



## ‘Protective’ promotion review applications: What, When, Why and How Tip sheet

Throughout this tip sheet we refer to any APS employee who has successfully been promoted as a ‘promotee’.

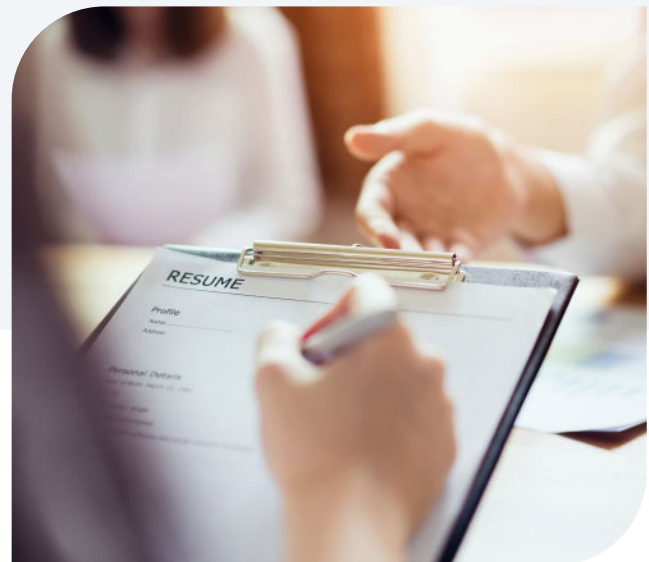
### What is a ‘protective application’?

A ‘protective application’ is a colloquial public service term used to describe a promotion review application made by an APS employee who:

- has been successfully promoted to an APS/PS level 1-6 job in a recruitment action; and
- where more than one APS employee has been promoted to that job (in relation to the same job vacancy in the same location).

### Is a ‘protective promotion review application’ different to a ‘normal’ promotion review application?

No. The Public Service Act and Regulations and the Parliamentary Service Act and Determination provides an **entitlement**<sup>1</sup> for **any** APS employee to seek an independent merits review of a promotion decision to promote another APS/PS employee to a job at the APS/PS 1-6 level that they have applied for.



It is irrelevant to the performance of the promotion review function what your reasons are for making a promotion review application, that is, whether you were unsuccessful or successful in obtaining promotion.

All applications are subject to the same process. Applications are received and assessed by the MPC to ensure they are eligible – if they are, a Promotion Review Committee (PRC) is formed and will conduct a full merits review<sup>2</sup>. The PRC will either uphold the original promotion decision or will recommend it be ‘set aside’ if following its assessment, another applicant was more meritorious than the person originally promoted.

<sup>1</sup> Division 5.2 of the Public Service Regulations 1999 and Division 2 of the Parliamentary Service Determination 2013.

<sup>2</sup> See Public Service Regulations 5.8 And 5.18

## When can a promoted APS employee submit make a promotion review application – also known as a ‘protective application’?

In many recruitment actions, there is only one position in one location being advertised. In this circumstance, only unsuccessful APS applicants for the one position in the one location can submit a promotion review application.

Departments and large agencies often undertake large scale recruitment actions (often referred to as ‘bulk’ rounds) and it is here that promotion review applications often described as ‘protective’ typically arise. In other words, ‘protective’ applications become useful for the promotee(s) where there are **both** unsuccessful and successful applicants appealing the same position and location of multiple individuals who were successful in obtaining a promotion.

A promotion review application (made by an eligible APS employee) must be received by the MPC within 14 days of the promotion notification in the APS Gazette.<sup>3</sup>

### Consider the following example:

Department ABC advertises 20 ongoing APS 5 ‘Business Analyst’ positions across Sydney (5 positions), Melbourne (5 positions) and Canberra (10 positions). All positions are advertised under one vacancy number in this case, VN-1234567.

Mr Joe Smith works in Department ABC and is an ongoing APS 4 – he applies for the APS 5 ‘business analyst’ position in Department ABC under VN-1234567 – in his application he indicates he is applying for a position in either Sydney or Melbourne (but not Canberra).

Joe is successful in being promoted to an APS 5 ‘business analyst’ job in Sydney. As required by the Commissioner’s Directions<sup>4</sup>, Department ABC notifies via the Gazette on a Thursday<sup>5</sup>, Joe’s promotion along with the other 19 APS employee’s promoted in the same round (for VN-1234567).<sup>6</sup> In relation to Joe and the other four promotees in the Sydney location, any APS employee who applied for the same job (i.e. advertised under VN-1234567) AND in the Sydney location can make an application to the Merit Protection Commissioner for promotion review.

