

## Explainer: Scott Morrison Was Sworn in to Several Portfolios Other Than Prime Minister During the Pandemic. How Can this be Done?

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*It has been reported that, during the pandemic, the then prime minister, **Scott Morrison**, swore himself in as a minister to several portfolios, including health, finance and resources.*

Can this be done?

### Uncertainty about the facts

First, there are inconsistent stories about what occurred. There has [been reference](#) to Morrison “swearing himself in” as a minister, when only the governor-general can appoint ministers.

It has also been said the attorney-general found a way for the governor-general to be cut out of the process by making changes by way of an administrative order. It is claimed the health minister knew about and supported such action, while the finance minister and the resources minister were unaware.

Another news story said the Commonwealth government has presented evidence to court that the prime minister was [sworn in as minister for resources](#) by the governor-general on April 15 2021.

It has since been confirmed the governor-general did appoint the prime minister to administer other ministerial portfolios, but no details have so far been provided. The details of exactly what happened therefore remain unclear.

## Can ministers share the administration of legislation?

Because the titles and roles of ministers change all the time, statutes tend simply to confer power on “the minister”, without specifying which one. [Section 19](#) of the Acts Interpretation Act says that to work this out you should look to the relevant “Administrative Arrangements Order”.

An [Administrative Arrangements Order](#) sets out the matters and legislation that fall within the responsibility of particular departments and their administering minister.

For example, during the pandemic, the Administrative Arrangements Orders said the Biosecurity Act was administered by the minister for health in relation to human health and the minister for agriculture in relation to animals and plants. They did not allocate the administration of this act to the prime minister.

The governor-general makes Administrative Arrangements Orders on the advice of the [Federal Executive Council](#). The orders are published on the [Federal Register of Legislation](#). No such order allocates the administration of the health, finance or resources legislation to the prime minister.

So the only way the prime minister could exercise powers granted by that legislation was if he was also appointed, or acting, as the minister for health, finance or resources.

The Cabinet could reach a collective decision about a policy issue, including how a minister’s power should be exercised in relation to it, and the minister would be bound by collective ministerial responsibility to act consistently with that decision. But the prime minister alone has no legal power to instruct a minister how to exercise powers conferred by statute on that minister.

## Can a minister exercise the powers of another minister?

Ministers can be struck down sick, go on holidays or be out of the country on business, so there is always a need for another minister to be able to exercise their powers. This is recognised in section 19(4) of the Acts Interpretation Act, which says a reference to a minister in an Act can include a reference to another minister who is acting on behalf of the first minister.

But this is usually when the first minister is unavailable. It is therefore different from the scenario of the prime minister simultaneously having the same powers as the ministers for health, finance and resources.

[Section 34AAB](#) of the Acts Interpretation Act also says that a minister who administers an Act may authorise another minister to act on behalf of the first minister in exercising powers under the Act. The authorisation must be in writing.

It is possible this power was used if, for example, the health minister agreed to exercise it. But it would not cover cases where the first minister did not choose to grant such an authorisation and did not know about it.

## Appointing a minister to administer a portfolio

It is the governor-general who appoints ministers to particular portfolios and swears them in.

This happens under section 64 of the Constitution. It is ordinarily done publicly, when a new ministry is being sworn in. The [ministerial changes](#) are then published in the Commonwealth Gazette and on the Federal Register of Legislation.

For example, on [February 6 2020](#), Keith Pitt was appointed as minister for resources, water and Northern Australia. But it does not seem any ministerial change announcement was made for the appointment of the prime minister to become minister for resources in April 2021 (or at least, I haven't yet found it).

A spokesperson for the official secretary of the governor-general stated:

The Governor-General [...] appointed former Prime Minister Morrison to administer portfolios other than the Department of the Prime Minister and Cabinet.

This was done by an administrative instrument on the advice of the prime minister. The spokesperson also stated the decision whether to publicise such appointment is a matter for the government of the day.

## **Secrecy and transparency**

Is it appropriate for ministers to be secretly appointed to exercise statutory powers?

No, such matters should be notified to parliament and formally published so members of the public can know who is entitled to exercise particular powers. That is why we have Administrative Arrangements Orders and notifications of changes in ministerial responsibility that are recorded on the Federal Register of Legislation.

It is inappropriate for such matters to be kept secret – especially if it is kept secret from the Cabinet and from the minister who was formally allocated responsibility for a portfolio by the governor-general.

Such a lack of transparency is indicative of a lack of respect for the institutions of government and for the general public who have a right to know how power is allocated.

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