

# Protocols for communication between ministerial staff members and department employees

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## 1. Purpose

- 1.1. These protocols provide for proper, transparent and respectful communication between ministerial staff members and department employees<sup>1</sup>, which is an important part of government accountability and central to good government.

## 2. Application

- 2.1. This is a whole-of-government policy that applies to department employees and ministerial staff members. Department employees and ministerial staff members are required to comply with these protocols by their respective codes of conduct<sup>2,3</sup>.
- 2.2. Ministerial staff members and department employees operate within a framework of laws, policies and codes of conduct that establish legal obligations, standards of conduct and accountability measures. These protocols provide guidance for communication between ministerial staff members and department employees within that context.

## 3. Roles and responsibilities within the Westminster system

- 3.1. **Ministers** are individually responsible to Parliament for the administration of their portfolios and collectively responsible to the community through the electoral process. Ministers function under a clear line of responsibility for their departments in accordance with the Westminster system.
- 3.2. **Ministers** should behave at the highest standard and make decisions that are open and accountable.
- 3.3. **Departments** operate in a non-partisan way to give effect to the policies and decisions of the government of the day, regardless of its political complexion, and provide advice that is impartial, responsive, accurate and comprehensive.
- 3.4. **Directors-General** are responsible for the delivery of their department's services in accordance with government priorities. They report to their responsible Minister(s) on a day-to-day basis and are accountable to the Premier.
- 3.5. **Department employees** give objective and apolitical advice to assist the government and the Minister. Their advice, together with the advice of ministerial staff members, enables Ministers to make informed decisions.
- 3.6. **Ministerial staff members** must behave at the highest standard and:
  - a. facilitate communication of ministerial priorities to departments
  - b. support and assist Ministers to meet their portfolio responsibilities

<sup>1</sup> 'Department employees' are public service employees in departments of government declared under section 197 of the *Public Sector Act 2022*

<sup>2</sup> *Code of Conduct for the Queensland Public Service* requires public service employees to comply with whole-of-government policies

<sup>3</sup> *Code of Conduct Ministerial Staff Members* requires ministerial staff to comply with applicable policies and these Protocols



- c. act as a conduit between Ministers and department employees
- d. provide advice which takes account of political considerations and complements the advice of the department.

#### 4. Protocols

- 4.1. Ministerial staff members and department employees must, at all times, behave honestly and with integrity in the course of their employment, treating each other with respect and courtesy.
- 4.2. A Minister may direct a Director-General in relation to administering their portfolio and may direct the department to act in a manner contrary to its own advice<sup>4</sup>. However, the Minister cannot compel the Director-General to give particular advice or to change departmental advice.
- 4.3. A formal ministerial direction must be provided in writing to the Director-General unless legislation prescribes another way of making the direction.
- 4.4. In urgent circumstances, a ministerial direction may be provided verbally. Where the Director-General is not available, a ministerial direction may be provided to an alternative senior executive. In both of these cases, the ministerial direction must be confirmed in writing to the Director-General, as soon as practical.
- 4.5. Ministerial staff members may ask public service employees to provide information or prepare briefing notes on particular issues, or covering particular topics, within specified timeframes to assist the Minister in the timely performance of the Minister's duties and responsibilities. Ministerial staff members may also discuss advice received and seek clarification of the advice. Such requests are commonplace communications that would usually occur in the course of normal day-to-day interactions necessary for the administration of government business.
- 4.6. Ministerial staff members do not have the power to direct department employees<sup>5</sup> or to make a particular policy or administrative decision in their own right without specific and direct authorisation from the Minister. Ministerial staff members may communicate a ministerial direction to a Director-General on behalf of the responsible Minister only where there is specific and direct authorisation from the Minister. Like Ministers, ministerial staff members may not direct department employees to give particular advice or change departmental advice.
- 4.7. Ministerial staff members should confirm that a ministerial direction provided to department employees has the authority of the Minister. If there is any doubt about the authority of a ministerial direction conveyed by a ministerial staff member, department employees are expected to request confirmation from the ministerial staff member that the direction has ministerial authority.
- 4.8. Unless the matter is of a routine administrative nature, ministerial staff members must not directly contact department employees who work in a department that reports to a different Minister. Such contact must only be made with the prior agreement of the appropriate Ministerial office, in consultation with the relevant Director-General.
- 4.9. Regardless of any communications with ministerial staff members, the obligation on public service employees to provide advice that is objective, independent, apolitical and impartial remains paramount.

