

EXPLANATORY STATEMENT

Issued by authority of the Assistant Minister to the Prime Minister

Ministers of State Act 1952

Ministers of State Regulations 2024

The *Ministers of State Act 1952* (the Act) makes provision for the number of Ministers of State permitted under the Constitution and also requires the Official-Secretary to the Governor-General to publish information regarding certain constitutional matters concerning the Federal Executive Council and Ministers of State.

Section 7 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The *Ministers of State Regulations 2024* (the Regulations) are necessary and convenient to give effect to the Act.

The Regulations require the Official Secretary to the Governor-General to make a notifiable instrument:

- (a) from time-to-time specifying a list of each person appointed to administer a Department of State under section 64 of the Constitution and the offices the person holds under section 65 of the Constitution. This list of Ministers will ensure up to date public information is available about the constitution of the Ministry since the start of the 47th Parliament.
- (b) detailing occasions the Governor-General chose, summoned and swore a person as a member of the Federal Executive Council under section 62 of the Constitution.
- (c) detailing occasions the Governor-General appointed a person to administer a Department of State under section 64 of the Constitution.
- (d) detailing occasions the Governor-General directed a person to hold an office under section 65 of the Constitution.
- (e) detailing occasions the Governor-General revoked membership under paragraph (b), revokes an appointment under paragraph (c) or revokes a direction under paragraph (d).

The Regulations reflect the Government's policy of increasing the transparency of Ministerial arrangements in light of the *Report of the Inquiry into the Appointment of the Former Prime Minister to Administer Multiple Departments* (the Report).

The Regulations are consistent with the *Ministers of State Amendment Act 2023* (the Amendment Act) that imposes obligations on the Official Secretary to the Governor-General to publish, by notifiable instrument, information regarding changes to the Ministry that occur after the commencement of the Amendment Act.

The Regulations mirror the Amendment Act in relation to actions the Governor-General took from 23 May 2022 until 29 November 2023 (when the Amendment Act commenced). During this period, the Governor-General took actions on 23 May 2022, 1 June 2022, 1 July 2022, 2 September 2022 and 31 May 2023. Together the Amendment Act and Regulations cover the entire period

of the 47th Parliament. While the Regulations cover actions taken in the past, the provisions apply prospectively.

Consultation on the draft Regulations was undertaken with Government House.

Details of the Regulations are included in the Attachment.

Details of the *Ministers of State Regulation 2024*

Section 1 — Name of Regulations

This section specifies that the name of the Regulations is the *Ministers of State Regulations 2024*.

Section 2 — Commencement

This section provides that the Regulations commence on the day after the instrument is registered.

Section 3 — Authority

This section states that the Regulations are made under the *Ministers of State Act 1952*.

Section 4 – Definitions

This section defines a “Department” consistently with the concept of a Department of State in the Constitution.

Section 5 – Notification of Ministers and Departments they administer

Subsection 5(1) requires the Official Secretary to the Governor-General (OSGG) to make a notifiable instrument:

- specifying each person that administers a Department under section 64 of the Constitution and the offices they hold under section 65 of the Constitution. In practice this will be a table that allows the public to see each person, their Ministerial titles and the Departments they administer. This table will be updated each time the Governor-General performs an action under sections 64 or 65 of the Constitution (paragraph 5(1)(a)).
- notifying each time the Governor-General took action under sections 62, 64 or 65 of the Constitution (paragraphs 5(1)(b) to (d)). In practice these notifications will follow the table in paragraph 5(1)(a) to allow the public to see how the actions of the Governor-General affected the table.

Subsection 5(2) permits the notifiable instrument to include copies of the instruments made by the Governor-General pursuant to sections 62, 64 and 65 of the Constitution. This provides greater transparency on what has occurred in relation to the Ministry. In practice, copies of the instruments will be attached in schedules of the notifiable instrument.

Subsection 5(3) requires the OSGG to keep the notifiable instrument up to date. The notifiable instrument will be updated as soon as practicable after the Governor-General performs an action under sections 62, 64 and 65 of the Constitution.

