



Australian Government
Merit Protection Commissioner



MERIT
PROTECTION
COMMISSIONER

Annual Report 2021–22





Australian Government
Merit Protection Commissioner



MERIT
PROTECTION
COMMISSIONER

Senator the Hon Katy Gallagher
Minister for Finance, Minister for the Public Service, Minister for Women
Parliament House
Canberra ACT 2600

Dear Minister

I am pleased to present the Merit Protection Commissioner Annual Report for the reporting period ending 30 June 2022. As required by section 51 of the *Public Service Act 1999*, my report deals with the activities of the Merit Protection Commissioner and is included in the Australian Public Service Commissioner's Annual Report.

In preparing this report, I have taken into account those requirements relevant to my role as a statutory office holder contained in *Annual reports for non-corporate Commonwealth entities: Resource Management Guide No. 135*, issued by the Department of Finance in April 2022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Linda Waugh'.

Linda Waugh
Merit Protection Commissioner
19 October 2022

Contents

Merit Protection Commissioner's foreword	119
At a glance	123
1. Overview	124
About us	125
Our vision	125
Our purpose	125
Our staff and structure	126
Our Minister	127
Our legislation and statutory functions	127
Reviews of actions	128
Review of involuntary retirement decisions for Australian Federal Police employees	129
Complaints and inquiries	129
Employer services	130
2. Performance in reviewing APS actions	131
Year-end totals for all reviews of actions	132
Trends in application numbers	132
Contact with us	133
Review of promotion decisions	134
The APS Merit principle and the value of promotion reviews	135
About promotion reviews	136
Applications received for reviews of promotion decisions	139
Promotion review cases	141
Outcomes of reviews of promotion decisions	143
Drivers behind increased overturn of promotion decisions	143
Timeliness of reviews of promotion decisions	147
Contact with us about promotion reviews	147
Review of workplace decisions	149
About review of workplace decisions	150
Applications received for reviews of workplace decisions	153
Outcomes of reviews of workplace decisions	159
Timeliness of reviews of workplace decisions	163
MPC direct reviews of workplace decisions	165
MPC secondary reviews of workplace decisions	171
Contact with us about reviews of workplace decisions	173

3. Performance of other statutory functions	175
Reviews of involuntary retirement decisions for Australian Federal Police employees	176
Complaints and inquiries	176
Complaints about final entitlements	176
Inquiries	177
Employer services	178
4. Engagement, projects and accountability	179
Engagement	180
Stakeholder meetings	181
Tip sheets and video explainers	182
Case summaries	183
Feedback on agency policy and procedures	183
Review of Actions and Code of Conduct Community of Practice	183
Surveys and feedback from applicants and agencies	184
Website and website visits	186
Projects	187
Reach Out strategy	187
Promotion Review Committee and Independent Selection Advisory Committee convenor conferences	188
Pilot of an improved application process for promotion reviews	188
Implementation of an application management system for promotion reviews	189
Accountability	189
Financial arrangements and corporate support	189
Staffing and office locations	190
Interaction with the Australian Public Service Commissioner	190
Business planning and risk management	191
Freedom of information and privacy	191
Judicial review and other court decisions	191
Information Publication Scheme	191
5. The year ahead	192
Our key priorities	193
Engaging with and supporting our stakeholders	193
Delivering new services and resources	193
Improving the way we work	194
Appendices	195
Appendix A: The Merit Protection Commissioner's statutory functions	196
Appendix B: Data tables for statutory functions	198
Review of promotion decisions	198
Review of workplace decisions and complaints	199

List of figures and tables

List of figures

Figure 1: Organisational structure	126
Figure 2: Review of Actions scheme, types of actions	128
Figure 3: Total applications for a review of a promotion decision, over a five-year period	132
Figure 4: Total applications for a review of a workplace decision, over a five-year period	133
Figure 5: Number of contacts with our office over a three-year period	134
Figure 6: Stages of a promotion review	137
Figure 7: Total applications for a review of a promotion, by month, over a three-year period	140
Figure 8: Promotion review workload by agency, 2021–22	142
Figure 9: Number of overturned promotion decisions, over a five-year period	143
Key figures from Services Australia recruitment and promotion reviews	144
Figure 10: Percentage of promotion reviews completed within eight or 12 weeks, over a five-year period	147
Figure 11: Promotion review telephone enquiries by month	148
Figure 12: Flowchart of the life cycle of a review of a workplace decision	152
Figure 13: Workplace decision review applications received and outcomes over a 10-year period	154
Figure 14: Reasons workplace decision review applications were not accepted, 2021–22	155
Figure 15: Number of workplace decision review applications finalised, by agency and review category, 2021–22	158
Figure 16: Percentage of agency workplace decisions set aside/varied or upheld, over a 10-year period	160
Figure 17: Percentage of reviews of workplace decisions completed within 14 weeks, over a five-year period	163
Figure 18: Number of weeks taken to complete reviews of workplace decisions	164
Figure 19: Code of Conduct matters as a proportion of total workplace decisions reviews, 2017–18 to 2021–22	167
Figure 20: Reviews of Code of Conduct decisions, by issue	169
Figure 21: MPC secondary reviews, by issue	171
Figure 22: Number of telephone enquiries about reviews of workplace decisions, by month, 2021–22	174

List of tables

Table 1:	Eligible promotion review applications received, by successful and unsuccessful applicants, 2021–22 to 2021–22	140
Table 2:	Outcomes of applications for a promotion review	141
Table 3:	Status of promotion review cases	141
Table 4:	Workplace decision review applications received and finalised, and the number of agencies involved, 2020–21 to 2021–22	153
Table 5:	Total workplace decision review applications, by agency and agency size, 2021–22	158
Table 6:	Percentage of workplace agency decisions set aside or varied, 2018–19 to 2021–22	159
Table B.1	Status of promotion review cases 2021–22, compared with 2020–21	198
Table B.2	Promotion reviews, by agency, 2021–22	198
Table B.3	Review and complaints workload, 2021–22 compared with 2020–21	199
Table B.4	Timeliness in handling reviews and complaints, 2021–22 compared with 2020–21	200
Table B.5	Applications for reviews and complaints completed, by agency, 2021–22	201
Table B.6	Subject matter of reviewed cases (other than Code of Conduct), 2021–22	201
Table B.7	Subject matter of Code of Conduct reviews completed, 2021–22	202

Merit Protection Commissioner's foreword



Each year, I am pleased to reflect on the achievements of my office and report to our stakeholders on our efforts to build an Australian Public Service (APS) that is underpinned by principles of merit, accountability and transparency. The core statutory function of the office of the Merit Protection Commissioner (MPC)—conducting independent reviews of employment-related actions and decisions—serves two key objectives. The first is to ensure that no employee is subject to an unfair or wrong action or decision. The second is to ensure that the APS continues to be a career-based organisation that makes fair employment decisions and provides flexible, safe and rewarding workplaces.

Our work towards those two objectives is both reactionary and proactive.

In the case of our review work, it's reactionary. We receive an application for review, we conduct a merits review and we take action to remedy any errors or mistakes. Though we may provide feedback to the agency about a particular procedure or practice, this part of our work—consistent with our legislation—is largely concerned with the merits of the individual action or decision.

The proactive part of our work is in identifying trends across all our reviews and using that analysis to help mitigate systemic and emerging risks to public sector employment practices. We provide resources and training to our stakeholders to help them develop equitable policies and systems. We also identify and implement new initiatives designed to improve our own functions and workplace performance.

Our legislation mandates that we must always prioritise our review work. This year, we received 996 applications under the Review of Actions scheme, compared to 746 last year. This change was driven by applications for reviews of promotion decisions, which increased by 50% from last year. Comparatively, applications for reviews of workplace decisions decreased by 24%. In total we conducted 323 merits reviews and met our timeliness targets.

One important review function that saw increased utility in 2021–22 was for promotion reviews. Limited to promotions up to APS 6 level, this function allows an APS employee to seek an independent merits review of a promotion they applied for and missed out on. It can only be exercised when another APS employee won the role, and the review is solely to

assess who had the most merit for the advertised job. This type of review was designed to assure staff and senior leaders that merit forms the basis of APS promotions, and to prevent nepotism and cronyism. This year our office discovered that the scheme can also detect unintentional issues with the application of the merit principle in newly designed selection processes. This led to a number of recruitment decisions being overturned.

In 2021–22, Promotion Review Committees (PRCs) overturned 4.46% of promotion decisions reviewed. This was significantly higher than the 0.66% in the preceding year. Overall, 12 promotion decisions were overturned. Of these, 11 were from one recruitment action where PRCs reviewed 115 of 747 promotion decisions. This was a large-scale 'bulk round' of recruitment, recruiting for multiple roles across different locations at the APS 5 and 6 levels. Outsourced to a recruitment specialist, this was a new and completely online recruitment model. The process used artificial intelligence–assisted (AI-assisted) and automated selection techniques and included psychometric testing, questionnaires and self-recorded video responses.

The number of overturns from this recruitment action indicated that the selection process did not always meet the key objective of selecting the most meritorious candidates. After several meetings with the agency concerned, the agency undertook a comprehensive review of its recruitment processes. This resulted in changes to ensure that the principle of merit will underpin the selection process for future bulk-round recruitment actions.

Operating in an increasingly tight and competitive labour market, APS agencies are looking to explore and embrace innovative recruitment practices that are more efficient and effective than traditional recruitment approaches. However, agencies must understand the risks involved—particularly to the merit principle—in these new approaches. Our office wants to ensure there are resources available to help agencies manage these risks.

Aligning with this goal, in 2021–22 we sponsored a major project by Australian Public Service Commission (APSC) graduates to research AI-assisted and automated selection assessment techniques and their use in the APS. One key objective of this project is to develop guidance materials to help agencies achieve successful and meritorious recruitment outcomes using the AI-assisted and automated selection techniques. We will report on the project's outcomes in 2022–23.

Unlike applications for promotion reviews, which have increased, the number of applications for reviews of workplace decisions declined. While the number of applications for these types of reviews have fluctuated over the past 10 years, they dropped since the start of the COVID-19 pandemic. In 2019–20, we had 195 applications, and in 2020–21 there were 177. This year, in addition to 19 applications carried over from the previous year, we had 130 applications. Compared to the 98 applications that proceeded to full merits reviews last year, this year only 54 applications proceeded. Although it is not possible to reach a definitive conclusion on the cause of this change, the timing suggests that employees may have had other priorities during the past two extraordinary years.

The number of workplace decisions we have set aside has also seen a corresponding reduction, from 30% in 2020–21 to 20% this year. Interestingly, this change arises from secondary reviews of actions, where the set-aside/vary rate dropped from 32% to 10% this year. Consistent with previous years, the set-aside/vary rate for reviews of Code of Conduct decisions remains at about 30%. The reduction in the number of decisions for secondary reviews that were set aside or varied shows that agency and MPC reviews of the same action or decision are increasingly reaching the same conclusion. This indicates either a potential improvement in agency review capability or that this reduction may be caused by the type of issue under review.

For the first time in my term, most secondary review applications related to flexible working arrangements—a historically small category of secondary review. There can be no doubt that this change results from the COVID-19 pandemic, which has brought about a seismic shift in the way we work through increased uptake of hybrid and fully remote working arrangements. Where it suits, many APS agencies have introduced hybrid working arrangements as the ‘norm’. For other agencies, this transition is challenged by the nature of operations or limits to the technology available to support effective home-based work.

With fewer reviews of workplace decisions in 2021–22, we were better able to prioritise our proactive work. This year, we saw a 100% increase in stakeholder engagement, from 56 contacts last year to 112 this year. This comprised 80 stakeholder meetings and 32 presentations. We delivered monthly webinars detailing the available review entitlements for APS employees and we developed four short, engaging and informative video resources detailing different aspects of the entitlements scheme for employees. We also launched our new website in September 2021. Finally, this year, we delivered on several significant projects that had been on hold or delayed since before 2022. For an office with 12 ongoing staff members and a small group of casual employees, the management of this workload and the completion of major projects in 2021–22 was an outstanding achievement.

During my term as Commissioner I have been committed to promoting the importance of merit. Merit should not only be viewed as applying to recruitment. It should be the underpinning basis of all government decision-making, including decisions relating to our most valuable asset: our APS employees. The Review of Actions scheme, which concerns merit and its application in both recruitment and employment-related decision-making, can only be successful if:

- employees are aware of the scheme and know what their entitlements are
- employers communicate information about the scheme in their workplaces on a regular basis
- employers support employees who use the scheme
- employees and employers alike see worth in the scheme in ensuring that the APS operates as a career-based organisation that makes fair employment decisions with a fair system of review.

One particular challenge during my term has been to persuade APS agencies of the value of the Review of Actions scheme and its potential to contribute to strong institutional integrity and positive organisational culture. This challenge has been a central focus of our work over the past 18 months. We have met it by increasing engagement with our key stakeholders, delivering more resources to both employees and agencies, providing more training and information sessions, and enhancing our website. Though this work has been successful and well received, there is much more work to be done, both by the MPC and APS agencies.

Public Service Regulation 3.16—which requires each APS employee to inform themselves about the *Public Service Act 1999*, the Public Service Regulations 1999 and the Australian Public Service Commissioner's Directions 2022—places the sole obligation on the employee to read the employment framework to find out about their review entitlements. In my view, the onus should be placed on the employer to inform employees. I consider it incumbent on each agency, as a model employer, to inform employees about their review entitlements and the mechanisms used to resolve workplace disputes.

This year had many challenges. At different points we were either understaffed or had multiple, relatively new employees trying to learn their roles and office processes. We went through lockdowns and staff absences due to COVID-19 and for other reasons. Yet, despite it all, our staff members continued to deliver timely and high-quality work, seeing us through some of the biggest projects we have undertaken since I became Commissioner. I thank each one of them for their commitment to the principles of accountability, transparency and integrity, and for their hard work this year. The achievements of 2021–22 really belong to them.

I also wish to acknowledge the tremendous support provided by APSC staff members to ensure the effective operation of my office.

Finally, as this is my last annual report as Merit Protection Commissioner, I wish to acknowledge and thank my former and current staff for their incredible commitment and dedication to the work we do. I also wish to acknowledge the senior officers and leaders across the APS with whom I have had the pleasure of working throughout my term. I thank them for the support they have given my office throughout the past four years.



Linda Waugh

Merit Protection Commissioner

At a glance

At a glance



12 staff and Merit Protection Commissioner



112 stakeholder engagement opportunities



146,979 unique web page visits



1,546 contacts with our office

996 applications under the Review of Actions scheme

130 applications for review of workplace decisions

Top 4 agencies

- Services Australia **45**
- Department of Home Affairs **12**
- Australian Taxation Office **12**
- Department of Defence **10**



866 applications for review of a promotion

269 promotion decisions subject to review

Top 4 agencies

- Services Australia **354**
- Australian Taxation Office **332**
- Department of Home Affairs **113**
- Australian Bureau of Statistics **26**

Review of workplace decisions

20.37%

of decisions varied or set aside



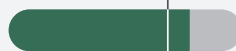
Review of promotion decisions

4.46%

of decisions set aside



TARGET



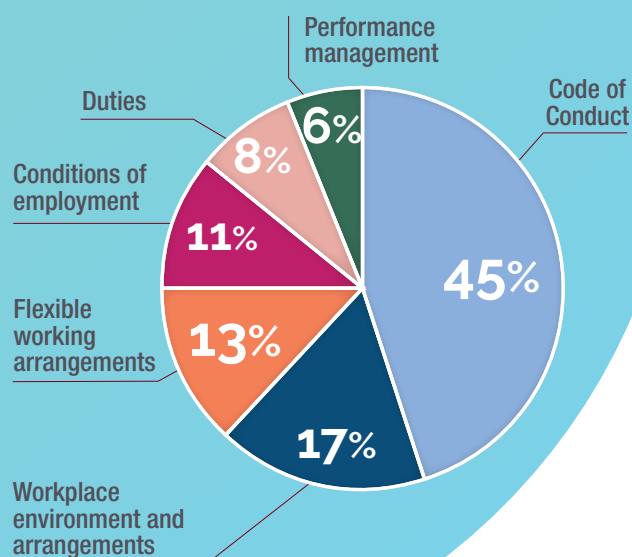
80% of review of workplace decisions completed within 14 weeks

TARGET



83% of promotion reviews completed within 8 weeks (or 12 weeks if more than 10 parties)

Reviews by subject



Overview

1

About us

The Merit Protection Commissioner (MPC) is an independent statutory office holder established under Part 6 of the *Public Service Act 1999* to perform a range of functions for the Australian Public Service (APS). Those functions are concerned with the implementation of, and compliance with, the APS employment framework and principles. This is done principally through reviews of workplace decisions affecting APS employees and through promotion reviews. The MPC also has a range of other complaint and inquiry functions and can provide recruitment and employment-related services to employers.

Ms Linda Waugh is the current MPC and was appointed on 25 June 2018. The staff of the office of the MPC are employees of the Australian Public Service Commission (APSC). Under section 49(2) of the Public Service Act, the staff necessary to assist the MPC must be made available by the Australian Public Service Commissioner and be people engaged under that Act. The APSC provides all corporate support, information systems and services to the MPC. The MPC is co-located with the APSC in its Canberra and Sydney offices.

Ms Waugh is also the Parliamentary Service Merit Protection Commissioner. The duties and functions of this role for Parliamentary Service employees mirror those under the Public Service Act, and are the subject of a separate annual report.

Our vision

To be a centre of expertise providing independent, impartial and professional advice and services in relation to people management and workplace issues, and to contribute to the continual improvement of the integrity and performance of the APS.

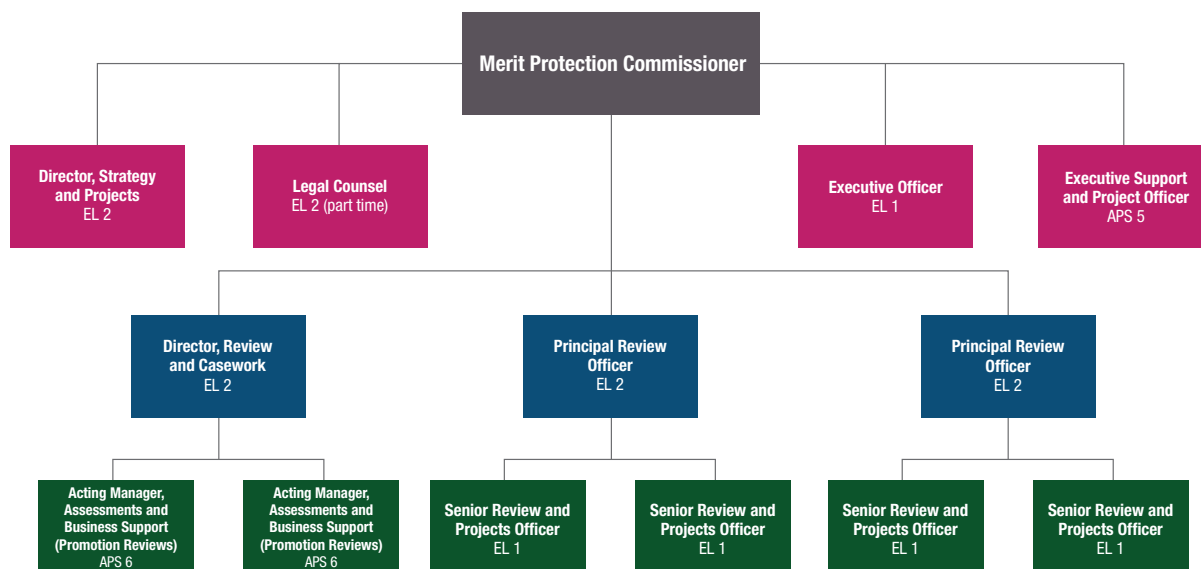
Our purpose

To provide a fair system of review of APS employment actions that is efficient, timely and informal, and that contributes to productive, safe and harmonious workplaces.

To support effective and fair employment, management and leadership throughout the APS by upholding and implementing the APS Values, Employment Principles and Code of Conduct.

Our staff and structure

Figure 1: Organisational structure



We operate with an average staffing level (ASL) of 12.7. We use an organisational structure that best supports the performance of our statutory functions, having regard to where the bulk of work is done.

The organisational structure includes a non-ongoing part-time legal counsel, engaged in May 2021 for a 12-month pilot. This role was introduced by agreement with the Australian Public Service Commissioner, recognising that there were clear business needs for the MPC to have independent legal counsel. The pilot was to ascertain the level of legal work required and whether an in-house legal counsel was the right solution to meet the legal needs of the MPC. The pilot showed the legal support and work required supported a full-time role, and that an in-house legal counsel was justified. In March 2022, we submitted a business case to the Australian Public Service Commissioner recommending the establishment of a full-time ongoing position of MPC Legal Counsel within the office of the MPC. The recommendation was accepted in April 2022, and we commenced recruitment to fill the new Legal Counsel position in 2022–23. This means from next year the MPC's ASL will increase to 13.7.

It should also be noted that one of the Principal Review Officers is on secondment and fully funded by the Department of Defence until June 2023. This position is not included in the MPC budget or ASL.

The following resources were engaged during 2021–22 to support the performance of the MPC office on a non-ongoing or labour hire basis and are not reflected in the organisational structure above.

- The MPC engaged a non-ongoing Executive Level 1 communications specialist to develop our communications strategy and to lead our key communications projects. This role was for a seven-month period, spanning May 2021 to December 2021. Following this, communications support and strategy reverted to the APSC communications team.
- In March 2022, the MPC established a labour hire position to assist with a surge in promotion review work. The original engagement was for a four-month period and was extended in June 2022 for a further three months, to September 2022.
- In May 2022, the MPC, in conjunction with the APSC's Enabling Services, established a labour hire position on a cost-sharing basis to assist with office and property administration for the APSC's Sydney office and with some administrative support to the office of the MPC.

We maintain a pool of skilled casual employees who are engaged as needed. The casual pool is used when there is a surge in review applications and casework, during periods of staff absence, and to undertake specific activities. These include convening a Promotion Review Committee (PRC), sitting on an Independent Selection Advisory Committee (ISAC) or conducting a Code of Conduct investigation. We currently have 14 casual employees.

Our Minister

The Minister is Senator the Hon Katy Gallagher, Minister for Finance, Minister for the Public Service, Minister for Women.

Our legislation and statutory functions

The MPC's statutory functions are set out under Part 6 of the Public Service Act and Parts 4, 5 and 7 of the Public Service Regulations 1999 (the Public Service Regulations). Additionally, the MPC has a specialised review function for the Australian Federal Police (AFP), which is set out in the *Australian Federal Police Act 1979* (AFP Act) and the Australian Federal Police Regulations 2018 (AFP Regulations).

The specific statutory authorities for each of the MPC's functions are set out in a table at Appendix A. The following sections provide a summary of each of our statutory functions.

Reviews of actions

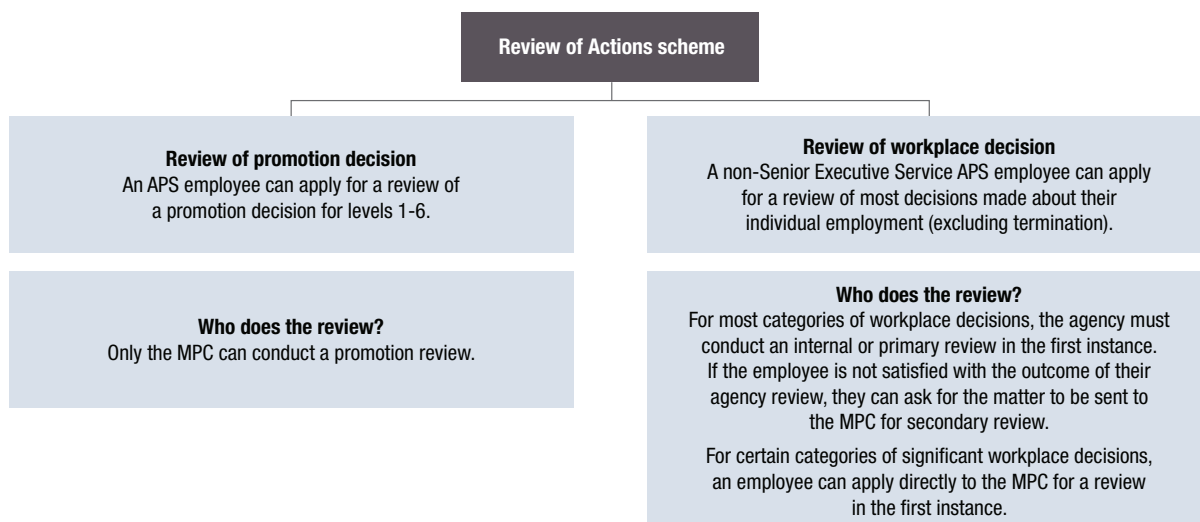
Section 33 of the Public Service Act gives APS employees an entitlement to seek a review of an action or decision that relates to their employment (excluding decisions to terminate).

