Protocols for communication between ministerial staff members and public service employees

# Purpose

* 1. The purpose of these protocols is to provide for proper and transparent communication between ministerial staff members and public service employees.

# Application

* 1. These protocols constitute a whole-of-government policy that:

2.1.1 applies to employees of departments of government declared under section 14 of the *Public Service Act 2008* (the *Code of Conduct for the Queensland Public Service* provides that public service employees will comply with whole-of-government policies);

2.1.2 applies to ministerial staff members (the *Code of Conduct for Ministerial Staff Members* provides that ministerial staff members will comply with applicable policies); and

2.1.2 complements the concurrent Premier’s Communiqué entitled *Interaction between Ministerial Staff and Public Servants (Attachment 1).*

* 1. **Effective date:** March 2015

# Context

* 1. Ministers and their staff should perform and behave to the highest standard. Ministers are to make decisions that are open and accountable, and function under a clear line of responsibility for their departments, in accordance with the Westminster system of departments reporting to a single Minister.
  2. Proper and transparent communication between ministerial officers and the public service is an important part of restored accountability in government.

# Principles

* 1. The Queensland Government operates as a system of responsible government.
  2. Governments are responsible collectively to the community through the electoral process and are supported by an independent public service. Ministers are responsible individually to Parliament for the administration of their portfolios. Directors-General are responsible for the delivery of their departments’ services and are accountable ultimately to the Premier, although they report to their responsible Minister on a day-to-day basis.
  3. Departments are responsible for giving independent and apolitical advice to assist the government and the Minister with decision-making.
  4. Subject to legislative provision to the contrary[[1]](#footnote-1), Ministers may direct Directors-General in relation to administering their portfolios, and may direct a department to act in a manner that is contrary to its own advice. However, a Minister’s power to give direction to a Director-General does not include the power to compel the Director-General to give particular advice or to change departmental advice.
  5. Ministerial staff members and public service employees are subject to rigorous accountability measures. Their interactions are subject to a comprehensive framework of laws, policies and codes of conduct that establish legal obligations and expected standards of behaviour.
  6. Positive and productive interaction between the administrative and political arms of government is central to good government.

# Protocols

* 1. Ministerial staff members and public service employees have different but complementary roles.
  2. Public service employees provide advice that is objective, independent, apolitical and impartial and give effect to the policies and decisions of the government of the day, regardless of its political complexion.
  3. Ministerial staff members facilitate communication of ministerial priorities to departments and act as a conduit between Ministers and public service employees, for example, by communicating ministerial views or decisions and requesting information or briefing notes.
  4. In performing this role, 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.
  5. However, consistent with the legislation and contracts of employment of ministerial staff members, ministerial staff members do not have the power to direct public service employees or to make policy or administrative decisions in their own right without specific and direct authorisation from the Minister.
  6. Unless the matter is of a routine administrative nature, Ministerial staff members must not directly contact public service 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.
  7. Unless otherwise legislatively prescribed, if there is any doubt about the authority of a direction conveyed by a ministerial staff member, public service employees are expected to confirm that the direction has ministerial authority. Public service employees should do so by asking the ministerial staff member for confirmation that a direction is being relayed with the authority of a Minister.
  8. Unless otherwise legislatively prescribed, a formal ministerial direction should be provided in writing to the Director-General where practical. In the event of urgency, the direction may be provided verbally and confirmed in writing. If the Director-General is not available to receive the direction, the direction can be provided to an alternative Senior Officer and confirmed in writing to the Director-General.
  9. Just as Ministers may not direct that particular advice be given or departmental advice be changed (as mentioned in paragraph 4.4 above), ministerial staff members may not direct public service employees to give particular advice or change departmental advice.
  10. Ministerial staff members must not ask a public service employee to take any action that would be inconsistent with the public service employee’s duties and obligations under the *Public Service Act 2008* or other employing legislation, or the Code of Conduct for the Queensland Public Service or an approved code of conduct under the *Public Sector Ethics Act 1994*.
  11. 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.

*Documenting decisions and interactions*

* 1. In line with the requirements of the *Public Records Act 2002*, public service employees and ministerial staff members should ensure that formal decisions and actions are documented in sufficient detail to ensure that the processes involved are accountable and transparent.
  2. Public service employees and ministerial staff members should keep full and accurate records of all substantive communications between ministerial staff members and public service employees and of the process of making formal decisions, in line with existing legislative and administrative requirements to make and keep records.
  3. Formal recordkeeping is particularly important when a Minister or Ministerial staff member on the Minister’s behalf verbally or in writing 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. 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 decision should contain a section to capture the Minister’s approval of, or response to, the department’s recommendations.
  5. Where possible, a file reference should be included in all submissions to, or replies from, the Minister to assist in proper recordkeeping.
  6. When a Minister has instructed that certain action be taken contrary to departmental advice, the department should consider providing information and advice as to how it proposes to implement the instruction in a briefing note to the Minister.

