that the appointment of a Minister to administer multiple departments is not unlawful (for the reasons I am about to address), it would have been a clear breach of the applicable conventions for the Governor-General to decline to accept and act upon the Prime Minister's advice. That is so whether or not the Governor-General was aware that the appointment would not be published.¹³

15. Section 64 empowers the Governor-General to appoint multiple Ministers to administer a single department of State. The High Court unequivocally resolved any doubts in that regard in *Re Patterson; Ex parte Taylor*.¹⁴ The Court's holding in that case sanctioned a longstanding (albeit sometimes controversial) practice in relation to the appointment of Assistant Ministers and Parliamentary

Government (1986) at 34. As to the general constitutional convention that the Governor-General must act on advice, see, eg, *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342 at 365 (Mason J), 400-401 (Wilson J), 414 (Brennan J); *Steiner v Attorney-General (Cth)* (1983) 74 FLR 89 at 92-93 (Beaumont J).

¹⁰ Constitutional Commission Report at [5.71] (listing the four reserve powers); Executive Government Report at 38.

¹¹ See, eg, Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (2018) at 17, 29; Executive Government Report at 36; *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342 at 364 (Mason J); *Comcare v Banerji* (2019) 267 CLR 373 at [147] (Gordon J).

¹² As Mr Morrison did in his letter to the Governor-General dated 12 April 2021.

¹³ I have not received, and I do not require, instructions as to the Governor-General's knowledge in that regard, because that is irrelevant to the validity of the appointment upon which I am asked to advise. Of course, even in contexts where the Governor-General is required to act upon advice, the Governor-General always has the right to be consulted, to encourage and to warn in respect of Ministerial advice: see, eg, Executive Government Report at 111 (reproducing the Resolution adopted at the Australian Constitutional Convention at Brisbane in 1985, Practice R). I do not know, and I do not need to know, whether the Governor-General exercised that right, as that is likewise irrelevant to the validity of the appointment.

¹⁴ (2001) 207 CLR 391 (*Re Patterson*) at [17] (Gleeson CJ), [65] (Gaudron J), [209]-[211] (Gummow and Hayne JJ, Gleeson CJ and Kirby J relevantly agreeing).

Secretaries.¹⁵ Since that decision, the appointment of one or more junior Ministers to administer a department jointly with a Cabinet minister has become a matter of routine. However, the High Court’s reasoning in *Re Patterson* also entails that it is lawful for a Cabinet Minister to be appointed to administer departments of State other than the department for which they have primary responsibility.

16. Section 65 of the Constitution relevantly provides that a Minister of State “shall hold such offices as ... the Governor-General directs”.¹⁶ That power, which is distinct from the power under s 64 to appoint a member of the Federal Executive Council to administer a department of State, allows the Governor-General to direct that a Minister hold a particular office, such as Prime Minister or Minister for Health, thereby differentiating that Minister from other Ministers of State.
17. The requirement that members of the Federal Executive Council be “sworn” is the only legal requirement that members of the Executive Government make an oath or affirmation in addition to their oath or affirmation as members of Parliament.¹⁷ Accordingly, it is not necessary for an officer who is appointed to administer a department of State under s 64, or who is directed to hold a particular office under s 65, to take any further oath or affirmation. To the extent that this occurs in practice,¹⁸ it serves a ceremonial purpose but does not fulfil any legal requirement.¹⁹

¹⁵ *Re Patterson* (2001) 207 CLR 391 at [17] (Gleeson CJ). See also Sawer, “Councils, Ministers and Cabinets in Australia” (1956) *Public Law* 110 at 124.

¹⁶ Parliament may also prescribe offices for the purposes of s 65 of the Constitution, but it has not done so: cf, in respect of the number of Ministers, the *Ministers of State Act 1954* (Cth).

¹⁷ Unlike the position for parliamentarians, the Constitution does not prescribe the form of that oath or affirmation: cf s 42 of the Constitution.

¹⁸ The Office of the Official Secretary to the Governor-General records such ceremonies as part of its reporting of activities and performance in Annual Reports: see, eg, Office of the Official Secretary to the Governor-General, *Annual Report 2020-2021* (2021) at 20-21.

¹⁹ The Government has received advice to the same effect over many decades. An example reflecting that advice is that former Prime Minister, the Hon Malcolm Turnbull MP, advised the then Governor-General in a letter dated 18 July 2016 that “I am advised that there is no legal or constitutional requirement for a person who is appointed by the Governor-General to administer a Department of State to be present when the appointment is made. Nor is such a person required by

(b) The Instrument of Appointment

18. In practice, the Governor-General exercises the powers in ss 64 and 65 of the Constitution by executing an instrument of appointment. The same instrument is often used to “appoint” an officer to “administer” a department (pursuant to s 64) and to “direct” that person to hold a particular “office” (pursuant to s 65). By way of example, the instrument of appointment issued by the Governor-General with respect to Mr Morrison following the 2019 federal election provided:

I, PETER JOHN COSGROVE, Governor-General of the Commonwealth of Australia, pursuant to sections 64 and 65 of the Constitution, hereby direct and appoint [Mr Morrison], a member of the Federal Executive Council, to hold the offices of PRIME MINISTER and MINISTER FOR THE PUBLIC SERVICE and to administer THE DEPARTMENT OF THE PRIME MINISTER AND CABINET.

That instrument both appointed Mr Morrison to administer the Department of the Prime Minister and Cabinet (under s 64) and directed him to hold the offices of Prime Minister and Minister for the Public Service (under s 65).

19. There is no reason why the Governor-General must exercise the powers under ss 64 and 65 concurrently. In particular, the Governor-General can appoint a person who is already a Minister to administer an additional department, without it being necessary to direct that person to hold a different or additional “office”. In such a case, the Governor-General would be exercising the power to appoint a person to administer a department (pursuant to s 64), but not the power to direct the person to hold an office (pursuant to s 65). That is in fact what occurred when Mr Morrison was appointed to administer the Department of Health on 14 March 2020 and the Department of Finance on 30 March 2020 (as neither of those instruments of appointment made any reference to s 65).

the Constitution to swear or affirm an oath in relation to the ministerial appointment”. That letter is publicly available through the Governor-General’s disclosure log: see <https://www.gg.gov.au/disclosure-log>.