Our reviews are independent, fair and merit-based, and are conducted in accordance with the Australian Government's general policy about reviews, contained in the Public Service Regulations. The general policy states the following:

- APS agencies should achieve and maintain workplaces that encourage productive and harmonious working environments.
- There should be a fair system of review of APS actions.
- An APS employee's concerns should be dealt with quickly, impartially and fairly.
- The review process should be consistent with the use of alternative dispute resolution methods to reach satisfactory outcomes, where appropriate.
- Nothing should prevent an application for a review from being resolved by conciliation or other means at any time before the review process is completed.

The Review of Actions scheme is concerned with two types of actions that may be reviewed by the APS agency or the MPC (as shown in Figure 2).

Figure 2: Review of Actions scheme, types of actions



The outcome of a review of a promotion decision is binding and must be accepted by the agency. Promotion reviews are concerned only with merit—that is, to assess the merits of the applicants and the person promoted, and determine which employee is most meritorious for the role. The review does not consider the process or whether there were faults or disagreements with the original recruitment process. Promotion reviews are only available for promotions up to APS Level 6 and have strict eligibility criteria, which are discussed in the following chapter.

Unlike promotion reviews, a review of a workplace decision has a recommendatory outcome. This type of review examines compliance with law, case law, industrial instruments, policy and procedures, and considers whether the decision is the preferred or correct one. The MPC can recommend that the decision be confirmed, varied or set aside. This part of the scheme is two-tiered in that certain decisions must be first reviewed by the agency (for example, rejection of a leave application) before they can come to the MPC. Others that are significant for the employee (for example, a finding that an employee has breached the APS Code of Conduct) can come directly to the MPC. We review a range of different workplace decisions that relate to an APS employee's employment. The timeframes and eligibility criteria to seek a review depend on the seriousness and complexity of the matter and on the individual circumstances of the applicant. More information about review of workplace decisions is set out in the following chapter.

Review of involuntary retirement decisions for Australian Federal Police employees

The MPC can review certain decisions taken by the Australian Federal Police Commissioner to compulsorily retire APS employees on invalidity grounds, because of physical or mental incapacity. This review scheme is set out in sections 32 and 33 of the AFP Act and in the AFP Regulations. It applies to all AFP employees, including sworn officers and civilian staff, where the AFP employee has not consented to the compulsory retirement.

Our role is to make sure the retirement decision is the correct and preferable decision in the circumstances.

Complaints and inquiries

The MPC can accept complaints and conduct inquiries and investigations under certain circumstances.

A former APS employee can make a complaint about the calculation of final entitlements on separation from the APS. These complaints often relate to payments made for leave accrued but not taken, delays in receiving final payments, or whether the agency has provided adequate information to assist the employee to understand the calculation of their final payment. The MPC can investigate these complaints if it cannot be otherwise resolved.

The MPC can conduct an inquiry into:

- a public interest disclosure that relates to an alleged breach of the Code of Conduct in accordance with the *Public Interest Disclosure Act 2013*
- an alleged breach of the Code of Conduct by the Australian Public Service Commissioner
- an APS action, but only at the request of the Minister for the Public Service
- whether an APS employee, or former employee, has engaged in conduct that may have breached the Code of Conduct, but only at the request of an agency, and if the employee agrees.

Employer services

We can assist employers by providing a range of recruitment and employment services. These services can assist an employer to make high-quality and timely recruitment decisions or to effectively manage allegations of misconduct or workplace disputes. These services are provided on a cost recovery basis. The following are the key services the MPC can provide to employers.

Independent Selection Advisory Committees

We can provide APS agencies with an ISAC, which is where the MPC conducts an entire recruitment and selection process on behalf of an APS agency.

The establishment of an ISAC is made under the Public Service Act and is independent, merit-based and cost-effective. It is a useful option for specialised recruitments, for smaller agencies, or for large or sensitive recruitment processes where confidence in the process, time management or impartiality is a critical factor. An ISAC can only be established for recruitments for positions up to APS Level 6.

A unique feature of an ISAC is that any resulting promotion decision is not subject to a promotion review under the Review of Actions scheme.

Recruitment services

The MPC can provide specialised recruitment services to APS and non-APS Commonwealth entities, and state and territory agencies and departments. Our services include highly skilled and independent convenors or committee members who can assist to make sure the recruitment process is merit-based and compliant with all legislative requirements. We also provide some limited scribing services.

Workplace investigations and merits reviews of workplace decisions

A core function of the MPC is to conduct independent merits reviews of workplace decisions or actions for the APS. On request, we can provide these services, as well as workplace investigation services, to non-APS agencies, non-APS Commonwealth entities, and state and territory agencies and departments.

Performance in reviewing APS actions

2

Year-end totals for all reviews of actions

During 2021–22, the Merit Protection Commissioner (MPC) received 996 applications from Australian Public Service (APS) employees seeking a review of a workplace decision that had affected their employment, or a review of a promotion decision.

Of the 996 applicants:

- 866 applied for a review of a promotion decision
- 31 applied for an MPC direct review of a determination that they had breached the APS Code of Conduct and/or the subsequent sanction decision
- 30 applied for an MPC direct review of a workplace decision on the basis that it was not appropriate for the agency to conduct a primary review
- 69 applied for a secondary review of a workplace decision that had already been subject to their APS agency's primary review.

Trends in application numbers

Figure 3 shows the number of applications for a review of a promotion decision over a five-year period. Every year, the number of applications we receive for a review of a promotion decision varies considerably. This trend can also be seen in Figure 7, later in this chapter, which has a further breakdown of application numbers by month over three years. The number of applications received was higher this year than in 2020–21 (an increase of 290 applications). This increase is largely due to the volume and scale of a recruitment round undertaken by a large APS agency. We discuss this recruitment activity and its outcomes later in this chapter.

Figure 3: Total applications for a review of a promotion decision, over a five-year period

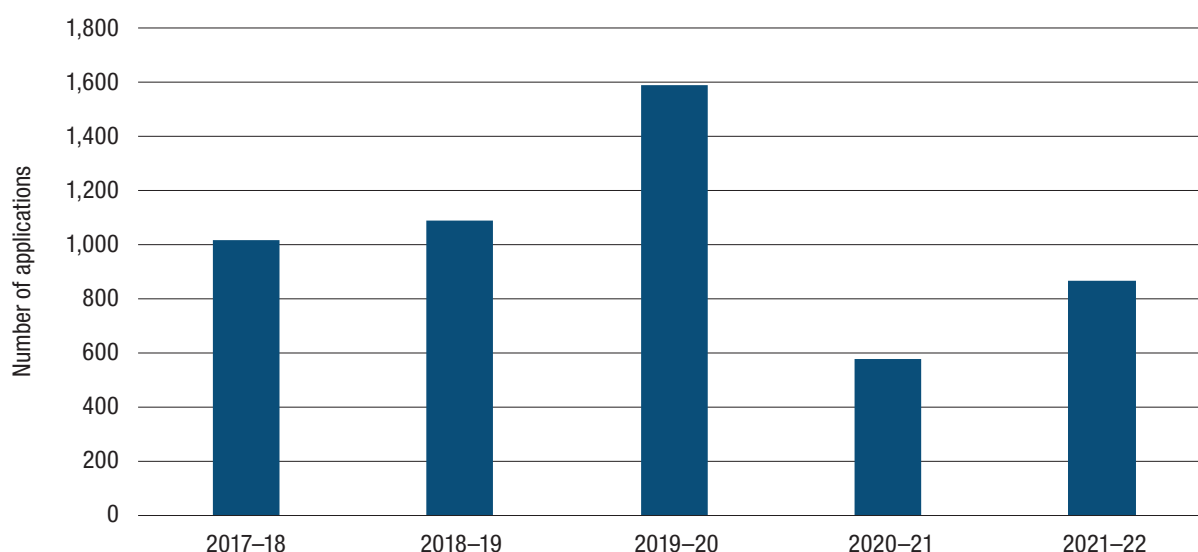
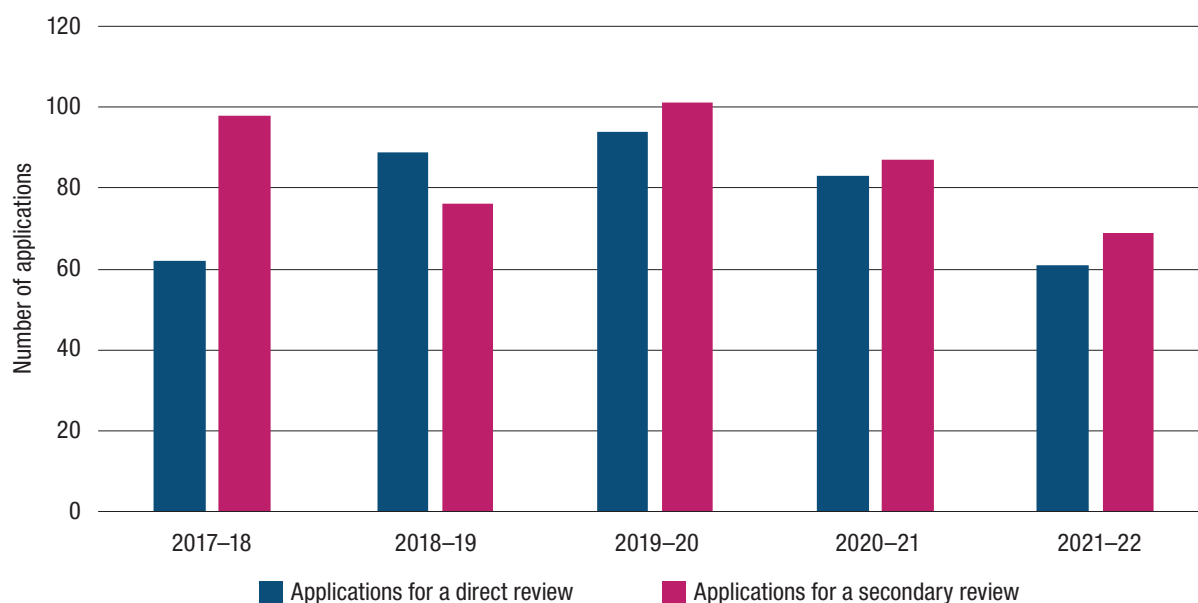


Figure 4 shows the number of applications received for a review of a workplace decision. The number of applications has remained relatively stable over time. However, as illustrated in Figure 4, there was a decrease in applications from APS employees seeking either a direct or secondary review in 2021–22. We continue to receive slightly more applications for secondary than direct reviews. (See 'Review of workplace decisions', later in this chapter).

Figure 4: Total applications for a review of a workplace decision, over a five-year period



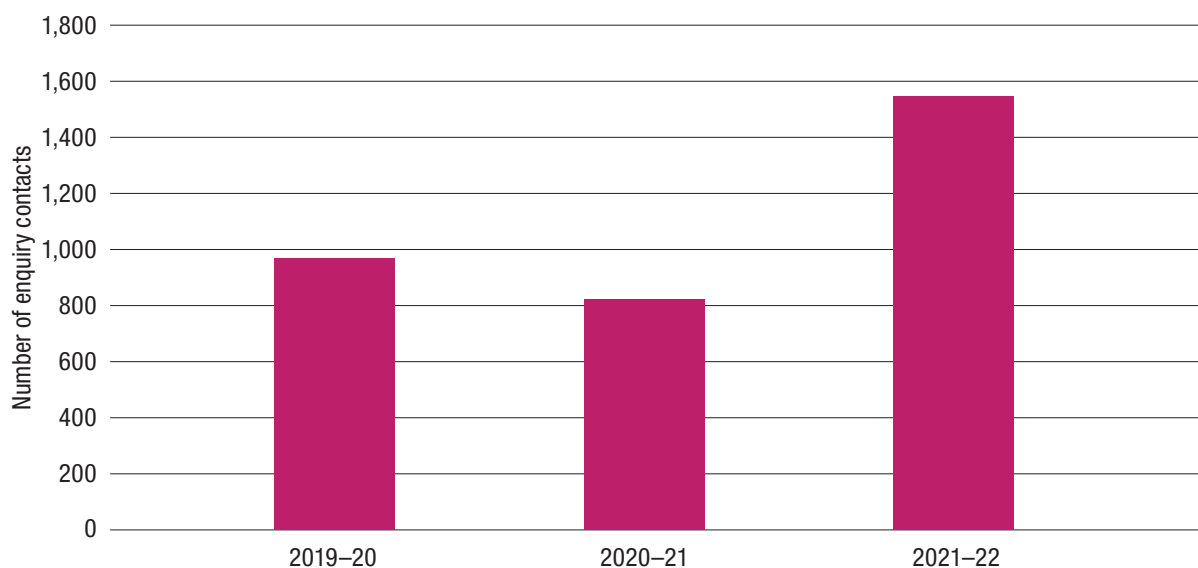
Contact with us

We provide a telephone and email enquiry service to APS employees. The majority of enquiries are from employees seeking advice on the eligibility criteria, on how to make an application, and timeframes to make an application. We also receive enquiries from managers and human resources practitioners seeking guidance on their role and responsibilities in the review processes. Wherever possible, we try to resolve the caller's issue. If we are not able to resolve the matter, we will refer the caller to the appropriate agency.

As shown in Figure 5, this year we responded to nearly twice the number of enquiries of 2020–21. We received a total of 1,546 enquiry contacts compared to 822 enquiry contacts in 2021–22. This increase is largely attributable to the increase in applications for promotion reviews during 2021–22.

The 1,546 enquiry contacts consisted of 1,049 telephone enquiries and 497 emails. We also received and responded to 32 calls and 34 emails that were on matters not within our jurisdiction or were misdirected enquiries.

Figure 5: Number of contacts with our office over a three-year period



Note: Data collection on office contacts commenced in 2019-20.

Review of promotion decisions



Received **866** applications,
an increase of **33%** on
2020-21

Formed **42** promotion review
committees to consider
the claims of **327** parties



Reviewed **269**
promotion decisions
with **12** overturned
(a set-aside rate of
4.46%)



Received **788** telephone
and **232**
email enquiries



The APS Merit principle and the value of promotion reviews

Merit is a key component of recruitment in the APS and is defined in section 10A of the *Public Service Act 1991*, which states that a promotion or engagement decision is based on merit where:

- all eligible members of the community are given a reasonable opportunity to apply
- an assessment is made of the relative suitability of candidates, using a competitive selection process
- the assessment is based on the relationship between the candidates' work-related qualities and the qualities genuinely required to perform the relevant duties
- the assessment focuses on the relative capacity of candidates to achieve outcomes related to the relevant duties
- the assessment is the primary consideration in making the employment decision.

The elements of a merit-based selection process are set out in the Australian Public Service Commissioner's Directions 2022, which state that a selection process is based on merit when:

- the aim and purpose of the selection process is determined in advance
- information about the selection process is readily available to candidates
- the selection process is applied fairly to all applicants
- the selection process is appropriately documented.

When making a decision on who is the best candidate, the decision maker must:

- have merit as the primary consideration
- take secondary considerations into account when candidates are otherwise equal on merit.

At the completion of a merit-based recruitment process, successful candidates are appointed to or engaged in the roles advertised. A promotion of an ongoing employee to an ongoing role up to APS Level 6 is reviewable.

Candidates who were not appointed or engaged but who have successfully demonstrated they meet all the capabilities for a role can be placed into a 'merit pool' or on a 'merit list':

- **A merit list** indicates the relative suitability of candidates in a ranked order of merit.
- **A merit pool** indicates that two or more candidates are assessed as equally suitable within that pool. More than one pool can be established from a recruitment action—for example, a pool of 'highly suitable' candidates and a pool of 'suitable' candidates.

Merit pools and lists are valid for 18 months from the date the original vacancy was notified in the APS Gazette. A vacancy for the same or a similar role that arises during that period can be filled from a merit pool or list. Merit pools and lists can be shared between agencies. A decision to promote an APS employee from a merit pool or list must be published in the APS Gazette and may be reviewable if the position is at or below APS Level 6.

The value of merits reviews of promotion decisions

The Review of Actions scheme is one of accountability and scrutiny, and forms part of the broader integrity framework for the APS. In relation to reviews of promotion decisions, it is a form of assurance that the merit principle has been met in recruitment actions for positions up to APS Level 6.

While a key intention of the scheme is to prevent nepotism and cronyism, it also serves to identify unintended consequences of changes to recruitment processes, where changes may result in the merit principle not being met. The continuing emergence of new technologies impacts and changes the way we do many things, including recruitment and selection. We see the increasing use of artificial intelligence (AI) and AI-assisted processes in recruitment, along with automated processes that remove the human element from selection and aim to achieve efficiencies in the recruitment process.

These technologies create both opportunity and risk in achieving successful and efficient recruitment outcomes. Innovation in APS recruitment and selection should be encouraged and embraced; however, agencies must also ensure that as they explore the use of new technologies and models of recruitment, there are systems of checks and balances to ensure the merit principle underpins and informs those new processes. The review of promotion decisions is one such mechanism that provides those checks and balances independently. It gives assurance to employers and the government that the APS continues to be a model employer that recruits on the basis of merit.

About promotion reviews

Who can apply for a promotion review?

The entitlement to seek a review of a promotion decision is limited to certain APS employees and classifications. It will also depend on the location of the role applied for.

To be eligible, an applicant must meet all the following conditions:

- be an ongoing APS employee
- be employed at classification APS Level 5 or lower
- have applied for a promotion to a role at a higher classification, up to APS Level 6
- have applied to the same location as the successful applicant.

The entitlement only applies in circumstances when each of the following conditions are met:

- the person who won the promotion is an ongoing APS employee
- the role is a permanent role at a higher APS classification
- the application for review is made within the statutory timeframes.

Most recruitment activities in the APS include only one vacancy in one location. When this occurs, only those applicants who were unsuccessful in getting the position can apply for a review of the promotion decision. We call these 'unsuccessful applicants'.

However, there are some circumstances when the person who has won a promotion and who also meets the eligibility criteria applies for a promotion review. We call these 'successful applicants' but they are sometimes called 'protective applicants'. This occurs when an agency undertakes a single recruitment activity that involves employees filling one or more roles across multiple locations. This is often called a 'bulk' recruitment round.

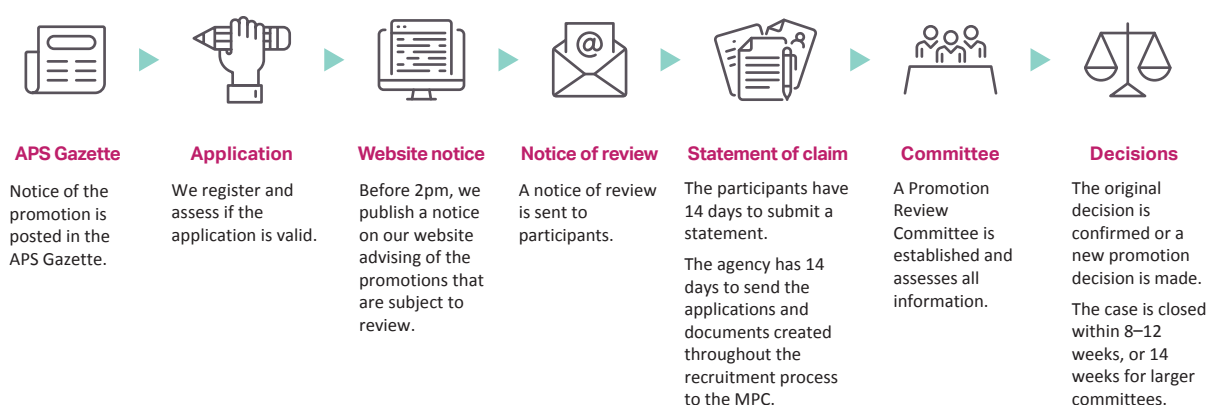
The following is an example of a 'successful applicant' in a bulk recruitment. An agency advertises 12 APS Level 5 customer service roles across three different locations: the Brisbane Mount Gravatt office, the Brisbane Central office and the Brisbane Logan office. An ongoing APS Level 4 employee applies for the role and indicates in their application they are willing to take up the role in any of the three office locations. They are successful and win an APS Level 5 customer service role in the Brisbane Mount Gravatt office. Even though they have won a promotion, they are still entitled to lodge a promotion review application against the other APS employees who won promotion into the customer service roles in Brisbane Mount Gravatt, Brisbane Central and Brisbane Logan offices.

Why would the employee who won a promotion submit a promotion review application? They may do this just in case another employee makes a promotion review application against their promotion. The reasoning is that if their promotion is overturned by a Promotion Review Committee (PRC), they will have the opportunity to review another employee's promotion decision from the same recruitment round.

Steps in reviewing a promotion decision

The purpose of conducting reviews of promotion decisions is to make sure the person with the most merit was promoted to a role. There are a number of important steps to completing a review of a promotion decision.

Figure 6: Stages of a promotion review



1. Promotion is published in the APS Gazette

APS promotions are published weekly in the APS Gazette and online at www.apsjobs.gov.au.

An employee who seeks to have a promotion reviewed by the MPC has 14 days from the date of this notice to make an application.

2. Applications are assessed

Applications received at the MPC are assessed to determine whether the applicant and the circumstances of the promotion meet the eligibility criteria. Ineligible applicants and those who make invalid applications are advised why their application has not proceeded to a promotion review. All applications for a promotion review (from either unsuccessful or successful applicants) are made and assessed in the same way under the legislation.

3. A publication notice is published on the MPC website

Every Friday, a notice is published on the MPC website advising of the promotions that have been named in applications for a promotion review. A case is created for valid promotion review applications, and the applicant(s) and promoted employee now become parties to the case.

4. Parties are notified

All parties to a case receive a notice that a review of the promotion is now in progress. This includes the agency that conducted the original recruitment process. This notice has instructions and advice for the parties on the next steps and timeframes.

5. A statement of claim may be submitted

Parties are given an opportunity to submit a statement in support of their claim to the promotion. A statement can include new evidence, or information not otherwise considered in the initial recruitment process. An agency must give us all the documents and evidence relating to how the original recruitment panel reached its decision on who had the most merit. This information is collated and provided to the PRC.

6. A Promotion Review Committee is established

Members are appointed to a PRC in accordance with the Public Service Regulations, to perform a review of a promotion decision on behalf of the MPC. A PRC has three independent members. A PRC member is not subject to direction in carrying out their duties but must, however, comply with general instructions issued by the MPC on the operation of a PRC.

7. A decision is made

The Public Service Regulations require a PRC when reviewing a promotion decision to assess the relative merits of the person promoted and each applicant on the basis of:

- » the relative suitability of each person for the duties
- » the relationship between each person's work-related qualities and the work-related qualities genuinely required for the duties
- » the relative capacity of each person to achieve outcomes related to the duties.

