



OPSSC

Office of the
Public Sector Standards
Commissioner

Mr Steven Amendola
Level 39 101 Collins Street
MELBOURNE VIC 3000

Our ref:
Your ref:
Contact:

Dear Mr Amendola

Thank you for the opportunity to meet with you regarding the independent review of the State industrial relations system.

As I mentioned to you, I am a supporter of strong industrial protection. In the case of unfair dismissal or industrial dispute, independent resolution is an important protection.

The issue that I wish to pursue in the context of your review, however, is that of the interface between the responsibility of the employer, and the obligations of the independent arbiter.

Under the Public Sector Management Act 1994, the chief executive officer or chief employee holds responsibility for management of staffing issues. In the case of determination of staff classification, this is the responsibility of the CEO, and is affected by issues such as operational need and agency capacity, and in particular, financial capacity. CEOs are obliged to follow the principles within the PSM Act when determining classifications, and as such, must conduct a proper assessment of situation, exercise no power on the basis of nepotism and patronage, and treat employees fairly and consistently and not subject them to arbitrary or capricious administrative acts. In the event that employees believe that the principles of the Act have been breached, this can be pursued by our own Office, or by the Public Sector Commission.

It is also the case that employees who believe that their classification is unfair can seek intervention by the Industrial Relations Commission. The IR Commission has the power to determine a new classification, eroding the capacity of the chief executive officer, even where the principles of the PSM Act have not been breached.

The effect of this is to reduce the capacity of the CEO, and to place such decisions outside the scope of operational need and agency capacity. One of the dangers in such actions is that there is a potential for flow on effects which create inconsistencies within the agency. When this occurs, determinations of new classifications are made on a case by case basis, rather than within the scope of the business of the agency and its resources.

I note that one of the terms of reference of your review is to "consider the most likely impact of any changes in the State industrial relations system on public sector employment". I would therefore like to suggest that consideration be given to clarifying the demarcation between the power of the chief executive officer and the power of the IRC to overturn decisions made by the chief executive officer, especially where there is no breach of proper process and where the CEO is acting according to operational need.

Yours sincerely

Dr Ruth Shean
COMMISSIONER
PUBLIC SECTOR STANDARDS

14 July 2009