



AUSTRALIAN PUBLIC SERVICE COMMISSIONER
STEPHEN SEDGWICK

Ms Christine McDonald
Committee Secretary
Senate Finance and Public Administration Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Ms McDonald

I am writing to provide the Committee with further information relating to the evidence I gave at the hearing on 17 October 2011 concerning the application of the Australian Public Service (APS) Values and Code of Conduct to agency heads and statutory office holders. This is an important area of the *Public Service Act 1999* (the Act), and the Committee may find it helpful to have additional material that was not possible to put before it in the short time available at the hearing.

The integrity framework contained in the Act centres around the standards of behaviour required of agency heads and APS employees that are set out in the APS Values and the Code of Conduct (sections 10 and 13 of the Act respectively). It is these provisions that require, for example, agency heads and APS employees to uphold the good reputation of the APS and to perform their functions in an impartial and professional manner.

An agency head is defined under section 7 of the Act to include:

- a. the Secretary of a Department; or
- b. the Head of an Executive Agency; or
- c. the Head of a Statutory Agency.

In turn, a statutory agency is defined in section 7 as a body or group of persons declared by an Act to be a statutory agency for the purposes of the Act. For example, section 40(3) of the Public Service Act states that the Public Service Commissioner is the head of a statutory agency for the purposes of section 7. Section 31 of the *Ombudsman Act 1976* contains a similar provision relating to the Ombudsman.

Agency heads must uphold and promote the APS Values (section 12). Section 14 (1) of the Act provides that agency heads are bound by the Code of Conduct in the same way as APS employees.

Suspected breaches of the APS Values or Code of Conduct by agency heads fall within the responsibilities of my office to investigate. Section 41(1)(f) of the Act states that I have the following function:

to inquire into alleged breaches of the Code of Conduct by Agency Heads and to report to the appropriate authority on the results of such enquiries (including, where relevant, recommendations for sanctions)

The 'appropriate authority' is defined in the Act at section 41(3). It provides that the Presiding Officers are the appropriate authority for an agency head of a statutory agency that is prescribed in

the regulations. Public Service Regulation 6.2 (e) lists the Commonwealth Ombudsman and his employees as a statutory agency for this purpose.

Consideration of an agency head's conduct where that person is also a statutory officer (with functions as prescribed by the law establishing their office) may not be as straightforward as in the case of another agency head. It seems reasonable that such an office holder's actions in respect of staff, or the administration of the agency, for example, might be assessed in substantially the same way as any other agency head. However, an assessment of the statutory officer's actions in discharge of non-managerial functions would have to have regard to the totality of the legal framework in which s/he operates (e.g. including how that office holder is expected to interact with the Parliament and with Ministers).

As I said at the end of my evidence, such decisions would need to be carefully considered in the circumstances of each case.

I have not covered within this letter the arrangements whereby the APS Values and Code of Conduct apply to statutory office holders who are not also heads of an agency within the meaning of the Act. Those arrangements are different again, reflecting the character of statutory offices which do not have responsibility for the administration of an agency. I would be happy, of course, to set this material out for the Committee in more detail if it thought that that would be helpful.

I would be grateful if you could draw this letter to the attention of members of the Committee.

Yours sincerely

Stephen Sedgwick

19 October 2011