A PRC decides who is the most suitable candidate and has the greatest merit to perform the duties of the role. The PRC considers all the relevant recruitment records, including the role description, essential criteria, referee reports, selection report and statements of claim. A PRC may decide it requires further information to inform its assessment so may conduct interviews or seek further referee checks.

Once a decision is reached, the PRC completes a report and provides feedback to unsuccessful applicant(s). The PRC's decision is final and must be complied with by the agency.

Applications received for reviews of promotion decisions



Thank you very much for your assistance in navigating this process. You were very helpful and I thank you for your professionalism and courtesy.

– APS employee applying for a promotion review

In 2021–22, we received 866 applications for a review of a promotion decision. As shown in Figure 6, the number of applications for a promotion review can fluctuate significantly from month to month, and year to year, consistent with the level of recruitment activities in APS agencies. This reactive environment means planning and resourcing can be difficult to anticipate and manage. This year, our busiest months were September and October.

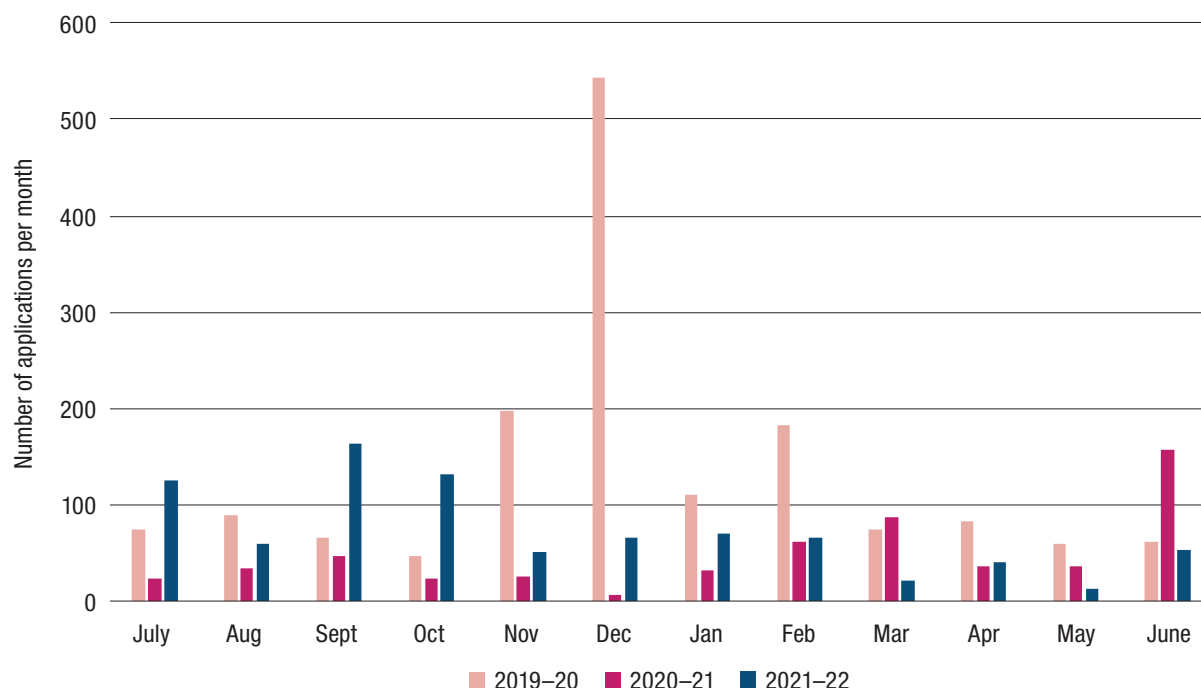
Figure 7: Total applications for a review of a promotion, by month, over a three-year period

Table 1 includes the number of applications from APS employees who were promoted (successful candidates) but still made a promotion review application against other employees promoted during the same recruitment round (the bulk round).

In most instances, these applications do not proceed to review. If a promotion notice in the APS Gazette only attracts applications from applicants who were similarly promoted in the bulk round, there is no reason to proceed with a review (in fact, as their promotion will have proceeded, they will no longer be eligible to see a review). These applications will therefore 'lapse' after the 14-day period has passed. As shown in Table 1, 84% of eligible applications received and assessed in 2021–22 were made by successful candidates.

Table 1: Eligible promotion review applications received, by successful and unsuccessful applicants, 2021–22 to 2021–22

Applications received	2020–21	2021–22
Successful candidate (protective)	433	617
Unsuccessful candidate	61	116
Total	494*	733**

* Note: This total does not include the 82 applications assessed as ineligible, withdrawn or yet to be assessed at 30 June 2021.

** Note: This total does not include the 133 applications assessed as ineligible, withdrawn or yet to be assessed at 30 June 2022.

Table 2 lists the outcomes of all 866 applications received this financial year for a promotion review. As show in the table, more than half (56%) of applications eventually lapsed and closed with no further action being taken. This is consistent with the previous year, where the total of lapsed applications was 57%. While a lapsed application does not proceed to a review, each application we receive is required to be assessed, and to have checks conducted to determine eligibility, although some will later lapse or be withdrawn.

Table 2: Outcomes of applications for a promotion review

Application outcomes	2020–21	2021–22
Lapsed	326	486
Promotion review case created	168	247
Ineligible	70	120
Withdrawn	6	8
Received, not yet assessed	6	5
Total	576	866

Note: Data collection on outcomes by application commenced in 2020.

Promotion review cases

After we assess an application as being eligible, we prepare for a promotion review by creating a 'case'. A case is how we track applications to a particular agency, vacancy and location. A case can include numerous parties seeking to have their merit assessed for a role.

For each case, we gather together statements of claim, role descriptions, referee reports, selection reports and any interview notes created by the agency's recruitment panel. If the case proceeds, this information is provided to assist the PRC to make its decision.

This year, we created 78 individual cases. Of those, 29 did not proceed to a promotion review because the applications lapsed or were withdrawn. There were 42 cases where a PRC was established to review a promotion decision, involving a total of 327 individual parties. The remaining seven cases were not completed in this financial year (see Table 3).

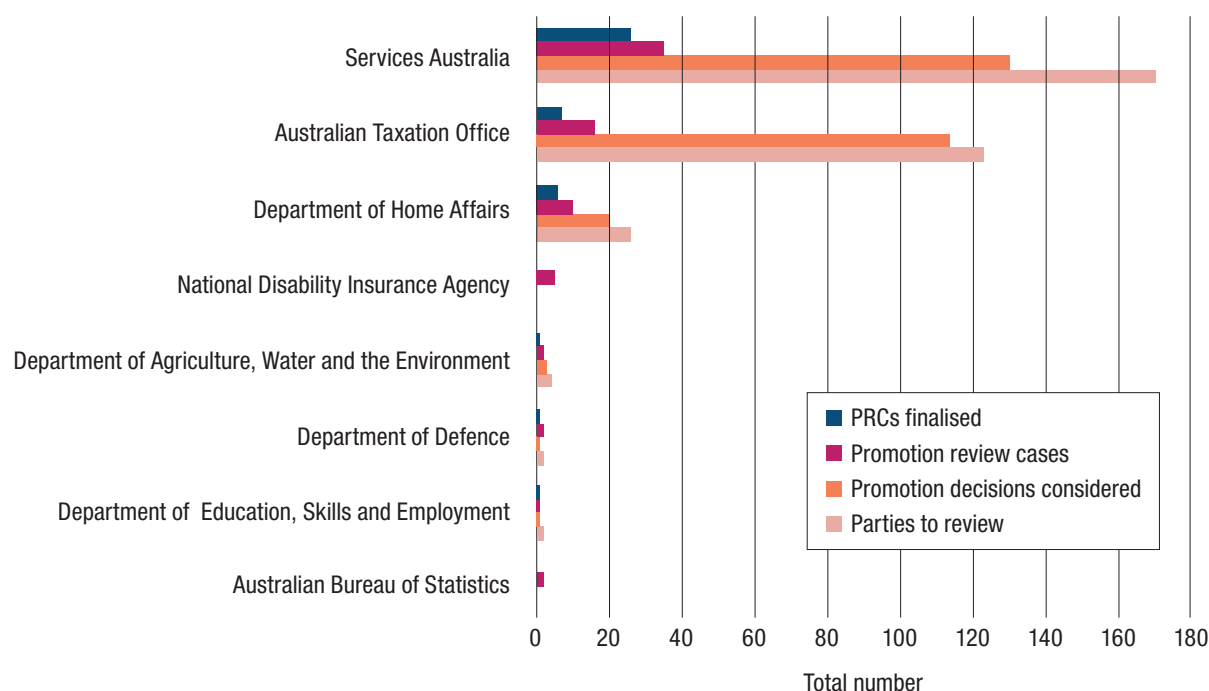
Table 3: Status of promotion review cases

Promotion Review Committee cases	2020–21	2021–22
Proceeded to promotion review	34 (involving a total of 196 parties)	42 (involving a total of 327 parties)
Lapsed, withdrawn or invalid	21	29
Ongoing	5	7
Total	60	78

During 2021–22, the largest number of parties to a promotion review for a single recruitment exercise was 70. This compares with 19 in 2020–21, and 52 in 2019–20. Seven other promotion review cases had 10 or more promotion review parties, compared with five in 2020–21, and 24 in 2019–20.

Figure 8 breaks down the number of cases by agency, with the number of decisions considered, the total number of parties involved, and the number of PRCs finalised. Employees from Services Australia were the largest users of the scheme, followed by ATO employees.

Figure 8: Promotion review workload by agency, 2021–22



A significant number of the applications from Services Australia employees were received in September and October 2021. Surges in review applications can be challenging for our office to manage for two key reasons:

- Our team receiving and assessing promotion review applications, and forming and supporting the operation of PRCs, is comprised of two staff members.
- Our promotion review processes are largely manual so can become backlogged when there is a sudden increase in applications.

Services Australia met with the MPC in November 2021 to discuss the backlog of work arising from the surges in applications and to offer assistance in managing that workload. Services Australia assisted the MPC by providing funding that supported:

- two additional positions from 4 January 2022 to 30 June 2022, to assist with assessing and processing review applications and cases, and provide support to the operation of PRCs
- increased hours worked by our PRC convenors who are engaged casually

- the engagement of a consultant to commence a project to develop an application management system to automate many manual processes and build capacity to manage surges in promotion review applications.

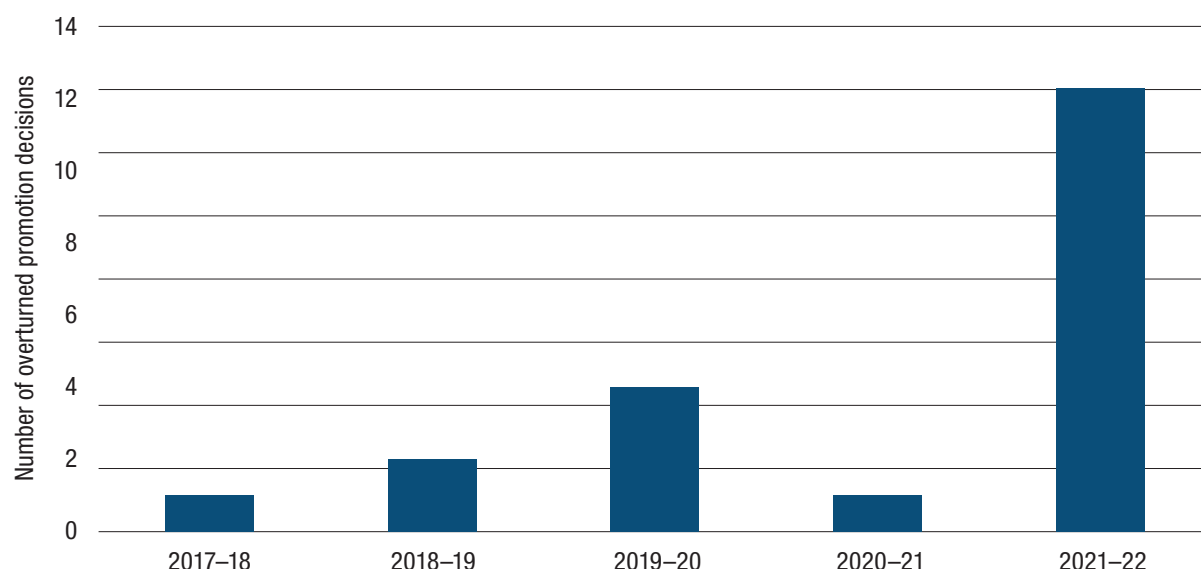
The MPC appreciates the funding and support provided by Services Australia.

Outcomes of reviews of promotion decisions

In the vast majority of promotion reviews, a PRC confirms the original promotion decision. If it determines that the unsuccessful candidate had more merit, it will make a new promotion decision.

In previous years, the number of promotion decisions that were overturned remained stable and low, sitting at around 1–4 cases or 1% of the total promotion decisions reviewed. However, in 2021–22, there were 12 promotion decisions overturned, which was 4% of the total number of promotions reviewed. As shown in Figure 9, this represents a significant increase on previous years. The driver of this increase and how it has been responded to are discussed in the following section.

Figure 9: Number of overturned promotion decisions, over a five-year period

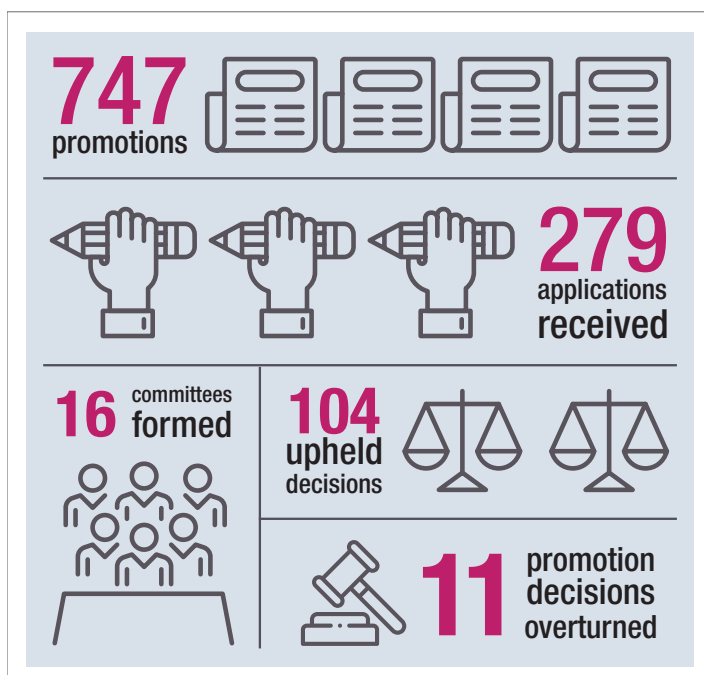


Drivers behind increased overturn of promotion decisions

As noted in the preceding section, 12 promotion decisions were overturned in 2021–22, which is higher than in previous years. Of these, 11 involved Services Australia.

In December 2020, Services Australia advertised, under a single vacancy number, a range of roles across two classifications of APS Level 5 and APS Level 6, using the same selection criteria. Approximately 18,000 applications were received. From that recruitment, two merit pools were established at each APS level. In late 2021, Services Australia started using the merit pools to fill vacant positions. This resulted in 747 APS employees being promoted. The key figures for this recruitment and the associated promotion reviews are shown below.

Key figures from Services Australia recruitment and promotion reviews



We received 279 applications for review, over a number of months, as candidates were being selected from a merit pool. From those applications, 11 decisions were overturned. It was clear that further examination of the December 2020 bulk-round recruitment was warranted to understand what was driving the increased number of promotion decisions being overturned by PRCs. The following outlines what occurred and the subsequent actions taken by Services Australia.

Services Australia recruitment and promotion reviews from December 2020

Services Australia employs over 34,000 people¹, and as such, often runs large bulk recruitments for APS classifications. It had been considering different recruitment models to reduce demands on Services Australia staff members and to speed up recruitment time.

Towards the end of 2020, Services Australia decided to do a bulk-round recruitment using a new recruitment model, for a single recruitment round. This involved outsourcing the selection process and trialling an online selection process using AI-assisted and automated selection techniques. This model did not require the establishment of a selection panel to cull or interview candidates, a process that can be resource-intensive (in terms of Service's Australia staff time) and slow.

1 *State of the Service Report 2020-21*, Australian Public Service Commission, [Appendix 2: APS Agencies](#).

The selection process was a stepped sequence of online assessments using different selection techniques. Each assessment had a benchmark the applicant had to pass to progress to the next step in the selection process. The selection techniques or tasks used included psychometric testing, questionnaires and self-recorded video responses to questions. If candidates made it to the last assessment step, they completed that, and their rating on the final assessment step determined whether or not they progressed into the merit pools, and if so, which merit pool they were placed in (APS Level 5 or APS Level 6, or both).

From August 2021, Services Australia began to offer promotions to candidates in the merit pool. We received 279 applications for review, and formed 16 PRCs. The PRCs reviewed 115 individual promotion decisions and overturned 11 of those decisions. The only reason a PRC can overturn a promotion decision is finding one of the applicants who is part of the review has demonstrated they have more merit than the person who had been promoted. The increased number of overturns indicated that the selection process was not always meeting its key objective, which put simply, was to identify and select the most meritorious candidates for the roles advertised.

We had a number of meetings with Services Australia about the overturned decisions. The focus of those discussions was on the overall design of selection process, the use of different selection techniques, how these techniques assessed the relationship between candidate's work-related qualities and the work-related qualities required to perform the relevant duties, and the approach to measuring overall suitability. Services Australia undertook a comprehensive review of its processes and identified changes for future bulk-round recruitment activities to ensure the principle of merit is embedded and underpins all recruitment decisions.

Issues to consider when designing new recruitment processes

Agencies are operating in an increasingly tight labour market and are looking to use recruitment processes that are efficient, effective and less resource-intensive. This includes a new reliance on technological solutions, such as automated and AI-assisted assessment techniques to cull and select candidates. This creates real opportunity for APS agencies to design new and innovative recruitment process to increase efficiency in terms of time and resources. However, like any emerging technology and new ways of doing things, it does bring a degree of risk. A key risk is that the merit principle becomes compromised or secondary to other priorities such as efficiency.

Through our work conducting reviews of promotion decisions we have identified some important steps and issues for agencies to consider when designing new recruitment processes.

New and innovative recruitment and selection initiatives should be embraced by the APS; however, the risks, particularly to the merit principle, should be both articulated and assessed. APS agencies need to invest in and give careful consideration to the design of their selection processes to ensure:

- the selection techniques used assess the relative suitability of the candidates to perform the relevant duties
- the assessment is based on the relationship between the candidates' work-related qualities and the work-related qualities genuinely required to perform the duties of the role.

When first using a new selection methodology involving AI-assisted and/or automated selection techniques, APS agencies may want to consider what quality assurance or parallel alternative processes can be adopted to test and ensure the most meritorious candidates are progressing through the process and being selected. This will provide assurance on the new process and, if needed, allow corrections or changes that can be rolled out for future recruitments.

In designing recruitment and selection processes, agencies should be aware of the research literature on the validity and reliability of selection techniques, particularly newer and technology-based techniques. In April this year, we initiated sponsorship of an Australian Public Service Commission graduate team project to conduct research examining recruitment practices across the APS, with a particular focus on the use of AI-assisted and automated selection assessment techniques. A key project objective is to develop guidance materials for APS agencies on how best to use AI-assisted and automated selection assessment tools to achieve successful and meritorious recruitment outcomes.

The number of selection techniques used, and how assessments on each are combined to assess candidates, are also important in the design of selection processes that are valid, reliable and based on merit. Overall candidate assessment informed by performance on multiple and different selection techniques are likely to be more accurate than an assessment that relies on a single selection technique or selection tools that are measuring only one of several work-related characteristics or qualities needed to perform the role.

Another consideration for designing recruitment processes is the Australian Public Service Commissioner's Directions 2022, which require that information about the selection process is readily available to candidates and that the selection process is appropriately documented. This means:

- It should be clear to candidates what the selection process is.
- It should be clear to candidates what criteria they are being assessed against.
- Selection documentation should be sufficiently detailed, showing how merit was assessed and the comparative assessment of the candidates.
- The outcome of a selection process should result in a signed selection report that recommends to the delegate the candidates who should be appointed or engaged, and the candidates who should be placed in a merit pool or on a merit list.

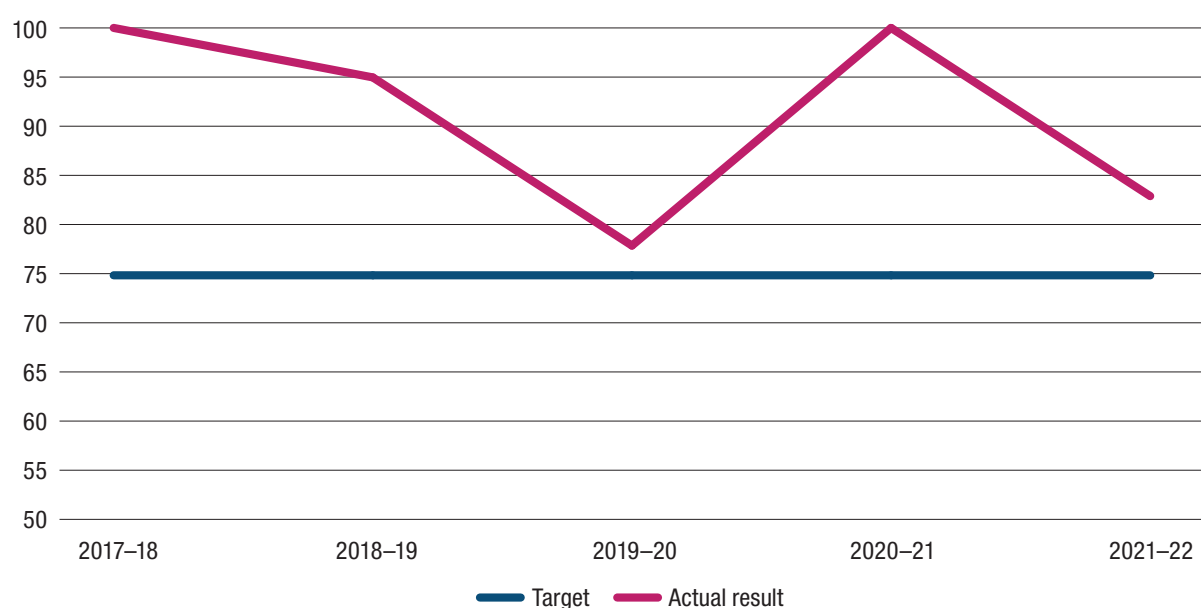
Timeliness of reviews of promotion decisions

Our performance target for conducting promotion reviews is for 75% to be completed:

- within eight weeks of the closing date, where there are up to 10 parties to the review
- within 12 weeks of the closing date, where there are 10 or more parties to the review.

As shown in Figure 10, despite the surge in applications, this year we completed 83.09% of promotion reviews within our target timeframes. This is compared to 100% last year, noting that last year we received the lowest number of applications of the past five years.

