



*Commonwealth Ministers, including Prime Minister Anthony Albanese, after being sworn in by the Governor-General, General the Honourable David Hurley AC DSC (Retd) | June 2022
Source: Anthony Albanese Twitter*

Confusingly, most statutes just give power to 'the Minister', without saying which one. This makes it hard for ordinary people to know who has the power. The trick is to find the latest 'Administrative Arrangements Order', which for the Commonwealth is published on the Federal Register of Legislation. It lists the matters dealt with by each Department, and the statutes administered by the Minister in charge of that Department.

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. They can also be quizzed more closely by committees, including 'Estimates Committees', which examine how government money is spent.

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

Yes, there are lots of 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 the Minister cannot take over the exercise of the organisation's powers or give it oral or secret directions.

Third, the Minister must obey legal rules about making decisions fairly. These rules, which form part of administrative law, are imposed 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 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 Statement of Ministerial Standards. 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 Statement 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. So giving government money to organisations for the purpose of advantaging your own election or that of your political party would be biased, unfair and not a disinterested exercise of power.

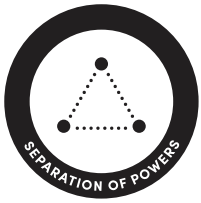
The Statement of Ministerial Standards also says that Ministers must accept accountability for the exercise of their powers and that they must observe 'fairness in making official decisions – that is, to act honestly and reasonably, with



Parliament House, Canberra
Source: IStock

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. They are not all-powerful. There are many important limits on their powers, with which they should comply.



Topic 6.3 and 7.1: Lesson/Activities Ten



AUSTRALIAN
CONSTITUTION
CENTRE

Executive Power – The powers of Ministers and their limits

Time/Lesson

- 1 hour

Learning Goal

For students to understand the position roles and powers of Ministers.

Rationale

Students will understand what Ministers do and what the limits on their powers are including obeying legal rules about making decisions fairly.

Teaching Reference Document

- TRD 63 Executive Power – The powers of Ministers and their limits

Resources

- Internet classroom access and/or copies of different newspapers for the day
- Copy of the Australian Constitution or internet access to it

Teacher Instruction

- Teacher discusses TRD 63 Executive Power – The powers of Ministers and their limits:
 - What does the Constitution say?
 - Who makes up the Ministry.
 - Are there limits to Ministers or can they do what they like?
 - What do Ministers do?
 - Are there limits on Ministers' powers or can they do what they like?
- Students, in groups, each look at a different hard-copy newspaper or a news media outlet on the internet for the day. Students mark down all the different articles that refer to a Minister and the subject and type of decision the Minister is making or is being asked to make. Are they being asked to introduce a law into Parliament, or make a policy, or spend government money, or change an existing law or policy? Get the groups to feed this information into a collective list. Then ask students to identify the issue of the day which is of most interest to them. What are the arguments for and against the Minister making a particular decision on that issue? Back in their groups, students prepare a letter to the relevant Minister that presents a case to them to act in a particular way, drawing on the evidence provided in the newspaper articles and any supplementary internet research.

Extension

- Students access and consider this article about the rules that limit ministerial powers and how they are often not enforced: <https://theconversation.com/rorts-scandals-in-politics-are-rife-so-what-exactly-are-the-rules-157411>.
- Students apply what they now know about the rules to a recent controversy concerning ministerial behaviour. Students may research the controversy by drawing on official reports, such as reports by the Auditor-General, a parliamentary committee, a royal commission or an anti-corruption body.
- Students identify any failures in the rules and how they have been enforced and draft a letter to the Attorney-General arguing the case for improved rules and better enforcement of limits on ministerial powers. Explain why it is important that ministers obey rules of fairness and impartiality to ensure that public trust in the democratic system is maintained.

Assessment

- Students are assessed upon the quality of their letter to the Minister (or in the case of extension, the Attorney-General).
- The assessment may be differentiated by allowing students to make a speech on the relevant issue, role-playing the role of a back-bencher putting the case to Parliament and seeking to persuade the Minister.