



Australian Government
Merit Protection Commissioner



MERIT
PROTECTION
COMMISSIONER

Annual Report 2024–25





Senator the Hon Katy Gallagher

Minister for Women
Minister for Government Services
Minister for Finance
Minister for the Public Service
Parliament House
Canberra ACT 2600

Dear Minister

As the Merit Protection Commissioner (MPC), I am pleased to present you with the annual report for the reporting period ending 30 June 2025 for presentation to the parliament in accordance with section 51 of the *Public Service Act 1999*.

In line with my statutory obligations and the independent operation of this office, this report details the activities of the MPC during the year.

I am satisfied that the disclosure of information contained in this report is consistent with section 72B of the *Public Service Act 1999*, as the disclosure is in the public interest, is not likely to interfere with a review or inquiry and does not disclose the name of an individual that has been the subject of review or inquiry by me or my office. The purpose of the disclosure is to support the effective reporting of my functions in accordance with section 51 of the *Public Service Act 1999*.

In preparing this report, I have taken into account the annual report guidance approved by the Joint Committee of Public Accounts and Audit.

Yours sincerely

Jamie Lowe

Merit Protection Commissioner

9 October 2025

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Merit Protection Commissioner

Jamie Lowe



Jamie Lowe commenced in the role of Merit Protection Commissioner on 30 September 2024.

Ms Lowe holds a Bachelor of Law (Honours) and Arts and has served in senior positions across the Commonwealth Government. Prior to her appointment Ms Lowe was First Assistant Commissioner at the Australian Public Service Commission. In this role she led the Centralised Code of Conduct Inquiry Taskforce established in response to the report of the Royal Commission into the Robodebt Scheme.

Ms Lowe has led multidisciplinary teams at the National Disability Insurance Agency (NDIA) and the Attorney-General's Department in delivering major policy reform and program design for government.

The office of the Merit Protection Commissioner is established under the *Public Service Act 1999*. It is responsible for a number of statutory functions, including supporting compliance with the APS Values, the APS Employment Principles and the APS Code of Conduct.

Merit Protection Commissioner's foreword

This year was one of significant progress and change for my office. We have reshaped how we operate and implemented a new statutory reform that will deliver better outcomes for the Australian Public Service (APS).

The reason we review workplace decisions is to make sure they are correct and fair. Through this work, we often act as a circuit breaker by de-escalating workplace disputes about applications of policy, as well as managing poor performance and inappropriate workplace conduct. Our work also provides assurances that the APS Code of Conduct is being applied and used in a way that contributes to making the public service a better, fairer and safer workplace.

Reviews of Code of Conduct matters take up a large percentage of our workload – 69% of all reviews and complaints are about the application of the APS Code of Conduct. This year (of the matters that proceeded to review) I recommended that nearly 40% of those decisions be set aside or varied in some way, often as a result of a serious procedural defect. This figure indicates that there is more work to be done to lift the capability of people responsible for undertaking investigations and making decisions about how misconduct in the APS is handled. When we have set aside or varied a decision, my team and I have taken every opportunity to talk to agencies to explain the decision or variation and provide constructive feedback to assist in building better agency process and practice. Pleasingly, the response has been consistently positive, and we have observed agencies incorporating our feedback in their practices, accessing the resources available on our website and participating in our community of practice. This indicates a high level of self-awareness about current capability gaps and a commitment to continuous improvement. Importantly, all of our recommendations to set aside or vary decisions were accepted by the relevant agencies.

Investigations into alleged misconduct are resource intensive and can have a significant impact on all parties to the process – not just the subject of the allegation – as well as on team culture. An ongoing concern is the assessment processes used by agencies to determine whether to initiate a formal investigation under the *Public Service Act 1999*. In our experience, the reasons for commencing a formal investigation – as opposed to other management options to resolve or remediate behaviour – are often opaque or inadequately documented. This is particularly concerning when the alleged conduct is less serious in nature and would, if proven, warrant a penalty of, for example, a reprimand. We will continue to work with agencies to improve the important preliminary assessment stage.

In April 2025, amendments to the Public Service Regulations 2023 were made which empower my office to review an entire selection exercise, from beginning to end, to determine whether it was merit based. In the APS, all recruitment activity must comply with 'merit' as defined in section 10A of the Public Service Act. This new review type means we have a vehicle to provide constructive feedback and share good practice initiatives at a systemic level, with a view to strengthening understanding and the application of merit in APS recruitment.

In preparation for this new function, we worked closely with the Australian Public Service Commission and APS human resources practitioners to develop resources to support its commencement. We have invested in this consultation to ensure that we are transparent about how we conduct these new reviews. I encourage both agencies and employees to visit our website for more information.

In the 2025–26 financial year we will be operating within a fiscally restrained environment at a time when the expectations on my office are increasing. This presents both challenges and opportunities. A new case management system, which I expect to be in place midway through the coming financial year, will allow my office to reduce manual tasks, freeing up our capacity to focus on delivering our core statutory functions.

My office is committed to high-quality employment decisions and actions that are ethical, have integrity, and support safe, productive and harmonious workplaces. I very much look forward to the year ahead.

Jamie Lowe

Merit Protection Commissioner

Part 1: Overview



At a glance

Rate of decisions set-aside or varied

APS Code of Conduct decisions

39%



Other workplace decisions

10%



48

stakeholder engagements



956

enquiries responded to



253,706

web page visits

Applications received

343

Promotion decisions

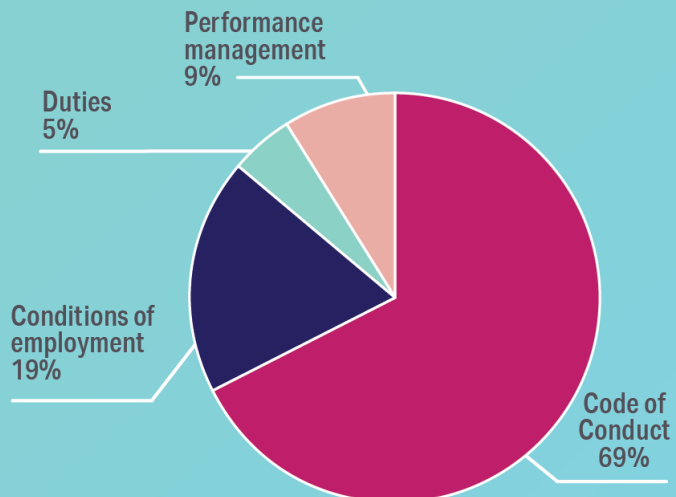
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Workplace decisions

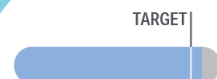
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APS Code of Conduct decisions

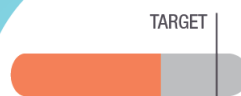
Categories of decision reviewed



93% of Code of Conduct matters completed in time



96% of workplace decisions completed in time



77% of promotion reviews completed in time

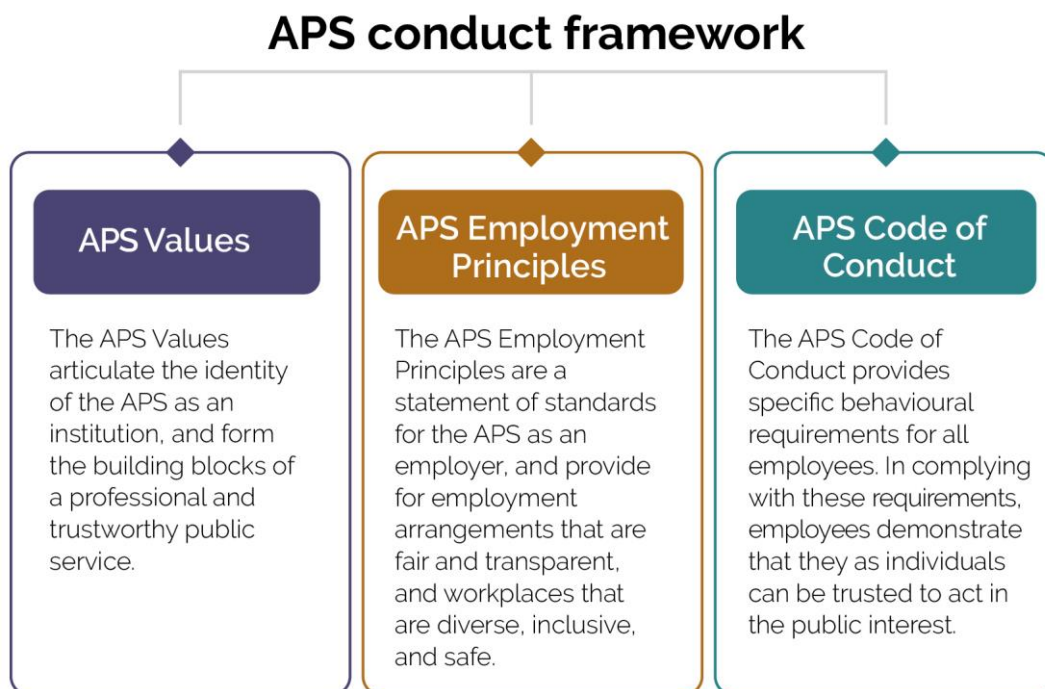
About us

The Merit Protection Commissioner (MPC) is an independent review body whose role is to review workplace decisions to make sure they are correct and fair. We make recommendations based on evidence and grounded in a strong understanding of employment law, employee rights and entitlements, and the Australian Public Service (APS) operating environment. We do this by adjudicating disagreements about workplace decisions, inquiring into alleged misconduct in the workplace, reviewing agency decisions to ensure agencies have followed the appropriate processes and directions, and ensuring that recruitment and promotion decisions are based on merit.

The MPC is a steward of the APS conduct framework, which is made up of the APS Values, the APS Employment Principles and the APS Code of Conduct. By ensuring that public servants are being employed based on merit and by confirming or overturning Code of Conduct and other workplace decisions, we are contributing to the integrity, efficiency and effectiveness of the APS.

Along with all Commonwealth agencies, we share a commitment to making the APS a better, fairer and safer workplace and a model employer.

Figure 1: The APS conduct framework



Our ministers

Our ministers are:

- Senator the Hon Katy Gallagher, Minister for Women, Minister for Government Services, Minister for the Public Service and Minister for Finance
- The Hon Patrick Gorman MP, Assistant Minister to the Prime Minister, Assistant Minister for the Public Service and Assistant Minister for Employment and Workplace Relations.

