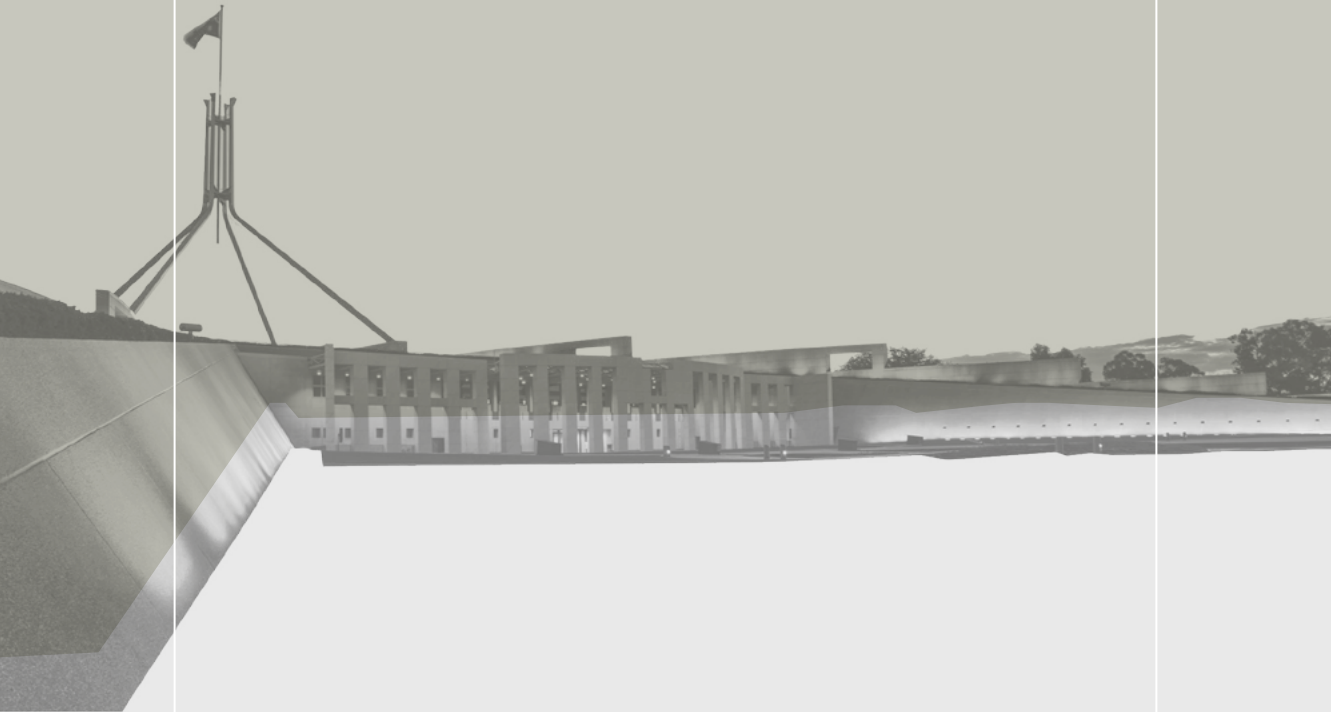




Report of the Inquiry into the Appointment of the Former Prime Minister to Administer Multiple Departments

The Hon Virginia Bell AC

25 November 2022



Acknowledgement of country

I acknowledge the traditional custodians of Australia and their continuing connection to land, waters and community. In particular, I acknowledge the Ngunnawal, Ngambri, and Gadigal people, the traditional custodians of the land on which this report was prepared. I pay respects to the people, the cultures and their Elders, past and present, and thank them for their ongoing contributions to the culture and prosperity of this country.



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Inquiry into the Appointment of the Former Prime Minister to Administer Multiple Departments

25 November 2022

**The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600**

Dear Prime Minister,

I am pleased to present the report of my inquiry into the appointment of the former Prime Minister, the Hon Scott Morrison MP, to administer departments other than the Department of the Prime Minister and Cabinet.

Yours sincerely,

A handwritten signature in black ink that reads 'Virginia Bell'.

The Hon Virginia Bell AC

Contents

Covering Letter	ii
Executive Summary	1
List of recommendations	7
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Section 1: Introduction	9
The Solicitor-General's Opinion	10
Establishment of the Inquiry	11
Production of documents by the public service	12
Consultation	13
Access to documents	17
Public submissions	18
Interim recommendation for legislative reform	19
<hr/>	
Section 2: Appointments to administer departments of State and directions to hold office	20
Constitutional provisions and conventions	20
Administrative Arrangements Orders	21
Process for making an appointment under section 64 or a direction under section 65	22
Publication of appointments under section 64 and directions under section 65	25
The Ministry List and the footnote	26
<hr/>	
Section 3: Facts and circumstances of the appointments	29
COVID-19 and the <i>Biosecurity Act 2015</i>	29
Appointment to administer the Department of Health	33
Appointment to administer the Department of Finance	41
The 2021 appointments	44
The Governor-General	63
The Department of the Prime Minister and Cabinet's role in the appointments	66
Mr Morrison's reasons for seeking the appointments	70
The necessity of the appointments to administer the Departments of Health and Finance	70
The secrecy surrounding the appointments	71

Section 4: The implications of the appointments	77
The functioning of departments of State	77
Statutory bodies and government business enterprises	80
The structure of the ministry	82
The accountability of the Executive to the Parliament	89
Public confidence in government	91
<hr/>	
Section 5: Procedural and legislative changes to provide greater transparency and accountability	96
Submissions for reform beyond the scope of the Inquiry	96
Ministerial appointments under sections 62, 64 and 65 of the Constitution	97
Acting authorisations	99
Proposals to alter the form of the Administrative Arrangements Order	102
The division of responsibility in the case of two or more ministers administering a department	103
A centralised point of information	104
Departmental websites and annual reports	106
<hr/>	
Appendix A: Instruments appointing Mr Morrison to administer departments other than the Department of the Prime Minister and Cabinet	107
Appendix B: Persons who were consulted or provided information to the Inquiry	111
Appendix C: Mr Morrison’s public statements dated 17 and 23 August 2022, and transcript of press conference on 17 August 2022	114
Appendix D: People and organisations who made public submissions	135
Appendix E: Letter from the Hon Virginia Bell AC to the Prime Minister dated 26 October 2022	136
Appendix F: Letter from Mr Morrison to the Governor-General recommending appointment to administer the Department of Health dated 13 March 2022	138
Appendix G: Letter from Mr Morrison to the Governor-General recommending appointment to administer the Department of Finance (undated, sent 30 March 2020)	139
Appendix H: Brief and attachments concerning appointment to administer the Department of Industry, Science, Energy and Resources dated 12 April 2021	140
Appendix I: Draft brief and attachments concerning appointments to administer the Departments of Agriculture, Water and the Environment, Home Affairs and the Treasury (undated)	144
Appendix J: Brief and attachments concerning appointments to administer the Departments of Home Affairs and the Treasury dated 22 April 2021	148
Appendix K: Media statements attributable to a spokesperson for the Governor-General dated 15 and 17 August 2022	152
Glossary	154

Executive Summary

1. On 16 August 2022, following revelations in the media a few days earlier, the Prime Minister the Hon Anthony Albanese MP announced that the Hon Scott Morrison MP had been appointed to administer five departments of State in addition to the Department of the Prime Minister and Cabinet (“PM&C”) during his term as Prime Minister. Mr Morrison had been appointed to administer the Department of Health on 14 March 2020, the Department of Finance on 30 March 2020, the Department of Industry, Science, Energy and Resources (“DISER”) on 15 April 2021, and the Departments of the Treasury and Home Affairs on 6 May 2021. In other words, Mr Morrison had been appointed to administer six of the 14 departments of State. These appointments had not previously been disclosed to the Parliament or to the public.
2. I was appointed to conduct an Inquiry into the appointments. The Terms of Reference require the Inquiry to examine and report on: the facts and circumstances surrounding the appointments; the implications arising from the appointments; and the practices and processes that apply to the appointment of ministers to administer departments under section 64 of the Constitution and directions that ministers hold certain offices under section 65 of the Constitution. I am also asked to recommend any procedural or legislative changes which would provide greater transparency and accountability. I summarise my key findings below. A list of recommendations is at pages 7 and 8.
3. The Terms of Reference require me to have regard to the Solicitor-General’s Opinion dated 22 August 2022 (SG No 12 of 2022). In that Opinion, the Solicitor-General concluded that the appointment of Mr Morrison to administer DISER was constitutionally valid. The reasoning applies with equal force to each of the appointments. I approach my task upon acceptance of the Solicitor-General’s analysis and conclusions.

Facts and circumstances surrounding the appointments

4. The appointments to administer the Departments of Health and Finance in March 2020 were made under the extreme pressure of responding to the onset of the COVID-19 pandemic. The then Attorney-General, the Hon Christian Porter MP, proposed Mr Morrison's appointment to administer the Department of Health as a check on the exercise of the Health Minister's extraordinary powers that are enlivened by the declaration of a "human biosecurity emergency" under the *Biosecurity Act 2015* (Cth). Other senior ministers recalled that the justification for the appointment was a concern that, if the Hon Greg Hunt MP, the then Minister for Health, should become incapacitated, a senior minister should be seen to be responsible for the exercise of these powers. Mr Morrison's reason for taking the appointment appears to have been this latter concern.
5. The context for the appointment to administer the Department of Finance included the financial measures enacted in March 2020 to address the economic impact of the COVID-19 pandemic, in particular, the \$2 billion Advance to the Finance Minister. The Department of Finance had only one Cabinet Minister administering it. Mr Morrison advised the Governor-General, His Excellency General the Honourable David Hurley AC DSC (Rtd), that the appointment would enable him to exercise the Finance Minister's significant powers were Senator the Hon Mathias Cormann, the then Minister for Finance, unavailable to do so. Mr Morrison also wished to have the capacity to make decisions about financial support for the States and Territories in "real time" in the context of meetings of the National Cabinet.
6. The appointments, however, were unnecessary. If Mr Hunt or Mr Cormann had become incapacitated and it was desired to have a senior minister exercise the Health Minister's expansive human biosecurity emergency powers or the Finance Minister's significant financial authorities, Mr Morrison could have been authorised to act as Minister for Health or Minister for Finance in a matter of minutes.
7. The appointments to DISER, the Department of the Treasury and the Department of Home Affairs are in a different category to the appointments to the Departments of Health and Finance. These appointments had little if any connection to the pandemic. Rather, Mr Morrison was appointed to administer these departments to give himself the capacity to exercise particular statutory powers. In addition to these three departments, the Prime Minister's Office ("PMO") also instructed PM&C to prepare a brief for his appointment to administer the Department of Agriculture, Water and the Environment ("DAWE"). Subsequently, Mr Morrison decided not to proceed with the appointment to administer DAWE.

8. Mr Morrison only exercised a statutory power that he enjoyed by reason of the appointments on one occasion. This was the decision to refuse the applications concerning Petroleum Export Permit 11 (known as PEP-11). Mr Morrison had himself appointed to administer DISER to enable him to decide the PEP-11 applications. In relation to the other two appointments, Mr Morrison, through his legal representative, informed me that he “considered it necessary, in the national interest, to lawfully ensure that there would be no gap in the exercise of [powers related to ongoing matters of national security] if required, so as to guarantee the continuity and effective operation of Government”. This concern is not easy to understand. There were ministers, other than the then Treasurer and Minister for Home Affairs, who were appointed to administer those departments. In the event either senior minister were unavailable, there would be no “gap” in the exercise of their ministerial powers. And, as noted, Mr Morrison could readily have been appointed as acting Minister for Home Affairs or acting Treasurer in the event that either Minister was incapacitated.
9. The then Secretary of PM&C, Mr Phil Gaetjens, viewed the appointments to the Departments of Health and Finance as an appropriate safeguard should Mr Hunt or Mr Cormann have become incapacitated. In relation to the other three appointments, the covering briefs prepared by PM&C noted that it was “somewhat unusual” for the Prime Minister to be appointed to administer a department other than PM&C. In relation to the appointment to administer DISER, Mr Gaetjens considered that Mr Morrison had been made aware of the risk of successful legal challenge, in light of his public statements, before he determined the PEP-11 applications. Mr Gaetjens did not seek to speak with Mr Morrison and to advise him in stronger terms than those used in the brief against being appointed to administer DISER in order to make the PEP-11 decision.
10. The proposal to appoint Mr Morrison to administer the Department of Health was known to some senior ministers (including Mr Hunt), as well as some senior public servants (including the then Chief Medical Officer and the Secretary of the Department of Home Affairs). The appointment was not disclosed to the Department of Health. The fact of the appointments to administer the Departments of Finance, the Treasury and Home Affairs was not disclosed to anyone other than some members of the PMO and officers in PM&C involved in arranging the appointments. In particular, the appointments were not disclosed to the other ministers appointed to administer those departments or the departments themselves. The former Minister for Resources, the Hon Keith Pitt MP, learned of the appointment to administer DISER on 21 April 2021, however it was not until December 2021 that DISER itself was formally advised of the appointment.

11. In a public statement delivered on 17 August 2022, Mr Morrison justified the secrecy surrounding the appointments on two grounds. In relation to the failure to inform his ministers, Mr Morrison said that he “did not wish Ministers to be second guessing themselves or for there to be the appearance [of] a right of appeal or any diminishing of their authority to exercise their responsibilities”. In relation to the failure to inform the public, Mr Morrison said that “these were emergency, effectively reserve powers”, and there was a risk that the disclosure of the appointments “could be misinterpreted and misunderstood”.
12. However, in the context of my Inquiry, Mr Morrison informed me, again through his legal representative, that “neither [he] nor his office instructed PM&C not to gazette the appointments”, and that he “assumed the usual practice would apply following the relevant Ministerial appointments”. He subsequently explained that he understood the “usual practice” to be that the appointments would be gazetted. This understanding was not consistent with what I was told by PM&C, which is that the announcement of ministerial appointments is the prerogative of the Prime Minister.
13. It is difficult to reconcile Mr Morrison’s choice not to inform his ministers of the appointments out of his wish not to be thought to be second guessing them, with his belief that the appointments had been notified in the Commonwealth Gazette (the “Gazette”). While few members of the public may read the Gazette, any idea that the gazettal of the Prime Minister’s appointment to administer the Treasury (or any of the other appointments) would not be picked up and quickly circulated within the public service and the Parliament strikes me as improbable in the extreme. One might have expected Mr Morrison to inform the affected ministers of the appointments had it been his belief at the time that they were being notified in the Gazette. Finally, there is the circumstance that Mr Morrison was repeatedly pressed at his press conference on 17 August 2022 about his failure not only to inform his ministers but also to inform the public of the appointments. The omission to state that he had acted at all times on the assumption that each appointment had been notified to the public in the Gazette is striking.
14. While it is troubling that by the time of the 2021 appointments, Mr Gaetjens did not take up the issue of the secrecy surrounding them with Mr Morrison and firmly argue for their disclosure, the responsibility for that secrecy must reside with Mr Morrison.

15. Each of the appointments was made by the Governor-General acting on the advice of the Prime Minister, consistently with well settled constitutional convention. Some commentators argued that the Governor-General should have warned Mr Morrison that the appointments were unorthodox and encouraged him to make them public. I consider the criticism of the Governor-General to be unwarranted. Until recently, it was not the practice for Government House to arrange for notification in the Gazette of the appointment of an existing minister to administer a department of State when the appointment was made “on the papers” and not in association with a public swearing-in ceremony.

Implications of the appointments

16. Given the appointments were not disclosed to the Parliament or to the public, and that Mr Morrison did not exercise any of the powers he enjoyed by reason of his appointments apart from making the PEP-11 decision, the implications of the appointments are limited.
17. Mr Morrison does not appear to have attached any significance to the fact that, from the time of its making, each appointment operated in law to charge him with responsibility for the administration of the whole department. There was no delineation of responsibilities between Mr Morrison and the other minister or ministers appointed to administer the department. In the absence of such delineation, there was a risk of conflict had Mr Morrison decided to exercise a statutory power inconsistently with the exercise of the power by another minister administering the department. The 2021 appointments were not taken with a view to Mr Morrison having any active part in the administration of the department but rather to give Mr Morrison the capacity to exercise particular statutory power should the minister charged with responsibility for the exercise of that power propose to do so in a manner with which Mr Morrison disagreed, or fail to make a decision that Mr Morrison wanted to be made. In terms of the functioning of the departments this was as Dr Gordon de Brouwer PSM, Secretary for Public Sector Reform, observes “extremely irregular”.
18. As long as the appointments remained secret and Mr Morrison elected not to exercise his powers as the minister administering a department, it is not apparent that there was any impact on the structure of the ministry. Nevertheless, recourse to being appointed to administer multiple departments seems an exorbitant means of addressing Mr Morrison’s concern about his ministers’ exercise of statutory power in cases that were not subject to Cabinet oversight. Ultimately, he had the power to dismiss a minister if he considered the minister might exercise a power in a way that he, Mr Morrison, considered not to be conducive to the national interest.

19. Given that the Parliament was not informed of any of the appointments, it was unable to hold Mr Morrison to account in his capacity as minister administering any of these five departments. As the Solicitor-General concluded, the principles of responsible government were “fundamentally undermined” because Mr Morrison was not “responsible” to the Parliament, and through the Parliament to the electors, for the departments he was appointed to administer.
20. Finally, the lack of disclosure of the appointments to the public was apt to undermine public confidence in government. Once the appointments became known, the secrecy with which they had been surrounded was corrosive of trust in government.

Process of appointments under sections 64 and 65 of the Constitution

21. Appointments of ministers to administer departments of State under section 64 of the Constitution, and directions that a minister hold a particular office under section 65 of the Constitution, are made by the Governor-General on the advice of the Prime Minister.
22. Since Federation, Government House has arranged for notification in the Gazette of the names of the ministers who have been “sworn in” as members of a ministry at a public ceremony. In recent years, the notification in the Gazette has included the name of the minister and the office the minister has been directed to hold. While the office may serve to indicate the department the minister has been appointed to administer, the fact of the appointment to administer a department of State has not formed part of the notice. Following the “swearing in” ceremony, the Prime Minister will often issue a media release containing the names and offices of the ministers.
23. In some cases, where an existing minister is to be appointed to administer an additional department of State, the appointment will be made “on the papers”. Publication of the appointment in such cases is dependent on the issue of a media release by the Prime Minister.
24. Following the disclosure of Mr Morrison’s appointment to administer additional departments of State, at the direction of the Prime Minister, PM&C and the Office of the Official Secretary to the Governor-General have agreed on a new protocol for the publication in the Gazette of all ministerial appointments and directions to hold office.

List of recommendations

Recommendation 1

Legislation should be enacted to require publication in the Commonwealth Gazette or in a notifiable instrument registered on the Federal Register of Legislation as soon as reasonably practicable following the fact of:

- i.** the swearing of an Executive Councillor under section 62 of the Constitution;
- ii.** the appointment of an officer to administer a department of State under section 64 of the Constitution;
- iii.** the direction to a Minister of State to hold an office under section 65 of the Constitution; and
- iv.** the revocation of membership of the Federal Executive Council, an appointment to administer a department, and a direction to hold an office, when effected by an instrument executed by the Governor-General.

The notice or notifiable instrument should include the name of the person and the date that he or she was sworn, appointed and/or directed, or the date that such membership, appointment and/or direction was revoked. It may also be convenient for a copy of the instrument to be included in the notification.

Recommendation 2

The authorisation of an acting minister for a period of two weeks or more should be published as soon as reasonably practicable in the Commonwealth Gazette or in a notifiable instrument on the Federal Register of Legislation.

Recommendation 3

A list of all acting arrangements should be published periodically on the Department of the Prime Minister and Cabinet's or each department's website.

Recommendation 4

A document identifying:

- i. the ministers appointed to administer each department of State;
- ii. the offices the ministers are directed to hold; and
- iii. in the case of two or more ministers administering the one department, an outline of the division of responsibilities between the ministers

should be published on the Department of the Prime Minister and Cabinet's website.

Recommendation 5

A website concerning ministerial appointments should be established which contains explanatory materials and current and past records to enable the public to readily ascertain which minister is responsible for which particular matters.

Recommendation 6

All departments should publish a list of the ministers appointed to administer them on their website, and include in their annual report the name of all ministers appointed to administer the department in the reporting period.

Section 1:

Introduction

25. On 13 August 2022, an extract from the book *Plagued* by Mr Simon Benson and Mr Geoff Chambers¹, and an accompanying news story, was published in the *Weekend Australian*. The article reported that the Hon Scott Morrison MP “secretly swore himself in as joint health minister when COVID-19 began to take off in March 2020” and “also appointed himself as joint finance minister”².
26. The following day, it was reported that “[Mr Morrison] secretly swore himself in as resources minister and ultimately used the power to roll his own frontbencher, [the Hon Keith Pitt MP], over a plan to drill for gas off the New South Wales coast”³.
27. On 16 August 2022, the Prime Minister, the Hon Anthony Albanese MP, gave a press conference in which he stated⁴:

I can say that today that I have been informed by the Department of [the] Prime Minister and Cabinet that between March 2020 [and] May 2021, the Prime Minister, Scott Morrison, was appointed to five additional portfolios in addition to his appointment as the head of Prime Minister and Cabinet. He was appointed to administer the Department of Health on 14 March 2020. The Department of Finance on 30 March 2020. The Department of Home Affairs on 6 May 2021. The Department of the Treasury on 6 May 2021. And the Department of Industry, Science, Energy and Resources on 15 April 2021. Each of these appointments [was] made under Section 64 of the Constitution.

28. A copy of each of the instruments of appointment for the five appointments is **Appendix A**.

1 Simon Benson and Geoff Chambers, *Plagued: Australia's Two Years of Hell – The Inside Story* (Pantera Press, 2022).

2 Simon Benson and Geoff Chambers, “Revealed: ScoMo’s Secret Covid Moves to Protect Power”, *Weekend Australian* (13 August 2022) 1-2.

3 Samantha Maiden, “Scott Morrison ‘Shocked’ Minister by Secretly Swearing Himself into Cabinet Portfolio”, *News.com.au* (online, 14 August 2022) <<https://www.news.com.au/national/politics/scott-morrison-shocked-minister-by-secretly-swearing-himself-into-cabinet-portfolio/news-story/ac7505f1648a335ccd01f88faf881086>>.

4 Prime Minister the Hon Anthony Albanese MP, “Transcript” (Press Conference, 16 August 2022) <<https://www.pm.gov.au/media/press-conference-parliament-house-canberra-act-1>>.

The Solicitor-General's Opinion

29. The Prime Minister sought advice from the Solicitor-General, Dr Stephen Donaghue KC, on the validity of Mr Morrison's appointment to administer the Department of Industry, Science, Energy and Resources ("DISER"). On 22 August 2022, the Solicitor-General delivered his Opinion⁵. On 23 August 2022, the Opinion was published in full on the website of the Department of the Prime Minister and Cabinet ("PM&C"). In answer to the question "[w]as Mr Morrison validly appointed to administer [DISER] on 15 April 2021", the Solicitor-General stated⁶:

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.

30. The Solicitor-General advised that while Mr Morrison's appointment was valid, in the absence of any notification of the appointment to the Parliament, the public, the other ministers administering DISER or DISER itself, the appointment was not consistent with the principle of responsible government that is inherent in Chapter II of the Constitution⁷. The inconsistency lay in the Parliament's inability to hold ministers to account for the administration of departments if the Parliament does not know which ministers are responsible for which departments⁸.

5 Solicitor-General, "In the Matter of the Validity of the Appointment of Mr Morrison to Administer the Department of Industry, Science, Energy and Resources" [SG No 12 of 2022, 22 August 2022] <<https://www.pmc.gov.au/sites/default/files/sg-no-12-of-2022.pdf>> ["Solicitor-General's Opinion"].

6 Solicitor-General's Opinion at [8].

7 Solicitor-General's Opinion at [29].

8 Solicitor-General's Opinion at [32].

Establishment of the Inquiry

31. On 26 August 2022, the Prime Minister and the Attorney-General, the Hon Mark Dreyfus KC MP, announced the establishment of this Inquiry⁹.

32. The inquiry has the following Terms of Reference:

The inquiry will:

- a) examine and report on the facts and circumstances surrounding the appointment of Mr Morrison to administer the Department of Health, the Department of Finance, the Department of Industry, Science and Energy and Resources, the Department of Home Affairs and the Department of the Treasury, in addition to the Department of the Prime Minister and the Cabinet
- b) examine and report on the implications arising from the appointments, including on:
 - i. the functioning of departments of state, Government Business Enterprises and statutory bodies;
 - ii. the structure of the Ministry
 - iii. the accountability of the executive to the Parliament; and
 - iv. public confidence in government
- c) examine and report on the practices and processes which apply to:
 - i. the appointment of ministers to administer departments of state under section 64 of the Constitution; and
 - ii. directions that ministers hold certain offices under section 65 of the Constitution; including the disclosure of those appointments and directions; and
- d) recommend any procedural or legislative changes which would provide greater transparency and accountability.

The inquiry shall have regard to the Solicitor-General's Opinion in the matter of the appointment of Mr Morrison to administer the Department of Industry, Science, Energy and Resources (SG No 12 of 2022).

Ms Bell will report to the Prime Minister by Friday 25 November 2022.

⁹ Prime Minister the Hon Anthony Albanese MP and Attorney-General the Hon Mark Dreyfus KC MP, "Establishment of Inquiry into the Appointment of Scott Morrison to Multiple Departments" (Press Conference, 26 August 2022) <<https://www.pm.gov.au/media/press-conference-sydney-2>>; Prime Minister the Hon Anthony Albanese MP and Attorney-General the Hon Mark Dreyfus KC MP, "Establishment of Inquiry into the Appointment of the Hon Scott Morrison MP to Multiple Departments" (Media Release, 26 August 2022) <<https://www.pm.gov.au/media/establishment-inquiry-appointment-hon-scott-morrison-mp-multiple-departments>>.

33. Following my appointment, a small team was set up within the Attorney-General's Department ("AGD") to support the Inquiry. This team comprised Ms Kate McLaren and Ms Laura Cameron, both senior advisors, Mr Finbar Piper, advisor, and Ms Angela Turnbull, Executive Assistant. Mr Jackson Wherrett was engaged as counsel assisting the Inquiry. I am grateful to each of them for their assistance throughout the Inquiry and in the preparation of this report.
34. The Inquiry used AGD's information technology, but this was set up so that the Inquiry's electronic records and communications were only accessible to members of the Inquiry team and technical support staff as required.
35. A dedicated website for the Inquiry was established in mid-September 2022¹⁰.

Production of documents by the public service

36. On 2 September 2022, I wrote to the Secretaries of AGD, PM&C and the five departments which Mr Morrison was appointed to administer¹¹ seeking information to assist the Inquiry, including any advice the Secretary or Department provided or received regarding Mr Morrison's appointments and his exercise of portfolio powers.
37. Documents and information relating to one or more of the appointments were provided by AGD, PM&C, the Department of Industry, Science and Resources ("DISR"), the Department of Climate Change, Energy, the Environment and Water ("DCCEEW") and the Department of Health and Aged Care¹². The Secretaries of the Departments of the Treasury, Finance and Home Affairs advised that they did not hold any relevant documents.
38. Over the course of the Inquiry PM&C provided additional information at my request, including as to the practices and processes associated with the appointment of ministers to administer departments and to hold specified offices, and the creation and promulgation of Administrative Arrangements Orders ("AAOs").

10 Inquiry into the Appointment of the Former Prime Minister to Administer Multiple Departments (Web Page) <<https://www.ministriesinquiry.gov.au>>.

11 Following machinery of government changes that took effect on 1 July 2022, DISR was superseded by the Department of Industry, Science and Resources ("DISR") and the Department of Climate Change, Energy, the Environment and Water ("DCCEEW"): Administrative Arrangements Order made on 1 June 2022. I initially wrote to the Secretary of DISR.

12 Following machinery of government changes that took effect on 1 July 2022, the Department of Health was renamed the Department of Health and Aged Care: Administrative Arrangements Order made on 1 June 2022, Part 9.

Consultation

39. The Inquiry was not established under statute and did not have the power to summon witnesses to give evidence or to produce documents. During September and October 2022, I wrote to a number of current and former public servants, ministers, and ministerial advisors, seeking to meet with them in relation to one or more of the Terms of Reference, or seeking specific information from them to assist the Inquiry. Some of those whom I approached preferred to provide information to the Inquiry in writing.
40. At the outset of the Inquiry, I also wrote to the leaders of the minor political parties represented in the Parliament¹³, all of the independent parliamentarians, the Speaker of the House and the President of the Senate inviting them to meet with me if they wished. A number of these parliamentarians took up my invitation to attend a consultation meeting.
41. I also met with academics and other experts in the fields of constitutional law and public administration.
42. A list of the persons who were consulted or provided information to the Inquiry in writing is **Appendix B**.
43. Consultation meetings were conducted in person or by videoconference. Records were made of every consultation meeting, in the form of notes or a transcript (depending on the individual's preference) on the basis that the information contained in them is confidential unless disclosed in this report. The individuals with whom I spoke were given an opportunity to review the notes (or transcript) and to amend or supplement the record of the discussion so that it best reflected their recollection of events.
44. In September 2022, I wrote to Mr Benson and Mr Chambers, the authors of *Plagued*, asking if they would consider providing me with copies of any documents that may assist the Inquiry, and offering to meet with them. I was advised that they do not hold any relevant documents and did not wish to attend a meeting.
45. In examining the facts and circumstances of the appointments I spoke with a number of public servants. All were cooperative and all impressed me as giving a full and frank account of events. In my report I have not named public servants below the level of Senior Executive Service, or ministerial advisors below the level of Chief of Staff.
46. Of the parliamentarians with whom I met in person or by videoconference only the Hon Michael McCormack MP, the Hon Barnaby Joyce MP, Senator the Hon Simon Birmingham and the Hon Peter Dutton MP had any information bearing on the facts and circumstances of the appointments. Each was cooperative and each impressed me as giving a full and frank account.

13 Noting that I sought to meet with the Prime Minister and the Leader of the Opposition.

Ms Andrews, Mr Cormann, Ms Cash and Mr Frydenberg

47. Between 15 and 19 September 2022, I wrote to:

- the Hon Karen Andrews MP, who was the Minister for Home Affairs from 30 March 2021 to 23 May 2022;
- the Hon Mathias Cormann, who was the Minister for Finance from 18 September 2013 to 30 October 2020;
- Senator the Hon Michaelia Cash, who was the Attorney-General from 30 March 2021 to 23 May 2022; and
- the Hon Josh Frydenberg, who was the Treasurer from 28 August 2018 to 23 May 2022.

48. Each responded in writing about their knowledge of and involvement in the appointments. The information provided by each was consistent with other material that was available to me and I accepted it as accurate. I did not seek any further information from any of these individuals.

Mr Hunt

49. On 15 September 2022, I wrote to the Hon Greg Hunt, who was the Minister for Health¹⁴ and was appointed to administer the Department of Health at the time of these events, seeking his assistance with the Inquiry. After obtaining legal advice, Mr Hunt indicated his preferred approach was to answer questions in writing. I agreed to this approach. Mr Hunt provided prompt and comprehensive answers to all of my questions. Those answers were consistent with other material that was available to me and I accept them.

¹⁴ Mr Hunt was Minister for Health from 24 January 2017 to 22 December 2020, and the Minister for Health and Aged Care from 22 December 2020 to 23 May 2022.

Mr Pitt

50. Mr Pitt held the office of Minister for Resources, Water and Northern Australia¹⁵ and was a minister appointed to administer DISER at the time of Mr Morrison's appointment to administer that department. On 15 September 2022, I wrote to Mr Pitt seeking his assistance with the Inquiry. After obtaining legal advice, Mr Pitt's preferred approach was also to answer questions in writing. I agreed to this approach and submitted a list of questions to Mr Pitt. I was advised by his solicitors of Mr Pitt's concern that his answers to my questions not prejudice proceedings that are currently before the Federal Court of Australia¹⁶. In the event, on advice, Mr Pitt declined to answer my questions save for stating that he had first learned of Mr Morrison's appointment to administer DISER around mid-2021 and before 21 June 2021. I did not consider the grounds of Mr Pitt's objections to my questions to be well founded, but I had no reason to doubt the sincerity with which his concerns were held. I did not pursue the matter. My timeframe for reporting was tight and I was satisfied that I was in a position to accurately give an account of the facts and circumstances of Mr Morrison's appointment to administer DISER without the benefit of Mr Pitt's recollection of events.

Mr Porter

51. On 16 September 2022, I wrote to the Hon Christian Porter to seek his assistance with the Inquiry. Mr Porter was the Attorney-General at the time of Mr Morrison's appointments to administer the Departments of Health and Finance¹⁷ and was appointed to administer DISER at the time of Mr Morrison's appointment to that department¹⁸. Mr Porter indicated his willingness to assist the Inquiry but, in light of his professional commitments, he preferred to do so in writing. Mr Porter provided detailed written responses to each of my questions. Mr Porter had a clear recall of events surrounding Mr Morrison's appointment to administer the Department of Health. Mr Porter did not have knowledge of the other appointments. I accept Mr Porter's account.

15 Mr Pitt was Minister for Resources, Water and Northern Australia from 6 February 2020 to 2 July 2021, and the Minister for Resources and Water from 2 July 2021 to 23 May 2022.

16 *Asset Energy Pty Ltd v the Commonwealth Minister for Resources, as the Responsible Commonwealth Minister of the Commonwealth-New South Wales Offshore Petroleum Joint Authority; and Minister for Regional New South Wales, as Responsible State Minister of the Commonwealth-New South Wales Offshore Petroleum Joint Authority*, Federal Court of Australia, WAD106/2022.

17 Mr Porter was Attorney-General from 20 December 2017 to 30 March 2021.

18 Mr Porter was the Minister for Industry, Science and Technology from 30 March 2021 to 19 September 2021.

Mr Morrison

52. On 19 September 2022, I wrote to Mr Morrison to seek his assistance with the Inquiry. I proposed meeting with him to obtain his account of the facts and circumstances leading to his appointment to administer the five departments and I sought his views on those of my Terms of Reference which raise issues of ministerial practice, the processes applying to appointments under sections 64 and 65 of the Constitution, and any procedural or legislative reforms. I drew Mr Morrison's attention to the tight timeframe for completion of my report and I offered to meet with him at his electorate office in Sydney or his parliamentary office in Canberra on any date in the three weeks commencing 26 September 2022.
53. Mr Morrison acknowledged receipt of my letter and advised that he was making an application for legal assistance and that he would write to me in relation to the substance of my letter thereafter. Following approval of that assistance, on 4 October 2022, Dr Ashley Tscalos, solicitor, informed me that he was acting for Mr Morrison and that he was in the process of preparing a response to my letter.
54. By letter dated 11 October 2022, Dr Tscalos advised me that "the totality of Mr Morrison's recollections of the matters that are the subject of the Inquiry are contained in his two public statements" on 17 and 23 August 2022. Dr Tscalos also referred me to Mr Morrison's statements at a press conference held on 17 August 2022. The two public statements and a transcript of the press conference are **Appendix C**. Dr Tscalos informed me that Mr Morrison had sought additional information from PM&C and that he had been given access to a subset of the documents sought. Dr Tscalos said that Mr Morrison proposed to inspect these documents to determine whether he could provide any additional assistance to the Inquiry and that he, Dr Tscalos, would update me following the inspection. Mr Morrison was given access to the documents on 12 October 2022.
55. I did not hear further from Dr Tscalos until the afternoon of Friday 4 November 2022, when I received a letter by email advising that Mr Morrison had inspected the documents. The only respect in which it was suggested that Mr Morrison's recall had been refreshed by this inspection was that he was able to say that neither he nor his office instructed PM&C not to gazette the appointments nor was he or his office consulted on whether the appointments should be published in the Commonwealth Gazette. I was told that Mr Morrison assumed PM&C would act in accordance with their "usual practice" in this respect. Notably, the letter did not contain any account of Mr Morrison's understanding of that usual practice. I return to this matter when dealing with the first Term of Reference.

56. Contrary to the advice contained in his letter of 11 October 2022, Dr Tsacalos' letter of 4 November 2022 concluded with the statement that:

We note that Mr Morrison remains available to assist the Inquiry by providing responses to any further matters you would like to raise that are not addressed in his earlier statements and information forwarded to you.

57. I responded to this invitation by asking for Mr Morrison's response to a number of questions. On 10 November 2022, I received a letter from Dr Tsacalos containing Mr Morrison's responses to these questions. To the extent that the responses contain information that is not found in Mr Morrison's public statements, I refer to it in dealing with the facts and circumstances of the appointments. On 22 November 2022, I received a further letter from Dr Tsacalos containing a number of comments on extracts from the draft of this report which I had sent him together with some additional material concerning Mr Morrison's appointment to administer the Department of Home Affairs.

