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Judicial Review and Ministerial Responsibility

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Introduction

The growth of executive power – as exercised by Cabinet – has been a continued theme of modern Australian government. Cabinet is the undisputed apex of governmental power. It determines the legislative and financial agenda of the government, dominates the conduct of parliamentary proceedings, approves all significant appointments to judicial and public office, and controls most of the material placed before the vice-regal representatives.¹ Members of Cabinet obtain power over the Parliament through their position as senior members of the majority political party of the day.² Membership of Cabinet carries a responsibility to adhere to strict political rules, particularly the observance of secrecy and solidarity in Cabinet decision-making. These political rules are largely enforced in the political arena, in either the party room or the Parliament itself.

Members of Cabinet obtain much of their power over the machinery of government by virtue of the positions they hold as ministers of state.³

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- 1 Although appointments are normally made by the vice-regal representative acting with the advice of Ministers in the Executive Council, they are not placed before Executive Council without the approval of Cabinet. In addition, the vice-regal representative has no real option other than to accept the advice of the ministerial members of Executive Council (which would inevitably be to approve the proposed appointment). This is not intended to suggest that the vice-regal representative is merely a conduit of Cabinet. Not all materials placed before the vice-regal representative are subject to Cabinet approval. The award of Australian honours, for example, is approved by the Governor-General without the involvement of Cabinet. It should also be noted that the reserve powers of the Governor-General may enable the Governor-General to act without or even contrary to ministerial advice. On the scope of those powers, see G Winterton, *Parliament, the Executive and the Governor-General* (Melbourne UP, 1983) 149–60.
 - 2 In *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342 at 373, Murphy J, who was a federal Minister before appointment to the High Court, explained that Cabinet was “a committee of Ministers of the ruling parliamentary party or parties”.
 - 3 Not all Ministers are members of Cabinet. Several junior ministers, who hold small or less important portfolios, may be omitted from Cabinet. The rise of the inner circle of Ministers, now known as Cabinet, is explained in *Minister for Arts, Heritage and Environment v Peko-Wallsend* (1987) 75 ALR 218 at 225 (Bowen CJ).

This is a preview. Not all pages are shown.