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Exhibit number: 61

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WHEN TELEPHONING OR  
CALLING PLEASE ASK FOR

Ref. Mr. Campbell  
A3. 8210 A.280/89  
RWC:LW



Solicitor General,  
State Law Building,  
50 Ann Street,  
Brisbane, Queensland. 4000.

30th June, 1989.

Director-General,  
Department of Family Services,  
G.P.O. Box 806,  
BRISBANE, Q. 4001.

Dear Sir,

Re: The requirements of Regulations 46, 63 and 65  
of the Public Service Management and  
Employment Regulations 1988

I refer to your letter dated 20th June concerning aspects of grievance and departmental filing procedures under the abovementioned Regulations. Regulation 46 provides:-

"A report ... concerning the performance of an officer which could reasonably be considered to be detrimental to the interests of that officer, shall not be placed on any official files or records relating to that officer unless ... initialled ... and ... provided with-

- (a) a copy ...;
- (b) the opportunity to respond ...".

Regulation 63 provides :-

- "(1) Any officer may submit a grievance to the chief executive ....
- (2) The chief executive shall ensure that -
  - (a) .... opportunity to present all aspects of the grievance;
  - (b) investigated in a thorough, fair and impartial manner ....
- (3) The chief executive may appoint an officer to investigate the grievance. The investigating officer shall prepare a report ....

- (4) The chief executive shall advise .... of the determination made ...."

Regulation 65 provides :-

".... an officer shall be permitted to peruse any departmental file or record held on the officer ...."

You requested legal opinion in relation to aspects arising from Regulations 46, 63 and 65.

(i) Should reports prepared under Regulation 63(3) be placed on the officer's file?

Given that each matter will, substantially, turn on its individual fact situation, it is not possible to provide an absolute and definitive advice to this question. However, commonsense and good administrative practice would seem to indicate that such reports, whether favourable or detrimental, should be placed on official files or records. In the event that such a report is detrimental, the requirements of Regulation 46 must be complied with.

The concern that you express about the lodgement of further grievance matters would not appear to be well-based and, in any event, may be dealt with by the Chief Executive opining the grievance to be of a frivolous or vexatious nature.

The option to keep a record of material derived from grievance investigations in a confidential policy file separate from personnel files would not seem to be an advisable or a practicable solution. Simply, a separate confidential policy file is an official file and may well contain material detrimental to an officer. This being so, the adoption of a system of confidential grievance files to run parallel to the system of official files would seem to be an exercise in artificiality and administrative duplication.

(ii) Would a confidential policy file constitute a "departmental file or record held on the officer" under Regulation 65?

Yes, especially in the event that such confidential policy file contains material detrimental to the officer.

(iii) Would it be necessary to supply an officer with a copy of material on a confidential policy file as required by Regulation 65?

Yes.

(iv) Would it be necessary to afford an officer the opportunity to respond to material on a confidential policy file?

Yes. The terms of Regulation 46 in relation to material "which could reasonably be considered to be detrimental to the interests of the officer" are unequivocal and mandatory.

Yours faithfully,

(K.M. O'Shea)  
Acting Solicitor General.