Access to documents

58. Some of the individuals who provided information relating to the facts and circumstances of the appointments did not have access to contemporaneous records with which to refresh their recollection. While Mr Morrison was given access to a "subset" of documents by PM&C, Dr Tsacalos advised that these documents were insufficient to enable Mr Morrison to provide the Inquiry with additional assistance in relation to his appointments to administer the Departments of Home Affairs and the Treasury. Neither Dr Kunkel, Mr Morrison's Chief of Staff, nor the Senior Advisor, Parliamentary and Corporate ("Senior Advisor, Parliamentary"), in the PMO at the time of these events had the benefit of access to any contemporaneous records.

Public submissions

59. On 13 September 2022, I invited any interested individual or organisation to make a submission to inform the Inquiry by 30 September 2022. A number of individuals and organisations were granted an extension of time in which to make submissions.
60. Submissions were received from a total of 62 persons or organisations. Some individuals asked that their submission not be published, or that it be published anonymously. In a few instances I determined that publication would not be appropriate. Submissions will otherwise be published on the Inquiry website with the name of the author. A list of the individuals and organisations who made submissions that are public is **Appendix D**.
61. The submissions received canvassed a wide range of issues. In addition to the particular matters which the Inquiry is required to examine and report on, this included:
 - the role of and relationship between the public service, parliamentarians, and advisors to parliamentarians;
 - the role and evolution of constitutional conventions;
 - the role and responsibilities of the Governor-General and his office;
 - the publication of Commonwealth administrative arrangements more generally, including in annual reports;
 - the process for the appointment of acting ministers;
 - the implications for shareholders of Mr Morrison making a decision in relation to Petroleum Export Permit 11 (also known as PEP-11); and
 - the conduct and responsibilities of the authors of *Plagued*.

62. The authors of some submissions questioned the validity of Mr Morrison's appointments¹⁹. The validity of the appointments is not within my Terms of Reference. I am instructed to have regard to the Solicitor-General's Opinion. The Solicitor-General's analysis of the validity of Mr Morrison's appointment to administer DISER applies with equal force to each of the appointments. I approach my task upon acceptance of the Solicitor-General's analysis and conclusions.
63. To the extent that the submissions relate to or touch upon the Terms of Reference, they have informed this report and my recommendations. I am grateful to the individuals and organisations who made submissions for the time and consideration that went into their preparation.

Interim recommendation for legislative reform

64. When the Inquiry was announced, the Prime Minister indicated that the report would be provided on 25 November 2022 so that any changes could be put to the Parliament in the following sitting week (commencing 28 November 2022)²⁰.
65. On 26 October 2022, I wrote to the Prime Minister to advise of a recommendation for legislative change that I intended to make in this report, to enable the Government to pursue legislative changes in a timely way if that were desired. A copy of the letter is **Appendix E**.

¹⁹ See, too, the discussion of this issue by the Hon William Gummow AC: Michael Pelly, "Morrison's Extra Roles 'Invalid': Former High Court Judge", *The Australian Financial Review* (online, 14 October 2022) <<https://www.afr.com/politics/morrison-s-extra-roles-invalid-former-high-court-judge-20221012-p5bp35>>. See, also, Fiona Roughley and Megan Caristo, "Secret Ministries and the *Constitution*: An Implied Requirement of Publication?" (2023) *Australian Law Journal* (forthcoming).

²⁰ Prime Minister the Hon Anthony Albanese MP and Attorney-General the Hon Mark Dreyfus KC MP, "Establishment of Inquiry into the Appointment of Scott Morrison to Multiple Departments" (Press Conference, 26 August 2022) <<https://www.pm.gov.au/media/press-conference-sydney-2>>.

Section 2:

Appointments to administer departments of State and directions to hold office

Constitutional provisions and conventions

66. Chapter II of the Constitution provides for the Executive government of the Commonwealth. Relevantly it provides²¹:

Section 61. Executive Power

The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Section 62. Federal Executive Council

There shall be a Federal Executive Council to advise the Governor-General in the government of the Commonwealth, and the members of the Council shall be chosen and summoned by the Governor-General and sworn as Executive Councillors, and shall hold office during his pleasure.

...

Section 64. Ministers of State

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.

²¹ Covering clause 2 of the Constitution provides that "[t]he provisions of this Act referring to the Queen shall extend to Her Majesty's heirs and successors in the sovereignty of the United Kingdom".

Section 65. Number of Ministers

Until the Parliament otherwise provides, the Ministers of State shall not exceed seven in number, and shall hold such offices as the Parliament prescribes, or, in the absence of provision, as the Governor-General directs.

67. The Federal Executive Council established in section 62 is the body which advises the Governor-General in the government of the Commonwealth. Provisions of the Constitution that refer to the Governor-General in Council refer to the Governor-General acting with the advice of the Federal Executive Council. That advice commonly reflects government policy as determined by the Cabinet, or implements a decision made by the Cabinet²².
68. The power to appoint a person to be a member of the Federal Executive Council under section 62, to administer a department of State under section 64, and the power to direct a Minister of State to hold a particular office under section 65, is vested in the Governor-General alone. By convention these powers are exercised on the advice of the Prime Minister (save with respect to the direction to hold the office of Prime Minister).
69. Before being appointed to administer a department of State a person must first be sworn as a member of the Federal Executive Council. All the members of the ministry are Executive Councillors.

Administrative Arrangements Orders

70. The areas of executive responsibility of each department of State are as specified in the AAO issued by the Governor-General in Council from time to time. A schedule to the AAO lists each department of State and sets out the “Matters dealt with by the Department” and the “Legislation administered by the Minister”. It is common in Commonwealth legislation to refer to “the Minister” and not the minister’s office given the frequency with which the office may change. Section 19(1) of the *Acts Interpretation Act 1901* (Cth) contains a table which enables the reader to identify which minister is referred to when a provision of an Act refers to “the Minister” in relation to a particular matter (the relevant matter) on a particular day (the relevant day): one goes to the Schedule to the AAO in force on the relevant day, or any earlier day, to work out which minister is responsible for administering a particular Act or the provision of a particular Act²³.

²² See Quick and Garran, *The Annotated Constitution of the Australian Commonwealth* (LexisNexis Butterworths, rev ed, 2015) 845.

²³ *Acts Interpretation Act 1901* (Cth) s 19(2). The application of s 19(1) is subject to a contrary intention appearing in the Act being construed: s 2(2).

71. Each minister appointed to administer a department of State is in law charged with the administration of all the matters dealt with by the department and all the legislation listed under that department in the AAO. In practice, responsibility will usually be divided between two or more ministers who have been appointed to administer the one department. The offices ministers are directed to hold may serve to indicate that division of responsibility, as in the case of the Minister for Foreign Affairs and the Minister for Trade. It remains that each minister has the same powers, and is subject to the same duties, in relation to all the matters and legislation allocated to the department in the AAO.
72. Departments of State under section 64 of the Constitution comprise the Commonwealth government department as defined in the *Public Service Act 1999* (Cth)²⁴ and other Commonwealth entities which under the Schedule to the AAO are within the matters dealt with by the department or the legislation administered by its minister. The term “portfolio” is used to apply to the full range of matters that are within the remit of a department of State. Hence, the senior minister administering a department of State will often be referred to as the “portfolio minister”.

Process for making an appointment under section 64 or a direction under section 65

Documentation prepared by PM&C

73. As noted, appointments of ministers to administer departments of State are made, and directions that a minister hold a particular office are given, on the advice of the Prime Minister. PM&C facilitates the process by preparing the supporting documents and liaising with Government House. In the usual course, the Prime Minister’s Office (“PMO”) sends PM&C a direction listing the names and offices of the proposed ministers. In most cases, it is clear from this direction which department each minister is to administer. On occasions, PM&C may clarify with the PMO which department a minister is to be appointed to administer.

²⁴ *Public Service Act 1999* (Cth) s 7 (definition of “department”).

74. PM&C prepares a brief including a draft letter from the Prime Minister to the Governor-General recommending the appointments, and instruments of appointment to be counter-signed by the Prime Minister (save the instrument appointing the Prime Minister to administer a department of State, which is signed by the Governor-General alone). In the ordinary case, an instrument of appointment directs a person to hold an office and to administer a department of State. By way of example, the instrument of appointment for Prime Minister Albanese earlier this year read²⁵:

I, DAVID JOHN HURLEY, Governor-General of the Commonwealth of Australia, pursuant to sections 64 and 65 of the Constitution, hereby direct and appoint ANTHONY NORMAN ALBANESE, a member of the Federal Executive Council, to hold the office of PRIME MINISTER and to administer THE DEPARTMENT OF THE PRIME MINISTER AND CABINET.

“Swearing-in” ceremonies

75. In the majority of cases, a public “swearing-in” ceremony is conducted at which the members of a new ministry are appointed. At the ceremony, the office which the minister is directed to hold is announced and the minister takes an oath or affirmation of office in the presence of the Governor-General. The document recording the oath is signed by the minister and the Governor-General. There is no reference at the ceremony to the minister’s appointment to administer a department of State. The appointment is commonly, albeit inaccurately, referred to as being “sworn” to the department. Following a ceremony, the Prime Minister will often issue a media release containing the names and offices of the ministers. PM&C does not usually provide advice in relation to these statements. PM&C is not usually involved in publicising the fact of ministerial appointments.

Appointments or directions in absentia or “on the papers”

76. On occasions, a minister has been appointed to administer a department and directed to hold office in absentia. On 19 July 2016, the Hon Dan Tehan MP was appointed to administer the Departments of Veterans’ Affairs and Defence and directed to hold the offices of Minister for Veterans’ Affairs and Minister for Defence Personnel, in absentia, as part of the swearing-in ceremony for the full ministry. Mr Tehan later took his oath or affirmation of office in person before the Governor-General.

²⁵ Governor-General of the Commonwealth of Australia, *Appointment of Minister of State* [23 May 2022] <<https://www.pmc.gov.au/sites/default/files/foi-log/foi-2022-227-documents-released.pdf>>.

77. There is no constitutional or legislative requirement that a minister take an oath of office. The only oath that must be taken before a person is appointed to administer a department of State is the oath as an Executive Councillor. It follows that provided a person has been sworn as an Executive Councillor, it is possible for the person to be appointed to administer a department of State “on the papers”. In such a case, PM&C prepares a brief to which is attached a draft letter from the Prime Minister to the Governor-General recommending the appointment and an instrument of appointment. Once the Prime Minister signs the letter, it and the instrument are delivered to Government House and executed by the Governor-General at his convenience without the attendance of the appointee. Publication of the appointment is dependent on the issue of a media release by the Prime Minister. There is no requirement for notification of the appointment in the Gazette.
78. PM&C identified three instances of appointments to administer departments of State made “on the papers” in the recent past (in addition to the five appointments that are the subject of this Inquiry):
- 5 December 2019 – a number of ministers were appointed to administer departments with effect on and from 1 February 2020 reflecting machinery of government changes;
 - 15 April 2021 – the Hon Stuart Robert MP was appointed to administer PM&C as a consequence of the transfer of responsibility for the Digital Transformation Agency (“DTA”) to PM&C; and
 - 1 July 2022 – a number of members of the Albanese Ministry were appointed to administer departments of State reflecting machinery of government changes which took effect on that day.

Publication of appointments under section 64 and directions under section 65

79. Since Federation, Government House has arranged for notification in the Gazette of the names of the ministers who have been “sworn in” as members of a ministry at a public ceremony. The instruments of appointment have not been published. The form of the notification has varied. The notice has not always tracked the language of sections 64 and 65 of the Constitution precisely and on occasions either the appointment to administer a department or the direction to hold office has not been notified. The notice published in the first issue of the Gazette on 1 January 1901 recorded that the Governor-General had appointed “the undermentioned Members of the Federal Executive Council to administer the Departments of State respectively set opposite their names”²⁶. There followed the name of each of the seven departments of State with the name of the minister appointed to administer it set out directly underneath. The direction to hold office was not the subject of separate treatment. Later the form of notice came to refer to the fact that the Governor-General had been pleased “to direct and appoint the following members of the Executive Council to hold the offices mentioned in connexion with their respective names, and to administer the Departments of State connected with such offices”²⁷. This was more accurate save for the inexactitude of the reference to the appointment to administer the departments “connected with such offices”.
80. In recent years it has been the practice for the Office of the Official Secretary to the Governor-General to arrange for a notice in the Gazette following a swearing-in ceremony stating that “the Governor-General directs it to be notified, for general information, that ... [h]e has made the following appointments” followed by a list of the names and offices of each minister²⁸. While the language of “appointment” has been used, the notification is of the direction to hold office in each case, and the appointment to administer the department of State has not been made public, although the former may serve to indicate the latter.
81. PM&C has never arranged for the publication in the Gazette of ministerial appointments. PM&C views it as within the prerogative of the Prime Minister to announce the composition of, or changes to, the Ministry. PM&C treats its role in preparing the necessary documentation in strict confidence. Only a small number of PM&C officers are involved, and details of the appointments are not shared more widely, either to other departments or within PM&C, until the Prime Minister makes a public announcement. In the case of these appointments, Mr Morrison made no announcement.

²⁶ Commonwealth, *Commonwealth of Australia Gazette*, No 1, 1 January 1901, 4.

²⁷ See, eg, Commonwealth, *Commonwealth of Australia Gazette*, No 26, 27 April 1904, 295.

²⁸ See, eg, Commonwealth, *Commonwealth of Australia Gazette*, No C2022G00430, 23 May 2022.

82. Following the disclosure of Mr Morrison's appointment to administer additional departments of State, at the direction of the Prime Minister, PM&C and the Office of the Official Secretary to the Governor-General have agreed on a new process for the publication in the Gazette of appointments to administer departments of State and directions to hold office. PM&C has amended the format of the Prime Minister's advice to the Governor-General so that it now includes both the office (or offices) the appointee is recommended to hold and the department (or departments) the appointee is recommended to administer. This information now forms the basis of the notice which the Office of the Official Secretary to the Governor-General arranges to be published in the Gazette. This process will also be adopted for any appointments made "on the papers". Further communication of these changes, including to the Parliament, remains the prerogative of the government of the day.

The Ministry List and the footnote

83. Following the swearing-in of a ministry, a Ministry List is tabled in the Parliament, usually before the next Question Time, and is published on the PM&C website. The Ministry List records the names of ministers and their offices. It distinguishes between Cabinet ministers, members of the outer ministry and assistant ministers²⁹. Save for the Hawke Government Ministry Lists tabled on 14 September 1987³⁰, 27 September 1988³¹ and 8 May 1990³², Ministry Lists have not recorded the name of the department (or departments) a minister has been appointed to administer.

29 Assistant Ministers are designated as Parliamentary Secretaries: *Ministers of State Act 1952* (Cth) s 4.

30 House of Representatives, *Hansard* (14 September 1987) 9-11.

31 House of Representatives, *Hansard* (27 September 1988) 910.

32 House of Representatives, *Hansard* (8 May 1990) 14-15.

84. The Solicitor-General noted the footnote which appeared in the Morrison Government Ministry Lists and which alerted the reader to the fact that ministers may have been appointed to administer departments not listed³³. It appears that the history of that footnote is as follows. The first Keating Government Ministry List, of 27 December 1991, contained a lengthy footnote³⁴:

Portfolio ministers, all of whom are in the Cabinet, are shown in bold type. Senator Collins is also a Cabinet Minister.

A Department with a title reflecting the portfolio Minister's title is administered by the Ministers within each grouping, with one exception: within the Health, Housing and Community Services portfolio, Mr Howe administers both the Department of Health, Housing and Community Services and the Department of Veterans' Affairs; Mr Staples administers the Department of Health, Housing and Community Services; and Mr Humphreys administers the Department of Veterans' Affairs. Mr Griffiths administers the Department of Tourism, as portfolio Minister; and both Mr Crean, as portfolio Minister, and Mr Griffiths administer the Department of Primary Industries and Energy. Mr Simmons administers both the Department of Social Security, with Dr Blewett as portfolio Minister and the Department of Immigration, Local Government and Ethnic Affairs, with Mr Hand as portfolio Minister.

85. The second Keating Government Ministry List sought to deal with ministerial responsibilities in a more economical way. It read³⁵:

Each box represents a portfolio. **Cabinet ministers are shown in bold type.** As a general rule, there is one Department in each portfolio. Except for the Department of the Prime Minister and Cabinet and the Department of Foreign Affairs and Trade, the title of each Department reflects that of the portfolio Minister. There is also a Department of Administrative Services in the Finance portfolio; and a Department of Veterans' Affairs in the Defence portfolio.

33 Solicitor-General's Opinion at [38].

34 Prime Minister the Hon Paul Keating MP, "Keating Ministry" (Media Release, 27 December 1991) <<https://pmtranscripts.pmc.gov.au/sites/default/files/original/00008370.pdf>>.

35 Prime Minister the Hon Paul Keating MP, "Second Keating Ministry" (Media Release, 25 March 1994) <<https://pmtranscripts.pmc.gov.au/sites/default/files/original/00009167.pdf>>.

86. A footnote identifying the instances in which the names of departments did not reflect the title of the portfolio minister, and where a portfolio contained two departments of State, featured in Ministry Lists thereafter for some years. The Rudd Government Ministry List of 9 June 2009 contained a shortened footnote that stated “[t]he title of a department does not necessarily reflect the title of a minister in all cases”³⁶. This convention was continued in the Ministry Lists issued by the Gillard, Abbott and Turnbull Governments. In the Turnbull Government’s Ministry List of 15 September 2015, a further line was added to the footnote stating “Assistant Ministers in italics are designated as Parliamentary Secretaries under the *Ministers of State Act 1952*”³⁷.

87. Following the swearing-in of the first Morrison Ministry on 28 August 2018, the footnote to the Ministry List read³⁸:

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*. (italicised emphasis added)

88. The inclusion of the reference to ministers being sworn to administer “other portfolios in which they are not listed” was inserted on the recommendation of PM&C to reflect the growing trend in the appointment of ministers to administer multiple departments. PM&C had recommended incorporating this caveat in the Turnbull Government’s Ministry List in 2017. It did not appear in the published Ministry List for the Turnbull Government due to what PM&C described as a “template issue”. The footnote in succeeding ministry lists has remained unchanged since 28 August 2018.

36 Commonwealth Government, *Rudd Ministry* (9 June 2009) <<https://webarchive.nla.gov.au/awa/20091024195914/http://dpmc.gov.au/parliamentary/index.cfm>>.

37 Commonwealth Government, *Turnbull Ministry* (30 September 2015) <[https://web.archive.org.au/awa/20151020192114mp_/http://www.dpmc.gov.au/sites/default/files/files/Ministry_List_30_Sept_2015\(2\).pdf](https://web.archive.org.au/awa/20151020192114mp_/http://www.dpmc.gov.au/sites/default/files/files/Ministry_List_30_Sept_2015(2).pdf)>.

38 Commonwealth Government, *Morrison Ministry* (28 August 2018) <<https://webarchive.nla.gov.au/awa/20181010005147/https://www.pmc.gov.au/resource-centre/government/ministry-list>>.

Section 3:

Facts and circumstances of the appointments

COVID-19 and the *Biosecurity Act 2015*

89. The COVID-19 pandemic is the context in which Mr Morrison’s appointments to administer the Departments of Health and Finance are to be understood. The appointment to administer the Department of Health was prompted by recognition of the extraordinary powers conferred on the Health Minister in the event of the declaration of a “human biosecurity emergency” under the *Biosecurity Act 2015* (Cth).
90. On 30 January 2020, the Director-General of the World Health Organization (“WHO”) declared the outbreak of COVID-19 to be a Public Health Emergency of International Concern³⁹. The WHO issued Temporary Recommendations under the International Health Regulations 2005 which included that all countries should be prepared for containment and prevention of the spread of COVID-19 by means that included active surveillance, early detection, isolation and contact tracing.
91. On 4 March 2020, the Governor-General, His Excellency General the Honourable David Hurley AC DSC (Rtd), was given a briefing on the human biosecurity emergency powers under the Biosecurity Act by Mr Hunt and Professor Paul Kelly, the then Deputy Chief Medical Officer at the Department of Health.
92. The Biosecurity Act was enacted to provide a modern regulatory framework for the management of a wide range of risks including the introduction of pests and diseases that cause harm to animal, plant and human health and to the environment⁴⁰. It gives effect to Australia’s international obligations under the International Health Regulations.

39 World Health Organization, “Statement on the Second Meeting of the International Health Regulations (2005) Emergency Committee Regarding the Outbreak of Novel Coronavirus (2019-nCoV)” (30 January 2020) <[https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news/item/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))>.

40 Explanatory Memorandum, *Biosecurity Bill 2014* (Cth) 7.

93. The declaration of a “human biosecurity emergency” under the Biosecurity Act is conditioned on the Health Minister’s satisfaction that a listed human disease is posing a severe and immediate threat, or is causing harm, to human health on a nationally significant scale, and that the declaration is necessary to prevent or control the entry, emergence, establishment or spread of the disease⁴¹. A human biosecurity emergency period must not be longer than the Health Minister considers necessary to prevent or control the entry, emergence, establishment or spread of the disease, and in any case must not be longer than three months⁴². However, this period may be extended⁴³.
94. In the event, the Governor-General declared that a human biosecurity emergency existed regarding the listed human disease “human coronavirus with pandemic potential” on 18 March 2020⁴⁴. This declaration was extended eight times, with the emergency period continuing until 17 April 2022⁴⁵. Before 18 March 2020, there had not been an occasion to declare a human biosecurity emergency enlivening these powers.
95. Under the Biosecurity Act the declaration of a human biosecurity emergency confers expansive powers upon the Health Minister to determine emergency requirements⁴⁶ and to give directions⁴⁷. The Health Minister may determine any requirement and give any direction⁴⁸ that he or she is satisfied is necessary to⁴⁹:
- prevent or control the entry, emergence, establishment or spread of the listed human disease;
 - prevent or control the spread of the listed human disease to another country; or
 - to give effect to a recommendation by the WHO under the International Health Regulations.

41 *Biosecurity Act 2015* (Cth) s 475.

42 *Biosecurity Act 2015* (Cth) s 475(4).

43 *Biosecurity Act 2015* (Cth) s 476.

44 *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* <<https://www.legislation.gov.au/Details/F2020L00266>>.

45 *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Variation (Extension No. 1) Instrument 2022* <<https://www.legislation.gov.au/Details/F2022L00132>>.

46 *Biosecurity Act 2015* (Cth) s 477.

47 *Biosecurity Act 2015* (Cth) s 478.

48 Other than biosecurity measures which could be imposed on individuals as part of a human biosecurity control order under the *Biosecurity Act 2015* (Cth) ch 2 pt 3: ss 477(6), 478(6).

49 *Biosecurity Act 2015* (Cth) ss 477(1), 478(1).

96. The Health Minister must be satisfied that the requirement or direction⁵⁰:
- is likely to be effective in, or contribute to, achieving the purpose for which it is to be determined;
 - is appropriate and adapted to achieve that purpose;
 - is no more restrictive or intrusive than is required (and for a requirement, the manner in which that requirement is applied is no more restrictive or intrusive than is required); and
 - is only to apply for as long as necessary.
97. These human biosecurity emergency powers may only be exercised by the Minister personally⁵¹. Unlike other provisions of the Biosecurity Act, there is no requirement for the Health Minister to consult with any person before determining a requirement or giving a direction⁵². There is no requirement for publication of directions, which may be given orally⁵³. Whilst determinations are legislative instruments, they are non-disallowable⁵⁴. A requirement determined or a direction given by the Health Minister during a human biosecurity emergency applies despite any provision of any other Australian law⁵⁵.
98. On the morning of 5 March 2020, Mr Porter, the then Attorney-General, met with members of his staff and officers of the Australian Government Solicitor (“AGS”) to discuss the human biosecurity emergency powers, including those that may only be exercised by the Health Minister personally. Mr Adam Cason, Senior General Counsel with the AGS, suggested that for the purposes of the exercise of the human biosecurity emergency powers under the Biosecurity Act, the “Health Minister” may be not only Mr Hunt but also the two junior ministers who had been appointed to administer the Department of Health, Senator the Hon Richard Colbeck, then Minister for Aged Care and Senior Australians and Minister for Youth and Sport; and the Hon Mark Coulton MP, then Minister for Regional Health, Regional Communications and Local Government. Following this meeting, Mr Cason advised the Attorney-General’s Office (“AGO”) in writing of his opinion that each of the three ministers who had been appointed to administer the Department of Health was the “Health Minister” for the purposes of the Biosecurity Act⁵⁶ and it followed that the powers conferred on the Health Minister personally under that Act could also validly be exercised by Mr Colbeck

50 *Biosecurity Act 2015* (Cth) ss 477(4), 478(3).

51 *Biosecurity Act 2015* (Cth) s 474.

52 Cf, for example, *Biosecurity Act 2015* (Cth) s 51(7).

53 *Biosecurity Act 2015* (Cth) s 572(1).

54 *Biosecurity Act 2015* (Cth) s 477(2).

55 *Biosecurity Act 2015* (Cth) ss 477(5), 478(4).

56 *Biosecurity Act 2015* (Cth) s 9 (definition of “Health Minister”).

or Mr Coulton. Mr Cason suggested that it may be prudent for Mr Hunt to write to his fellow portfolio ministers informing them that he would exercise the human biosecurity emergency powers under the Biosecurity Act save in specified circumstances such as illness or inability, if so much had not already been made clear.

99. In early March 2020, Mr Porter was engaged in assessing the powers available to the Commonwealth to address a range of issues presented by the pandemic. Mr Porter was surprised that the Biosecurity Act had been passed by the Parliament in the form in which it did. He considered that the human biosecurity emergency powers were extraordinary and he was critical of the omission of appropriate legislative checks and balances governing their exercise. Mr Porter recalls that he raised with Mr Morrison his concern about the “unrestrained plenary nature” of the powers that would vest in the Health Minister upon the declaration of a human biosecurity emergency. Mr Porter proposed that a protocol be adopted to provide a staged, consultative decision-making process before any determinations were made under a human biosecurity declaration. Mr Porter’s concerns respecting the unchecked scope of the human biosecurity emergency powers did not reflect any question in his mind about Mr Hunt’s judgement in exercising them. Mr Porter discussed the proposal for a decision-making protocol with Mr Hunt who was supportive of it.
100. Senior officers in AGD and the AGS spent much of the long weekend of 9 March 2020⁵⁷ working with the Department of Health on the draft of the proposed protocol (“the protocol”). The protocol was designed to ensure that the Health Minister would engage in a process of consultation with the Prime Minister and other senior ministers on the need for, and the terms of, a human biosecurity emergency declaration, emergency requirement or direction under the Biosecurity Act.

⁵⁷ 9 March 2020, Canberra Day, was a public holiday in the Australian Capital Territory.

Appointment to administer the Department of Health

The proposal that Mr Morrison be appointed to administer the Department of Health

101. Mr Porter recalls that he proposed that Mr Morrison be appointed to administer the Department of Health as an added check on the exercise of the human biosecurity emergency powers. Mr Porter reasoned that, were the Prime Minister appointed to administer the Department of Health, he would be briefed by departmental officers in advance of any exercise of the human biosecurity emergency powers in the same way that Mr Hunt would be briefed. Mr Porter's recollection of the rationale for the appointment differs from the recollection of a number of others who had knowledge of the appointment and who understood it to be a precautionary measure only to be enlivened if Mr Hunt were to be incapacitated.
102. Mr Porter's account is consistent with the recollection of Mr Cormann, the then Minister for Finance, who said that in early March he became aware of the suggestion that the powers of the Health Minister under the Biosecurity Act were so extensive, that it may be advisable to have the Prime Minister appointed, alongside Mr Hunt, to administer them. Mr Porter's account also has some resonance with the recollection of Mr Michael Pezzullo AO, Secretary of the Department of Home Affairs. Mr Pezzullo remembered learning of the proposal, and that it had been initially presented as a safeguard in case Mr Hunt were to be incapacitated, but that Mr Morrison had also conveyed that it was a check on Mr Hunt's powers under the Biosecurity Act.
103. Dr Brendan Murphy⁵⁸, then the Commonwealth's Chief Medical Officer (currently the Secretary of the Department of Health and Aged Care), was present at a meeting in early March 2020 with Mr Morrison and Mr Hunt at which there was discussion of the likely need to exercise the human biosecurity emergency powers at short notice to control the transmission of COVID-19. Professor Murphy recalls that at this meeting Mr Morrison raised the possibility of Mr Hunt contracting COVID-19 (or becoming otherwise incapacitated) and being unable to exercise the human biosecurity emergency powers. And in this context, Mr Morrison said that he intended to have himself appointed to administer the Department of Health as a safeguard against this risk. Professor Murphy has a clear recall that Mr Morrison did not express any intention of exercising the Health Minister's powers other than in the event of Mr Hunt becoming incapacitated. Professor Murphy was not asked to treat Mr Morrison's foreshadowed appointment as confidential.

58 As he then was, now Professor Brendan Murphy AC.

104. As at 9 March 2020, Ms Stephanie Foster PSM, then Deputy Secretary, Governance and APS Reform in PM&C, understood that the human biosecurity emergency powers had been considered at ministerial level and, in the event Mr Hunt were to be incapacitated, it was the ministers' strong preference that these powers be exercised by the Prime Minister and not by a junior portfolio minister. On the morning of 9 March 2020, Ms Foster conveyed this understanding to Mr Chris Moraitis PSM, then Secretary of AGD, suggesting to him that the easiest way to achieve this outcome was for the Prime Minister to be "cross sworn" in the Health portfolio. Ms Foster sought advice from AGD on whether her understanding was correct in law.

105. Mr Moraitis referred Ms Foster's request to Mr Leo Hardiman⁵⁹, then AGS' Deputy Chief General Counsel, and to Mr Cason. This was the first time Mr Cason, who was working closely with the AGO in relation to the COVID-19 response, had been asked to consider the exercise by the Prime Minister of the powers conferred on the Health Minister under the Biosecurity Act. Mr Cason concluded that the most obvious, and possibly the only, means of achieving the desired outcome was to appoint Mr Morrison to administer the Department of Health. Mr Cason conveyed this view in an email to Mr David Lewis, General Counsel (Constitutional) in AGD. The two had been working together on the draft of the protocol. Mr Lewis agreed that the most obvious mechanism was to have Mr Morrison appointed to administer the Department of Health. Notably, Mr Lewis added:

It does seem a bit like overkill as any Health portfolio minister will, under the protocol, need to consult the [Prime Minister] and other relevant ministers. *I don't really see why we are trying to reinvent the process under the Act and usual cabinet government, but there you are.* (emphasis added)

106. Mr Lewis re-iterated his reservation in an email sent to Mr Moraitis shortly thereafter:

The idea of having the [Prime Minister] exercise the emergency biosecurity powers seems unnecessary to me.

A junior health minister could exercise the powers if Mr Hunt were incapacitated. Under the protocols proposed, that junior minister would need to consult other relevant ministers including the [Prime Minister] before exercising the powers. In any case, I don't imagine any junior minister would exercise these powers without consulting the [Prime Minister].

⁵⁹ As he then was, now Leo Hardiman PSM KC.

107. Mr Moraitis responded that it was his understanding that the government's strong preference was to have a senior minister exercise these powers. Mr Hardiman shared Mr Lewis' view that the proposal to have Mr Morrison appointed to administer the Department of Health was unnecessary, but he advised Ms Foster on the morning of 9 March 2020 that, were it ultimately to be decided that Mr Morrison should exercise the Health Minister's Biosecurity Act powers when Mr Hunt was unable to do so, it would be necessary for him to be appointed to administer the Department of Health.

108. That day, the PMO asked PM&C to prepare the necessary documents to effect the appointment. As explained above at paragraph 73, in the ordinary course, a brief would be prepared by PM&C, together with a draft letter of recommendation addressed to the Governor-General for the Prime Minister's signature and an instrument of appointment. On this occasion no brief was prepared. The initial draft of the letter of recommendation prepared by PM&C included the assertion that:

The Government's leadership group considers it is necessary that, in the event that the Minister for Health, the Hon Greg Hunt MP, is unavailable, another senior Minister should be able to exercise his powers in the Health portfolio in an emergency.

109. Before forwarding the letter and instrument to the PMO, Ms Foster reviewed this draft and commented that her instinct was not to refer to "the leadership group" but rather to Mr Morrison's own judgement. Ms Foster believes she proposed the amendment because she did not know as a fact that the decision had been made by "the leadership group", an imprecise expression which she was not accustomed to hearing Mr Morrison use. Ms Foster also discussed the matter with Mr Phil Gaetjens, then Secretary of PM&C. Following this discussion, on the afternoon of 9 March 2020, a revised draft of the letter addressed to the Governor-General and the instrument of appointment was sent to Dr John Kunkel, Mr Morrison's Chief of Staff. The letter is **Appendix F** and read as follows:

Your Excellency

I am writing to recommend additional administrative arrangements in the Health portfolio. The severity of the Coronavirus crisis requires that we are prepared for all eventualities.

In the event that the Minister for Health, the Hon Greg Hunt MP, is unavailable to exercise his significant powers as Health Minister, I consider it would be appropriate for another senior Minister to be able to exercise these in an emergency.

To facilitate this contingency, I recommend that you appoint me, in addition to my existing appointment, to administer the Department of Health.

An instrument to give effect to this recommendation is attached, for your signature.

Yours sincerely

SCOTT MORRISON

110. On 11 March 2020, the Director-General of the WHO released a statement expressing the WHO's deep concern about the alarming levels of spread and severity of COVID-19, and advising that COVID-19 could be now characterised a pandemic. The WHO renewed its call for countries to take "urgent and aggressive action"⁶⁰.
111. On 12 March 2020, Mr John Reid PSM, First Assistant Secretary, Government Division of PM&C, contacted Mr Paul Singer MVO, Official Secretary to the Governor-General, and explained that it was proposed to make an administrative change to the Department of Health. Mr Singer's recollection was that Mr Reid said that the change was constitutionally valid and in accord with established practice.
112. On 13 March 2020, it was disclosed that the then Minister for Home Affairs, the Hon Peter Dutton MP, had tested positive for COVID-19⁶¹ and had been admitted to hospital in Queensland⁶². Mr Dutton had attended a Cabinet meeting in person in Sydney on 10 March 2020, at which Mr Morrison and other Cabinet Ministers were also present⁶³. On the same day, Mr Hunt discussed the Government's pandemic response with Mr Morrison by telephone. Mr Hunt recalls that in the course of this discussion, Mr Morrison expressed his intention of being appointed to administer the Department of Health to enable him to exercise the Health Minister's human biosecurity emergency powers in the event that Mr Hunt were to become incapacitated. Mr Hunt was not aware of any suggestion that the appointment was intended to serve as a check on his exercise of these powers.

The appointment

113. Shortly after 6:00pm on 13 March 2020, PM&C provided the PMO with further soft copies of the letter of recommendation and the instrument of appointment together with advice about printing and execution of the instrument. Less than half an hour later, the PMO returned a signed copy of the letter of recommendation to PM&C. Mr Reid contacted Mr Singer, and made an appointment to see the Governor-General the following morning, and sent soft copies of the letter and instrument to Mr Singer that evening.

60 World Health Organization, "WHO Director-General's Opening Remarks at the Media Briefing on COVID-19 – 11 March 2020" (11 March 2020) <<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>>.

61 Prime Minister the Hon Scott Morrison MP, "Statement – Minister for Home Affairs, Coronavirus Update" (13 March 2020) <<https://pmtranscripts.pmc.gov.au/release/transcript-43964>>.

62 Brett Worthington, "Home Affairs Minister Peter Dutton Diagnosed with Coronavirus", *ABC News* (online, 13 March 2020) <<https://www.abc.net.au/news/2020-03-13/peter-dutton-diagnosed-with-coronavirus/12055104>>.

63 Prime Minister the Hon Scott Morrison MP, "Statement – Minister for Home Affairs, Coronavirus Update" (13 March 2020) <<https://pmtranscripts.pmc.gov.au/release/transcript-43964>>.

114. At 11:00am on Saturday 14 March 2020, Mr Reid attended Government House and the instrument of appointment was signed by the Governor-General⁶⁴. The instrument as signed stated:

APPOINTMENT OF MINISTER OF STATE

I, DAVID JOHN HURLEY, Governor-General of the Commonwealth of Australia, pursuant to section 64 of the Constitution, hereby appoint SCOTT JOHN MORRISON, a member of the Federal Executive Council, to administer THE DEPARTMENT OF HEALTH.