Subsections 5(4) and (5) clarify that the OSGG can specify matters required under paragraph 5(1)(a) and paragraphs 5(1)(b) to (d) before section 5 commences. This permits the OSGG to provide information on past Ministry arrangements. It is intended that a notifiable instrument would include information on the Ministry for the whole of the 47th Parliament,

Paragraphs 5(1)(b) to (d) require the OSGG to make a notifiable instrument of actions taken by the Governor-General under sections 62, 64 and 65 of the *Constitution* between 23 May 2022 and 29 November 2023 (when the *Ministers of State Amendment Act 2023* (the Amendment Act) commenced). This period is not covered by the Amendment Act, which only requires notification for actions taken after the Amendment Act commenced (i.e. actions taken after 29 November 2023).

The Albanese Government was elected on 23 May 2022. Therefore, the Regulations ensure there is a complete picture of all actions taken by the Governor-General in relation to the Albanese Government. In the absence of the Regulations, the notifiable instrument will effectively start partway through the 47th Parliament and only at the point if and when the Prime Minister recommends the Governor-General make changes to the existing Ministry.

Subsection 5(6) clarifies that failing to comply with paragraphs 5(2)(a) to (f) does not affect the validity of an instrument made under sections 62, 64 and 65 of the *Constitution*. This reflects that subsection 5(2) is purely for transparency. The legal actions the Governor-General takes are executing the actual instruments on the advice of the Prime Minister.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Ministers of State Regulations 2024

The Ministers of State Regulations 2024 (the Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulations

The Regulations require the Official Secretary to the Governor-General to make a notifiable instrument:

- (a) from time-to-time specifying a list of each person appointed to administer a Department of State under section 64 of the Constitution and the offices the person holds under section 65 of the Constitution. This list on Ministers will ensure up to date public information is available about the constitution of the Ministry since the start of the 47th Parliament.
- (b) detailing occasions the Governor-General chose, summoned and swore a person as a member of the Federal Executive Council under section 62 of the Constitution.
- (c) detailing occasions the Governor-General appointed a person to administer a Department of State under section 64 of the Constitution.
- (d) detailing occasions the Governor-General directed a person to hold an office under section 65 of the Constitution.
- (e) detailing occasions the Governor-General revoked membership under paragraph (b), revokes an appointment under paragraph (c) or revokes a direction under paragraph (d).

Human rights implications

The Regulations engage the right to take part in public affairs in Article 25(a) and the right to freedom of expression in Article 19(2) of the *International Covenant on Civil and Political Rights* (ICCPR), in so far as that article includes freedom to seek, receive and impart information.

Right to take part in public affairs

Article 25 of the ICCPR provides that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a. To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

- c. To have access, on general terms of equality, to public service in his country.

The Regulations engage with, but do not alter or affect, the usual practices and conventions by which a Governor-General exercises their powers, or the right of elected representatives to be sworn-in as an Executive Councillor of the Federal Executive Council under section 62 of the Constitution, to be appointed an officer to administer a Department of State under section 64 of the Constitution, or be directed, as a Minister of State, to hold an office under section 65 of the Constitution.

Section 65 of the Constitution provides that Ministers of State shall hold office during the pleasure of the Governor-General. Revocation of these positions can, therefore, be undertaken by the Governor-General. The Regulations do not confer additional powers on the Governor-General, other than those provided for under the Constitution, to appoint or revoke Executive Councillors or Ministers of State, or to appoint Ministers of State to administer certain Departments of State.

While Regulations require the Official Secretary to the Governor-General to publish the aforementioned decisions of the Governor-General, the Regulations make it clear that failure to do so does not affect the validity of the Governor-General's decisions. The Regulations, therefore, do not impact on the ability of, or powers conferred on or revoked from, elected representatives in taking part in public affairs in specific roles even if public publication of the notifiable instruments does not occur.

Freedom of expression

Article 19 of the ICCPR provides that:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order, or of public health or morals.

The Regulations provide greater transparency and accountability at the Commonwealth-level of Australia's system of government by ensuring that citizens are able to access information in relation to the composition of the Federal Executive Council, those who have been appointed to administer certain Departments of State, and the offices that Ministers of State hold. The Regulations also provide for public access of specific information in relation to the appointments and/or revocation, as well as possible copies of any instruments made by the Governor-General.

Conclusion

The Regulations are compatible with human rights; they support the right of citizens to take part in public affairs per Article 25(a) of the ICCPR, and strengthen citizens' right to freedom of expression, including the freedom to seek, receive and impart information, as provided for in Article 19(2) of the ICCPR.