20. As noted in the introduction to this opinion, Mr Morrison’s letter to the Governor-General on 12 April 2021 recommended that the Governor-General appoint him, “as Prime Minister, to administer [DISER]”, in order to allow him “to be the responsible Minister for matters within that Portfolio, if and when required”. Mr Morrison did not advise the Governor-General to direct him to hold a new office under s 65. He sought only to be appointed “as Prime Minister” to administer DISER so that he could exercise the powers of “the Minister”²⁰ under any legislation administered by DISER, without the need for one of the other Ministers administering DISER to authorise Mr Morrison to act on his or her behalf.²¹

21. Notwithstanding the above, the Instrument of Appointment stated:

I, DAVID JOHN HURLEY, Governor-General of the Commonwealth of Australia, pursuant to sections 64 and 65 of the Constitution, hereby direct and appoint [Mr Morrison], a member of the Federal Executive Council, to administer the DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES.

(underlined emphasis added)

22. The reference to s 65 of the Constitution in the Instrument of Appointment, and the use of the word “direct”, were inapposite. The instrument did not in fact direct Mr Morrison to hold any office (unlike the instrument quoted in paragraph 18 above, in which he was directed to hold the offices of “Prime Minister” and “Minister for the Public Service”). It therefore did not involve any exercise of power pursuant to s 65. In my view, however, the unnecessary reference to s 65 has no effect on the validity of the appointment under s 64. The instrument contained all the wording necessary to “appoint” Mr Morrison to “administer” DISER under s 64. The inclusion of superfluous words does not cast doubt on the legal efficacy of that appointment.

²⁰ See *Acts Interpretation Act 1901* (Cth) s 19(1).

²¹ Under *Acts Interpretation Act 1901* (Cth) s 34AAB(1).

23. Nor is it relevant to the validity of that appointment that Mr Morrison did not subscribe an oath upon his appointment to administer DISER. Mr Morrison had already sworn an oath as a Member of Parliament as required by s 42 of the Constitution, and he had subscribed an oath upon becoming a member of the Federal Executive Council on 18 September 2013. As discussed in paragraph 17 above, no further oath was required either upon an initial appointment as a Minister of State under s 64, or upon any subsequent appointment.

(c) Notification of an appointment is not a condition of its validity

24. As noted above, I am instructed that, after the Instrument of Appointment was executed, no action was taken by the Department of the Prime Minister and Cabinet to announce that appointment, the Instrument of Appointment was not published, no change was made to the Ministry list which is tabled in Parliament, and no gazettal was pursued. Further, I understand from media reporting that the other Ministers administering DISER (and presumably DISER itself) remained unaware of the appointment for at least some months after it occurred.
25. The above facts do not cast any doubt on the validity of Mr Morrison's appointment to administer DISER. Section 64 does not prescribe any procedures or mechanisms for giving effect to appointments. As a result, the appointment could be invalid only if there is an implicit condition that the valid exercise of the power to appoint an officer to administer a department of State depends on subsequent publication of the appointment. In my opinion, there is no such implicit condition.
26. There is nothing in the text or context of Ch II of the Constitution to support the implication of such a condition. The text of s 64 is expressed broadly in order

to preserve flexibility.²² As to context, while Ch II of the Constitution establishes the broad architecture or framework within which the executive power of the Commonwealth may be exercised, it deliberately leaves room for further evolution in the institution of responsible government.²³ That institution “was not a perfectly developed concept at the time of federation and, perhaps, is not yet so”.²⁴ Its “characteristics ... are not immutable”²⁵ and the “method of giving expression to the concept varies over time and according to changes in society”.²⁶ As Gleeson CJ put it in *Re Patterson*, the provisions in the Constitution concerning the Executive Government are expressed with a “deliberate lack of specificity” so as to avoid imposing “an unnecessary and inappropriate degree of inflexibility upon constitutional arrangements that need to be capable of development and adaptability”.²⁷ His Honour added that “[t]he practices and conventions which promote efficient and effective government administration alter over time, and need to be able to respond to changes in circumstances and in theory”.²⁸ Justices Gummow and Hayne (with whom Gleeson CJ and Kirby J relevantly agreed²⁹) similarly held that s 64 should be construed in a manner “which allows for development in a system of responsible ministerial government”,³⁰ expressly recognising that “[i]t is for each chamber [of Parliament] by its own internal procedures and regulations to provide

²² *Re Patterson* (2001) 207 CLR 391 at [15] (Gleeson CJ); Winterton, *Parliament, the Executive and the Governor-General* (1983) at 80, quoting Garran, *The Coming Commonwealth* (1897) at 149.

²³ See *Commonwealth v Kreglinger & Fernau Ltd* (1926) 37 CLR 393 at 412-413 (Isaacs J); *Re Patterson* (2001) 207 CLR 391 at [14] (Gleeson CJ), [211] (Gummow and Hayne JJ, Gleeson CJ and Kirby J relevantly agreeing).

²⁴ Cf *McGinty v Western Australia* (1996) 186 CLR 140 at 221 (Gaudron J); see also at 200 (Toohey J), 280 (Gummow J).

²⁵ *Re Patterson* (2001) 207 CLR 391 at [17] (Gleeson CJ); see also at [212] (Gummow and Hayne JJ, Gleeson CJ and Kirby J relevantly agreeing). See also Cooray, *Conventions, the Australian Constitution and the Future* (1979) at 66-74; *Egan v Willis* (1996) 40 NSWLR 650 at 660 (Gleeson CJ).

²⁶ *McGinty v Western Australia* (1996) 186 CLR 140 at 201 (Toohey J). See also *Attorney-General (Cth); ex rel McKinlay v Commonwealth* (1975) 135 CLR 1 at 35-36 (McTiernan and Jacobs JJ); *Williams v Commonwealth* (2012) 248 CLR 156 at [516]-[517] (Crennan J).

²⁷ (2001) 207 CLR 391 at [14].

²⁸ *Re Patterson* (2001) 207 CLR 391 at [15]. To similar effect, see also *Zoeller v Attorney-General (Cth)* (1987) 16 FCR 153 at 164-165 (Beaumont J).

²⁹ *Re Patterson* (2001) 207 CLR 391 at [1], [320].

³⁰ *Re Patterson* (2001) 207 CLR 391 at [211].

systems which facilitate the accountability of Ministers for the particular form of administration of the department of State in question”.³¹ Put simply, s 64 “is not a repository for bright line categories”.³²

27. A constitutional implication will be drawn only where that is “logically or practically necessary for the preservation of the integrity”³³ of the constitutional structure. Here, the fact that notification of an appointment to administer a department of State might, depending on all the circumstances, reasonably occur to different groups at different times (meaning that the content of any constitutional implication would be unclear), together with the emphasis that the High Court has placed on interpreting Ch II so that it can accommodate “change in governmental practice”³⁴ and the significant extent to which that result is achieved by leaving most aspects of the operation of the Executive Government to be controlled by convention and practice, tells decisively against the implication into the Constitution of an unexpressed publication requirement that would operate as an immutable condition subsequent to the valid exercise of the power under s 64 of the Constitution. For that reason, the fact that there was no notification to the public, the Parliament or the other Ministers administering DISER of Mr Morrison’s appointment on 15 April 2021 does not invalidate that appointment (although, as addressed below, it is relevant to whether that appointment was consistent with the conventions and practices of responsible government).