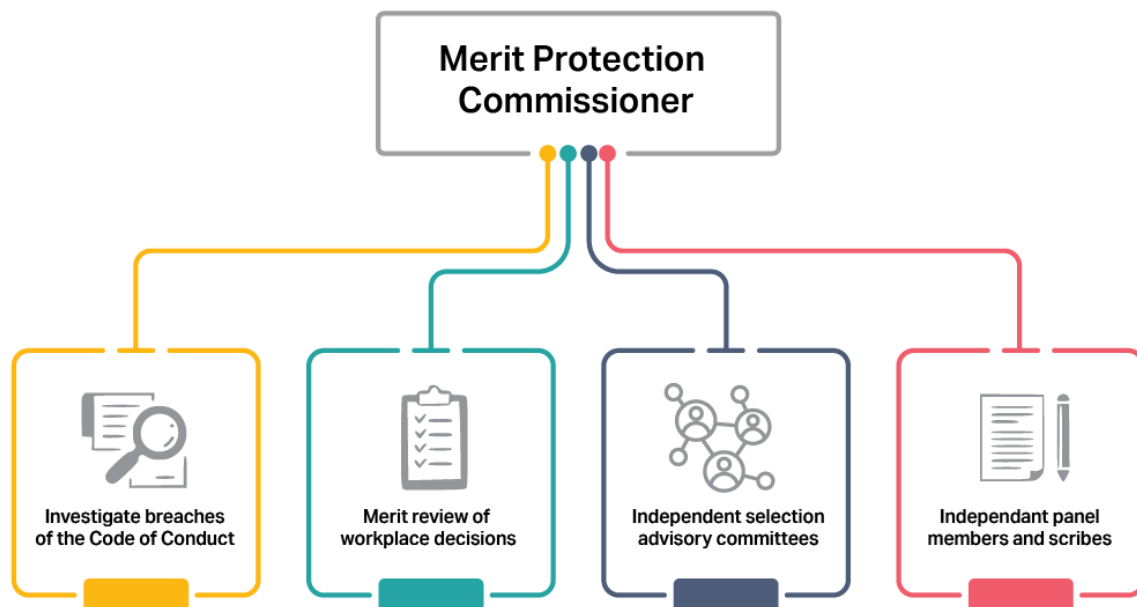
Our legislation

The MPC is an independent statutory office holder established under the *Public Service Act 1999* (the Public Service Act) to perform certain statutory functions for the Australian Public Service.

The statutory functions are set out in Part 6 of the Public Service Act and Parts 4 and 6 of the Public Service Regulations 2023. The MPC also has a review function for the Australian Federal Police (AFP), set out in the *Australian Federal Police Act 1979* and the Australian Federal Police Regulations 2018. The specific statutory authorities for each MPC function are set out in Appendix A.

Jamie Lowe is also the Parliamentary Service Merit Protection Commissioner. The duties and functions under the *Parliamentary Service Act 1999* mirror those of the MPC and the Public Service Act and are the subject of a separate annual report.

Figure 2: Our key statutory activities



Staff and structure

The office of the MPC comprises the Merit Protection Commissioner and a team of experienced and highly knowledgeable public servants with diverse experience. Staff are employees of the Australian Public Service Commission (APSC).

Under section 49(2) of the Public Service Act, the APSC must provide the MPC with the staff necessary to enable the exercise of her functions. The APSC provides the MPC with corporate support, information systems and property services.

The MPC was given an average staffing level of 15. Due to the small staffing number, the organisational structure is designed to optimise the performance of our statutory functions. We maintain a pool of skilled and experienced casual employees who are engaged on an as-needed basis. We use these employees for our recruitment services, in establishing

committees to conduct promotion reviews, and to run independent selection advisory committees (ISACs).

Our functions

If an APS employee believes that a recruitment, promotion or other workplace decision is unfair or incorrect, they can contact us to better understand whether they are eligible to seek a review of that decision.

Attracting, recruiting and retaining good employees are persistent challenges for all employers, including Australian Government agencies. From time to time there will be workplace decisions that may result in disputes between employers and employees, and we can operate as an effective and impartial circuit breaker in these circumstances.

We also provide expert and impartial services to assist agencies to make high-quality and timely recruitment decisions and effectively manage allegations of misconduct or workplace disputes.

Review of workplace and Code of Conduct decisions

Section 33 of the Public Service Act gives APS employees an entitlement to seek a review of an action that relates to their employment. This includes a decision relating to misconduct findings and any subsequent sanction decision. The primary role of the MPC is to conduct reviews under this part of the Act.

A review is an independent 'fresh look' at the original decision to make sure that it is fair and lawful. Depending on the type of decision under review, it will mean taking into account any case law, industrial instruments, agency policy and procedures. In all reviews it is important to take into account any individual circumstances and the context of the decision.

We can make recommendations that confirm workplace decisions made by agencies when those decisions are fair and correct. When agencies make the wrong decision, we recommend a different decision. We discuss our role under the Public Service Act and the Public Service Regulations in detail at Part 2 of this report.

Review of merit in recruitment

All Australians should have trust in the public servants who deliver important services and make policies that impact all of us. Australians should be confident that public servants are employed because they have the right skills and experience and are the best person for the job they have been employed to do. This is the basis of merit in APS recruitment.

Significant amendments to review of recruitment decisions

In April 2025 amendments to the Public Service Regulations came into effect which introduced a new way of regulating merit-based recruitment in the APS. The amendments significantly changed how we review promotion decisions.

The key changes are:

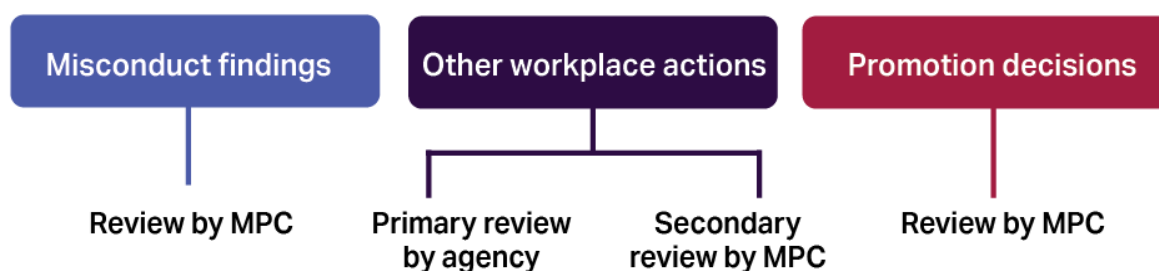
- A review will assess the entire selection process to determine whether it is compliant with the merit principle and with the requirements of the Australian Public Service Commissioner's Directions 2022.
- The MPC has 'own motion' powers to initiate a review (or audit) of a selection exercise independently, without a complaint or application, to determine whether it is merit based.

The purpose of the new function is to strengthen the understanding and application of merit in recruitment across the APS. More details about the new process can be found on the MPC website.

In accordance with transitional arrangements, vacancies advertised prior to 1 April 2025 are eligible for review under the previous regulations. The new regulations will only apply to promotion decisions and recruitment exercises that were advertised on and after 1 April 2025.

The MPC will continue to administer 2 concurrent review processes until the end of 2026. Information on our performance in administering this function can be found at Part 2 of this report.

Figure 3: MPC's role in conducting reviews



Complaints and inquiries

Under section 50 of the Public Service Act, the MPC can conduct an inquiry into:

- a public interest disclosure that relates to an alleged breach of the APS Code of Conduct
- a complaint about an alleged breach by The Australian Public Service Commissioner of the APS Code of Conduct
- 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 APS Code of Conduct, but only at the request of an agency and only if the employee agrees.

The Public Service Regulations also provide for a former employee to make a complaint to the MPC about their agency's calculation of the final entitlement when they separate from the APS.

Recruitment and employee services

We can assist employers by providing a range of employment-related and recruitment services. These services can assist an employer to make high-quality and timely recruitment decisions and can be provided to APS and non-APS Commonwealth entities and to state and territory departments or agencies. In certain circumstances we can also effectively manage allegations of misconduct or workplace disputes for an agency. These services are provided on a cost-recovery basis.

Independent selection advisory committees

On request we can provide APS agencies with support to conduct a recruitment exercise in the form of an ISAC. An ISAC, established by the MPC under the Public Service Regulations, can conduct the entire selection process on behalf of an agency. The unique feature of an ISAC is that any promotion decisions resulting from the process cannot be subject to a promotion review.

Advice and guidance

We value the opportunity to engage directly with our stakeholders and use the data we collect to inform our publications, target our education and resources, and improve our service delivery.

This year we received and responded to 956 enquiries (in addition to our casework) from both employees and agencies about the Review of Actions scheme, our recruitment services and the role of the MPC. Where possible, we resolve the enquirer's issue.