Figure 10: Percentage of promotion reviews completed within eight or 12 weeks, over a five-year period



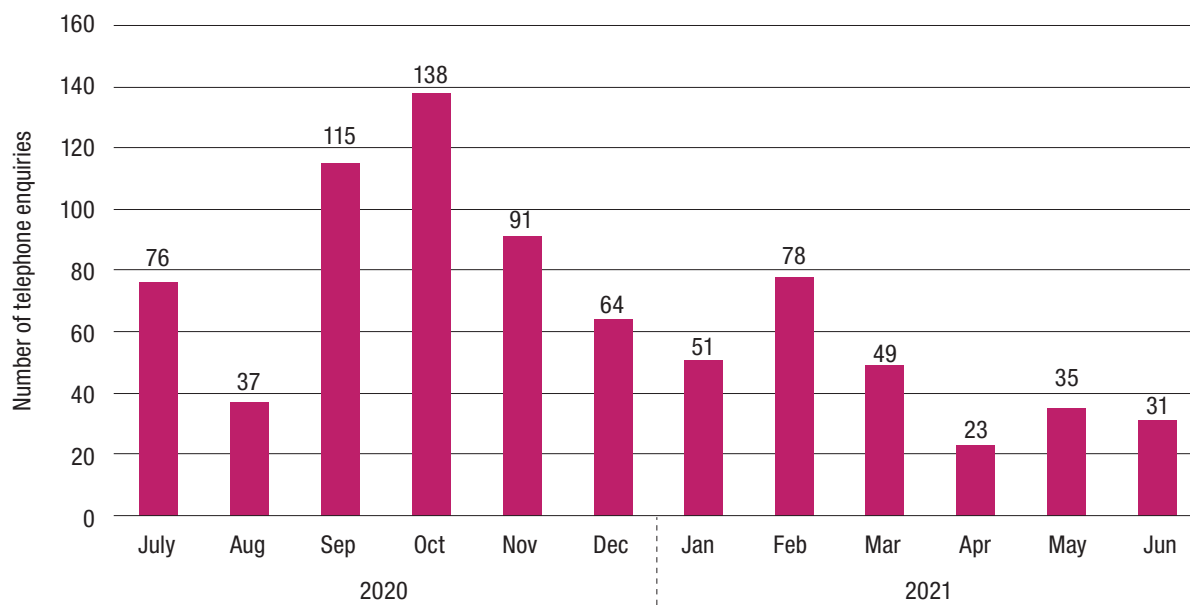
Contact with us about promotion reviews

We collect data on the number of enquiries we receive from employees, agencies and applicants about promotion reviews. We will continue to improve our collection and analysis of this data and use it to make decisions about where we focus our resources.

Throughout the year, we received 788 telephone enquiries about the promotion review process, which represents 75% of all telephone enquiries received. We also received 232 email enquiries about promotion reviews.

As shown in Figure 11, there was a marked increase in telephone enquiries in September and October 2020, which aligns with the increased number of applications received in those months (see Figure 7). These applications were from a particular recruitment action undertaken by Services Australia discussed earlier in this chapter.

Figure 11: Promotion review telephone enquiries by month



Of the 788 promotion review telephone enquiries received:

- 380 concerned the promotion review process (48%)
- 228 concerned 'successful' or 'protective' promotion review applications (29%)
- 69 concerned 'statements of claims' for PRCs (9%)
- 67 concerned promotion review applications (8%)
- 44 concerned promotion review entitlements (6%).

By agency, the breakdown of promotion review telephone enquiries was:

- 435 concerning Services Australia (55%)
- 188 concerning the Australian Taxation Office (ATO) (24%)
- 118 concerning 17 other agencies or an undisclosed agency and one concerning a non-APS agency (15%)
- 47 concerning the Department of Home Affairs (6%).

Review of workplace decisions

Received **130** applications,
a decrease of **24%** on 2020–21



Reviewed **54** cases,
45% of which were
Code of Conduct decisions

Received **229**
telephone and **231**
email enquiries



Varied or set aside
20.3%
of agency decisions



“

Throughout the process I almost crumpled, it was so stressful. I knew I was innocent but it seemed at the time no-one would listen to my side of the story, or wanted to.

You and your department [the office of the MPC] gave me a voice and literally restored my faith in justice and fairness.

– APS employee at the conclusion of their review

About review of workplace decisions

Who can apply for a review of a workplace decision?

The entitlement to seek a review of a workplace decision is available to all ongoing and non-ongoing non-Senior Executive Service (non-SES) APS employees.

A former employee (non-SES) can seek a review in one circumstance: where there is a determination that they have breached the Code of Conduct. This entitlement only applies if the breach determination was made after the employee left the APS.

What workplace decisions can be reviewed?

The MPC conducts reviews of a range of workplace decisions that affect an APS employee's employment. Some examples of what we can review include decisions about performance management ratings, suspension from duty, decisions about salary, reclassification or relocation, leave requests, and the handling of complaints about bullying, sexual harassment or inappropriate workplace behaviour. We also review decisions that an employee has breached the Code of Conduct, as well as any subsequent sanction decision.

Schedule 1 of the Public Service Regulations sets out the type of decisions that are not included in the Review of Action scheme, this includes high-level strategic and resourcing decisions or the reasonable assignment of duties.

Who conducts the review—the employee agency or the MPC?

For certain workplace decisions, an employee can apply directly to the MPC to review a workplace decision; for the remainder, the employee's agency must conduct the initial or primary review before it comes to our office. We explain below the difference between an MPC direct review and an MPC secondary review (which follows an agency primary review).

When can the MPC conduct a direct review?

APS employees can apply directly to the MPC to conduct a review of a workplace decision without first applying to their agency in particular circumstances:

- a. An investigation has determined that the APS employee (or in certain circumstances, a former employee) breached the Code of Conduct and/or the resulting sanction decision.
- b. It is not appropriate for the agency to conduct an internal primary review of the workplace decision because:
 - » the agency head was directly involved in making the decision or taking the action that is the subject of the review
 - » it is not appropriate due to the seriousness or sensitivity of the decision or the action
 - » it is alleged the action or decision is victimisation or harassment of the employee for having made a previous application for review.

An APS agency head can also request the MPC to conduct a direct review (of a decision or action that would ordinarily be reviewed by the agency in the first instance) in circumstances where:

- » the agency head was directly involved in the decision or the action
- » it is not appropriate for the agency to conduct the review due to the seriousness or sensitivity of the matter.

c. The action or decision was taken by a statutory officer and that officer is supervising or managing the APS employee.

How does an employee seek a secondary review from the MPC?

With the majority of actions or decisions, an APS employee must first request that their agency conduct an internal or primary review. This part of the scheme is designed to give agencies an opportunity to:

- deal with matters quickly and informally
- resolve an issue before it escalates to something more serious
- fix a problem, mistake or error with a decision quickly
- identify and address an emerging issue before it becomes a systemic problem.

If the employee is not satisfied with their agency's primary review, they advise the agency that they request that the MPC conduct a secondary review. The agency must forward the review to the MPC for the secondary review. This means we will have a fresh look at the original decision.

Employees also have an entitlement to apply for an MPC secondary review if their agency head has declined a request to conduct a primary review of an action or decision (for example, if the agency assesses the action as non-reviewable).

Steps in reviewing a workplace decision

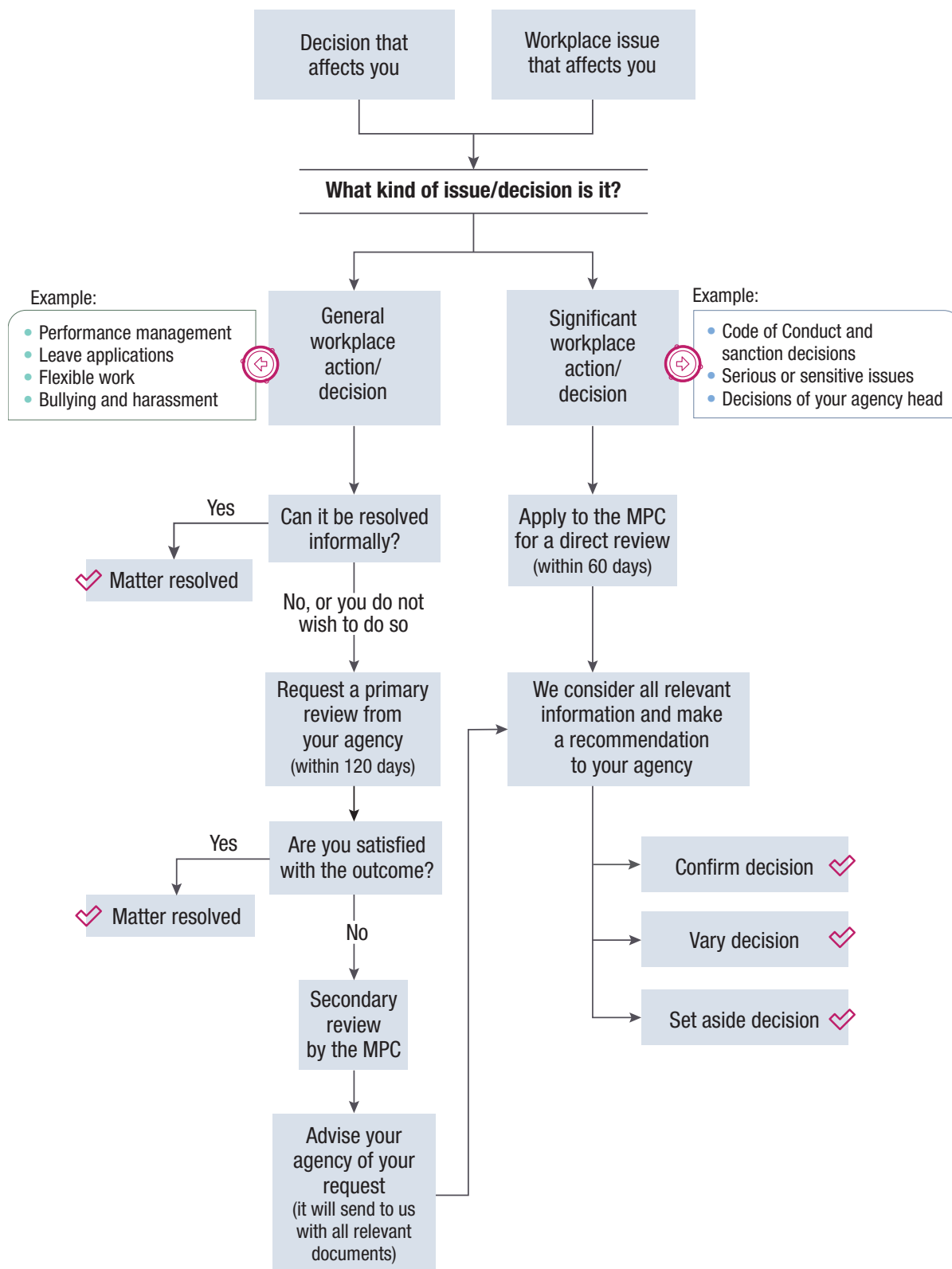
Our reviews are independent, fair and merit-based. Our role is to stand in the shoes of the original decision maker and to take a fresh look at the relevant facts, law and agency policy to reach a decision. We must have regard to the individual circumstances of each matter. We may also ask for additional supporting documents such as policies, procedures and examples of the applicant's work or rosters. It will depend on the issue or decision we are reviewing. Each review is unique.

Once our review is completed, we make a recommendation that the agency does one of the following:

- uphold its original decision or action
- vary it in some way
- set it aside.

Figure 12 illustrates the steps in reviewing a workplace decision, whether it is reviewed by the agency first or comes directly to the MPC in the first instance.

Figure 12: Flowchart of the life cycle of a review of a workplace decision



Applications received for reviews of workplace decisions

We assessed 149 applications for reviews of workplace decisions in 2021–22. This comprised 130 applications received during the year and 19 applications carried over from 2020–21.

We completed the assessment of 123 applications. Of the assessment:

- 54 proceeded to review, including one application that was resolved prior to completion of the review, where parties agreed to an outcome that no longer required our involvement
- 43 did not meet the eligibility criteria for review
- 26 were withdrawn prior to a review being finalised.

Table 4 shows the number of applications for review of a workplace decision we received and finalised this year, with the number of agencies.

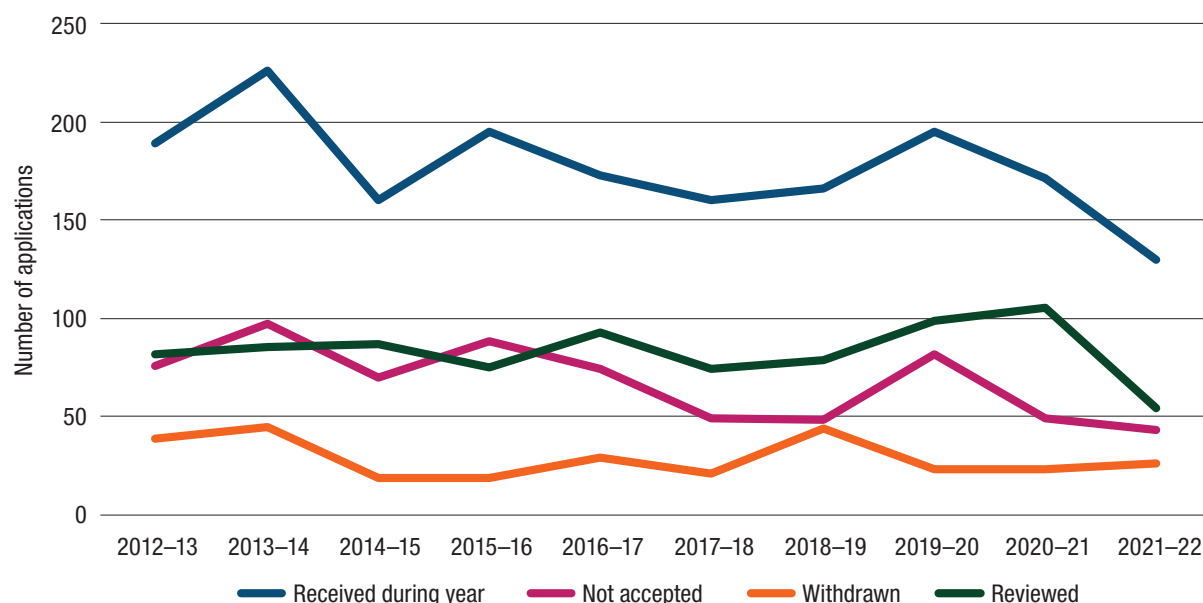
Table 4: Workplace decision review applications received and finalised, and the number of agencies involved, 2020–21 to 2021–22

Application outcomes	2020–21	2021–22
Received	170	130
Finalised	177	123
Agencies involved	28	26

Figure 13 shows the trend over time of applications received over a 10-year period. This year we received 24% fewer applications for review, compared to the same period in 2020–21. Additionally, there were 44% fewer review applications that proceeded to a merits review in 2020–21 (58) when compared to 2021–22 (98).

While the numbers fluctuate from year to year, there has been a decrease in the number of review applications since the start of the COVID-19 pandemic in 2020. While it is not possible to come to a definitive conclusion as to the cause of the decrease, it would appear likely to be connected to the pandemic, and may reflect that employees have had other priorities or concerns during this period. We will continue to closely monitor these figures, to determine if this is a trend that continues or if it is a response to the extraordinary events over the last two years.

Figure 13: Workplace decision review applications received and outcomes over a 10-year period



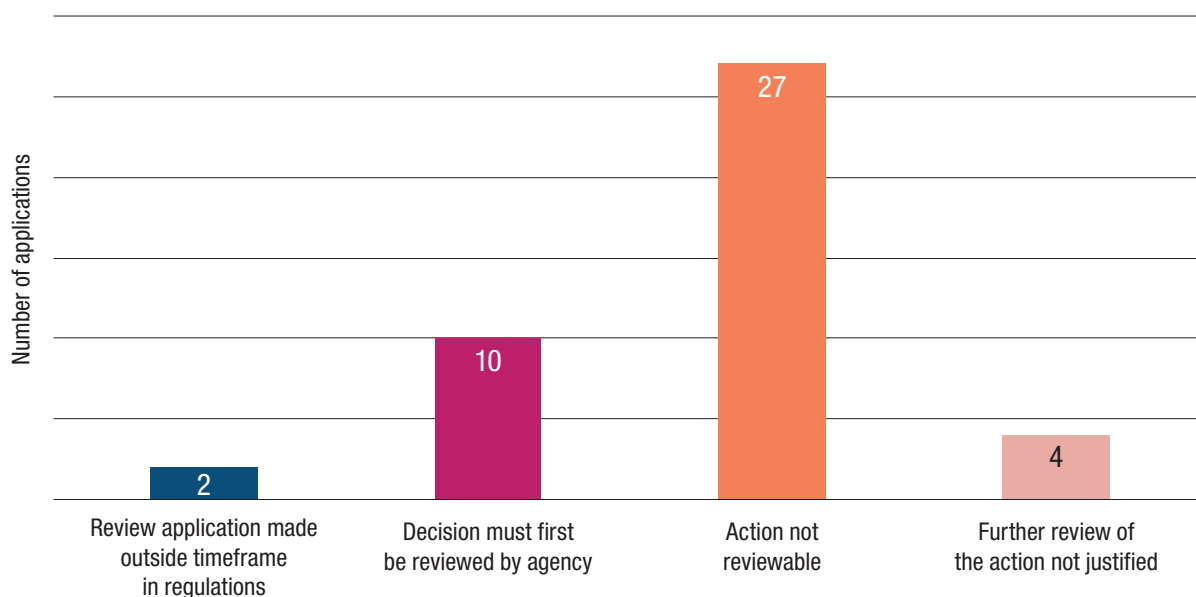
Reasons applications were not accepted

When we receive an application, we conduct an assessment to determine if it is eligible. This year, 35% of applications assessed for review of a workplace decision were not accepted as eligible and did not proceed to review. The primary reasons for this are:

- the decision was excluded under Schedule 1, item 10 of the Public Service Regulations—for example, it was the result of a machinery of government change, or the decision was about policy or the direction of the agency
- there were no special circumstances relating to the decision or the applicant that enabled the MPC to conduct a direct review prior to the agency doing its own internal review
- the applicant made their application out of time, and without evidence of an exceptional circumstance to explain the delay.

For applications that are not accepted, we provide written reasons for our decision and advice on what other course of action may be available to resolve the applicant's concerns. Figure 14 shows the breakdown of the reasons we have not accepted applications for review during 2021-22.

Figure 14: Reasons workplace decision review applications were not accepted, 2021–22



Assessing whether an action is eligible for review can be complex and depends on the individual circumstances of each application. Section 33 of the Public Service Act provides a very broad scope of review, which covers a wide range of possible actions. For example, an action can also include an inaction or omission. It also has to be an action that relates directly to the applicant's employment.

This year we published a tip sheet called [Determining review eligibility](#) to assist agency decision makers in determining if a review application is eligible. It includes specific advice on how to interpret the list of exceptions set out in the Public Service Regulations.

The next case study is an illustration of how we assess applications made outside the prescribed timeframes. In these cases the MPC needs to be satisfied that the applicant has exceptional circumstances to explain the delay. Exceptional circumstances include where extended sick leave has significantly hindered an employee's ability to make a review application. They would not usually include an employee arguing that they were not aware that they had an entitlement to review or a circumstance that might be considered ordinary or usual (such as moving to a new job or taking planned leave).

No exceptional circumstances to explain late application

An employee asked their agency for a primary review of a decision to decline their application for miscellaneous leave without pay. The primary reviewer confirmed the original decision. Three months after the date of the primary review, the employee submitted an application through their agency to the MPC for a secondary review.

The application was 30 days out of time under the time limits for applying for review under the Public Service Regulations 1999. In accordance with the Public Service Regulations,

an application for a secondary review must be made within 60 days of the primary review decision. If it is out of time, then the agency's decision is not reviewable unless there are exceptional circumstances that explain the failure to make the application in time.

The employee submitted that due to being on leave and transitioning to a new job, they were unable to make an application within the 30 days. We carefully considered the employee's submissions. While we acknowledged the applicant's circumstances, we did not consider that the circumstances presented amounted to the standard of exceptional circumstances as required by the Public Service Regulations.

On this basis, we decided that the decision was not reviewable, as it was made outside the prescribed time period and there were no exceptional circumstances explaining the failure to make the application in time.

APS employees can also apply to the MPC to have an action or decision that would ordinarily be reviewed by their agency in the first instance come directly to the MPC. There are, however, only three reasons under the Public Service Regulations that allow the MPC to accept such an application:

- if the agency head was directly involved in the action or decision
- it is inappropriate, because of the seriousness or sensitivity of the action or decision, for the agency to deal with the application
- the action is claimed to be victimisation or harassment of the employee for having made a previous application for review of an action.

These applications need to be supported by additional information or evidence that one of the three reasons exists to accept the application. We carefully assess these applications, and where appropriate, seek further information from the applicant and/or the agency to determine if the application meets the criteria for acceptance. If it does not, we will advise the applicant to seek a primary review with their agency. This year we received 27 applications for direct review.

We also receive applications for review on the grounds that a recruitment process for an Executive Level 1 (EL 1) or Executive Level 2 (EL 2) position had a serious defect. There is a high standard for the test of what is a 'serious defect'. To be regarded as a serious defect, there needs to be a flaw or error in the process that would, if proven true, be so serious that it would impair the selection process in its entirety. In other words, the defect would need to be such that the entire selection process would need to be done again, and the decisions made as a result of the original process could not stand. A serious defect cannot be corrected by a review of the merits. The threshold for accepting an application for review is high, as demonstrated in the following two case studies.

Applications on the grounds of a serious defect in an Executive Level recruitment decision

1. An employee applied for a review of their agency's decision to not promote them to an Executive Level role, alleging there were serious defects in the selection process.

Due to personal circumstances, the employee did poorly at the interview. The employee was concerned that their suitability for the role was assessed solely on the basis of the interview and not using other assessment tasks.

In deciding whether there were serious defects in the selection process, we noted the interview panel was fully aware of the employee's personal circumstances and had offered to reschedule the interview. As a result, we found no evidence of a serious defect in the selection process to meet the exemption requirements in item 10 of Schedule 1 of the Public Service Regulations.

2. An employee alleged that there were serious defects in the selection process for two roles, due to a statement of claim being limited to a fixed number of words. In this case, candidates who applied for both roles were given the same word limit. The employee submitted that the agency should have had two separate processes in order to give the same opportunity to applicants whether they applied for one or both roles.

In this second case, we considered the decision to use a single recruitment process for two roles did not amount to a serious procedural defect. The agency had advised there was substantial overlap in the criteria and qualities for both roles, and it was standard practice to advertise these particular roles together, due to them having multiple common selection criteria and being likely to attract the same candidates. We determined that the concerns about the selection process did not amount to serious defects in the selection process.

Workplace decision review applications by agency

The 130 review applications received during the year were from employees in 25 agencies. The largest agencies by number of employees, Services Australia, Department of Defence, Department of Home Affairs and ATO, comprise almost 56% of APS employees and almost 61% of review applications made to our office.

The largest number of applications were made by employees in Services Australia, which is the largest agency in the APS, with 34,056 employees.² The comparable figures for the largest agencies are outlined in Table 5.

