



HON GARY GRAY AO MP

Special Minister of State
Special Minister of State for the Public Service and Integrity

REF: C11/1734

The Hon John Murphy MP
Chair
Standing Committee on Petitions
Parliament House

RECEIVED
22 AUG 2011
PETITIONS COMMITTEE

16 AUG 2011
BY:

Dear Mr Murphy

Thank you for your letter of 1 June 2011 concerning a petition submitted to the Standing Committee on Petitions about a secondary review of actions through the merit protection process. I note the concerns raised in the petition and make the following comments.

In regard to the review of employment decisions process, Section 33 of the *Public Service Act 1999* (the Act) and Part 5 of the Public Service Regulations 1999 (the Regulations) provide for a system of review of employment decisions and actions in the Australian Public Service (APS), including secondary review by the Merit Protection Commissioner (the Commissioner).

The statutory scheme entitles non-Senior Executive Service employees to a review of a broad range of actions related to his or her employment.

In most cases APS employees are required to have their matter initially reviewed within their agency (section 33(4)(a) of the Act). If they are dissatisfied with the outcome or if the agency considers that the matter is not reviewable, they may apply for secondary review by the Commissioner.

This is consistent with the Explanatory Memorandum that accompanies the Act and reinforced in practice through the Regulations and the Public Service Commissioner's Public Service Directions (the Commissioner's Directions). That is, wherever possible, to deal with an issue 'as quickly, and with as little formality, as proper consideration of the matter allows' (Regulation 5.35(1)(c)). This approach also supports the concept of an agency having, and taking responsibility for, its internal management approaches and being in a position to strategically and positively respond to issues as they arise. This includes improving future decision-making by incorporating lessons from complaints and issues into policy and procedures.

An application for a secondary review by the Commissioner is made through the agency head. Under Regulation 5.30 the agency head is required to give the Commissioner the application and any relevant documents relating to the primary review within 14 days. Should the Commissioner suspect poor administration or premeditated delay with regard to lodging a secondary review application, the concerns are usually raised with the relevant agency head and, if necessary, with the Special Minister of State (SMOS) or included in the Commissioner's annual report.

When conducting reviews the Commissioner considers evidence provided by both the agency and the employee and forms a view on whether the actions of the agency were consistent with agency policies, were fair and reasonable and were consistent with the principles of procedural fairness. Further information on the approach taken to reviews of action and complaint handling is provided on the Merit Protection Commissioner's website (<http://www.apsc.gov.au/merit/reviewactionsguideforhrpractitioners.htm>).

The Office of the Merit Protection Commissioner is an independent statutory office established under section 50 of the Act. The Commissioner is appointed by the Governor-General for a period up to five years and cannot be directed in the performance of his or her duties.

The Commissioner reports directly to the SMOS and if he or she is not satisfied with the response to recommendations contained in a report of a review under section 33(6) of the Act, may after consultation with the Public Service Minister have the matter reported to the agency Minister, the Prime Minister or the Presiding Officers for presentation to Parliament. These are significant powers and independence.

The devolved nature of employee powers under the Act (section 20(1)) mean that every agency has its own policies and procedures (within the parameters identified by the Regulations and the Commissioner's Directions) with regard to how they construct and implement review in their agency. A knowledge and understanding of the Commonwealth public service environment balanced with a keen knowledge and understanding of the independence and the role of a statutory office holder is a key aspect of this very important role. In 2010 employees of the Office of the Merit Protection Commissioner were recipients of an Australia Day Award. It is unclear how an external body from outside the APS would provide a better or fairer system of review given the understanding and independence of the Commissioner.

In regard to the Department of Finance and Deregulation (Finance) merit selection process, the Finance Valued Behaviours form the basis of selection criteria and assessment framework for all selection processes. In accordance with section 10 of the Act, all candidates applying for positions within Finance are assessed on merit using the guiding principles for APS staff selection as follows:

- An assessment is made of the relative suitability of candidates for the duties, using a comparative selection process.
- The assessment is based on the relationship between the candidate's work related qualities and the work related qualities genuinely required for the duties.
- The assessment focuses on the relative capacity of the candidates to achieve outcomes related to the duties. The assessment is the primary consideration in making the decision.

Thank you for notifying me of this petition. I trust that this information will be of assistance to the committee.

Yours sincerely

GARY GRAY

10 AUG 2011