

Philp, Alex

From: Philp, Alex
Sent: Friday, 26 February 2021 2:36 PM
To: 'Tarnawsky, Jo'
Cc: s 47F; s 47F; Rush, Peter; s 47F
Subject: RE: Andrew Singh - My application of 18/1/21 seeking ombudsman's suspension [SEC=OFFICIAL]

OFFICIAL

Hi Jo

Thanks for your email and yes it was very nice to be at Govt House last week for that meeting.

I will consult my colleagues about the issues raised in your email and will respond to you more fully next week.

Warm regards
Alex Philp

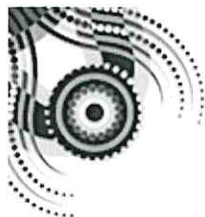
Alex Philp | Senior Adviser

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PO Box 6500 CANBERRA ACT 2600



The Department acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters and community. We pay our respect to their Cultures, Country and Elders both past and present.

s 22

Philp, Alex

From: Philp, Alex
Sent: Monday, 15 March 2021 9:25 AM
To: 'Tarnawsky, Jo'
Cc: s 47F; s 47F; Rush, Peter; s 47F
Subject: RE: Andrew Singh - My application of 18/1/21 seeking ombudsman's suspension [SEC=OFFICIAL]

OFFICIAL

Hi Jo

Apologies for the delay, we have given this one some thought and can offer the following.

We suggest referring to the Federal Executive Council Handbook as it goes some way to describe the role of the Governor-General, and may be a useful public document and context to provide to Mr Singh to reinforce your original advice.

For your consideration, I have prepared some standard words (based on the ExCo Handbook) below which are proposed to be included in a response to Mr Singh:

The Governor-General exercises the executive power of the Commonwealth under section 61 of the Constitution of the Commonwealth of Australia. Since Federation it has been an established principle that the Governor-General, in exercising the powers and functions of the office, should only do so with the advice of their Ministers of State. This principle is reinforced under section 62 of the Constitution, which establishes the Federal Executive Council to 'advise the Governor-General in the government of the Commonwealth'. In this regard, the powers exercised by the Governor-General on the advice of the Executive Council are referred to as those of the 'Governor General in Council'. This arrangement is reinforced by the *Acts Interpretation Act 1901*, s16A which states that "Where, in an Act, the Governor-General is referred to, the reference...shall be read as referring to the Governor-General...acting with the advice of the Executive Council."

Powers exercisable by the Governor-General in Council under the Constitution or, more commonly under Acts of Parliament, include the making and terminating of appointments to statutory offices, boards, commissions, courts and tribunals and diplomatic posts. Consistent with our previous advice, these powers are always exercised by the Governor-General in Council, in practice meaning on the advice of the Government via the Executive Council. While the Governor-General presides over meetings of the Executive Council they are not a member of the Council, noting that it would not be consistent with section 62 of the Constitution for them to exercise their powers without the advice of, the Government, meaning the Executive Council.

It is for these reasons that a decision to suspend the Ombudsmen cannot be taken unilaterally by the Governor-General but rather, must be done "in Council", meaning that this must be a decision taken by the Federal Executive Council.

Further information on the role and operations of the Federal Executive Council is available via the Handbook, available from the Department of the Prime Minister and Cabinet website: [Federal Executive Council Handbook 2019 | Department of the Prime Minister and Cabinet \(pmc.gov.au\)](https://www.pmc.gov.au/federal-executive-council-handbook-2019)

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In terms of a PM&C contact, you can refer Mr

Singh to myself, A/g Assistant Secretary, Parliamentary and Government Branch.

Very happy to discuss further should you have any questions.

Thanks,
Alex Philp

Alex Philp | A/g Assistant Secretary

Parliamentary and Government Branch | Department of the Prime Minister and Cabinet

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