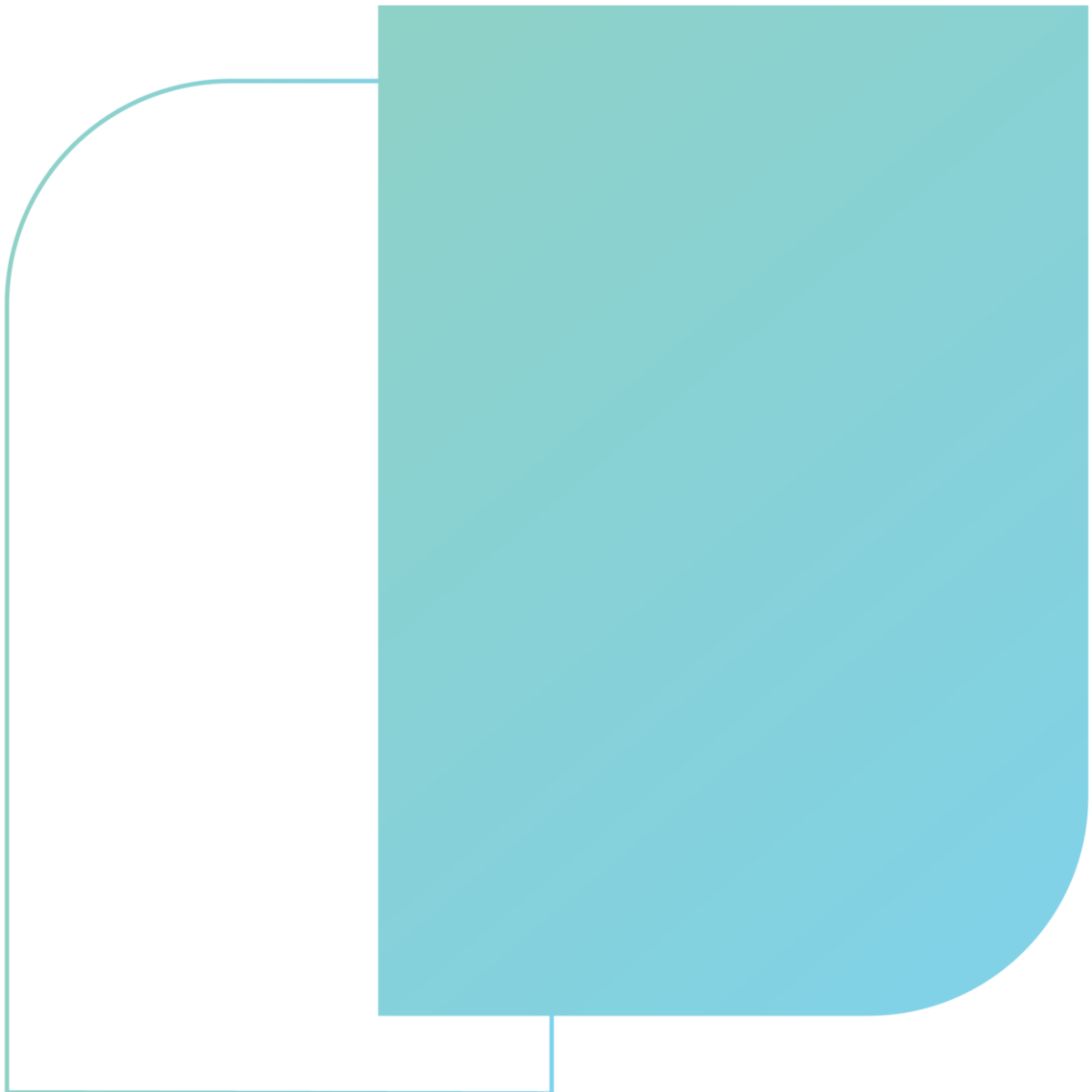
If we cannot assist, we refer the enquirer to the appropriate agency. We regularly refer matters to the APSC's employment policy team and ethics advisory team. Table 1 has the number of enquiries we have responded to over a 5-year period.

The decrease in enquiries in 2024–25 may reflect an increase in the quantity and quality of information now available on the MPC website, particularly with respect to the new promotion review function. This has assisted both employees and employers to self-source answers to their enquiries. In 2025–26, the MPC website will continue to be reviewed and updated in response to changes to policy and practice, and user feedback.

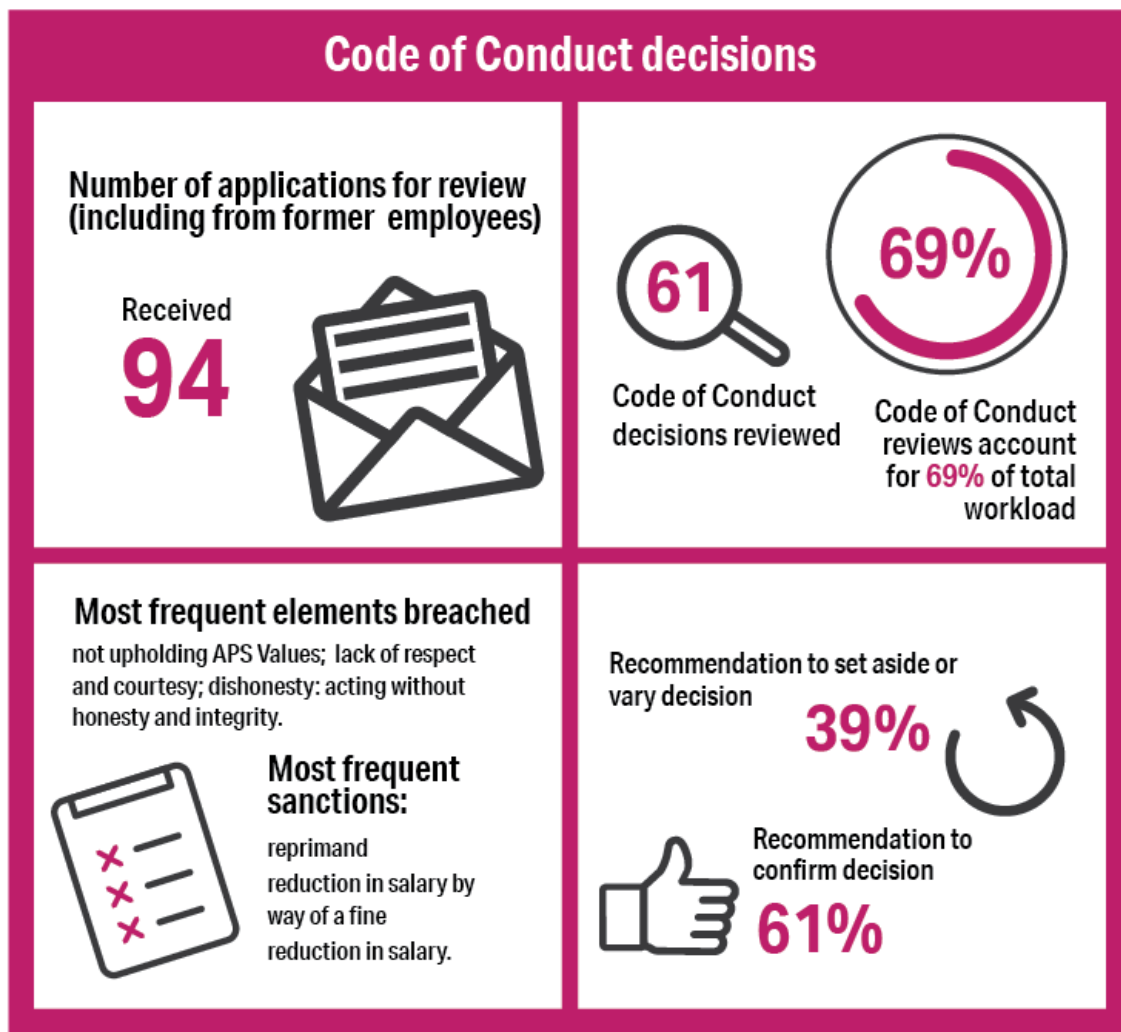
Table 1: Number of enquiries, over 5 years

Year	2020–21	2021–22	2022–23	2023–24	2024–25
Enquiries	822	1,546	1,107	1,226	956

Part 2: Report on performance



Review of Code of Conduct decisions



What is the APS Code of Conduct?

All APS employees have an obligation to act in a manner that reflects the APS Values, the APS Employment Principles and the APS Code of Conduct. Employees are expected to know, understand and act in accordance with this framework.

Engaging in behaviour that is contrary to the Code of Conduct can create unsafe workplaces, undermine relationships with other staff and damage public trust and confidence in the public service. For public servants, the Code of Conduct applies whenever they act during, and in connection with, their employment.

Being found to have breached the Code of Conduct can have serious consequences both for the employee and for the workplace. It is therefore incumbent on agency heads to make sure they manage suspected misconduct effectively and without bias, and to make fair decisions that can withstand scrutiny.

Under section 15(3) of the Public Service Act, an agency head must publish how they will determine breaches of the Code of Conduct. Those procedures must also meet the requirements set out in the Australian Public Service Commissioner's Directions to ensure:

- the employee is informed of the detail of the suspected misconduct
- the process undertaken to investigate, or inquire into, the allegations is clear
- the employee is given a reasonable opportunity to respond to the allegation and to any proposed sanction.

For an agency head to reach a valid decision on whether an employee has acted contrary to the Code of Conduct, the investigation must follow those section 15(3) procedures.

For APS employees who have been found to have breached the Code of Conduct, there may be an option to apply to the MPC to review the breach decision and any sanction decision (except for decisions to terminate their employment).

This right to seek an independent review of a Code of Conduct decision applies to APS employees in classifications APS 1 to EL 2. Former APS employees can seek review of a breach decision made after they left the APS in relation to behaviour that occurred during their employment.

MPC merits reviews

The MPC has the power to conduct reviews of:

- a decision that an employee's conduct is in **breach** of an element of the Code of Conduct (a breach decision), and/or
- a subsequent **sanction** decision arising from the breach (except for termination of employment decisions).

We consider all aspects of the decision, including the finding of facts, evidence, the application of policy and the law, and the exercise of discretion that is given to the decision-maker.

The MPC can make a recommendation to an agency head to confirm the original decision or to set aside or vary the decision.

Reviewing breach decisions

When we conduct a review of a breach decision, we must consider whether:

- the agency's procedures for dealing with the alleged breach comply with the Australian Public Service 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
- what the employee did amounts to a breach of one or more of the elements of the APS Code of Conduct.

Reviewing sanction decisions

Getting a sanction decision right is important to the culture and productivity of a workplace. When an employee is found to have engaged in conduct that is in breach of the Code of Conduct, an agency head can impose one of the sanctions set out in section 15(1) of the Public Service Act.

The sanctions are:

- termination of employment
- reduction in classification
- reassignment of duties
- reduction in salary
- deductions from salary by way of a fine
- a reprimand.

A decision to terminate an employee’s employment can only be reviewed by the Fair Work Commission; however, the MPC can review the related breach decision until the employee’s employment is terminated.

When reviewing a sanction decision, we have regard to the original decision and how issues such as the nature and seriousness of the breach, and any other mitigating factors, were balanced.

End-of-year totals for Code of Conduct decisions

Applications

This year we received 94 applications from employees who were found to have breached the Code of Conduct and/or received a sanction decision. This total includes 3 applications from former APS employees. Table 2 shows that over the past 4 years there has been a steady increase in the number of applications for a review of a Code of Conduct decision.

