



Australian Government  
Merit Protection Commissioner



MERIT  
PROTECTION  
COMMISSIONER

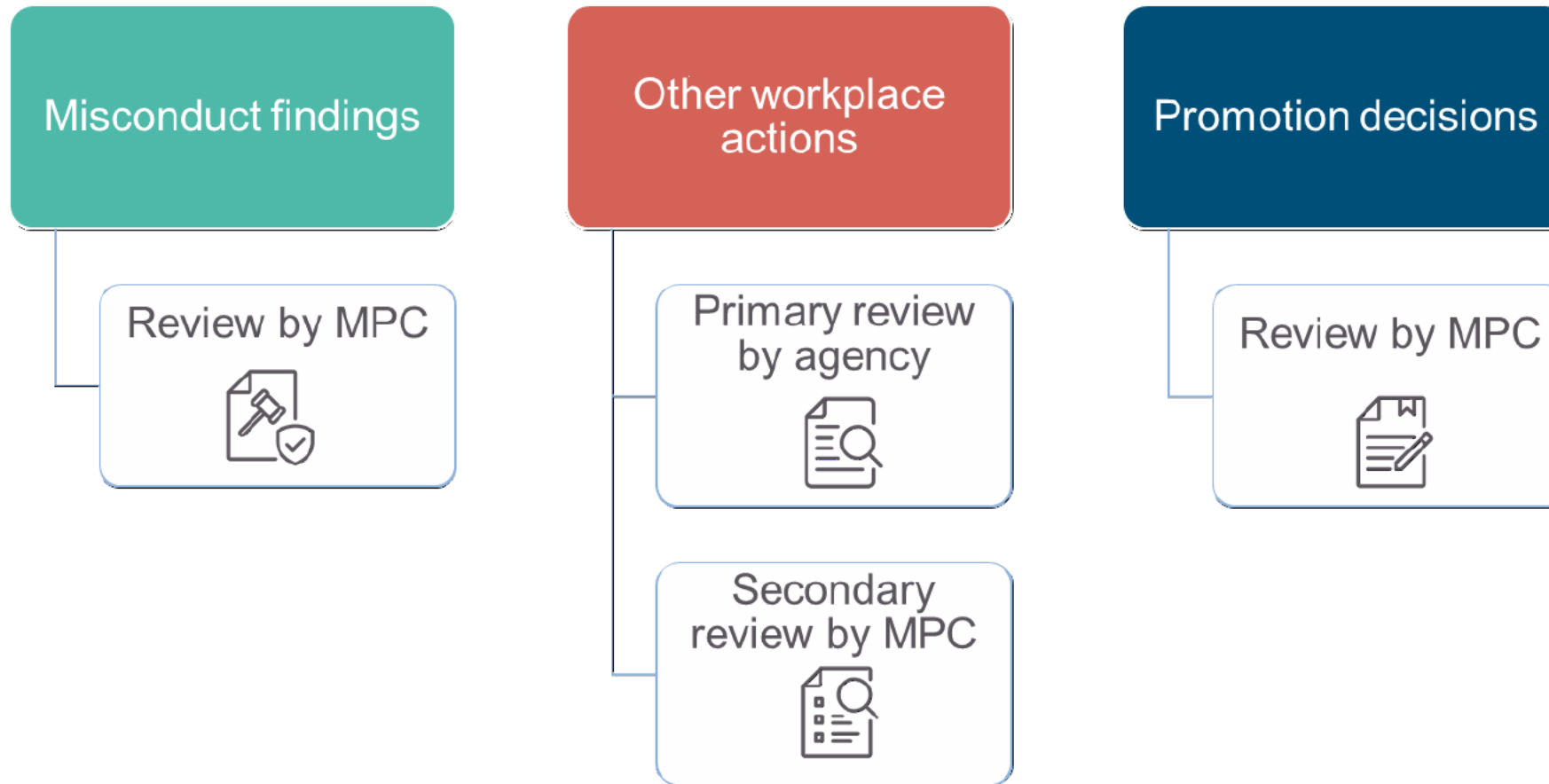
# Merit, misconduct and workplace culture





