

QUESTIONS

1. Did you send an email to Scott Gartrell about the legal framework that applies to the appointment of the Transport Secretary?
2. If so, did that email include the statement that “the final decision maker is the Acting Secretary of the Premier’s Department”?
3. In Q and A prepared by Minister Haylen’s office and circulated to several people in the Premier’s office it states: “The Minister was then asked by the panel chair to interview the final two candidates and make the final decision.” Would it be lawful for the Acting Secretary of the Premier’s Department to ask the Minister for Transport to make the final decision on the appointment of the Secretary, Transport for NSW?
4. In the email to Scott Gartrell did you also state “The Acting Secretary cannot be directed by a Minister in relation to the appointment decision.”?
(a) Is that a correct statement of the law?
5. If a Minister purported to give a direction to the Acting Secretary in relation to the appointment decision would that be a breach of the law?

ANSWERS:

1. The email was returned to the House in accordance with Standing Order 52 and is subject to a claim of legal professional privilege.
2. See response to question 1 above.
3. The Premier, and the Secretary of the Premier’s Department as the Premier’s delegate, have the power to appoint Secretaries of Departments under section 23(4) of the *Government Sector Employment Act 2013*.
4. See response to question 1 above.
5. I am not aware of any such direction being given to the Acting Secretary in relation to the appointment of Mr Murray as the Secretary of the Department of Transport. It is open to the Committee to obtain its own legal advice on this question if it wishes to.

QUESTIONS

6. Is the relative seniority of ministers correctly reflected in the order they are listed in the *Administrative Arrangements (Minns Ministry—Administration of Acts) Order 2023*?

Public Accountability and Works Committee - Inquiry into the appointments of Josh Murray to the Position of Secretary of Transport for NSW and Emma Watts as NSW Cross-Border Assistant Commissioner - Supplementary Questions to Deputy Secretary, General Counsel – 28 September 2023

7. In that Order is the Minister for Roads listed as senior to the Minister for Transport?
8. Is Transport for NSW responsible to the Minister for Roads as stated on its website at <https://www.transport.nsw.gov.au/about-us/who-we-are/our-ministers> ?
9. Was the report to the Premier on the appointment of Mr Murray prepared by the Acting Secretary of the Premier’s Department after consultation with the Minister for Roads as the senior Minister to whom Transport for NSW is responsible?

ANSWERS:

Senior Minister to whom a Department is responsible

The senior Minister to whom the Department of Transport is responsible is the Minister for Transport.

Rule 52 of the GSE Rules requires consultation with “the senior Minister to whom the relevant Department is responsible” before a report is prepared for the Premier for the appointment of a Secretary of that Department.

The senior Minister to whom a Department is responsible is the Minister to whom the appropriation for the relevant Department is made under the Appropriation Act.

The *Appropriation Act 2022* appropriated moneys to the Minister for Infrastructure for the services of the Department of Transport for the year 2022-2023.

Clause 7 of the *Administrative Arrangements (58th Parliament) Order 2023* provides that a reference in the *Appropriation Act 2022* to the Minister for Infrastructure is to be read as a reference to the Minister for Transport.

The Minister for Transport is therefore the senior Minister to whom the Department of Transport is responsible.

This is reflected in the Governance Arrangements Chart, prepared by The Cabinet Office (available at <https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/governance-arrangements-chart>), which provides that the Minister for Transport is the lead Minister for the Department of Transport.

As set out in clause 1 of Schedule 1 to the *Administrative Arrangements (Public Service agencies and Ministers) Order 2023*, the Department of Transport is responsible to:

- Minister for Transport
- Minister for Roads
- Minister for Planning and Public Spaces
- Minister for Regional Transport and Roads.

The Acting Secretary of the Premier's Department consulted the Minister for Transport prior to preparing the report to the Premier relating to the proposed appointment of Mr Josh Murray as the Secretary of the Department of Transport, as required by Rule 52 of the GSE Rules.

Seniority of Ministers in other contexts

The seniority of Ministers is determined in different ways, depending on the particular context:

- In relation to Departments – as set out above, the senior Minister to whom a Department is responsible is the Minister to whom the appropriation for the relevant Department is made under the Appropriation Act.
- In terms of membership of the Executive Council – section 35D of the *Constitution Act 1902* (**Constitution Act**) states that, in the absence of the Governor and the Vice President of the Executive Council, the “senior member” present shall preside at the Executive Council meeting. Section 35D of the Constitution Act provides that, for the purposes of that section, the seniority of members of the Executive Council shall be determined according to the order of their respective appointments as members of the Executive Council.
- In terms of membership of Cabinet – as set out in the List of Ministers (available at <https://www.nsw.gov.au/nsw-government/ministers>), and which is generally reflected in the order in which Ministers are listed in the Allocation of Acts.
- For the purposes of the *Parliamentary Remuneration Act 1989* (**PR Act**) – senior Ministers are those Ministers designated as senior Ministers for the purposes of that Act by the Premier. The Minister for Transport has been designated as a senior Minister for the purposes of the PR Act.