Table 2: Applications for Code of Conduct reviews, over 4 years

	2021–22	2022–23	2023–24	2024–25
Applications received*	31	59	79	94

*Totals include applications from former APS employees

Reviews of Code of Conduct decisions

Breach decisions

When an employee is found to have breached the Code of Conduct, the investigation can involve numerous allegations, witness statements and large volumes of other evidence such as audit reports, CCTV footage and policy documents. Depending on the individual circumstances, a single application for review can include reviewing an investigation report which has found numerous breaches of many different elements of the Code of Conduct.

In 2024–25 we completed 61 reviews, in which the most frequent breaches related to:

- conduct that did not uphold the APS Values and the APS Employment Principles
- lack of respect and courtesy
- dishonest conduct – that is, acting without honesty and integrity

Tables 3 and 4 are a breakdown of the misconduct categories we reviewed this year and a comparative list of the most frequent misconduct issues over the past 4 years, respectively.

Table 3: Code of Conduct issues in 2024–25

Conduct type	Percentage	Number
Dishonesty: act without honesty and integrity	45	66
Lack of respect and courtesy	20	29
Misuse of Commonwealth property and information	12	17
Failure to act with care and diligence	6	9
Failure to follow a direction	5	8
Misuse of authority so as to seek gain or advantage	5	7
Failure to declare or avoid a conflict	3	4
Failure to comply with law (in connection with APS employment)	2	3
Breach of confidentiality / other	2	3

Table 4: Most frequent Code of Conduct issues, over 4 years

Year	Top conduct issues
2024–25	Dishonest conduct or conduct lacking integrity Lack of respect and courtesy Misuse of Commonwealth resources
2023–24	Dishonest conduct or conduct lacking integrity Failure to follow a direction Conflict of interest
2022–23	Lack of respect and courtesy Lack of care and diligence Dishonest conduct or conduct lacking integrity
2021–22	Lack of respect and courtesy Unauthorised accesses Misuse of Commonwealth resources

Sanction decisions

Table 5 breaks down the sanction decisions reviewed by the MPC in 2024–25 into the different types of sanctions issued to employees for breaches of the Code of Conduct (noting that a decision to terminate employment can only be reviewed by the Fair Work Commission).

Table 5: Sanction decisions reviewed in 2024–25, by type of sanction

Type of sanction imposed	Reviewed
Reprimand	11
Deduction from salary by way of a fine	9
Reduction in salary	6
Reduction in classification	4
Reassignment of duties	1
Total	31

Reviews by agency

Table 6 lists the number of applications received by the MPC, and the agency that made the Code of Conduct decision. Consistent with previous years, the highest number of applications received involved decisions made by the extra-large operational agencies with the highest number of employees.

Table 6: Code of Conduct applications in 2024–25, by agency

Subject agency	Number
Services Australia	19
Department of Defence	9
Australian Taxation Office	5
National Disability Insurance Agency	4
Sport Integrity Australia	4
Department of Home Affairs	2
Other agencies	18
Total	61

Review outcomes

When the MPC makes a recommendation to confirm, set aside or vary a decision, it can be due to a range of factors. No matter the outcome, by its nature a merit review is a resource-intensive exercise. Reviews of Code of Conduct related matters made up 69% of our total review workload this year, and these reviews regularly take a number of weeks to complete. This process involves procedural fairness requirements. All of the recommendations made by the MPC to agency heads in 2024–25 were accepted and implemented.

As can be seen in Table 7, the percentage of our recommendations to set aside or vary a breach or sanction decision has remained largely consistent over the past 5 years. It is worth noting, however, that the number of applications and reviews continues to steadily increase.

Table 7: Code of Conduct decisions set aside / varied, over 5 years

Decisions	2020–21	2021–22	2022–23	2023–24	2024–25
Percentage set aside / varied (%)	30	33	36	34	39
Total reviewed	50	24	39	47	61

Feedback from an applicant:

The person who handled my review was very clear in communication, professional, and understood a number of nuances regarding my situation without having to go into details. I felt heard by them, something not previously experienced.

Case studies

This section gives examples of our work this year. Our case studies demonstrate how our work benefits agencies, employees and the public.

MPC preliminary view

In some circumstances we may give an agency or an applicant a preliminary view of our proposed recommendation. This is not a legal requirement but can be a useful practice in some circumstances. We may issue a preliminary view where the facts are complicated or if we are recommending an outcome significantly different to the original decision. This additional step gives parties notice of our reasons and provides an opportunity for the agency or applicant to reconsider or seek additional advice.

Case study 1 is an example of how we used a preliminary view to notify the agency of significant deficits that, in our view, could not be remedied.

Case study 1: Significant defects identified early

An agency investigation found that 2 employees had failed to declare a conflict of interest about knowing each other and that the failure was a breach of the Code of Conduct. Both employees were involved in a recruitment exercise, one as a panel member and the other as a candidate who applied for the role, which would be a promotion. The employee who applied for the role won the promotion. In response to a complaint, the agency decided to conduct an investigation into the failure to declare the relationship. Our initial review found that the employees had not been treated fairly and there was evidence to contradict the investigation findings.

The allegations were poorly drafted and did not explain what the employees were alleged to have done, meaning they had been denied a reasonable opportunity to respond. In fact, some of the allegations were changed over time, new allegations were introduced and others included incorrect information and referenced inaccurate dates.

We found that the investigator had not followed important lines of inquiry, had not considered the reasonable explanations provided by the employees for what had occurred, and had not interviewed witnesses who could support the employees' version

of events. In our view there was clear and compelling evidence that contradicted the investigation findings that the employees had engaged in misconduct.

Early in our process we sought a meeting with the agency to discuss our concerns. On the basis of our preliminary view, the agency agreed to set aside the decision.

Introducing new evidence

We are not limited to reviewing only evidence that was available to the original decision-maker. Merits review means we can take into account new or existing evidence that was not available or not considered by the decision-maker.

If appropriate, we can seek, obtain and consider additional evidence to assist us with our review. This can include interviewing the applicant and/or witnesses; seeking documents (such as emails, audit reports or performance records); or accessing other types of evidence (such as CCTV footage and expert medical opinions or reports).

Case study 2 is an example where we located evidence material to our decision to set aside an agency's decision.

Case study 2: Disability was material to the decision

An investigation found that the applicant had used their mobility walker to assault the complainant and that this was in breach of the Code of Conduct. The alleged assault occurred after a verbal interaction between the applicant and the complainant. While the applicant was attempting to leave the situation, their mobility walker made contact with the complainant.

The applicant claimed the incident was an accident, noting that their disability meant they could not intentionally engage in the alleged conduct. The applicant lives with a degenerative physical disability which significantly affects coordination and mobility.

The applicant's claim that the incident was an accident was not accepted by the investigator (who also did not interview the applicant during the investigation). The applicant was concerned that the investigator had failed to consider exculpatory evidence, which included medical advice about their diagnosis and an explanation of the practical realities of their disability.

On review, we looked closely at the 2 competing narratives to determine which was more likely to have occurred. We examined the applicant's medical records and interviewed their work colleagues to get a better understanding of the nature and extent of the applicant's lived experience with disability.

Our review decided the evidence supported the applicant's claim that they were physically unable to intentionally target, knock or bump into another person. In addition to this we found the applicant had a history of good conduct, with no other reported incidents of aggressive behaviour towards others in the workplace.

The MPC recommended that the breach decision be set aside. This was accepted by the agency.

Fairness and reasonableness

When deciding that a person's conduct is in breach of the Code of Conduct, it is important for that decision to be logical and fair, taking into account all of the individual circumstances and the context to better understand how and why the conduct occurred.

In case study 3 an agency decided an employee had failed to follow a direction and had acted in a way that was inconsistent with an internal policy. When taking into account the specific circumstances, we disagreed and considered the decision to be unfair.

Case study 3: Staff member acted in accordance with policy

The applicant was the subject of a bullying complaint. They received a direction not to discuss the matter 'with any other party ... other than a support person'.

After learning about the complaint, the applicant was very upset and burst into tears when issued the direction. A work friend, who knew about the complicated background and circumstances of the complaint, reached out to provide the applicant with support. The bullying complaint was not sustained.

At some stage the agency discovered the applicant's discussion of the complaint with their work friend and decided that this contravened the direction. The subsequent investigation found that the applicant's conduct was in breach of the APS Code of Conduct. The agency argued that 'a reasonable person would interpret "support person" to mean someone acting in an official capacity, such as [a] union representative or counsellor, someone who is independent and not a colleague'.

The applicant sought a review by the MPC on the basis that they had genuinely believed their work friend could be a support person. The MPC referred to the agency's own guidance materials on who could be a support person, which said, 'A support person can be anyone who the employee trusts, including a friend, family member, colleague, or union representative.'

On review, we concluded that the policy did allow for a support person to be a friend or colleague and the role was not limited to someone acting in an official capacity. We also noted that the formal direction did not place any specific restrictions on who could support the applicant through the complaint process. This meant the applicant had complied with the direction. Our recommendation to set aside the breach decision was accepted.

Procedural defects and invalid decisions

A first step in any review is to assess whether the decision under review was lawful and procedurally fair. This step occurs before we can begin to examine the merits of the decision under review. The *Administrative Decisions (Judicial Review) Act 1977* sets out grounds on which a decision may be invalid.

If a decision suffers from a significant legal error, such as a breach of procedural fairness or an improper exercise of power, the MPC must recommend that the decision be set aside, regardless of the circumstances or merits of the decision. Case study 4 is an example where our review found the decision-maker had no authority to make a sanction decision.

Case study 4: No power to issue a sanction

The MPC conducted a merits review of an agency's decision to sanction an employee who was found to have breached the APS Code of Conduct.

A review of a sanction decision must first establish whether the decision-maker had the authority to make the decision. The authority to issue a sanction is established by the Public Service Act, which also defines the types of sanctions that can be imposed, such as a fine, a demotion, a reduction in salary, or termination of employment. Under the Public Service Act, only an agency head can make a sanction decision. This reflects the serious nature and potentially long-term impact a sanction decision can have on an employee's finances and career progression. An agency head can delegate this decision-making power; however, that delegation of power must be in writing (and be reasonable) in order to be valid and lawful.

In this case, while there was evidence that the agency head had intended to delegate the power, there was no written record that delegation had occurred. This meant the officer who issued the sanction did not have the power to make that decision. In line with principles of administrative law, the MPC had to recommend the decision be set aside. Our report provided advice on how to avoid making similar invalid decisions in the future.