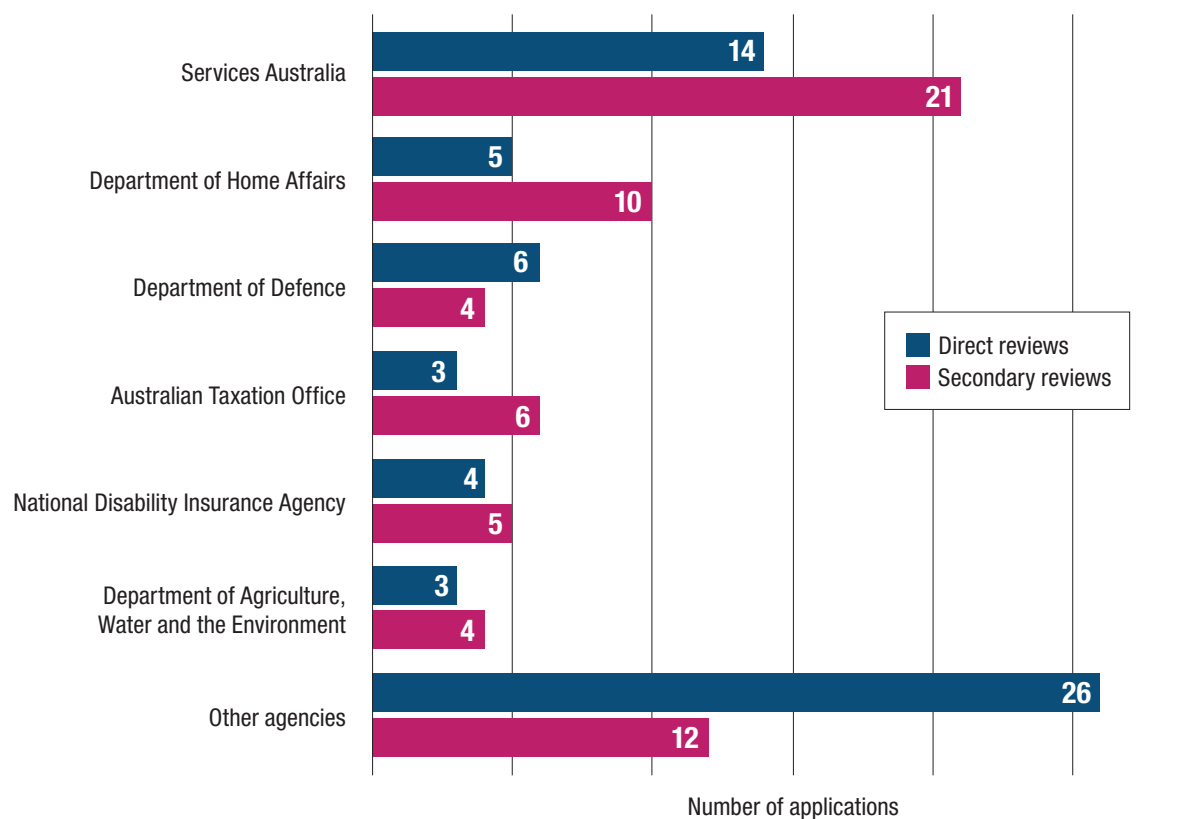
2 *State of the Service Report 2020-21*, Australian Public Service Commission, [Appendix 2: APS Agencies](#).

Table 5: Total workplace decision review applications, by agency and agency size, 2021–22

Agency	Applications	Employees
Services Australia	45	34,056
ATO	12	21,179
Department of Defence	10	17,049
Department of Home Affairs	12	13,787
National Disability Insurance Agency	11	4,313

Figure 15 shows the numbers of finalised review applications made either directly to the MPC for a direct review or for a secondary review, by agency, in this financial year. Of the 123 applications finalised, 61 were made directly to the MPC, 34 of which involved a decision about a breach of the Code of Conduct or sanction decision. Almost half of applications were from employees of Services Australia, Home Affairs, the ATO and Defence.

In respect to the 62 applications from employees who were not satisfied with the outcome of the agency's primary review, the majority (67%) were from employees of Services Australia, Home Affairs, the ATO and Defence.

Figure 15: Number of workplace decision review applications finalised, by agency and review category, 2021–22

Note: 'Other agencies' comprises 20 agencies with fewer than six employees applying for review.

Outcomes of reviews of workplace decisions

In 2021–22, we completed 54 merits reviews of workplace decisions to determine whether the correct and preferable decision had been made. This includes a matter that went through a process of facilitated resolution prior to completion of the review. Conducting a merits review is resource intensive and requires considerable skill as well as a deep understanding of the principles of administrative decision-making. It also requires a careful analysis of the individual circumstances of each matter and the drafting of a report with detailed reasons for our decision.

- Of the 54 reviews:
- one (2% of reviews) commenced but was resolved through facilitated resolution, achieving a mutually agreed outcome by the employee and employer
- 42 (78%) ended with the MPC agreeing with the original decision and recommending that the agency decision or action be upheld
- 11 (20%) ended with the MPC recommending that the decision under review be varied or set aside.

All our recommendations considered by agencies within the financial year were accepted. One outstanding recommendation was still to be determined.³

Table 6 lists the percentages of MPC decisions to set aside and/or vary an agency decision over a four-year period, by review of conduct of conduct matters, secondary reviews and MPC direct reviews (where the MPC agrees to do a review that would otherwise be undertaken by the agency).

Table 6: Percentage of workplace agency decisions set aside or varied, 2018–19 to 2021–22

Review category	2018–19 (%)	2019–20 (%)	2020–21 (%)	2021–22 (%)
Code of Conduct (breach or sanction decision)	37	48	30	33
Secondary review of workplace decision	19	25	32	10
MPC direct review	N/A*	33	25	N/A*

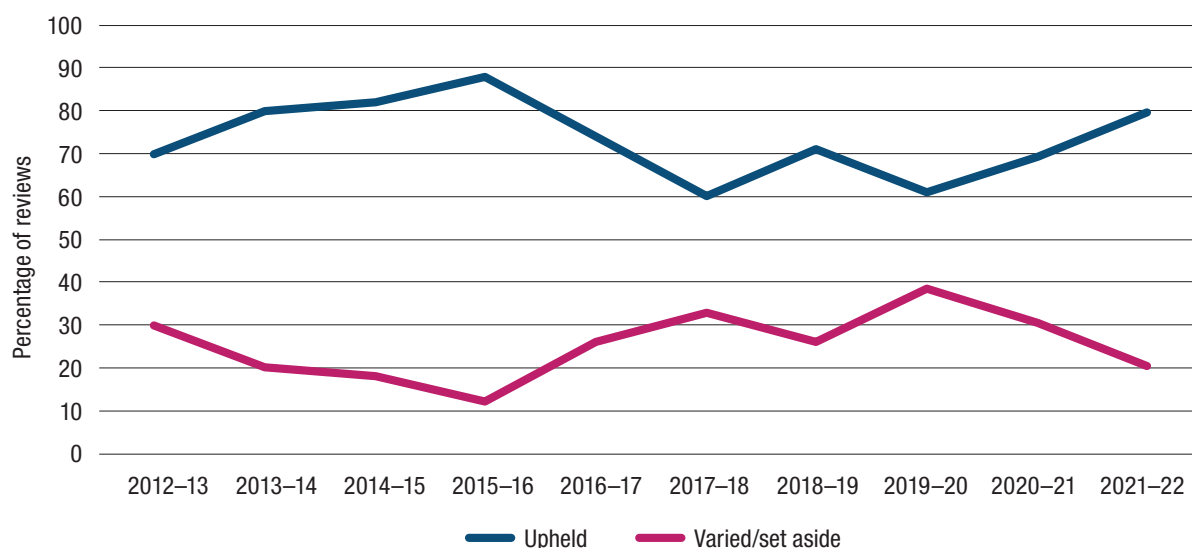
* Note: In 2018–19 and 2021–22, we did not conduct any direct reviews of non–Code of Conduct matters.

3 The matter was finalised at the end of June 2022 and we were waiting on a response from agency to the recommendation at the time of writing.

Figure 16 represents the overall trend across time for upholding or varying an agency decision versus upholding a decision. It shows that since 2019–20, we have seen an increase in the percentage of reviews where the agency decision was upheld and a corresponding decrease in the percentage where the agency decision was varied or set aside. Considering Table 6 and Figure 16 together, what is largely responsible for this year's results is changes in review outcomes for secondary reviews. In particular, there was a notable drop in the percentage of decisions where the MPC set aside or varied an agency decision as a result of a secondary review.

It is not possible to reach a conclusive reason on what this change means based on one year of data; however, it shows that more than in previous years, the agency primary review and the MPC secondary review are reaching the same conclusion. This may be a positive indication of uplift in the capability of agencies conducting primary reviews, but we would need to see these levels continue for the next two years to determine if this is the case.

Figure 16: Percentage of agency workplace decisions set aside/varied or upheld, over a 10-year period



The reasons why we set aside a decision or recommend that an agency vary an aspect of the decision include:

- significant procedural errors
- insufficient evidence to support the decision maker's conclusions about facts relating to the case
- misapplication of a policy or an enterprise agreement
- insufficient weight or consideration given to the individual circumstances of the matter
- consideration of irrelevant information or undue weight given to a piece of evidence, or not having regard to other relevant evidence.

The following case study is an example of where we set aside a decision after our merits review of the process identified the agency had not complied with a critically important procedural obligation.

Setting aside an agency decision because of a material defect in procedural fairness

In conducting a review involving a breach of the APS Code of Conduct, the MPC is required to consider procedural compliance before considering the merits of the case. Where a substantial or material procedural error or flaw is identified, a recommendation will be made to set the decision aside, without considering the merits of the case. Often, this will also be accompanied by a recommendation for the decision to be remade by a different decision maker.

For example, an employee was notified of the commencement of an investigation into suspected breaches of the Code of Conduct, including allegations that the employee failed to comply with relevant departmental policies. The breach decision maker provided the employee with a letter containing his preliminary views that the employee was suspected of breaching section 13(1) of the code, as stated in the Public Service Act. The employee provided a response to the preliminary view letter.

The breach decision maker finalised his decision and wrote to the employee informing her that he had determined she had breached section 13(2) of the code instead. The breach decision maker referred the breach determination to the sanction delegate, who imposed a low-level sanction. The employee lodged an application for a direct review of the department's breach and sanction decisions with the MPC.

Consistent with the Australian Public Service Commissioner's Directions, the department's procedures required the employee be informed of the details of the suspected breach, including any subsequent variation of those details.

In response to the MPC's further enquiries, the department confirmed that there was no communication with the employee notifying her that considerations were being given to vary the section of the Act the suspected breach related to, before the final breach decision being made.

The MPC considered that a material defect had occurred in the decision-making process. The failure to inform the employee that a variation of the breach determination was being considered was a fundamental breach of the department's procedures and the essential elements of procedural fairness. The MPC considered that the failure to inform the employee that the breach decision maker was no longer considering whether she was suspected to have breached section 13(1) of the Public Service Act, and then later finding the employee to have breached section 13(2) of the Public Service Act, would have caught her by surprise at the very end of the decision-making process.

The MPC recommended that the department set aside the breach determination against the employee for section 13(1) of the Code of Conduct on the grounds that a procedural defect had occurred. Given the sanction decision was based on the breach of section 13(1), it followed that the sanction decision should also be set aside.

In matters whether we confirm the agency's decision, we still provide the employee and the agency with comprehensive reasons for our decision recommendation. This is important for the applicant to understand why and how a decision was reached, and is useful for the agency to learn and build their own internal capabilities. Often, even when we confirm a decision, we will provide feedback on areas for future improvements and acknowledge where good practice has been observed.

Code of conduct breach confirmed

An employee was found to have breached the Code of Conduct for making comments to a colleague about their poor performance. The comments were made on several occasions, with a raised voice, and in earshot of other employees.

The agency determined this behaviour amounted to a failure to uphold elements of the Code to treat everyone with respect and courtesy, without harassment, and to behave in a way that upholds the APS Values.

On review we considered all the available evidence and circumstances of the incidents, and ultimately reached the same view as the original decision maker. On the balance of probabilities, we were satisfied the evidence proved the employee did what they were alleged to have done.

The evidence included statements from two witnesses who reported the volume of the shouting was so loud that they actively avoided the office space where the employee worked. Other witnesses described the employee as being angry, agitated and condescending towards their colleague.

In addition to this, the colleague reported feeling upset by the interaction and took leave during the days following to cope. The colleague felt the employee had spoken in a condescending tone. The witnesses also felt uncomfortable during these interactions.

Ultimately, our report to all the parties set out all the reasons why there was sufficient credible and corroboratory witness statements and evidence gathered during the investigation to support the breach decision and recommended that it be confirmed.

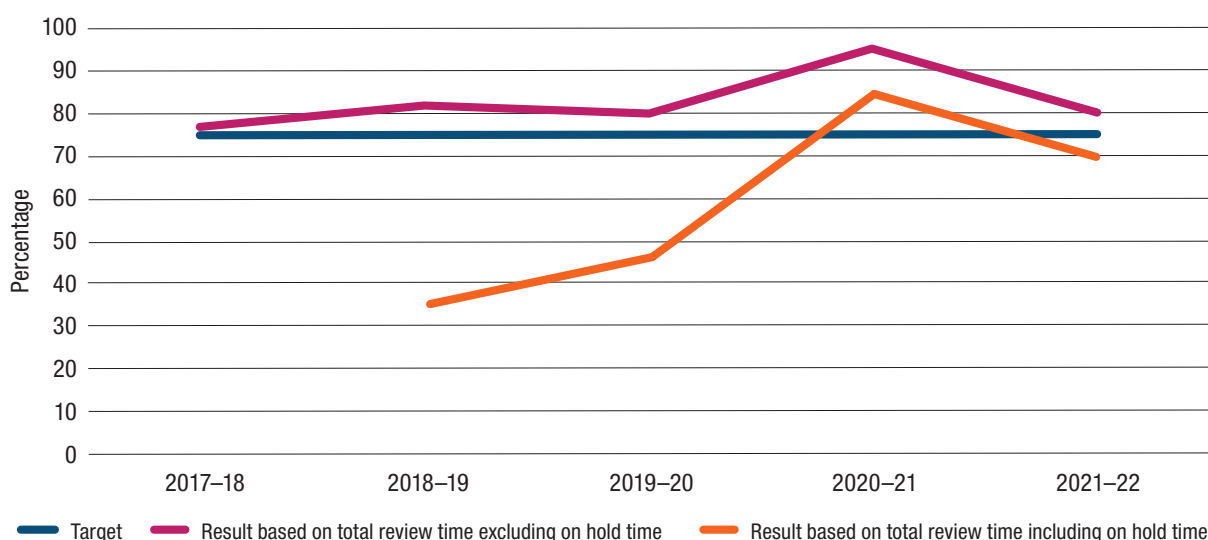
Timeliness of reviews of workplace decisions

Our target is to complete 75% of reviews of workplace decisions within 14 weeks from the date of receipt. For the purpose of reporting against the target, we exclude the time a case been placed 'on hold'. This is because it is time where we are not able, for external reasons, to progress or take action on a matter. A case is usually put on hold when we are waiting for a response or information from an applicant or the agency. A case cannot be placed on hold because the reviewer is on leave or because we do not have the resources to allocate and progress a case. This year, review cases were placed on hold for an average of two and a half weeks or 18 days.

This year we exceeded our target by completing 80% of all our reviews of workplace decisions within 14 weeks (see Figure 17, which shows results based on total review time, excluding on-hold time). Although we exceeded our target, it is a notable drop from the five-year high of last year, where we completed 95.2% of our reviews within 14 weeks. The increase in completion rates between 2019–20 and 2020–21 was the result of internal improvements we made to our business processes and by using our resources better.

In 2021–22, those improvements were still in place; however, for most of this year, the team that conducts reviews of workplace decisions almost exclusively comprised new employees. Additionally, in the first half of the year, the two senior review position holders left the MPC within a short period of each other. A new reviewer takes three to six months to become familiar with the work of the MPC and our review methodology and processes. During this period, they are under the guidance of the MPC or a more senior officer on the conduct of individual review matters. For a review team of six people, this means review processing times slow down considerably when the majority of that team are new to the roles, as was the case throughout most of 2021–22.

Figure 17: Percentage of reviews of workplace decisions completed within 14 weeks, over a five-year period

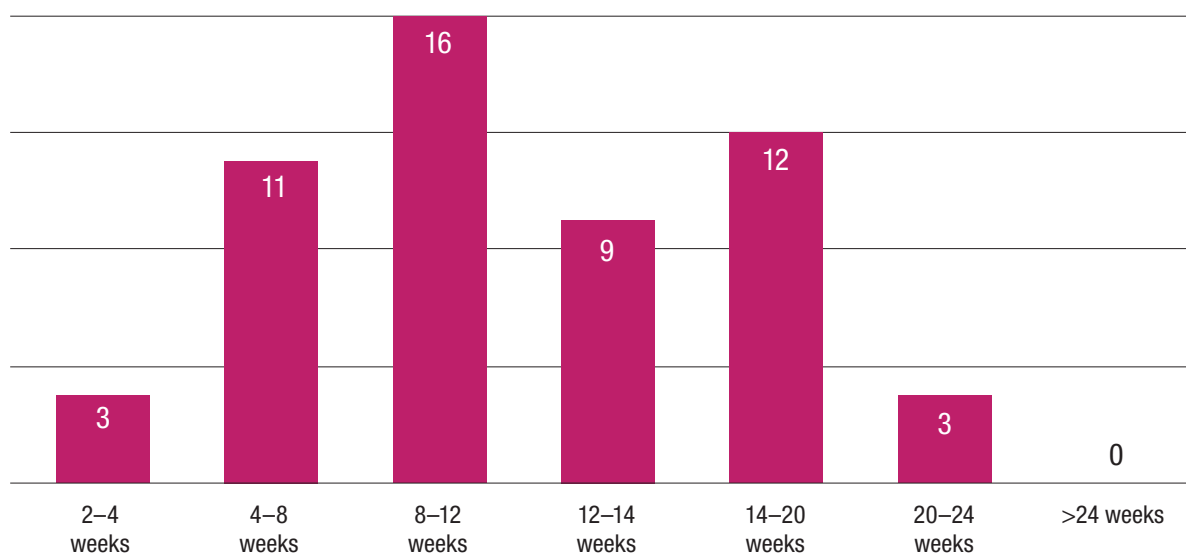


As shown in Figure 17, this year we also want to report, for the first time, the percentage of reviews of workplace decisions completed within 14 weeks, without regard for on-hold time (that is, the time to complete a review including on-hold time). Our goal on this measure is an ambitious one. We want to further improve our case handling times to a point where we are achieving 75% of reviews being completed within 14 weeks, including on-hold time.

This year we fell slightly below this new target at 70%. This was lower than 2020-21 but higher than the previous years where we have captured this data. The significant improvement from 2019-20 reflected changes we made to the rules for placing a review matter on hold. Previously a case could be put on hold for many reasons including because a reviewer was on annual leave or because of the Christmas and New Year break. The rules are now far more restrictive and a case can only be placed on hold for delays the result of waiting for documents or a response from the applicant or the agency. This new figure also shows, that since 2018-2019, we have significantly improved our overall case handling times.

We also report our timeliness performance for reviews of workplace decisions by the total number of weeks each review takes to complete. As can be seen in Figure 18, the majority of reviews were completed within eight to 12 weeks (noting this count includes the time a review was on hold). The length of time taken to complete a review reflects the work involved in conducting merits reviews, including adhering to procedural fairness requirements and writing comprehensive reports that clearly explain the reasons for our decision.

Figure 18: Number of weeks taken to complete reviews of workplace decisions



Note: The totals in this figure include one review that was resolved prior to a recommendation being made.

MPC direct reviews of workplace decisions

As noted earlier, the MPC can conduct direct reviews for three categories of workplace decisions:

- Code of Conduct (where an applicant seeks a review of a breach or sanction decision)
- those where it is not appropriate for the agency to do an internal review
- those that concern an action taken by a statutory office holder.

Code of Conduct reviews

For Code of Conduct matters, we can review a determination that a current or former employee has breached the Code of Conduct, or a decision to impose a sanction in relation to a breach determination. Each decision is counted as a separate review.

When we review a determination that an employee has breached the Code of Conduct, we will have regard to all the evidence gathered during the agency's own investigation and any additional information provided during the review by the employer and the employee. The review will consider whether:

- the agency's procedures for dealing with alleged breach comply with the Australian Public Service Commissioner's Directions 2022
- there was substantial compliance with the agency's procedures and the requirements of procedural fairness
- on the balance of probabilities, there is sufficient evidence to conclude the employee did what was alleged
- what the employee did amounts to a breach of the Code of Conduct.

As shown in the following case study, it is important for decision makers to understand why following procedural fairness requirements is significant and necessary to making a fair decision.

Handling a complaint about bullying

Agencies have a number of pathways available to them to decisively handle complaints and concerns raised about inappropriate workplace behaviour. Agencies may choose to conduct an investigation, refer the allegations to a third party for investigation, or attempt to manage and resolve these types of complaints through more informal, alternative dispute mechanisms.

In one case, an employee made a bullying complaint against their manager. The agency decided to conduct a 'preliminary assessment' of the complaint, which involved obtaining documentation and interviewing the employee. In concluding their preliminary assessment, the delegate found that there was insufficient evidence that bullying had occurred and, therefore, no breach of the Code of Conduct had occurred. After seeking an internal review by their agency without success, the employee applied for a secondary review with the MPC.

In order to make findings of facts or findings that an employee had, or had not, breached the Code of Conduct, an investigation should be commenced in accordance with procedures in 15(3) of the Public Service Act. Where these procedures are not enacted, Code of Conduct findings cannot reasonably be made.

In this case, the MPC considered that the outcome of the agency's preliminary assessment constituted 'findings'. The decision was inconsistent with the intention by the agency to conduct a preliminary assessment to determine whether or not to commence a Code of Conduct process.

The MPC recommended the agency set aside the decision.

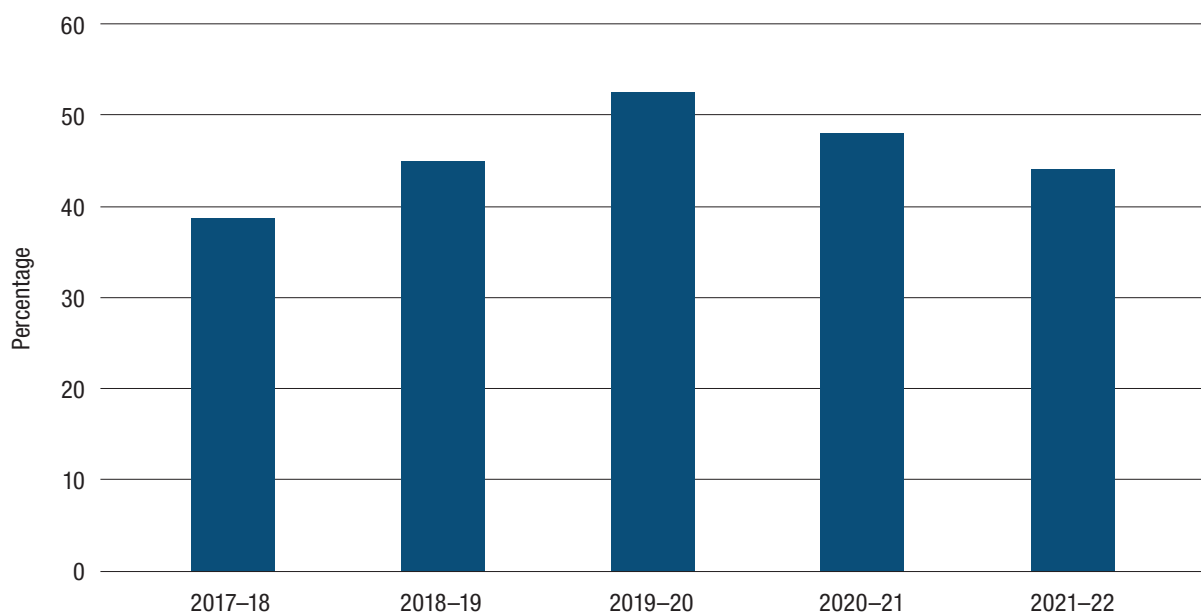
If a sanction has been imposed, our review will consider whether the sanction was appropriate in the circumstances of the employee's case. We will have regard to what was considered by the original decision maker and how issues such as the nature and seriousness of the breach and mitigating factors were balanced. Getting sanction decisions right is important to the culture and productivity of a workplace. Our review of sanction decisions provides assurance that decision-making is robust, fair and consistent with the APS Values and Employment Principles.

The APS State of the Service report 2020-2021 shows a total of 570 APS employees were found to have breached the Code of Conduct by their APS agency.⁴ Of those, we received 69 applications to conduct a merits review to determine if the decision was fair, reasonable and proportionate. This year, we received 31 applications for a review of a decision or finding that an employee or former employee had breached the Code of Conduct, or of a sanction decision. Of these, 24 Code of Conduct decisions involving 20 employees proceeded to review.

Reviewing decisions in Code of Conduct matters accounts for 44% of all our review work. Figure 19 demonstrates that the number of reviews of Code of Conduct decisions has reduced slightly as a proportion of total reviews over the last two years, but it remains as the highest overall proportion of types of matters we review.

