



PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE
SENATOR THE HONOURABLE SCOTT RYAN

Senator James Paterson
Chair
Senate Finance & Public Administration Legislation Committee
Parliament House
Canberra ACT 2600

Dear Senator,

As previously discussed with yourself and committee members following the Estimates hearing, having had the opportunity to look further into relevant provisions of the Public Service Act 1999 and the Parliamentary Service Act 1999 and take further advice, I would like to provide the following additional information in relation to the statement I made to the committee Monday about inquiries that may be undertaken by the Merit Protection Commissioner.

As senators would be aware, there are two offices of Merit Protection Commissioner – one for the Public Service and one for the Parliamentary Service. Among other things, each has the function of inquiring into alleged breaches of the respective Codes of Conduct by the respective Commissioners (that is, the Public Service Commissioner and the Parliamentary Service Commissioner). In each case, the reports of such inquiries would be provided to the Presiding Officers.

While the Presiding Officers have a degree of administrative responsibility for the Parliamentary Service Merit Protection Commissioner, including the ability to initiate inquiries into parliamentary service actions, we have no administrative connection to the Public Service Merit Protection Commissioner.

The only role we have in respect of the Public Service Merit Protection Commissioner, relevant to the committee's line of inquiry, is to receive a report of the kind mentioned above, in relation to an inquiry under section 50(1)(b) of the Public Service Act. (The Presiding Officers may also receive reports from the Merit Protection Commissioner under s 33 of the Act, which is unconnected to this matter). My advice is that such reports are provided to the Presiding Officers for presentation to the Parliament.

On my reading, the Act does not require the Merit Protection Commissioner to alert the Presiding Officers that an inquiry under s 50(1)(b) is underway.

I confirm the advice I provided at the hearing, that a search of office correspondence following that reveals nothing between my office and the Parliamentary Service Merit Protection Commissioner since I took office on 13 November last year and May 21, 2018.

However, I am now in a position to outline that, at 4:46pm today, May 23, I received advice from the Acting Merit Protection Commissioner regarding this matter. I attach a copy of this advice for the information of the Committee.

Yours sincerely,

SCOTT RYAN.
23 May 2018



Sensitive: Personal

Senator the Hon. Scott Ryan
President of the Senate
The Senate
Parliament House
Canberra
ACT 2600

The Hon. Tony Smith MP
Speaker
House of Representatives
Parliament House
Canberra
ACT 2600

Dear Presiding Officers

I am writing to you about an allegation of a breach of the Australian Public Service Code of Conduct that I have received about the alleged conduct of the Australian Public Service Commissioner.

I am writing to you now with the facts concerning my handling of the matter, given the media interest and questions raised by Senators in Estimates hearings earlier this week.

I received the allegation on 11 January 2018. At the time, I was Acting Merit Protection Commissioner. My substantive role is an employee in the Australian Public Service Commission (APSC).

As I expected a Merit Protection Commissioner to be appointed in the near future, I advised the person making the allegation that the matter would be referred to the new Merit Protection Commissioner when appointed.

A Merit Protection Commissioner has not been appointed and I have continued to act in the position. In late March 2018 I decided that the allegation needed to be addressed. In light of any perception of bias arising from my substantive employment in the APSC, in April 2018 I asked a former Secretary to assist me to consider whether the allegation, on its face, warranted the start of an inquiry.

I have not yet reached a view on whether to start an inquiry. I will advise you if I decide to do so. Consistent with section 50(1)(b) of the *Public Service Act 1999*, if I start an inquiry, I will inform you of the results of that inquiry.

Yours sincerely

Mark Davidson
Acting Merit Protection Commissioner
23 May 2018

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