Appropriate and proportionate sanctions

The purpose of a sanction decision under the Public Service Act is not to punish an employee but to provide a clear message that their behaviour was not acceptable and to deter them (and others) from repeating the behaviour. The severity of a sanction must be proportionate to the severity of the misconduct, and balance the nature and seriousness with any mitigating circumstances. Case study 5 shows how we take those factors into account.

Case study 5: Serious misconduct attracts an appropriate sanction

An agency had decided that an employee (the applicant) had engaged in serious misconduct that warranted a high-level sanction. It made the decision to demote the applicant after finding that they had breached the Code of Conduct by accessing personal records without authorisation. While the applicant admitted their wrongdoing, they argued that a reduction in classification was disproportionate when taking into account the context and mitigating circumstances.

The applicant noted that the records they had accessed belonged to a relative who was having difficulties with the agency due to an unknown error. They claimed to have accessed their relative's records only to identify the error and get it resolved. The applicant also pointed to a long history of good conduct, with over 20 years of service. They provided numerous character references that emphasised their professionalism and personal integrity. The applicant apologised for their actions, demonstrated genuine remorse and claimed financial hardship.

The agency argued that the conduct was significant regardless of the motivation or reason. Unauthorised access to government data and personal records has the

potential to undermine confidence in the public service and lead to a serious security breach.

The agency has a policy explicitly forbidding unauthorised access to personal records and has training programs which emphasise the prohibition against accessing the system to resolve personal issues. Further, the applicant's position within the agency, in terms of both the branch they worked in and the level they were employed at, demanded a high level of trust, responsibility and sound judgement.

On review, we noted that the applicant was a valued employee but that this did not remediate their poor judgement in this circumstance. We also noted the agency's view that there was a serious breach of trust on a matter that was of central importance to their work. We decided that a reduction in classification was reasonable in the circumstances and therefore confirmed the agency's decision.

Bias and impartiality

It is critical for decision-makers to be, and be seen to be, impartial and without bias. This is a fundamental principle of procedural fairness in administrative decision-making. Case study 6 is an example where an allegation of bias was not supported by evidence.

Case study 6: No evidence of bias

An applicant was found to have breached the Code of Conduct after they had physically damaged workplace property. The applicant did not contest that they had caused the breakage but claimed that the decision to find the conduct in breach of the Code of Conduct was prejudged. The applicant claimed the agency had 'pre-determined' the decision so they could be made liable to pay for the damage. The applicant also claimed the breach determination was reprisal action for previously raising concerns about workplace safety.

If what the applicant claimed was true, then the investigation would have been in breach of the bias rule of procedural fairness. Procedural fairness is fundamental to fair administrative decision-making, and a failure to afford it makes a decision invalid – even if that decision was correct and preferable in the circumstances.

The question of bias ultimately relates to whether the decision-maker was impartial. In this case there was no evidence that the decision-maker had had any knowledge of, or been involved in, the applicant's concerns about the workplace or the reparation of the damage. In the absence of any supporting evidence, the applicant's own frustrations with the agency did not mean the investigator or decision-maker were biased or could not independently consider the case.

The MPC determined that the decision satisfied the requirements of procedural fairness and recommended that the agency confirm the decision.

Timeliness

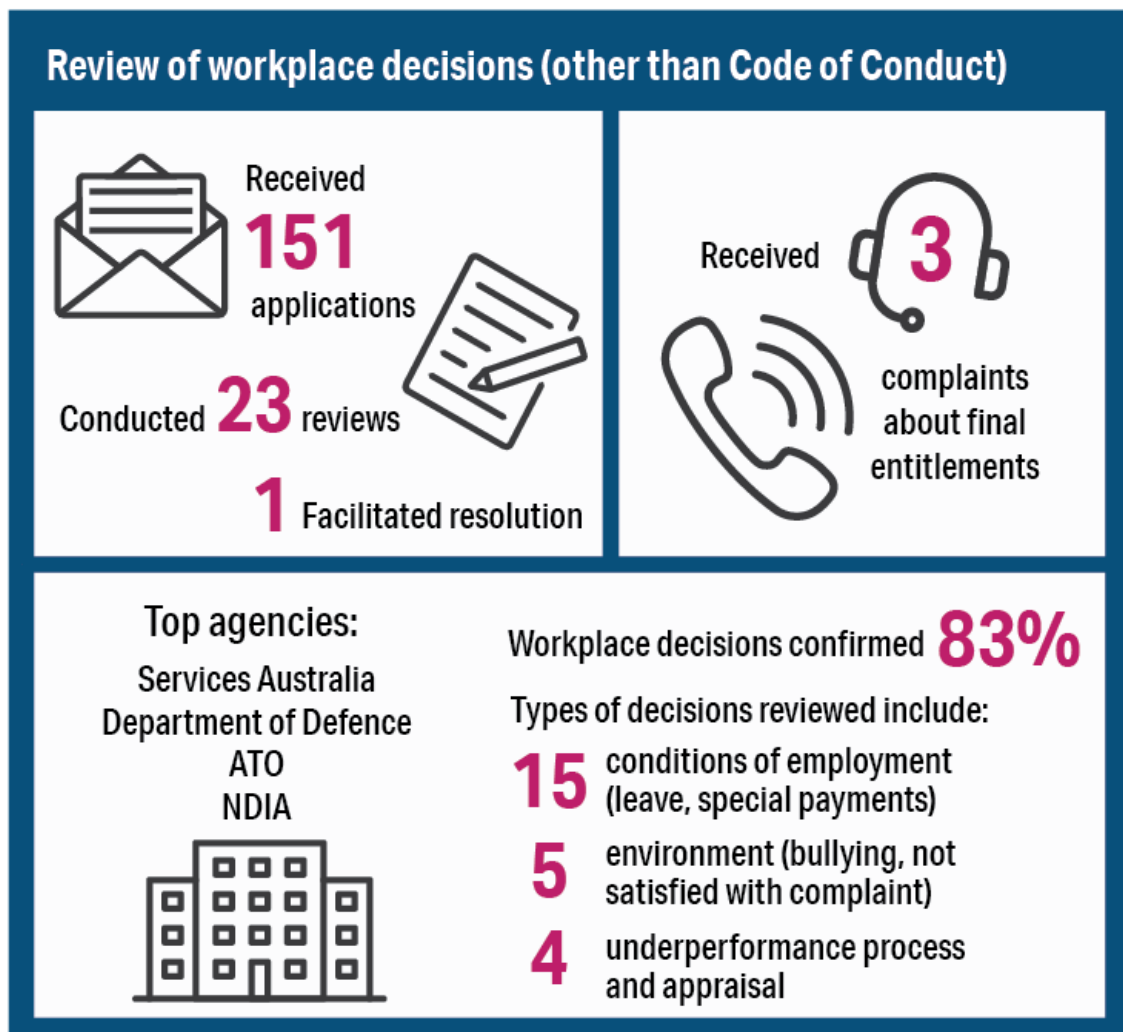
We aim to complete a review of a Code of Conduct decision within 14 weeks from the date we receive the application. We do not count the time when we are waiting for a response

from an agency or an applicant, or some other factor which impacts our ability to progress the review. This year we completed 93% of our decisions about Code of Conduct matters within the timeframe – a similar result to last year.

Table 8: Average time to complete review of Code of Conduct decisions

Review type	Average time to complete reviews (weeks)	Reviews completed within target timeframe (%)
Code of Conduct decisions	10	93
Code of Conduct decisions (former employees)	10	66

Review of workplace decisions



Review of workplace decisions

This chapter is about workplace decisions other than those related to the Code of Conduct.

With these types of decisions, an agency is first given the opportunity to conduct its own review to determine whether the correct and preferable decision has been made. This is called a primary review. If the employee is not satisfied with the agency's primary review, they may apply to the MPC for a further review of the decision.

In limited circumstances, the Public Service Act permits the MPC to accept an application for a review without requiring the agency to conduct its own review of the decision. We may do this where:

- it is not appropriate, for a range of reasons, for the agency to do its own primary review in the first instance, or
- the action or decision was taken by a statutory office holder.

Types of decisions

Workplace decisions under this part of the Public Service Act include decisions on:

- disputes about conditions of employment, including decisions about an employee's allowances, accrual of flex time, fitness for duty and leave entitlements
- concerns about assignment of duties, such as decisions about medical report interpretation, decisions about return-to-work arrangements, and decisions to suspend an employee (usually because a Code of Conduct process has been initiated)
- issues with workplace environments, including allegations of bullying and harassment, sexual harassment, failure to act on a complaint, decisions not to investigate, the lawfulness of a direction, management action, and outside employment
- disputes about performance management, such as the outcomes of performance appraisals, salary advancement, training and development, and underperformance processes.

How we review these workplace decisions

Deciding what the correct or preferable decision is can be difficult, particularly if there are a range of competing interests or a decision-maker has broad discretion. Some decisions are more difficult to review than others.

A reviewer is not confined to considering the information available to the original decision-maker. In many cases the reviewer can have regard to all relevant information, including fresh evidence or considerations that arose after the original decision was made.

The reviewer is often required to develop a level of expertise to consider whether:

- the level of inquiry is appropriate, having regard to the seriousness of the decision under review
- gaps in knowledge can be filled by reading business plans, organisation charts, procedural manuals, and other guidance material about the work area
- there is technical advice available that could be seen to be independent
- the manager's concerns about an employee's performance are supported by evidence
- the manager and the employee are credible in presenting their respective positions.

End of year totals

Applications finalised

This year we received 151 applications for a review of a workplace decision. Of the applications we finalised (including those on hand at the end of last financial year):

- 115 did not meet the eligibility criteria for review
- 28 proceeded to review

- 8 were withdrawn before a review was finalised
- 12 were on hand at the end of the year
- one was resolved through a process of facilitated resolutions.

The number of applications for review of a workplace decision received and finalised for the 5 years from 2020–21 to 2024–25 are shown in Table 9.

Table 9: Applications for workplace reviews received and finalised, over 5 years

Applications	2020–21	2021–22	2022–23	2023–24	2024–25
Received	101	99	111	143	151
Finalised	103	89	128	136	151

Types of decisions reviewed

Table 10 lists the types of workplace decisions we reviewed in 2024–25. The largest group, ‘conditions of employment’, includes decisions about employee leave applications, payment of allowances, and salary and similar entitlements.