Signed and sealed with the
Great Seal of Australia on
14 March 2020
Governor-General

115. Mr Reid advised the PMO that the instrument had been signed and that Mr Morrison was now appointed to administer the Department of Health. On the afternoon of Monday 16 March 2020, PM&C sent an electronic copy of the signed instrument to the PMO.
116. Mr Hunt was not notified of the appointment but in light of his discussion with Mr Morrison he assumed that it had been made. The Department of Health was not notified of the appointment. Ms Caroline Edwards, who was acting Secretary of the Department of Health at the time of the appointment, was not informed of it, and nor was Professor Murphy. Nonetheless, Professor Murphy assumed that the appointment had been made having regard to the earlier discussion to which he had been a party. Mr McCormack, then the Deputy Prime Minister, recalls that senior ministers who were part of an informal “leadership group” were told of the appointment and that Mr Morrison foreshadowed that he would “take and fill other senior ministerial roles if the case arises, as need be, as the Prime Minister”. Mr McCormack said that none of the Ministers present expressed any concerns about it.
117. In mid-March 2020, Mr Cason was working with the AGO on a document titled the *COVID -19 Playbook* (the “Playbook”). The Playbook was conceived as a “living, iterative document” that would be updated and would inform departmental officers and ministerial advisors of the legislative mechanisms available to support measures that the Government might adopt to address the pandemic. On 18 March 2020, an advisor in the AGO sent an email to Mr Cason proposing that the Playbook be updated to “note generally that the [Prime Minister] is now also the Health Minister for the purposes of the [Biosecurity Act]” and attaching an updated version of the Playbook that read: “[c]urrently, *the Prime Minister, and Ministers Colbeck and Coulton* are sworn to administer the [Department of Health],

⁶⁴ Governor-General of the Commonwealth of Australia, *Appointment of Minister of State* (14 March 2020) <<https://www.pmc.gov.au/sites/default/files/Instrument-2020-03-14-Health.pdf>> [Appendix A].

as well as Minister Hunt” (additional text in italics). However, it does not appear that publication in the Playbook served to make the appointment known within the public service and ministerial offices. By the time the Playbook was amended to include reference to Mr Morrison’s appointment, it would seem it had outlived its usefulness and it is unclear how widely, if at all, it was distributed.

118. The declaration of the “human biosecurity emergency” made on 18 March 2020 was counter-signed by Mr Hunt as Minister for Health⁶⁵. Before the declaration was made, the protocol setting out the steps to be taken before the making of a declaration had been adopted. These steps included consultation by the Minister for Health with either the National Security Committee of Cabinet, or the Prime Minister, Attorney-General, Minister for Home Affairs and Minister for Defence (it being permissible to proceed without consulting a minister if it were not reasonably practicable in the circumstances), on the need for a declaration and its terms.
119. Following the declaration, Mr Morrison made a statement at a press conference in Parliament House on 18 March 2020 in which he said⁶⁶:

Now, the National Security Committee met yesterday, before the National Cabinet. They made a number of decisions, one of those has been enacted this morning by the Governor-General, and that is that a human biosecurity emergency was declared under the Biosecurity Act by the Governor-General, and that regards the recognition of the threat, the coronavirus, and the need for the Federal Government to take actions under the Health Minister and myself as Prime Minister in relation to limiting that spread.

120. Mr Porter recalls watching the press conference and being aware of the reference to the declaration of the human biosecurity emergency and to action being taken in this respect by the former Health Minister and Prime Minister. Mr Porter did not consider the absence of reference to the fact of Mr Morrison’s appointment to administer the Department of Health to be unusual given the circumstances and other more pressing issues. Mr Hunt viewed Mr Morrison’s statement as an acknowledgment of his appointment to administer the Department of Health because the reference to taking action under the Biosecurity Act was a reference to powers that were only held by the Health Minister. Mr Hunt presumed that Mr Morrison’s appointment would be notified in the Gazette.

65 *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (Cth) <<https://www.legislation.gov.au/Details/F2020L00266>>.

66 Prime Minister the Hon Scott Morrison MP, “Press Conference – Australian Parliament House, ACT” (Press Conference, 18 March 2020) <<https://pmtranscripts.pmc.gov.au/release/transcript-42738>>.

121. In statements made after the appointments were made public, Mr Morrison gave two reasons for taking the appointments: (i) the incapacity of a minister or (ii) the national interest. The national interest category was concerned with departments in which ministers were vested with specific legislative powers, including significant financial authorities, that were not subject to Cabinet oversight⁶⁷. In his letter of 10 November 2022, Dr Tscalos advised that in addition to the account given in Mr Morrison’s public statements:

[...] the decision to appoint Mr Morrison to also be in a position to administer the Department of Health and the relevant portfolio legislation was taken so as to avoid delay in the exercise of the relevant statutory powers given the extraordinary events surrounding the COVID-19 pandemic and the fact that there may be a need to move quickly. The appointment was also intended to ensure the further oversight of the use of the relevant powers under the *Biosecurity Act 2015* (Cth), given the extraordinary nature of those powers, and the fact that these were not subject to oversight by Cabinet.

122. The second reason is consistent with Mr Porter’s proposal that the appointment would operate as a check on the use of the emergency powers. What is unclear on Mr Morrison’s account is how he saw the appointment giving him the “further oversight of the use of the relevant powers”. Mr Porter envisaged that the Department of Health would brief Mr Morrison in tandem with Mr Hunt. This did not happen because the Department of Health was not informed of the appointment. Had Mr Morrison wished to receive the same briefings from the Department of Health as Mr Hunt was receiving, it is to be expected that he would have instructed his office or PM&C to notify the department of the fact of his appointment and of his wish to be briefed by it. To the contrary, in his statement of 17 August 2022, Mr Morrison said:

Ministerial briefs were not copied to me as Prime Minister in a co-Minister capacity, as this was not the nature of the arrangement.

⁶⁷ The Hon Scott Morrison MP, “Statement Regarding Ministerial Arrangements” (Media Release, 17 August 2022) (Appendix C).

123. Mr Porter recalls some discussion with Mr Morrison, and probably Mr Hunt, to the effect that Mr Morrison's appointment to administer the Department of Health would serve as a precaution in the event Mr Hunt were to become incapacitated. Mr Porter viewed this object as ancillary to the primary rationale for the appointment, namely as a check on the exercise of the plenary human biosecurity emergency powers. Mr Porter's advice concerning the appointment was not given in writing. The appointment appears to have been subsidiary in his mind to the protocol. Taking into account the pressures on both Mr Porter and Mr Morrison in mid March 2020, it seems likely that Mr Porter's rationale for the appointment became lost and that the reason Mr Morrison had himself appointed to administer the Department of Health was the reason he gave in his letter to the Governor-General, namely that if Mr Hunt was unavailable to exercise his powers as Health Minister those powers should be exercised by a senior minister.
124. It does not appear that Mr Lewis' view, that the appointment of Mr Morrison to administer the Department of Health was unnecessary, was conveyed to PM&C or the PMO. I spoke with both Mr Moraitis and Mr Lewis. Neither had an independent recall of his involvement in this appointment. Mr Moraitis explained that development of the protocol had occupied "98 per cent" of his focus in this time of crisis. In the circumstances, PM&C's request for clarification of the legality of the proposed appointment would not have been a matter to which he attached particular significance. Mr Moraitis was not aware of ministers having been "jointly sworn" before, but he considered the desire to ensure that a senior minister was the person responsible for exercising the human biosecurity emergency powers was understandable. Provided the appointment was lawful, Mr Moraitis considered it the function of departmental officers to give effect to the ministers' wish that it be put in place.
125. Mr Lewis commented that his involvement in the appointment had taken place within one or two hours on the morning of Monday 9 March. He characterised his query concerning the necessity for the appointment as having been "fairly casual", albeit he had put his concerns to Mr Moraitis shortly afterwards. Mr Lewis observed that it is common practice to have senior and junior ministers administering the same portfolio but he considered it a "bit unusual" for a Prime Minister to be appointed to administer another portfolio. He adhered to his view that this appointment had been unnecessary. The senior officers in PM&C, including Mr Gaetjens, who had knowledge of the appointment shared Mr Moraitis' view that the desire to have a senior minister responsible for the exercise of the biosecurity powers in the event Mr Hunt was unable to do so was reasonable in the circumstances.

Appointment to administer the Department of Finance

The financial measures enacted as part of the pandemic response

126. The context of Mr Morrison’s appointment to administer the Department of Finance includes the financial measures enacted in March 2020 to address the economic impact of the COVID-19 pandemic. Since Federation, Bills for annual appropriations have been introduced in two principal sets: Appropriation Bills Nos 1 and 2 (which, together now with an Appropriation (Parliamentary Departments) Bill (No 1) and accompanying statements, are referred to as “the Budget”) and Appropriation Bills Nos 3 and 4 (which, together now with an Appropriation (Parliamentary Departments) Bill (No 2), are referred to as “additional estimates”)⁶⁸. Supply Bills make interim provision for expenditure when the Budget is not going to be passed before the start of the financial year on 1 July⁶⁹.
127. Appropriation and (if introduced) supply Bills include an appropriation of funds for the “Advance to the Finance Minister”. These amounts enable the expenditure of moneys that the Finance Minister is satisfied is urgently required and was unforeseen, or erroneously omitted from, or understated in, the Appropriation and Supply Acts⁷⁰.
128. *The Appropriation Act (No 1) 2019–2020* (Cth) and *Supply Act (No 1) 2019–2020* (Cth) together provided for an Advance to the Finance Minister of \$295 million⁷¹. The *Appropriation Act (No 2) 2019–2020* (Cth) and the *Supply Act (No 2) 2019–2020* (Cth) together provided for an Advance to the Finance Minister of \$380 million⁷². The amounts specified in these 2019–2020 Acts are the same as the amounts provided for under each of the Appropriations Acts Nos 1 and 2 (and Supply Acts Nos 1 and 2 when enacted) since 2008–2009.
129. On 23 March 2020, two Bills forming part of a larger package that was intended to address the economic impact of the COVID-19 pandemic were passed by both Houses of Parliament without amendment. Each commenced on 24 March 2020⁷³. The *Appropriation (Coronavirus*

⁶⁸ *Wilkie v The Commonwealth* [2017] 263 CLR 487 at [65].

⁶⁹ Department of the House of Representatives, *House of Representatives Practice* (7th ed, 2018) 425 <https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7>.

⁷⁰ See *Wilkie v The Commonwealth* [2017] 263 CLR 487 at [73]–[84] in relation to the history and operation of the Advance to the Finance Minister.

⁷¹ *Appropriation Act (No 1) 2019–2020* (Cth) s 10(3); *Supply Act (No 1) 2019–2020* (Cth) s 10(3).

⁷² *Appropriation Act (No 2) 2019–2020* (Cth) s 12(3); *Supply Act (No 2) 2019–2020* (Cth) s 12(3).

⁷³ *Appropriation (Coronavirus Economic Response Package) Act (No. 1) 2019–2020* (Cth) s 3; *Appropriation (Coronavirus Economic Response Package) Act (No. 2) 2019–2020* (Cth) s 3.

Economic Response Package) Act (No. 1) 2019–2020 (Cth) provided for an Advance to the Finance Minister of \$800 million⁷⁴. The *(Coronavirus Economic Response Package) Act (No. 2) 2019–2020* (Cth) provided for an Advance to the Finance Minister of \$1,200 million⁷⁵.

130. Mr Cormann informed the Senate in his second reading speech for the Bills that two advances by the Finance Minister had been approved in early March 2020 under *Appropriation Act (No 2) 2019–2020* in the amount of \$300 million, for initial coronavirus related responses⁷⁶. The additional \$2 billion Advance to the Finance Minister is to be compared with amounts that were actually made available under Advance to Finance Minister provisions in previous financial years⁷⁷:

- 2015–2016, \$101,237,000;
- 2016–2017, none;
- 2017–2018, \$122,000,000; and
- 2018–2019, \$167,939,000.

The appointment

131. The genesis of the proposal to appoint Mr Morrison to administer the Department of Finance would seem to date back at least to 13 March 2020. PM&C maintained a table which listed each portfolio and department together with the names and offices of each minister administering the department and their respective responsibilities (“the portfolio table”). On 13 March 2020, the PMO requested a copy of the portfolio table. PM&C sent a copy of the portfolio table as at 6 February 2020. A copy of PM&C’s email attaching the portfolio table was also sent to Mr Gaetjens. On the same day, officers in the Government Division of PM&C reviewed the portfolio table to assess the need, if any, for the appointment of additional ministers to administer portfolios against the risk of the portfolio minister becoming incapacitated. This was the day Mr Dutton was admitted to hospital having tested positive for COVID-19.

⁷⁴ *Appropriation (Coronavirus Economic Response Package) Act (No. 1) 2019–2020* (Cth) s 10(3).

⁷⁵ *Appropriation (Coronavirus Economic Response Package) Act (No. 2) 2019–2020* (Cth) s 12(3).

⁷⁶ Commonwealth, *Parliamentary Debates*, Senate, 23 March 2020 (Mathias Cormann, Minister for Finance) 1794.

⁷⁷ Department of Finance, *Advance to the Finance Minister – List of AFMs* (Web Page, 27 June 2022) <<https://www.finance.gov.au/publications/advance-finance-minister/advance-finance-minister-list-afms>>.

132. The Government Division of PM&C concluded that the only portfolios which should be considered for additional ministerial appointments were AGD and the Department of Finance; AGD had only one minister administering it and Mr Cormann was the only Cabinet Minister administering the Department of Finance. All other departments were being administered by more than one Cabinet Minister and it was considered that there was “enough redundancy” under existing arrangements. At this time, Mr Morrison’s appointment to administer the Department of Health was already well under way. The officers conducting the review noted that Mr Morrison could be “cross sworn” to these two departments. Alternatively, they proposed that Senator the Hon Marise Payne, who represented the Attorney-General in the Senate at the time, could be “sworn” to administer AGD and Mr Frydenberg, the then Treasurer, who represented the Finance Minister in the House of Representatives, could be “sworn” to administer the Department of Finance. It is unclear whether the results of this review were passed on to the PMO.
133. Following Mr Morrison’s appointment to administer the Department of Health on 14 March 2020, no immediate action was taken in relation to the appointment of additional ministers to administer other departments. And, in the event, no additional minister was appointed to administer AGD. However, on 30 March 2020, PM&C received a request from the PMO to prepare the supporting documents to enable Mr Morrison to be appointed to administer the Department of Finance. PM&C acted promptly. A letter of recommendation and an instrument of appointment, in terms relevantly identical to the letter of recommendation and instrument appointing Mr Morrison to administer the Department of Health⁷⁸, were prepared, sent to the PMO and signed by Mr Morrison within hours. The previous week, the Governor-General had received a briefing on the economic impact of the COVID-19 pandemic by Mr Gaetjens and Dr Steven Kennedy PSM, the Secretary of the Treasury. Mr Reid contacted Mr Singer and made an appointment to see the Governor-General at 4:00pm on 30 March 2020. The Governor-General signed the instrument in accordance with Mr Morrison’s recommendation that day⁷⁹.
134. The legality of appointing Mr Morrison to administer additional departments having been established following consultation with AGD, no advice was sought in relation to this further appointment and neither the Attorney-General nor his office were informed of it.

⁷⁸ See text of the letter of recommendation in relation to the appointment to administer the Department of Health above at paragraph 109. The letter of recommendation is Appendix G.

⁷⁹ Governor-General of the Commonwealth of Australia, *Appointment of Minister of State* (30 March 2020) <<https://www.pmc.gov.au/sites/default/files/Instrument-2020-03-30-Finance.pdf>> (Appendix A).

135. This appointment was not made public. Neither Mr Cormann nor Ms Rosemary Huxtable PSM, the then Secretary of the Department of Finance, were informed of the appointment before it became public following the media reporting that accompanied the publication of *Plagued* in August 2022. Senator the Hon Simon Birmingham, who was the Minister for Finance in the period 30 October 2020 to 23 May 2022, was not informed of the appointment. Apart from advisors in the PMO and a small group of senior officers in the Government Division of PM&C, the Prime Minister’s appointment to administer the Department of Finance remained secret.
136. Dr Kunkel, Mr Morrison’s Chief of Staff, had little involvement in, or knowledge of, the appointments to administer the Departments of Health and Finance. He understood that Mr Morrison, Mr Hunt, Mr Porter and possibly other senior ministers had been involved in discussions about Mr Morrison’s appointment to administer the Department of Health. Dr Kunkel had no recollection of whether advice was obtained concerning the appointment or whether alternative options had been canvassed. Dr Kunkel recalls there was a further reason for the Department of Finance appointment: Mr Morrison wanted to have the capacity to make decisions about financial support for the States and Territories in “real time” in the context of meetings of the “National Cabinet”. Mr Morrison agrees that this was an additional consideration in his decision to take the appointment.

The 2021 appointments

137. Mr Morrison was appointed to administer DISER on 15 April 2021 and the Departments of the Treasury and Home Affairs on 6 May 2021. PM&C arranged for each of these appointments at the request of the PMO. Mr Gaetjens and senior officers in the Government Division of PM&C were given to understand that Mr Morrison sought to be appointed to administer these additional departments so that he could exercise statutory powers in his role as minister in relation to particular subject matters within the relevant portfolio. In relation to DISER Mr Morrison’s concern was understood to be the determination of applications under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) (“OPGGGS Act”) in relation to a petroleum exploration permit known as PEP-11. In relation to the Department of the Treasury his concern was understood to be the power under the *Foreign Acquisition and Takeovers Act 1975* (Cth) to prohibit, place conditions on, or undo a significant action taken with relation to a foreign power acquiring interests in assets that have a connection to Australia. And in relation to the Department of Home Affairs his concern was understood to be the power to determine that a person cease to be an Australian citizen under section 36B of the *Australian Citizenship Act 2007* (Cth). Mr Morrison, or the PMO, also considered his appointment to administer

the Department of Agriculture, Water and the Environment (“DAWE”), his concern being understood to relate to powers under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (“EPBC Act”).

Regulation of petroleum exploration and PEP-11

138. Petroleum exploration and recovery in “offshore areas” is regulated under the OPGGS Act. A petroleum exploration permit area is a title that authorises the titleholder to explore for petroleum in the permit area⁸⁰. A petroleum exploration permit may be granted subject to conditions, including a requirement that the titleholders carry out work in, or in relation to the permit area, within specified timeframes⁸¹.
139. Under the OPGGS Act, decisions about petroleum exploration permits are made by a “Joint Authority”⁸² comprising the responsible Commonwealth Minister, and the responsible State Minister⁸³. If the responsible Commonwealth Minister and the responsible State Minister disagree about a decision, the responsible Commonwealth Minister’s decision is determinative and takes effect as the decision of the Joint Authority⁸⁴.
140. In April 2021, the OPGGS Act was administered by the minister administering DISER⁸⁵. At the time six ministers had been appointed to administer DISER. While each could lawfully exercise powers conferred on “the Minister” under the legislation listed in the AAO in the DISER portfolio⁸⁶, Mr Pitt, then Minister for Resources, Water and Northern Australia, was understood to be the responsible Commonwealth Minister in the Joint Authority. The Hon John Barilaro MP, the New South Wales Deputy Premier and Minister for Regional New South Wales, Industry and Trade, was the responsible State Minister for New South Wales in the Joint Authority.
141. The National Offshore Petroleum Titles Administrator (“NOPTA”) assists and advises the responsible Commonwealth and State Ministers in relation to the performance of the functions, or the exercise of the powers, of a Joint Authority⁸⁷. The OPGGS Act provides that all communications to or by a Joint Authority are to be made through NOPTA⁸⁸.

80 *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) s 98 (“OPGGS Act”).

81 *OPGGS Act* s 99.

82 *OPGGS Act* s 99(1).

83 *OPGGS Act* s 56.

84 *OPGGS Act* s 59(2).

85 Since 1 July 2022, it has been administered by the Department of Industry, Science and Resources: Administrative Arrangements Order made on 1 June 2022, Part 11.

86 Subject to a contrary intention in the legislation being construed: *Acts Interpretation Act 1901* (Cth) s 2(2).

87 *OPGGS Act* s 695B.

88 *OPGGS Act* s 63.

142. PEP-11 covers an area of 4,575.41 km² off the coast of New South Wales, between Sydney and Newcastle. It was initially granted on 24 June 1999 for a period of 6 years (to 23 June 2005). It was renewed, and the expiry date was subsequently extended a number of times to 12 February 2021⁸⁹. Asset Energy Pty Ltd (“Asset Energy”) and Bounty Oil & Gas NL are the current titleholders of PEP-11.
143. On 23 January 2020, Asset Energy submitted an application under the OPGGS Act⁹⁰ to NOPTA on behalf of both titleholders for certain conditions attached to PEP-11 requiring the titleholders to undertake particular work to be suspended and varied, and for a corresponding extension to the permit term (the “PEP-11 applications”). The PEP-11 applications attracted considerable public controversy. Under a protocol settled by the Joint Authority, a decision on the PEP-11 applications was to be made by the responsible Commonwealth and State Ministers personally and not by a delegate.
144. Under the OPGGS Act, if an application is made to suspend any of the conditions to which a petroleum exploration permit is subject, and the permit is otherwise due to expire, the permit continues in force until the Joint Authority makes a decision on the application⁹¹. If the Joint Authority refuses the application, the permit continues for two months after notice of the refusal is given, unless the Joint Authority allows a longer period⁹². This meant that PEP-11 continued in force after the notional expiry date of 12 February 2021, while the Joint Authority was considering the PEP-11 applications.
145. On 17 February 2021, Mr Barilaro wrote to Mr Pitt advising of his recommendation that the Joint Authority refuse the PEP-11 applications. On 22 February 2021, DISER submitted a brief to Mr Pitt attaching Mr Barilaro’s recommendation and NOPTA’s recommendation (which was to approve the PEP-11 applications), and outlining the options open to him in determining the PEP-11 applications.

89 National Offshore Petroleum Titles Administrator, “Title Summary for Exploration Permit PEP-11”, *National Electronic Approvals Tracking System (NEATS) Public Portal* <<https://public.neats.nopta.gov.au/Title/81775e2a-8d46-47f7-91c9-de6f10feca90>>.

90 *OPGGS Act* ss 264, 265.

91 *OPGGS Act* s 265A(1).

92 *OPGGS Act* s 265A(2).

Mr Morrison's interest in the PEP-11 applications

146. On 4 March 2021, Mr Morrison was questioned at a press conference about the PEP-11 applications. Relevantly, the exchange was in these terms⁹³:

JOURNALIST: Do you support the extension of the petroleum exploration licence [off] the coast of New South Wales?

PRIME MINISTER: We're talking about the one down on the...

JOURNALIST: Between Port Stephens and Sydney?

PRIME MINISTER: Yeah, yeah. No.

JOURNALIST: You don't support the extension?

PRIME MINISTER: No.

...

JOURNALIST: Prime Minister, can I just clarify the response that you gave regarding [PEP-11], Keith Pitt is currently considering an application to extend the offshore gas exploration license between Port Stephens and Sydney, are you saying that you don't support the extension of that license?

PRIME MINISTER: I am. Pretty clearly.

JOURNALIST: That will make some of our tourist operators very happy.

PRIME MINISTER: It's going to make me very happy. I think that's the right decision.

JOURNALIST: Will you be pushing Keith Pitt to make this decision soon?

PRIME MINISTER: It's a matter the government's working through, but I'm happy to answer the question – you asked me what my view is. I've told you fairly plainly. I tend to be a fairly plain-speaking person.

147. The following day, PM&C advised the PMO that under the Joint Authority's protocol it was not open for the responsible Commonwealth Minister's decision about the PEP-11 applications to be delegated.

148. On 26 March 2021, the brief prepared by DISER for submission to Mr Pitt on the PEP-11 applications was forwarded by Minister Pitt's Office to the PMO. Later that day the PMO sought further advice from PM&C on the question of the delegation of the responsible Commonwealth Minister's decision on the PEP-11 applications. On 2 April 2021, PM&C advised that nothing in the briefing materials served to alter its earlier advice that Mr Pitt was the decision-maker and the decision could not be delegated.

⁹³ Prime Minister the Hon Scott Morrison MP, "Press Conference – Tomago, NSW" [Press Conference, 4 March 2021], <<https://pmtranscripts.pmc.gov.au/release/transcript-43256>>.

149. In response to a request from the PMO, on 8 April 2021 PM&C supplied the PMO with a “mock-up” of an amendment to the AAO transferring responsibility for that part of the OPGGS Act that governs the variation, suspension and exemption of petroleum exploration permits from DISER to PM&C⁹⁴. The evident purpose of the proposed amendment was to enable Mr Morrison to decide the PEP-11 applications. PM&C advised that given the complexity of arrangements under the OPGGS Act there was a risk of unintended consequences resulting from the transfer.
150. On the evening of 8 April 2021, PM&C raised with the PMO an alternative to the proposal for amendment of the AAO that would still permit Mr Morrison to decide the PEP-11 applications himself. PM&C suggested that Mr Porter (the senior Cabinet Minister administering DISER) could authorise Mr Morrison to act for and on his behalf as the responsible Commonwealth Minister for the purposes of performing functions or exercising powers conferred on a Joint Authority under the OPGGS Act⁹⁵. A draft instrument of authorisation was provided by PM&C to the PMO.
151. The following day, PM&C supplied the PMO with the draft of a letter from Mr Morrison to Mr Pitt which contained four options for the determination of the PEP-11 applications (the “options letter”). The fourth option was for Mr Morrison to direct that another minister be responsible for deciding these applications.
152. Mr Gaetjens was aware of activity within his department concerning the PEP-11 applications from at least 9 April 2021, when he asked Mr Reid for background on the work PM&C was doing on the OPGGS Act. In response to this request, Mr Reid supplied Mr Gaetjens with a copy of the brief DISER had given Mr Pitt on 22 February 2021. Mr Reid also summarised the advice PM&C had given to the PMO over the previous two days about the mechanisms that would enable Mr Morrison to determine the PEP-11 applications himself or arrange for a minister other than Mr Pitt to do so.

⁹⁴ *OPGGS Act* ch 2 pt 2.11 div 1.

⁹⁵ *OPGGS Act* s 7 (definition of “responsible Commonwealth Minister” para (b)); *Acts Interpretation Act 1901* [Cth] s 19(4).

The appointment to administer DISER

153. On or before 12 April 2021, the PMO requested that PM&C prepare the papers for Mr Morrison to be appointed to administer DISER. On 12 April 2021, Mr Peter Rush, Assistant Secretary, Parliamentary and Government Branch, Government Division of PM&C, sent an electronic copy of the brief to the PMO. The brief, and its two attachments, are **Appendix H**. The recommendation and analysis in the brief was as follows:

Recommendation – that you

1. If you wish to do so, sign the letter to the Governor-General, proposing your appointment to administer the Department of Industry, Science, Energy and Resources and enclosing an Instrument of Appointment for his signature (**Attachment A**).

Signed / Not signed

...

Key Points:

1. Your Office has requested documents to appoint you to administer the Department of Industry, Science, Energy and Resources.
2. While it is somewhat unusual for the Prime Minister to be appointed to administer departments outside of the Prime Minister and Cabinet portfolio, there is no constitutional barrier to doing so.
 - a. There are precedents: during 2020 at the start of the COVID-19 pandemic you were appointed to administer the Department of Health and the Department of Finance.
3. As this change is of an administrative nature only, you do not need to subscribe an Oath of Office.

154. The email to the PMO providing the brief was copied to officers within PM&C who were responsible for advising on resources issues and to Ms Foster and Mr Reid. At 8:10pm on 12 April 2021, PM&C was advised by a departmental liaison officer that Mr Morrison had signed the brief and the letter of recommendation. Mr Reid telephoned Mr Singer to advise that Mr Morrison was proposing to make further changes to administrative arrangements. Mr Singer made a diary note of the conversation. He recorded that Mr Reid told him that Mr Morrison’s proposed appointment to DISER was “unusual” but that “the process is fine, valid and consistent with existing practice” and that Mr Morrison might raise the matter during his regular breakfast meeting with the Governor-General which was scheduled to take place the following morning. Mr Singer said that Mr Morrison should provide the Governor-General with additional context in relation to this proposal. The Governor-General received Mr Morrison for their scheduled breakfast meeting on 13 April 2021.

155. A little after midday on 13 April 2021, a senior advisor in the Government Division of PM&C emailed soft copies of documents relating to two ministerial appointments to Mr Singer. Hardcopies of the documents were delivered to Government House on 15 April 2021. One set of documents concerned the appointment of Mr Morrison to administer DISER, and the other set concerned the appointment of the Hon Stuart Robert MP, then Minister for Employment, Workforce, Skills, Small and Family Business, to administer PM&C. Prior to machinery of government changes in March 2021, Mr Robert had been the Minister for Government Services and the National Disability Insurance Scheme in the Social Services portfolio. The DTA was among his responsibilities in the Social Services portfolio. The COVID-19 pandemic had accelerated the pace of digital transformation and this had led to a decision to move the DTA into the Prime Minister and Cabinet portfolio⁹⁶. The proposal to have Mr Robert appointed to administer PM&C appears to have been designed to allow him to continue to hold ministerial responsibility for the DTA and to be briefed by PM&C as the responsible minister for public data policy and related matters.
156. The transfer of responsibility for the DTA to PM&C was on the agenda of the Executive Council for 15 April 2021. It was approved and an Order-in-Council amending the AAO of 18 March 2021 was issued giving effect to the decision. Additionally, on 15 April 2021, the Governor-General signed an instrument appointing Mr Robert to administer PM&C as well as the instrument appointing Mr Morrison to administer DISER. Neither of these appointments was made public by notice in the Gazette or otherwise.
157. The instrument appointing Mr Morrison to administer DISER stated that the appointment was made pursuant to sections 64 and 65 of the Constitution⁹⁷. The instrument did not purport to direct Mr Morrison to hold any office. The Solicitor-General has concluded that the reference to section 65 is surplusage and that the instrument was effective to appoint Mr Morrison to administer DISER⁹⁸. I was advised that the departure from the template used for the appointments to administer the Departments of Health and Finance was a clerical error. There was no suggestion that Mr Morrison was seeking to be directed to hold any office other than that of Prime Minister. I note that the instrument appointing Mr Robert to administer PM&C also wrongly stated that the appointment was made pursuant to sections 64 and 65 of the Constitution.

96 Digital Transformation Agency, *Annual Report 2020–21* (Report, 2021), 5 <https://www.dta.gov.au/sites/default/files/2021-10/DTA%20Annual%20Report%202020-21_Accessible%20FINAL.pdf>.

97 Governor-General of the Commonwealth of Australia, *Appointment of Minister of State* [15 April 2021] <<https://www.pmc.gov.au/sites/default/files/Instrument-2021-04-15-DISER.pdf>> [Appendix A].

98 Solicitor-General's Opinion at [22].

158. Mr David Fredericks PSM, then Secretary of DISER, did not receive notification of the Prime Minister’s appointment at the time it was made. Neither Mr Pitt nor the other minister administering DISER were informed of the appointment at this time.

The decision on the PEP-11 applications

159. On 13 April 2021, before the documents for Mr Morrison’s appointment to administer DISER were provided to the Governor-General, the PMO requested that PM&C provide briefing materials by 19 April 2022 to support Mr Morrison in making a decision under the OPGGS Act in relation to the PEP-11 applications.
160. On 19 April 2021, PM&C provided the PMO with a “draft” brief to Mr Morrison with respect to the PEP-11 applications. The brief stated:
- We have relied on the Department of Industry, Science and Resources’ [sic] analysis to prepare this brief. We do not have specific expertise in administering the Act. This may also contribute to the legal risks associated with you making the decision as responsible Commonwealth Minister.
161. Around this time but before 21 April 2021, Mr McCormack, then Deputy Prime Minister and Leader of the Federal Parliamentary Nationals, recalled being present at a discussion between Mr Morrison and Mr Pitt where they disagreed about PEP-11, and Mr Morrison made clear that he could make the decision saying “I can make that call because I’m the Prime Minister and I can be the signatory on that particular decision”. This meeting ended with Mr Morrison and Mr Pitt agreeing to disagree.
162. On 21 April 2021, Mr James Chisholm, First Assistant Secretary, Industry, Infrastructure and Environment Division of PM&C, advised Mr Paul Trotman, Head of the Resources Division in DISER, that Mr Morrison wished to discuss PEP-11 with Mr Pitt. In the course of this telephone discussion Mr Chisholm explained that Mr Morrison was able to decide the PEP-11 applications himself because he had been “sworn in to the Resources portfolio for the purposes of PEP-11”. On the same day Mr Trotman informed Mr Fredericks of the fact of Mr Morrison’s appointment and of his wish to discuss PEP-11 with Mr Pitt.
163. In a further telephone call on 21 April 2021, Mr Chisholm advised Mr Trotman that Mr Morrison and Mr Pitt had met that morning and it had been agreed that Mr Pitt would “remain silent on PEP-11”. Mr Pitt states that he was first made aware of Mr Morrison’s appointment to administer DISER in around mid-2021 but before 21 June 2021. Given that on 21 April 2021 DISER, and Mr Pitt’s office, was told that Mr Morrison had been “sworn in” to the Resources portfolio, that Mr Pitt and Mr Morrison met that morning and on this occasion Mr Pitt agreed to remain silent on PEP-11, it seems clear that Mr Pitt learned of the appointment on that day.

164. At Mr Fredericks' request, Mr Trotman sought further information about Mr Morrison's appointment. PM&C did not provide it. Nothing in writing was conveyed to DISER about the appointment until December 2021. It was not until December 2021 that Mr Fredericks became aware that Mr Morrison had been appointed to administer DISER at large. Before then it was Mr Fredericks' understanding that Mr Morrison had "been appointed as the Resources Minister for the purposes of making the PEP-11 decision". As matters unfolded, from Mr Fredericks' perspective the issue of who would decide the PEP-11 applications appeared to have gone away. After the activity on 21 April 2021, DISER heard nothing further about the PEP-11 applications from Mr Morrison, the PMO or PM&C. It was Mr Fredericks' assumption that there had been a political resolution of the issue. Mr Fredericks understood that Mr Pitt remained the minister responsible for PEP-11. The brief relating to the PEP-11 applications remained with Mr Pitt. On 31 August 2021, a senior advisor in Mr Pitt's office wrote on Mr Pitt's behalf to a constituent who had expressed support for the PEP-11 applications. The constituent was advised that "the Minister is currently considering this matter as the final decision maker".
165. Following his appointment to administer DISER, Mr Morrison was questioned on a number of occasions by members of the media about the PEP-11 applications. Mr Morrison adhered to his earlier statements that the applications did not have his support but he did not disclose that he had assumed the authority to determine them⁹⁹. Notable in this respect is an exchange in an interview on 8 November 2021 broadcast on 2HD Newcastle¹⁰⁰:

INTERVIEWER: A number of government MPs and including yourself, have spoken out against the renewal of the PEP-11 exploration licence off the coast of, well, your electorate and end up here in the Hunter as well. Keith Pitt's the sole person responsible for making a call on that, but he seems reluctant to do it. Can we expect an announcement re PEP-11?

PRIME MINISTER: Well, I think people know my view about this. It's very clear. I can assure you that that's the position that I will continue to progress. And I think that should give people a lot of comfort that the Prime Minister is not supportive of that.

99 Prime Minister the Hon Scott Morrison MP, "Press Conference – Berkeley Vale, NSW" (Press Conference, 21 April 2021) <<https://pmtranscripts.pmc.gov.au/release/transcript-43332>>; Prime Minister the Hon Scott Morrison MP, "Doorstop – Williamstown NSW" (Press Conference, 7 May 2021) <<https://pmtranscripts.pmc.gov.au/release/transcript-43370>>; Interview with Prime Minister the Hon Scott Morrison MP (Richard and Shanna, 2HD Newcastle, 19 May 2021), <<https://pmtranscripts.pmc.gov.au/release/transcript-43405>>.

100 Interview with Prime Minister the Hon Scott Morrison MP (Richard and Shanna, 2HD Newcastle, 8 November 2021) <<https://pmtranscripts.pmc.gov.au/release/transcript-43649>>.

166. On 8 December 2021, Mr Chisholm telephoned Mr Sean Sullivan, Deputy Secretary, DISER and told him that Mr Morrison wished to be briefed by DISER in his capacity as minister administering DISER. At midday on that day, a meeting was convened at which officers of PM&C advised officers of DISER that (i) Mr Morrison had been appointed to administer DISER earlier in the year, (ii) the appointment was valid and did not affect Mr Pitt's appointment as Minister for Resources, and (iii) Mr Morrison would determine the PEP-11 applications. It was agreed that DISER would lead in briefing Mr Morrison on PEP-11. As DISER's Parliamentary Document Management System ("PDMS") was configured to transmit documents only to existing ministers who had been appointed to administer it, it was also agreed that PM&C would transmit the brief to the PMO. DISER took independent steps to satisfy itself that the Prime Minister could exercise the powers of the Minister for the purposes of the OPGGS Act.
167. Also on 8 December 2021, Mr Chisholm advised Mr Gaetjens that "PEP-11 may come to a head this week", PM&C would work with DISER on a brief, and he had spoken to Mr Fredericks and Mr Sullivan. Mr Gaetjens asked to be kept "regularly briefed".
168. Mr Morrison was briefed by DISER on the determination of the PEP-11 applications. Mr Pitt's office advised DISER that he did not need to be briefed in parallel or copied into the briefing, and he was not. On 14 December 2021, Mr Morrison wrote to the New South Wales Deputy Premier, the Hon Paul Toole MP, who had become the responsible State Minister in the Joint Authority, recommending that Asset Energy be given 30 days to respond to a notice of intention to refuse the applications. On 16 December 2021, Mr Morrison issued a media release headed "PEP-11" which stated that "the Morrison Government has advised NSW Deputy Premier Paul Toole as the joint authority partner, as well as [NOPTA], of the Commonwealth's intention to refuse the application"¹⁰¹. In a press conference at Terrigal, New South Wales, Mr Morrison made clear, without explaining the mechanism, that the PEP-11 decision had been made by him and not by Mr Pitt¹⁰²:

JOURNALIST: You always said with regards to PEP-11 that the ultimate decision was with the Resources Minister Keith Pitt. It's taken a long time to get to today. What's been the main sticking point and is, does he support this decision that you're announcing today?

