



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT

BARTON

Ms Lyn Beverley
Senate Finance and Public Administration Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms Beverley

Thank you for your letter of 5 December 2016 to Dr Martin Parkinson PSM, inviting the Department of the Prime Minister and Cabinet (PM&C) to make a submission to the Senate Standing Committee on Finance and Public Administration's inquiry into the operation of the Administrative Arrangements Order. Dr Parkinson has asked me to respond on his behalf.

PM&C's submission to the inquiry is attached. The Department of Finance and the Australian Public Service Commission were consulted in the preparation of this submission.

Yours sincerely

Debōrah Lewis
A/g Deputy Secretary, Governance
20 January 2017

Senate Standing Committee on Finance and Public Administration

Inquiry into the Operation of the Administrative Arrangements Order, the effectiveness of the division and performance of responsibilities under it, and any other related matters

Submission of the Department of the Prime Minister and Cabinet

1. This submission provides a general outline of the operation of the Administrative Arrangements Order (AAO), some key information about the two parts of the AAO and explains the role of the Department of the Prime Minister and Cabinet (PM&C).

Operation of the AAO

2. Section 61 of the *Constitution* places the executive power of the Commonwealth in The Queen, and provides that it is exercisable by the Governor-General. Section 62 provides for the Executive Council, and section 64 provides that the Governor-General may appoint Ministers of State to administer such Departments of State of the Commonwealth as the Governor-General in Council establishes.
3. The Governor-General makes the Administrative Arrangements Order, on the advice of the Prime Minister. The AAO allocates the principal matters Departments are responsible for and the legislation administered by each portfolio. The AAO therefore has two key parts: ‘*matters dealt with by the Department*’ and ‘*legislation administered by the Minister*’.

Matters dealt with by the Department

4. It is not intended that this part be an exhaustive list of all the matters dealt with by a Department. Rather, the aim is to identify the principal areas of responsibility, which provides sufficient guidance to determine where responsibility for a particular matter lies.
5. This part of the AAO, when read in conjunction with the list of legislation, provides an overview of each portfolio’s responsibilities. Where there is a division of responsibility between Departments on particular matters, this part of the AAO can clarify which Department has the lead on certain matters.

Legislation administered by the Minister

6. This part lists the legislation administered by the Minister. The ‘Minister’ is any minister sworn to administer the relevant Department of State.
 - a. For example, where there is more than one minister in a portfolio, each minister can administer the legislation listed in that portfolio.
7. Generally only principal legislation is listed and amending Acts are only listed when they contain their own substantive provisions. Acts that contain transitional and/or consequential amendments are not usually listed unless those Acts contain stand-alone provision which require administration – that is, there are provisions in the Act which require a department or a Minister to make decisions not set out in the principal Act.

8. The order made by the Governor-General refers to the legislation as follows:
- 2. The legislation administered by a Minister of State administering a Department is:***
- (a) the legislation referred to in the Part of the Schedule relating to that Department; and***
- (b) legislation passed before or after the date of this Order, that relates to a matter dealt with by the Department, not being legislation referred to in another Part of the Schedule.***
9. The effect of clause 2(b) means it is not required the AAO list every piece of legislation that a Minister administers. That is, if legislation has passed after an AAO is made it will not appear in the AAO until a consolidation is made. In these circumstances, the general rule is the minister that sponsored the legislation, and the portfolio that supports them, is responsible until it is listed in the AAO.
10. Where administrative responsibility for principal legislation is divided between portfolios, the relevant part or section of an Act can be specified to make the division of responsibility as clear as possible.

AAO amendments and consolidations

11. Changes to the AAO can be made through a schedule of amendment (amendment) or through a consolidation.
- a. An amendment makes specific changes to an existing AAO through a schedule, and this amendment needs to be read with the AAO.
- b. In a consolidation, a new AAO is made which incorporates any amendments that have been made.
12. Generally, a consolidation of the AAO is undertaken every 12 to 18 months to take account of the passage, renaming, and repeal of primary legislation during that period.

Role of PM&C and other entities

13. For a consolidation of the AAO, PM&C consults with all government departments about suggested changes, particularly about the legislation that has been passed and repealed since the last AAO. PM&C also consults with the Office of Parliamentary Counsel to confirm legislation being passed and repealed.
14. PM&C also consults departments about proposed amendments to the AAO.
15. Once an AAO, or a schedule of amendment, is made by the Governor-General, it is made available on the PM&C website.
- a. Currently, the website has the amendment made on [27 October 2016](#) and the consolidated AAO made on [1 September 2016](#). A [notice](#) is also placed in the Gazette which advises where the AAO can be found on the PM&C website.
- b. The AAO can also be found on the [Federal Register of Legislation](#) website.

16. PM&C informs agencies of changes once the Governor-General makes an AAO.
17. Where functions are moved between portfolios in the AAO, this can result in machinery of government changes. In these circumstances, PM&C engages with the Australian Public Service Commission (APSC) and the Department of Finance (Finance) who are responsible for implementing the transfers of staff and funding between agencies.
 - a. APSC makes determinations under section 72 of the *Public Service Act 1999* to move staff and advises on remuneration policy, terms and conditions of employment and workplace arrangements.
 - b. Finance makes determinations under section 75 of the *Public Governance, Performance and Accountability Act 2013* to transfer appropriation funding and advises on governance arrangements, superannuation, accounting, reporting, banking, information and communication technology, insurance and property management issues.
18. The National Archives of Australia also liaises with affected entities regarding the transfer of information, data and records following machinery changes.
19. More information about implementing machinery changes can be found in the APSC resource: [Machinery of Government changes: a guide](#).