

Review of actions

Role of the Parliamentary Service Merit Protection Commissioner

The office of Parliamentary Service Merit Protection Commissioner (PSMPC) is an independent statutory office established under section 47 of the *Parliamentary Service Act 1999* (the Act). The PSMPC also currently holds the office of Public Service Merit Protection Commissioner. Parliamentary Service reviews of actions are handled by the Australian Public Service Commission on behalf of the PSMPC.

What actions or decisions are reviewable?

Under section 33 of the Act, employees are entitled to review of actions or decisions that relate to their Parliamentary Service employment. However, not all employment actions or decisions are subject to review:

- section 33 of the Act provides that action to terminate employment is not subject to review; and
- Parliamentary Service Determination 2003/2 (the Determination) exempts certain other employment actions and decisions from review and provides that review rights are not available to Senior Executive Service (SES) employees.

For further information on the limits on review see clauses 7.3.1 and 7.3.3 of the Determination.

Making an application for review does not prevent a department from proceeding with an action or implementing a decision.

Primary and secondary review

For the majority of employment-related decisions and actions, the Determination requires an employee to apply to his or her department head for review in the first instance.

Reviews conducted within departments are called primary reviews. Applications for primary review are made under clause 7.4.1 of the Determination.

When a department receives a valid application for review of actions or decisions it is required to:

- review the action and attempt to resolve the employee's concerns;
- advise the employee in writing of the outcome; the reasons for the decision; and any action the department intends to take; and
- advise the employee of his or her right of review by the PSMPC.

If the employee is dissatisfied with the outcome of the department's review, or the department has advised that the matter is not reviewable, the employee may apply to the PSMPC for secondary review. Applications for secondary review are made under clause 7.5.1 of the Determination.

Applications for primary review can be made directly to the PSMPC in certain circumstances prescribed in clause 7.4.1 of the Determination. These are:

- for review of a decision that the employee has breached the Parliamentary Service Code of Conduct (the Code of Conduct) and/or of the resulting sanction (each parliamentary department has procedures for determining suspected breaches of the Code of Conduct);
- if the employee's department head was directly involved in the relevant action or decision;
- where it is not appropriate, because of the seriousness or sensitivity of the action, for the department head to deal with the review application; or
- where the employee claims that the relevant action or decision is victimisation or harassment because of having made a previous application for review.

Time limits for review applications

An employee must apply for review within 12 months of the action or decision. The 12 month timeframe applies to applications made to the:

- department for primary review;
- PSMPC for primary review (including Code of Conduct decisions); and
- PSMPC for secondary review.

Applications received outside that timeframe may be accepted only if there are exceptional circumstances to explain the delay in making the application.

How do you apply for review?

Contact your department's Human Resources section for advice on how to make a review application to your department head.

Applications for primary review by the PSMPC (see primary and secondary review above) can be made directly to the PSMPC. These should be addressed to:

The Parliamentary Service Merit Protection Commissioner
 Australian Public Service Commission
 PO Box 20636
 World Square Post Office
 SYDNEY NSW 2002

or by email to review@apsc.gov.au.

Applications for secondary review by the PSMPC must be made through your department head. This means that you need to address the application to your department head advising that you wish the matter to be reviewed by the PSMPC. Your department should then forward your application and the relevant department papers to the address above.

All applications must:

- be made in writing (including by email);
- state why the review is sought; and
- state the outcome sought.

How will your application for review be handled?

Reviews conducted by the PSMPC are required to have regard to procedural fairness, be conducted in private and be finished as quickly, and with as little formality, as a proper consideration of the matter allows.

First, staff assisting the PSMPC will acknowledge your application and advise you whether it has been accepted. Then, if papers have not already been received from your department, the reviewer will ask for copies of all relevant papers. In some cases, it may be possible to conduct the review solely by an examination of the papers. Where necessary, the reviewer may investigate further by seeking additional information from your department and by interviewing you and/or other persons. Generally, interviews with a reviewer are done in person or over the telephone.

While you are welcome to have a person support you throughout the review, you are able to be represented by another person only with the approval of the PSMPC. If you wish to have someone represent you, you will need to make a formal request to the PSMPC stating your reasons.

In most cases, a review by the PSMPC will address the following issues:

- whether your department's procedures for dealing with the particular matter in question were substantially complied with in your case;
- whether the requirements of procedural fairness were substantially observed in your case; and
- whether the action or decision under review was appropriate or reasonable in the circumstances of the case.

Outcome of the review

The PSMPC can make recommendations to your department head about the matters under review. The PSMPC cannot impose an outcome on your department nor can the PSMPC substitute a decision different from that made by your department.

When the review is finished you will be advised of the result and the PSMPC's recommendation. If it is concluded that the department's actions were appropriate, the PSMPC will explain to you why that view was reached.

On the other hand, if the PSMPC is satisfied that the decision under review was in some way inappropriate or unreasonable, the PSMPC may recommend that the department:

- set aside the decision and re-consider the matter concerned;
- vary the decision;
- review any procedures or processes that led to the decision; or
- take some other appropriate action.

A department cannot be required to do what the PSMPC recommends. However, departments generally act on the PSMPC's recommendations. If a department decides not to act on a PSMPC recommendation, the department must advise the employee of the reasons for this decision.

If the PSMPC is not satisfied with the department's response to a recommendation, the PSMPC may report the matter to the Presiding Officers for presentation to the Parliament.

What if you are still not satisfied?

There is no further right of administrative review under the Act or the Determination.

To take the matter further, you would need to apply to a court for judicial review, under the general law or the *Administrative Decisions (Judicial Review) Act 1977*. In such cases, it would be prudent to seek independent legal advice.

Who to contact

Inquiries should be directed to the Review Team, Australian Public Service Commission Sydney, on telephone: 02 8239 5330 or by email to review@apsc.gov.au.