101 Prime Minister the Hon Scott Morrison MP, "PEP-11" (Media Release, 16 December 2021) <<https://pmtranscripts.pmc.gov.au/release/transcript-43714>>.

102 Prime Minister the Hon Scott Morrison MP, "Press Conference, Terrigal, NSW" (Press Conference, 16 December 2021), <<https://pmtranscripts.pmc.gov.au/release/transcript-43716>>.

PRIME MINISTER: It's a decision of the Government and I decided to take the decision as the Prime Minister, which I'm authorised to do, and I did this because I wanted to ensure that we took a whole of government understanding of this decision and to take into account all of the factors. And that's why I thank all of those who've felt so strongly about this issue for their patience. And it was important that I methodically worked through the proper process to make the ultimate decision and take all the necessary advice that I had to take and then form a decision. And so I appreciate that has required patience. And I've made comments about this and those comments were exactly as I, as I felt about the situation. But Prime Ministers have to do more than that [sic]. Prime Ministers who are experienced in these roles need to ensure that they follow those processes, which I have done. And so here we are today. We've got to take the time to get it right, and I was ensuring that we did that, and I wanted to send a very clear message to people right along this coast about the priority I put on these decisions and getting the balance right on these decisions, as Prime Minister. ...

169. That day, NOPTA wrote to Asset Energy on behalf of the Joint Authority advising that the Joint Authority intended to refuse the PEP-11 applications, and giving Asset Energy 30 days in which to make any submissions.
170. Mr Morrison continued to be briefed by DISER in relation to the determination of the PEP-11 applications.
171. On 17 February 2022, Mr Morrison issued a media release stating that “[he had] made the decision under section 59(3) of the [OPGGGS Act] to propose to refuse the application” and had written to the New South Wales Deputy Premier advising of his intention to refuse the PEP-11 applications¹⁰³. On the same day before the Senate Standing Committee on Economics during Additional Estimates, an officer of DISER stated that Mr Morrison was the “Commonwealth’s decision-maker” for the purposes of the Joint Authority’s determination of the PEP-11 applications and that Mr Pitt did not have a role in respect of the decision¹⁰⁴.

103 Prime Minister the Hon Scott Morrison MP, “PEP-11” (Media Release, 17 February 2022) <<https://pmtranscripts.pmc.gov.au/release/transcript-43796>>.

104 Evidence to Senate Economics Legislation Committee, Parliament of Australia, Canberra, 17 February 2022, 97-98 (Sean Sullivan).

172. Following receipt of New South Wales' response to the Commonwealth's intention to refuse, Mr Morrison received a further briefing from DISER and on 26 March 2022 he determined that the applications be refused and notified NOPTA to advise Asset Energy of this determination. On 30 March 2022, NOPTA advised Asset Energy of the Joint Authority's decision to refuse its applications.
173. On 4 May 2022, the Joint Authority provided Asset Energy with written reasons for its decision. The written reasons were signed and dated 26 March 2022 by Mr Morrison, and signed and dated 12 April 2022 by Mr O'Toole.
174. On 26 May 2022, Asset Energy wrote to NOPTA seeking to learn the basis on which Mr Morrison had been authorised to make the decision. On 27 May 2022, PM&C provided DISER with a copy of the instrument appointing Mr Morrison to administer DISER. On 31 May 2022, Asset Energy was advised of Mr Morrison's appointment. On 1 June 2022, Asset Energy commenced proceedings in the Federal Court of Australia challenging the determination of its applications on three procedural fairness grounds, including actual and apprehended bias¹⁰⁵. Asset Energy has since been given leave to amend its originating application to challenge the validity of Mr Morrison's appointment to administer DISER¹⁰⁶.

The appointments to administer the Departments of Home Affairs and the Treasury

175. On 12 April 2021, the day on which Mr Morrison signed a letter to the Governor-General recommending that he, Mr Morrison, be appointed to administer DISER, PM&C prepared a brief for Mr Morrison's appointment to administer three further departments: DAWE, Home Affairs, and the Treasury. Again, PM&C acted in response to a request from the PMO.
176. The circumstances that gave rise to the request are obscure. In August 2022, when the appointments to administer the Departments of Home Affairs and the Treasury became public, Mr Morrison said that he had not recalled taking them. Dr Kunkel had no recall of either of these appointments or of the proposal that Mr Morrison also be appointed to administer DAWE. Dr Kunkel explained that in his role as Chief of Staff he had not shadowed Mr Morrison, but rather he had acted as "point person" in relation to particular

105 Originating Application, *Asset Energy v The Commonwealth Minister for Resources, as the Responsible Commonwealth Minister of the Commonwealth – New South Wales Offshore Petroleum Joint Authority; and Minister for Regional New South Wales, as responsible State Minister of the Commonwealth – New South Wales Offshore Petroleum Joint Authority*, Federal Court of Australia, WAD106/2022.

106 An amended originating application was filed on 25 October 2022 and a notice of a constitutional matter under s 78B of the *Judiciary Act 1903* (Cth) was filed on 26 October 2022.

issues. He noted that his background is economics and not law. Mr Morrison's General Counsel was not consulted in relation to any of the appointments. He had a vague recall of learning that Mr Morrison had been appointed to administer the Department of Health during the time that he worked in the PMO. He first learned of the remaining appointments when they were reported in the media.

177. The Senior Advisor, Parliamentary, within the PMO was the officer tasked with liaising with PM&C in relation to each of the appointments. He had a poor recall of his role in this respect. He said that it "[sounded] right" that he was the officer who dealt with Mr Reid in PM&C in connection with the processes and the paperwork for the appointments. He had no recall of the circumstances surrounding the request that Mr Morrison be appointed to administer DAWE and the Departments of Home Affairs and the Treasury. He said that, if he requested preparation of the brief for the three further appointments, the request would have been made at Mr Morrison's direction.
178. Mr Morrison agrees that the appointment to administer DISER was taken for the purpose of enabling him to decide the PEP-11 applications personally. With respect to the appointments to administer the Departments of Home Affairs and the Treasury, I invited Mr Morrison to comment on the understanding of the officers in PM&C that his interest in the Home Affairs portfolio was the power under section 36B of the Australian Citizenship Act to determine that a person cease to be an Australian citizen and his interest in the Treasury portfolio was the Treasurer's powers under the Foreign Acquisitions and Takeovers Act. In response to this inquiry, in his letter of 10 November 2022, Dr Tscalos referred me to Mr Morrison's two public statements and added:

The relevant statutory powers all related to ongoing matters of national security on which Mr Morrison was fully briefed as Prime Minister. Mr Morrison considered it necessary, in the national interest, to lawfully ensure that there would be no gap in the exercise of those powers if required, so as to guarantee the continuity and effective operation of Government.

179. I inferred from this response that Mr Morrison's memory of the reasons for seeking these appointments was not revived by reference to PM&C's understanding of their object. However, in his letter of 22 November 2022, Dr Tscalos stated:

In relation to Mr Morrison's concern with respect to the Department of Home Affairs, this related to the power to determine that a person ceased to be an Australian citizen under section 36B of the *Australian Citizenship Act 2007* (Cth) as well as numerous direct Ministerial powers under the *Migration Act 1958* (Cth), including with respect to visa cancellations on character grounds as well as the ministerial intervention powers in relation to visas generally.

180. In the same letter Dr Tscalos sounded the following caution:

Further, given the national security briefings received by the Prime Minister and general national security issues Mr Morrison was aware of as Prime Minister, it is simply not available to the Inquiry to draw conclusions based on incomplete information available to it in relation to issues of national security and national interest generally which would not be in any way comparable to the information that would have been available to Mr Morrison in his capacity as Prime Minister. Therefore, no inferences or conclusions can be drawn on the basis of any matter related to national security or national interest grounds given that the Inquiry had available to it incomplete information.

181. Accepting that Mr Morrison's object in having himself appointed to administer the Department of Home Affairs was wider than had been understood by officers in PM&C, and mindful of the caution above, it remains difficult to see the relation between the power to determine that a person is no longer an Australian citizen, or to cancel a person's visa on character grounds or otherwise to exercise the Minister's "intervention powers" under the *Migration Act 1958* (Cth) and the response to the COVID-19 pandemic. In relation to the appointment to administer the Treasury, I note that from 29 March 2020, the monetary threshold for all foreign investment subject to the Foreign Acquisitions and Takeovers Act was reduced to nil¹⁰⁷. The stated reason for this change in the rule was that the "significant impact of Coronavirus on the Australian economy has increased the risk of foreign investment in Australia occurring in ways that would be contrary to the national interest"¹⁰⁸. This change meant that there was an increase in the number of investments that were required to be notified to the Treasurer who was empowered to reject the proposed investment if it were deemed to be contrary to the national interest. However, the monetary threshold was reinstated for investments other than investments in sensitive national security businesses on 1 January 2021¹⁰⁹ which, again, makes it difficult to discern in April 2021 the relation between the Minister's power to reject investments under the Foreign Acquisitions and Takeovers Act and the response to the COVID-19 pandemic.

107 *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020* (Cth).

108 Explanatory Statement, *Foreign Acquisitions and Takeovers Amendment (Threshold Test) Regulations 2020* (Cth).

109 Treasurer the Hon Josh Frydenberg MP, "Major Reforms to Australia's Foreign Investment Framework Pass the Parliament" (Media Release, 9 December 2020) <<https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/major-reforms-australias-foreign-investment-0>>; *Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020* (Cth).

182. Nor is Mr Morrison's concern to ensure that there was no gap in the exercise of the ministers' powers easy to understand. There were other ministers apart from Ms Andrews and Mr Frydenberg who were appointed to administer the Departments of Home Affairs and the Treasury respectively. In the event either senior portfolio minister were unavailable there would be no gap in the exercise of their ministerial powers. And if Mr Morrison wished to exercise the powers himself in the event that Ms Andrews or Mr Frydenberg were incapacitated he could have been appointed as acting Minister of Home Affairs or Treasurer, as the case may be.
183. The draft brief and its attachments are **Appendix I**. The recommendation and analysis in the draft brief was as follows:

Recommendation – that:

If you wish to do so, sign a letter to the Governor-General (Attachment A), proposing your appointment to administer the Department of Agriculture, Water and the Environment, the Department of Home Affairs; and the Department of the Treasury; and enclosing an Instrument of Appointment for the Governor-General's signature (**Attachment B**).

Signed / Not signed

Key Points:

1. Your Office has requested documents to appoint you to administer the Departments of Agriculture, Water and the Environment; Home Affairs; and the Treasury.
2. While it is somewhat unusual for the Prime Minister to be appointed to administer departments outside of the Prime Minister and Cabinet portfolio, there is no constitutional barrier with doing so.
 - a. There are precedents: during 2020 at the start of the COVID-19 pandemic you were appointed to administer the Department of Health and the Department of Finance.
 - b. On 12 April 2021 you signed a similar letter and instrument to the Governor-General, His Excellency General the Hon David Hurley AC DSC, regarding your appointment to administer the Department of Industry, Science, Energy and Resources.
3. As this change is of an administrative nature only, you do not need to subscribe an Oath of Office.

184. The officer who prepared this brief passed on to her superior observations concerning perceived risks attending the decision to administer the departments and associated legislation. The officer referenced the Treasurer's power under the Foreign Acquisitions and Takeovers Act and the Minister for Home Affairs' power under the Australian Citizenship Act referred to at paragraph 137 above. The officer did not highlight any particular risk associated with the exercise of these powers if Mr Morrison were appointed to administer the Departments of the Treasury or Home Affairs. The officer noted that the appointment of an additional minister to administer DAWE would add to the existing complexity of decision making under the EPBC Act. She advised that the level of risk assumed by the minister making a decision under the EPBC Act was high given the complex and prescriptive nature of the processes under the Act, and the interaction with other Commonwealth, State and Territory legislation and bilateral agreements.
185. The brief for the appointment to administer the three additional departments was entered into PM&C's PDMS on 13 April 2021 and assigned for clearance by a superior officer within PM&C. It remained in PDMS awaiting clearance until 20 April 2021. Mr Reid had no recall of the reason it was not transmitted to the PMO during this period. Mr Reid suggests that he may have telephoned the PMO to advise that the brief was ready and been told to let the matter rest. This was the only reason that PM&C would "sit on" the brief.
186. Whether, as seems likely, Mr Reid passed on to the PMO the advice that there were risks associated with an appointment to DAWE is not known. Neither Mr Morrison nor his Senior Advisor, Parliamentary, appear to have any recall of the matter. On 21 April 2021, at the request of the PMO, a revised brief was cleared and submitted to the PMO via PDMS which recommended Mr Morrison's appointment to administer the Departments of Home Affairs and the Treasury. The appointment to administer DAWE was omitted. A copy of the revised brief and its attachments, signed by Mr Morrison, is **Appendix J**. The recommendation and analysis in the brief was as follows:

Recommendation – that:

Sign the letter to the Governor-General, His Excellency General the Hon David Hurley AC DSC (Retd), at Attachment A, proposing your appointment to administer the Department of Home Affairs and the Department of the Treasury, and enclosing an Instrument of Appointment for the Governor-General's signature.

Signed / Not signed

Key Points:

1. Your Office has requested documents to appoint you to administer the Department of Home Affairs and the Department of the Treasury.
 2. While it is somewhat unusual for the Prime Minister to be appointed to administer departments outside of the Prime Minister and Cabinet portfolio, there is no constitutional barrier with doing so.
 - a. There are precedents: during 2020 at the start of the COVID-19 pandemic you were appointed to administer the Department of Health and the Department of Finance.
 - b. On 15 April 2021 the Governor-General, His Excellency General the Hon David Hurley AC DSC (Retd) appointed you to administer the Department of Industry, Science, Energy and Resources.
 3. As this change is of an administrative nature only, you do not need to subscribe an Oath of Office.
187. On 21 April 2021, after submitting the brief, Mr Reid took what he described as the unusual course of sending an email to Mr Gaetjens, which was copied to all the Deputy Secretaries in PM&C:

Phil, Deputies,

For your awareness.

This morning [Government Division] was asked for urgent papers to be prepared (today) to cross-swear the [Prime Minister] to the portfolios of Home Affairs and Treasury. We have this afternoon provided the necessary paperwork (letter to the [Governor-General] and proposed instrument of appointment). This can all be done on the papers, and would not require a ceremony or publicity.

We are advised the Treasury swearing relates to [the Foreign Investment Review Board], and the Home Affairs swearing relates to decisions on citizenship loss.

For note, should the [Governor-General] accept the [Prime Minister]'s recommendation and make the appointment, the [Prime Minister] will be sworn to six of the 14 portfolios (PM&C, Finance, Treasury, Health, DISER, and Home Affairs).

188. Following the submission of the brief to the PMO, PM&C heard nothing further until 3 May 2021, when it was learned that Mr Morrison had signed the brief and the letter addressed to the Governor-General on 22 April 2021. On 3 May 2021, a departmental liaison officer emailed electronic copies of the signed documents to the Government Division of PM&C at 6:51pm. The PMO arranged for the transmission of the signed letter of recommendation and the instrument of appointment to Government House. They were received by Government House on 5 May 2021 and signed by the Governor-General the following day.
189. Ms Andrews, the then Minister for Home Affairs, was not advised of Mr Morrison's appointment to administer the Department of Home Affairs. Mr Pezzullo, the Secretary of the Department of Home Affairs, knew nothing of the appointment until 16 August 2022. A search of the department's records revealed that it had not received notice of the appointment nor had any ministerial decision been made by Mr Morrison in his capacity as minister administering the Department of Home Affairs.
190. Mr Frydenberg, the then Treasurer, was not informed of Mr Morrison's appointment to administer the Department of the Treasury. Mr Frydenberg first became aware of this appointment, and Mr Morrison's appointment to administer the Departments of Finance, Home Affairs and Industry, Science, Energy and Resources, in August 2022. Neither Dr Steven Kennedy PSM, Secretary of the Department of the Treasury, nor his department received any notice of Mr Morrison's appointment to administer the department before being provided by PM&C with a copy of the instrument of appointment on 16 August 2022.

Other changes to offices held by Mr Morrison

191. In October 2021, it was proposed that Mr Morrison's office of Minister for the Public Service (which he had held since the previous federal election in May 2019) be revoked, and that the Hon Ben Morton MP be directed to hold that office. The Senior Advisor, Parliamentary, recalled a discussion about whether it would be necessary for Mr Morrison's commission to be completely revoked or whether just the office of Minister for the Public Service could be revoked. He had no recollection of giving any consideration to ensuring that the proposed change would not affect Mr Morrison's appointment to administer the additional departments. However, it is apparent that PM&C understood that consideration should be given to this issue. Mr Hardiman's advice on the drafting of the instrument of revocation was sought to ensure that it would not have the unintended consequence of revoking Mr Morrison's appointments to administer additional departments of State. On 8 October 2021, the Governor-General revoked Mr Morrison's "appointment" as Minister for the Public Service¹¹⁰. This did not have any bearing on Mr Morrison's appointments to administer six departments of State under section 64 of the Constitution.

¹¹⁰ The instrument wrongly stated that the revocation was being effected pursuant to section 64 of the Constitution, but nothing is suggested to turn on this.

Summary of facts and circumstances of appointments

192. The only occasion on which Mr Morrison exercised power in his capacity as minister administering a department other than PM&C was the determination of the PEP-11 applications made in his capacity as minister administering DISER. Nonetheless, by 6 May 2021, in addition to PM&C, the Prime Minister was administering five other departments of State. Mr Morrison had assumed the functions, powers and duties of “the Minister” across the range of policy matters dealt with by these departments and the legislation administered by the Minister administering each of these departments. No Minister charged with the administration of an affected department was informed of the appointment although Mr Pitt was advised of the DISER appointment within weeks of its making and Mr Hunt assumed that Mr Morrison had been appointed to administer the Department of Health. In the case of Finance, Home Affairs and the Treasury, the responsible Ministers did not learn of the appointment at any time during the last term of the Morrison Government. The Secretaries of the Departments of Health, Finance, Home Affairs and the Treasury were unaware of the appointments, and Professor Murphy (then Chief Medical Officer) was not informed that the appointment to administer the Department of Health had, in fact, been made. In no instance was the Parliament or the public informed of any of the appointments. The Prime Minister’s responsibility for the administration of each department of State continued until his resignation on 23 May 2022, following the federal election two days earlier.

The Governor-General

193. The Solicitor-General's advice that the lack of notice of Mr Morrison's appointment to administer DISER to the public and the Parliament was inconsistent with the principles of responsible government prompted at least one academic to question whether the Governor-General exercised his "Bagehot rights" in the case of any of these appointments¹¹¹. The reference is to the mid-19th century encapsulation of the role of the Sovereign by Walter Bagehot in his account of the English constitution¹¹²:

To state the matter shortly, the sovereign has, under a constitutional monarchy such as ours, three rights – the right to be consulted, the right to encourage, the right to warn. And a king of great sense and sagacity would want no others.

194. In summary, it was argued that the Governor-General should have warned Mr Morrison that the appointments were unorthodox and encouraged him to ensure that they were "communicated properly". It was submitted that "[y]our inquiry should seek to discover whether the Governor-General exercised [the right to warn] in respect of any of the additional ministries"¹¹³.

195. The Governor-General occupies a unique status under the Constitution as the Sovereign's representative in Australia. Recognition of this is found among other places in the Governor-General's immunity from compulsion in any legal proceeding¹¹⁴ and in conventions which both confer the "right to warn" and treat its exercise as the subject of a convention of strict confidence¹¹⁵. Disclosure of confidential communications between the Governor-General and Prime Minister would risk involving the Governor-General in political controversy inconsistent with the neutrality of his office. Given that were I conducting an inquiry with power to summon witnesses to testify, there would be no question of summoning the Governor-General to answer questions about whether he had exercised his right to warn Mr Morrison, I did not consider it appropriate to invite the Governor-General to participate in this Inquiry with a view to seeking to obtain that very information.

111 Professor Luke Beck, *Submission to the Inquiry*, 30 September 2022, 1–2.

112 Walter Bagehot, *The English Constitution* (Fontana, 4th ed, 1965) 111.

113 Professor Luke Beck, *Submission to the Inquiry*, 30 September 2022, 1–2.

114 *Evidence Act 1995* (Cth) s 15(1)(b).

115 Vernon Bogdanor, *The Monarchy and the Constitution* (Oxford University Press, 1995) 66–67, 71; Paul Hasluck, *The Office of the Governor-General* (Melbourne University Press, 1979) 31–32; Peter Boyce, *The Queen's Other Realms: The Crown and Its Legacy in Australia, Canada and New Zealand* (The Federation Press, 2008) 48; and see Anne Twomey, *The Chameleon Crown* (Federation Press, 2006) 57–62.

196. I consulted Mr Singer, the Official Secretary to the Governor-General, about the practices and processes adopted by Government House with respect to appointments of ministers to administer departments of State made on occasions where there is a public “swearing-in” ceremony and where the appointment is made “on the papers”. I also sought to obtain the Governor-General’s consent to the waiver of legal professional privilege in relation to the advice given to his predecessor concerning the validity of Mr Whitlam’s and Mr Barnard’s appointments to administer multiple departments (which I discuss below at paragraph 260). That consent was granted. I informed Mr Singer that I had received a submission that was critical of the Governor-General and I outlined the basis of the criticisms. I explained, for the reasons noted above, that I was not seeking to have the Governor-General participate in the Inquiry, much less to ask him about the contents of his confidential communications with the former Prime Minister, but that the Governor-General could participate by way of submission or otherwise if he was of a different view. Following this discussion, I spoke with the Governor-General by telephone and he confirmed that having regard to his office, and the obligations of confidence attaching to it, he did not consider it appropriate to participate in the Inquiry.
197. For the reasons given below, I consider the criticism of the Governor-General to be unwarranted.
198. It was submitted that the Governor-General’s role in relation to the 2021 appointments, and statements made by a spokesperson for the Governor-General in August 2022 (which are **Appendix K**), may have contributed to a lack of public confidence in government. It was argued that the Governor-General should have warned Mr Morrison that these appointments were unorthodox and encouraged Mr Morrison to ensure they were “communicated properly”. In the latter respect, it was asserted that it must have been obvious to the Governor-General that the earlier appointments had not been made public given the absence of any media coverage of them. For the same reason a statement issued by a spokesperson for the Governor-General that the Governor-General “had no reason to believe that the appointments would not be communicated” was criticised¹¹⁶.

116 Professor Luke Beck, *Submission to the Inquiry*, 30 September 2022, 2; Governor-General of the Commonwealth of Australia, “Statement on the Appointment of the Former Prime Minister to Portfolios Other than the Department of the Prime Minister and Cabinet” (Media Release, 17 August 2022) [Appendix K].

199. In March 2020, at the height of the onset of the COVID-19 pandemic, the Governor-General appointed Mr Morrison to administer two critical departments of State against the risk that the responsible minister might be unable to discharge his duties. In the event, neither Mr Hunt nor Mr Cormann was incapacitated. The inference that the Governor-General should have realised from these facts that the two appointments had not been made public is not self-evident. It had never been the practice of Government House to arrange for the gazettal of appointments when made administratively “on the papers”. As Professor Anne Twomey AO has observed, it is unfair to criticise the Governor-General for not noticing that something has not been made public, when customarily that thing was not formally made public¹¹⁷. Moreover, I note that until August 2022 it had been Mr Hunt’s belief that Mr Morrison’s appointment to administer the Department of Health had been notified in the Gazette.
200. The Governor-General was on notice that the proposed appointment to administer DISER was “unusual”. Mr Singer, anticipating that the Governor-General would like more information in relation to such a recommendation, recalled telling Mr Reid that the Prime Minister should raise the issue at their scheduled breakfast meeting the following morning. It is likely that the DISER appointment, and possibly further appointments which the PMO was actively pursuing at the time, were raised by Mr Morrison at that meeting. Whether the Governor-General was satisfied with any account given by the Prime Minister or whether he exercised his right to warn is not known. The “right to warn” does not carry with it a right to have the warning heeded. What is clear beyond argument is that the Governor-General was bound to make the appointments if, after raising any issue about them, the former Prime Minister insisted on them being made¹¹⁸.
201. Prior to the current protocol settled between PM&C and Government House after these appointments became known, it has never been the practice for Government House to arrange for notification in the Gazette of the appointment of an existing minister to administer a department of State when the appointment was made “on the papers” and not in association with a public swearing-in ceremony. The practice of publishing Vice-Regal notices in major newspapers recording the Governor-General’s daily engagements has been replaced by publication of the Governor-General’s Program on the Government House website¹¹⁹. The Program records the Governor-General’s official engagements. It does not include appointments made, directions given, or other orders

117 Anne Twomey, “Controversies Concerning the Appointment of Ministers in Australia and the United Kingdom” [Speech delivered at the University of Oxford on 18 October 2022 and the London School of Economics and Political Science on 2 November 2022] 6.

118 *FAI Insurances Ltd v Winneke* [1982] 151 CLR 342; George Winterton, *Parliament, the Executive and the Governor-General* (Melbourne University Press, 1983) 15-17; Anne Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge University Press, 2018) 28-29.

119 Governor-General of the Commonwealth of Australia, “The Governor-General’s Program” <<https://www.gg.gov.au/about-governor-general/governor-generals-program>>.

made by the Governor-General on the advice of the Prime Minister. Responsibility for the failure to notify the public and the Parliament of the making of these appointments rests with Mr Morrison and not the Governor-General or the Office of the Official Secretary to the Governor-General.

202. Finally, it was submitted that a statement issued by the Governor-General on 15 August 2022 may have contributed to a lack of public confidence in government¹²⁰. In short, the Governor-General's statement is criticised for failing to reveal that Mr Morrison had been appointed to administer a total of five, and not three, additional departments of State. It is a prime obligation of the Governor-General to avoid political controversy. Consistently with that obligation, the Governor-General's statement of 15 August 2022 was a short, factual account of the process adopted in relation to appointments made under section 64 of the Constitution when the appointment is of an existing minister and does not coincide with a swearing-in ceremony. The subject of Mr Morrison's appointments was of intense political interest at the time and in my view the Governor-General is not to be criticised for leaving disclosures concerning the number and nature of those appointments to the government of the day.

The Department of the Prime Minister and Cabinet's role in the appointments

203. By 15 April 2021, when the appointment to administer DISER was made, and when PM&C were being asked to prepare the documents to have Mr Morrison appointed to three further departments, the fact that Mr Morrison's appointments to administer the Departments of Health and Finance had not been made public was clear to Mr Gaetjens and to senior officers in the Government Division of PM&C. Moreover it was apparent to PM&C that there was a significant risk of successful challenge to the decision on the PEP-11 applications should Mr Morrison be appointed to administer DISER in order to be the decision-maker. Mr Reid prepared the options letter with advice from senior officials in the Industry, Infrastructure and Environment Division of PM&C with a view to providing Mr Morrison with alternative mechanisms to take the decision on the PEP-11 applications away from Mr Pitt. The fourth option proposed in the options letter was for Mr Morrison to direct that one of the other six Ministers administering DISER take responsibility for determining the PEP-11 applications. Mr Reid recalled that after the options letter was sent to the PMO, an advisor within PMO contacted him and said words to the effect "we like the option of another Minister but [it] won't be one of the six, [it] will be the [Prime Minister] who you are going to swear".

120 Professor Luke Beck, *Submission to the Inquiry*, 30 September 2022, 2-3; Governor-General of the Commonwealth of Australia, "Response" [Media Release, 15 August 2022] [Appendix K].

204. The brief for Mr Morrison’s appointment to administer DISER recorded the fact that it had been prepared at the request of the PMO¹²¹. It did not recommend that Mr Morrison proceed with the appointment; the “recommendation” commenced “[i]f you wish to do so, sign the letter to the Governor-General ...”. It also referred to the appointment as “somewhat unusual”. In addition to the contents of the brief, Ms Foster recalled that Mr Reid had made the risks of successful legal challenge were Mr Morrison to make the PEP-11 decision very clear in his discussion with the PMO. Ms Foster observed that “what we don’t and can’t know is what was happening between the [Prime Minister] and his advisors”.
205. I asked the Senior Advisor, Parliamentary, if he recalled Mr Reid speaking to him about the legal risks associated with Mr Morrison’s appointment to administer DISER and the determination of the PEP-11 applications. He did not recall a specific conversation along those lines, adding that it “doesn’t mean others don’t recall”. I asked him about the options letter in which PM&C had outlined alternative mechanisms to take the decision about the PEP-11 applications away from Mr Pitt. He said that this sounded correct but he was unsure about the timing of it. He did recall that PM&C had provided advice that there would be “some complexity” associated with Mr Morrison’s appointment to administer DISER. He had no recall of consulting anyone in the PMO about the legal risk associated with Mr Morrison making the PEP-11 decision.
206. Dr Kunkel was not aware of any barrier to PM&C’s advice reaching Mr Morrison in relation to “these issues”. Dr Kunkel’s belief, which I have no reason to doubt, is to be measured against the fact that Mr Reid’s clear advice, of the legal risk of Mr Morrison taking the appointment to administer DISER and deciding the PEP-11 applications himself, does not appear to have prompted those handling “these issues” in the PMO to consult with him as Chief of Staff or with the General Counsel.
207. One means for PM&C to seek to ensure that its advice concerning the risks of proceeding with the appointment reached Mr Morrison was for Mr Gaetjens to take the matter up directly with him. Mr Gaetjens did not attempt to do so.
208. Mr Reid said that, putting to one side the Whitlam Government’s interim ministerial arrangements, the PMO’s request that PM&C prepare a brief for Mr Morrison to be appointed to administer three, later reduced to two, further departments of State was unprecedented. He and Ms Foster discussed the proposal. It had not occurred to either of them that the appointments would be kept secret from the Cabinet. To the contrary, Mr Reid assumed that Mr Morrison was seeking to put himself in a position in which he could say to his Cabinet colleagues “you make the decision or I’ll make it for you”. Ms Foster said that in circumstances in which she was satisfied the appointments could legally be made she

121 Appendix H.

had not considered the constitutional issues until reading the Solicitor-General's Opinion. At the time, the issue she identified was a political one, namely, the political risk of the assumption of so much authority in Mr Morrison's hands. This was not a matter for PM&C to take into account. As earlier noted, Mr Reid described his decision to send Mr Gaetjens the email on 21 April 2021 as "unusual". Whatever Mr Reid's intention may have been in drawing attention to the fact that should the appointments to administer the Departments of Home Affairs and the Treasury be made, Mr Morrison would be administering six out of the 14 departments of State, Mr Gaetjens did not view the email as raising any concerns.

209. Mr Gaetjens viewed Mr Morrison's appointment to administer the Department of Health as an appropriate safeguard should Mr Hunt become incapacitated. Mr Gaetjens did not know of the appointment to administer the Department of Finance at the time it was made, but when he learned of it, he viewed it in the same light. In the early months of 2021, when he became aware of Mr Morrison's wish to be appointed to administer DISER so that he could decide the PEP-11 applications, Mr Gaetjens was mindful of the evident legal risk of this course. Mr Gaetjens did not seek to advise Mr Morrison against taking the appointment and determining the PEP-11 applications. Mr Gaetjens draws a distinction between the appointment and the exercise of the power to decide the PEP-11 applications. The legal risk attended the latter and Mr Gaetjens points out that Mr Morrison was fully briefed on this risk before deciding the PEP-11 applications. Mr Gaetjens explains that his focus was on the "policy issues" and ensuring that Mr Morrison was briefed by DISER in relation to PEP-11, and not on the ministerial appointment.
210. At no time did Mr Gaetjens raise with Mr Morrison the DISER appointment or the further appointments to administer the Departments of Home Affairs and the Treasury. Mr Gaetjens observed that the brief for the Home Affairs and Treasury appointments, like the DISER brief, described the proposal as being "unusual". In Mr Gaetjens' experience this language in a public service brief is apt to raise the reader's antennae. The unusual feature of the proposed appointments, as Mr Gaetjens viewed matters, was what they suggested about the relationships between ministers. This however was a matter for the government to sort out. More generally, Mr Gaetjens emphasised that there had not been any suggestion that Mr Morrison wanted to involve himself in the general administration of the additional departments. Mr Gaetjens was aware that the appointments had not been made public but in the absence of a legal requirement for publication, and in circumstances where PM&C was not generally involved in publicising appointments, this did not concern him.

211. I asked Mr Gaetjens whether it had been his view that, provided the appointments could be validly made in law, it was not the role of PM&C to “push back” against the decision to take them. Mr Gaetjens responded that this is a “thin sharp line that public servants come up to”. He contrasted the public service today with the public service in the days of Sir Arthur Tange when, as he understood it, senior public servants had effectively vetoed some initiatives. In Mr Gaetjens’ view, provided a proposed course is legal, and the government has made a decision to take the course, it is wrong for the public service to overplay the risks of the decision in an attempt to stop a decision being implemented. Mr Gaetjens went on to emphasise that he had seen no sign that Mr Morrison was seeking to become “a President”. As Mr Gaetjens viewed the 2021 appointments, Mr Morrison was not seeking to displace Cabinet government; he was seeking to displace individual ministers on individual issues. Mr Gaetjens saw no evidence of a “systemic or creeping acquisition [...] of sole power”, which would have raised a flag for him in his role as Secretary of PM&C.
212. It would not have been to overplay the risk of the decision to be appointed to administer DISER in order to decide the PEP-11 applications for Mr Gaetjens to advise Mr Morrison against proceeding with this course in stronger terms than those contained in PM&C’s brief. Mr Morrison’s only reason for taking the appointment to administer DISER was so that he could be the PEP-11 decision-maker and having regard to Mr Morrison’s public statements concerning PEP-11, the risks of that course were apparent. Moreover, accepting that Mr Morrison took the 2021 appointments without the intention of actively taking part in any aspect of the administration of the relevant departments, his assumption of legal authority for that administration in order to give himself the capacity to countermand the exercise of particular statutory powers by the repository of that power, might be thought itself to raise a flag for the Secretary of PM&C.
213. Mr Gaetjens states that he was not alerted to any concerns about the appointments by the Government Division or any other party. Mr Gaetjens maintains that had he “been provided with any concerns or requests to directly engage with the Prime Minister or his office in respect of any issue which is the subject of this Inquiry” he would have done so. It remains that Mr Gaetjens as Secretary of PM&C, and with knowledge of the appointments and the lack of publicity that surrounded them, at no time sought to raise the propriety of them with Mr Morrison. What this says about the effectiveness of the partnership between the elected government and its senior officials raises issues that have been considered elsewhere¹²² and which is not within my Terms of Reference.

122 PM&C, *Our Public Service Our Future: Independent Review of the Australian Public Service* (December 2019) 133–137.

Mr Morrison’s reasons for seeking the appointments

214. In a public statement made on 17 August 2022, Mr Morrison explained that he had sought the appointments in light of the need to respond to the devastating impacts of the COVID-19 pandemic and the associated recession, and to “ensure the continuity and effective operation of Government during the crisis period”, which he stated had continued throughout his full term of office¹²³. He explained that he had taken the precaution of being given the authority to administer certain departments “should the need arise due to incapacity of a Minister or in the national interest”. The appointments were taken in the case of departments “where Ministers were vested with specific powers under their legislation that were not subject to oversight by Cabinet, including significant financial authorities”. The appointments were made as a “break glass in case of emergency” safeguard. The appointment to administer DISER was taken for “separate reasons”, namely that Mr Morrison had determined that he would decide the PEP-11 applications personally.

The necessity of the appointments to administer the Departments of Health and Finance

215. Mr Lewis’ view that it was unnecessary for Mr Morrison to be appointed to administer the Department of Health against the risk of Mr Hunt becoming incapacitated was correct. Mr Lewis had in mind that in the event Mr Hunt was incapacitated, the junior Ministers appointed to administer the Department of Health could have exercised the Health Minister’s powers under the Biosecurity Act, and under the protocol they would have been required to consult Mr Morrison and other ministers before doing so. Accepting Mr Morrison’s concern that, were Mr Hunt to be unavailable, the exercise of these powers should be seen to be carried out by the Prime Minister rather than a junior Minister¹²⁴, it remains that his appointment was unnecessary. Despite Mr Morrison’s assertion that the authority was “pre approved to ensure there would be no delay in being able to make decisions or take actions should the need arise”¹²⁵, had Mr Hunt become incapacitated, an instrument appointing Mr Morrison to act as Minister for Health could have been executed within minutes. Instruments effecting acting appointments are not required

123 The Hon Scott Morrison MP, “Statement Regarding Ministerial Arrangements” (Media Release, 17 August 2022) (Appendix C).

124 The Hon Scott Morrison MP, “Statement Regarding Ministerial Arrangements” (Media Release, 17 August 2022) (Appendix C).