28. For completeness, I note that there is likewise no statutory requirement to publish an appointment to administer a department under s 64 of the

³¹ *Re Patterson* (2001) 207 CLR 391 at [220].

³² *Williams v Commonwealth* (2012) 248 CLR 156 at [79] (French CJ); *Mulholland v Australian Electoral Commission* (2004) 220 CLR 181 at [6], [9] (Gleeson CJ).

³³ *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 135 (Mason CJ); *McGinty v Western Australia* (1996) 186 CLR 140 at 168-169 (Brennan J); *Burns v Corbett* (2018) 265 CLR 304 at [94] (Gageler J), [175] (Gordon J).

³⁴ *Williams v Commonwealth* (2012) 248 CLR 156 at [79] (French CJ), referring to *Re Patterson* (2001) 207 CLR 391 at [15] (Gleeson CJ), [211] (Gummow and Hayne JJ, Gleeson CJ and Kirby J relevantly agreeing).

Constitution.³⁵ While the publication of such appointments in the Gazette has evidentiary consequences (as it would allow it to be “presumed, unless the contrary is proved, that the appointment was “duly done”³⁶), there is no legal obligation to publish such appointments in the Gazette or anywhere else.

(d) Responsible government and practice concerning the notification of Ministerial appointments

29. While I consider that Mr Morrison’s appointment to administer DISER was valid, that is not to say that the absence of any notification of that appointment to the Parliament, the public, the other Ministers administering DISER or DISER itself was consistent with the principle of responsible government that is inherent in Ch II of the Constitution. In my opinion, it was not.

(i) Responsible government

30. The provisions of Chapter II are sparse.³⁷ Nevertheless, the High Court has long recognised that they provide for a system of responsible government – meaning a “system by which the executive is responsible to the legislature and, through it, to the electorate”.³⁸ Indeed, responsible government has been recognised as

³⁵ Compare, for example, s 7A of the now repealed *Public Service Act 1922* (Cth), which provided that, as soon as practicable after a department specified in Sch 2 was abolished, established or renamed, the Prime Minister was obliged to cause a notice of the event to be published in the Gazette, specifying the date on which the event occurred.

³⁶ *Evidence Act 1995* (Cth) s 153(2)(b)(i).

³⁷ See Moore, *The Constitution of the Commonwealth of Australia* (2nd ed, 1910) at 168-169; Crommelin, “The Executive”, in Craven (ed), *The Convention Debates 1891-1898: Commentaries, Indices and Guide* (1986) vol 6 at 147, cited in *Re Patterson* (2001) 207 CLR 391 at [214] and [216] (Gummow and Hayne JJ, Gleeson CJ and Kirby J relevantly agreeing).

³⁸ *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 184-185 (Dawson J); see also at 135 (Mason CJ). See also *Comcare v Banerji* (2019) 267 CLR 373 at [59] (Gageler J), [146], [148] (Gordon J); Lindell, “Responsible Government” in Finn (ed), *Essays on Law and Government: Volume 1, Principles and Values* (1995) 75.

a “central feature of the Australian constitutional system”.³⁹ As a majority of the High Court put it in the *Engineers Case*, the Constitution is “permeated through and through with the spirit of ... the institution of responsible government”.⁴⁰

31. The concluding sentence of s 64 of the Constitution – by requiring that Ministers be, or within three months of appointment become, senators or members of the House of Representatives – “provides the machinery by which a Minister is accountable to Parliament”.⁴¹ It secures political accountability by ensuring the “individual responsibility of Ministers to Parliament for the administration of their departments”.⁴² As Gaudron, Gummow and Hayne JJ explained in *Egan v Willis*:⁴³

A system of responsible government traditionally has been considered to encompass ‘the means by which Parliament brings the Executive to account’ so that ‘the Executive’s primary responsibility in its prosecution of government is owed to Parliament’. ... [T]he task of the legislature [is] ‘to watch and control the government: to throw the light of publicity on its acts [T]o secure accountability of government activity is the very essence of responsible government’.

32. Plainly enough, it is impossible for the Parliament to hold Ministers to account for the administration of departments if it does not know which Ministers are responsible for which departments. As McHugh J put it in *Australian Capital Television Pty Ltd v Commonwealth*,⁴⁴ “[i]f the institutions of representative and

³⁹ *R v Kirby; Ex parte Boilermakers’ Society of Australia* (1956) 94 CLR 254 at 275 (Dixon CJ, McTiernan, Fullagar and Kitto JJ). See also *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 135 (Mason CJ, calling it “an integral element in the Constitution”).

⁴⁰ *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 at 147 (Knox CJ, Isaacs, Rich and Starke JJ, endorsing the words of Lord Haldane).

⁴¹ *Re Patterson* (2001) 207 CLR 391 at [64] (Gaudron J). See also *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 558-559 (the Court); *McCloy v New South Wales* (2015) 257 CLR 178 at [105] (Gageler J).

⁴² *Comcare v Banerji* (2019) 267 CLR 373 at [60] (Gageler J), quoting *FAI v Winneke* (1982) 151 CLR 342 at 364 (Mason J). See also *Comcare v Banerji* (2019) 267 CLR 373 at [146], [148]-[149] (Gordon J); Winterton, *Parliament, the Executive and the Governor-General* (1983) at 78-79.

⁴³ (1998) 195 CLR 424 at [42]. That passage was quoted with approval in *Re Patterson* (2001) 207 CLR 391 at [217] (Gummow and Hayne JJ, Gleeson CJ and Kirby J relevantly agreeing).

⁴⁴ (1992) 177 CLR 106 at 231.

responsible government are to operate effectively and as the Constitution intended, the business of government must be examinable and the subject of scrutiny, debate and ultimate accountability at the ballot box”. These are the very concerns that underpin the implied freedom of political communication, which operates as a limitation on legislative power.⁴⁵ That highlights the legal importance of the maintenance of the constitutionally prescribed system of representative and responsible government.

33. The means by which the Parliament acquires the information that it requires in order to hold the Executive Government to account are not specified in the Constitution. That reflects the fact that, despite its centrality and importance, responsible government is “a concept based upon a combination of law, convention, and political practice”.⁴⁶ The conventions and practices are generally enforced politically, not legally.⁴⁷ Nevertheless, while departure from those conventions or practices does not result in invalidity, they remain important as “part of the fabric on which the written words of the Constitution are superimposed”.⁴⁸

(ii) *Existing practice concerning the publication of appointments under s 64*

34. As a matter of practice, various forms of information have historically been made publicly available about the exercise of the powers conferred upon the

⁴⁵ See, eg, *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520; *McCloy v New South Wales* (2015) 257 CLR 178.