Table 10: Types of decisions reviewed, 2024–25

Type of decision	2024–25
Conditions of employment	15
Workplace environment and arrangements	5
Performance management	4
Duties/miscellaneous	2
Total	26

Review outcomes

In 90% of reviews of workplace decisions other than Code of Conduct matters, the MPC confirmed the original decision. A decision to confirm is on the basis that the agency made the correct and preferable decision, taking into account all of the individual circumstances.

This is a positive outcome and should give both agency heads and employees confidence that their supervisors and managers are making sound and fair employment-related decisions that have an impact on their staff.

Table 11 shows the number of workplace decisions we set aside or varied over a 5-year period. This trend may reflect an uplift in the quality of primary reviews and capability in agencies’ review teams. As noted in last year’s annual report, we continue to observe an increase in attendance and active participation of human resource practitioners in our Review of Actions and Code of Conduct Community of Practice. We continue to engage with agencies to share our insights on the review process.

The number of reviews of workplace decisions has reduced over time as our resources are required to focus on the increase in applications for review of Code of Conduct matters.

Table 11: Workplace decisions set aside or varied, 2020–21 to 2024–25

	2020–21	2021–22	2022–23	2023–24	2024–25
Percentage set aside / varied	32	10	17	10	10
Total reviewed	48	30	31	47	28

Results by agency

Table 12 lists the agencies whose decisions were subject to review, and the number of applications received. For context, the large operational APS agencies, such as Services Australia and the Australian Taxation Office (ATO), employ about 50% of all APS employees and make up 75% of review applications made to our office.

The operation of the Review of Actions scheme depends on APS employees knowing they can seek a review of a decision they are not satisfied with. In our experience, an employee is unlikely to seek a review if they are not supported to do so or if they are not informed about their right to seek a review. This may explain why we do not receive from other agencies the number of applications commensurate with their size.

Table 12: Agencies with highest number of applications, 2023–24 and 2024–25

	Top 5 agencies	Application numbers
2024–25	Services Australia	63
	Department of Defence	32
	Australian Taxation Office	26
	Department of Home Affairs	23
	National Disability Insurance Agency	14
2023–24	Services Australia	58
	Department of Home Affairs	14
	Australian Taxation Office	11
	Department of Defence	7
	Attorney-General's Department	5

Case studies

A broad range of decisions can be subject to review under the Review of Actions scheme. The following case studies demonstrate how our team of experienced expert reviewers make sure workplace decisions are correct and fair.

Use of discretion

Managers and supervisors can have a lot of discretion when making employment-related decisions about their staff. How the discretion is exercised will depend on the individual circumstances, the context and a range of operational factors. While having discretion allows

for flexibility, it also carries the risk that the discretion may be used inconsistently or unfairly. Case studies 7 and 8 describe cases where an agency appropriately used its discretion to make decisions that were fair and justifiable.

Case study 7: Operational needs a factor when determining unauthorised leave

An applicant sought a review of a decision to record their long-term absence from work as unauthorised leave. As a result of the lengthy period of unauthorised leave, the agency proposed to terminate the applicant's employment.

The agency had initially supported rehabilitation and worked with the applicant on a return-to-work plan. Over time, the agency lost confidence in the process due to the applicant's repeated delays, extension requests and non-compliance with treatment recommendations. The applicant was given a direction to provide additional medical evidence to support further absences.

The applicant disagreed with the direction and the decision to record their leave as unauthorised, stating that they had been compliant with the return-to-work plan and that all delays were genuine and beyond their control.

Our interview with the rehabilitation caseworker confirmed that the applicant had cancelled meetings, had not obtained independent medical advice (as required by the return-to-work plan) and had failed to follow a previously agreed treatment plan. On balance, we viewed the rehabilitation caseworker's account to be credible.

Under its enterprise agreement, the agency had discretion as to when to determine an employee's absence was unauthorised. When making its decision, the agency took into account the operational impacts the significant period of absence was having on the applicant's work area, their colleagues and members of the public.

Given the nature of the agency's service provider role, the MPC considered it appropriate to have regard to these broader operational considerations when managing the long-term absence of an employee. Also, despite the applicant's genuine confusion about certain aspects of the treatment plan, we considered it likely that the applicant had contributed to delays in returning to work.

We therefore considered the agency's use of discretion to have been fair and reasonable in all the circumstances, and recommended to confirm the decision.

Case study 8: Decision not to reimburse location costs was reasonable

The applicant had decided to move interstate. They made this decision after receiving an assurance there would be a job available in the new location at some stage in the future. The applicant paid for their own relocation costs. A few months after the move, the agency did offer the applicant a new role at the location.

Once the applicant had accepted the new role, they applied to the agency seeking retrospective reimbursement of their relocation expenses. The agency declined the application.

The applicant sought a review of the decision, stating a senior official had given them an assurance that they would be posted to the location and, based on this advice, they had made a pre-emptive decision to relocate, paying for their own moving costs.

The senior official denied providing that advice to the applicant.

The agency was able to confirm that the applicant had failed to follow the appropriate approval process before making the decision to relocate. The applicant argued that it was common practice for staff to relocate and then submit requests for reimbursement that were approved, but they were unable to provide evidence to support this claim.

The MPC review determined that the decision to deny the application for reimbursement was reasonable, and recommended to confirm the decision.

Providing reasons in transparent decision-making

The APS has a performance management framework to ensure its workforce is effective and accountable and to support professional development. It is also there to make sure an employee's underperformance is handled fairly and lawfully and in a way that aligns with the APS Values and the APS Employment Principles. Case study 9 describes a case where an agency did not comply with its own policy on how to manage underperformance.

Case study 9: Employee given incomplete reasons for not getting salary increment

An agency denied an applicant's performance advancement salary increment during their performance review. The applicant was told they had failed to meet one of a number of mandatory performance criteria and therefore were not eligible for the increase. When the applicant sought an agency review of the decision, the original decision was confirmed. The applicant then applied to the MPC for a secondary review.

During the review we requested copies of the applicant's performance records and reasons for the decision not to progress the salary increment. These records revealed that the applicant had failed to meet more than one of the mandatory performance criteria for the role. However, the agency had not given this information to the applicant.

In practical terms this meant the applicant was not aware they had not met more than one criterion and therefore had been denied an opportunity to give reasons, provide an explanation, or take action to improve and remediate their performance.

The agency's own policy on managing performance required the decision-maker to inform an employee of the reasons for denying a performance advancement. In this case, the applicant was given incomplete information on the extent and nature of their performance rating.

Our review acknowledged there may have been valid reasons for the decision. We also noted that these types of discussions about performance are difficult. However, by giving incomplete information to the applicant, the agency had conducted a procedurally unfair process.

We decided this procedural failure was a material procedural flaw and recommended to the agency that the decision be set aside. The agency agreed and set the decision aside.

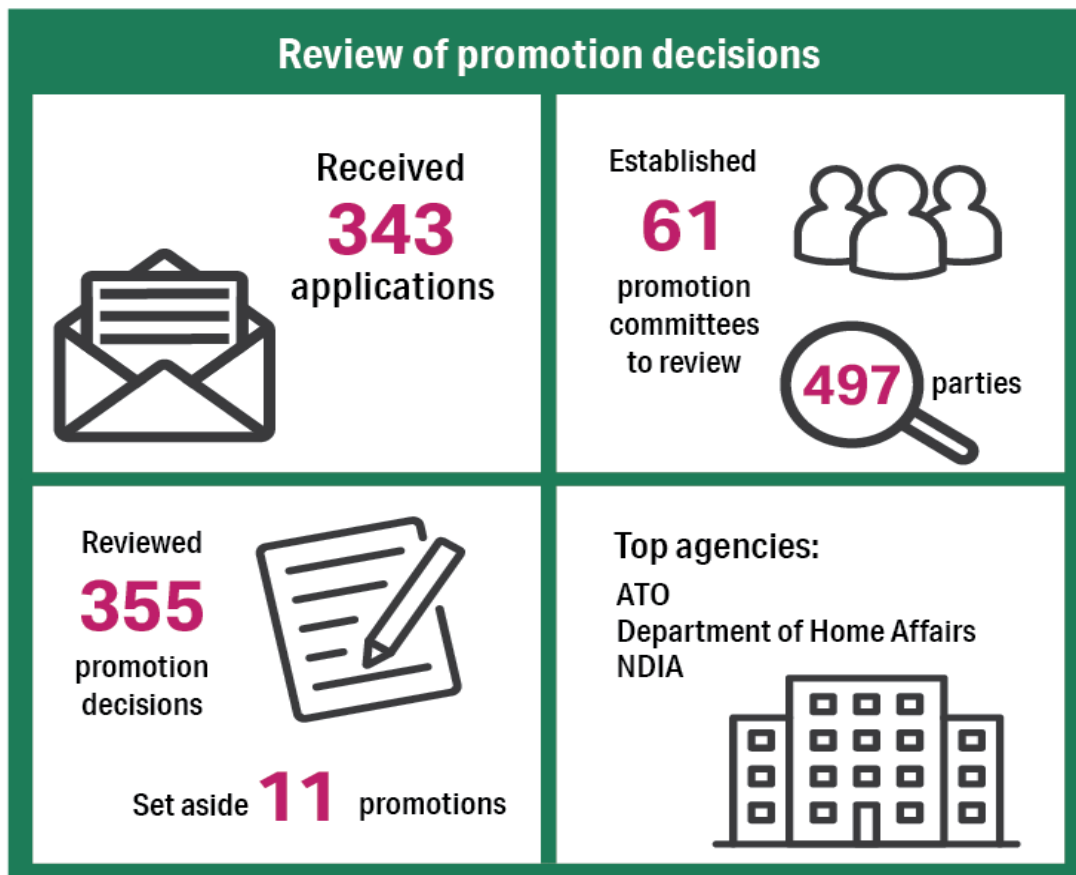
Timeliness

We aim to complete a review within 14 weeks from the date of receipt. We do not count the time when we are waiting for a response from an agency or an applicant. This year we completed 97% of our reviews within the timeframe. As well as showing the timeliness of review decisions, Table 13 shows the timeliness of our decisions on complaints about final entitlements, which are discussed further in Part 3.