⁴ *State of the Service Report 2020-21*, Australian Public Service Commission, Table A4.8 Outcomes of investigations into suspected breaches of the APS Code of Conduct.

Figure 19: Code of Conduct matters as a proportion of total workplace decisions reviews, 2017–18 to 2021–22



For the 24 reviews of Code of Conduct decisions we conducted, we recommended that:

- 16 decisions be upheld
- five decisions be set aside
- three decisions be varied.

The following case study shows how we apply the principles of procedural fairness and determine what, in all the circumstances, is the correct and preferable decision.

Biased investigator

An agency issued a longstanding employee with notice they had received information that could potentially constitute a breach of the Code of Conduct. The letter detailed several general examples and informed the employee that an external investigator had been appointed to determine if a breach had occurred.

The employee participated in an interview. In the final report, the investigator found the employee had engaged in conduct that breached multiple sections of the Code of Conduct (the Breach Decision). The employee submitted an application to the MPC for review, raising a number of concerns about procedural defects in the investigation process.

The agency procedures require that investigators and breach decision makers conduct investigations consistent with the requirements of procedural fairness and other administrative law principles.

The MPC examined the interview between the employee and the investigator (via transcript and audio records) and found a lack of planning and preparation. The investigator provided

large excerpts of evidence from multiple witnesses, which were not provided to the employee prior to the interview. During the interview, the investigator referred to multiple incidents, dates and individuals in no apparent order or context, making it difficult for the employee to respond. The investigator raised issues and allegations that were not well articulated.

The MPC observed that the investigator was, at various times, sarcastic, dismissive and accusatory. The investigator made negative inferences about the employee's work capabilities and made direct statements that ultimately suggested that they did not bring an open mind to the matter.

There are two primary rules of procedural fairness: the 'hearing rule' is that people who will be affected by a proposed decision must be given an opportunity to express their views to the decision maker, and the 'bias rule' is that the decision maker must be impartial and must have no personal stake in the matter to be decided.

The Administrative Review Council's best practice guide⁵ on natural justice states:

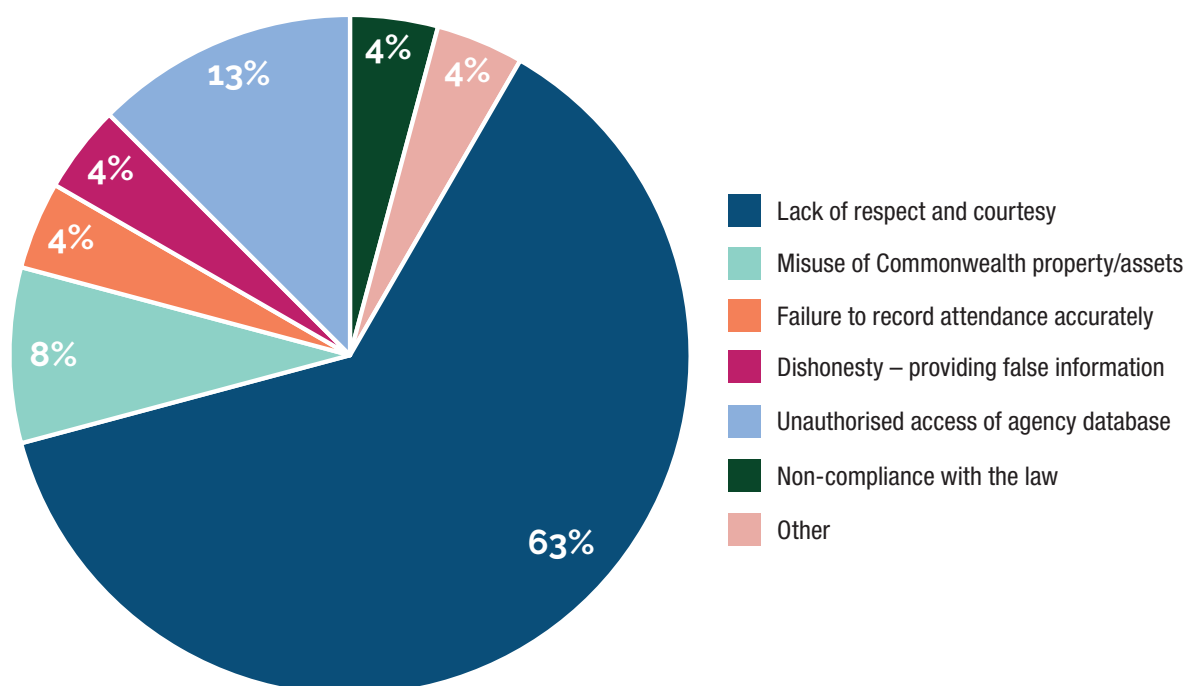
"Actual bias' means that the decision maker has a predisposition to decide the matter otherwise than with an impartial and unprejudiced mind. 'Apparent bias' means that in the circumstances a fair-minded observer might reasonably suspect that the decision maker is not impartial ... It is not about whether an affected person thinks the decision maker is biased; it is about whether a fair-minded observer would reasonably suspect bias. An apprehension or suspicion of bias can arise from things the decision maker says or does that suggest he or she is either partial or hostile to one side or has formed prejudgments and is not open to persuasion."

Considering the overall circumstances, the MPC concluded there was evidence the investigator did not have an impartial mind to the question of whether the employee had engaged in the conduct alleged. For this reason, the decision was set aside.

Our reviews of decisions involving the Code of Conduct covered a wide range of behaviour and conduct. As can be seen in Figure 20, this includes 'lack of respect and courtesy', which comprises the largest group of cases, making up more than half of applications. 'Unauthorised access of agency database' and 'misuse of Commonwealth property/assets' were the next two most significant behaviours. For a comprehensive breakdown of the categories of decisions, see Appendix B, Table B.7.

5 <https://www.ag.gov.au/legal-system/publications/administrative-review-council-best-practice-guide-2-natural-justice>

Figure 20: Reviews of Code of Conduct decisions, by issue



Reviews conducted by the MPC because a primary review by the agency is not appropriate

We received 30 applications to conduct direct reviews of workplace decisions that would, in usual circumstances, be reviewed first by the agency.

Of those 30 applications, 27 applications were closed as follows:

- 19 applications were not accepted (i.e invalid)
- three applications lapsed
- five were withdrawn.

Three matters remained on hand at the end of the year.

The reasons why the applications for direct review by the MPC were not accepted include that:

- the applicant had sought a primary review from the agency and it was not yet complete, or the applicant had failed to seek a primary review from the agency
- the agency head was not involved in the decision, the action was not serious or sensitive, and the action for which the review was sought was not claimed to be victimisation or harassment for previously seeking a review
- the application was outside of our jurisdiction
- the applicant had ceased being an APS employee.

Application for a direct review by the MPC

An employee submitted a request for annual leave, which was declined by the CEO of his agency. The employee submitted an application to the MPC for a direct review of his agency's decision to refuse his request for annual leave, in accordance with regulation 5.24(3)(a) of the Public Service Regulations.

Under the Regulations, an affected employee may apply to the MPC for a direct review of an action not involving a Code of Conduct breach or sanction determination in one of the following select circumstances:

- the agency head was directly involved in the action
- it is not appropriate, because of the seriousness or sensitivity of the action, for the agency head to deal with the application
- the action is claimed to be victimisation or harassment of the employee for having made a previous application for review of action.

In order to accept an application under regulation 5.24(3)(a), the MPC must be satisfied that there is evidence of the agency head being directly involved in the action or decision.

'Agency head' is defined in the Public Service Act as one the following:

- the secretary of a department
- the head of an executive agency
- the head of a statutory agency.

The employee submitted that, due to being part of a small agency, the agency head was directly involved in the decision to decline his application for leave, and it was, therefore, not appropriate to seek a primary review with the agency.

The MPC carefully considered the employee's application and confirmed that the CEO of the agency had signed the decision to decline his leave application. The MPC also contacted the agency, who confirmed that the CEO was directly involved in the decision. As there was sufficient evidence to support that the CEO of the agency was directly involved in the decision, the MPC decided to accept the employee's application for a direct review, pursuant to regulation 5.24(3)(a) of the Public Service Regulations.

Reviews of actions by statutory office holders

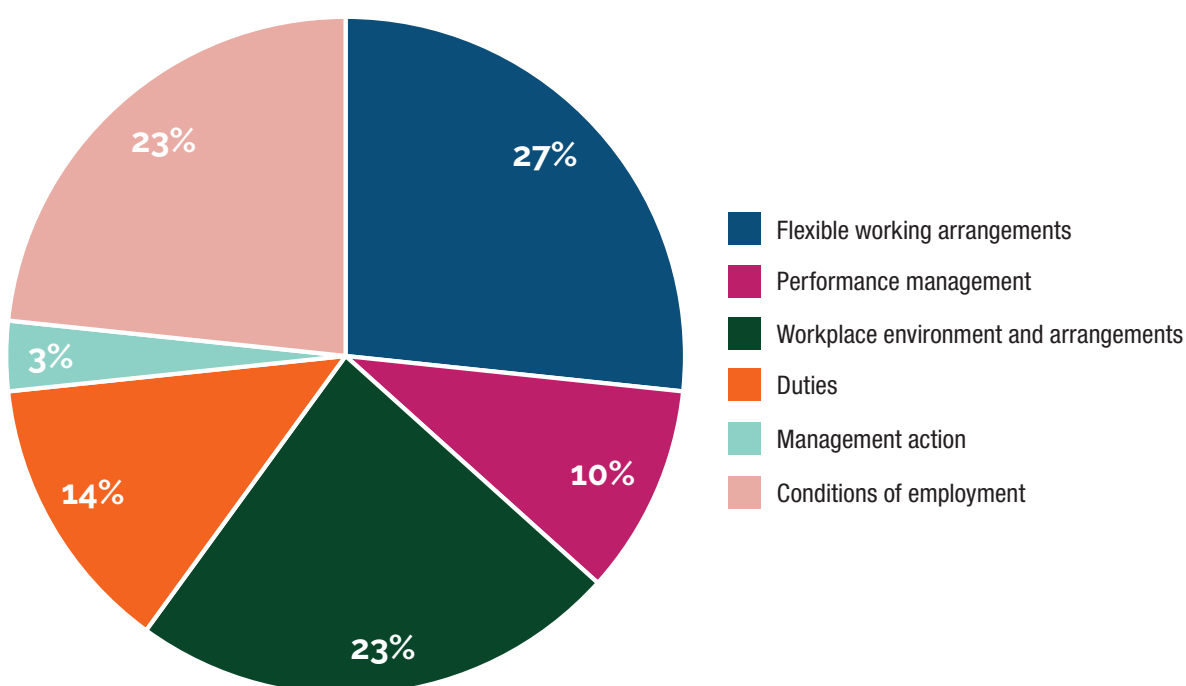
We received no applications from APS employees requesting reviews of the actions of statutory officer holders.

MPC secondary reviews of workplace decisions

We received 69 applications to conduct secondary reviews of workplace decisions this year. Of those, we reviewed 30 decisions, including one decision that was resolved before the review was completed.

Figure 21 and Appendix B, Table B.6 provide a breakdown by issue of the 30 secondary reviews that we completed this year.

Figure 21: MPC secondary reviews, by issue



As can be seen in Figure 21, the largest proportion of secondary reviews related to disputes about flexible working arrangements.

Before the COVID-19 pandemic, reviews about flexible work was one of the smallest categories of secondary review (4% in 2019–20). This changed in 2020–21, when this category leapt to being the one of the largest, at 18%. There is no doubt that the pandemic has had a seismic impact on the way we work. In the APS, we have seen some agencies adopt hybrid working arrangements as the new 'normal' as they discovered this type of working model could be successful for many types of work. In many respects, we are still transitioning and adapting to new ways of working, and it is increasingly seen by employees as a critical condition for a new job.

This year, the remainder of secondary reviews covered a diverse range of decisions about conditions of employment such as workplace environment and arrangements (including bullying and harassment), performance management, disputes about duties, and conditions of employment including leave and salary.

The following case studies highlight the variety of issues that are addressed via secondary reviews and provide insight into the mechanics of conducting reviews. The first case study also demonstrates the MPC's ability to implement facilitated resolutions, where the agency and employee come to an agreement about the best way ahead without a final recommendation from the MPC.

Reviews relating to conditions of employment

1. An employee sought a review of their agency's decision to decline an application for carer's leave. The application related to the employee's care of their adult child who was suffering a serious illness, as well as their grandchild who required care as their parent was too ill to care for them. The agency decided that the employee was not eligible for carer's leave in these circumstances, as the grandchild was not ill and only required supervision.

The primary review upheld the original decision, deciding that caring for the grandson did not satisfy the requirements of personal leave (for caring purposes). The employee was advised that if they could provide evidence that they had cared for their child when they were ill, then the delegate would consider an application for personal leave.

The MPC made enquiries with the employee, who was able to provide written advice from their child's doctor confirming that they had acted as primary carer for the child during a period of illness.

The MPC contacted the agency and provided the new evidence supplied by the employee. The MPC agreed that supervising the grandchild did not meet the requirements of the policy. However, the agency was advised that it was the MPC's provisional view that the employee did meet the requirements of the policy in relation to caring for their child. The MPC advised that it was inclined to recommend that the original decision be set aside and that the employee be granted personal leave (for caring purposes) for the relevant period.

The agency was given the opportunity to consider the new information and responded by changing its decision to allow the employee to use personal leave (for caring purposes) for the period in question.

As a result of our intervention, the employee was re-credited with the other types of leave utilised during this period. As this matter had been successfully conciliated, no further action was required to complete the review and the file was closed.

2. An employee sought a review of an agency's decision to reduce their classification due to unsatisfactory performance of duties. The employee alleged they had been bullied and that their supervisor had given them an unreasonable workload.

The employee had been working in their processing role for two years when a new supervisor joined the team. After several months, the new supervisor identified that the employee was making errors in their work and was not meeting the same timeliness targets as other employees in the team.

After some initial conversations and suggestions, the employee's performance did not improve, and a performance improvement plan was put in place. After six weeks, the employee's performance had not improved to the required standard, and the human resources (HR) delegate agreed to commence an eight-week performance assessment program, with an independent assessor. At the end of this process, the delegate decided to reduce the employee's classification.

The MPC reviewed all the documents that showed how the processes were conducted. The MPC also spoke to the employee to get an in-depth understanding of their concerns, and to the supervisor and independent assessor for their perspectives.

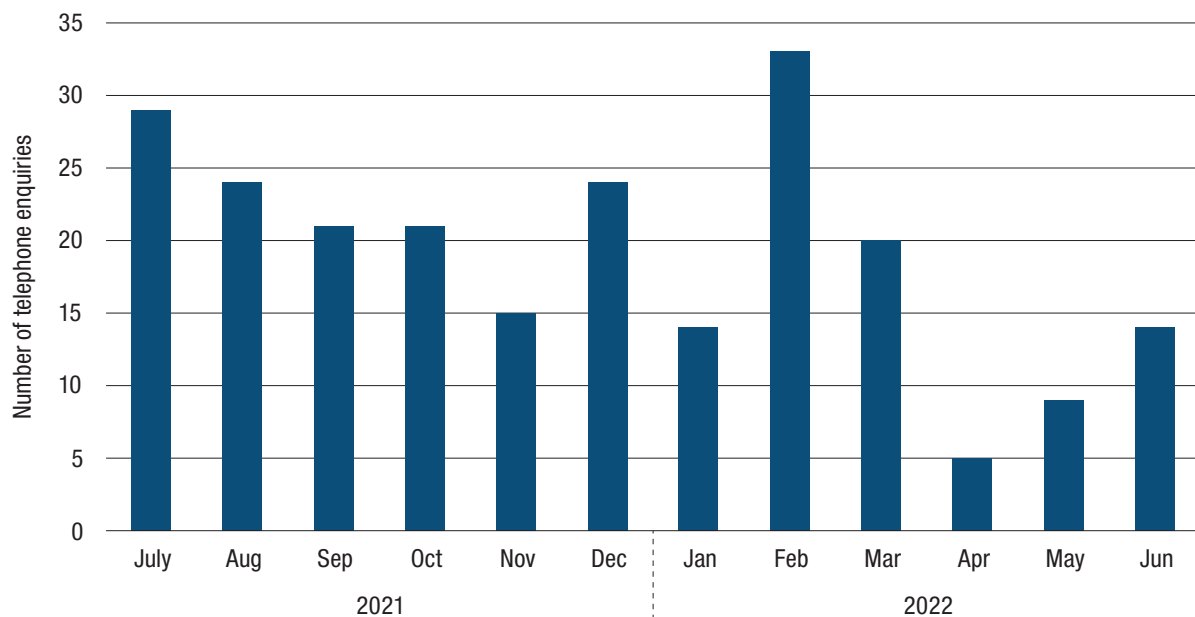
Taking into account all of the information, the MPC decided to uphold the agency's decision. This was because the performance management processes were thorough and well documented, and included multiple strategies to assist the employee to improve their performance. The written evidence and advice from the independent assessor indicated the supervisor was supportive and constructive in their dealings with the employee, who was resistant to feedback. The agency had also investigated the employee's complaints of bullying separately. It was clear the employee was not performing to the required work level standard but demonstrated ability to work at the classification below. As such, the MPC was of the view that the decision was fair and reasonable in the circumstances.

Contact with us about reviews of workplace decisions

Every year we respond to hundreds of enquiries from employees and agencies by phone and email about review or workplace decisions. We have a small team of officers who are responsible for managing and responding to the vast array of questions and issues arising from individual cases and general enquiries about the Review of Actions scheme and our role, and seeking information on how a review is conducted. We value the opportunity to engage directly with our stakeholders, and we use the data we collect to inform our education and communications strategy.

During the reporting period, the office recorded 229 telephone enquiries relating to reviews of workplace decisions, which represents 22% of all telephone enquiries received. We received 231 (non-casework) email enquiries relating to reviews of workplace decisions in 2021–22.

Figure 22: Number of telephone enquiries about reviews of workplace decisions, by month, 2021–22



Of the 229 telephone enquiries received about reviews of workplace decisions:

- 80 were about secondary review matters, which included actions relating to bullying and harassment, flexible work and performance reviews or agreements (35%)
- 44 concerned a Code of Conduct matter (19%)
- 40 were categorised as 'other' (17%)
- 25 concerned recruitment matters, including procedural fairness and serious defects in the recruitment process (11%)
- 15 concerned employee entitlements (7%)
- 13 were about an application to the MPC for a direct review of an action that would otherwise be reviewed by the employee's agency (6%)
- 12 were questions about application timeframes (5%).

Performance of other statutory functions

3

Reviews of involuntary retirement decisions for Australian Federal Police employees

Australian Federal Police (AFP) employees employed under the *Australian Federal Police Act 1979* can apply to the MPC for a review of a decision by the AFP Commissioner to retire the employee due to physical or mental incapacity. When making these types of retirement decisions, the consent of the AFP employee is not required.

AFP officers and civilian staff members are entitled to a review, but senior executive AFP employees are not.

Our role is to make sure the retirement decision is based on sound evidence and is the correct and preferred decision, taking into account all the individual circumstances.

The MPC did not receive any applications for review of an AFP retirement decision this year.

Complaints and inquiries

Complaints about final entitlements

We take complaints from former Australian Public Service (APS) employees (including Senior Executive Service employees) who are concerned about their final entitlements. Final entitlements are the payments an employee receives when they cease employment. Those payments may include final salary payments including any outstanding payment for overtime, any leave that has been accrued but not taken, and the calculation of redundancy payments and payments in lieu of notice.

Final entitlements are determined by the *Fair Work Act 2009* and the industrial instrument the employee is employed under, such as an agency enterprise agreement or contract of employment.

We can investigate errors in the amount of money received or delays in providing an employee with their final payment. We can also look into whether an agency has provided adequate information about how final entitlements are calculated.

This year, we received four complaints involving concerns about final entitlements. Of these complaints, one was not accepted, two were withdrawn and one was investigated as outlined in the following case study.

Applicant entitled to greater amount of long service leave

The applicant was a long-term casual employee at an agency, having worked there for over 15 years. Upon separation from the agency, the applicant did not receive the amount of long service leave they believed they were entitled to.

The applicant attempted to resolve this with the agency informally without success, and subsequently made a complaint to the MPC. In accordance with regulation 7.2 of the Public Service Regulations 1999, the MPC may investigate a complaint by a former APS employee that relates to their final entitlements on separation from the APS, including long service leave or annual leave.

Once the MPC received the complaint, we contacted the employee's former agency to understand how they calculated the amount of the employee's long service leave entitlement. The MPC carefully reviewed the agency's explanations, the applicant's submissions and the applicable legislation, and sought further information from the agency and the applicant, including in relation to the applicant's employment history and employment contracts.

On the basis of all the available information and evidence, the MPC advised the agency that the applicant was entitled to a greater amount of long service leave than they received. We recommended that the agency pay the applicant the difference between the higher amount and the amount already received by the applicant in respect of his long service leave.

Inquiries

The MPC can conduct inquiries into:

- a public interest disclosure that relates to an alleged breach of the APS Code of Conduct and meets all the requirements of a disclosure in accordance with the Public Interest Disclosure Act
- an alleged breach of the Code of Conduct by the Australian Public Service Commissioner
- an APS action, refusal or failure to act by a person in the capacity of an APS employee, secretary or agency head, but only at the request of the Minister for the Public Service
- whether an APS employee, or former employee, has engaged in conduct that may have breached the Code of Conduct, but only at the request of an agency, and if all the parties agree.

We did not conduct any inquiries into any of the above matters this year.

We received two requests in relation to a disclosure in accordance with the Public Interest Disclosure Act. As of 30 June 2022, these two requests were being assessed for eligibility.

We received one request to investigate an alleged breach of the Code of Conduct; however, it did not proceed as all parties did not agree to the MPC undertaking the investigation (which is a requirement under the legislation for the MPC to conduct an investigation of this type).

Employer services

The MPC can provide employer services to APS agencies, non-APS Commonwealth entities, and state and territory agencies and departments to help them make high-quality and timely recruitment and employment-related decisions. The services are provided on a cost recovery basis and include:

- Independent Selection Advisory Committees (ISACs), where the MPC forms a selection committee for an APS agency
- recruitment services (for example, convening selection panels for APS agencies and other entities)
- workplace investigations and merits reviews of workplace decisions for non-APS entities.

During 2021–22, we have seen a significant uptake in APS agencies using our employer services. We completed four ISACs and provided support to 10 recruitment panels compared to no requests in 2020–21.

This is a result of actively promoting our services through our website, presentations and meetings with agencies.

Feedback from agencies who have used our employer services during 2021–22 has been overwhelmingly positive; below are some examples:



In 2021/22 period, we have engaged the services of MPC for multiple APS recruitment rounds at both APS and EL levels including under the ISAC arrangements. All internal panel participants have found the participation of MPC highly beneficial, where the MPC representative was able to provide them with valuable recruitment knowledge, coaching on best practice and supported the timeliness of the processes. We highly recommend the use of the MPC services and regularly promote the services based on our experience.