⁴⁶ *Re Patterson* (2001) 207 CLR 391 at [17] (Gleeson CJ); see also at [212] (Gummow and Hayne JJ, Gleeson CJ and Kirby J relevantly agreeing). See also *Egan v Willis* (1998) 195 CLR 424 at [152] (Kirby J); *Williams v Commonwealth* (2012) 248 CLR 156 at [515] (Crennan J); Cooray, *Conventions, the Australian Constitution and the Future* (1979) at 66-74; Moore, *The Constitution of the Commonwealth of Australia* (2nd ed, 1910) at 168-169.

⁴⁷ Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (2018) at 23, 27; Stellios, *Zines’s, The High Court and the Constitution* (6th ed, 2015) at 370; Lindell, “Responsible Government”, in Finn (ed), *Essays on Law and Government, Vol 1: Principles and Values* (1995) 75 at 80.

⁴⁸ *Commonwealth v Kreglinger & Fernau Ltd* (1926) 37 CLR 393 at 413 (Isaacs J).

Governor-General by Ch II of the Constitution. In particular, there is a longstanding practice of publishing in the Gazette: (i) appointments to the Federal Executive Council made under s 62 of the Constitution;⁴⁹ (ii) the establishment, abolition and renaming of departments under s 64 of the Constitution;⁵⁰ and (iii) changes to the offices held by Ministers under s 65 of the Constitution.⁵¹ By contrast, while there is some historical precedent for the publication in the Gazette of appointments to administer particular departments of State under s 64,⁵² there is no consistent practice in that regard.⁵³

35. The current edition of *House of Representatives Practice* states:⁵⁴

The approval of the Governor-General to the composition of the Ministry, the creation of departments, the allocation of portfolios and

⁴⁹ See, eg, Commonwealth, *Gazette*, No 1, 1 January 1901 at 4; Commonwealth, *Gazette*, No 12, 4 February 1920 at 1; Commonwealth, *Gazette*, No C2013G01423, 18 September 2012; Commonwealth, *Gazette*, No C2019G00472, 30 May 2019.

⁵⁰ See, eg, Commonwealth, *Gazette*, No 1, 1 January 1901 at 4; Commonwealth, *Gazette*, No 28, 15 March 1971 at 1 (abolishing the Prime Minister’s Department and the Department of the Cabinet Office and establishing the Department of the Prime Minister and Cabinet); Commonwealth, *Gazette*, No C2017G01401, 22 December 2017 (renaming certain departments of State with effect from 20 December 2017).

⁵¹ See, eg, Commonwealth, *Gazette*, No C2019G00472, 30 May 2019 (publishing the offices held following the 2019 federal election). An equivalent document concerning the Turnbull Ministry was published in Commonwealth, *Gazette*, No C2017G01400, 21 December 2017.

⁵² See, eg, Commonwealth, *Gazette*, No 1, 1 January 1901 at 4; Commonwealth, *Gazette*, No S 59, 27 March 1975; Commonwealth, *Gazette*, No S 336, 20 July 1999; Commonwealth, *Gazette*, No C2015G00825, 29 May 2015.

⁵³ There was a longstanding practice of gazettes referring to Ministers being appointed to administer a department or departments of State “connected with” or “in connection with” an identified office, without that department or those departments actually being named: see, eg, Commonwealth, *Gazette*, No 65, 5 August 1920 at 1049; Commonwealth, *Gazette*, No 33, 1 May 1930 at 861; Commonwealth, *Gazette*, No 53, 14 March 1940 at 636; Commonwealth, *Gazette*, No 15, 17 March 1950 at 665; Commonwealth, *Gazette*, No 13, 11 February 1960 at 613; Commonwealth, *Gazette*, No S 85, 5 April 1990 at 3-5. More recently, however, the gazettes have normally publicised appointments to Ministerial offices, without mentioning appointments to administer departments at all: see, eg, Commonwealth, *Gazette*, No S 26, 25 January 2002; Commonwealth, *Gazette*, No S 26, 10 March 2010; Commonwealth, *Gazette*, No S 76 C2013G00976, 27 June 2013; Commonwealth, *Gazette*, No C2021G00456, 24 June 2021.

⁵⁴ House of Representatives, “The Ministry”, *House of Representatives Practice* (7th ed) available at: https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter2/The_Ministry.

any ministerial and departmental change is notified publicly⁵⁵ and announced in the House.⁵⁶

The footnotes in that extract refer, respectively, to a Gazette giving notice of an amendment to an AAO, and to a Ministry list which was tabled in Parliament. That highlights the extent to which, as a matter of practice, Ministry lists have assumed importance in providing the information upon which the proper functioning of responsible government depends.

36. Ministry lists have been tabled in Parliament after every federal election since at least the 1970s (and probably for much longer⁵⁷), and updated lists have also been tabled following changes to ministerial offices during a parliamentary term.⁵⁸ They are also published on the website of the Department of the Prime Minister and Cabinet. I have identified two occasions, being the lists published after the 1987 and 1990 federal elections,⁵⁹ when the Ministry lists included a column showing which departments were administered by each Minister. Ordinarily, however, both before⁶⁰ and after⁶¹ those examples, Ministry lists have not included that information.

⁵⁵ See, eg, Commonwealth, *Gazette*, No C2016G01034, 27 July 2016.

⁵⁶ House of Representatives, *Votes and Proceedings* (30 August 2016) at 7-9.

⁵⁷ There has certainly been a longstanding practice of announcing the Ministry in the first session of a new Parliament following a federal election: see, eg, House of Representatives, *Hansard* (20 November 1929) at 16; House of Representatives, *Hansard* (23 September 1943) at 18; House of Representatives, *Hansard* (6 November 1946) at 18-19; House of Representatives, *Hansard* (15 February 1956) at 16.

⁵⁸ See, eg, House of Representatives, *Hansard* (3 August 2021) at 7226-7229.

⁵⁹ See House of Representatives, *Hansard* (14 September 1987) at 9-11; House of Representatives, *Hansard* (8 May 1990) at 14-15. In 1990, Parliament was also informed of the broad division of responsibility between Ministers where more than one was appointed to administer a single department: House of Representatives, *Hansard* (8 May 1990) at 15-17.

⁶⁰ See, eg, House of Representatives, *Hansard* (21 February 1978) at 10-11; House of Representatives, *Hansard* (25 November 1980) at 9-10; House of Representatives, *Hansard* (21 April 1983) at 11-12; House of Representatives, *Hansard* (21 February 1985) at 8-9.