Table 13: Average time to complete review of workplace decisions

Review type	Average time to complete reviews (weeks)	Reviews completed within target timeframe (%)
Workplace decisions (not Code of Conduct)	9	98
Complaints about final entitlements	4	100

Review of promotion decisions



Merit in APS recruitment

Merit is the key component of recruitment in the APS. It is defined in section 10A of the Public Service Act, 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 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.

At the completion of a recruitment process, successful candidates are engaged or promoted or placed into a merit pool or list. APS 2 to APS 6 promotion decisions published in the APS Gazette may be subject to a promotion review by the MPC.

Amendments to the Public Service Regulations that changed how the MPC reviews merit in APS selection exercises took effect on 1 April 2025.

The key change requires the MPC to review the entire selection process, from beginning to end, to determine whether it meets the merit principle and the requirements of the Australian Public Service Commissioner's Directions. Under the transitional arrangements, vacancies advertised prior to 1 April 2025 are eligible for review under the previous regulations by a promotion review committee. For recruitment exercises that were advertised on and after 1 April 2025, the new regulatory process will apply.

We will continue to administer these 2 review processes concurrently until the end of 2026 (when the merit pool or list from a vacancy advertised prior to April 2025 will no longer be active).

Review of promotion decisions for vacancies advertised on or after 1 April 2025

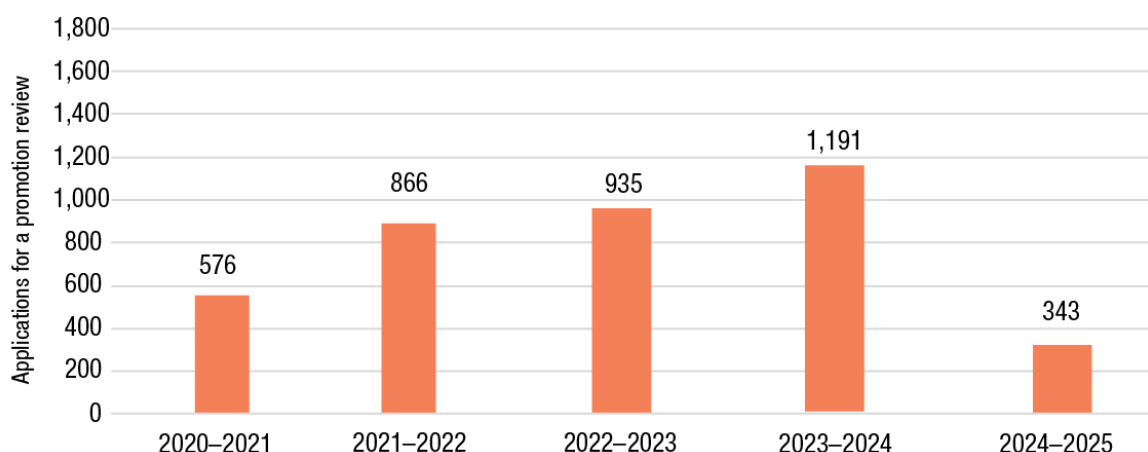
As at 30 June 2025 we had received 2 applications for review under the amended regulations; however, both of these applications were ineligible. We anticipate that valid applications for review of a vacancy advertised after 1 April 2025, and where a promotion decision has been published in the APS Gazette, will start to arrive from September 2025.

Review of promotion decisions for vacancies advertised prior to 1 April 2025

Since 1999, ongoing APS employees at levels APS 1 to APS 5 have had an entitlement to seek a review of a promotion by a promotion review committee. The purpose of the committee is to determine whether the person who won the promotion had the most merit for the role. A promotion review committee can set aside a promotion decision where it finds another applicant has been able to demonstrate more merit for the role.

Figure 4 sets out the number of applications for review of a promotion decision received by the MPC over the 5 years from 2020–21 to 2024–25. As shown in the graph, the number of applications can vary significantly from year to year depending on the frequency and volume of recruitment activities undertaken by the larger APS agencies. Large recruitment activities are common in service delivery agencies such as Services Australia and the ATO and can be used to fill hundreds of positions across the country through a single recruitment exercise. We did not experience the impact of a bulk recruitment round this financial year.

Figure 4: Applications for review of promotion decisions, over 5 years



Who can apply for a promotion review?

To be eligible to seek a review of a promotion decision an applicant must:

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

The entitlement applies only when:

- 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 timeframe.

In some circumstances, a person who has won a promotion and also meets the eligibility criteria applies for a promotion review. This occurs only when an agency undertakes a bulk recruitment activity to fill numerous roles, often across multiple locations.

Applications for review of promotion decisions

This year we received 343 applications for review of a promotion decision. Table 14 shows the outcome of applications received over the past 5 years.

Table 14: Outcome of applications for a promotion review, over 5 years

Application outcome	2020–21	2021–22	2022–23	2023–24	2024–25
Eligible	168	247	301	507	156
Lapsed	326	486	435	459	106
Ineligible/invalid	70	120	140	180	68
Withdrawn	6	8	22	43	11
Received, not yet assessed	6	5	37	2	2
Total	576	866	935	1,191	343

Review cases

In this context we use the term ‘case’ to describe how we manage all the related applications for the same promotion decisions. A case can include numerous parties seeking to have their merit for the role assessed.

For each case, we gather statements of claim, role descriptions, referee reports, selection reports and any interview notes created by the agency’s recruitment panel. If the case proceeds to a review, all that information is provided to the promotion review committee for its consideration.

Table 15 shows the number and size of cases created and their outcomes, including the number of individual applicants who were party to a review.

Table 15: Promotion review case outcomes, over 5 years

Promotion review cases	2020–21	2021–22	2022–23	2023–24	2024–25
Proceeded to review	34 (involving 196 parties)	42 (involving 327 parties)	48 (involving 271 parties)	67 (involving 177 parties)	73 (involving 497 parties)
Did not proceed to review	21	29	29	42	19
On hand at end of year	5	7	15	37	6
Total	60	78	92	146	98

Outcomes of promotion reviews

In most cases, a promotion review committee will confirm the original promotion decision. However, when committee members decide an applicant seeking review has demonstrated they have more merit for the role, the committee is required to make a new promotion decision.

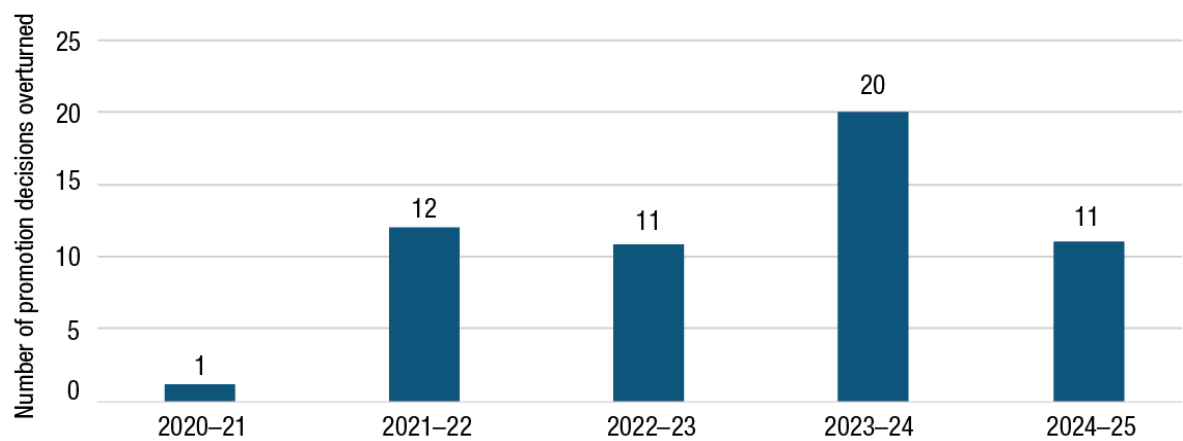
When considering merit in the context of an application for review, a promotion review committee considers each applicant’s claim that they have greater merit.

The consideration of merit is as it stands on the day the promotion review committee makes its decision, not at the time the selection committee made the original decision. This means that if the applicant has undertaken a course or has had an acting opportunity, they can submit this new information for the promotion review committee to take into account.

On completing its review the promotion review committee reports on the outcome and sets out the reasons for its decisions. The applicants are provided with verbal advice on the outcome and are sent written advice. Unsuccessful parties are offered feedback.

Figure 5 shows the number of promotion decisions that have been set aside, and a new decision made, over the past 5 years.

Figure 5: Promotion decisions set aside, over 5 years



Applications by agency

Table 16 shows that the highest number of applications was from employees who had applied for roles at Services Australia and the ATO. This is due to the volume of recruitment, the type of bulk recruitment activities and the large merit pools created to fill vacancies.