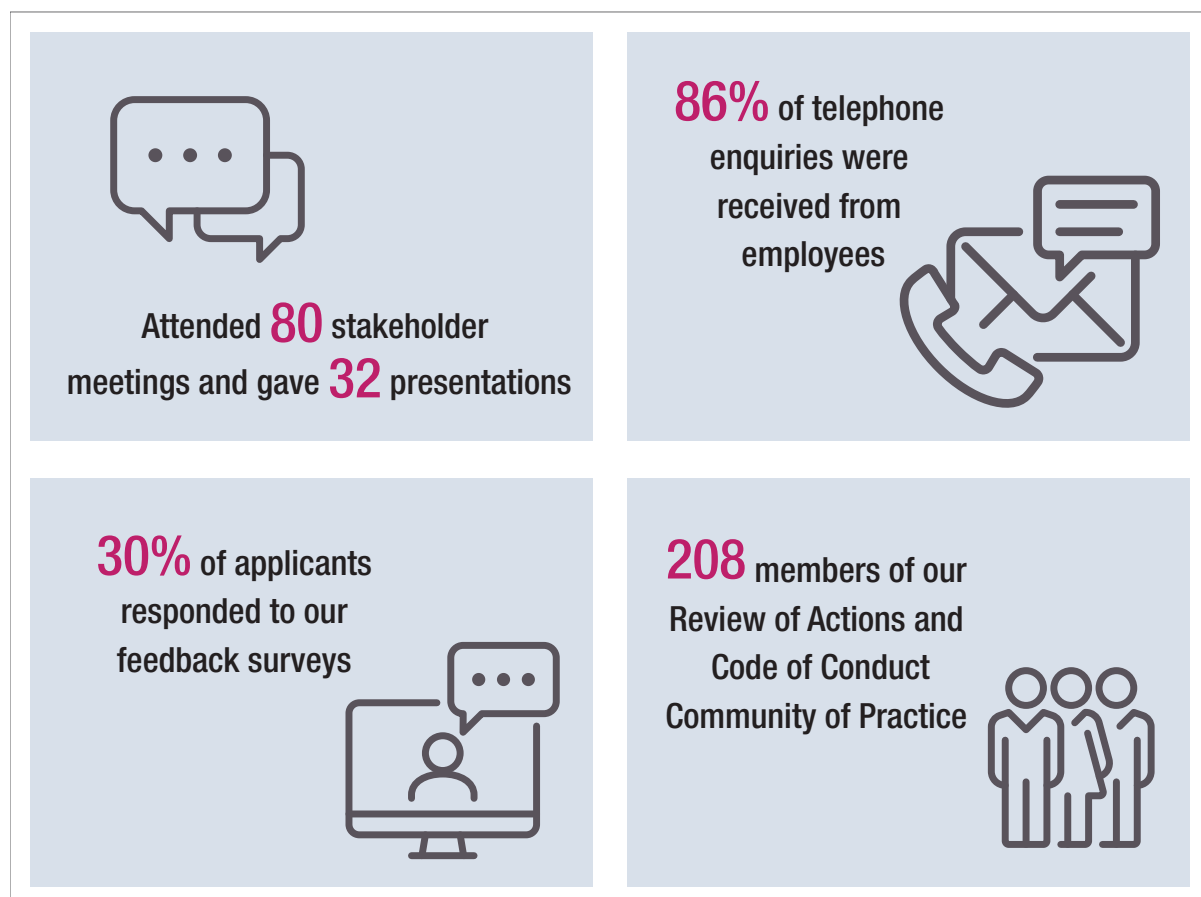
We are extremely grateful to the Merit Protection Commissioner for making [convenor name] available to us for our EL1 recruitment process. As predicted, we had a strong internal field of candidates and wanted to ensure we were upholding the merit based principles.

Both myself and the other panel member learnt some valuable points from [convenor name] which we will take forward as better practice into future recruitment activities.

Engagement, projects and accountability

4

Engagement



We recognise the importance of actively engaging and consulting with our stakeholders, to work together on service improvements to achieve safe, effective and productive workplaces in the Australian Public Service (APS).

We have reflected this in our communications strategy, where we set out to:

- raise awareness of the entitlement to seek a review
- educate the APS on the role of the Merit Protection Commissioner (MPC)
- assist APS agencies to continuously improve their practice.

Our stakeholder engagement activities this year are outlined in the following sections.

Stakeholder meetings

The MPC and her staff attended 80 meetings with external stakeholders and gave 32 presentations this year.

- It was a great privilege to meet with Senator the Hon Katy Gallagher shortly after her appointment to the position of Minister for the Public Service, to discuss the challenges and priorities of the office of the MPC.
- The MPC met with the six largest APS agencies on a quarterly basis throughout the year. These meetings are an opportunity to provide feedback, identify patterns and emerging trends in review outcomes, and discuss significant, complex or sensitive issues.
- In addition to regular quarterly meetings with Services Australia, the MPC also had meetings with Services Australia to discuss the surge in promotion review applications, how Services Australia could assist with the increased workload in promotion reviews, and about the overturn decisions by Promotion Review Committees.
- The MPC met with a number of similar domestic and international agencies to strength relationships, understand challenges and discuss merit in public administration best practices. International engagements included:
 - » Merit Systems Protection Board, United States
 - » Te Kawa Mataaho Public Service Commission, Aoteroa, New Zealand
 - » Public Service Commission, Canada
 - » Commission for Public Service Appointments, Ireland
 - » Civil Service Commission, United Kingdom
 - » Merit Commissioner, British Columbia, Canada.Domestic engagements included:
 - » Fair Work Commission
 - » Fair Work Ombudsman
 - » Merit Protection Boards Registrar, Victoria.
- As part of our Reach Out strategy to employees and agencies we:
 - » met with six agencies from which we do not currently receive casework, or from which we receive few applications, to raise awareness of the Review of Actions schemes and other employer services where we can offer assistance
 - » presented 17 webinars on review of workplace and promotion decisions (we discuss our program of free informative webinars below)
 - » presented to the ACT Small Agencies HR Forum on the role and function of the MPC.
- We conducted several workshops and training sessions for review practitioners and breach decision makers. The MPC has presented at five APS SES orientation training sessions.

The MPC is the Chair of the Audit and Risk Committee for the Australian Human Rights Commission (AHRC), and chaired five meetings during the year. There were also eight meetings with AHRC staff on matters relevant to the committee, and the MPC meet with all the AHRC Commissioners to discuss the committee's work.

The MPC is a member of the Integrity Agencies Group, chaired by the Australian Public Service Commissioner, which met three times during the year. This group serves to ensure that integrity is at the centre of the work of the APS and that the APS approach to integrity is integrated, capable, agile and transparent.

The MPC was interviewed for an article published in *The Mandarin* on 16 September 2021, 'Merit matters in the Australian Public Service', where the MPC discussed the importance of raising awareness of the Review of Actions scheme and published an article entitled 'Workplace disputes: Five essential steps to conduct a fair merits review' in the October 2021 edition of APS HR Professional Stream, APS HR Newsletter. In this article, we outlined five essential steps HR professionals need to take to ensure they are conducting a fair review and getting the balance right.

Tip sheets and video explainers

We develop tip sheets based on observations and issues identified through reviews or workplace decisions. We published two tip sheets during 2021–22:

- **Determining review eligibility**—Determining if a review application is eligible for review can be complex. We receive requests for advice about assessing eligibility and often receive questions about eligibility when we deliver presentations. This tip sheet aims to guide decision makers on how to determine if an application for review is eligible and includes specific advice on how to interpret exceptions in the Public Service Regulations.
- **Drafting formal directions**—This tip sheet is for HR practitioners and managers who are considering issuing a formal direction to an employee. It aims to assist on when to use a direction and how to frame it so that it is clear and specific.

We recognise that navigating the Review of Actions scheme can be difficult for employees—the legislation and regulations are complex, and it can be difficult for an employee to ascertain exactly what they can and cannot achieve through the scheme. We decided that in addition to our website content and other publications, we needed to develop resources that could provide information to employees in quick, succinct and clear way. During 2021–22, we published on our website video explainers to tell employees about their entitlements, how the Review of Actions scheme works, how they can apply for review, and what the role of their agency and the MPC is in the scheme. Each video is entertaining and informative. The topics covered by the four video explainers are:

- the entitlement to apply for a review of workplace decisions
- the entitlement to apply for a promotion review

- how reviews of performance management decisions are done
- how we review a decision that an employee has breached the Code of Conduct or a decision to impose a sanction.

Case summaries

Each year we identify topics from our review casework that will provide informative and instructive case studies for our stakeholder groups. These may be examples of good-quality decisions made by agencies which we upheld, or examples of errors or incorrectly applied policy resulting in decisions that we have recommended be set aside or varied.

During 2021–22, we published nine case summaries concerning decisions on a range of employment-related issues including identifying material defects in procedural fairness and understanding the bias rule. The full set of case summaries can be found on our website.

Feedback on agency policy and procedures

Part of our vision and purpose is to share what we have learnt through our role in the Review of Actions scheme. This includes offering to review an agency's own internal policy and procedures and training content. This year we contributed to the Australian Public Service Commission's comprehensive review of the Handling Misconduct guidelines for APS agencies.

We were approached by the Australian Taxation Office as a subject matter expert to review course materials on training modules on regulatory frameworks, and on an APS recruitment to induction learning series. We contributed to the drafting of internal review of employment decisions and Review of Actions policies of three other APS agencies.

Review of Actions and Code of Conduct Community of Practice

We continue to support the Review of Actions and Code of Conduct Community of Practice to raise the quality of reviews and Code of Conduct decisions in the APS and build a network of practitioners who can share information and experiences in a supportive environment.

Some examples of feedback from our Community of Practice members are:



I found it really informative, thoroughly enjoyable and the speakers worked well together. It really was an excellent session!

I find the Q&A time incredibly valuable. The scenarios and questions posed by CoP members often are shared by numerous others in the session. Thank you.

The Community of Practice is governed by a steering committee. Our role is currently to provide secretariat support through maintaining the membership list, providing support to agencies where possible, and leading planning for future meetings. The growing membership of the community of practice is sitting at 208 members (compared to 135 members in 2020–21). As a result of COVID-19, we moved away from in-person meetings to an online forum using a range of platforms to communicate. We continued through 2021–22 with the online format but are looking to develop a hybrid model that will include online and face-to-face meeting options in the future.

Surveys and feedback from applicants and agencies

We build on feedback we receive from applicants through a survey instrument sent out to all applicants who have been through an MPC review process. We ask for feedback in order to learn and improve our review processes and how we communicate with applicants. The purpose is to seek feedback on the process, not about the outcome of the review.

The survey is anonymous and conducted online. It is sent to all applicants who have received a review recommendation. The response rate this year was 30%, compared to 28% in 2020–21. Respondents were generally positive about the application process, with 80% agreeing that the process to apply for review was easy.

Positive feedback received regarding the benefit of case studies being made available on our website triggered a dedicated project in the second half of the year to review our current case studies and build the knowledge library. This will continue into 2022–23 financial year.

Examples of responses are:



An increase in recent case summaries would be beneficial to review, to understand what can be in the remit of a review.

It is always beneficial to read case studies of similar reviews—further case studies of highly complex reviews would be beneficial for employees and employers.

We have also received positive feedback in relation to the respectful approach shown by our reviewers to applicants.



[The reviewer] was highly professional, impartial and went to great lengths to ensure all available information was considered in her review.

[The reviewer] had communication with me over the phone, I felt very positive about the conversation and her empathy at the time, however the outcome reflected differently.

This was a positive experience, knowing someone well informed was available to help and guide.

During 2021–22, we conducted an annual survey for agencies to seek feedback on the overall experience of the review process and to track changes and improvements. Respondents were sent an anonymous online survey in June 2022. The response rate was 10%, compared to 27% in 2020–21. The feedback provided was constructive and will be incorporated into continued operational improvements during 2022–23.



The MPC has implemented significant changes to its resources, approach and process over the last few years which is really impressive. I hope that it continues to look at how to provide practical and informative information to agencies and applicants and continuously improve that offering. Heavy emphasis on the practical and informative as that really assists us at the coal face to become better investigators/ decision makers and continuously improve our processes.

Website and website visits

On 6 September 2021, we launched our new website, with the address name www.mpc.gov.au, which included refreshed content and improved navigation for our key stakeholders.

This replaced our previous website address name, www.meritprotectioncommission.gov.au.

The key features of the new website include:

- extensive review and refresh of content and resources
- simplified online application forms accessible from the landing page, making it easier for employees to apply for a review, or to lodge a complaint about final entitlements
- a webinar registration page for employees to sign up to join information sessions on the Review of Actions scheme throughout the year
- video explainers to better communicate eligibility and the MPC's role in support employees.

The feedback from both employees and employers has been extremely positive.



That looks great and works very well also. I absolutely appreciate being able to access relevant information through a well-structured and aesthetically appealing website. Well done!

This new website looks really good and is easy to navigate! Well done!!

In 2021–22, we had 146,979 unique page visitors to our website⁶ (compared to 114,208 in 2020–21), with the most visited website pages on mpc.gov.au being:

- Review of Actions – 24,353 unique page views
- Resources – 3,672 unique page views
- Case summaries – 4,518 unique page views
- About us – 3,134 unique page views
- Resources, webinars – 1,932 unique page views
- Lodge a review application – 1,764 unique page views.

6 This number represents combined visits from mpc.gov.au and meritprotection.gov.au.

Projects

Reach Out strategy

Increasing awareness of our role in the public sector is critical to achieving our vision: to support and contribute to safe, productive and harmonious workplaces in the APS.

In 2020–21, we piloted a program called Reach Out, for APS employees to highlight key information about the review of workplace decisions and promotion decisions. The pilot was very successful and was developed into a calendar-year program of webinars and workshops. The program was launched in February 2022 and continues to be further developed and refined. Registration to attend these sessions is available on the website at www.mpc.gov.au.

Our free monthly webinars are a great way to introduce the Review of Actions scheme and the role of the MPC to new employees. Equally important, the free webinars provide awareness sessions for existing employees, either as refresher training or for those who may not have received information at their induction about the Review of Actions scheme and the MPC's statutory functions. We are encouraging agencies to incorporate attendance at our webinars into their induction program and to promote attendance to existing employees.

Below is feedback from attendees of the promotion review webinars:



Presenters very knowledgeable about a confusing process.

The pace was excellent and the case studies helped with the learning.

Below is feedback from attendees of the review of workplace decisions webinars:



It was informative and not something I was aware of.

They explained everything clearly, and that we could submit questions which were answered at the end.

Promotion Review Committee and Independent Selection Advisory Committee convenor conferences

Promotion Review Committee (PRC) and Independent Selection Advisory Committee (ISAC) convenors perform an important statutory function for the MPC, and many are casual rather than ongoing employees. Many are scattered across the country and do not have the opportunity to attend the office when they do their convening work. This means their opportunities to interact with other convenors and the ongoing staff are minimal. In response to these factors, we have continued to work on engagement with our casual pool through increased communication.

ISAC convenors were invited to attend an inaugural conference in March 2022, where it was agreed it would be beneficial to combine the ISAC and PRC groups for a further conference in June 2022. Previous terms of reference related to the PRC conferences have been updated to reflect this change.

The feedback from attendees was positive, and it was clear that this forum will provide an opportunity to better engage with the Office of the MPC, improve the way we work, build consistent practices and processes in the conduct of promotion reviews and recruitment panels, and provide a platform for convenors to share and discuss their casework experiences arising from complex cases.

Pilot of an improved application process for promotion reviews

In our Annual Report 2021–21, we announced we had begun a pilot to improve the efficiency of the promotion review process and decrease the amount of time APS employees spend submitting applications for review that do not proceed. As noted in Chapter 2, most applications for promotion reviews lapse because no 'unsuccessful' candidate (an APS employee who did not win a promotion in the recruitment round) seeks a review of the promotion of the 'successful' candidate (an APS employee who did win a promotion in the recruitment round). Another key driver for this pilot is to reduce the workload of MPC staff in assessing applications that then do not proceed to review.

The pilot will trial a process where promotion review applications from successful candidates are only sought if an application is received from an unsuccessful candidate. This can be managed through regulation 5.9 of the Public Service Regulations, which allows the MPC to extend the time for making an application for a review of a promotion decision to a class of employees (in the pilot, the MPC would give additional time to successful candidates).

This year we had planned to report on the outcome of the pilot. Due to a number of factors, including finding a suitable vacancy position to use for the pilot, together with constraints on staffing capacity due to the surge of promotion review work, the pilot has been delayed until 2022–23. We will report on the outcome of the pilot in next year's annual report.

Implementation of an application management system for promotion reviews

The current operation of registration, assessment and processing of promotion reviews is a complex, rules-based process with multiple parties, application types and variations. Information is currently stored across multiple systems and the process has many steps, which are highly manual but critical tasks.

The volume and scale of this manual work is dependent on the level of recruitment activity being undertaken by the larger agencies. In December 2021, Services Australia entered into a service delivery agreement with the MPC to assist with addressing delays arising from the increased workload processing applications from Services Australia employees. Part of that agreement was to fund a discovery project to identify a software solution to resolve the complicated manual processes.

In April 2022, we engaged an external consultant to map out the critical business processes of the promotion review function, and to identify how to streamline and automate a manual process, thereby reducing operational risks.

The consultant provided an end-to-end map of the current state workflow, which identified points of delay, dependencies and processes that could be automated. The consultant also provided a recommendation on a technological solution and a roadmap to assist with implementation. The recommendations have been accepted, and consideration is being given to the implementation phase.

Accountability

The APSC is included in the Department of the Prime Minister and Cabinet's Portfolio Budget Statements. The Australian Public Service Commissioner, as head of the APSC, is responsible for the APSC's financial and human resources and for assessing the level of its achievement against its outcome.

During 2021–22, the MPC had managerial responsibility for the work of the APSC employees made available to assist the MPC in the exercise of her functions.

Financial arrangements and corporate support

The MPC is neither a Commonwealth entity nor an accountable authority for the purposes of the *Public Governance, Performance and Accountability Act 2013*. Rather, the MPC is a statutory officer appointed by the Governor-General under section 52 of the Public Service Act. Section 49(2) of the Public Service Act requires that the staff necessary to assist the MPC must be persons engaged under that Act and be made available by the Australian Public Service Commissioner. The MPC does not have a separate budget allocation and is dependent on the APSC for staffing and resources to undertake her functions.

For 2021–22, the MPC was allocated an annual budget (excluding corporate costs) of \$2.099 million and an average staffing level of 12.7.

The MPC and the Australian Public Service Commissioner have a memorandum of understanding for the provision of staff and corporate services. The current memorandum of understanding took effect in February 2022.

Staffing and office locations

The MPC is based in the APSC's Sydney office and has staff in the APSC's Sydney and Canberra offices. As noted in Chapter 1, the MPC operated in 2020–21 with an ASL of 12.7.

The small number of staff means we are organised along functional lines, with people performing more than one function and reporting to one or more supervisors. The main functional/team areas are:

- review of action and promotion review casework
- policy and projects
- employer services
- MPC inquiries.

The MPC also maintains a register of suitably skilled people who are engaged as casual employees at Executive Level 1 or 2. They may be engaged as required for irregular or intermittent duties (for example, to chair a PRC or undertake employer services work). There were 14 employees listed as casual employees during 2021–22. Throughout the year, casual employees undertook work equivalent to approximately one ASL.

Interaction with the Australian Public Service Commissioner

The respective responsibilities of the MPC and the Australian Public Service Commissioner are established in the Public Service Act. The roles are complementary, particularly in relation to maintaining confidence in public administration.

The Australian Public Service Commissioner is responsible for upholding high standards of integrity and conduct in the APS. The MPC assists by ensuring consistent standards of decision-making and people management practices across the APS, and also provides an important assurance role for the APS. This assurance is provided by reviewing individual actions or decisions for consistency with the APS Values and other administrative law requirements, and through reviews of determinations of breaches of the Code of Conduct and/or sanctions.

During the year, the MPC and the Australian Public Service Commissioner met on five occasions.

Business planning and risk management

During 2021–22, we reviewed and closed out our 2020–2022 business plan. Projects contained within the 2020–2022 business plan were aligned to the risk register at the December 2021 mid-year review meeting. Incomplete projects have been rolled over into the 2022–23 business plan.

The complete risk register and framework is reviewed by all staff twice a year, in April as part of the forward planning day and in December as part of a mid-year review. Medium and high risks and future controls are reviewed on a regular basis by the MPC's Senior Leadership Group.

In June 2022, the MPC provided a business briefing to the APSC Audit and Risk Management Committee on the functions of the MPC, priorities and challenges, and risks and mitigations.

Freedom of information and privacy

We received seven applications under the *Freedom of Information Act 1982* during 2021–22. Three of these requests were for papers relating to the applicant's reviews of a workplace decision; three were for papers relating to promotion review matters; and one related to a general data request. The request for data was released administratively. Of the remaining six requests, four were finalised and two were withdrawn after providing further information.

We had no privacy breaches notified to the Office of the Australian Information Commissioner and received no privacy complaints.

Judicial review and other court decisions

During 2021–22, the MPC was joined as a respondent in three unconnected applications filed in the Federal Court of Australia seeking judicial review of workplace decisions taken by three respective APS agencies under the Public Service Act and Regulations. Two of these applications were discontinued and withdrawn by the applicants during the course of the reporting year. The ongoing application is for judicial review of certain decisions made by an APS agency and related recommendations made by the MPC in regard to breaches of the APS Code of Conduct by the applicant. The application is continuing in the Federal Court as at 30 June 2022.

Information Publication Scheme

From September 2021, we published information about our information publication plan on our MPC website.

Prior to this, information about the MPC's information publication plan was located on the APSC website and in the APSC information plan, which is available at www.apsc.gov.au/information-publication-scheme-ips.

The year ahead

5

Our key priorities

The Australian Public Service (APS) strives to be a model employer. That objective is underpinned by the APS Values and Employment Principles enshrined in the *Public Service Act 1999*. The Merit Protection Commissioner (MPC) plays an important role in ensuring those values and principles are 'lived' and complied with both by employees and agencies. The MPC and the Review of Actions scheme also form part of the broader APS integrity framework.

Our key priorities are driven by the statutory functions we perform and informed by current challenges and trends facing the APS. In 2022–23, we will provide guidance on good practice in decision-making and people management, and continue to provide effective and expert reviews. We will do this through the range of activities listed below.

Engaging with and supporting our stakeholders

- Implement a detailed communication and engagement strategy to better engage with stakeholders.
- Continue to implement and refine the Reach Out strategy with a particular focus on our webinar sessions to raise APS employees' awareness of their entitlements and how the Review of Actions scheme operates.
- Continue to support and expand membership of the Review of Actions and Code of Conduct Community of Practice.
- Inform APS agencies about MPC services that can assist with the conduct of high-quality recruitment processes (for example, Independent Selection Advisory Committees and provision of highly experience recruitment panel convenors and members).
- Continue to inform APS agencies and employees of new initiatives, projects and resources.

Delivering new services and resources

- Develop a suite of online information and training products to support a range of our statutory functions for educational and awareness raising purposes.
- Develop a Review of Actions HR practitioner workshop.
- Develop a guide to the Review of Actions for HR practitioners and decision makers.
- Commence a project about merit policy and its implementation. A key focus will be on translating promotion review outcomes into services or resources to assist APS agencies with the evolution and development of modern recruitment practices, and to engage with any Australian Public Service Commission and/or public sector reform processes that relate to recruitment and merit-based selection and appointment.

- Promote MPC employer service and offer expert and high-quality employment-related services to APS and non-APS Commonwealth entities.
- Publish new tip sheets, case studies and other resources for agency decision makers and APS employees.

Improving the way we work

- Undertake a post-implementation review to identify enhancements to further refine the website's content and functionality. Following the launch of our new website in 2021, we plan to have regard to user experience and feedback and relevant data analytics in identifying improvements to make to the website.
- Identify and implement a software solution to better manage promotion review applications and cases.
- Identify and implement a fit-for-purpose case management system for our reviews of workplace decisions, the management of complaints, and the conduct of any inquiries.
- Survey APS employees to establish baseline measures for awareness of review entitlements, the Review of Actions scheme, and the role of the MPC. This data will inform the development of resources and services, and how best to target our communications. Once established, it is proposed the survey continues on an annual basis to observe shifts and trends over time.
- Continue to receive and use feedback about our reviews of workplace decisions from applicants and agencies to inform our work and continuously improve.
- Undertake a new survey of promotion review applicants and agencies to understand their experience and views of the promotion review process and system.
- Develop an MPC business continuity plan to operate in conjunction with the APSC's business continuity plan.