⁶¹ See, eg, House of Representatives, *Hansard* (4 May 1993) at 18-19; House of Representatives, *Hansard* (16 November 2004) at 12-14; House of Representatives, *Hansard* (28 September 2010) at 13-15; House of Representatives, *Hansard* (30 August 2016) at 11-13; House of Representatives, *Hansard* (12 July 2019) at 12-16.

37. Even without a column listing appointments under s 64, some inferences can be drawn as to those appointments from the publication of ministerial offices in the Ministry list. However, while such inferences may have been sufficient when the practice was that Ministers were appointed to administer only one department, they are now insufficient to allow appointments under s 64 of the Constitution to be identified. The issue can be illustrated by reference to the Ministry list for the Second Morrison Ministry published on 8 October 2021 (a complete copy of which is **Annexure A** to this opinion). It stated, in part:

Title	Minister
Prime Minister	The Hon Scott Morrison MP
Minister for Women	Senator the Hon Marise Payne
Minister for Emergency Management and National Recovery and Resilience	Senator the Hon Bridget McKenzie
Minister for Indigenous Australians	The Hon Ken Wyatt AM MP
Minister Assisting the Prime Minister and Cabinet	The Hon Ben Morton MP
Minister for the Public Service	The Hon Ben Morton MP
<i>Assistant Minister to the Prime Minister for Mental Health and Suicide Prevention</i>	<i>The Hon David Coleman MP</i>
<i>Assistant Minister for Women</i>	<i>Senator the Hon Amanda Stoker</i>
Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development	The Hon Barnaby Joyce MP
Minister for Agriculture and Northern Australia	The Hon David Littleproud MP
Minister for Communications, Urban Infrastructure, Cities and the Arts	The Hon Paul Fletcher MP
Minister for Regionalisation, Regional Communications and Regional Education	Senator the Hon Bridget McKenzie
<i>Assistant Minister for Road Safety and Freight Transport</i>	<i>The Hon Scott Buchholz MP</i>
<i>Assistant Minister to the Deputy Prime Minister</i>	<i>The Hon Kevin Hogan MP</i>
<i>Assistant Minister for Local Government</i>	<i>The Hon Kevin Hogan MP</i>
<i>Assistant Minister for Regional Development and Territories</i>	<i>The Hon Nola Marino MP</i>

38. Ministry lists invariably contain a footer, the content of which has evolved in important respects in recent years. Apparently commencing from the Ministry list dated 28 August 2018 (four days after Mr Morrison became Prime Minister),⁶² and certainly since 25 January 2019, that footer has stated:

⁶² I say “apparently” because a Ministry list dated 28 August 2018 and containing this footer was tabled in the Senate on 10 September 2018: see **Annexure B** to this opinion, which was downloaded from on the Tabled Papers Register on the parlinfo.aph.gov.au website. However, Senate, *Hansard* (10 September 2018) at 5788-5789 records Senator Cormann tabling a revised Ministry list that (as reproduced in *Hansard*) does not contain that footer. The same is true of the version of the Ministry list that Mr Morrison tabled: House of Representatives, *Hansard* (10 September 2018) at 8376. Similarly, the version of the Ministry list which was published on the Department of the Prime Minister and Cabinet’s website dated 26 August 2018 does not contain that footer (see: <https://www.pmc.gov.au/sites/default/files/publications/morrison-ministry-announced-260818.pdf>). However, by 25 January 2019, the version of the Ministry list published on that website did contain a footer corresponding to that of the Ministry list reproduced as **Annexure B** to this opinion.

Each box represents a portfolio. **Cabinet Ministers are shown in bold type.** As a general rule, there is one department in each portfolio. However, there can be two departments in one portfolio. The title of a department does not necessarily reflect the title of a Minister in all cases. Ministers are sworn to administer the portfolio in which they are listed under the ‘Minister’ column and may also be sworn to administer other portfolios in which they are not listed

(underlined emphasis added)

39. As the fourth sentence in the footer acknowledges, in some cases a portfolio (represented by a box in the above table) may encompass multiple departments (although prior to 2019 the footer usually expressly identified the cases where this occurred). At present, it is not clear which portfolios include multiple departments. Further, where a portfolio does include multiple departments, it is not clear whether the Ministers listed within that portfolio have been appointed to administer all, or only some, of those departments. That highlights one of the limitations of the Ministry list as a tool for identifying which Ministers have been appointed to administer which departments under s 64 of the Constitution.
40. The Ministry list extracted above also illustrates the practice of Cabinet Ministers being appointed to administer departments other than the department for which they are principally responsible. For example, Senator the Hon Marise Payne is listed in the above extract as the Minister for Women (within the Prime Minister’s portfolio) and also (in a part of the Ministry list not extracted above, but which is annexed to this opinion) as the Minister for Foreign Affairs. That implies that Senator Payne had been appointed under s 64 to administer at least the Department of Foreign Affairs and the Department of the Prime Minister and Cabinet. As discussed above, such appointments are permitted by s 64. They are now reasonably common.⁶³

⁶³ An early example of this practice appears in House of Representatives, *Hansard* (6 November 1946) at 19, which records, after the Ministry was listed, the statement: “In addition to the duties associated with their portfolios, it has been arranged that the Minister for Health and Minister for Social Services (Senator McKenna) will assist the Attorney-General and Minister for External Affairs (Dr Evatt) in administering the office of Attorney-General, and that the Minister for Works and Housing (Mr Lemmon) will assist me in the office of Treasurer”.

41. In cases where the appointments are made public, the fact that multiple Ministers may be responsible for administering a single department is not inconsistent with responsible government. In such circumstances, as a matter of law each Minister may individually exercise such powers as are conferred on “the Minister” by legislation that is identified in the AAO as legislation that is administered by that department.⁶⁴ As a matter of good administration, it is for the Ministers themselves (or the Prime Minister) to work out “the method by which the Department will be administered”, including as to any division of responsibility between Ministers.⁶⁵ As a matter of accountability, it is for “Parliament to determine the procedures by which those ... persons will answer for the conduct of such administration”.⁶⁶

(iii) *Recent change in practice concerning Ministry lists*

42. Apparently since Mr Morrison became Prime Minister in August 2018 (and certainly since no later than 25 January 2019), it has not been possible to infer from the Ministry list that a Minister has been appointed to administer only such departments as fall within the portfolios against which that Minister’s name appears. That follows because, since that time, the footer to the Ministry list has denied the legitimacy of any such inference, by expressly stating that Ministers “may also be sworn to administer other portfolios in which they are not listed”. The impetus for the inclusion of those words is unclear, although it seems possible that they were included so as to ensure that the tabling of the Ministry list did not mislead Parliament. The words contemplate an apparent

⁶⁴ See *Acts Interpretation Act 1901* (Cth) s 19(1). The exercise of power in those circumstances does not depend upon one Minister authorising another to act on his or her behalf, as is required under s 34AAB(1) of the *Acts Interpretation Act 1901* (Cth).