# Support to public service employees and ministerial staff members

*Public service employees*

* 1. Directors-General should provide ongoing support to staff (including reinforcing among senior executives their responsibility to provide support to their staff) in managing their interactions with Ministers and ministerial staff members, as per the Premier’s Communiqué entitled *Interaction between Ministerial Staff and Public Servants (Attachment 1).*
  2. Public service employees should raise any concerns with their Senior Officer or Director-General. The Director-General should, if necessary, raise significant concerns with the Minister.

*Ministerial staff members*

* 1. Ministerial staff members should discuss any matters of perceived breach of these protocols by public service employees with their Chief of Staff, who should refer significant concerns where necessary to the Director-General.

# Directors-General to liaise with Ministers with a view to supplementing the protocols

* 1. If necessary, Directors-General should liaise with Ministers about the desirability of supplementing the above protocols with further guidelines about communication between ministerial staff members and public service employees tailored to the particular needs of the Minister or   
     Director-General.
  2. However, supplementary guidelines may not detract from the minimum standards of communication between ministerial staff members and public service employees represented by the protocols contained in this document.
  3. The Director-General should ensure public service employees affected by any department-specific supplementary guidelines are notified of the supplementary guidelines as well as these protocols. The Chief of Staff should also notify ministerial staff members of any department-specific supplementary guidelines.

# Review of protocols

* 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 subsection (2) of section 12C of the *Public Sector Ethics Act 1994*.
  2. 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.*

**Premier’s Communiqué**

**Interaction between ministerial staff and public servants**

The purpose of this Communiqué is to provide clear direction on the expected standards of conduct for interactions between ministerial staff and public service employees.

Ministerial staff and public servants must have a clear understanding of their respective roles and responsibilities within the broader context of our Westminster system of government:

**Ministers**. The Westminster system dictates that, as elected representatives, Ministers are individually responsible to Parliament for the administration of their portfolios, and that governments are collectively accountable to the community through the electoral process.

**Public Servants.** The public service gives effect to the policies and decisions of the government of the day, regardless of its political complexion, and provides advice that is objective and impartial as well as responsive, accurate and comprehensive. Directors-General are responsible for the delivery of their department’s services and are ultimately accountable to the Premier, although they report to their responsible Minister on a day-to-day basis.

**Ministerial Staff.** The practical realities of the ministerial workload require that Ministers receive support

to manage portfolio responsibilities, control policy direction and negotiate the political arena. This is the primary purpose of employing ministerial staff; they support and assist Ministers to meet their broad responsibilities and provide advice which takes account of political considerations and complements the advice of the public service.

Ministerial staff do not have any executive power or other legal authority to direct public service employees in their own right. However, they perform a critical role in facilitating communication of ministerial priorities to departments and acting as a conduit between Ministers and public service employees, for example by communicating ministerial views or decisions. Ministerial staff must not ask a public service employee to take any action which would be inconsistent with that person's duties and obligations under the *Public Service Act 2008* or under the *Public Sector Ethics Act 1994*.

Positive and productive interaction between the administrative and political arms of government is central to good government. Together, the work performed by ministerial staff and the public service contributes to a robust system that allows Ministers to receive information and analysis that enable them to make informed decisions.

All interactions between Ministers, ministerial staff and public servants are subject to a comprehensive framework of laws, policies and codes of conduct that establish legal obligations and expected standards of behaviour.

Within the context of this framework, the Queensland Government expects that:

* Ministerial staff and public service employees must, at all times, behave honestly and with integrity in the course of their employment, treating each other with respect and courtesy.
* Ministerial staff must act on the understanding that they do not have the capacity to direct public servants in their own right and that public service employees are not subject to their directions unless those directions are being communicated to a Director-General on behalf of the responsible Minister.
* Directions given by ministerial staff to the public service on behalf of a Minister should be provided directly to Directors-General in accordance with the public service management and accountability framework set out in the *Public Service Act 2008*.
* Directors-General should provide ongoing support to staff (including reinforcing among senior executives their responsibility to provide support to their staff) in managing their interactions with Ministers and ministerial staff.
* Directors-General should be openly available to senior executives and other staff to

answer questions or provide advice if any actions of ministerial staff are considered to be unreasonable (or potentially unlawful).

* Where concerns have been raised relating to interactions with ministerial staff, the Director-General should raise the matter with the appropriate Minister for resolution. The Minister should work cooperatively with their Director-General to achieve resolution of matters as they arise.
* Where a matter can not be adequately resolved, it should 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.
* Where a direction or action could potentially be unlawful, the matter should be referred to the relevant Director-General to determine whether to notify the Crime and Corruption Commission or the police.
* Ministerial staff and public service employees should be aware of and comply with their roles, responsibilities and obligations as contained in their respective codes of conduct.
* Ministerial staff and public service employees should also be aware of each other’s roles, responsibilities and obligations, and the context and environment within which they operate.

1. For example, see section 100 of the *Public Service Act 2008* which provides that a chief executive is subject to the directions of the departmental Minister in managing the department, except where another Act provides otherwise or limits the extent to which, or circumstances in which, the chief executive is subject to directions of the departmental Minister. Also, section 175 of the *Right to Information Act 2009* makes it an offence to direct a person to make a decision the person believes is not the decision that should be made. [↑](#footnote-ref-1)