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<sup>4</sup> The power to direct is subject to legislative provision to the contrary. For example, section 178 of the *Public Sector Act 2022* provides that a chief executive of a department is subject to the directions of the chief executive's Minister in managing the department, other than to the extent of listed exceptions. The *Right to Information Act 2009* also makes it an offence to direct a decision maker in specified circumstances.

<sup>5</sup> section 15 *Ministerial and Other Office Holders Staff Act 2010* provides that a public service employee is not subject to the direction of a ministerial staff member and ministerial staff employment contracts contain provisions that are consistent with this.



- 4.10. Department employees may be subject to statutory obligations in relation to sensitive matters such as procurement, public interest disclosures, privacy and other confidential matters. Requests from ministerial staff members in relation to these matters should be managed more sensitively, with department employees expected to comply with their confidentiality obligations.
- 4.11. Ministerial staff members must not ask a department employee to take any action that would be inconsistent with the requirements of the *Public Sector Act 2022*, or other employing legislation, or the Code of Conduct for the Queensland Public Service or a standard of conduct approved under the *Public Sector Ethics Act 1994*.

#### Documenting decisions and interactions

- 4.12. Department employees and ministerial staff members must ensure formal decisions and actions are documented in sufficient detail to ensure the processes involved are accountable and transparent, in line with the requirements of the *Public Records Act 2002*.
- 4.13. Department employees and ministerial staff members should keep full and accurate records of all substantive communications between ministerial staff members and department employees and of the process of making formal decisions, in line with existing legislative and administrative requirements to make and keep records.<sup>6</sup>
- 4.14. Formal recordkeeping is particularly important when a Minister, or Ministerial staff member on the Minister's behalf, provides a direction to departments to implement particular policies or the Minister makes a final decision that is contrary to, or overrides, departmental advice.
- 4.15. Records should be made in such a manner that the information is readily accessible in the records directly relating to the Minister's decision. For example, a department's ministerial briefing note for a decision should contain a section to capture the Minister's approval of, or response to, the department's recommendations.
- 4.16. Where possible, a file reference should be included in all submissions to, or replies from, the Minister to assist in proper recordkeeping.
- 4.17. When a Minister has instructed that certain action be taken contrary to departmental advice, the department should consider advising the Minister, in a briefing note, how it proposes to implement the instruction.

### **5. Support for department employees and ministerial staff members**

- 5.1. Directors-General, with their senior executives, are responsible for managing the interface with Ministers and ministerial staff members and have a responsibility to support department employees in any interactions with Ministers and their offices.
- 5.2. Directors-General should be openly available to advise department employees regarding actions of a ministerial staff member that may be unreasonable or potentially unlawful.
- 5.3. Department employees should raise any concerns about an interaction with a ministerial staff member with their senior executive or Director-General.
- 5.4. The Director-General should raise significant concerns with the appropriate Minister as they arise. The Minister and Director-General should work co-operatively to resolve matters as soon as possible.

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<sup>6</sup> Including compliance with the *Financial Accountability Act 2009* and the *Financial Accountability Handbook* for financial decisions such as awarding of grants



- 5.5. Where a direction or action could potentially be unlawful, the matter must be referred to the relevant Director-General to determine whether to notify the Crime and Corruption Commission or the police.
- 5.6. Ministerial staff members should discuss any matters of perceived breach of these protocols by a department employee with their Chief of Staff, who must refer significant concerns to the relevant Director-General.
- 5.7. A matter that cannot be adequately resolved must be referred to the Director-General of the Department of the Premier and Cabinet for resolution with the Premier's Chief of Staff or the Premier directly.

## 6. Supplementary guidelines

- 6.1. These protocols establish the minimum standards for communication between ministerial staff members and department employees.
- 6.2. A Director-General and their responsible Minister may supplement these protocols with additional communication guidelines tailored to their particular requirements, including procedures for requesting information of a routine or administrative nature.
- 6.3. The Director-General and the relevant Chief of Staff must ensure, respectively, that department employees and ministerial staff members are aware of these protocols and any supplementary guidelines.

## 7. Review of protocols

- 7.1. The Department of the Premier and Cabinet must review these protocols on each occasion the code of conduct for the public service is reviewed under section 12C of the *Public Sector Ethics Act 1994*<sup>7</sup>.

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<sup>7</sup> Section 12C of the *Public Sector Ethics Act 1994* provides:

### **12C Review of code**

- (1) The commission [Public Service Commission] chief executive must review the code of conduct for public service agencies within 1 year after it is approved under section 12B. [The Code was approved with an effective date of 1 January 2011.]
- (2) The commission chief executive must subsequently review the code no later than 2 years after the previous review.