⁶⁵ See *Re Patterson* (2001) 207 CLR 391 at [17] (Gleeson CJ) and [209] (Gummow and Hayne JJ, Gleeson CJ and Kirby J relevantly agreeing), quoting an opinion of Sir Douglas Menzies QC; Sawyer, “Councils, Ministers and Cabinets in Australia” (1958) *Public Law* 110 at 124; Campbell, “Ministerial Arrangements”, Appendix 1.G to *Royal Commission on Australian Government Administration* (1976) vol 1 at [37].

⁶⁶ *Re Patterson* (2001) 207 CLR 391 at [17] (Gleeson CJ); see also at [206] (Gummow and Hayne JJ, Gleeson CJ and Kirby J relevantly agreeing).

practice whereby Ministers may be appointed to administer one or more departments of State without those appointments being published (at least in the Ministry list). The point is starkly illustrated by the fact that Mr Morrison's name did not appear in the Ministry list published in October 2021 with respect to any of the five departments that he was appointed to administer between March 2020 and May 2021.

43. The result of the analysis above is that there was no way the public could discern from the Ministry list, or anywhere else, that Mr Morrison had been appointed to administer either DISER or any of the other four departments that he was appointed to administer between March 2020 and May 2021. There was likewise no way of knowing whether any other Ministers had also been appointed to administer additional departments without that being mentioned in the Ministry list.

(iv) Implications for responsible government

44. The capacity of the public and the Parliament to ascertain which Ministers have been appointed to administer which departments is critical to the proper functioning of responsible government, because it is those appointments, when read together with the AAO, that determine the matters for which a Minister is legally and politically responsible.
45. The pathway to that conclusion is fairly technical. It is the result of reading the AAO together with the *Acts Interpretation Act 1901* (Cth). The AAO provides that a Minister who has been appointed to administer a department is responsible for administering the legislation listed in the Schedule to the AAO relating to that department. The *Acts Interpretation Act 1901* (Cth) then provides that references to "the Minister" in legislation are to be interpreted as a reference to

“the Minister, or any of the Ministers, administering the provision”.⁶⁷ The result is that the Ministers who are entitled to exercise statutory powers under any Act of the Commonwealth Parliament cannot be identified without first identifying from the AAO which department administers that Act, and then identifying the Ministers who have been appointed to administer that department.

46. The end result is that, to the extent that the public and the Parliament are not informed of appointments that have been made under s 64 of the Constitution, the principles of responsible government are fundamentally undermined. Neither the people nor the Parliament can hold a Minister accountable for the exercise (or, just as importantly, for the non-exercise) of particular statutory powers if they are not aware that the Minister has those powers. Nor can they hold the correct Ministers accountable for any other actions, or inactions, of departments. The undermining of responsible government therefore does not depend on the extent to which Mr Morrison exercised powers under legislation administered by DISER, because from the moment of his appointment he was both legally and politically responsible for the administration of that department, and yet he could not be held accountable for the way that he performed (or did not perform) that role.
47. Separately from the problem of holding Ministers to account, if multiple Ministers have been appointed to administer a single department, those Ministers (or the Prime Minister) are responsible for working out the division of responsibilities between themselves. However, if one Minister does not know that another Minister has been appointed to administer their department, that obviously cannot occur.
48. Finally, an appointment under s 64 of the Constitution is an appointment to “administer” a department. Plainly, however, a department cannot, in practice,

⁶⁷ See *Acts Interpretation Act 1901* (Cth) s 19(1).

be administered by a person whose appointment has not been revealed to the department itself. Failure to inform at least the Secretary of the department of the appointment therefore defeats the purpose of the appointment.⁶⁸ It also prevents the department from taking appropriate steps to support and advise that Minister if the Minister decides to exercise powers under any legislation that is administered by that department (unless the appointment is disclosed at that time, as appears to have occurred with respect to Mr Morrison’s appointment to administer DISER). An unpublicised appointment to administer a department therefore fundamentally undermines not just the proper functioning of responsible government, but also the relationship between the Ministry and the public service.

(e) Possible solutions

49. There are many ways that the Government could remedy the situation identified above.
50. Most straightforwardly, it could alter the form of the Ministry lists to ensure that they include details of all appointments under s 64 of the Constitution (as was done in 1987 and 1990). In addition, the Government could require, as an administrative practice, the website of each department to list all of the Ministers who have been appointed to administer that department.
51. Further or alternatively, a practice could be adopted of publishing in the Gazette all appointments made under s 64 of the Constitution, in much the same way as currently occurs for appointments made under s 65 of the Constitution. It appears that the gazettal of appointments under s 65 occurs at the instigation of

⁶⁸ See generally *Public Service Act 1999* (Cth) s 57, specifying the roles and responsibilities of the Secretary, which presuppose close collaboration with the “Agency Minister. The term “Agency Minister” is defined in s 7 to mean “in relation to a Department – the Minister who administers the Department”. Here, of course, the singular “the Minister” includes the plural: *Acts Interpretation Act 1901* (Cth), s 23(b).

the Governor-General.⁶⁹ If that is correct, and if the Governor-General were to agree to institute such a practice in relation to appointments under s 64,⁷⁰ that would insulate the publication of those appointments from the wishes of the Prime Minister of the day (subject, perhaps, to the Prime Minister providing express advice to the Governor-General not to publish an appointment).

52. A further alternative would be for the Governor-General, acting with the advice of the Federal Executive Council, to alter the form of the AAO⁷¹ to include, in the part of the Schedule relating to each department of State, a new section listing every Minister who has been appointed to administer that Department. That would have the considerable practical benefit of including in one place all of the information necessary to identify the Minister or Ministers who can exercise power under any Act (absent a request from one of those Ministers that another Minister act on their behalf).⁷²
53. The above reform could be taken a step further by including reference in the AAO to arrangements by which the Prime Minister (or the Ministers themselves) have divided responsibility for the administration of different parts of a department between them (including, for example, by assigning responsibility to administer different Acts to different Ministers).⁷³ At present, any such division of responsibilities is often recorded only in charter letters from the Prime Minister to the relevant Ministers, which generally are not publicly

⁶⁹ See, eg, Commonwealth, *Gazette*, No C2019G00472, 29 May 2019 publishing the offices held following the 2019 federal election, which commences with the words “the Governor-General directs it to be notified, for general information, that ...”. It is, however, possible that even in this respect the Governor-General acts only on advice.