In addition to those APS employees who applied and did not get promoted in the Sydney office, Joe and the other four Sydney promotees can also make a promotion review application for the positions in the Sydney office by naming one, more or all four of the other promotees as the promotions for which they seek review. In Joe’s case, because he also applied for the position in the Melbourne location, he can make a promotion review application against the five promotees in that location. It is these applications which are often referred to as ‘protective’ applications.

Joe cannot however, lodge a promotion review application in relation to the Canberra promotees because Joe did not apply for the job (VN-1234567) in the Canberra location.

<sup>3</sup> For APS employees this statutory timeframe is set by Public Service Regulation 5.9 and for PS employees, clause 81 of the Parliamentary Service Determination 2013

<sup>4</sup> The requirement for an APS Department/Agent to notify promotion in the Government Gazette is found in section 20 of the Australian Public Service Commissioner’s Directions 2016

<sup>5</sup> Government convention is for promotion decisions to always be announced or published on a Thursday.

<sup>6</sup> In some cases not all promotions are notified in one Gazette – the Department may roll out promotion notices across for example five different Gazette notices spanning ten weeks. In these circumstances, applicants need to revisit the Gazette each week to check promotions until all announced.

## Why make a promotion review application if you have been promoted and what is achieved by doing so?

If you are an APS employee who has been promoted and are considering making a promotion review application, it is important to understand what an application can and cannot do for you.

Sometimes APS employees, whose promotions have recently been notified in the APS Gazette, tell MPC staff that they have been told by a colleague or HR to make a 'protective promotion review application' because it will 'protect their promotion'. The colloquial term is often misunderstood resulting in a promoted employee falsely believing that by making a promotion review application they can either:

- stop or block other APS employee's application for review of their promotion; or
- stop or halt the formation of a Promotion Review Committee to consider their promotion.

Neither is true.

There is only one scenario where making a promotion review application may be beneficial for a promotee. In this scenario two separate promotion reviews will take place. The scenario is as follows:

- You have been successfully promoted and you have made an eligible promotion review application (a 'protective' application) against one or more other successful promotees.
- One or more unsuccessful APS employees have made eligible promotion review applications against your promotion.
- A promotion review committee has been formed and completed their merits review of your promotion. That committee has recommended on the basis of merit that another person be promoted instead of you (your promotion is then set aside and your 'protective' application is considered an application from an employee who has been unsuccessful in being promoted).

- Because your promotion has been set aside, a promotion review committee has then conducted a merits review of your 'protective' application against the other promotees you identified in your application.
- That promotion review committee has recommended on the basis of merit that you be promoted instead of one of the other promotees.

In 2018–19, none of these 'protective' applications proceeded to review, either because no unsuccessful applicants from the same selection exercise sought review of their promotion, or there was a review and the PRC upheld their promotion.

The majority of past PRC's have upheld the original promotion decision. This indicates that in almost all of these selection exercises, the most meritorious candidates are being promoted. In 2018-19 PRC's varied only two (0.51%) of the 392 promotion decisions reviewed that financial year. This is similar to the percentage of promotion decisions varied in 2017–18 (0.37%) and in 2016–17 (0.49%).<sup>7</sup>

## Should you wait to see if someone has applied for review of your promotion before putting in a review application?

No. All applications for review application must be made within 14 days of the promotions being gazetted. This means, if you wait to see if another person has applied to review your promotion, you will be out of time to make an application.

The question as to whether you should make an application can only be answered by you. Some promotees do not feel the need to make a 'protective' application, others do if they think there is a chance that their promotion will attract a review application.

<sup>7</sup> Information can be found in the [Merit Protection Commissioner's Annual Reports](#).

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## How to make an eligible promotion review application if you are a promotee?

The timeframe to make an application for promotion review is within 14 days of the promotion(s) being advertised in the relevant gazette.

To be eligible to make a promotion review application:

- you must be an ongoing APS employee; and
- you must have applied for an APS 1-6 (or at equivalent level) position; and
- it must be a promotion (one or more level up from your substantive position); and
- another ongoing APS employee has been promoted to the same job vacancy in the same location(s) you applied for
- the promotion cannot be the result from an independent selection advisory committee's recommendation or from a promotion review committee decision.

If your application is being made within the 14 days timeframe and you can tick all of the above boxes, then proceed to our standard online form for promotion review applications.

Further information on how to make a promotion review application is available on the [MPC website](#).