125 The Hon Scott Morrison MP, “Statement Regarding Ministerial Arrangements” (Media Release, 17 August 2022) (Appendix C).

to be made by the Governor-General and are not required to be registered¹²⁶. As acting Minister for Health, Mr Morrison could have exercised all the powers, and would have been subject to all the duties, of the Minister for Health¹²⁷. No cogent reason for the need to appoint a Minister to administer a department against the risk of the incumbent becoming incapacitated was identified in the course of my consultations or in the submissions made to the Inquiry.

216. Senior public servants and members of the Morrison Ministry with whom I spoke all described the singular pressure of responding to the onset of the COVID-19 pandemic. Mr McCormack powerfully conveyed the gravity of the early pandemic briefings, the fears of widespread public panic and the sense, in March 2020, of being on a “war footing”. Given the unprecedented challenge, Mr Morrison and senior staff in PM&C are unlikely to have paused to consider the lack of necessity for the appointments to administer the Departments of Health and Finance. Nonetheless, Mr Morrison’s appointment to administer departments against the risk of the incumbent becoming incapacitated served as a blueprint for the three appointments to administer departments of State in 2021, which were not concerned with the risk of incapacity but rather with the risk that the incumbent minister might exercise his or her statutory powers in a manner with which Mr Morrison did not agree.

The secrecy surrounding the appointments

217. It is a serious deficiency in governance arrangements that Mr Morrison was able to be appointed to administer five departments of State (in addition to PM&C) without notification of the fact of the appointments to the Parliament or the public and in the case of the Departments of Health, Finance, Home Affairs and the Treasury, without notification to the Department or the other Ministers appointed to administer the Department. There is controversy with respect to the responsibility for this state of affairs.

¹²⁶ They are not “notifiable instruments” under the *Legislation Act 2003* (Cth) and are not required to be registered on the Federal Register of Legislation.

¹²⁷ See *Acts Interpretation Act 1901* (Cth) s 19(4).

Mr Morrison's account of the secrecy of appointments

218. In his public statements, Mr Morrison justified the secrecy surrounding the appointments on two grounds. In relation to the failure to inform his Ministers, Mr Morrison said¹²⁸:

I also did not wish Ministers to be second guessing themselves or for there to be the appearance of a right of appeal or any diminishing of their authority to exercise their responsibilities, as this was not the intention of putting these arrangements in place.

And in relation to the failure to inform the public, Mr Morrison gave this account at his press conference on 17 August 2022¹²⁹:

JOURNALIST: ... Why didn't you tell the Australian public?

MORRISON: Well, again, these were emergency, effectively reserve powers. I think there was a great risk that in the midst of that crisis those powers could be misinterpreted and misunderstood, which would have caused unnecessary angst in the middle of a pandemic and could have impacted on the day to day functioning of the government. No, that's not what I said. I said there was a possibility of this being misinterpreted. And frankly, the events of the last few days, I think, have highlighted how these things can be misinterpreted.

219. At the press conference Mr Morrison invoked the secrecy surrounding the appointments as evidence that he had not sought to interfere with his ministers' conduct of their portfolios¹³⁰:

The fact that Ministers were unaware of these things is actually proof of my lack of interference or intervention in any of their activities and that I honoured the basis upon which I sought those powers because I was only ever going to use them in an emergency or emergency situation that would require that. Now, I understand the offence that some of my colleagues particularly have felt about this. I understand that and I've apologised to them. But equally as Prime Minister, only I could really understand the weight of responsibility that was on my shoulders and on no one else. And as a result, I took the decisions that I thought I needed to take.

128 The Hon Scott Morrison MP, "Statement Regarding Ministerial Arrangements" (Media Release, 17 August 2022) (Appendix C).

129 The Hon Scott Morrison MP (Press Conference, 17 August 2022) (Appendix C).

130 The Hon Scott Morrison MP (Press Conference, 17 August 2022) (Appendix C).

220. Mr Morrison's review of the documents produced by PM&C revived his memory in one respect. In his letter of 4 November 2022, Dr Tscalos advised:

As a result of this inspection and based on Mr Morrison's recollection, we can confirm that neither Mr Morrison nor his office instructed PM&C not to gazette the appointments nor was he or his office consulted on whether the appointments should be published in the gazette. These decisions, like all such matters, were left to PM&C to determine in accordance with what they considered to be the usual practice. Mr Morrison also assumed the usual practice would apply following the relevant Ministerial appointments.

221. I responded to Dr Tscalos' letter setting out the account I had been given of PM&C's practice with respect to notification of appointments in terms that mirror those set out in Section 2 above. I asked (i) if Mr Morrison's recall differed in any material respect to this account and (ii) if Mr Morrison understood that it was PM&C's usual practice to notify appointments such as these (an existing Minister appointed to administer a department made "on the papers") in the Gazette, and he assumed that PM&C acted in accordance with that practice, how was I to reconcile that with his public statements.

222. In answer to my first query, Dr Tscalos advised:

Mr Morrison's recollection differs substantially from that set out in your account. At the time of the appointments the subject of the Inquiry, Mr Morrison had no reason to understand otherwise than that PM&C's usual practice was to arrange publication in the Gazette of the names of the Ministers and the offices they held – irrespective of whether a Minister was sworn in at Government House or not. Naturally, he expected that this usual practice would be followed.

Neither Mr Morrison nor his office instructed PM&C not to publish the appointments in the Gazette. Further, neither Mr Morrison nor his office were consulted on whether the appointments should be published in the Gazette. Nor was Mr Morrison advised of any possible breach of convention that would occur of the nature discussed by the Solicitor-General should the appointments not be published.

223. In answer to my second query, Dr Tscalos advised:

The public statements by Mr Morrison were directed to the fact that he did not inform all relevant Ministers or members of the public of the ministerial appointments by way of media release or public statement. However, this in no way suggests that he did not expect that the usual practice would apply and that PM&C would publish the appointments in the Gazette. That is, Mr Morrison expected that the normal machinery of government mechanisms would be applied and, if someone raised any matters arising from his various ministerial appointments after identifying same in the Gazette, he would have been happy to address same. It should be noted that, as Prime Minister, he was regularly required to answer questions across all portfolios.

224. Mr Morrison's assumption that all the appointments were notified to the public in the Gazette is not easy to reconcile with his conduct at the time or with his public statements when the appointments came to light. Mr Morrison's press conference on the day he announced the declaration of the human biosecurity emergency was an occasion to explain that he had taken the step of being appointed to administer the Department of Health as a precaution lest Mr Hunt were to become incapacitated, but Mr Morrison did not disclose that fact. On that occasion, as with his public statements concerning the PEP-11 applications, Mr Morrison chose to describe his exercise, or potential exercise, of statutory power as in his capacity as Prime Minister when, in truth, it was in his capacity as minister administering the Department of Health or DISER respectively.

225. In his letter of 22 November 2022, Dr Tscalos stated:

Mr Morrison's statement at the press conference in Parliament House on 18 March 2020 made it clear that he would be capable of taking various actions under the *Biosecurity Act 2015* (Cth) and this accorded with Mr Hunt's view.

By conveying this to the public in this way, Mr Morrison was able to do so without causing any alarm to the public at the outset of the pandemic when the country was gripped by fear and apprehension whilst, at all times, being comfortable in the knowledge that this appointment would be made public via the Gazette (which Mr Hunt also thought would occur). As a result, Mr Morrison's public statement on 18 March 2020 is consistent with his view that the appointment would be announced formally via its publication in the Gazette.

226. I understand that Mr Morrison accepts that on the day of the declaration of the human biosecurity emergency he chose not to make public the fact of his appointment to administer the Department of Health because he did not wish to cause public alarm. Mr Morrison maintains that he believed that the appointment would be notified to the public in due course in the Gazette. Dr Tscalos argues that the fact that Mr Hunt believed the appointment was notified in the Gazette is supportive of acceptance that Mr Morrison had the like belief.
227. I accept that Mr Hunt believed Mr Morrison's appointment to administer the Department of Health had been notified in the Gazette. Mr Hunt was not Prime Minister, he had not made ministerial appointments, and he had no reason to be familiar with processes adopted by the PMO and PM&C with respect to them. It is unsurprising that Mr Hunt understood in the normal course any such appointment would be notified in the Gazette. Mr Hunt viewed this appointment as a "dormant contingency" that would only spring into life were he to be incapacitated. There is no suggestion that he understood that there was any secrecy surrounding it.
228. Mr Morrison's choice not to inform Mr Cormann, Ms Andrews or Mr Frydenberg of his appointments to administer departments of which each was portfolio minister out of the wish not to be thought to be second guessing them remains difficult to reconcile with his understanding that each appointment had been notified in the Gazette. One might have expected Mr Morrison to have informed each of these Ministers of the appointments had that been his understanding. While few members of the public may read the Gazette, any idea that the gazettal of the Prime Minister's appointment to administer the Treasury (or any of the other appointments) would not be picked up and quickly circulated within the public service and the Parliament strikes me as improbable in the extreme. Finally, Mr Morrison was repeatedly pressed at his press conference on 17 August 2022 about his failure not only to inform his Ministers but also to inform the public of the appointments. The omission on that occasion to state that he had acted at all times on the assumption that each appointment had been notified to the public in the Gazette is striking.

PM&C's account of the secrecy of appointments

229. The relative rarity of the appointment of an existing minister to administer a department of State “on the papers” may explain the absence of an established practice for notification of the appointment in the Gazette. Ms Foster drew a distinction between matters being sensitive, and for that reason not made public, and matters being kept secret. With the benefit of hindsight, she said she had not expected the fact that Mr Morrison had sought, and been given, the power to administer the Department of Health as a safeguard against Mr Hunt becoming incapacitated to be made public. This was a time of crisis and considerations of transparency were being balanced against the need to convey “calm leadership and that things are under control”. Ms Foster understood that the appointment had been considered by a small group of senior ministers whom she saw as dealing with “a problem which could impact on the public that was already pretty edgy and distressed”. Ms Foster’s understanding in this respect aligns with the reason given by Mr Morrison at his press conference for not informing the public of the appointments¹³¹. Ms Foster explained that the environment in March 2020 was one in which there was a sense of urgency dominating their work. In the context of the pandemic, to the extent that she gave thought to the matter, Ms Foster did not consider the decision not to make appointment public to be inappropriate or wrong. I understood Mr Reid to be of a like mind in this respect.
230. Ms Foster and Mr Reid assumed that Mr Cormann was aware of Mr Morrison’s appointment to administer the Department of Finance. Mr Reid pointed out that on 30 March 2020 there was a meeting of the full Cabinet and two of its committees, the National Security Committee and the Expenditure Review Committee, and that Mr Cormann attended each.

Conclusions on the secrecy of the appointments

231. The appointments to administer the Departments of Health and Finance are in a different category to the 2021 appointments. They were made in March 2020 under the extreme pressure of responding to the onset of the COVID-19 pandemic. In the circumstances it is unclear that those within PM&C with knowledge of the appointments gave thought to the fact that they had not been made public. It was apparent by 2021 that the mechanism of appointing Mr Morrison to administer additional departments of State had come to be employed for reasons having little if any connection to the pandemic. It was also apparent that these appointments were not being made public, albeit that it did not occur to anyone in PM&C that Mr Morrison was keeping the appointments secret from his Ministers. While it is troubling that by the time of the 2021 appointments, Mr Gaetjens did not take up the issue of the secrecy surrounding them with Mr Morrison and firmly argue for their public disclosure, the responsibility for that secrecy must reside with Mr Morrison.

131 The Hon Scott Morrison MP [Press Conference, 17 August 2022] (Appendix C)

Section 4:

The implications of the appointments

The functioning of departments of State

232. It has become common for two or more ministers to be appointed to administer one department of State. The validity of these ministerial arrangements was authoritatively settled in *Re Patterson; Ex parte Taylor*¹³². In practice, responsibilities are allocated between two or more ministers by the Prime Minister or the senior minister or sometimes by agreement between ministers. Commonly, the Prime Minister will allocate responsibilities in a Charter letter addressed to the senior minister. Save in rare cases, respective areas of ministerial responsibility will be known to the Secretary of the department and no question will arise as to which of two or more ministers is to be briefed on a particular subject matter. In the event of overlapping responsibilities, which tends to occur more with respect to matters of policy than the administration of particular legislation, it is usual for the Secretary to ensure that the brief is copied to the minister or ministers concerned.
233. In the case of these appointments there was no delineation of responsibilities between Mr Morrison and the other minister, or ministers, administering the department. This is because Mr Morrison did not intend to administer any aspect of the work of the departments unless and until the happening of a future event. Mr Morrison does not appear to have attached any significance to the fact that, from the time of its making, each appointment operated in law to charge him with responsibility for the administration of the department.
234. Emeritus Professor John Wanna and Adjunct Professor Robert McMahon PSM argued against viewing Mr Morrison's appointment to administer multiple departments as cutting against the conventions of Westminster government save that they were critical of the secrecy surrounding them¹³³. They emphasised the flexibility of Westminster systems noting the respects in which our system of government has evolved since Federation. They argued against applying a "legalistic lens" to developments which allow government to respond effectively to exigencies. Their submission assumed that all the appointments, save for the one to administer DISER, were taken as a precaution in the context of the

¹³² *Re Patterson; Ex parte Taylor* (2001) 207 CLR 391.

¹³³ Emeritus Professor John Wanna and Adjunct Professor Robert McMahon PSM, *Submission to the Inquiry*, 30 September 2022.

pandemic. It is an assumption that in relation to the appointments to administer the Departments of Home Affairs and the Treasury does not appear to be warranted.

235. At the level of day to day functioning, Mr McMahon did not consider that the appointments had created any difficulty due to the subject department having “two masters”. In the event Mr Morrison proposed to make a statutory decision in his capacity as the minister administering one of the departments, the fact of his appointment would have become known, enabling the department to brief him accordingly, much as happened in relation to the decision to determine the PEP-11 applications. Mr Morrison made the same point in his public statements¹³⁴.
236. Mr Gaetjens was of a like mind. He referred to the terms of Mr Morrison’s recommendation to the Governor-General that he be appointed to administer the Departments of Home Affairs and the Treasury “to be the responsible Minister for matters within these portfolios, if and when required”. Mr Gaetjens said that there had been no suggestion that Mr Morrison wanted to administer the whole of the additional departments. In the case of the DISER appointment, Mr Gaetjens said there was a “firm boundary” around what Mr Morrison sought to do in his capacity as minister administering the department. Mr Gaetjens pointed out that had Mr Morrison chosen to decide a matter within the Home Affairs or Treasury portfolios, the fact that he was the decision-maker would be evident to the portfolio minister, departmental officers and the person or persons affected by the decision. Mr Gaetjens inclined to the view that it may have been preferable for Mr Morrison to take a decision himself, having been appointed to administer the relevant department, rather than “twisting the Minister’s arm to come to a particular decision”.
237. The contrary view was expressed by Mr Pezzullo who was critical of Mr Morrison’s appointment to administer the Department of Home Affairs in circumstances in which neither the Minister for Home Affairs, Ms Andrews, nor he, was informed of it. Mr Pezzullo illustrated his concern by reference to Operation Sovereign Borders. He asked rhetorically what would have happened if Ms Andrews had given a direction to the officer in charge of Operation Sovereign Borders and Mr Morrison had issued a contrary direction. Mr Pezzullo observed that he would have been confronted by two Cabinet ministers, each authorised to administer his department, exercising power inconsistently over the same subject matter. Mr Pezzullo considered that he would have been placed in a position of untenable conflict given that Mr Morrison, in his capacity as Minister administering the Department of Home Affairs, would not have possessed any greater authority than his fellow Cabinet Minister, Ms Andrews.

134 See, eg, The Hon Scott Morrison MP, “Statement Regarding Ministerial Arrangements” (Media Release, 17 August 2022) (Appendix C).

238. Dr Gordon de Brouwer PSM, Secretary for Public Sector Reform, shared Mr Pezzullo's view with respect to the absence of a clear hierarchy between the Prime Minister in his capacity as the minister administering a department of State and a Cabinet Minister appointed to administer the same department of State. Like Mr Pezzullo, Dr de Brouwer viewed the risk of conflict as a real one. In his view it is unworkable for a department to be answerable to two ministers in relation to the same subject matter in the absence of a clear hierarchy.
239. In addition to the risk of conflict, there is a further dimension to the impact of these appointments on the functioning of departments of State. It is through the departments of State that the business of government is carried out¹³⁵. Each department of State has responsibility for the matters and the legislation listed in the Schedule to the AAO under its name. It is a working assumption that a minister appointed to administer a department of State will familiarise himself or herself with the matters within the remit of the department or, in the case of several ministers administering a department, with the matters within the minister's area of responsibility. The Secretary of each department is under a statutory duty to ensure that the minister administering the department is advised about matters relating to the department and to assist the minister to fulfil his or her accountability obligations to the Parliament¹³⁶. Departments are staffed by members of the Australian Public Service, which exists to provide apolitical, efficient and effective service to the government, the Parliament and the Australian public¹³⁷. Senior public servants are employed for, or may be expected to acquire, specialist knowledge of matters handled by their department¹³⁸.
240. Against this background, in conferring powers and discretions and imposing duties on the minister administering an Act, the Parliament is to be taken to intend that the same will be exercised by the minister who has had the benefit of the advice of the department, whether or not the advice is accepted. Here Mr Morrison sought to be appointed to administer DISER and the Departments of Home Affairs and the Treasury not to assume responsibility for their administration but rather to be in a position to exercise a particular statutory power should the minister charged with the exercise of that power propose a course with which he, Mr Morrison, disagreed, or fail to make a decision that Mr Morrison wanted to be made. In terms of the functioning of the departments it was as Dr de Brouwer observes "extremely irregular".

135 PM&C, *Our Public Service Our Future: Independent Review of the Australian Public Service* (December 2019) 88; Royal Commission on Australian Government Administration, *Report* (1976) 67.

136 *Public Service Act 1999* (Cth) s 57(2)(b), (i).

137 *Public Service Act 1999* (Cth) s 3(a).

138 Royal Commission on Australian Government Administration, *Report* (1976) 58; *Carltona Ltd v Commissioner of Works* [1943] 2 All ER 560 at [563] (Lord Greene MR, Goddard and du Parcq LJJ agreeing).

Statutory bodies and government business enterprises

241. I am also asked to examine and report on the implications arising from the appointments on the functioning of government business enterprises and statutory bodies.
242. The term “government business enterprise” is defined in section 8 of the *Public Governance, Performance and Accountability Act 2013* (Cth) (“PGPA Act”) as a “Commonwealth entity or Commonwealth company that is prescribed by the rules”¹³⁹. The Revised Explanatory Memorandum to the Public Governance, Performance and Accountability Bill 2013 said that “Commonwealth entities or companies that exhibit commercial behaviours with strong entrepreneurial expertise in their governance are candidates for [government business enterprise] status”¹⁴⁰. *The Public Governance, Performance and Accountability Rule 2014* (Cth) (“PGPA Rule”) prescribes two “Commonwealth entities” and seven “Commonwealth companies” as government business enterprises¹⁴¹.
243. The PGPA Act imposes obligations on both Commonwealth entities and Commonwealth companies. For example, the “accountable authority” of a Commonwealth entity¹⁴², or the directors of a wholly-owned Commonwealth company, must “give the responsible Minister or the Finance Minister any reports, documents and information in relation to [its] activities as that Minister requires”¹⁴³. The “responsible Minister” for a Commonwealth entity or Commonwealth company means the Minister who is responsible for the entity or company, unless otherwise prescribed by the rules¹⁴⁴. The “Finance Minister” is the Minister who administers the PGPA Act¹⁴⁵.

139 The term “Commonwealth entity” is defined in s 10 of the *Public Governance, Performance and Accountability Act 2013* (Cth) (“PGPA Act”). There are two types of Commonwealth entities: corporate Commonwealth entities (which is a Commonwealth entity that is a body corporate) and non-corporate Commonwealth entities (which is a Commonwealth entity that is not a body corporate): *PGPA Act* s 11. A “Commonwealth company” is, subject to certain exceptions, “a Corporations Act company that the Commonwealth controls”: *PGPA Act* s 89(1).

140 Revised Explanatory Memorandum, Public Governance, Performance and Accountability Bill 2013 (Cth) 98.

141 *Public Governance, Performance and Accountability Rule 2014* (Cth) (“PGPA Rule”) s 5. The Commonwealth entities are the Australian Postal Corporation and Defence Housing Australia. The Commonwealth companies are ASC Pty Limited, Australian Rail Track Corporation Limited, National Intermodel Corporation Limited, NBN Co Limited, Australian Naval Infrastructure Pty Ltd, WSA Co Limited and Snowy Hydro Limited.

142 *PGPA Act* s 12.

143 *PGPA Act* ss 19(1)(b), 91(1)(b).

144 *PGPA Act* s 8 (definition of “responsible Minister”).

145 *PGPA Act* s 8 (definition of “Finance Minister”).

244. The PGPA Act and the PGPA Rule also impose particular obligations on government business enterprises. For example, both Commonwealth entities and Commonwealth companies must prepare annual reports for their “responsible Minister”¹⁴⁶. The PGPA Rule then requires certain information to be included in the annual report of a government business enterprise that is a corporate Commonwealth entity or a Commonwealth company¹⁴⁷.
245. The term “statutory bodies” is less precise. I understand the phrase to refer to any body that is established, or continued in existence, by statute. There is clearly some overlap in the phrases “government business enterprises” and “statutory bodies”¹⁴⁸.
246. The AAO identifies the majority of Commonwealth legislation as being administered by the minister or ministers administering particular departments of State. That legislation would include the Acts establishing statutory bodies. Generally speaking, subject to a contrary intention appearing in the relevant legislation, references to “the Minister” in that legislation would be a reference to any of the ministers administering the legislation on the relevant day, in relation to the relevant matter, as determined by reference to the AAO¹⁴⁹.
247. Having regard to the above, it is clear that, by reason of the appointments, Mr Morrison may have been:
- “the Minister” in legislation creating various statutory bodies, to the extent that the legislation was administered by the Minister administering the Departments of Health, Finance, the Treasury, Home Affairs, or Industry, Science, Energy and Resources;
 - the “responsible Minister” for certain government business enterprises and statutory bodies for the purposes of the PGPA Act and PGPA Rule, to the extent that the Minister responsible for the entity or company was the Minister administering the Departments of Health, Finance, the Treasury, Home Affairs, or Industry, Science, Energy and Resources; and
 - the “Finance Minister” in the PGPA Act and the PGPA Rule, as well as the “Finance Minister” in legislation creating various statutory bodies (assuming that term was defined as the Minister administering the PGPA Act)¹⁵⁰, given the PGPA Act was administered by the Minister administering the Department of Finance.

¹⁴⁶ *PGPA Act* ss 46, 97.

¹⁴⁷ *PGPA Rule* ss 17BF, 28F.

¹⁴⁸ For example, the Australian Postal Corporation (known as Australia Post) would be classified as both a “statutory body” and a government business enterprise.

¹⁴⁹ *Acts Interpretation Act 1901* (Cth) s 19(1). There may be other ways in which the relevant Minister is referenced in the legislation: see s 19(1).

¹⁵⁰ For example, the *Australian Postal Corporation Act 1989* (Cth) confers power on the “Finance Minister” to lend money to Australia Post: s 60. A reference to the “Finance Minister” means the Minister administering the PGPA Act: s 3 (definition of “Finance Minister”).

248. However, it is equally clear that, aside from the PEP-11 decision, Mr Morrison did not exercise any of the powers or functions, or discharge any of the duties, conferred or imposed on him by legislation not administered by the minister administering PM&C. As discussed above, Mr Morrison never intended to assume any general responsibility for the administration of the departments that he was appointed to administer (other than PM&C). Accordingly, the appointments had no implications for the *functioning* of government business enterprises and statutory bodies. Any implications for the functioning of those bodies were entirely theoretical.

The structure of the ministry

History of the structure of the ministry

249. The ministry has increased in size, and changed in structure, since Federation. Section 65 of the Constitution provides that “[u]ntil the Parliament otherwise provides, the Ministers of State shall not exceed seven in number”. The Parliament has “otherwise provided”, and currently there is a cap of 42 on the number of ministers of State comprising up to 12 Ministers who are designated as Parliamentary Secretary and up to 30 ministers not so designated¹⁵¹. The Parliament has not made other provision as to the offices that are held by the ministers of State. Ministers hold such offices as the Governor-General acting on the advice of the Prime Minister directs.

250. At Federation, the office which a minister was directed to hold corresponded with the department of State which the minister was appointed to administer. That changed in 1987, when Prime Minister the Hon Bob Hawke AC made significant changes to the machinery of government reducing the number of departments of State thereby increasing the area of executive responsibility of each. A Cabinet minister was appointed to administer each department and in most cases a member of the outer ministry was appointed to administer the same department with responsibility for specific parts of the portfolio or to assist the senior minister across the range of the portfolio¹⁵². One consequence of these changes was that the name of the department of State which a minister was appointed to administer no longer necessarily corresponded to the title of the office which the minister was directed to hold. Thus on 18 September 1987, Senator the Hon Michael Tate was appointed to administer the Attorney-General’s Department (section 64 of the Constitution) and directed to hold the office of Minister for Justice (section 65 of the Constitution).

151 *Ministers of State Act 1952* (Cth) s 4.

152 Prime Minister the Hon Bob Hawke AC (Media Release, 14 July 1987) <<https://pmtranscripts.pmc.gov.au/sites/default/files/original/00007197.pdf>>.

251. The move to large departments of State administered by more than one minister has continued. The office which a minister is directed to hold under section 65 of the Constitution not uncommonly does not correspond with the name of the department of State the minister is appointed to administer under section 64 of the Constitution. The point may be illustrated by DISER in April 2021 when Mr Morrison was appointed to administer it. At the time six ministers were appointed to administer DISER:

- the Hon Christian Porter MP, Minister for Industry, Science and Technology;
- the Hon Angus Taylor MP, Minister for Energy and Emissions Reduction;
- the Hon Keith Pitt MP, Minister for Resources, Water and Northern Australia;
- Senator the Hon Jane Hume, Minister for Superannuation, Financial Services and the Digital Economy and Minister for Women’s Economic Security;
- Senator the Hon Jonathon Duniam, Assistant Minister for Forestry and Fisheries and Assistant Minister for Industry Development; and
- the Hon Michelle Landry MP, Assistant Minister for Children and Families and Assistant Minister for Northern Australia.

All six ministers had the capacity to exercise the powers, and were subject to the duties, conferred on “the Minister” in legislation specified in the Schedule to the AAO as being administered by the minister administering DISER.

252. Where two or more ministers are appointed to administer the one department their respective responsibilities will usually be assigned by the Prime Minister in a Charter letter addressed to the senior minister. The latter may in turn assign particular responsibilities to the junior minister or ministers and one or more parliamentary secretaries. Parliamentary secretaries are now more commonly referred to as assistant ministers although, consistently with the *Ministers of State Act 1952* (Cth), they are formally designated as parliamentary secretaries¹⁵³. Senior, junior and assistant ministers will all have been appointed to administer the department under section 64 of the Constitution.

253. By the time of the Morrison Ministry in April 2021, there were 23 Cabinet ministers, seven ministers in the outer ministry and 12 ministers designated as parliamentary secretaries. Those ministers were appointed to administer one or more of 14 departments of State, which were grouped into 13 portfolios (the Department of Veterans’ Affairs is a department of State but it is within the Defence portfolio).

¹⁵³ *Ministers of State Act 1952* (Cth) s 4.

History of Prime Ministerial appointments and offices

254. At the time of Federation there was no Department of the Prime Minister. The first Prime Minister, the Rt Hon Edmund Barton PC, was appointed to administer the Department of External Affairs and, for the purposes of section 65 of the Constitution, the office that Mr Barton was directed to hold was that of Minister for External Affairs. Professor Geoffrey Sawer has explained that in the absence of a Department of the Prime Minister, the title of Prime Minister was held as a courtesy and by convention¹⁵⁴.
255. In the early years after Federation, Prime Ministers were either appointed to administer the Department of External Affairs or the Treasury and they held the office of Minister of External Affairs or Treasurer respectively¹⁵⁵. Following the establishment of the Department of the Prime Minister in 1911, it remained common for Prime Ministers to be appointed to administer departments of State in addition to the Department of the Prime Minister. The Hon Gough Whitlam AC QC was the last Prime Minister to hold a substantive appointment to administer a department of State in addition to PM&C as well as being directed to hold the office of Minister connected with that department.¹⁵⁶ When the first full Whitlam Ministry was “sworn in” on 19 December 1972, Mr Whitlam was appointed to administer the Department of Foreign Affairs as well as PM&C and he held the office of Foreign Minister as well as that of Prime Minister throughout the first term of his Government.
256. Since 1987 on occasions a minister has been appointed to administer an additional department of State without the appointment being made public through either the Gazette or the Ministry List. Putting aside the appointments the subject of this Inquiry and the interim arrangements addressed below, I am aware of one other occasion in which a Prime Minister has been appointed to administer another department. Following the federal election on 24 November 2007, the first Rudd Ministry was “sworn in” on 3 December 2007. The Hon Kevin Rudd MP was appointed to administer the Department of Climate Change as well as PM&C. The AAO issued on that day listed the Department of Climate Change as forming part of the Prime Minister and Cabinet Portfolio¹⁵⁷. The Ministry List dated 12 February 2008 stated in its footnote that “there is a Department of Climate Change in the Prime Minister’s portfolio”.

154 Geoffrey Sawer, *Australian Federal Politics and Law 1901–1929* (Melbourne University Press, 1956) 4.

155 Sir Edmund Barton, the Hon Alfred Deakin and Sir George Reid KC were all appointed as Minister for External Affairs for the duration of their respective terms as Prime Minister and the Hon Chris Watson and the Rt Hon Andrew Fisher were both appointed as Treasurer for the duration of their respective terms as Prime Minister.

156 Subsequent Prime Ministers have briefly administered an additional department: following resignation of the Treasurer to contest the leadership (The Hon Bob Hawke AC); pending settlement of the Ministry (The Hon Julia Gillard AC); pending a by-election occasioned by the disqualification of a Minister under s 44 of the Constitution (The Hon Malcolm Turnbull AC); pending settlement of ministry (the Hon Malcolm Turnbull AC).

157 Administrative Arrangements Order made on 3 December 2007; Commonwealth, *Commonwealth of Australia Gazette*, No S248, 3 December 2007.

The Hon Penny Wong was directed to hold the office of Minister for Climate Change and Water and she was appointed to administer the Department of Climate Change and the Department of the Environment, Water, Heritage and the Arts.

257. The notice in the Gazette relevantly read that “[h]is Excellency the Governor-General directs it to be notified, for general information, that he has made the following appointments: The Honourable Kevin Rudd MP, Prime Minister”¹⁵⁸. While the public was on notice that the Department of Climate Change was within the Portfolio of the Prime Minister and Cabinet there was no notification in the Gazette of the fact of Mr Rudd’s appointment to administer the Department of Climate Change (in conformity with the then current style of notification of ministerial appointments). It is not apparent that it was the intention to keep the appointment secret. Thus in a media release made on 3 December 2007, Mr Rudd advised that “Dr Martin Parkinson will be Secretary of the new Department of Climate Change within my portfolio”¹⁵⁹. Nonetheless, while the annual reports of the Department of Climate Change noted that it “is part of the Prime Minister and Cabinet portfolio”¹⁶⁰, they made no reference to Mr Rudd’s appointment to administer the Department.
258. The Department of Climate Change remained within the PM&C portfolio until 8 March 2010, when the Governor-General in Council, acting on Mr Rudd’s recommendation, changed the name from the Department of Climate Change to the Department of Climate Change and Energy Efficiency¹⁶¹. The AAO was amended that day by omitting reference to the Department of Climate Change forming part of the PM&C portfolio and setting out additional matters dealt with by the newly named Department of Climate Change and Energy Efficiency¹⁶². On the same day, it was notified in the Gazette that Senator Wong had been “sworn in” as Minister for Climate Change, Energy Efficiency and Water¹⁶³. It would seem likely that Senator Wong was also appointed to administer the Department of Climate Change and Energy Efficiency and that again in conformity with the then current style of notification of ministerial appointments no reference was made to the appointment.

158 Commonwealth, *Commonwealth of Australia Gazette*, No S248, 3 December 2007.

159 Prime Minister the Hon Kevin Rudd MP, “Appointment of Departmental Secretaries” (Media Release, 3 December 2007) <<https://pmtranscripts.pmc.gov.au/release/transcript-15695>>.

160 See eg, Department of Climate Change, *Annual Report 2008-09* (Report, 2009) 15 <<https://nla.gov.au/nla.obj-1940396020/view?partId=nla.obj-1941648930#page/n0/mode/1up>>.

161 Commonwealth, *Commonwealth of Australia Gazette*, No S27, 10 March 2010, 1.

162 Commonwealth, *Commonwealth of Australia Gazette*, No S27, 10 March 2010, 2-3, amending the Administrative Arrangements Order made on 25 January 2008 and amended on 1 May 2008 and updated on 1 July 2008.

163 Commonwealth, *Commonwealth of Australia Gazette*, No S26, 10 March 2010.

On 9 March 2010, Mr Rudd tabled a revised Ministry List, in which the Department of Climate Change and Energy Efficiency was identified as a standalone portfolio (and not part of the PM&C portfolio)¹⁶⁴. No formal step was taken to revoke Mr Rudd's appointment to administer the Department of Climate Change, which was terminated by Mr Rudd's resignation on 24 June 2010.

The Whitlam “duumvirate” and the Albanese interim ministerial arrangements

259. Mr Morrison's appointments are not relevantly comparable with the interim ministerial arrangements made following the election of the first Whitlam government on 2 December 1972, or the first Albanese government on 23 May 2022. Since some reference was made to the “Whitlam duumvirate” in the course of consultations, I should explain why that is so.

260. On 5 December 1972, Prime Minister Whitlam was appointed to administer 13 departments of State and his Deputy, the Hon Lance Barnard MP, was appointed to administer the remaining 14 departments of State. While the result of the election was clear, there were delays in the final counting of a number of seats and the Labor Party Caucus was not able to elect the full Ministry until 18 December 1972. Mr Whitlam proposed the “duumvirate” in the interim¹⁶⁵. The arrangement lasted between 5 and 19 December 1972 when the full Whitlam Ministry was appointed. Mr CW Harders OBE, then Secretary of AGD, tendered advice to the Governor-General that there was no constitutional or other legal objection to Mr Whitlam's proposal. Mr Harders said that the arrangement would enable the work of government to be carried on more effectively than would be possible if there were to continue to be a “caretaker” outgoing Ministry of greater numbers. Mr Harders' opinion was, in terms, expressed to take into account that the proposal was of an “interim short-term nature”.

¹⁶⁴ House of Representatives, *Hansard* (9 March 2010) 1991-1992.

¹⁶⁵ Prime Minister the Hon Gough Whitlam QC MP, “Statement by Mr EG Whitlam QC” (Media Release, 5 December 1972) <<https://pmtranscripts.pmc.gov.au/release/transcript-2729>>.

261. Similarly, on 23 May 2022, immediately following the general election, Prime Minister Albanese and four other Ministers were appointed to administer all departments of State between them¹⁶⁶, in order to enable the Prime Minister and the Minister for Foreign Affairs to attend the Quad leaders meeting in Tokyo¹⁶⁷. These arrangements were in place between 23 May 2022 and 1 June 2022, when the first “full” Albanese Ministry was appointed¹⁶⁸.
262. By contrast with the evidently interim nature of the Whitlam/Barnard appointments, and the first Albanese Ministry, Mr Morrison’s appointments did not serve to fill a temporary gap in the appointment of the full Ministry. And they took effect from the date of their making until his resignation as Prime Minister on 23 May 2022 following the federal election held two days earlier.

Implications of the appointments on the structure of the ministry

263. The key institutions of responsible government under our Westminster system remain the Cabinet and the office of Prime Minister¹⁶⁹. As long as the appointments remained secret and Mr Morrison elected not to exercise his powers as the minister administering a department it is not apparent that there was any impact on the structure of the ministry. A larger question is what are the implications for the ministry, and Cabinet in particular, if the Prime Minister is known to have assumed the administration of five portfolios in addition to PM&C, meaning that he or she is responsible for the administration of six out of 13 portfolios. If the concept of the Prime Minister being “first among equals” was ever the reality under our system of responsible Cabinet government it would be a stretch to so describe it today. The Prime Minister has formidable authority in Cabinet: it is the Prime Minister who decides the make-up of the Cabinet¹⁷⁰; who is the arbiter of its procedures¹⁷¹ and its agenda¹⁷²; and who possesses the ultimate power to dismiss a Cabinet minister or ministers. Nonetheless, the concentration of so much authority in the hands of the Prime Minister might be thought to erode the collective decision-making which is the defining feature of Cabinet government. But that is not what happened here.

166 Commonwealth Government, *Albanese Ministry* (23 May 2022) <<https://www.pmc.gov.au/sites/default/files/publications/ministry-list-20220523.pdf>>.

167 Prime Minister the Hon Anthony Albanese MP, “Transcript” (Press Conference, 23 May 2022) <<https://www.pm.gov.au/media/press-conference>>.