⁷⁰ For example, by issuing gazettes in a similar form to the s 65 gazettes, or by including instruments of appointment under s 64 in the disclosure log that appears on the website of the Governor-General: <https://www.gg.gov.au/disclosure-log>.

⁷¹ At present, the AAO lists matters to be dealt with by each department and the legislation to be administered by a minister administering that department, but does not identify which officers are appointed to administer each department under s 64.

⁷² See *Acts Interpretation Act 1901* (Cth) s 19(2)(a).

⁷³ Such a division of responsibilities was proposed by Professor Campbell: see Campbell, “Ministerial Arrangements”, Appendix 1.G to *Royal Commission on Australian Government Administration* (1976) vol 1 at [37].

available. That can make it difficult to identify the Minister within a portfolio who is actually responsible for particular matters. If a division of responsibility is specified in the AAO, that would be without prejudice to the power of any other Minister to exercise power on behalf of the Minister identified in the AAO, utilising the mechanism provided by s 34AAB of the *Acts Interpretation Act 1901* (Cth).

54. Of course, none of the above proposals would bind a future Government. For that reason, the Government might choose to entrench a requirement for the publication of appointments under s 64 of the Constitution, by creating a statutory requirement that such appointments be published (which would legally require publication unless or until a future Parliament repealed that requirement). In my opinion it is clear that Parliament has power to enact such a requirement. It could, for example, require the gazettal of those appointments, or alternatively it could require the instruments making those appointments to be included on a public register (such as the Federal Register of Legislation). No doubt other approaches are also possible.
55. I am grateful to my counsel assisting, Michael Maynard and Arlette Regan, for their assistance in the preparation of this opinion.
56. I advise accordingly.

Dated: 22 August 2022



STEPHEN DONAGHUE QC

Solicitor-General

SECOND MORRISON MINISTRY

Title	Minister
Prime Minister Minister for Women Minister for Emergency Management and National Recovery and Resilience Minister for Indigenous Australians Minister Assisting the Prime Minister and Cabinet Minister for the Public Service <i>Assistant Minister to the Prime Minister for Mental Health and Suicide Prevention</i> <i>Assistant Minister for Women</i>	The Hon Scott Morrison MP Senator the Hon Marise Payne Senator the Hon Bridget McKenzie The Hon Ken Wyatt AM MP The Hon Ben Morton MP The Hon Ben Morton MP <i>The Hon David Coleman MP</i> <i>Senator the Hon Amanda Stoker</i>
Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development Minister for Agriculture and Northern Australia Minister for Communications, Urban Infrastructure, Cities and the Arts Minister for Regionalisation, Regional Communications and Regional Education <i>Assistant Minister for Road Safety and Freight Transport</i> <i>Assistant Minister to the Deputy Prime Minister</i> <i>Assistant Minister for Local Government</i> <i>Assistant Minister for Regional Development and Territories</i>	The Hon Barnaby Joyce MP The Hon David Littleproud MP The Hon Paul Fletcher MP Senator the Hon Bridget McKenzie <i>The Hon Scott Buchholz MP</i> <i>The Hon Kevin Hogan MP</i> <i>The Hon Kevin Hogan MP</i> <i>The Hon Nola Marino MP</i>
Treasurer Assistant Treasurer Minister for Housing Minister for Superannuation, Financial Services and the Digital Economy Minister for Women's Economic Security	The Hon Josh Frydenberg MP The Hon Michael Sukkar MP The Hon Michael Sukkar MP Senator the Hon Jane Hume Senator the Hon Jane Hume
Minister for Finance (Vice-President of the Executive Council) (Leader of the Government in the Senate) Special Minister of State	Senator the Hon Simon Birmingham The Hon Ben Morton MP
Minister for Agriculture and Northern Australia Minister for the Environment Minister for Resources and Water <i>Assistant Minister for Waste Reduction and Environmental Management</i> <i>Assistant Minister for Forestry and Fisheries</i>	The Hon David Littleproud MP The Hon Sussan Ley MP The Hon Keith Pitt MP <i>The Hon Trevor Evans MP</i> <i>Senator the Hon Jonathon Duniam</i>
Minister for Foreign Affairs Minister for Trade, Tourism and Investment Minister for International Development and the Pacific Minister Assisting the Minister for Trade and Investment <i>Assistant Minister for Regional Tourism</i>	Senator the Hon Marise Payne The Hon Dan Tehan MP Senator the Hon Zed Seselja The Hon Dr David Gillespie MP <i>The Hon Michelle Landry MP</i>
Minister for Defence (Leader of the House) Minister for Defence Industry Minister for Veterans' Affairs Minister for Defence Personnel <i>Assistant Minister for Defence</i>	The Hon Peter Dutton MP The Hon Melissa Price MP The Hon Andrew Gee MP The Hon Andrew Gee MP <i>The Hon Andrew Hastie MP</i>
Attorney-General Minister for Industrial Relations (Deputy Leader of the Government in the Senate) <i>Assistant Minister to the Attorney-General</i> <i>Assistant Minister for Industrial Relations</i>	Senator the Hon Michaelia Cash Senator the Hon Michaelia Cash <i>Senator the Hon Amanda Stoker</i> <i>Senator the Hon Amanda Stoker</i>
Minister for Health and Aged Care Minister for Senior Australians and Aged Care Services Minister for Sport Minister for Regional Health (Deputy Leader of the House)	The Hon Greg Hunt MP Senator the Hon Richard Colbeck Senator the Hon Richard Colbeck The Hon Dr David Gillespie MP
Minister for Families and Social Services Minister for Women's Safety (Manager of Government Business in the Senate) Minister for Government Services Minister for the National Disability Insurance Scheme Minister for Homelessness, Social and Community Housing <i>Assistant Minister for Children and Families</i>	Senator the Hon Anne Ruston Senator the Hon Anne Ruston Senator the Hon Linda Reynolds CSC Senator the Hon Linda Reynolds CSC The Hon Michael Sukkar MP <i>The Hon Michelle Landry MP</i>
Minister for Home Affairs Minister for Emergency Management and National Recovery and Resilience Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs <i>Assistant Minister for Customs, Community Safety and Multicultural Affairs</i>	The Hon Karen Andrews MP Senator the Hon Bridget McKenzie The Hon Alex Hawke MP <i>The Hon Jason Wood MP</i>
Minister for Industry, Energy and Emissions Reduction Minister for Science and Technology Minister for Resources and Water <i>Assistant Minister for Industry Development</i> <i>Assistant Minister to the Minister for Industry, Energy and Emissions Reduction</i>	The Hon Angus Taylor MP The Hon Melissa Price MP The Hon Keith Pitt MP <i>Senator the Hon Jonathon Duniam</i> <i>The Hon Tim Wilson MP</i>
Minister for Employment, Workforce, Skills, Small and Family Business Minister for Education and Youth Minister for Regionalisation, Regional Communications and Regional Education <i>Assistant Minister for Youth and Employment Services</i>	The Hon Stuart Robert MP The Hon Alan Tudge MP Senator the Hon Bridget McKenzie <i>The Hon Luke Howarth MP</i>

Each box represents a portfolio. **Cabinet Ministers are shown in bold type.** As a general rule, there is one department in each portfolio. However, there can be two departments in one portfolio. The title of a department does not necessarily reflect the title of a Minister in all cases. Ministers are sworn to administer the portfolio in which they are listed under the 'Minister' column and may also be sworn to administer other portfolios in which they are not listed. Assistant Ministers in italics are designated as Parliamentary Secretaries under the *Ministers of State Act 1952*.

