

Merit Protection Commissioner

Review of Actions



Australian Government
Australian Public Service
Commission

REVIEW OF ACTIONS

Role of the Merit Protection Commissioner

The Merit Protection Commissioner is an independent statutory office holder established under section 49 of the *Public Service Act 1999* (the Act). Among other functions, the Merit Protection Commissioner conducts reviews of employment-related decisions and other actions affecting individual Australian Public Service (APS) employees.

The Merit Protection Commissioner is assisted by staff of the Australian Public Service Commission.

What actions or decisions are reviewable?

Under section 33 of the Act, APS employees are entitled to review of actions or decisions that relate to their APS employment. These review rights are available to all APS employees with the exception of the Senior Executive Service.

The types of employment matters that are reviewable are not significantly limited by legislation. However the Act and Public Service Regulations exempt certain employment actions from review, including termination of employment.

For further information on the limits on review see Public Service Regulation 5.23 and Schedule 1 to the Regulations.

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

Primary and secondary review

The legislation requires that an APS employee applies to his or her agency head for review in the first instance for the majority of employment-related decisions and actions.

The reviews conducted within agencies are called primary reviews. Applications for primary review are made under Public Service Regulation 5.24.

When an agency receives a valid review application it is required to:

- review the action and attempt to resolve the employee's concern
- advise the employee in writing of the outcome; the reason for the decision; and any action the agency intends to take
- advise the employee of their right of review by the Merit Protection Commissioner.

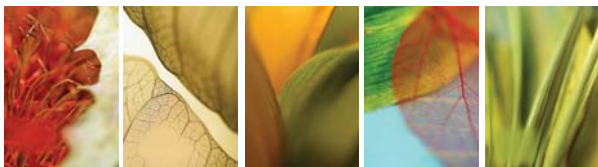
If the employee is dissatisfied with the outcome of the agency's review, or the agency has advised that the matter is not reviewable, the employee may make an application for secondary review to the Merit Protection Commissioner. Applications for secondary review are made under Public Service Regulation 5.29.

Applications for primary review can be made directly to the Merit Protection Commissioner in certain circumstances prescribed in Regulation 5.24. These are:

- for review of a decision that an employee has breached the APS Code of Conduct and/or of the resulting sanction (see the brochure *Review of Breaches of the APS Code of Conduct*)
- if the employee's agency 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 agency head to deal with the review application
- 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 application for review must be made within 12 months of the actions or decision that the employee is seeking to have reviewed. Applications received outside that timeframe will be considered only if there are exceptional circumstances to explain the delay in making the application.



How do you apply for review?

Contact your agency's human resources area for advice on how to make a review application to your agency head or check your agency's intranet.

Applications for primary review by the Merit Protection Commissioner can be made directly to the Commissioner. These should be addressed to the regional office of the Australian Public Service Commission which covers the state or territory in which you work (See Further information).

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

All applications must:

- be made in writing
- state why the review is sought
- if a particular outcome is sought, state the outcome sought.

How will your application for review be handled?

Reviews conducted by the Merit Protection Commissioner 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 Commissioner will acknowledge your application and advise you whether it has been accepted. Then, if papers have not already been received from your agency, 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 agency and by interviewing you and/or other persons. Interviews with a reviewer are done in person either at a Commission office or over the telephone.

While you are welcome to have a person support you throughout the review, you are not able to be represented by another person. If you wish to have someone represent you, you will need to make a formal request to the Merit Protection Commissioner stating your reasons.

In most cases, a review by the Merit Protection Commissioner will address the following issues:

- whether your agency'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
- whether the action or decision under review was appropriate or reasonable in the circumstances of the case.

Outcome of the review

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

When the review is finished you will be advised of the result and the Commissioner's recommendation. If it is concluded the agency has not acted wrongly, the Commissioner will explain to you why that view was reached.

On the other hand, if the Merit Protection Commissioner is satisfied that the decision under review was in some way unreasonable, the Commissioner may recommend that the agency:

- set aside the decision and consider whether the relevant process should be re-done

- vary the decision
- change its procedures
- take some other appropriate action.

An agency cannot be forced to do what the Commissioner recommends. However:

- agencies usually act on the Commissioner's recommendations and are required to give reasons for their decisions
- if the Merit Protection Commissioner is not satisfied with the response, the Commissioner may report the matter to the relevant Minister, the Prime Minister or the Parliament.

What if you are still not satisfied?

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

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.

Further information

Further information is available from the Commission website at www.apsc.gov.au.

The email addresses for the Commission offices are provided below. The current telephone and facsimile numbers of these offices can be found at www.apsc.gov.au/contact/index.

Australian Capital Territory

Email: mpc.canberra@apsc.gov.au

Victoria and Tasmania

Email: mpc.melbourne@apsc.gov.au

Western Australia

Email: mpc.perth@apsc.gov.au

New South Wales

Email: mpc.sydney@apsc.gov.au

Queensland

Email: mpc.brisbane@apsc.gov.au

South Australia and Northern Territory

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