*Leaning towards Reconciliation*, Kayannie Denigan, 2024

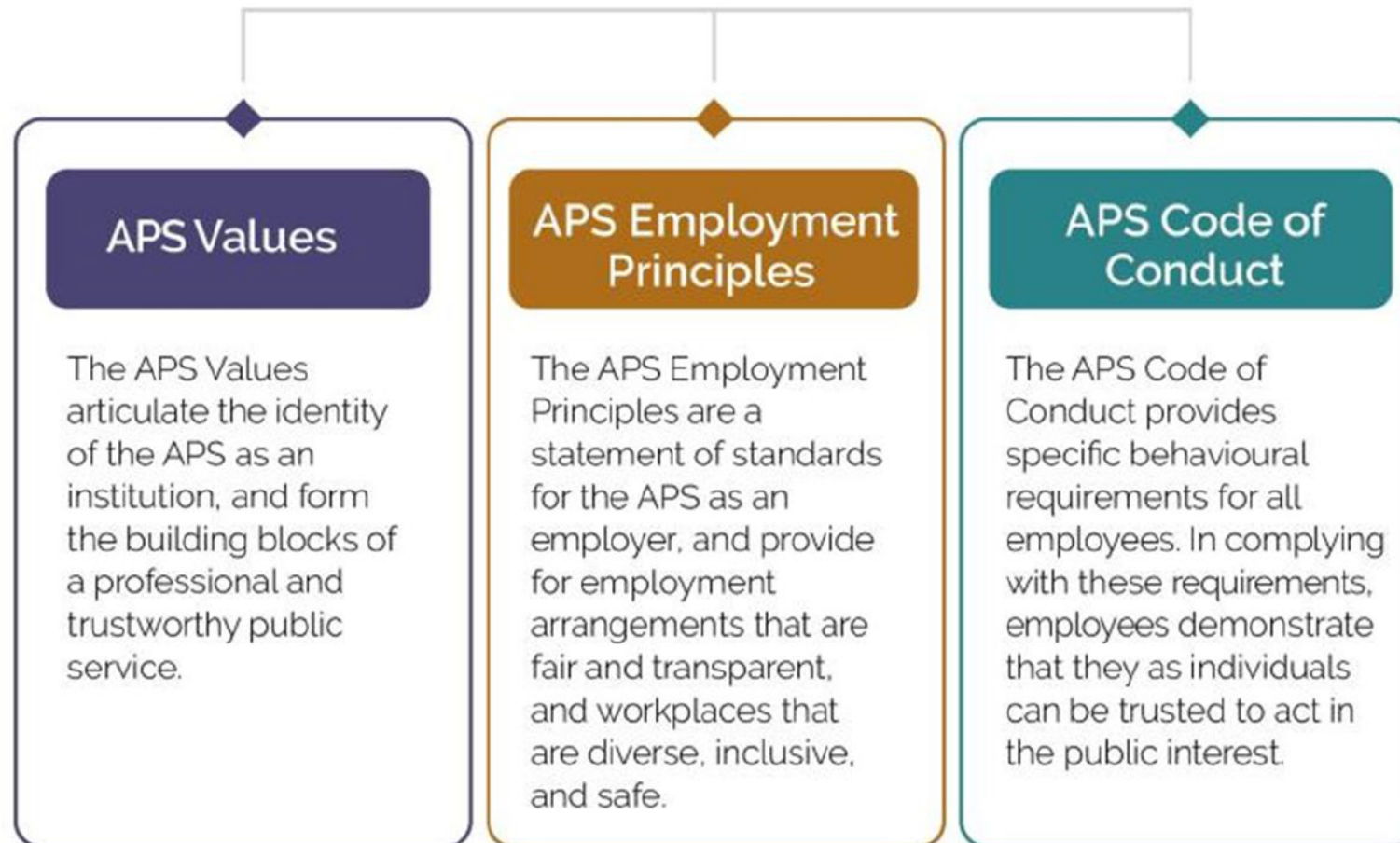
# APS Merit Protection Commissioner



# The APS conduct framework



## APS conduct framework





# Support Commonwealth agencies



## **Independent workplace umpire**

- Confirm fair and correct decisions
- Resolve disputes
- Make sure alleged misconduct is handled appropriately and lawfully
- Recommend wrong decisions are set aside