MORRISON MINISTRY

28 August 2018



TITLE	MINISTER	OTHER CHAMBER
Prime Minister	The Hon Scott Morrison MP	Senator the Hon Mathias Cormann
Minister for Indigenous Affairs	Senator the Hon Nigel Scullion	The Hon Ken Wyatt AM MP
Minister for Women	The Hon Kelly O'Dwyer MP	Senator the Hon Marise Payne
<i>Assistant Minister to the Prime Minister</i>	<i>The Hon Steve Irons MP</i>	
Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development	The Hon Michael McCormack MP	Senator the Hon Bridget McKenzie
Minister for Regional Services, Sport, Local Government and Decentralisation	Senator the Hon Bridget McKenzie	The Hon David Littleproud MP
Minister for Cities, Urban Infrastructure and Population	The Hon Alan Tudge MP	Senator the Hon Bridget McKenzie
<i>Assistant Minister for Regional Development and Territories</i>	<i>The Hon Sussan Ley MP</i>	
<i>Assistant Minister to the Deputy Prime Minister</i>	<i>The Hon Andrew Broad MP</i>	
<i>Assistant Minister for Roads and Transport</i>	<i>The Hon Scott Buchholz MP</i>	
Treasurer	The Hon Josh Frydenberg MP	Senator the Hon Mathias Cormann
Assistant Treasurer	The Hon Stuart Robert MP	Senator the Hon Mathias Cormann
<i>Assistant Minister for Treasury and Finance</i>	<i>Senator the Hon Zed Seselja</i>	
Minister for Finance and the Public Service (Vice-President of the Executive Council) (Leader of the Government in the Senate) Special Minister of State	Senator the Hon Mathias Cormann	The Hon Josh Frydenberg MP
<i>Assistant Minister for Treasury and Finance</i>	The Hon Alex Hawke MP <i>Senator the Hon Zed Seselja</i>	Senator the Hon Mathias Cormann
Minister for Defence (Leader of the House)	The Hon Christopher Pyne MP	Senator the Hon Marise Payne
Minister for Defence Industry	The Hon Steven Ciobo MP	Senator the Hon Marise Payne
Minister for Veterans' Affairs	The Hon Darren Chester MP	Senator the Hon Marise Payne
Minister for Defence Personnel (Deputy Leader of the House)	The Hon Darren Chester MP	Senator the Hon Marise Payne
Minister Assisting the Prime Minister for the Centenary of ANZAC	The Hon Darren Chester MP	Senator the Hon Marise Payne
<i>Assistant Minister for Defence</i>	<i>Senator the Hon David Fawcett</i>	
Minister for Foreign Affairs	Senator the Hon Marise Payne	The Hon Christopher Pyne MP
Minister for Trade, Tourism and Investment (Deputy Leader of the Government in the Senate)	Senator the Hon Simon Birmingham	The Hon Steven Ciobo MP
<i>Assistant Minister for International Development and the Pacific</i>	<i>Senator the Hon Anne Ruston</i>	
<i>Assistant Minister for Trade, Tourism and Investment</i>	<i>The Hon Mark Coulton MP</i>	
Attorney-General	The Hon Christian Porter MP	Senator the Hon Michaelia Cash
Minister for Home Affairs	The Hon Peter Dutton MP	Senator the Hon Michaelia Cash
Minister for Immigration, Citizenship and Multicultural Affairs	The Hon David Coleman MP	Senator the Hon Michaelia Cash
<i>Assistant Minister for Home Affairs</i>	<i>Senator the Hon Linda Reynolds CSC</i>	
Minister for Communications and the Arts (Manager of Government Business in the Senate)	Senator the Hon Mitch Fifield	The Hon Paul Fletcher MP
Minister for Jobs and Industrial Relations	The Hon Kelly O'Dwyer MP	Senator the Hon Marise Payne
Minister for Small and Family Business, Skills and Vocational Education	Senator the Hon Michaelia Cash	The Hon Kelly O'Dwyer MP
Minister for Resources and Northern Australia	Senator the Hon Matthew Canavan	The Hon Angus Taylor MP
Minister for Industry, Science and Technology	The Hon Karen Andrews MP	Senator the Hon Matthew Canavan
Minister for Education	The Hon Dan Tehan MP	Senator the Hon Simon Birmingham
Minister for Health	The Hon Greg Hunt MP	Senator the Hon Nigel Scullion
Minister for Senior Australians and Aged Care	The Hon Ken Wyatt AM MP	Senator the Hon Nigel Scullion
Minister for Indigenous Health	The Hon Ken Wyatt AM MP	Senator the Hon Nigel Scullion
Minister for Families and Social Services	The Hon Paul Fletcher MP	Senator the Hon Mitch Fifield
Minister for Human Services and Digital Transformation	The Hon Michael Keenan MP	Senator the Hon Mitch Fifield
<i>Assistant Minister for Social Services, Housing and Disability Services</i>	<i>The Hon Sarah Henderson MP</i>	
<i>Assistant Minister for Children and Families</i>	<i>The Hon Michelle Landry MP</i>	
Minister for Agriculture and Water Resources	The Hon David Littleproud MP	Senator the Hon Matthew Canavan
<i>Assistant Minister for Agriculture and Water Resources</i>	<i>Senator the Hon Richard Colbeck</i>	
Minister for the Environment	The Hon Melissa Price MP	Senator the Hon Simon Birmingham
Minister for Energy	The Hon Angus Taylor MP	Senator the Hon Simon Birmingham

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**IN THE MATTER OF THE
VALIDITY OF THE
APPOINTMENT OF MR
MORRISON TO ADMINISTER
THE DEPARTMENT OF
INDUSTRY, SCIENCE, ENERGY
AND RESOURCES**

OPINION

Attention:
John Reid
A/g Deputy Secretary
Department of the Prime Minister and
Cabinet

SG No. 12 of 2022