168 Prime Minister the Hon Anthony Albanese MP, “Media Release” (Media Release, 31 May 2022) <<https://www.pm.gov.au/media/albanese-government-full-ministry>>; Commonwealth Government, *Albanese Ministry* (1 June 2022) <<https://www.pmc.gov.au/sites/default/files/publications/ministry-list-20220601-2.pdf>>.

169 George Winterton, *Parliament, the Executive and the Governor-General* (Melbourne University Press, 1983) 13.

170 PM&C, *Cabinet Handbook* (14th Edition, 2020) para 7.

171 PM&C, *Cabinet Handbook* (14th Edition, 2020) para 6.

172 PM&C, *Cabinet Handbook* (14th Edition, 2020) para 8.

264. The “Cabinet Handbook” (“the Handbook”), a non-partisan document¹⁷³, is a source for understanding the contemporary functioning of the Cabinet under Coalition and Labor governments¹⁷⁴. The Handbook provides guidance as to when matters should be brought to Cabinet¹⁷⁵:

As a general rule, the Cabinet considers significant, complex or controversial matters which benefit from collective and collaborative discussion and decision making. Ministers should put before their colleagues the sorts of issues on which they themselves would wish to be consulted—matters of public interest, importance, or controversy. It is ultimately for the Prime Minister, on the advice of the Cabinet Secretary, to decide what matters require Cabinet consideration.

Among the kinds of issues that would normally require Cabinet consideration are “significant or controversial policy issues” and “significant or controversial exercise of a minister’s statutory power”¹⁷⁶.

265. Mr Morrison was concerned about his ministers’ exercise of statutory power in cases that were not subject to Cabinet oversight. Recourse to being appointed to administer multiple departments seems an exorbitant means of addressing the concern. Plainly the Handbook envisages that some significant or potentially controversial exercises of ministerial power may be the subject of Cabinet consideration notwithstanding that ultimately the decision rests with the minister in whom the power is vested.

266. Mr Morrison took these appointments to give himself the capacity to exercise a statutory power that was reposed in a fellow Cabinet Minister in what he, Mr Morrison, perceived to be the national interest. Implicit in the assumption of this capacity was Mr Morrison’s concern that the responsible minister might fail to exercise the power in a manner that Mr Morrison regarded as conducive to the national interest. Mr Morrison was not without recourse if one of his ministers was proposing to exercise a statutory power in a manner that Mr Morrison considered to be not conducive to the national interest. Ultimately the power lay in his hands to dismiss the minister.

173 From time to time, the same edition of the Cabinet Handbook has been used by Coalition and Labor governments.

174 The current edition published in October 2020 under the Morrison Government is still in use.

175 PM&C, *Cabinet Handbook* (14th Edition, 2020) para 71.

176 PM&C, *Cabinet Handbook* (14th Edition, 2020) para 72.

267. In his letter of 10 November 2022, Dr Tsacalos contended:

It would have been unlawful for Mr Morrison to do as has been suggested by some public commentators, namely, to direct the Minister to make a particular decision under the relevant legislation. In the alternative, the dismissal of the Minister would also have been ineffective, as the relevant statutory power would have simply passed to the succeeding Minister, whom it would also have been unlawful for Mr Morrison to direct in such matters.

268. The submission is apt to suggest that Mr Morrison found himself unable to appoint a minister to administer the subject department whom he could be confident would exercise his or her statutory powers in a manner that Mr Morrison considered to be in the national interest. It is a surprising contention. I do not infer that Mr Morrison in fact had any such concern.

269. The scheme to have himself appointed to administer departments of State against the risk of the responsible minister failing to exercise particular statutory power in a manner with which Mr Morrison agreed does not appear to have been closely thought through. Among other things, while the appointment remained unknown to the responsible minister, there does not appear to have been any obstacle to that minister proceeding to exercise the power in a manner with which Mr Morrison disagreed. In the event, once Mr Morrison made his interest in the exercise of a particular power known, as with the PEP-11 applications, his evident disagreement with Mr Pitt appears to have sufficed to ensure that Mr Pitt did not pre-empt matters by deciding the applications while the brief remained with him between April and December 2021. It speaks to Mr Morrison's authority as Prime Minister and makes the decision to be secretly appointed to the additional departments of State bizarre.

The accountability of the Executive to the Parliament

270. Section 64 of the Constitution provides that no Minister of State shall hold office for a longer period than three months unless he or she is or becomes a Senator or a Member of the House of Representatives. It is an explicit recognition that the system for which Chapter II provides is one of responsible government. Responsible government demands that ministers who are appointed to administer departments of State are responsible to the Parliament for that administration. The importance of the Parliament's role in this respect was distilled in *Egan v Willis* in these terms¹⁷⁷:

¹⁷⁷ *Egan v Willis* (1998) 195 CLR 424 at [42] [Gaudron, Gummow and Hayne JJ].

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”. The point was made by Mill, writing in 1861, who spoke of the task of the legislature “to watch and control the government: to throw the light of publicity on its acts”. It has been said of the contemporary position in Australia that, whilst “the primary role of Parliament is to pass laws, it also has important functions to question and criticise government on behalf of the people” and that “to secure accountability of government activity is the very essence of responsible government”.

271. Accountability to the Parliament is both collective and individual. Each minister is responsible to the Parliament, and through the Parliament to the electorate, for the action or inaction of the department of State that he or she is appointed to administer. Ministers “may be questioned in Parliament and are accountable to it for their expenditure of public funds, their development and implementation of government policy and their administration of government”¹⁷⁸. Whether he chose to actively administer these departments or not, Mr Morrison was in law responsible for the administration of each. And yet the Parliament was not informed of any of the appointments and was unable to hold Mr Morrison to account in his capacity as Minister administering the five departments and therefore responsible for the conduct of that administration.

272. In *Re Patterson*, three of the Justices made it clear that, in their view, there was no constitutional difficulty with the appointment of multiple ministers to administer a department of State *because* each Minister would be accountable to the Parliament. In particular Gleeson CJ said¹⁷⁹:

The concept of administration does not require that there be only one person who administers, and the concept of responsible government does not require that there be only one person answerable to Parliament for the administration of a Department. ... It is for Parliament to determine the procedures by which those two persons will answer for the conduct of such administration.

178 Anne Twomey, *The Veiled Sceptre: Reserve Powers of Heads of State in Westminster Systems* (Cambridge University Press, 2018) 16. Similarly, Winterton said that “Ministers, being members of Parliament, are subject to interrogation, censure and possibly even suspension or expulsion at the hands of their parliamentary colleagues”: George Winterton, *Parliament, the Executive and the Governor-General* (Melbourne University Press, 1983) 78. The Houses of the Commonwealth Parliament no longer have power to expel a Member: *Parliamentary Privileges Act 1987* (Cth) s 8. See also A.H. Birch, *Representative and Responsible Government* (Allen and Unwin, 1964) 20.

179 *Re Patterson; Ex parte Taylor* (2001) 207 CLR 391 at [17].

273. Similarly, Gummow and Hayne JJ endorsed the reasoning of Beaumont J in *Zoeller v Attorney-General* (Cth)¹⁸⁰, in which his Honour said that the principle of responsible government was not “any obstacle” to the appointment of multiple ministers to administer a department as “both Ministers would remain answerable to Parliament”¹⁸¹.
274. There are a number of accountability mechanisms available to parliamentarians which depend on knowledge of the identity of the relevant Minister. In particular, “[t]he accountability of the Government is demonstrated most clearly and publicly at Question Time when, for a period (usually well over an hour) on each sitting day, questions without notice are put to Ministers”¹⁸². A parliamentarian may wish to move a motion with the aim of having a minister provide the House with an explanation for the exercise or the non-exercise of their powers within their portfolio. The identity of the persons appointed to administer a department may also be relevant to the framing of calls for documents, or of questions, by members including during debates in the relevant House or committee proceedings. Self-evidently the mechanisms that allow parliamentarians to “question and criticise government on behalf of the people” depend on knowing who is responsible for the administration of the departments of State.

Public confidence in government

275. For the purposes of this Inquiry, I adopt the ordinary meaning of “confidence”, which is relevantly “full trust” or “belief in the trustworthiness or reliability of a person or thing”¹⁸³. Consistently with that ordinary meaning, I am concerned with the implications of the appointments for the belief of “the public” in the trustworthiness of government.

180 *Zoeller v Attorney-General* (1987) 16 FCR 153.

181 *Re Patterson; Ex parte Taylor* (2001) 207 CLR 391 at [210]-[211].

182 Department of the House of Representatives, *House of Representatives Practice* (7th ed, 2018) 543 <https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7>.

183 *Macquarie Dictionary* [online at 17 November 2022] “confidence”.

276. This understanding is consistent with the High Court’s approach to the concept of “public confidence” when assessing the impact of a law on the institutional integrity of the court¹⁸⁴. The Court has emphasised that it is not attempting “to estimate with precision the impact, if any, of particular legislation upon public opinion”¹⁸⁵. Rather, the Court seeks to assess whether the conferral of a particular function impermissibly interferes with the qualities which the public expects to be possessed by courts. As Gleeson CJ put it¹⁸⁶:

Confidence is not something that exists in the abstract. It is related to some quality or qualities which one person believes to exist in another. The most basic quality of courts in which the public should have confidence is that they will administer justice according to law.

277. I am not concerned to make any empirical assessment of the extent to which public confidence in government was in fact affected by the appointments. Rather, I am being asked to report on the implications of the appointments on “the trust reposed constitutionally”¹⁸⁷ in government, having regard to the quality or qualities which the public expects government to possess.

278. A number of the submissions observed that the fact that the appointments were kept secret had the potential to undermine public confidence in government. For example, Grata Fund said¹⁸⁸:

... the public has an expectation of transparency and, in the absence of such transparency in ministerial appointments, the public may perceive that ministers can appoint themselves to multiple portfolios and exercise significant power in secret without the level of public scrutiny otherwise expected in Australia’s system of responsible government.

... although the secret ministerial appointments were not found to be illegal per se, they diminished confidence in government by undermining the public’s ability to scrutinise government decision-making.

184 *Kable v Director of Public Prosecutions* (NSW) (1996) 189 CLR 51.

185 *Baker v The Queen* (2004) 223 CLR 513 at [79] (Kirby J).

186 *Baker v The Queen* (2004) 223 CLR 513 at [6].

187 *Moti v The Queen* (2011) 245 CLR 456 at [57] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

188 Grata Fund, *Submission to the Inquiry*, 7 October 2022, 3-4.

279. The Australian Social Cohesion: Exploring New Directions project at the Australian National University said¹⁸⁹:

Unless the government conveys a clear public message that reassures electors that secret appointments are no longer acceptable and are prepared to make that commitment a legal obligation binding on future governments, then this could also undermine trust in government.

280. With respect to Mr Morrison's appointment to administer DISER, Asset Energy submitted¹⁹⁰:

The non-public nature of the appointment creates a potential inference, whether accurate or not, that any decision made by such an appointee is not being made for a proper purpose. Such non-public appointments will, overtime, erode trust in government decision-making.

281. Professor Twomey also raised similar concerns in an article published on *The Conversation* on 15 August 2022. She said¹⁹¹:

Is it appropriate for ministers to be secretly appointed to exercise statutory powers? No, such matters should be notified to parliament and formally published so members of the public can know who is entitled to exercise particular powers. That is why we have Administrative Arrangements Orders and notifications of changes in ministerial responsibility that are recorded on the Federal Register of Legislation.

It is inappropriate for such matters to be kept secret – especially if it is kept secret from the Cabinet and from the minister who was formally allocated responsibility for a portfolio by the Governor-General.

Such a lack of transparency is indicative of a lack of respect for the institutions of government and for the general public who have a right to know how power is allocated.

189 Australian Social Cohesion: Exploring New Directions project at the Australian National University, *Submission to the Inquiry*, 29 September 2022, 5.

190 Asset Energy Pty Ltd, *Submission to the Inquiry*, 6 October 2022, 4.

191 Anne Twomey, "Explainer: Scott Morrison Was Sworn in to Several Portfolios Other than Prime Minister During the Pandemic. How Can This Be Done?", *The Conversation* [online, 15 August 2022] <<https://theconversation.com/explainer-scott-morrison-was-sworn-in-to-several-portfolios-other-than-prime-minister-during-the-pandemic-how-can-this-be-done-188718>>.

282. In contrast to these views, Dr Michael de Percy contended that public confidence in government is “unlikely to reside in the minutiae of constitutional legal opinion”¹⁹². Dr de Percy questioned the assumption that transparency necessarily leads to more trust in government, by reference to the findings of a study that “national cultural differences are an important independent variable in assessing whether transparency leads to increased trust”¹⁹³. Putting to one side the nuances of the constitutional debate raised by these appointments, and accepting that many variables bear on the quality of trust in government, it is difficult to conclude that the assumption of the capacity to exercise significant public power in secret is not one of those variables.

283. The only decision made by Mr Morrison as minister administering any of the additional departments was in relation to the PEP-11 applications. It is true that, at the time that decision was made, the public was unaware that Mr Morrison had been appointed to administer DISER. Nevertheless, it is difficult to describe the decision as having been made by Mr Morrison in secret. In this regard, at a press conference announcing the making of the first PEP-11 decision on 16 December 2021, Mr Morrison said that (emphasis added)¹⁹⁴:

- “the Government has taken, *through my own decision*, the first step to formally reject an application for the Petroleum Export Permit, known as PEP-11”;
- “[t]he Government has advised, *I have advised* the New South Wales Minister Paul O’Toole, as the joint authority partner, and the National Office Offshore Petroleum Titles Administrator, of our decision, *of my decision*, of our intention to refuse the application”;
- he had “taken that decision directly as Prime Minister”; and
- he had “decided to take the decision as the Prime Minister”, which he was “authorised to do”.

284. Although Mr Morrison’s appointments to the relevant departments were not disclosed to the public until August 2022, Mr Morrison did not exercise any of the powers he enjoyed by reason of those appointments in secret. Rather, what was kept secret was the fact that Mr Morrison had the *capacity* to exercise those powers.

192 Dr Michael de Percy, *Submission to the Inquiry*, 30 September 2022, 2.

193 Dr Michael de Percy, *Submission to the Inquiry*, 30 September 2022, 2.

194 Prime Minister the Hon Scott Morrison MP, “Press Conference Terrigal, NSW” (Press Conference, 16 December 2021) <<https://pmtranscripts.pmc.gov.au/release/transcript-43716>>.

285. An appointment to administer a department of State which is kept secret may, if subsequently revealed, raise questions in the mind of a reasonable member of the public as to why the appointment was kept secret. Even where powers are not exercised, the appointment may lead that reasonable member of the public to think that the individual may have intended to exercise powers enjoyed by reason of that appointment in secret. It may also create confusion in relation to why there was an individual (or individuals) who was publicly known to be appointed to administer the department, but there was another individual whose appointment was not.
286. Transparency in relation to the identity of the persons appointed to administer departments of State under section 64 of the Constitution is a quality that the public is entitled to expect of government. Departments of State provide the machinery through which society is governed. Ministers are both “constitutionally responsible and politically accountable” for their Departments¹⁹⁵. The public is entitled to know who bears that responsibility and owes that accountability.
287. The public was not aware of the appointments of Mr Morrison to administer the five departments. The public did not know something that it was entitled to know, namely the identity of persons appointed to administer departments of State. Once they became known, the secrecy with which the appointments had been surrounded was corrosive of trust, and thus confidence, in government.

195 *Comcare v Banerji* (2019) 267 CLR 373 at [70] (Gageler J).

Section 5:

Procedural and legislative changes to provide greater transparency and accountability

88. My first recommendation is that foreshadowed in my letter to the Prime Minister of 26 October 2022¹⁹⁶ and is intended to ensure that all ministerial appointments are made public. The remaining recommendations are concerned with the accessibility of information about ministerial appointments and responsibilities. They do not trench on how the ministry is structured or how responsibilities between ministers administering a department are shared. But the complexity of the latter arrangements in departments administered by multiple ministers makes it desirable that, where possible, the functional division of responsibilities is publicly disclosed.

Submissions for reform beyond the scope of the Inquiry

289. Some submissions raised broad, systemic issues concerning the operation, structure and functions of Executive government, particularly relating to the accountability and functioning of ministerial advisors employed under the *Members of Parliament (Staff) Act 1984* (Cth), the structure and ministerial oversight of departments of State, the capability and expertise of the Australian Public Service, and the role of oversight mechanisms such as parliamentary committees. Other submissions made recommendations regarding specific Commonwealth legislation, such as the effectiveness of the *Freedom of Information Act 1982* (Cth) and the scope of the offences in the National Anti-Corruption Commission Bill 2022 (Cth). While some of these subjects have a bearing on the circumstances of Mr Morrison's appointments, I consider that they are ultimately outside the scope of this Inquiry, and I note that a number canvass issues that have been extensively considered by other reviews¹⁹⁷.

¹⁹⁶ Appendix E.

¹⁹⁷ For example, the capability and expertise of the Australian Public Service has been comprehensively considered by other administrative inquiries; see, eg, PM&C, *Our Public Service Our Future: Independent Review of the Australian Public Service* (December 2019).

Ministerial appointments under sections 62, 64 and 65 of the Constitution

290. The starting point in considering the need, if any, for reform is the recognition that the failure to publish the appointment of a minister under section 64 of the Constitution to administer a department undermines responsible government. It follows that there must be an effective mechanism to ensure publication. Differing views were expressed in submissions on what that mechanism should be. The authors of some submissions proposed adoption of a practice of notifying appointments under section 64 in the Gazette conformably with the longstanding practice of notifying appointments to the Federal Executive Council under section 62 and directions to hold office under section 65 in the Gazette¹⁹⁸. One submission argued that recourse to a legislative requirement when the same result can be achieved procedurally is generally undesirable. Others contended that procedural change alone is an inadequate safeguard.
291. As explained in Section 2 procedural changes to ensure the publication of appointments to administer departments of State have been made since the disclosure of Mr Morrison's additional appointments. I consider that a legislative requirement to publish all appointments and directions made under Chapter II of the Constitution is desirable. As the Solicitor-General has noted, although the Governor-General's agreement to the new protocol "[insulates] the publication of those appointments from the wishes of the Prime Minister of the day", it remains open for the Prime Minister to advise the Governor-General *not* to publish an appointment¹⁹⁹. And as the Solicitor-General also noted, future Governments would not be bound to follow this new administrative practice²⁰⁰.
292. The object of the proposed legislative requirement is to ensure that at all times the public knows the identity of the minister or ministers administering a department of State. Hence, the legislative requirement for publication of appointments²⁰¹ and directions should extend to their revocation. Noting that generally appointments under section 64 and directions to hold office under section 65 automatically cease on the resignation of the Prime Minister²⁰², the requirement with respect to publication of the revocation of an appointment or direction should be confined to instances in which the revocation is effected by an instrument executed by the Governor-General.

198 See also Solicitor-General's Opinion at [51].

199 Solicitor-General's Opinion at [51].

200 Solicitor-General's Opinion at [54].

201 Including both appointments to administer a department under section 64 and the swearing-in of Executive Councillors under section 62.

202 For example, following a change of government as a result of a federal election, the appointment of an outgoing Prime Minister and all of their Ministry ceases on the Governor-General's acceptance of the Prime Minister's resignation.

293. Appointments and directions, and the revocation of appointments and directions when effected by an instrument, should be published in the Gazette or in a notifiable instrument registered on the Federal Register of Legislation. I do not express a view as to which option is preferable. I note that one submission was critical of the accessibility of Gazette notices. It may be that this concern will be remedied by the adoption of the Legislation Act Review Committee's recommendation that the *Legislation Act 2003* (Cth) be amended to allow the First Parliamentary Counsel to register any Gazette as a notifiable instrument²⁰³.
294. As proposed in a number of submissions, the requirement for publication could be effected by amendment to the *Ministers of State Act 1952* (Cth). Publication should be required as soon as reasonably practicable following the appointment or revocation. The notification should include the name of the minister and the date of appointment, direction or revocation, as the case may be. It may be convenient for a copy of the instrument to be published.
295. The failure to publish should not affect the validity of the appointment or revocation. Invalidity of an appointment could have significant consequences including for the validity of statutory decisions. And there may be uncertainty with respect to the validity of appointments pending publication. These potential consequences weigh against publication being a "condition subsequent" for a valid appointment. Moreover, I do not consider that the prospect of invalidity is necessary to ensure compliance with the requirement.

203 Legislation Act Review Committee, *2021–2022 Review of the Legislation Act 2003* (June 2022) 77 <<https://www.ag.gov.au/sites/default/files/2022-08/report-2021-22-review-legislation-act-2003.pdf>>. In addition, if an instrument (or particulars of an instrument) is required to be published or notified in the Gazette, then this requirement can be fulfilled by registering the instrument as a notifiable instrument: *Legislation Act 2003* (Cth) s 11(4). This leaves the decision with the "rule-maker", who can decide whether to register the instrument as a Gazette or as a notifiable instrument (the term "rule-maker" is defined in s 6(1)).

Recommendation 1

Legislation should be enacted to require publication in the Commonwealth Gazette or in a notifiable instrument registered on the Federal Register of Legislation as soon as reasonably practicable following the fact of:

- i.** the swearing of an Executive Councillor under section 62 of the Constitution;
- ii.** the appointment of an officer to administer a department of State under section 64 of the Constitution;
- iii.** the direction to a Minister of State to hold an office under section 65 of the Constitution; and
- iv.** the revocation of membership of the Federal Executive Council, an appointment to administer a department, and a direction to hold an office, when effected by an instrument executed by the Governor-General.

The notice or notifiable instrument should include the name of the person and the date that he or she was sworn, appointed and/or directed, or the date that such membership, appointment and/or direction was revoked. It may also be convenient for a copy of the instrument to be included in the notification.

Acting authorisations

296. When the Parliament is sitting, there is a practice whereby the Prime Minister announces any acting arrangements that are in place at that time. The current edition of *House of Representatives Practice* states²⁰⁴:

The Prime Minister from time to time informs the House of changes in the Ministry, of the absence or illness of Ministers, of any acting and representational arrangements that are made within the Ministry, and of changes in departmental and administrative arrangements. It is the normal practice for such an announcement to be made before questions without notice to assist Members in directing their questions.

204 Department of the House of Representatives, *House of Representatives Practice* (7th ed, 2018) 263 <https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7>.

297. However, there is no practice of publishing acting arrangements when the Parliament is not sitting. Some instruments authorising a Minister to act on behalf of the maker under section 34AAB(1) of the *Acts Interpretation Act 1901* (Cth) have been published on the Federal Register of Legislation²⁰⁵. However, it is clear that the vast majority of instruments effecting acting authorisations, whether under section 34AAB(1) or otherwise, have not been published.
298. There is also no established process by which the instruments are provided to the affected department. However, based on consultations with senior public servants, it appears that the department is always made aware of an acting authorisation so that necessary arrangements can be made to brief the acting minister.
299. Some State Constitutions expressly provide for the authorisation of acting ministers²⁰⁶. For example, section 36(1) of the *Constitution Act 1902* (NSW) provides that the Governor may authorise a minister to act for or on behalf of another minister, and section 37 provides that when a minister is unavailable, another minister can act for them. In practice, an acting arrangement under section 36 is put in place where a minister will be interstate for a period of two weeks or more, overseas (unless the trip is for no more than one or two days) or where approval has been given by the Premier for leave for two weeks or more²⁰⁷. It is the practice to publish these acting arrangements in the NSW Government Gazette, but this is not required²⁰⁸. The gazettal of acting authorisations is required in South Australia²⁰⁹.
300. By contrast, unless an acting authorisation is announced at the start of Question Time during a sitting period, or is otherwise disclosed in some ad hoc way, the public is unaware of when one Commonwealth minister is acting for another. During these periods, the public does not know that a minister possessed statutory powers, and was subject to statutory duties, by reason of their authorisation as an acting minister. Given that I am asked to “recommend any procedural ... changes which would provide greater transparency and accountability”, I consider it appropriate to make two recommendations in relation to acting authorisations.

205 See, eg, *Ministerial Powers (Acting Arrangements in the Treasury Portfolio) (No. 1) Authorisation 2022*; *Ministerial Powers (Acting Arrangements in the Treasury Portfolio) (No. 2) Authorisation 2022*; *Ministerial Powers (Acting Arrangements in the Treasury Portfolio) (No. 3) Authorisation 2022*; *Ministerial Powers (Acting Arrangements in the Treasury Portfolio) (No. 4) Authorisation 2022*.

206 *Constitution Act 1902* (NSW) ss 36, 37; *Constitution Act 1934* (SA) s 67; *Constitution of Queensland 2001* (Qld) s 45 (and see s 46).

207 Premier’s Memorandum M2014-02, *Ministerial Arrangements During Absences* (14 March 2014).

208 See *Constitution Act 1902* (NSW) s 36(5); Anne Twomey, *The Constitution of New South Wales* (2004) 689.

209 *Constitution Act 1934* (SA) s 67(4).

301. Where there is an authorisation of an acting minister for two weeks or more, as a matter of practice, the fact of the authorisation should be published as soon as reasonably practicable in the Gazette or in a notifiable instrument on the Federal Register of Legislation. The experience in New South Wales suggests that such a requirement would not prove unduly onerous. The threshold of two weeks preserves the ability to put acting arrangements into place quickly and at short notice. During sitting periods, this requirement could complement (rather than replace) the Prime Minister's announcement of any acting arrangements. An exception to the requirement for publication should be made where publication would pose a risk to national security or the personal safety of the minister.
302. As a further matter, all acting arrangements (including arrangements for periods shorter than two weeks) should be "back-captured" by publication on a government website to ensure that there is a record of any acting arrangements in place on a particular day in the past. The "back-capturing" could be done on a periodic basis, say each quarter, to avoid the administrative burden of updating the website every time an acting arrangement is made.
303. The publication of acting arrangements could be centrally managed by PM&C or be the responsibility of each department.

Recommendation 2

The authorisation of an acting minister for a period of two weeks or more should be published as soon as reasonably practicable in the Commonwealth Gazette or in a notifiable instrument on the Federal Register of Legislation.

Recommendation 3

A list of all acting arrangements should be published periodically on the Department of the Prime Minister and Cabinet's or each department's website.

Proposals to alter the form of the Administrative Arrangements Order

304. Among the proposals for reform that the Solicitor-General canvassed is for the Governor-General acting with the advice of the Federal Executive Council to alter the form of the AAO to include a new section in the Schedule listing every minister who has been appointed to administer that department²¹⁰. This would have the advantage of including in the one place all the information necessary to identify the minister or ministers who can exercise power under an Act or the provision of an Act. It was suggested that the reform could be taken a step further by including in the Schedule to the AAO an account of the arrangements by which the Prime Minister or the ministers between themselves have divided responsibility for the matters dealt with by the department and the legislation administered by the ministers administering the department²¹¹. It is desirable that the identity of all the ministers who have been appointed to administer a department is made public and some account is given of the division of responsibilities between ministers administering the one department, and I make recommendations about that below. However, I do not propose that this be done by altering the form of the AAO.
305. The appointment of ministers is made by the Governor-General on advice from the Prime Minister alone, while changes to the AAO are made by the Governor-General on advice from the Federal Executive Council. It is common for changes to the composition of the Ministry, including the description of the office a Minister holds, to occur separately from any machinery of government changes which require amendment to the AAO. Currently, these ministerial changes have no effect on the operation of the AAO. The implementation of the proposal to alter the form of the AAO would require the Executive Council to consider amendments to the AAO every time there was a change in ministerial office, even if there were no associated machinery of government changes. And in the event the further reform to indicate a division of responsibilities were to be adopted, there would be a need to amend the AAO on any occasion when there was a change in the division of responsibilities between portfolio ministers. The administrative burden created by either requirement²¹² is likely to be disproportionate to the benefits of increased transparency, particularly given the time required for the Executive Council to consider each amendment could create delays in updated information being made accessible to the public.

210 Solicitor-General's Opinion at [52].

211 Solicitor-General's Opinion at [53].

212 In the five years from 2017 to 2021, there were 10 changes to the ministry that were not accompanied by changes to the AAO but would require amendment to the AAO under this proposal. This would represent more than a 50% increase in the number of amendments to the AAO during this period, which would need to be considered by the Governor-General in Council.

The division of responsibility in the case of two or more ministers administering a department

306. Laureate Professor Emeritus Cheryl Saunders AO commented somewhat critically on the complexity of the ministerial arrangements sanctioned in *Re Patterson* and in this context stressed the need to ensure effective mechanisms of accountability. It is apparent that the practice of appointing multiple ministers to administer a department makes it difficult for the public to know which minister is responsible for which matters. The office held by a minister or Assistant Minister may indicate the minister's responsibilities at a high level²¹³, but this is not always the case²¹⁴. And while some departments provide an indicative functional division of responsibilities between portfolio ministers in their annual reports, the practice is not consistent²¹⁵. Considerations of accountability and transparency favour that this information is made more readily available.
307. Rather than including this information in the AAO as discussed above, I recommend that a standalone administrative document identifying the ministers who have been appointed to administer each department, together with an indicative overview of the respective responsibilities of each minister within each department, be published on the PM&C website.
308. Some of those with whom I consulted proposed that in the interest of greater transparency Charter letters be made public. There was strong opposition to this proposal from both Coalition and Labor parliamentarians. Charter letters are generally confidential and serve not only to allocate responsibilities between two or more Ministers but also to set out the Prime Minister's expectations with respect to portfolio outcomes. In this respect they have an aspirational character. It is likely that a requirement for the publication of Charter letters would lead to a change in their content and function. The preferable course is to ensure that information concerning the allocation of respective ministerial responsibilities is available to the public elsewhere.

213 For example, the delineation between the Minister for Climate Change and Energy and the Minister for the Environment and Water in administering the Department of Climate Change, Energy, the Environment and Water is indicated by their titles.

214 For example, it is not possible to ascertain from their title the responsibilities of Assistant Ministers assisting particular Ministers, such as the Assistant Minister to the Prime Minister, Assistant Minister for Defence, and the Assistant Minister for Social Services. This is in comparison to other Assistant Ministers, such as the Assistant Minister for Mental Health and Suicide Prevention.

215 For example, the Department of Health's 2020–21 Annual Report provided that the then Minister for Health and Aged Care held overarching responsibility for the Health portfolio assisted by three Assistant Ministers and set out the Departmental Outcomes and the portfolio entities/statutory office holders for which each Assistant Minister was responsible: Department of Health, *2020–21 Annual Report* (Report, 2021) 20–21 <<https://www.health.gov.au/sites/default/files/documents/2021/10/department-of-health-annual-report-2020-21.pdf>>.

Recommendation 4

A document identifying:

- i. the ministers appointed to administer each department of State;
- ii. the offices the ministers are directed to hold; and
- iii. in the case of two or more ministers administering the one department, an outline of the division of responsibilities between the ministers

should be published on the Department of the Prime Minister and Cabinet's website.

A centralised point of information

309. The legislative requirement for publication of appointments under section 64 of the Constitution will prevent a recurrence of the secret appointments considered in this report. It will not overcome the practical difficulties that members of the public encounter in seeking to find out which Minister is responsible for the exercise of a particular statutory power (or the failure to exercise such a power). As the Solicitor-General observed, determining the matters for which a Minister is legally and politically responsible is fairly technical²¹⁶. One goes to the AAO, which sets out the legislation administered by the Minister appointed to administer each Department. Then one goes to the Ministry List, which tells you the offices held by Ministers but not the departments they are appointed to administer. One then has to guess which department each Minister administers, which may or may not be straightforward. Those difficulties are compounded by the fact that the relevant documents are located in different places. The PM&C website publishes the current AAO and the Ministry List on separate pages. There is no link to former AAOs and Ministry Lists. The Gazette is separately published on the Federal Register of Legislation.

310. A number of submissions proposed that all information relating to ministerial appointments should be published in a single location that is accessible to the public. This is a sensible proposal that would overcome much of the present difficulty occasioned by the necessity to cross-reference the AAO with the Ministry List.

²¹⁶ Solicitor-General's Opinion at [44]-[45].

311. A centralised point of information on ministerial appointments should be established. The PM&C website would seem to be an appropriate repository for this information. The website should include:

- notifications of the swearings of Executive Councillors under section 62, appointments of Ministers to administer departments under section 64 and directions to hold office under section 65 (Recommendation 1);
- acting arrangements (Recommendations 2 and 3);
- current and former Administrative Arrangements Orders;
- current and former Ministry Lists;
- current and former documents setting out the division of ministerial responsibility within a portfolio (Recommendation 4); and
- an explanation of the constitutional basis of appointments and the process of making them, the function of the AAO in allocating executive responsibility, and how one works out which Minister is “the Minister” by reference to the AAO and the Ministry List.

Recommendation 5

A website concerning ministerial appointments should be established which contains explanatory materials and current and past records to enable the public to readily ascertain which minister is responsible for which particular matters.

Departmental websites and annual reports

312. Generally, departments publish the names of the Ministers who have been appointed to administer them on their website. However, the practice is not universal. The Solicitor-General proposed as an administrative practice that the website of each department list all the Ministers who have been appointed to administer that department²¹⁷. This practice should extend to the identification of all Ministers appointed to administer the department during the relevant financial year²¹⁸, up until the department's annual report is published. Alternatively, consideration could be given to amending section 8(2) of the *Freedom of Information Act 1982* (Cth)²¹⁹ to require departments to publish the names of all the Ministers appointed to administer the department.
313. While "corporate Commonwealth entities" and "Commonwealth companies" must include "the names of the persons holding the position of responsible Minister or responsible Ministers during the period, and the titles of those responsible Ministers" in their annual reports²²⁰, there is no express requirement for departments (which are "non-corporate Commonwealth entities") to include the names of the minister or ministers appointed to administer them in their annual reports. Nonetheless, in practice departments do include a list of portfolio ministers in their annual reports. This list should include not only the ministers administering the department at the date of reporting, but the names of all ministers appointed to administer the department in the reporting period. Again, consideration could be given to amending the PGPA Rule to require publication of this information. This measure would complement the real-time disclosure of responsible ministers on each department's webpage.

Recommendation 6

All departments should publish a list of the ministers appointed to administer them on their website, and include in their annual report the name of all ministers appointed to administer the department in the reporting period.

217 Solicitor-General's Opinion at [50].

218 This includes any ministers of the previous Government, if there was a change in government following an election during the relevant period.

219 Departments are "agencies" for the purpose of section 8 of the *Freedom of Information Act 1982* (Cth): see s 4(1) (definition of "agency").

220 *PGPA Rule* ss 17BE(c) and 28E(b).



APPOINTMENT OF MINISTER OF STATE

I, DAVID JOHN HURLEY, Governor-General of the Commonwealth of Australia, pursuant to section 64 of the Constitution, hereby appoint SCOTT JOHN MORRISON, a member of the Federal Executive Council, to administer THE DEPARTMENT OF HEALTH.



Signed and sealed with the
Great Seal of Australia on
14 March 2020

A handwritten signature in black ink, appearing to be 'D. Hurley', written over a diagonal line.

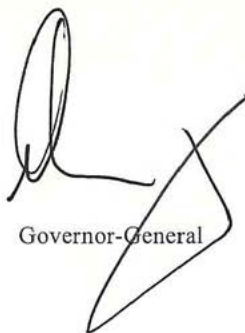
Governor-General



APPOINTMENT OF MINISTER OF STATE

I, DAVID JOHN HURLEY, Governor-General of the Commonwealth of Australia, pursuant to section 64 of the Constitution, hereby appoint SCOTT JOHN MORRISON, a member of the Federal Executive Council, to administer THE DEPARTMENT OF FINANCE.

Signed and sealed with the
Great Seal of Australia on
30 March 2020



Governor-General



APPOINTMENT OF MINISTER OF STATE

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



Signed and sealed with the
Great Seal of Australia on
15 April 2021

A handwritten signature in black ink, appearing to be 'D. J. Hurley', written over a horizontal line.

Governor-General



APPOINTMENT OF MINISTER OF STATE

I, DAVID JOHN HURLEY, Governor-General of the Commonwealth of Australia, pursuant to sections 64 and 65 of the Constitution, hereby direct and appoint SCOTT JOHN MORRISON, a member of the Federal Executive Council, to administer THE DEPARTMENT OF HOME AFFAIRS and THE DEPARTMENT OF THE TREASURY.

Signed and sealed with the
Great Seal of Australia on
6 May 2021



Governor-General

The following persons either attended a consultation meeting or provided information to the Inquiry in writing.