Appendices

Appendix A: The Merit Protection Commissioner's statutory functions

Function of the Merit Protection Commissioner	Statutory authority—Australian Public Service
<p>Review of Actions scheme — other employment-related actions (workplace decisions)</p> <p>(This includes Code of Conduct reviews, direct reviews of other matters and secondary reviews.)</p>	<p><i>Public Service Act 1999</i></p> <p>Section 33 and subsection 50(1)(d)</p> <p>Subsection 50(1)(d) (provides for review functions to be prescribed by regulations)</p> <p>Public Service Regulations 1999</p> <p>Part 5, regulations 5.1, 5.2, 5.4, 5.5, 5.22–5.37</p> <p>Schedule 1</p>
<p>Review of Actions scheme — promotion and engagement</p> <p>(This involves merit-based promotion reviews and review of engagement decisions relating to certain Parliamentary Service employees.)</p>	<p><i>Public Service Act 1999</i></p> <p>Section 33 and subsection 50(1)(d)</p> <p>Public Service Regulations 1999</p> <p>Part 5, regulations 5.1, 5.2, 5.3, 5.5, 5.6–5.21</p>
<p>Review agency's determination that a former employee breached the Code of Conduct for behaviour they engaged in while an employee</p>	<p><i>Public Service Act 1999</i></p> <p>Section 33 and subsection 50(1)(ca)</p> <p>Public Service Regulations 1999</p> <p>Part 7, Division 7.3</p>
<p>Review the actions of statutory office holders who are not agency heads that relate to an employee's APS employment</p>	<p><i>Public Service Act 1999</i></p> <p>Section 33 and subsection 50(1)(d)</p> <p>Public Service Regulations 1999</p> <p>Part 7, Division 7.4</p>

Function of the Merit Protection Commissioner

Statutory authority—Australian Public Service

Inquire into:

- a public interest disclosure alleging a breach of the Code of Conduct

Public Service Act 1999

Subsection 50(1)(a)

Subsection 50(2) (provisions relating to MPC's powers when conducting the inquiry)

Public Service Regulations 1999

Part 7, Division 7.1 (regulations 7.1 and 7.1A)

- the Australian Public Service Commissioner for an alleged breach of the Code of Conduct

Public Service Act 1999

Subsection 50(1)(b)

- an APS action as requested by the Public Service Minister

Public Service Act 1999

Subsection 50(a)(c) and subsection 50(2)

- whether a current or former APS employee has breached the Code of Conduct

Public Service Act 1999

Subsection 50(1)(ca) and section 50A

Public Service Regulations 1999

Part 7, Division 7.6 (MPC's procedures)

Investigate complaints by former employees relating to entitlements on separation

Public Service Act 1999

Subsection 50(1)(e)

Public Service Regulations 1999

Part 7, Division 7.2

Establish an ISAC

Public Service Regulations 1999

Part 4

Provide recruitment and employment-related services to any (non-APS) person or body on a fee-for-service basis

Public Service Act 1999

Subsection 50(a)(e) and subsection 50(3)

Public Service Regulations 1999

Part 7, regulation 7.4

Review decisions of the Australian Federal Police Commissioner to compulsorily retire AFP employees on invalidity grounds

Australian Federal Police Act 1979

Section 32 and 33

Australian Federal Police Regulations 2018

Part 3, Division 2

Appendix B: Data tables for statutory functions

This appendix provides information on the activity and performance of the statutory functions of the MPC. Information on the MPC's functions can be found at: www.mpc.gov.au.

Review of promotion decisions

Table B.1 shows the status of promotion review cases for 2021–22, as at 30 June 2022, compared with 2020–21. Table B.2 shows the promotion review caseload by agency for 2021–22.

Table B.1: Status of promotion review cases 2021–22, compared with 2020–21

Promotion review cases	2021–22	2020–21
On hand at start of year	5	9
Created during the period	73	51
Total caseload	78	60
Reviewed by Promotion Review Committee	42	34
Invalid (e.g. applicant not an ongoing APS employee)	8	6
Lapsed (e.g. a protective application where no unsuccessful application received) or withdrawn	21	15
Total finalised during period	71	55
On hand at end of year	7	5
Target completion time (weeks)	8 or 12	8 or 12
Number completed within target time	59	55
Percentage completed within target time	83.09%	100%

Table B.2: Promotion reviews, by agency, 2021–22

Agency	Services Australia	Australian Taxation Office	Department of Home Affairs	Australian Bureau of Statistics	Nine other APS departments and agencies	Totals
Promotion review applications received	354	332	113	26	41	866
Promotion review cases registered (not including cases on hand at the start of the year)	35	16	10	2	10	73
Number of promotion review committees formed and finalised—cases reviewed	26	7	6	0	3	42

Agency	Services Australia	Australian Taxation Office	Department of Home Affairs	Australian Bureau of Statistics	Nine other APS departments and agencies	Totals
Parties to a promotion review process where a Promotion Review Committee was formed and finalised	170	123	26	0	8	327
Promotion decisions subject to review	130	114	20	0	5	269
Promotion decisions varied	11	0	0	0	1	12

Review of workplace decisions and complaints

Table B.3 provides information on the review of workplace decisions and complaints casework in 2021–22. Table B.4 provides information on the timeliness with which we performed our review and complaints functions. Both tables compare results for 2021–22 with those for 2020–21.

Table B.3: Review and complaints workload, 2021–22 compared with 2020–21

Cases	Direct reviews – Code of Conduct	Direct reviews – other	Secondary reviews	Former employee Code of Conduct (regulation 7.2A)	Total reviews	Complaints about final entitlements (regulation 7.2)	Total cases	
2021–22							2021–22	2020–21
On hand at start of year	10	0	9	0	19	0	19	27
Received during the period	28	30	69	3	130	4	134	173
Total cases	38	30	78	3	149	4	153	201
Reviewed	21	0	30	3	54	1	55	101
Facilitated resolution	0	0	1	0	1	0	1	7
Not accepted	1	19	23	0	43	1	44	50
Lapsed or withdrawn	9	8	9	0	26	2	28	23

Cases	Direct reviews – Code of Conduct	Direct reviews – other	Secondary reviews	Former employee Code of Conduct (regulation 7.2A)	Total reviews	Complaints about final entitlements (regulation 7.2)	Total cases
Total finalised during period	31	27	62	3	123	4	181
On hand at end of the year	7	3	16	0	26	0	19

Note: Direct reviews are reviews conducted by the MPC without first being reviewed by the agency head. Secondary reviews are conducted by the MPC following a review conducted by the agency head or after the agency head decides the matter is not reviewable but the MPC considers it is.

Table B.4: Timeliness in handling reviews and complaints, 2021–22 compared with 2020–21

Review type	2021–22		2020–21	
	Average time to complete reviews (weeks)	Completed within target timeframes (%)	Average time to complete reviews (weeks)	Completed within target timeframes (%)
Direct reviews – Code of Conduct	10	80.95	7	95.55
Former employees – Code of Conduct (regulation 7.2A)	14	33.33	2	100
Direct reviews – other	0	N/A	5	100
Secondary reviews	11	83.33	9	95.55
Total reviews	11	79.63	8	95.24
Complaints about final entitlements (regulation 7.2)	19	0	4.42	100

Note: We have reported separately on reviews of workplace decisions (direct to MPC and secondary reviews) and complaints about entitlements on separations (regulation 7.2 of the Public Service Regulations) in this annual report. Previous annual reports included complaints about entitlements in the overall review figures.

Table B.5 details the number of applications received for reviews and complaints about entitlements, by agency.

Table B.5: Applications for reviews and complaints completed, by agency, 2021–22

Agency	Direct Review – Code of Conduct	Direct Review – non-Code of Conduct	Secondary review	Total	Complaints about entitlements – former employees
Services Australia	14	0	21	35	0
Department of Home Affairs	5	0	10	15	0
Department of Defence	6	0	4	10	0
Australian Taxation Office	3	0	6	9	0
National Disability Insurance Agency	4	0	5	9	0
Department of Agriculture, Water and the Environment	3	0	4	7	0
Other agencies (20 in total)	26	0	12	38	1
Total	61	0	62	123	1

Table B.6 shows the subject matter for all reviews, other than Code of Conduct, completed in 2021–22.

Table B.6: Subject matter of reviewed cases (other than Code of Conduct), 2021–22

Subject matter	Secondary subject matter	Number
Flexible working arrangements	Home-based work	7
	Remote working arrangement	1
Subtotal		8
Workplace environment and arrangements	Bullying and harassment	6
	Not satisfied with the outcome of a complaint	1
Subtotal		7
Conditions of employment	Allowances	1
	Fitness for duty assessment	1
	Leave	4
	Salary	1
Subtotal		7
Duties	Reclassification	1
	Relocation	2
	Suspension	1
Subtotal		4
Performance management	Unsatisfactory performance, including performance rating	1
	Performance appraisal	1

Subject matter	Secondary subject matter	Number
	Performance counselling	1
Subtotal		3
Management action	Formal counselling	1
Subtotal		1
Total		30

Table B.7 shows the subject matter of all Code of Conduct cases reviewed in 2021–22.

Table B.7: Subject matter of Code of Conduct reviews completed, 2021–22

Subject matter	Number
Lack of respect and courtesy	15
Unauthorised access of agency database	3
Misuse of Commonwealth property/assets	2
Dishonesty – providing false information	1
Failure to record attendance accurately	1
Non-compliance with the law	1
Other	1
Total number of matters identified	24

Index



A

abbreviations, 105

Academy *see* APS Academy

accountability

APSC, 85–91

MPC, 189–91

Accountable Authority, 3, *see also* Australian Public Service Commissioner

Accountable Authority Instructions, 81, 85

administrative tribunal decisions, 91

advertising, 102

ANAO *see* Australian National Audit Office

APS

capability and leadership development, 12, 28

diversity and inclusion, 21, 23–4

flexible working arrangements, 103, 121, 171, 184

hierarchy and classification, 8, 20, 21, 35

integrity, 9, 12, 21, 34, 103, 125, *see also* APS Code of Conduct breaches, review of decisions; Merit Protection Commissioner

leadership development, 12, 28

learning and development, 8, 20, 21, 36–8

professions, 37–8

reputation, 29

workforce strategies *see* workforce strategies (APS)

APS Academy, 7, 20, 21, 24, 25, 29, 36–7, 41

Academy Management Committee, 87

Head of Academy, 15

APS Code of Conduct, 12, 103, 125

APS Code of Conduct breaches, inquiries into, 129

APS Code of Conduct breaches, review of decisions, 132, 158, 159–62, 165–9

decisions set-aside or varied, 159–62

judicial review, 191

procedural fairness, 165–8

proportion of all reviews, 166–7

statistics, 166, 199–201

subject matter (issues), 169, 171, 202

APS Craft, 8, 21, 36

APS Digital Profession, 8, 20, 21, 37–8, 41

APS Employee Census, 8, 32

APS Hierarchy and Classification Review, 8, 20, 21, 35

APS HR Workforce Strategy and Action Plan: The People Profession, 7

APS Learning and Development Strategy and Action Plan, 7, 20, 21, 24–5

APS Learning Board, 7, 8

APS Learning Quality Framework and Design Standards, 8

APS Remuneration Report, 32

APS Surge Reserve, 9, 20, 21, 27

artificial intelligence assistance in recruitment, 120, 136, 144–6

assets management, 81

Audit and Risk Management Committee, 87, 88–9

Auditor-General *see* Australian National Audit Office
audits

audit report on financial statements, 45–6

internal, 85

AusTender, 81, 82, 83

Australian Federal Police Act 1979, 126, 129, 176

Australian Federal Police employees, 127

involuntary retirement decisions review, 129, 176

Australian Federal Police Regulations 2018, 127, 129

Australian Government Graduate Program, 20, 21, 25–6

Australian Human Rights Commission, Audit and Risk Committee, 182

Australian Information Commissioner, 91

Australian National Audit Office

Auditor-General access clauses in contracts, 81

financial statements audit report, 45–6

Australian Public Service *see* APS

Australian Public Service Commission, 183

organisational structure, 13

outcomes and programs, 12

roles and functions, 11–12

senior executives, 14–16

Australian Public Service Commissioner, 13, 125, 129, 182, 189, 190

Accountable Authority, 3

remuneration, 100
 review by, 7–9
 roles and functions, 190
Australian Public Service Commissioner's Directions
 2022, 34, 135, 146
Australian Public Service Disability Employment
Strategy 2020–25, 23–4
Australian Public Service Gender Equality Strategy
 2021–26, 23–4
 Australian Taxation Office training modules, 183
 automated selection techniques, 120, 136, 144–6
 Axiom Associates, 85

B

Bruinsma, Rina, 15
 business planning (MPC), 191

C

case summaries, 183
 Centre of Excellence, 20, 31
 Chief Operating Officer Committee, 20, 24, 25
 code of conduct *see* APS Code of Conduct
 collective workplace arrangements, 20, 21, 22
 Commissioners *see* Australian Public Service
 Commissioner; Merit Protection Commissioner;
 Parliamentary Service Commissioner;
 Parliamentary Service Merit Protection
 Commissioner
 committees, 86–9
Commonwealth Aboriginal and Torres Strait Islander
Workforce Strategy 2020–24, 23–4
 Commonwealth Ombudsman, 91
 Commonwealth Procurement Rules, 81
 communications strategy and projects, 127
 communities of practice, 20, 30, 31, 183–4
 complaints investigations, 129
 complaints about final entitlements, 176–7
 statistics, 199–201
 timeliness, 200
 compliance and accountability *see* accountability
 consultants, 81–2
 reduction of reliance on, 8

contact officer, *inside front cover*, 5
 contractors, reduction of reliance on, 8
 contracts, 81–3, *see also* procurement
 corporate governance, 85–8
 corporate plan, 10
 performance reporting alignment (PBS and
 corporate plan), 18–19
 performance results, 22–38
 court decisions, 191
 COVID-19 pandemic, 29, 30, 37, 91, 103, 122
 impact on applications for reviews of workplace
 decisions, 120, 121, 153, 171

D

data and research, 20, 32
 Defence Force Remuneration Tribunal, 10
Delivering for Tomorrow: APS Workforce Strategy 2025,
 11, 30
 Department of Defence, 126
 Deputy Australian Public Service Commissioner, 15
 Deputy Secretaries Talent Council, 28
 digital information management and record-keeping
 culture, 90–1
 digital literacy, 20, 29, 91
 Digital Profession, 8, *see also* APS Digital Profession
 Digital Stream Emerging Talent Program, 20
 Digital Transformation Agency machinery of
 government changes, 41, 91, 92, 94
 disability reporting, 102
 diversity and inclusion, 21, 23–4

E

ecologically sustainable development, 102
 employee/employer obligations, 122
 employees *see* staff (APSC)
 employer services provided by MPC, 130, 178
 energy consumption, 102
 enterprise agreements
 APS *see* workplace arrangements (APS),
 performance results
 APSC, 98



entity resource statement, 42, *see also* financial management
environmental performance, 102
ethical standards *see* integrity
Executive Board, 86
Executive Committee, 86
exempt contracts, 83
expenses for outcome, 43, *see also* financial management
external scrutiny, 90-1

F

Fair Work Act 2009, 176
final entitlements, complaints about, 176-7
Finance and Public Administration References Committee, 91
finance law compliance, 85
financial arrangements (MPC), 189-90
financial management
 entity resource statement, 42
 expenses for outcome, 43
 financial controls and reportable contracts, 81-3
 financial statements, 11, 44-80
 report on performance, 41-3
First Assistant Commissioner, 16
flexible working arrangements
 for APS staff, 103, 121, 171, 184
 workplace decisions review, 121, 171
fraud control, 3, 81, 85
freedom of information
 APSC, 102
 MPC, 191
functions *see* roles and functions
future *see* outlook

G

Gallagher, Hon Katy, 12, 127, 181
gender equality strategy, 8
governance *see* corporate governance
graduate recruitment, 8, 20, 21, 25-6
guidance material, 21, 90, 182-3

H

health and safety *see* work health and safety
Highly Capable, Future Ready, 7
human resources management *see* staff (APSC)
hybrid working arrangements, 121

I

Independent Review of the APS 2019, 7, 35
Independent Review Panel, 35
Independent Selection Advisory Committees, 127, 130, 178, 188
individual flexibility agreements, 98
Information Publication Scheme, 102, 191
information technology
 review application management system, 189
 see also APS Digital Profession; digital information management and record-keeping culture; digital literacy
inquiries by MPC, 129, 177
integrity, 8, 11, 21, 34, 103
Integrity Agencies Group, 182
internal audit arrangements, 85
international engagement, 9, 20, 21, 29-30, 181
involuntary retirement, AFP employees *see* Australian Federal Police employees

J

Joint Committee of Public Accounts and Audit, 90-1
judicial decisions
 APSC, 91
 MPC, 191

K

key management personnel remuneration, 75, 100
key performance indicators (performance measures), 19, 21, *see also* performance report
key priorities
 APSC, 11, 12
 MPC, 193-4

L

leadership development, 12, 28
 learning and development, 7, 20, 21, 36–7
Learning and Development Strategy and Action Plan, 7, 20, 21, 24–5
 legal counsel (MPC), 126
 legislative framework, 125, 127
 MPC, 125
 letters of transmittal
 APSC, 3
 MPC, 114
 Lilley, Carol, 88
 Lovelock, Grant, 16

M

machinery of government changes, 8, 41, 91, 92, 94
 APSC guidance material, 90
Maternity Leave (Commonwealth Employees) Act 1973
 review, 8
 mental health services, 103
 merit lists and pools, 121, 143–5
 merit policy and its implementation project, 193
 merit principle, 120, 121, 135
 Merit Protection Commissioner, 125–30
 and APS Commissioner, 190
 average staffing level, 126, 190
 budget, 190
 business planning and risk management, 191
 complaints investigations *see* complaints investigations
 contacts and enquiries, 133–4, 147–8, 173–4
 employer services, 130, 178
 foreword, 119–22
 inquiries by, 129, 177
 legislative framework, 125
 letter of transmission, 114
 office locations, 190
 organisational structure, 126
 promotion reviews *see* promotion decisions review
 purpose statement, 125
 remuneration, 100

roles and functions, 125, 189, 190
 staffing arrangements, 121, 123, 125–6
 stakeholder engagement, 121, 122, 123, 193
 statutory functions, 119, 127–30, 176–8, 189, 196–7
 virtual events and online engagement, 121
 vision statement, 125
 workload, 123, 133
 workplace decision reviews *see* workplace decisions review
 minister, 12, 127, 181
 mobility within APS, 21, 27, *see also* APS Surge Reserve

N

networks and groups, 87–8
NewAccess workplaces program, 103
 non-consultancy contracts, 82–3
 non-salary benefits, 98

O

Office of the Australian Information Commissioner, 191
 Ombudsman, 91
 Organisation for Economic Co-operation and Development, 20, 29
 organisational structure, 13
 outcomes and programs, 12–13
 outlook
 budget outlook for 2022–23, 42
 MPC year ahead, 193–4
 overview
 APSC, 11–16
 MPC, 125–30

P

parliamentary committees, 90–1
 Parliamentary Service Commissioner, 11, 91, 92, 94
 Parliamentary Service Merit Protection Commissioner, 125
 Parliamentary Workplace Support Service, 11, 91, 92, 94



pay *see* remuneration

People and Change Committee, 87

performance pay, 98

performance report

- environmental performance, 102
- financial *see* financial management
- performance measures, 19
- performance measures results, 21
- performance reporting alignment (PBS and corporate plan), 18-19
- results (details), 22-39
- results (summary), 20-1
- statement of preparation, 17

Portfolio Budget Statements, 11, 189

- performance reporting alignment (PBS and corporate plan), 18-19
- performance results, 22-39

portfolio membership, 11, 189

Principal Review Officer, Defence funding for, 126

principles of public sector governance, 85

priorities

- APSC, 9
- MPC, 193-4

privacy, 191

procurement, 81

- consultants, 81-2
- contracts, 81-3
- small business, 83
- see also* purchasing

programs *see* outcomes and programs

projects, 127, 187-9, 193

promotion decisions review

- about promotion reviews, 136-9
- agencies involved, 123, 143-5, 148, 198-9
- application management system, 189
- applications received, 119, 123, 132, 134, 139-41
- cases, 141-3
- decisions overturned, 120, 123, 134, 143, 144-5
- eligibility, 136-7
- enquiries, 147-8

- merit principle, 135
- outcomes, 141, 143
- process, 137-9, 188
- purpose, 119-20
- status of cases, 198
- timeliness, 147
- value of merits reviews of promotion decisions, 136
- workload, 119-20, 123, 127

Promotion Review Committees, 127, 134, 188

PS Academy Management Committee, 87

Public Governance, performance and Accountability Act 2013, 3, 81, 85, 88, 189

public interest disclosure, 129

Public Service Act 1999, 12, 122, 125, 127, 135, 189, 191, 193, 196-7

- s 24(1) determinations, 98

Public Service Regulations 1999, 122, 126, 191, 196-7

publications, 182-3

purchasing *see* procurement

purpose statement

- APSC, 11
- MPC, 125

R

Reach Out strategy, 181, 187, 193

Realising the Benefits for All: APS Gender Equality Strategy 2021-26, 7

record-keeping culture, 90-1

recruitment (whole-of-government), 8, 20, 25-6, 38

recruitment processes, 193

- AI-assisted and automated selection techniques, 120, 136, 144-6
- 'bulk rounds', 120, 143-5
- design of new processes, 145-6
- merit principle, 120, 121, 135
- see also* promotion decisions review

recruitment services provided by MPC, 130, 178

related party disclosures, 75

remuneration

APS Remuneration Report, 32
 Audit and Risk Management Committee members, 88–9
 key management personnel, 75, 100
 non-salary benefits, 98
 performance pay, 98
 salary ranges, 99
 senior executives, 98, 99, 100–1
 Remuneration Tribunal, 11
Report into Consultations Regarding APS Approaches to Institutional Integrity, 21, 34
 resources for outcome, 42, *see also* financial management
 Review of Actions and Code of Conduct Community of Practice, 183–4
 Review of Actions scheme, 121–2, 128–9, 136, 193
 applications received, 119, 123
 feedback on agency policy and procedures, 183
 guidance material, 182–3
 see also promotion decisions review; workplace decisions review
 risk management
 APSC, 81
 MPC, 191
 roles and functions
 APSC, 11–12
 Audit and Risk Management Committee, 88
 Australian Public Service Commissioner, 10–11, 14, 190
 Merit Protection Commissioner, 125
 senior executives, 14–16
 senior management committees, 86–9

S

safety *see* work health and safety
 salaries *see* remuneration
 Secretaries Board, 35
 Future of Work Sub-committee, 8, 35
 Secretaries Talent Council, 28
 Sedgwick, Stephen, 9
 Senates Estimates, 91

senior executives, 14–16
 employment arrangements, 98–9
 integrity resources and training, 34
 leadership development, 12, 28
 remuneration (APSC), 98, 99, 100–1
 Services Australia, 142–5, 147, 181
 small business participation in procurement, 83
 Smith, Paul, 89
 social media, 39
 staff (APSC), 91–101
 average staffing level, 43
 consultative arrangements, 86
 organisational structure, 13
 senior executives, 14–16
 workforce profile, 91–2
 workforce statistics, 92–8
 workplace arrangements, 98–9, *see also* remuneration
 staff (MPC), 121, 123, 125, 189–90
 stakeholder engagement, 20, 21, 30–1
 MPC, 121, 122, 123, 181–4, 193
 stakeholder feedback, 178, 183, 184–5, 186, 187
State of the Service Report, 8
 State of the Service Roadshow, 9
 statutory functions of the Merit Protection Commissioner, 119, 127–30, 196–7
 statutory officeholders, 11
 reviews of statutory officeholders' actions, 170
 Storti, Maria, 89
 strategic priorities
 APSC, 11–12
 MPC, 193–4

T

talent management, 28
 timeliness (MPC)
 statistics, 200
 targets, 119
 tip sheets and videos, 182–3
 Translating and Interpreting Service, 5