

# Responsibilities of secretaries

The formal responsibilities of departmental secretaries are set out in the *Public Service Act 1999* in Section 57:

(1) The Secretary of a Department, under the Agency Minister, is responsible for managing the Department and must advise the Agency Minister in matters relating to the Department.

(2) The Secretary of a Department must assist the Agency Minister to fulfil the Agency Minister's accountability obligations to the Parliament to provide factual information, as required by the Parliament, in relation to the operation and administration of the Department.

The *Public Service Act* also requires agency heads to promote (not just uphold) the Australian Public Service (APS) Values and binds them to the Code of Conduct (ss 12, 14).

The *Financial Management and Accountability Act 1997* also identifies special responsibilities for what it terms 'Chief Executives' (Part 7). These include in particular (s. 44) that they must manage the affairs of the agency in a way that promotes the proper use (that is, efficient, effective and ethical use) of Commonwealth resources for which the chief executive is responsible.

These two acts, and the regulations and directions made under them, establish the generic framework within which all departmental secretaries operate: their responsibilities, their authority and their accountability. Employees of their departments must obey their lawful directions and secretaries may issue Chief Executive Instructions. They must present annual financial statements to the Auditor-General that give a true and fair view of the finances of the department and they must provide an annual report to their minister for presentation to the Parliament in line with the requirements of the Joint Committee on Public Accounts and Audit.

Each secretary also has specific responsibilities. The Administrative Arrangements Order issued from time to time by the Governor-General on the advice of the Prime Minister sets out for each ministry the areas of responsibility and the legislation to be administered 'by the minister'. In the case of the Health portfolio, nearly 50 pieces of legislation were listed in 2001 (and more now). Most but not all are administered by the department and, in many cases, there are specific references to the powers and responsibilities of the secretary, or of the minister who in turn delegates them to the secretary.

**Table 1.1 Health and ageing legislative responsibilities**

The Administrative Arrangements Order in 2001, when I was the secretary, set out the functions of the Health and Ageing portfolio and the legislation administered by the minister. Among the 48 pieces of legislation listed, the following provide a flavour of the responsibilities involved:

*Aged Care Act 1997*

*Australian Hearing Services Act 1991*

*Gene Technology Act 2000*

*Health Insurance Act 1973*

*Home and Community Care Act 1985*

*National Health Act 1953*

*Quarantine Act 1908* (relating to human quarantine)

*Therapeutic Goods Act 1989*

Most of these acts authorise the secretary and/or the minister (who frequently delegates authority to the secretary) to make decisions exercising public power over individuals and organisations in order to deliver services, provide benefits or regulate behaviour, and hold them responsible for how that power is exercised.

For example, under the *Aged Care Act 1997*, the secretary is responsible for approving aged-care providers (s. 8) and planning and allocating places (ss 12, 14). The secretary mostly delegates such powers to officers in the department, but is held responsible overall for the management of the program and the exercise of the delegated powers. I was made acutely aware of this on several occasions, as mentioned in a number of later chapters in this monograph (see, for example, the 'Kerosene baths' case in Chapter 3).

In addition, in exercising their generic and specific responsibilities, secretaries are bound by administrative law and, in some cases, may hold specific authority under the legislation.

**Table 1.2 Examples of administrative law provisions**

Under the *Administrative Appeals Tribunal Act 1975* (s. 25[4]), the tribunal has power to review any decisions under any act. Secretaries or their delegates are constantly making decisions under various laws, which are therefore subject to possible Administrative Appeals Tribunal (AAT) review.

Under the *Administrative Decisions (Judicial Review) Act 1977* (s. 5[1]), a person aggrieved by a decision may apply for an order of review on a wide range of grounds, including a breach of natural justice, that legal procedures have not been observed and that the making of the decision is an improper exercise of power.

Under the *Ombudsman Act 1976* (s. 5[1]), the Ombudsman shall investigate administrative action by a department where there is a complaint, and may on his own motion investigate any administrative action, with reports going to the minister and, if he is not satisfied with the department's response, to the Prime Minister and possibly the Parliament.

Under the *Freedom of Information Act 1982* (s. 9[2]), 'principal officers' (including secretaries) are responsible for making documents available and making arrangements for decisions; under s. 36(3), ministers are responsible for any certificates denying access to internal working documents on public interest grounds—a power frequently delegated to secretaries.