Full title	Role relevant to inquiry
The Hon Anthony Albanese MP	Prime Minister (23 May 2022 to present) Leader of the Opposition (27 May 2019 to 23 May 2022)
The Hon Karen Andrews MP	Minister for Home Affairs (30 March 2021 to 23 May 2022)
Mr Adam Bandt MP	Leader of the Federal Parliamentary Australian Greens (4 February 2020 to present)
Senator the Hon Simon Birmingham	Minister for Finance (30 October 2020 to 23 May 2022)
Senator the Hon Michaelia Cash	Attorney-General (30 March 2021 to 23 May 2022)
Mr Adam Cason	Senior General Counsel, Australian Government Solicitor (December 2017 to present)
Mr James Chisholm	First Assistant Secretary, Industry, Infrastructure and Environment Division, Department of the Prime Minister and Cabinet (August 2020 to August 2022)
The Hon Mathias Cormann	Minister for Finance (29 May 2019 to 30 October 2020)
Ms Zoe Daniel MP	Independent Federal Member for Goldstein (26 July 2022 to present)
Professor Glyn Davis AC	Secretary of Department of the Prime Minister and Cabinet (6 June 2022 to present)
Dr Gordon de Brouwer PSM	Secretary for Public Sector Reform (22 June 2022 to present)
The Hon Milton Dick MP	Speaker of the House of Representatives (26 July 2022 to present)
The Hon Mark Dreyfus KC MP	Attorney-General and Cabinet Secretary (1 June 2022 to present)
Mr Simon Duggan	Deputy Secretary, Economy, Industry and G20 Sherpa, Department of the Prime Minister and Cabinet (December 2018 to September 2022)
The Hon Peter Dutton MP	Leader of the Opposition (5 June 2022 to present)
Ms Caroline Edwards PSM	Acting Secretary, Department of Health (24 February 2020 to 12 July 2020)
Ms Stephanie Foster PSM	Deputy Secretary, Governance and APS Reform, Department of the Prime Minister and Cabinet (December 2017 to 7 October 2022)
Mr David Fredericks PSM	Secretary, Department of Industry, Science, Energy and Resources (1 February 2020 to 30 June 2022) Secretary, Department of Climate Change, Energy, the Environment and Water (1 July 2022 to present)
The Hon Josh Frydenberg	Treasurer (28 August 2020 to 23 May 2022)

Mr Phil Gaetjens	Secretary, Department of the Prime Minister and Cabinet (2 September 2019 to 30 May 2022)
Dr Helen Haines MP	Independent Federal Member for Indi (2 July 2019 to present)
Mr Leo Hardiman PSM KC	Deputy Chief General Counsel and National Leader, Office of General Counsel, Australian Government Solicitor (July 2011 to December 2021)
The Hon Greg Hunt	Minister for Health (24 January 2017 to 22 December 2020) Minister for Health and Aged Care (22 December 2020 to 23 May 2022)
Ms Rosemary Huxtable PSM	Secretary, Department of Finance (February 2017 to 8 August 2022)
Ms Katherine Jones PSM	Secretary, Attorney-General's Department (16 August 2021 to present)
The Hon Barnaby Joyce MP	Deputy Prime Minister (22 June 2021 to 23 May 2022)
Dr Steven Kennedy PSM	Secretary, Department of the Treasury (2 September 2019 to present)
Dr John Kunkel	Chief of Staff to the Prime Minister (August 2018 to 22 May 2022)
Ms Norelle Laucher	Acting General Manager, Offshore Resources Branch, Department of Industry, Science, Energy and Resources (6 December 2021 to 9 January 2022)
Mr David Lewis	General Counsel (Constitutional), AGD (May 2017 to present)
Professor Don Markwell	Head of College, St Mark's College
The Hon Michael McCormack MP	Deputy Prime Minister (26 February 2018 to 22 June 2021)
Adjunct Professor Robert McMahon PSM	Visiting Fellow, Research School of Management, Australian National University Adjunct Professor of Governance, University of Canberra
Mr Chris Moraitis PSM	Secretary, Attorney-General's Department (September 2014 to 3 January 2021)
The Hon Scott Morrison MP	Prime Minister (24 August 2018 to 23 May 2022)
Professor Brendan Murphy AC	Chief Medical Officer (4 October 2016 to 29 June 2020) Secretary, Department of Health and Aged Care (as it is now known) (13 July 2020 to present)
Mr Michael Pezzullo AO	Secretary, Department of Home Affairs (20 December 2017 to present)
The Hon Keith Pitt MP	Minister for Resources, Water and Northern Australia (6 February 2020 to 2 July 2021) Minister for Resources and Water (2 July 2021 to 23 May 2022)
The Hon Christian Porter	Attorney-General (20 December 2017 to 30 March 2021) Minister for Industry, Science and Technology (30 March 2021 to 19 September 2021)

Ms Meghan Quinn PSM	Secretary, Department of Industry, Science and Resources (22 August 2022 to present)
Mr John Reid PSM	First Assistant Secretary, Government Division, Department of the Prime Minister and Cabinet (July 2018 to present)
Mr Peter Rush	Assistant Secretary, Parliamentary and Government Branch, Department of the Prime Minister and Cabinet (March 2015 to present)
Laureate Professor Emeritus Cheryl Saunders AO	University of Melbourne
Mr Paul Singer MVO	Official Secretary to the Governor-General (18 August 2018 to present)
Mr Sean Sullivan	Deputy Secretary, Department of Industry, Science, Energy and Resources (1 February 2020 to 30 June 2022)
Mr Paul Trotman	Head of Resources Division, Department of Industry, Science, Energy and Resources (April 2018 to December 2021)
Professor Anne Twomey AO	Professor of Constitutional Law, University of Sydney
Emeritus Professor John Wanna	Emeritus Professor of Political Science, School of Politics and International Relations, Australian National University
Mr Tim Wellington	Chief of Staff to the Attorney-General (June 2019 to April 2021)
Ms Jenny Wilkinson PSM	Secretary of the Department of Finance (9 August 2022 to present)

A number of persons who were Senior Advisors in the Prime Minister's Office and the Attorney-General's Office at the time of the appointments were also consulted or provided information to the Inquiry in writing.

Statement Regarding Ministerial Arrangements – the Hon Scott Morrison MP – 17 August 2022

The devastating impacts of the COVID-19 pandemic and associated recession required an unprecedented policy response from our Government.

These were extraordinary times and they required extraordinary measures to respond. Our Government's overriding objective was to save lives and livelihoods, which we achieved. To achieve this we needed to ensure continuity of government and robust administrative arrangements to deal with the unexpected in what was a period of constant uncertainty during the nation's biggest crisis outside of wartime.

Information and advice changed daily and even hourly. Meetings with Ministers, officials and advisers were constant, as was liaison with industry and other stakeholders as we were dealing with everything from supply chain shocks to business closures, the overwhelming of the social security and hospital system and the sourcing of critical medical supplies and workforce. The prospect of civil disruption, extensive fatalities and economic collapse was real, especially in the early stages, which was occurring in other parts of the world.

The risk of Ministers becoming incapacitated, sick, hospitalised, incapable of doing their work at a critical hour or even fatality was very real. The Home Affairs Minister was struck down with COVID-19 early in the pandemic and the UK Prime Minister was on a ventilator and facing the very real prospect of dying of COVID-19.

The Parliament was suspended from sitting for a time and Cabinet and others meetings were unable to be held face to face, as occurred with businesses and the public more generally.

As Prime Minister I considered it necessary to put in place safeguards, redundancies and contingencies to ensure the continuity and effective operation of Government during this crisis period, which extended for the full period of my term.

To ensure oversight, the Government, with the support of the Opposition, established a concurrent public Senate Inquiry into the management of COVID that effectively ran for the duration of my term as Prime Minister.

In addition I took the precaution of being given authority to administer various departments of state should the need arise due to incapacity of a Minister or in the national interest. This was done in relation to departments where Ministers were vested with specific powers under their legislation that were not subject to oversight by Cabinet, including significant financial authorities.

Given the significant nature of many of these powers I considered this to be a prudent and responsible action as Prime Minister.

It is not uncommon for multiple Ministers to be sworn to administer the same Department. However, given that such additional Ministers were in a more junior position in the relevant Departments, and would not be familiar with all the details of the pandemic response, I considered it appropriate that the redundancy be put in place at a higher level within the Government and not at a more junior level.

The major Department for which this was considered was the Health Department, given the extensive powers afforded to the Minister by the Biosecurity Act. This was put in place on March 14, 2020. The Department of Finance was added on March 30, 2020.

As an added administrative precaution, as a "belts and braces" approach, the Departments of Treasury and Home Affairs were added some time after in May 2021. I did not consider it was likely that it would be necessary to exercise powers in these areas, but the future was very difficult to predict during the pandemic. As events demonstrated with the resurgence of COVID-19 in the second half of 2021, we could never take certainty for granted. In hindsight these arrangements were unnecessary and until seeking advice from the Department of Prime Minister and Cabinet today, I had not recollected these arrangements having been put in place. There was a lot going on at the time.

Thankfully it was not necessary for me to trigger use of any of these powers. In the event that I would have to use such powers I would have done so disclosing the authority by which I was making such

decisions. The authority was pre approved to ensure there would be no delay in being able to make decisions or take actions should the need arise.

The crisis was a highly dynamic environment and it was important to plan ahead and take what precautions could lawfully be put in place to ensure I could act, as Prime Minister, if needed.

It is important to note that throughout this time Ministers in all Departments, where I was provided with authority to act, exercised full control of their Departments and portfolios without intervention. Ministerial briefs were not copied to me as Prime Minister in a co-Minister capacity, as this was not the nature of the arrangement. These arrangements were there as a “break glass in case of emergency” safeguard. I also did not wish Ministers to be second guessing themselves or for there to be the appearance to be a right of appeal or any diminishing of their authority to exercise their responsibilities, as this was not the intention of putting these arrangements in place. I simply wanted them to get on with their job, which they did admirably and I am grateful for their service.

The decision in relation to the Department of Industry, Energy and Resources was undertaken in April 2021 for separate reasons. This was the consequence of my decision to consider the issues of the PEP11 license directly. Under the legislation the decision is not taken by Cabinet, but unilaterally by a Minister with authority to administer that Department. I sought and was provided with the authority to administer matters in relation to this Department and considered this issue observing all the necessary advice and issues pertaining to the matter before making a decision, without prejudice, which I announced publicly. Once having been given the authority to consider this matter I advised the Minister of my intention to do so and proceeded to consider the matter. I retained full confidence in Minister Pitt who I was pleased to have serve in my Ministry. I believe I made the right decision in the national interest. This was the only matter I involved myself directly with in this or any other Department.

The use of the powers by a Prime Minister to exercise authority to administer Departments has clearly caused concern. I regret this, but acted in good faith in a crisis.

I used such powers on one occasion only. I did not seek to interfere with Ministers in the conduct of their portfolio as there were no circumstances that warranted their use, except in the case of the Department of Industry, Science, Energy and Resources which I have explained.

The pandemic has been a difficult time for Australia, although we have performed better than almost any other developed country in the world. There is no guide book in these circumstances and there is much commentary that will be offered in hindsight from the comfort of relatively calmer conditions. It is not surprising that some of this commentary will have a partisan or other motive, but that's politics. In a democracy it is a positive thing for these issues to be discussed and for experience to inform future decisions and I hope my statement will help inform that process.

I have endeavoured to set out the context and reasoning for the decisions I took as Prime Minister in a highly unusual time. I did so in good faith, seeking to exercise my responsibilities as Prime Minister which exceeded those of any other member of the Government, or Parliament. For any offence to my colleagues I apologise. I led an outstanding team who did an excellent job and provided me great service and loyalty as Ministers.

Statement regarding Solicitor General's Advice – the Hon Scott Morrison MP – 23 August 2022

I note the Solicitor General's advice released publicly today regarding the matter of appointments to administer Departments while I served as Prime Minister.

I note that the Solicitor General found that the appointments were "valid" and that "while there is some historical precedent for the publication in the Gazette of appointments to administer particular departments of State under s 64, there is no consistent practice in that regard."

To respond to the Solicitor General's advice I refer to my statement last week where I set out that at no time, other than the consideration of the PEP11 matter from first principles, did I exercise powers established under these lawful authorities. This means that I did not fulfill the function of an Acting or Co-Minister, as has been alleged. Ministers continued to exercise their full authorities without any interference, with my full trust and confidence.

The authorities at issue were put in place as an emergency power to be used only in extreme circumstances due to incapacity or in the national interest. These authorities were only sought with respect to where Ministers could act unilaterally, without reference to or interference by Cabinet or the Prime Minister. The suggestion that Ministers could be instructed or directed on these matters is false.

Given the serious crises facing Australia, I considered it prudent to put these authorities in place should they be necessary as a safeguard. The authorities granted were respected in the fact they were not exercised, as the circumstances for which they were provided did not materialise. In short, the authorities were not misused.

From January 2020 to the time of the election, the Government I led dealt with multiple crises. During that time thousands of decisions were taken. Some precautionary, some active. My focus was on saving lives, saving livelihoods and protecting Australians in one of the most challenging periods we had known since the second world war.

In the extraordinary circumstances I was contending with, decisions were made and then I kept moving forward. We did not dwell on such decisions, especially those of a precautionary nature as they were effectively dormant.

In hindsight, some of these decisions will be reflected upon now and lessons learned. The Solicitor General has noted a number of these points from his perspective in his advice and I am sure this will help guide any changes in these areas.

I will appropriately assist any genuine process to learn the lessons from the pandemic. I would expect that any credible processes would also extend to the actions of the States and Territories.

I've reflected further on these matters over the past week. I appreciate the concerns that have been raised in relation to these matters and regret any offence caused. To my colleagues I have expressed this directly.

Notwithstanding the current criticisms of these past decisions, it is important not to lose sight of the result achieved.

Australia came through these crises better than almost any developed country in the world. Tens of thousands of lives were saved, millions of Australians kept their jobs, their businesses and their homes, and Australia stood tall in our region in the face of extraordinary coercion. I am proud of what we achieved.

In summary,

- the authorities established were valid,
- there is no consistent process for publication,
- no powers were exercised under these authorities, except in the case of the PEP11 decision, or misused,
- Ministers exercised their portfolio authorities fully, with my utmost confidence and trust, without intervention,

- as Prime Minister I did not “Act” as Minister or engage in any “Co-Minister” arrangements, except in the case of the PEP11 decision,
- on the PEP11 matter, this was done lawfully from first principles and my intent to do so was advised to the relevant Minister before doing so,
- Australia’s performance through the pandemic was one of the strongest in the developed world,

I accept that many Australians will not agree with, accept or understand all the decisions I made during those difficult times. I can only state that I took the decisions I did as Prime Minister with the best of intentions to do all I could to protect Australia in the face of multiple crises.

I am proud and thankful for what we were able to achieve in such difficult circumstances.

Transcript of press conference – 17 August 2022

Scott Morrison: Good afternoon everyone thank you for joining me here today. I wanted to take the opportunity to address the matters that have been raised in recent days particularly those arising from the book that has been published, *Plagued*, in recent days, and of course to take any questions you may wish to raise in relation to these issues.

I start by referring to you to the statement that I issued yesterday, and I'm sure you've had the opportunity to read that, and if you have questions on that, I'm happy to address. But let me just add a couple of things first, and then we can go from there.

These were extraordinary times in which I had the great honour and privilege to serve as Prime Minister. No Prime Minister, I think, has faced the same combination of circumstances, be it the Pandemic or indeed the drought, the global recession, and indeed the Australian recession that was caused by the pandemic and the many other natural disasters that befell the country over that period of time. It was a very difficult time. It was a very unusual time. It was a very extraordinary time that tested every sinew and fabric of governments, not just at a federal level, but at a state level as well, and indeed tested the very fabric and sinew of Australian society. The good news is that Australia emerged well, that Australia emerged strongly that Australia's economy, Australia's health performance, Australia's, I believe democracy, and the way we went about things emerged frankly as an example to every other developed country around the world. The facts of that I think are not in dispute. 40,000 lives saved, tens of thousands of businesses that would not be here today. One of the most common things people come and say to me after the election is people from small business. It happens everywhere I go and they say thank you that my business is still there today and that my employees still have a job, and that now there are better times and they are doing better. Sure, it's tough still, but they know what the alternative could have been. So, I'm very proud of what Australia was able to achieve over that period. I'm very proud of Australians and I'm proud of all of those who did everything they possibly could, whether they be health workers on the front line or those public officials who beavered away in the back offices supporting governments at a state and federal level to help us all make the best decisions we possibly could at a time of extreme strain and unprecedented levels of challenge that you have not seen in this country since war time. Over that period, we took decisions. I did as a Prime Minister. We did as Cabinets at federal and state level that some of us would never have dreamed that we would ever have to make. And I remember making that comment on numerous occasions. The situation was very real. It was very serious. Events changed hourly, if not even more frequently than that. Meetings were constant. There was a procession of these, and engagements. As you know, the national cabinet met 57 times under my direction. And that highlights that this pandemic and this crisis, it wasn't a two-month thing. It went over more than two years all the way indeed up until the time of the election. And in its own form today continues.

And there are challenges still even now, the prospect of serious loss, of life, of disruption to civil society, of the collapse of our economy as we were seeing in other parts of the world, was real. As we sit here now and the relative calm seas or perhaps from the safety of the shore and we look back at a time which was a raging tempest, people can be led to make judgements out of context, but the context was very real. I was very mindful of it, as were all of my colleagues, and I'm sure at a state level as well, who I sought to work with constructively the whole time. The situation was highly uncertain, as I've said, and dynamic, and I'd make this point, there was a clear expectation established in the public's mind, certainly in the media's mind and

absolutely certainly in the mind of the Opposition, as I would walk into Question Time every day, that I as Prime Minister, was responsible pretty much for every single thing that was going on. Every drop of rain, every strain of the virus, everything that occurred over that period of time. Now, I'm not taking issue with that, but this was the expectation and I think the Australian public had an expectation that the Prime Minister had the authority to even overrule states.

Now that was not the case, but where there were authorities or powers that could be established, there was a clear expectation that I, as Prime Minister, would have sought to put those in place to protect the country and lead us through what was a very difficult period. People held me rightly to account for that. We've had an election and that's been run and done and here I am before you today no longer as the Prime Minister. That is our great democracy, which I cherish. Having said that, at that time, people expected me to be able to take what responsibilities I could to deal with the issues I was dealing with every day. And I did so. There were gaps. Our system, I think, was put under the microscope and put under strain. And I hope that the experience of this time will assist those in the future to better understand how these issues can be managed. And I'm happy to cooperate with any positive purpose or any positive process that is really about understanding that, because I know better than anybody the types of issues we had to deal with on a constant basis. And there are gaps in how our systems work, and we sought to overcome them. The very creation of the National Cabinet was an example of that, recognising that the Commonwealth had no power over the states.

But equally we found a mechanism as best we could to have it work together. There are critics of that, but it continues to operate today as an example of what I hope is a durable institution that will facilitate cooperative relations between the states and the federal government. So in that context, with an understanding of the expectation of public responsibility singularly directed at the Prime Minister, I believed it was necessary to have authority to have what were effectively emergency powers to exercise in extreme situations that would be unforeseen, that would enable me to act in the national interest. And that is what I did in a crisis, because frankly, I'd rather be having this conversation about what I did do to try and protect the Australian people and if there are views that that overstepped the mark, happy to have that conversation, because what was focussing my mind was not having the conversation that perhaps I could have put powers in place, if situations had arisen that I hadn't been in a position to address, because I hadn't done the things that have been set out in recent days. So, I'd rather have this discussion about what I did do rather than what I didn't do in order to ensure that I was exercising those responsibilities. So together with my colleagues, we did save lives, we did save livelihoods, and we did so in a way that as I've moved around the world since the election is recognised, is recognised, and there will come a time here, I suppose it will be, may be recognised also, but that is not my purpose today. A couple of other points. I want to stress with the five departments in which I was sworn to administratively, by the Governor-General, at no time, except in the one instance that I have made reference to in relation to Resources and the Department of Industry, did I interfere in any of the decisions or exercise those powers in those departments. Secondly, I did not act as Minister. There were not two Ministers doing the same job, me as Prime Minister or the Minister. You may not be aware, and I think these events have highlighted perhaps some unawareness of these types of arrangements. For example, Ben Morton was the Minister assisting the Prime Minister and Cabinet. He was also the Minister for Public Service. That did not make him the Prime Minister, despite the fact he was sworn to the Department of Prime Minister and Cabinet. It didn't make Ken Wyatt the Prime Minister. It didn't make Michael Sukkar,

who was the Assistant Treasurer, the Treasurer. It didn't make Jason Wood who was sworn to the Department of Home Affairs, the Minister for Home Affairs.

These matters, as to what Ministers do, are set out in charter letters which instruct the department and the Minister on the matters that they are responsible for exercising on a daily basis. In taking on these authorities from the Governor-General, I did not instruct any department that I was to have jurisdiction or carriage of any of the issues that the ministers were dealing with on a day to day basis. They continued to exercise their powers as Ministers fully and wholly, except in the one instance in relation to the decision that I referred to in my statement. I did not exercise those powers, and I had the power, though, to act if that was necessary. The powers that I was exercising, and being sworn in administratively to those roles, were lawful, based on the advice and working through those issues, as was done by the Department of Prime Minister and Cabinet, the Office of the Governor-General, my own office. Those are obvious issues that were being addressed at the time and we understood to be acting completely lawfully. But the point here is that at no time, because the accusation has been made, that somehow this was seeking these additional powers for what purpose personally I cannot understand. I didn't exercise them, because thankfully the extreme circumstances in which I had established these powers to act in, thankfully did not arise. The fact that ministers were unaware of these things is actually proof of my lack of interference or intervention in any of their activities and that I honoured the basis upon which I sought those powers, because I was only ever going to use them in an emergency situation that would require that. Now, I understand the offence that some of my colleagues particularly have felt about this. I understand that and I've apologised to them. But equally, as Prime Minister, only I could really understand the weight of responsibility that was on my shoulders and on no one else. And as a result, I took the decisions that I thought I needed to take.

I took the calls that I thought were necessary. And over the course of my time as Prime Minister, I sought to pursue the national interest on that basis, not for any personal advancement, but to get Australia through one of the worst crises we have faced since the Second World War. And the good news is Australia, we got through it because of you, because of the actions that we all took in the areas we have responsibility, and that is a story I think Australians should be very, very proud of. Now I make one other request while I'm here, before I go to questions. One of the reasons I've come here today, I set this all out in a statement yesterday, but I'm happy to take the questions today, because I would ask this of the media. As a member of Parliament, of course I'm accountable, and I'm happy to be here today. But members of my family have nothing to do with this. I would very much like that the cameras that sit outside my house each day and film my wife and my daughters going to school or going for a coffee, or if they would like to have friends around, or tradespeople coming, they have nothing to do with this, and so out of respect, by all means, sit outside my electoral office, there's great coffee down in Cronulla and I'm sure you'll enjoy it, but I would ask that you not invade the privacy of my family. I don't think that's an unreasonable request. Happy to take your questions. I'll get around everybody we've got plenty of time.

Journalist: Why did you deceive the Australian public and your Treasurer and Finance Minister about this?

Scott Morrison: Well, I don't share that view. I didn't inform them. Had I been in the situation, Andrew, where those powers had to be used, then I believe that was the time to have that conversation, because that's when the powers would be enacted. The powers were

established as emergency power, the powers that were later established. There were five portfolios. The latter ones, as I indicated in my statement yesterday, I think in hindsight proved to be unnecessary.

Journalist: But Mr. Morrison, you told Greg Hunt. You told Greg Hunt and the book says you said it wasn't I wasn't being sworn in as health minister. The book and I presume you spoke to the authors of the book about this. Am I right in assuming that?

Scott Morrison: Keep going.

Journalist: Says you swore, I trust you, but I'm swearing myself in as Health Minister.

Scott Morrison: Well, that meant I was swearing myself to have authorities under the portfolio, as I've made very clear and as the then Minister for Health will tell you, did I exercise any powers in that portfolio under that? No, I didn't. He continued to be, he continued to be the Health Minister. This was the first of these things that we first addressed. And it arose because of the rather unusual nature of the biosecurity powers which were unprecedented in Australia. And let me finish the answer to the question. What we did was in that particular instance, we were dealing with extra powers, new powers that were enlivened under the Biosecurity Act. And in talking with Greg and how we would manage that new set of powers, new set of powers, then we'd had that discussion. My honest recollection was that there'd been a communication between officers in relation to the Minister for Finance that didn't take place. I accept that and I've apologised to then Minister Cormann for that, but equally that also related to additional spending powers that were delegated to the Finance Minister at that time. The later ones were added in May 21, as the pandemic was continuing, because in all the portfolios that I sought to have these authorities put in place, they were portfolio areas where ministers could exercise unilateral decisions without reference to Cabinet. So that is a very different thing from portfolios where the decisions minister makes are implementing the decisions of Cabinet. Now we were in a rather extreme situation over a protracted period of time. Those safeguards were put in place for precautionary, for prudent and responsible reasons. And I didn't consider it at the time, given everything else that was going on and the other priorities we were dealing with that it was a matter that needed to be raised at that point, because if I needed to use the powers, then I would have disclosed them with the Minister in particular. I'll come here and I'll keep going around.

Journalist: Why not simply advise your Cabinet colleagues that you were doing this? I mean, you said you had this, there was an expectation on you, that you were responsible for everything. This looks like an extraordinary consolidation of power. Why not even just let your Cabinet colleagues know, if not the broader Australian public?

Scott Morrison: Well, as I said, I apologise for any concern this has caused about those issues and I understand that concern and that's why I'm standing here today. But at the same time, I did not want any of my ministers to be going about their daily business any different to what they were doing before. I was concerned that these issues could have been misconstrued and misunderstood and undermine the confidence of ministers in the performance of their duties at that time and I did not consider that to be in the country's interest.

Journalist: It looks like you didn't have the courage to tell them. It looks like you didn't have the courage to tell them, Mr Morrison.

Scott Morrison: No, I did what I thought was necessary in the national interest to ensure the Government continued to perform well, which it did.

Journalist: Mr. Morrison. Was there a specific issue or event that prompted you to take over Treasury and Home Affairs ministries on the 6th of May after the other ministries...

Scott Morrison: The answer to that is no.

Journalist: ... and if there was an expectation on the part of the Australian public that [...]. Why didn't you tell the Australian Public?

Scott Morrison: Well, again, these were emergency, effectively reserve powers. I think there was a great risk that in the midst of that crisis those powers could be misinterpreted and misunderstood, which would have caused unnecessary angst in the middle of a pandemic and could have impacted on the day to day functioning of the government. No, that's not what I said. I said there was a possibility of this being misinterpreted. And frankly, the events of the last few days, I think have highlighted how these things can be misinterpreted.

Journalist: Mr Morrison, you seem to be saying that your actions were prudent and they were right. But if that's the case, what are you apologising to your colleague for?

Scott Morrison: The offence that was caused to them.

Journalist: But so are you maintaining that you did nothing wrong, but the offence.

Scott Morrison: Well, of course I regret that offence and apologise for that offence, but I'm pleased that through the course of the pandemic my confidence was in them to keep just doing their job. Now the fact that I didn't interfere in doing their job shows the confidence I had in them. Now, there were many issues that arose over that period of time where, if I don't wish to, I could have exercised the authorities given to me in their portfolios. But I did not do that, and I did not do that because I did not consider that they were consistent with the emergency situations and emergency powers that I had sought. So I respected the additional authorities that were granted, and that is proved by the fact that I exercised them not at all, except in the one case in relation to Resources, which was a completely different set of circumstances.

Journalist: Why didn't you tell Karen Andrews specifically about the Home Affairs role?

Scott Morrison: Well, I think I've already answered that question.

Journalist: She's asking for you to resign.

Scott Morrison: Well, my answer is this.

Journalist: These are dictatorial powers in the way that you're talking about this, this power grab, as if there's no democratic institutions, as if you're the only one who understands what the nation was going through. Why didn't you share it with Karen Andrews and the other colleagues in your Cabinet?

Scott Morrison: Well, I've already addressed that question. But in relation to the other point that you made, I'm an elected member of the Parliament. I went to the 2019 election as the leader of the parliamentary Liberal Party and as Prime Minister and was duly elected. Now as Prime Minister, you have the authority given to you as a consequence of that election to determine the responsibilities that every single minister has in your advice to the Governor-General. Those powers are exercised democratically, by a democratically elected leader and were done so lawfully by me. So I don't accept that it was done in the way that you've suggested. And I think the proof of that is the fact that they were not exercised because I did not consider there were any circumstances that would justify the use of those powers, which is a point which seems to have been lost. I'll go up the back, I'm going to work all the way round. So over here.

Journalist: Did you seek any other legal advice about this other than from your Attorney-General?

Scott Morrison: The advice that I received is a matter between me and the department and the department advised me on these matters and implemented and administered these decisions and did so in concert with the office of the Governor-General.

Journalist: Mr. Morrison, why don't you tell us who you asked for...

Scott Morrison: Well, I sought advice from my department, which is the standard process.

Journalist: Did you seek advice from the Solicitor-General?

Scott Morrison: Again, I don't go into, as Prime Ministers and ministers don't, because the advice that is provided is a matter between ministers and their departments, and the Department of Prime Minister and Cabinet advised me on these matters, and I understand these matters to be entirely lawful.

Journalist: Did you use these powers on the PEP project?

Scott Morrison: Yep.

Journalist: If I recall from the press conference you said that you were doing that as Prime Minister, did you fudge the truth then? You didn't say that you were actually doing it as "the minister" which you said...

Scott Morrison: Well I was the Prime Minister.

Journalist: ... (inaudible) to that portfolio, you didn't say you were doing it as administrator.

Scott Morrison: Well, that's the only way I could have exercised those powers. I mean, anyone familiar with that issue would have understood that those powers could only have been exercised by someone who had authority under that department. The applicants certainly understood that. The applicant certainly understood that.

Journalist: (inaudible)

Scott Morrison: I can't speak for what is known and not known by those asking me questions about what they know or don't know about the operation of that Act. I said that I'd made the decision as Prime Minister, and that meant I had to have been able to do that with an authority to do that under that Act.

Journalist: So, it's the public's fault for not figuring it out?

Scott Morrison: Well, I didn't say it was the public's fault. I mean, I just said I made it clear I was making that decision as Prime Minister, which I did.

Journalist: Mr Morrison, there seems to be a bit of heat on the Governor-General today as to the reasons that he made these appointments. When you spoke, when the Governor-General was swearing you in, into these extra portfolios and giving you this extra responsibility, did at any stage he ask you to make it public?

Scott Morrison: Well I think the criticisms of the Governor-General are egregious, I think the Governor-General acted with absolute propriety and did everything that was expected of him in these arrangements and he would have taken the necessary advice from his own office and the suitable engagement was undertaken between my department and the office of the Governor-General. Now, there was no swearing in ceremonies. That is the point. These things were done administratively. So there was no such interaction like the one you're describing, because that's not how it was done.

Journalist: You never spoke... (inaudible)

Scott Morrison: I didn't say that. I said, he was asked whether, I was asked whether I spoke to him at the swearing in. There was no such swearing in, hang on Andrew, everyone's getting a turn and we're going round. I'll come back to you, it's fine.

Journalist: The only time you exercise these additional powers was to knock back a gas project, which has nothing to do with the pandemic. So your logic that you use these powers to manage the pandemic is actually completely flawed.

Scott Morrison: No, I made it very clear about the two different types of circumstances in which I established these powers.

Journalist: (inaudible)

Scott Morrison: I said there was the pandemic-related portfolios, and I've been clear about that. And in my statement yesterday, I was very clear there was a different set of circumstances in relation to that project. Now I don't regret that for a second, and I don't think anyone who went surfing off the New South Wales coast this week up around Newcastle or the Central Coast or off the northern beaches, would take any issue with a Prime Minister who lived up to his word and considered this matter from first principles as I was required to do under the Act, which I did without prejudice, worked through the issue and made a decision that did not see that project or that lease to be extended. Now, I think that was the right decision...

Journalist: But what does have to do... (inaudible)

Scott Morrison: Well I didn't say it did. The assertion that it had something to do with the pandemic is not true. I said there were two, hang on, there were two circumstances in which I put these powers in place. One— sorry.

Journalist: Would you have done that in normal times though? Taken over that portfolio if we weren't in a pandemic?

Scott Morrison: Yes. In that circumstance, on that issue, where I believe that was necessary, that's what I did.

Journalist: Why didn't you tell us, Mr. Morrison?

Scott Morrison: Well, as I said, I made the announcement on that project as the Prime Minister, and I said I did that with the authority that I needed to do that project.

Journalist: So how can you argue that it's anything other than political in terms of that takeover of that portfolio?

Scott Morrison: Are you talking about the Resources portfolio?

Journalist: Yes.

Scott Morrison: No, it's about the Prime Minister making a decision in the national interest and protecting our environment, I mean.

Journalist: Why couldn't your Minister do that?

Scott Morrison: I believed I needed to consider that matter directly.

Journalist: So you didn't have faith in your Minister then? Is that what you're saying?

Scott Morrison: On that issue, we'd had a number of discussions and I decided to consider that matter directly. I thought the Minister did an outstanding job and I wanted him to continue doing the job of the Minister. I wanted him to continue doing the job of the Minister. But on that particular project, I believe it was in the national interest for me to consider it in

its totality, which I did, and I'm very happy with that decision. And if people think I should have made a different decision and allowed that project to proceed and to allow that drilling to occur off the New South Wales coast, well, they can make that argument, but I don't agree with it.

Journalist: (inaudible)

Scott Morrison: We haven't gone all the way round yet.

Journalist: What's your commitment to your electorate of Cook?

Scott Morrison: Absolute. So, my commitment to them is, as it's always been, and I greatly appreciate the tremendous and wonderful support I get from my local community in the Sutherland Shire and St George. I particularly thank them for the strong support they've given me in recent days and I'll continue to serve them as the member for Cook and I'll make a decision at an appropriate time as to whether I contest the next election.

Journalist: At any point did you have conversations with the Governor-General about taking over the portfolios and did he ever raise any questions about you taking over the portfolios?

Scott Morrison: I will follow the practise that all Prime Ministers have in the past, ex-Prime Ministers. I don't go into private discussions with the Governor-General. I don't do that and I don't believe the Governor-General.

Journalist: But did you talk to him?

Scott Morrison: I did. I have had numerous conversations with the Governor-General over many topics over many years as you would expect me to do, but those conversations are between us and they are private conversations, and I don't intend to disclose them.

Journalist: Mr. Morrison, we have a right to know whether he said to you, whether he said to you, shouldn't we make this public? Can you at least tell us that, you're being secret about this (inaudible).

Scott Morrison: You are asking me to go into conversations between me and the Governor-General, which I'm not going to do.

Journalist: So, we assume he did. He did question you (inaudible).

Scott Morrison: No, you can't question, you can't assume anything, Andrew, and I'm not going to well, I'm not going to be verballed, Andrew, or bullied in this press conference by you trying to put words in my mouth. I am simply respecting a long-standing principle and convention that the Governor-General and the Prime Minister have many conversations. The Governor-General took the advice of the day from the Government and acted accordingly and in short—

Journalist: (inaudible)

Scott Morrison: Andrew, that is not something that any former Prime Minister would responsibly answer in divulging conversations with the Governor-General. And you can draw no conclusion from that. You can assert nothing about that, you can impugn nothing about it, because if you did so then you would be in error.

Journalist: This process of you approaching the Governor-General and asking to be appointed to these ministries—

Scott Morrison: Well, that was done by the department and my office. This was not done by me directly.

Journalist: So, it wasn't done in person and there were people inside your office, even though your Cabinet colleagues didn't know about it, there were people inside departments that did know that you were seeking these ministries (inaudible).

Scott Morrison: Of course, that's how they were effected. Take it in turns, sorry?

Journalist: Even though your Cabinet colleagues didn't know, there were people inside the PMO and others who did?

Scott Morrison: Well, there was people in the department and the people in my office who were directly responsible for managing these specific things. Of course there was. That's how governments work.

Journalist: (inaudible) that you signed, it wasn't done in person.

Scott Morrison: No, that's not the only time, that there are other circumstances that happens from time to time when ministers are sworn to portfolios out of session to exercise responsibilities in particular departments. Not every swearing in takes place, you know, on the steps of Government House, I mean, that's just a fact.

Journalist: Was the Governor-General ever asked not to publicise the swearing in and when you said the use of the powers is different, between the Health ministries, for example, and the Resources portfolios—

Scott Morrison: Yeah.

Journalist: Are you effectively saying that one is an emergency, and one is just, when you want something to happen, you're entitled?

Scott Morrison: Well, I'm saying that they were two different sets of circumstances. There was emergency powers which I had put in place that were dealing with pandemic arrangements. The resources portfolio decision was not one of those. That was a separate issue, that I determined to consider directly myself. I've been very open about that. That's what I've done. I took that decision. I took it lawfully. I took it in accordance with the process that was necessary to follow to make such a decision. And I believe it was the right decision.

Journalist: On the Governor-General, was the Governor-General ever asked not to publicise... (inaudible).

Scott Morrison: The administration of these decisions was done by the Department of Prime Minister and Cabinet. So they're the ones who then follow through on any, any advice, advisings or publications or anything of those decisions. So that no, I'm saying those issues were dealt with between the Department of Prime Minister and Cabinet and the office of the Governor-General. Not by me.

Journalist: Okay, do you know if the Governor-General was ever asked... (inaudible).

Scott Morrison: I don't believe he was.

Journalist: Mr Morrison, whose idea was it first for you to be sworn in to the portfolio this way, were you've advised by someone that you should do this, or was it your idea?

