

**Merit Protection Commissioner**

# **Role and Functions**



**Australian Government**

**Australian Public Service  
Commission**

# THE MERIT PROTECTION COMMISSIONER—ROLE AND FUNCTIONS

## Role of the Merit Protection Commissioner

The Merit Protection Commissioner is an independent statutory office holder appointed by the Governor-General in Council on the advice of the Public Service Minister.

The Commissioner provides assurance, in certain key areas of the Australian Public Service (APS) employment framework, that the APS Values are being applied effectively by agencies, their agency heads and staff. These key areas are:

- merit based employment decisions
- ethical standards
- a fair system of review of employment decisions and actions.

The APS Values are in section 10 of the *Public Service Act 1999* (the Act).

## Statutory basis

The office of Merit Protection Commissioner is established under section 49 of the Act.

## Functions of the Commissioner

The Commissioner's functions are detailed in section 50 of the Act and Part 7 of the Public Service Regulations 1999 (the Regulations). Two key functions are:

- to conduct independent reviews of employment actions, including promotion decisions, under section 33 of the Act
- to receive and inquire into whistleblower reports made under section 16 of the Act.

The Commissioner also has the power to perform functions for other government and non government bodies consistent with his or her functions under the Act.



For example, this could include conducting investigations and reviews for other tiers of government if requested.

### **What is merit?**

Merit, under the Act, means that employment decisions should be based on an assessment of a person's ability to do the job, must be objective and fair, avoiding patronage and favouritism and unjustified discrimination.

For engagements to the APS, and promotions, the assessment must be competitive meaning that jobs need to be advertised.

### **The Commissioner's role in supporting merit**

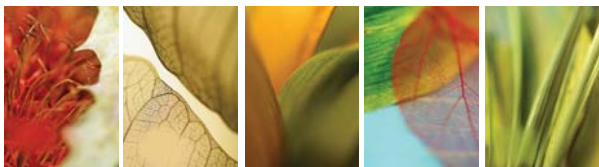
The Commissioner supports merit through having a:

- statutory role in review of promotion decisions
- capacity to establish Independent Selection Advisory Committees (ISACs) to support agency staff selection exercises.

In both these circumstances, the Commissioner appoints a committee to, in the case of:

- promotion reviews, review and make a fresh decision about who is promoted
- ISACs, consider evidence about candidates for a job and to make recommendations to an agency about who is most suitable to be engaged, promoted or transferred into a job.

Further information about these functions can be found in the brochures entitled *Review of Promotion Decisions* and *Independent Selection Advisory Committees*.



## **Fair system of review**

Section 33 of the Act and Part 5 of the Regulations provide for a system of review of employment decisions and actions in the APS.

In the majority of cases the APS employee will have their matter reviewed in the first instance within their agency. If they are dissatisfied with the outcome, they may apply for review by the Merit Protection Commissioner. The Commissioner provides an independent and external review option.

When conducting reviews, the Commissioner considers evidence provided by both the agency and employee and forms a view on whether the actions of the agency, with respect to that employee, were:

- consistent with agency policy and procedures
- fair and reasonable in the circumstances; and, where relevant
- consistent with the requirements of procedural fairness.

The range of employment decisions and actions that are reviewable is not significantly limited by legislation. They include, for example, decisions relating to employee pay and conditions, performance, access to training and other development opportunities and the management of workplace disputes. A significant component of the review work is agency decisions relating to breaches of the APS Code of Conduct.

Further information can be found in the brochures entitled *Review of Actions* and *Review of Breaches of the APS Code of Conduct*.

## **Ethical standards and whistleblowing**

The Commissioner supports the maintenance of a high level of ethical standards in the APS by reviewing decisions relating to breaches of the APS Code of Conduct and through receiving and investigating whistleblower reports.

Under the Act, whistleblowers are APS employees who report allegations of breaches of the APS Code of Conduct by other APS employees.

## **Merit Protection Commissioner's powers**

In most cases, the Merit Protection Commissioner's powers are recommendatory, meaning that he or she, after reviewing or investigating a matter, makes a recommendation on appropriate action to the relevant agency head. An exception to this is promotion reviews, where the Promotion Review Committees, established under the Commissioner's authority, make a decision that is binding on the Agency Head.

The Act provides that where the Commissioner is not satisfied with an agency's response to a recommendation, the Commissioner may, after consulting with the Public Service Minister, give a report on the matter to the agency minister, the Prime Minister and the Parliament.

## **Other functions of the Commissioner**

The Merit Protection Commissioner advises government and agency heads on a range of matters with a view to improving public administration. The Commissioner provides input to reviews of legislation, gives speeches and presentations to research forums and conferences on administrative review and public sector ethics. The Commissioner also provides formal and informal advice and assistance to agency heads, and other statutory officers, with a view to improving agency decision making and the management of merit based employment, review and ethical standards.

## **Support for the Merit Protection Commissioner**

The Merit Protection Commissioner is located in Canberra at the national office of the Australian Public Service Commission. The Commissioner receives assistance in performing his or her functions from staff of the Commission located in offices around Australia. Contact details are provided at the end of this brochure.

## **Annual report**

The Merit Protection Commissioner prepares an annual report which is available on the APS Commission website at the following address: <http://www.apsc.gov.au/annualreport/0607/index.html>.

## **Further information**

Information on the role and functions of the Merit Protection Commissioner is available on the APS Commission website at [www.apsc.gov.au](http://www.apsc.gov.au). If you are an APS employee, you can also contact the Commission office which covers the state or territory in which you work.

The current telephone and facsimile numbers of these offices can be found at the Commission website at [www.apsc.gov.au/contact/index](http://www.apsc.gov.au/contact/index). The email addresses are provided below.

### **Australian Capital Territory**

Email: [mpc.canberra@apsc.gov.au](mailto:mpc.canberra@apsc.gov.au)

### **Victoria and Tasmania**

Email: [mpc.melbourne@apsc.gov.au](mailto:mpc.melbourne@apsc.gov.au)

### **Western Australia**

Email: [mpc.perth@apsc.gov.au](mailto:mpc.perth@apsc.gov.au)

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