Legally, the responsibilities of secretaries relate to the operation and administration of the department and the programs the department manages. In practice, the responsibilities go much wider. Since the late-1980s, the term 'portfolio secretary' has come into common use. It does not appear in legislation. It reflects, however, the expectation that a secretary will help the minister to coordinate the activities of the multitude of agencies reporting to that minister (Table 1.3). This is particularly relevant in a portfolio with several ministers, one of whom has overarching responsibilities and sits in cabinet, and where there are quite a few agencies, big and small, in addition to the department. The 'portfolio secretary', for example, is responsible for helping the senior minister to prepare the 'portfolio budget submission' and will ensure preparation of the 'portfolio budget paper' for Parliament, and will probably be present throughout Senate Committee hearings on budget matters, including those relating to the agencies over which the secretary has no legal authority.

**Table 1.3 Health and ageing: portfolio agencies in 2001**

- Aged Care Standards and Accreditation Agency Ltd
- General Practice Education and Training
- Australian Institute of Health and Welfare
- Australian Radiation Protection and Nuclear Safety Agency
- Food Safety Australia New Zealand
- Health Insurance Commission
- Health Services Australia
- Hearing Services
- Medibank Private
- National Blood Authority
- National Health and Medical Research Council
- National Institute of Clinical Studies Ltd
- Private Health Insurance Administration Council
- Private Health Insurance Ombudsman
- Professional Services Review

In addition, there is a large number of independent committees, councils and authorities (many statutory) without their own employees—for example, Pharmaceutical Benefits Advisory Committee, Medical Benefits Advisory Committee, Australian Community Pharmacy Authority, Gene Technology Standing Committee, Pharmaceutical Benefits Pricing Authority.

Aspects of this portfolio responsibility have more recently been formalised after the Howard Government's response to the *Uhrig Report* on the governance of statutory authorities and statutory office-holders. This provides a role for secretaries in advising on appointments and on performance, while not constraining the statutory responsibilities of the authorities and office-holders involved. The Rudd Government has since strengthened the role of secretaries (and the Public Service Commissioner) further in providing advice to support merit-based selection of agency heads and statutory office-holders.

Secretaries also have a collective responsibility, partly reflected in the Management Advisory Committee (MAC) (*Public Service Act*, s. 64) to which all secretaries must belong. Significantly, the fact that the Prime Minister appoints secretaries (s. 58) makes it clear that, notwithstanding their formal accountability to their own ministers, they are to serve the government as a whole.

Introduction of performance-based pay for secretaries in 1999, although since dropped, provided an opportunity to summarise the different dimensions of the responsibilities of secretaries for the purpose of assessing their performance. The then Public Service Commissioner suggested five criteria—support for the

minister, support for the government as a whole, management, leadership and promoting the APS Values—to which subsequently was added a sixth: implementation of government decisions. The APS Commission's Senior Executive Service (SES) leadership capabilities also provide a useful insight into the skills required at the top of the Public Service to perform competently. These are summarised under the headings 'shapes strategic thinking', 'communicates with influence', 'cultivates productive working relationships', 'achieves results' and 'exemplifies personal drive and integrity'.

These responsibilities are in fact very broad, so the first questions I address (in Chapter 2) are how much time secretaries spend on the range of responsibilities with which they have been charged and what personal styles different secretaries use in meeting their responsibilities.

The remainder of this monograph is structured around the following headings, which encompass the range of responsibilities and the main areas of personal activity from my own experience:

- Chapter 3: Support for the minister
- Chapter 4: Support for the Prime Minister, cabinet and whole-of-government processes
- Chapter 5: Working with the Parliament
- Chapter 6: Management of the department
- Chapter 7: Management of the portfolio
- Chapter 8: External relationships (including with other governments and with non-governmental organisations and businesses)
- Chapter 9: Working with the media
- Chapter 10: Promoting the values and contributing to APS capability.

Chapter 11 addresses the development of and personal support for secretaries, and performance appraisal. Chapter 12 examines the role of the Public Service Commissioner, which differs in important ways from that of secretaries, with its own issues and challenges. Chapter 13 sets out some final comments and conclusions.