



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PuLC:JvdPvk290922

29 September 2022

The Hon Virginia Bell AC
Attorney General's Department
3-5 National Circuit
Barton ACT 2600

By email: submissions@ministriesinquiry.gov.au

Dear Ms Bell,

Inquiry into the appointment of the former Prime Minister to administer multiple departments

The Law Society of NSW provides this brief submission to underscore the critical nature of transparency and Ministerial accountability in the proper administration of government.

In preparing this submission, we have considered the opinion of the Solicitor-General dated 22 August 2022.

While we note that the advice of the Solicitor-General was that the multiple appointments of the former Prime Minister were not illegal, we also note the Solicitor-General's opinion that the fact that the multiple appointments were made in secret (unknown to both Parliament and the public) fundamentally undermined the principles of responsible government,¹ whether or not the former Prime Minister exercised power under the legislation administered by the department in question.

The Law Society supports this inquiry. We note the importance of this process to clarify, for both the public and the Government, the significance of what occurred. This inquiry also has a critical educative function in relation to the conventions and practices in the formation and operation of the Executive Government that are essential to the system of responsible government prescribed by Chapter II of the Constitution, particularly in the context of a Constitution that was designed to leave "room for further evolution in the institution of responsible government."²

We note the view of the Solicitor-General in his advice that the Government has the power to enact a requirement that appointments under s 64 of the Constitution be published.³ In our view, for the purposes of safeguarding transparency and accountability, it would be preferable that there be a statutory obligation to publish the Administrative Arrangements Orders (and any other information relevant to providing current information on who has authority to administer departments and legislation) promptly upon their making or amendment. The Law

¹ Solicitor-General's opinion (SG No 12 of 2022) – In the matter of the validity of the appointment of Mr Morrison to administer the Department of Industry, Science, Energy and Resources, [46]

² *Ibid.*, [26]

³ *Ibid.*, [54]

Society would be pleased to contribute at a later date in respect of draft legislation in this regard should the Government decide to pursue this option.

Thank you for the opportunity to make this submission. Questions at first instance may be directed to Vicky Kuek, Principal Policy Lawyer, at victoria.kuek@lawsociety.com.au or 02 9926 0354.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joanne van der Plaats', with a long horizontal stroke extending to the right.

Joanne van der Plaats
President