Scott Morrison: I believed it was a prudent, responsible action in the middle of a crisis to have these emergency powers in place to ensure that I could exercise the expectations of my responsibilities, which I remind you, was put to me on a daily basis by members of the media, by the opposition, constantly telling me that I was responsible for everything, even the actions of state premiers and decisions that they were taking and that I

should be able to override them. And to this day, people still make the argument why I didn't exercise some sort of non-existent prime ministerial authority over the states and territories. So this is something I dealt with every day. The expectation was created of that responsibility, and I made sure that I was in a position to act should I have to. And thank goodness that was not necessary. And I think this is a point that is being overlooked. The non-exercising of these powers proves that they were handled responsibly, that they were not abused, that they were there in a reserved capacity to ensure the Prime Minister could act if that was necessary. I respected them because I understood they were important power.

Journalist: Did you make a decision as Industry Minister?

Scott Morrison: I made a decision in Industry in the national interest.

Journalist: Mr Morrison, was it your idea to do this?

Scott Morrison: Well, it was a discussion that we had. And I take responsibility for those decisions, as I do of all decisions of my government.

Journalist: How much were you paid for the speeches you gave abroad since the election, and will you declare the full package?

Scott Morrison: I'll make all the necessary disclosures on my register of interest, as you'd expect me to do and as previous Members of Parliament have done.

Journalist: Why don't you just tell us now?

Scott Morrison: Because that's not the process for how it's done in the Parliament. And I answer to the Parliament, and I will complete the register of interest as you expect me to.

Journalist: Mr Morrison, you've been around the world G20 leaders. You've met some dictators, shook hands with them. You understand it's a slippery slope when you use the term emergency powers. Can you specify?

Scott Morrison: Not in this country. Australia. I'm sorry. Not in this country...

Journalist: Can you specify for the Australian public what these emergency powers, when would they have been invoked? Give us a situation. Can you specify not just a vague term the pandemic as such? It's the secrecy that we're upset about.

Scott Morrison: And I understand that.

Journalist: Can you explain it for us? What were the conditions?

Scott Morrison: I understand that. But I'm going to take issue with your, the parallel, and the example that you've used. Australia is a democracy and a proud democracy and there are—

Journalist: (inaudible)

Scott Morrison: Well no, with great respect, that is not the case, because the powers were put in place by an elected Prime Minister in accordance with the laws and Constitution of this country. And for you, if you have a different suggestion, then you need to substantiate that and you haven't done so. But my point about it is this, the fact that they were not enacted meant unforeseen events, and that's the nature of those events, they're unforeseen, which could have been anything from the incapacitation of a minister for any number of purposes, or some threat to the national interest as a result of unilateral action by an individual, then in those circumstances, the Prime Minister had the ability to take responsibility and to take action. Now I'm very, very pleased that that was not necessary. And the very fact that I didn't exercise those powers over that entire period

of time should be the evidence that I respected those powers greatly and didn't use them on any occasion. So I imagine that people looking onto this are saying, so what is the wash up of all of this? Did the Prime Minister use any powers that were unlawful? No. Did the Prime Minister exercise any powers that intervene with the operations of any minister? No, except bar the one circumstance which we've been very clear about. There were no other circumstances. Did the Prime Minister take any additional payment for any of these things? Of course not.

Journalist: Did the Prime Minister deceive his colleagues? Yes.

Journalist: And the public, and the voters.

Scott Morrison: And to the extent that I've caused offence to my colleagues—

Journalist: Isn't that true Mr Morrison, you deceived your colleagues?

Scott Morrison: I didn't disclose it to them because I didn't think it was in the interest of the best operations of the government during a crisis. And that is for which I'm responsible and I can appreciate. Andrew, you mightn't understand it because you haven't been a Prime Minister in the middle of the worst crisis since the Second World War.

Journalist: Well what does Josh Frydenberg think of it?

Scott Morrison: Josh and I spoke friendly, I've had a wonderful conversation with Josh. We had one yesterday afternoon and we are the best of friends and he has my total regard as both a friend and a colleague, and that will forever remain the case.

Journalist: Can I ask you about the Biosecurity Act?

Scott Morrison: Sorry. Just before, because there was a similar question on both Treasury and Home Affairs. I answered this question earlier. I only did it particularly in portfolios of significant areas of importance, i.e. Treasury and Home Affairs, because they were unilateral decision-making powers of ministers.

Journalist: Why didn't you do it at the beginning?

Scott Morrison: After we'd gone through the initial phase and the pandemic was continuing, we took the precaution to put those in place in these other important portfolios where there were unilateral decision-making powers of ministers that were not subject to Cabinet.

Journalist: Why then?

Scott Morrison: Not subject to Cabinet.

Journalist: Why then?

Scott Morrison: Because we were following through on the prudent, responsible measures we'd put in place in the other areas, and we added them to it. Now, as I said, well, Andrew, you may not have noticed, but COVID was still real in 2021. I mean, the benefit of hindsight, which is being applied here, looks back at these several years and thinks COVID was only an issue in March of 2020. Now the people of Australia know that's not true. The people of Australia know that they struggled with the burden of restrictions and the impact of the virus for years. For years. And you all reported on this on a daily basis. So, to pretend that the crisis, to pretend the crisis. But did you think there was no possibility that this wouldn't rise again? As it in fact, did, as it in fact did. The country at that point was not fully vaccinated.

Journalist: (inaudible) look, maybe we should chuck Treasury in there. Well, you must have gone to someone and said, look, you know what, we should have put Treasury and Home Affairs, let's do it. Can you take us through that? Can you take us through that process.

Scott Morrison: That's exactly how it happened.

Journalist: You just decided in May 2021.

Scott Morrison: These were areas that weren't included in those original decisions and we put them in at that later point because the pandemic was continuing.

Journalist: Why did you tell Greg Hunt but not Josh Frydenberg?

Scott Morrison: It was done in a matter of a very short period of time, Andrew, and it was not the primary issue of the day that we were dealing with as you will recall.

Journalist: But Josh Frydenberg is living with it.

Scott Morrison: As you will recall, in May of 2021, there were two very significant things taking place in addition to managing the pandemic. And in that case, that was the issue of getting the vaccine programme, after some initial difficulties, which we discussed, I suspect, in this room on a number of occasions and many others, back on track, and we put General Frewen in, and at that time we were dealing with those issues, and so to suggest that we weren't, you know, worried about the pandemic is completely false. We were very focused on the ongoing, on the pandemic and the many issues that could extend from the pandemic. As we saw in the second half of 2021, the east coast of Australia was effectively shut down because the country at that point wasn't vaccinated and had never been intended to be vaccinated by July of 2021, there was no suggestion that was ever going to take place. And so the COVID pandemic was very, very real. Now, at that time, we were also putting the budget together for that year, and in addition to that I was in the process of negotiating the AUKUS arrangement with the United States and the United Kingdom. So there were other issues that, frankly, had much higher priority, and these matters were added to the reserve emergency powers on an administrative basis. They were never used. And in hindsight, I think they proved to be unnecessary. Openly, I openly say that, but I can't offer you any further explanation.

Journalist: A number of your colleagues have basically asked for you to resign. Will you resign over this?

Scott Morrison: Well, of course not just. And there's a couple of reasons for that. Well, I'm only aware of one colleague who's asked me to do that. I'm not aware of any other colleague. I'm only aware of the member for McPherson asking for me to do that who served in my Cabinet. But these are actions and decisions I took as the Prime Minister. I'm no longer the Prime Minister. There is another Prime Minister who has a series of priorities that he must address, and I'm sure he will. But I didn't take these decisions as the member for Cook. These issues don't relate to my role as the member for Cook. And I will continue to serve the member as the member for Cook for the people of Cook and to the best of my ability, which I continue to do today. So I don't think those two issues, they didn't relate to decisions I took as a Member of Parliament. They went to my decisions as a member of the Executive. In fact, the head of the Executive, as the Prime Minister. Over here, you've been very patient.

Journalist: If you had your time again and everything was the same, would you do it again?

Scott Morrison: It's a good question. And it's one that I think particularly those going forward will need to reflect on, because I don't intend to be in a position where I will be doing it again, because I don't intend or have any expectation of being in that situation.

But I think, as I said at the outset, I'm very happy to cooperate with any sort of genuine or positive process, which is seeking to understand the lessons of the pandemic and how these issues can be better managed in the future. But your question sort of highlights a good point. There was no guidebook for a global pandemic of this nature and the recession it caused. We had to make many decisions that were unusual and many decisions which you were simply trying to make on the percentages, as many good ones as you possibly could. And you were making hundreds of them a day, and these fell into that. But the context is what I'm trying to convey to you. They were put in there as a safeguard, as a 'break glass in case of emergency' and as a result, and as a result, thankfully, we didn't need to break the glass. And as a result, I didn't need to trouble any of those Ministers. Again, I think there were very good reasons for what I did, and I think the way that I would do them at another time, well, I think that would be informed by my experience.

Journalist: (inaudible) Why couldn't you remember yesterday swearing yourself in as the Treasurer? I mean, you're taking over the Treasury Department and you couldn't remember it yesterday.

Scott Morrison: Yeah, that's a very cliched and way to put it, Andrew, but it doesn't reflect what I've told you. No, Andrew. Let me explain what I said. I did not take over the Treasury portfolio. I did not take over the Home Affairs portfolio. I did not take over the Health portfolio.

Journalist: You swore yourself in as (inaudible).

Scott Morrison: I was administratively sworn in. That gave me authority like many other Ministers had to exercise decisions in an emergency situation. It was something that was done on an order of many other issues we were dealing with at the time.

Journalist: Did you lie yesterday?

Scott Morrison: No, I did not. I didn't recall. I didn't recall and before I issued my statement yesterday, I took the time to make a formal request through the Department of Prime Minister and Cabinet to get the facts about if there were any other portfolios that administratively I was sworn to, to ensure that I could answer these exact questions, which I have done and I did in the statement yesterday. But it would be wrong to characterise it as you have, that I was taking over the portfolio, because my actions demonstrate that I did no such thing. I didn't intervene in one decision of the Treasurer. I didn't ask for briefs that came from the Department of Treasury to be co-sent to my office as well as to the Treasurer, and require there to be co-signatories as a co-minister. That did not take place. That is not what happened. Well, I've already explained to you, Andrew. Over the back.

Journalist: Mr. Morrison, can you be certain that you or anybody else acting under your authority did not exercise your power in any of the five portfolios you were co-administering (inaudible).

Scott Morrison: Again, I'm sorry. Now I've got to pull you up because you used the same phrase. I was not co-administering any of these departments. I was sworn in with authority to take decisions in a department if I believed that was necessary and if that were the case, then I would have sat down with the Minister, explained that, that is assuming the Minister was incapacitated, which may not have been the case and I would have dealt with it in that time. So the suggestion of co-administration of departments is one hundred percent false.

Journalist: Okay. So just on that, I'll rephrase. Can you be certain that you or anybody acting under your authority in those five portfolios approved any appropriations for grants, contracts or other spending?

Scott Morrison: No, I don't believe so at all. That's the best of my knowledge. That is my understanding, as best as I can.

Journalist: Have you checked because your memory has been sketchy.

Scott Morrison: That's fair enough. And you know, it was a pretty busy time over Prime Minister for almost four years in the middle of the pandemic. And I have sought some advice on these things and advice that I received around the authorities that I was given. But to the best of my recollection, that's why I've said it so plainly, I didn't exercise any override of any of the Ministers in any of their agencies except for the one that I've specified in relation to Resources.

Journalist: Who was the back up for you? If you were incapacitated by COVID?

Scott Morrison: The Deputy Prime Minister. The Deputy Prime Minister was the back up to me.

Journalist: And measures were put in place to administer your portfolio?

Scott Morrison: That's, I assign when I'm Prime Minister to the Deputy Prime Minister, if I went on leave or something like that, that is assigned to the Deputy Prime Minister, and he acts as Prime Minister.

Journalist: And you can sign in acting ministers, so that's why this is quite puzzling.

Scott Morrison: It may be puzzling, but that would be as a result of not having walked in my shoes, Andrew, and understood the urgency and the nature of the circumstances at the time. You're standing on the shore after the fact, I was steering the ship in the middle of the tempest, so I appreciate that your perspective is different to mine, and I think that may explain some of the differences in our vantage point and understanding of these issues.

Journalist: Did anyone in your Cabinet know that you were Home Affairs and Treasury Minister.

Scott Morrison: Well, that's already been answered. No.

Journalist: No one. Why did you take over the portfolio when Peter Dutton had COVID, you'd already taken over two portfolios. Why did you not do that when Peter Dutton was sick with COVID?

Scott Morrison: Well that's a reasonable question and at that point we were dealing with the issues in Health and Finance. We hadn't been moving on to some of the other issues and that's why it was added later as a precaution.

Journalist: Did you take the responsibilities, these extra responsibilities or co-responsibilities that you had, right through to the election, was there any time that you may relinquish them or once— (inaudible).

Scott Morrison: No, they remained in force until the time of the election.

Journalist: And just on the Biosecurity Act, I just wonder, do you think there should be reform of that Act? And also, do you think it confers too much power in the Health Minister?

Scott Morrison: Well the answer to that, I think, is in what we did and the Health, former Health Minister would explain to you the many key processes that we put in place as a government for the exercise of those authorities under the Biosecurity Act, which included the ones of

me taking on authority in the department, if that should be necessary. So, in that way, for quite significant decisions like that, under the Biosecurity Act, it was like a two-key process, and that provided a safeguard. And I think that was sensible and I think that question highlights what we were trying to do in many different areas of government as we navigated our way through the crisis. And that was to deal with some of these problems of lack of back up powers, or reserve powers, or emergency powers, if circumstances required it, and we sought to make do, and do the workarounds that would enable us to put those things in place. So, in the Biosecurity Act, I think it's worthwhile for departments and the government to look at what we did and see whether that is something they think they should put in place in the future. And I think all of these processes hopefully will help inform, should, God forbid, the country be put in this sort of situation again.

Journalist: You keep saying we. You say we needed to do this, we needed to do that. So your Treasurer didn't know, your Finance Minister didn't know. So who's we? You and John Kunkel?

Scott Morrison: The government.

Journalist: You discussed this with Christian Porter (inaudible).

Scott Morrison: I was talking prospectively.

Journalist: You discussed this with Mr. Porter, right?

Scott Morrison: On the Health issues, yes.

Journalist: And yet, when you took over his portfolio or whatever you want to call it, you signed yourself on as some kind of not co-administrator of this portfolio, why didn't you tell him that?

Scott Morrison: Well, I had no intention of exercising any powers or authorities in his department. I had no intention. Well, there was no intention on my part in that portfolio to do anything other than to consider from first principles the matter in relation to PEP-11. And once I had put those authorities in place, I met with the Minister, with Minister Pitt and I informed him of that and, I proceeded to consider the matter from first principles, and that is what I would have done in every other circumstance.

Journalist: I was talking about Mr Porter.

Scott Morrison: Well, Mr Porter, I wasn't exercising any authority in relation to anything Mr Porter was responsible for.

Journalist: You started in on the knowledge so why didn't you—

Scott Morrison: That was in relation to the Health portfolio, he wasn't involved in the latter discussion in relation to other portfolios.

Journalist: It's true isn't it that you had Christian Porter assure you that this move was legal in the first place, then you systematically did that in several of the portfolios, including portfolios that had little to do with COVID emergency management, and you did that without telling any of your colleagues because you knew it would make it look like you didn't trust them. That's how this played out, isn't it?

Scott Morrison: That's your narrative and I don't accept it. You know, commonly narratives are put forward around politics, and some may try and fit events to those to support those narratives. But that's not my practise. What I'm simply saying is that the authorities that were established were done so lawfully. In each case they were done with the

Department of Prime Minister and Cabinet, working with the office of the Governor-General and were done lawfully. Not unlawfully. And those reserved powers were in place, those emergency powers were in place if they were needed. Thankfully, they were not. No Ministers were interfered with in the conduct of their ministerial responsibilities. Other than in the express case, which I've been very clear about, which I've also said had nothing to do with the pandemic. It had to do with ensuring that a full consideration was done on that matter by the Prime Minister, which I did, and which I suspect the people who live on the New South Wales central coast and Hunter coast and the northern beaches of New South Wales will be forever grateful for. And so that is why these things were done. I mean, there was no personal advantage to me as Prime Minister in doing any of these things, other than to ensure that should I be in a position, that I confronted a set of circumstances that no one could fore-know, that I would be able to take a decision that was in the national interest and would save lives and livelihoods.

Journalist: Why not simply make that public?

Scott Morrison: Well, I've already addressed that on a number of occasions in this. I mean, I accept that you may not accept my explanation, and I accept that there may be many out there who don't. But I've given that explanation, and that's why I'm here today.

Journalist: What do you think the Australian public think of how you handled this situation?

Scott Morrison: Well, I think I'm not going to muse on that, because that's for them. But I do know a number of things and I go back to the most common response I've had to people as I've moved around the country and that is they know this was a tough gig and a tough time, and that we had to make some hard calls, and we had to get the country through a very difficult period. And we did that. People's lives were saved, people's livelihoods were saved. Businesses that would otherwise have been destroyed, that had been working for 30 or 40 years to establish, and they've come to me and simply said, look, quietly, I know there's a lot of people giving you a lot of flak about a lot of stuff, but thanks for what you did because my business is still here. I think Australians, you know, yes this is not an unimportant issue and I wouldn't want to give that impression, and I think there are lessons out of all of this. But you know, right now, Australians are very focused on what's affecting them. This decision I took didn't impact one Australian other than those who wanted to preserve the environment of the New South Wales coast. The other measures were put in place simply to try and protect them if I had to, and thankfully I didn't have to.

Journalist: Do you regret telling the authors of *Plagued* about this?

Scott Morrison: No. And what I find ironic about that is, I disclosed it and what I find interesting about the book that has been written, which I have no interest in the book, I have no commercial interest in it whatsoever, but I cooperated with interviews that were done contemporaneously, contemporaneously because, you know, a lot of political books are written and a lot of things are written after the event where people fit events to the narrative they want to tell. That book was written based on interviews that were conducted at the time in the middle of the tempest.

Journalist: So, in 2020, you told the authors?

Scott Morrison: Well, all I'm saying is they were contemporaneous interviews that were done over the course of the pandemic. And that's why I think it makes an interesting read, frankly, because it pretty much tells the story of what was an extraordinarily torrid time for the entire country. And as governments of federal and state level sought to do everything

they could to protect the Australian public. And so, I'm asked about what the Australian people think. I think they're a bit frankly over this going, what's all that about? What's it got to do with me?

And there are important points here about, you know, I exercised powers lawfully, I exercised them as an elected Member of the House of Representatives, and an elected member as party leader that I went to an election over, and I was responsible, as you all reminded me every day and the Opposition did, that I was responsible for all of it, and that I sought to exercise those responsibilities as best I could in the circumstances I faced, and as a result, Australia came through and is seen around the world as one of the best performing countries through the course of pandemic from a health and an economic point of view, and that is something I'm extremely proud of, and I want to thank you all for your attendance today. We've had a quite robust and extensive conversation about all this, and I thank you for your attendance and I just again, excuse me, the press conference I'm about to conclude, and I would, we've had a lot of questions and I've been very happy to take them, and I think we've covered this material in a lot of detail.

I simply ask something of you and your colleagues in the gallery. As I said at the end of my statements at the start of this press conference, having come here today, and having answered your questions to the best of my ability, I would ask that if you wish to be taking photos of me or, why you'd want to see me driving around the Shire I don't know, I don't know if that's terribly fascinating to the Australian public, but I would ask that you would not film my family, that you would not be standing on my driveway each morning as they go to school. I'd ask you to respect the privacy of my kids and my wife. We're moving on with our life. I'm serving as the Member for Cook. Since stepping down as Prime Minister after being defeated at the last election, you have not heard me engage in the day to day commentary and the political to and fro. I've sought to respect the decision of the Australian people at the election. I've made no statements critical of the government or engaged in any of that and nor do I intend to. This government was elected and they should get on with the job of what they were elected to do. And as I said on election night, I wish them well with that task because Australia faces many challenges. I said the same thing to the leadership of my own party and I wish Peter and Susan and all the team all the best as they do their job. But as a former Prime Minister, I intend to go on being a quiet Australian in the Shire and in St George doing my job as a local Member and I would ask you to respect the privacy of my family. And, when we're out and about doing things as a family, or down at the Sharkies seeing them make the semi-finals. All the best. Thank you.

Submissions were received from a total of **62** persons or organisations. Some persons who made a submission asked that it not be published, or that it be published anonymously. In a few instances I determined that publication would not be appropriate. Submissions from the following persons and organisations will be published on the Inquiry's website:

Tony Maiuto	Damian Marley
Paul Begley	Professor Kim Rubenstein
Peter Braund	Lesley Fjelly
Don Willis	Robin Brown
Alison Newman	Gary Campbell
Paul Gregory Morgan	Adam Johnston
Alexandra Victoria Forwood	Geoff Bridgland
John Crowther	Dr David Solomon AM
Kim Bond	Dr Michael de Percy
Palaniappan Subramanian	Thomas Killip
Pete Foley	Anonymous
Pollen Communications	Professor Luke Beck
Ray Johnson	Kelvin
Roseanne Byrne	Roger Davenport
Professor S Stoneway	Neil Francey
Viki West	OzSAGE
Mick Quinlivan	Asset Energy Pty Ltd
Judith Kirby	Grata Fund
Ian Russell	Brad Morrison
The Law Society of New South Wales	Anonymous
Stuart Sallie	Graham Langdown
Julian Ormond Green	Anthony Hordern
Dr Anne Macduff and Nicholas Bulbeck (ASCEND project, ANU College of Law)	Emeritus Professor John Wanna and Adjunct Professor Robert McMahon PSM
NSW Council for Civil Liberties, Liberty Victoria, South Australian Council for Civil Liberties and the Australian Council for Civil Liberties	



**Inquiry into the Appointment
of the Former Prime Minister to
Administer Multiple Departments**

26 October 2022

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

I refer to my inquiry into the appointment of the former Prime Minister to administer multiple departments.

As directed, I will deliver my report by 25 November 2022. I understand that, if the Government decides to pursue any legislative changes in response to my report, it may wish to do so in the week commencing 28 November 2022. Accordingly, in the interim, I write to advise you of a recommendation for legislative change that I intend to make in my report, which in my view would provide greater transparency and accountability in government.

The evident solution to the deficiency identified by the Solicitor-General (SG No 12 of 2022 at [29]) to the system of responsible government that is inherent in Chapter II of the Constitution is a legislative mandate to publish the appointment of an officer to administer a department of State under section 64 of the Constitution. The swearing-in of Executive Councillors under section 62 of the Constitution, and directions to hold offices under section 65 of the Constitution, should be subject to a similar legislative requirement. To date there has been a practice of publishing these matters in the Commonwealth Gazette. However, there is no legislative requirement to do so.

I intend to recommend that legislation be enacted to require publication in the Commonwealth Gazette or in a notifiable instrument registered on the Federal Register of Legislation as soon as reasonably practicable following the fact of:

- (i) the swearing of an Executive Councillor under section 62 of the Constitution
- (ii) the appointment of an officer to administer a department under section 64 of the Constitution
- (iii) the direction to a Minister of State to hold an office under section 65 of the Constitution
- (iv) the revocation of membership of the Executive Council, an appointment to administer a department, and a direction to hold an office, when effected by an instrument executed by the Governor-General.

Such an amendment may be conveniently made to the *Ministers of State Act 1952* (Cth).

The notice or notifiable instrument should include the name of the person and the date that he or she was sworn, appointed and/or directed, or the date that such membership, appointment and/or direction was revoked. It may be convenient for the notice or notifiable instrument to comprise a copy of the instrument.

I do not consider that a failure to publish should affect the validity of the appointment, direction or revocation. I do not intend to express a view as to whether your Department or the Official Secretary to the Governor-General should be responsible for publication, and whether this is specified in the legislation.

My report will set out the reasoning for this recommendation in greater detail.

Yours sincerely



The Hon Virginia Bell AC

Telephone: [REDACTED]

E-mail: [REDACTED]



PRIME MINISTER
CANBERRA

His Excellency General the Hon David Hurley AC DSC (Retd)
Governor-General of the Commonwealth of Australia
Government House
CANBERRA ACT 2600

Your Excellency

I am writing to recommend additional administrative arrangements in the Health portfolio. The severity of the Coronavirus crisis requires that we are prepared for all eventualities.

In the event that the Minister for Health, the Hon Greg Hunt MP, is unavailable to exercise his significant powers as Health Minister, I consider it would be appropriate for another senior Minister to be able to exercise these in an emergency.

To facilitate this contingency, I recommend that you appoint me, in addition to my existing appointment, to administer the Department of Health.

An instrument to give effect to this recommendation is attached, for your signature.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Scott Morrison'.

SCOTT MORRISON

13.3.22



PRIME MINISTER

His Excellency General the Hon David Hurley AC DSC (Retd)
Governor-General of the Commonwealth of Australia
Government House
CANBERRA ACT 2600

Your Excellency

I am writing to recommend additional administrative arrangements in the Finance portfolio. The severity of the Coronavirus crisis requires that we are prepared for all eventualities.

In the event that the Minister for Finance, Senator the Hon Mathias Cormann, is unavailable to exercise his significant powers as Finance Minister, I consider it would be appropriate for another senior Minister to be able to exercise these in an emergency.

To facilitate this contingency, I recommend that you appoint me, in addition to my existing appointments, to administer the Department of Finance.

An instrument to give effect to this recommendation is attached, for your signature.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Morrison', written over a faint, illegible stamp or watermark.

SCOTT MORRISON

~~PROTECTED CABINET~~

PDR: MS21-000XXX

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Ms Foster
Mr Duggan
Mr Reid
Mr
Chisholm
Mr Rush
Mr Trease

To: Prime Minister (for signature)

APPOINTMENT TO THE DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

PMO
Dr Kunkel
[Redacted]

Recommendation – that you:

1. If you wish to do so, sign the letter to the Governor-General, proposing your appointment to administer the Department of Industry, Science, Energy and Resources and enclosing an Instrument of Appointment for his signature (Attachment A).

Sign / Not Signed

SCOTT MORRISON

Date: 12.4.21

Comments:

Key Points:

1. Your Office has requested documents to appoint you to administer the Department of Industry, Science, Energy and Resources.
2. While it is somewhat unusual for the Prime Minister to be appointed to administer departments outside of the Prime Minister and Cabinet portfolio, there is no constitutional barrier to doing so.
 - a. There are precedents: during 2020 at the start of the COVID-19 pandemic you were appointed to administer the Department of Health and the Department of Finance.
3. As this change is of an administrative nature only, you do not need to subscribe an Oath of Office.

Peter Rush
Assistant Secretary
Parliamentary and Government Branch
12 April 2021

Policy Officer: [Redacted]
Phone no: [Redacted]

~~PROTECTED CABINET~~

PROTECTED CABINET

ATTACHMENTS

**ATTACHMENT A LETTER TO THE GOVERNOR-GENERAL AND INSTRUMENT
OF APPOINTMENT**

PROTECTED CABINET



PRIME MINISTER

Reference: MS21-000639

12 APR 2021

His Excellency General the Honourable David Hurley AC DSC (Retd)
Governor-General of the Commonwealth of Australia
Government House
CANBERRA ACT 2600

Your Excellency

I write to recommend a change to the appointment arrangements for one Minister and to provide the document necessary to implement the change, for your consideration.

My recommendation is for you to appoint me, as Prime Minister, to administer the Department of Industry, Science, Energy and Resources to allow me to be the responsible Minister for matters within that Portfolio, if and when required.

As this change is of an administrative nature only, I would not need to subscribe an Oath of Office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Morrison', written over a light blue horizontal line.

SCOTT MORRISON

Parliament House CANBERRA ACT 2600
Telephone (02) 6277 7700
www.pm.gov.au



APPOINTMENT OF MINISTER OF STATE

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

Signed and sealed with the
Great Seal of Australia on
April 2021

Governor-General

PROTECTED CABINET

PDR: MS21-000XXX

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Ms Foster
Mr Duggan
Mr Reid
Mr
Chisholm
Mr Rush
Mr Trease

To: Prime Minister (for signature)

APPOINTMENT TO ADMINISTER THE DEPARTMENTS OF AGRICULTURE, WATER AND THE ENVIRONMENT; HOME AFFAIRS; AND THE TREASURY

PMO
Dr Kunkel

Recommendation - that:

1. If you wish to do so, sign the letter to the Governor-General (Attachment A), proposing your appointment to administer the Department of Agriculture, Water and the Environment, the Department of Home Affairs; and the Department of the Treasury; and enclosing an Instrument of Appointment for the Governor-General's signature (Attachment B).

Signed / Not Signed

SCOTT MORRISON

Date:

Comments:

Key Points:

1. Your Office has requested documents to appoint you to administer the Departments of Agriculture, Water and the Environment; Home Affairs; and the Treasury.
2. While it is somewhat unusual for the Prime Minister to be appointed to administer departments outside of the Prime Minister and Cabinet portfolio, there is no constitutional barrier with doing so.
 - a. There are precedents: during 2020 at the start of the COVID-19 pandemic you were appointed to administer the Department of Health and the Department of Finance.
 - b. On 12 April 2021 you signed a similar letter and instrument to the Governor-General, His Excellency General the Hon David Hurley AC DSC, regarding your appointment to administer the Department of Industry, Science, Energy and Resources.
3. As this change is of an administrative nature only, you do not need to subscribe an Oath of Office.

Peter Rush
Assistant Secretary
Parliamentary and Government Branch
April 2021

Policy Officer: [Redacted]
Phone no: [Redacted]

PROTECTED CABINET

PROTECTED CABINET

ATTACHMENTS

ATTACHMENT A LETTER TO THE GOVERNOR-GENERAL

ATTACHMENT B INSTRUMENT OF APPOINTMENT

DRAFT

PROTECTED CABINET

PRIME MINISTER

Reference:

His Excellency General the Honourable David Hurley AC DSC (Retd)
Governor-General of the Commonwealth of Australia
Government House
CANBERRA ACT 2600

Your Excellency

I write to recommend a change to the appointment arrangements for one Minister and to provide the document necessary to implement the change, for your consideration.

My recommendation is for you to appoint me, as Prime Minister, to administer: the Department of Agriculture, Water and the Environment; the Department of Home Affairs; and the Department of the Treasury, to allow me to be the responsible Minister for matters within these Portfolios, if and when required.

As this change is of an administrative nature only, I would not need to subscribe an Oath of Office.

Yours sincerely

SCOTT MORRISON

APPOINTMENT OF MINISTER OF STATE

I, DAVID JOHN HURLEY, Governor-General of the Commonwealth of Australia, pursuant to sections 64 and 65 of the Constitution, hereby direct and appoint SCOTT JOHN MORRISON, a member of the Federal Executive Council, to administer THE DEPARTMENT OF AGRICULTURE, WATER AND THE ENVIRONMENT and THE DEPARTMENT OF HOME AFFAIRS and THE DEPARTMENT OF THE TREASURY.

Signed and sealed with the
Great Seal of Australia on
April 2021

Governor-General

~~PROTECTED CABINET~~

PDR: MS21-000645

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Ms Foster
Ms Frame
Ms Millar
Mr Duggan
Mr Reid
Mr Rush

To: Prime Minister

**APPOINTMENT TO ADMINISTER THE DEPARTMENTS OF HOME AFFAIRS
AND THE TREASURY**

PMO
Dr Kunkel

Recommendation - that:

1. Sign the letter to the Governor-General, His Excellency General the Hon David Hurley AC DSC (Retd), at Attachment A, proposing your appointment to administer the Department of Home Affairs and the Department of the Treasury, and enclosing an Instrument of Appointment for the Governor-General's signature.

Signed / Not Signed

SCOTT MORRISON

Date: 22-4-21

Comments:

Key Points:

1. Your Office has requested documents to appoint you to administer the Department of Home Affairs and the Department of the Treasury.
2. While it is somewhat unusual for the Prime Minister to be appointed to administer departments outside of the Prime Minister and Cabinet portfolio, there is no constitutional barrier to doing so.
 - a. There are precedents: during 2020 at the start of the COVID-19 pandemic you were appointed to administer the Department of Health and the Department of Finance.
 - b. On 15 April 2021 the Governor-General, His Excellency General the Hon David Hurley AC DSC (Retd) appointed you to administer the Department of Industry, Science, Energy and Resources.
3. As this change is of an administrative nature only, you do not need to subscribe an Oath of Office.

John Reid PSM
First Assistant Secretary
Government Division
April 2021

Policy Officer: [REDACTED]
Phone no: [REDACTED]

~~PROTECTED CABINET~~

~~PROTECTED CABINET~~

ATTACHMENTS

ATTACHMENT A LETTER TO THE GOVERNOR-GENERAL

ATTACHMENT B INSTRUMENT OF APPOINTMENT

~~PROTECTED CABINET~~



PRIME MINISTER

Reference: MS21-000645

22 APR 2021

His Excellency General the Honourable David Hurley AC DSC (Retd)
Governor-General of the Commonwealth of Australia
Government House
CANBERRA ACT 2600

Your Excellency

I write to recommend two changes to the appointment arrangements for one Minister and to provide the document necessary to implement the changes, for your consideration.

My recommendation is for you to appoint me, as Prime Minister, to administer the Department of Home Affairs and the Department of the Treasury, to allow me to be the responsible Minister for matters within these portfolios, if and when required.

As this change is of an administrative nature only, I would not need to subscribe an Oath of Office.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Scott Morrison', written over a light blue horizontal line.

SCOTT MORRISON

Parliament House CANBERRA ACT 2600
Telephone (02) 6277 7700
www.pm.gov.au



APPOINTMENT OF MINISTER OF STATE

I, DAVID JOHN HURLEY, Governor-General of the Commonwealth of Australia, pursuant to sections 64 and 65 of the Constitution, hereby direct and appoint SCOTT JOHN MORRISON, a member of the Federal Executive Council, to administer THE DEPARTMENT OF HOME AFFAIRS and THE DEPARTMENT OF THE TREASURY.

Signed and sealed with the
Great Seal of Australia on
April 2021

Governor-General



Response (distributed on an if asked basis on 15 August 2022)

Attributable to a spokesperson from the Office of the Official Secretary to the Governor-General:

The Governor-General, following normal process and acting on the advice of the government of the day, appointed former Prime Minister Morrison to administer portfolios other than the Department of the Prime Minister and Cabinet. The appointments were made consistently with section 64 of the Constitution.

It is not uncommon for Ministers to be appointed to administer departments other than their portfolio responsibility. These appointments do not require a swearing-in ceremony – the Governor-General signs an administrative instrument on the advice of the Prime Minister.

Questions around appointments of this nature are a matter for the government of the day and the Department of the Prime Minister and Cabinet. Similarly, the decision whether to publicise appointments to administer additional portfolios is a matter for the government of the day.



Media Statement

The below statement on the appointment of the former Prime Minister to portfolios other than the Department of the Prime Minister and Cabinet is attributable to a spokesperson for the Governor-General:

The Governor-General is content for the process that the Prime Minister has put in place to be completed and will not comment further. The Governor-General acted on the advice of the government of the day, consistent with the principle of responsible government (in which Ministers are responsible to the parliament, and through them to the Australian people, for the advice that they provide to the Governor-General).

In relation to questions around secrecy: any questions around secrecy after the Governor-General had acted on the advice of the government of the day are a matter for the previous government. It is not the responsibility of the Governor-General to advise the broader Ministry or parliament (or public) of administrative changes of this nature. The Governor-General had no reason to believe that appointments would not be communicated.

In terms of questions around the process by which advice is provided to the Governor-General: recommendations relating to appointments of Ministers of State, or to appoint a Minister to have administrative responsibilities over another department, are not, by convention, considered by Federal Executive Council. They are recommendations made, in writing, by the Prime Minister to the Governor-General. The Governor-General signs an instrument to act on the advice of the government of the day. The Department of the Prime Minister and Cabinet is responsible for that process.

<END>

Contact:

AAO	Administrative Arrangements Order
AGD	Attorney-General's Department
AGO	Attorney-General's Office
AGS	Australian Government Solicitor
DAWE	Department of Agriculture, Water and the Environment
DCCEEW	Department of Climate Change, Energy, the Environment and Water
DTA	Digital Transformation Agency
DISER	Department of Industry, Science, Energy and Resources
DISR	Department of Industry, Science and Resources
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
Human biosecurity emergency powers	Powers of the Health Minister to determine emergency requirements and give directions during a human biosecurity emergency period under Chapter 2, Division 2 of the <i>Biosecurity Act 2015</i> (Cth)
NOPTA	National Offshore Petroleum Titles Administrator
PDMS	Parliamentary Document Management System
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i> (Cth)
PGPA Rule	<i>Public Governance, Performance and Accountability Rule 2014</i> (Cth)
PEP-11	Petroleum Exploration Permit 11
PEP-11 applications	Applications for suspension, extension and variation of the title conditions of Petroleum Exploration Permit 11 (PEP-11) under the <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (Cth)
PM&C	Department of the Prime Minister and Cabinet
PMO	The Prime Minister's Office
OPGGGS Act	<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> (Cth)
WHO	World Health Organization