

Finance and Public Administration Legislative Committee

ANSWERS TO QUESTIONS ON NOTICE

Prime Minister and Cabinet Portfolio

Australian Public Service Commission

Estimates 2005-06 – Additional Estimates, February 2006

Question: PM 47

Topic: Review of the Public Service Act 1999

Senator Evans asked the following questions:

1. Can you confirm that the Commission is conducting a review of the Public Service Act?

Yes, I have commenced a review of the *Public Service Act 1999* and subordinate legislation.

2. Can you confirm that your findings will be presented to Cabinet in March 2006?

No. The timing of any submission to Cabinet will be a matter for the Minister Assisting the Prime Minister for the Public Service to decide.

3. What was the timeline for the review?

The review commenced in June 2005 and I anticipate providing initial recommendations on changes to the Public Service Act to the Minister Assisting the Prime Minister for the Public Service in the near future. It will be a matter for the Government to decide on the priority and timing of any legislative change.

4. What is the process the public service commissioner's office has undertaken for the conduct of the Review?

There have been consultations with Secretaries and other agency heads and their staff and other stakeholders on possible areas for change. I invited the Community and Public Sector Union to lodge a submission on the review and have advised the Shadow Minister for Public Accountability and Human Services, Mr Kelvin Thomson MP of the key issues being considered in the review.

5. Have decisions yet been made on the range of issues that will be progressed as a result of this review?

No decisions have been made on the issues that will be progressed at this stage.

6. With whom have you consulted to date on the review?

To date I have consulted with Departmental Secretaries, other APS Agency Heads and the Heads of the Parliamentary Departments in the course of conducting the review. I have also met with the Shadow Minister for Public Accountability and Human Services, Mr Kelvin Thomson MP. There have been exchanges of correspondence between the Commissioner and the National Secretary of the Community and Public

Sector Union on the review, and staff of the Australian Public Service Commission have met with representatives of the Community and Public Sector Union.

7. Can you confirm that you will not be seeking to change the intent and content of the APS values?

The review is examining the effectiveness of the current set of APS Values and whether there is potential for any streamlining.

8. Can you confirm that ongoing employment will remain as the explicit preferred option and that you will only be reviewing the non-ongoing provisions?

The review is examining the effectiveness of current provisions for non-ongoing employment in the Public Service Act and Regulations. Final recommendations are still being developed on changes to non-ongoing employment provisions.

9. How do you envisage the Review will examine the issue of Whistleblower protection?

The review is examining the effectiveness of current provisions for the making of whistleblower reports.

10. How many whistleblower related matters does the commission deal with each year? Please provide a table demonstrating the work performed by the commission related to whistleblowing each year for the past 3 years to 31 December 2005 including dates, nature of issue, agency affected and outcome of the commission's work.

The APS whistleblowing scheme is provided for in section 16 of the Public Service Act and in the Public Service Regulations. The Regulations require agency heads to establish procedures for dealing with whistleblower reports and these procedures must observe procedural fairness, comply with the *Privacy Act 1988* and provide that APS employees in the agency may report breaches or alleged breaches of the Code of Conduct to the agency head, the Public Service Commissioner or the Merit Protection Commissioner.

Generally, disclosures should be made to, and investigated by, the relevant agency head. Where this is not appropriate, or where the whistleblower is not satisfied with the outcome of the investigation by the agency head, the whistleblower may refer the report to the Public Service Commissioner or the Merit Protection Commissioner.

Details of whistleblowing matters dealt with by Public Service Commissioner and Merit Protection Commissioner during this period are attached. More applications than this were received in this period, however these were not accepted for a number of reasons, primarily that they should first be considered by the relevant Agency Head.

11. Will the Review be examining the issue of termination? If so, how?

The review is examining the adequacy of the current set of grounds for termination that are set out in section 29 of the Public Service Act.

12. Are there any other machinery of government functions that will be subject to this Review?

Yes. The review is examining the machinery of government provisions set out in section 72 of the Public Service Act.

13. Will the review be examining either the functions of the commissioner or the APS code of conduct?

Yes, the review is examining both of these areas.

14. How will the Review examine the increasing trend of Ministerial Advisers to directly approach public servants, often at junior levels, for information and advice?

This issue is not being dealt with in the Review of the PS Act

15. How does the Commission intend to educate Ministerial Advisers on the necessarily different roles and responsibilities of the political and administrative arms of government?

The Commission is not responsible for the education of Ministers' staff. Its statutory responsibilities include promoting the APS Values and Code of Conduct. In that context I seek to promote an effective working relationship between the political and administrative arms of government. On 9 March 2006 I launched a good practice guide, *Supporting Ministers, upholding the Values*, to assist APS agencies in this regard. The good practice guide is directed primarily towards public servants but the information it contains would also be useful to Ministers and their advisers.

16. Once the Review process is complete, does your office intend to issue a green paper or a discussion paper to canvass reaction from the community, academics, the APS, relevant unions and other key stakeholders?

No.

17. If not, why not?

The review's focus is to refine and improve on the current Public Service Act framework. Key stakeholders have been consulted in the development of proposals for change and have been invited to submit views on a range of issues. I will keep key stakeholders informed on the progress of the review.

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ATTACHMENT

Whistleblowing matters dealt with by Public Service Commissioner and Merit Protection Commissioner - 3 years to December 31 2005

Date	Nature of issue	Agency affected	Outcome of Commission work
<i>Public Service Commissioner</i>			
19 August 2003	Alleged harassment and misuse of authority.	Aboriginal Hostels Limited	Some systemic failures identified, but insufficient evidence to conclude that a breach of the Code of Conduct occurred
19 August 2003	Alleged harassment, inappropriate selection practices and allocation of duties issues.	Aboriginal Hostels Limited	Some systemic failures identified, but insufficient evidence to conclude that a breach of the Code of Conduct occurred
10 March 2004	Alleged intimidation of employees involved in a whistleblowing enquiry; inappropriate actions relating to leave and performance management.	Australian Customs Service	Insufficient evidence to recommend that the Agency undertake an investigation under Code of Conduct procedures.
9 March 2005	Alleged harassment; probity of actions/decisions under FMA Act.	Crimtrac	Inquiry commenced but discontinued on resignation of employee under investigation.
9 March 2005	Alleged harassment.	Crimtrac	Inquiry commenced but discontinued on resignation of employee under investigation.
7 April 2005	Alleged harassment	Crimtrac	Inquiry commenced but discontinued on resignation of employee under investigation.

Date	Nature of issue	Agency affected	Outcome of Commission work
<i>Merit Protection Commissioner</i>			
3 April 2003	Alleged breach of the Code of Conduct by employee conducting investigation of applicant, relating to procedural fairness and related issues.	Centrelink	No evidence to support the allegations that would justify the Agency conducting an investigation under Code of Conduct procedures.
22 July 2003	Alleged breaches of Code of Conduct in relation to various personnel matters, including discrimination in relation to leave entitlements, and an allegation of misuse of Commonwealth funds	Department of Health and Ageing	MPC concluded that there was insufficient evidence to support a recommendation to the Secretary to commence a Code of Conduct investigation
14 February 2005	Allegations that manager threatened employee who had lodged Review of Action application	Department of Immigration and Multicultural and Indigenous Affairs	No evidence to warrant a recommendation to commence Code of Conduct investigation.
10 November 2005	Allegations relating to harassment and failure to follow directions	Centrelink	Still under consideration awaiting further papers from applicant