## **Merit-based recruitment decisions**

- Fair and open to all members of the community

# Modernising promotion reviews



## Pre-April 2025

Review only which applicant has more merit – adversarial

Resource intensive

Lack of transparency

Not able to provide feedback

## Post-April 2025

We can review the entire process – compliance against merit principle

Make suggestions for improvement

Share good practice examples

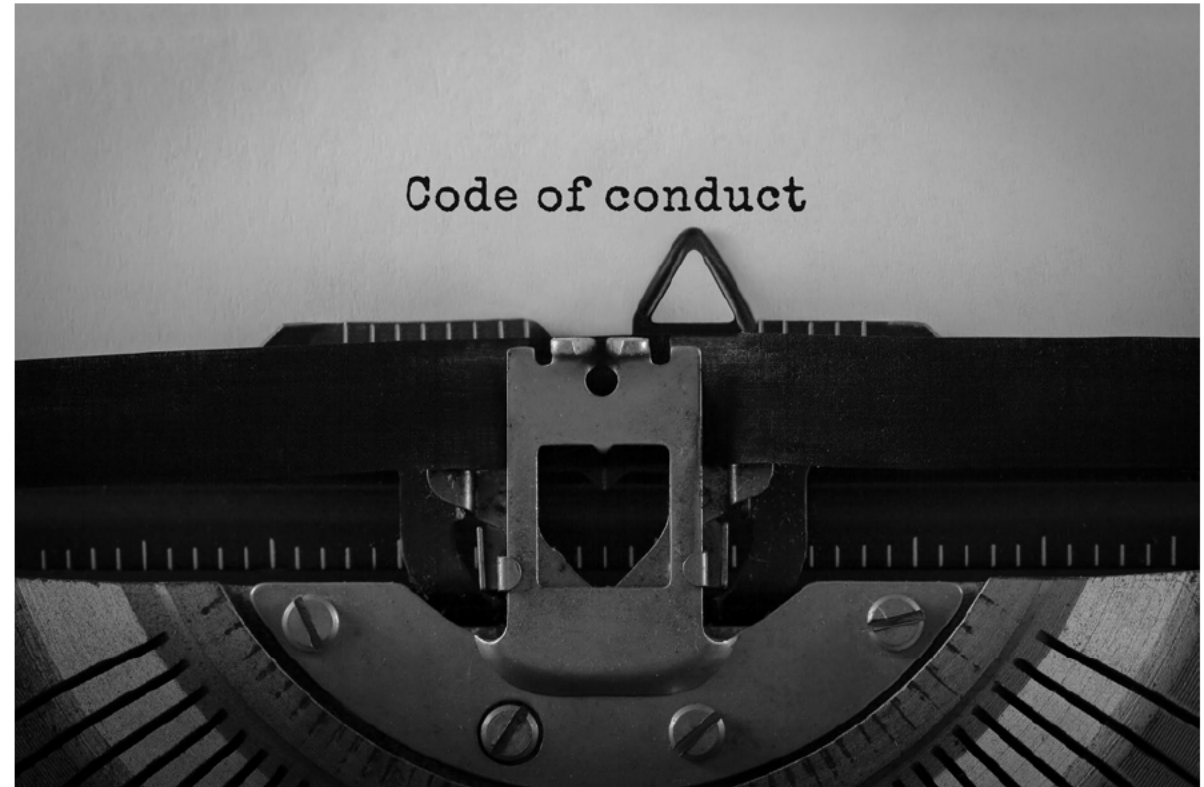
**Own motion audits**

# Managing misconduct



## Code of Conduct procedures

- Delegations
- Application of the Code
- Procedural fairness
  - hearing rule and
  - bias rule
- Balance of probabilities
- Documentation
- Suspension



# Misconduct statistics for 2023-24





# Sanction decisions in 2023-24



## Prescribed in the Public Service Act

Sanction	Number
Reprimand	264
Deductions from salary (fine)	167
Reduction in salary	70
Termination of employment	61
Re-assignment of duties	10
Reduction in classification	9
<b>Total</b>	<b>581</b>

# Merits review by the MPC



We consider all the evidence gathered during the investigation and any other information provided by the employer and the employee. We must consider whether:

- an Agency's procedures comply with the APS Commissioner's Directions
- 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 that the employee did what was alleged, and
- what the employee did amounts to a breach of the Code of Conduct.

# Case study 1 – the value of impartiality



APS employees must uphold the value of impartiality

Anonymous posting of a political opinion about a senior politician

Content was highly critical and derogatory

High Court decision taken into account

Confirmed the employee's conduct did not uphold value of impartiality

## Case study 2



Breached for non-compliance with an internal policy which post-dated incident

Poorly framed allegations, vague and factually incorrect

Did not follow lines of inquiry – exculpatory evidence missed & further misconduct

Accepted evidence on face value - despite implausibility

# Merits review outcomes



30% of decisions we review are set aside / varied

Reasons include:

- Inadequate or insufficient evidence to support a breach
- Behaviour not a breach of the Code of Conduct
- Material procedural defects
- Apprehended bias
- Sanction not proportionate to nature / seriousness of the conduct



# Thank you Questions?

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