Table 16: Promotion reviews by agency, 2024-25

Agency	Parties to review	Decisions reviewed	Promotion decisions varied
Services Australia	263	155	9
Australian Taxation Office	200	180	1
Department of Home Affairs	10	6	0
National Disability Insurance Agency	5	3	0
Other	19	11	1

Timeliness

Our performance target for completing promotion reviews is 75% within:

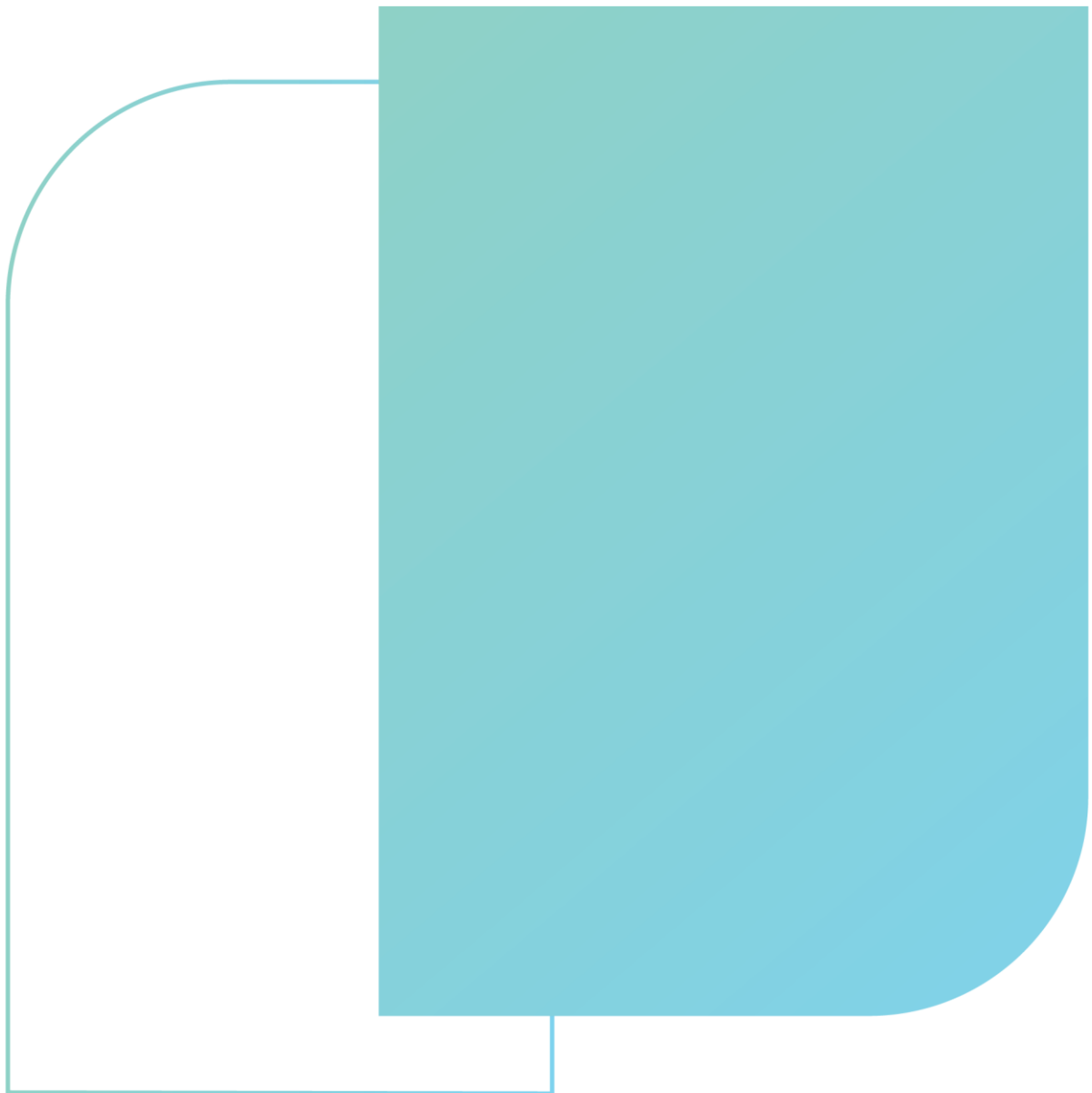
- 8 weeks from the date applications are closed, where there are up to 10 parties to the review
- 12 weeks from the date applications are closed, where there are 10 or more parties to the review.

It is pleasing to report an improvement in our timeliness this year compared to 2023-24. Timeliness is an important measure of our effectiveness.

Table 17: Percentage of promotion reviews completed in time, over 5 years

	2020-21	2021-22	2022-23	2023-24	2024-25
Promotion reviews completed in time	100%	83%	100%	66%	77%

Part 3: Complaints, inquiries and employer services



Complaints about final entitlements

We receive complaints from former APS employees (including Senior Executive Service (SES) employees) concerned about how their final entitlements have been calculated. Final entitlements are the payments an employee receives when they cease employment. The payments may include:

- final salary payments
- outstanding payment for overtime
- payment for leave that has been accrued but not taken
- redundancy payments and payments in lieu of notice.

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

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

This year we received 3 complaints about final entitlements. Of these, 2 were declined and one proceeded to review. The review recommended to confirm the agency's decision.

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 2013*
- complaints about an alleged breach of the Code of Conduct by the APS Commissioner
- an APS action, or a 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.

In 2024–25 we received 8 requests to conduct an inquiry under this part of the Public Service Act. Of those, the MPC conducted 2 preliminary assessments into the alleged misconduct of an APS employee, and gave recommendations to the relevant agencies about whether there was sufficient evidence to proceed to a Code of Conduct investigation. Two requests from an agency to conduct an inquiry into an employee's conduct did not proceed.

We handled 3 complaints under section 50(1)(b) of the Public Service Act. Of those, 2 were declined from the outset on the basis there was insufficient evidence to warrant taking any further action. Aspects of the other proceeded to an inquiry; no evidence was found to support the allegation of misconduct.

We received one misdirected public interest disclosure matter.

Recruitment and employer services

The MPC can provide a range of employment-related services to APS agencies, non-APS Commonwealth entities, and state and territory agencies and departments to assist with making high-quality and timely recruitment- and employment-related decisions. Services are provided on a cost-recovery basis. They include:

- establishing an ISAC where the MPC forms a selection committee for an APS agency
- recruitment services (for example, providing independent panel members to assist APS agencies and other entities in convening selection panels)
- workplace investigations and merits reviews of workplace decisions for non-APS entities.

We continue to see an increase in APS agencies seeking to use our employer services. This year we provided chairpersons, independent panel members and support to agencies to conduct 7 recruitment panels.

Feedback from agencies that have used our employer recruitment services has been overwhelmingly positive, noting the:

- level of expertise on the application of merit
- willingness to take on tasks
- ability to write comprehensive selection reports
- ability to drive the process to keep to timeframes.

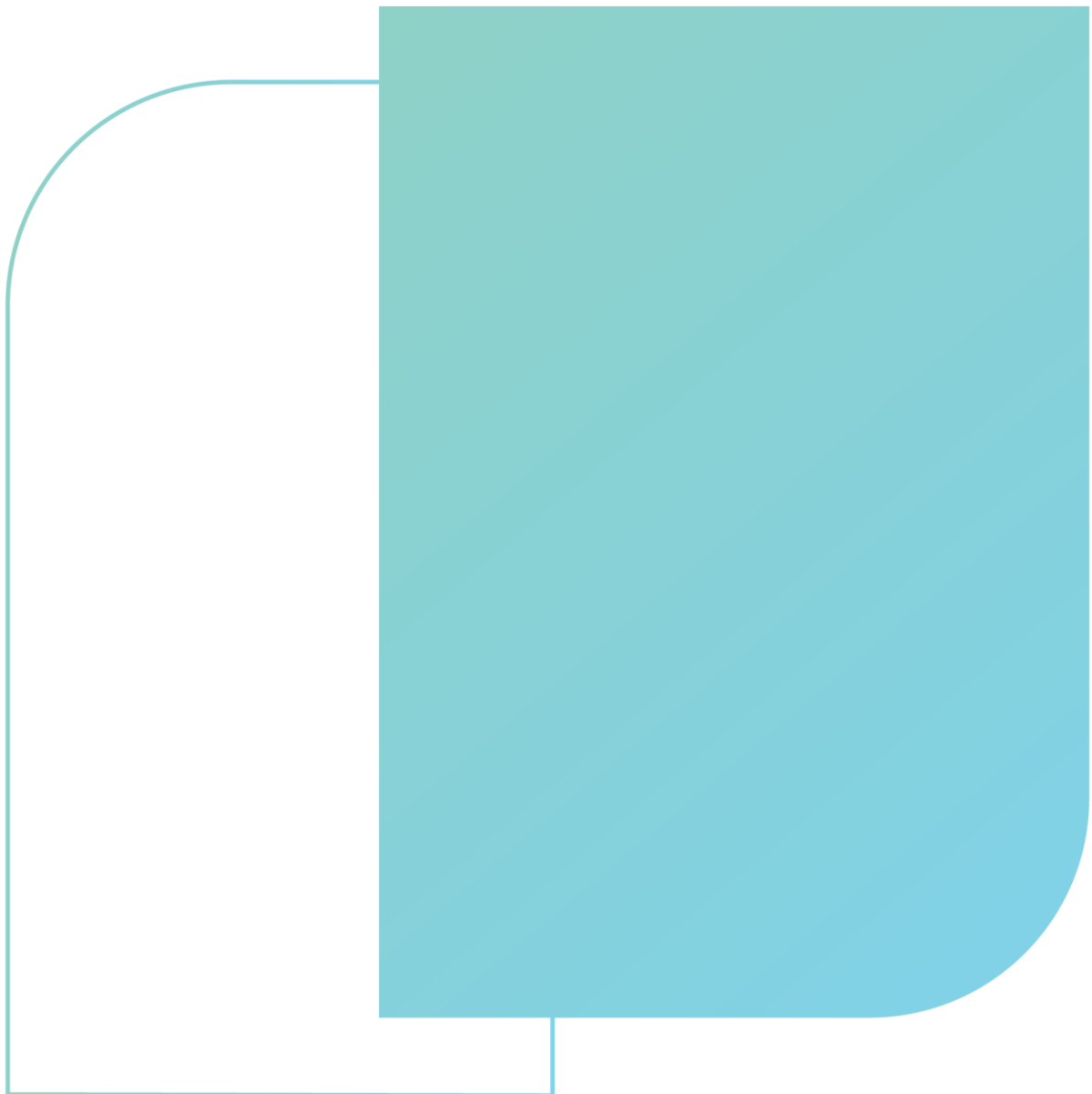
Review of involuntary retirement decisions for AFP employees

AFP employees employed under the Australian Federal Police Act 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.

This year the MPC did not receive an application for review of an AFP retirement decision under this function.

Part 4: Engagement and accountability



Engagement

Engaging with our stakeholders is critical to our vision of improving services to achieve effective and productive workplaces in the APS.

We continue to strengthen our commitment to our engagement work in accordance with 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 MPC
- assist APS agencies to continuously improve their practice.

Our stakeholder engagement activities this year are outlined throughout this section.

Stakeholder meetings

Throughout the year we meet with representatives from agencies that have contact with the office. These meetings are an opportunity to provide feedback, identify emerging trends in review outcomes and discuss significant, complex or sensitive issues.

We gave presentations and engaged in forums for both employer and employee stakeholders this year. These activities included:

- 12 presentations at the APSC SES orientation training sessions on the Review of Actions scheme and the role of SES officers in supporting their staff to access their entitlements
- 18 meetings between the Merit Protection Commissioner and agencies to discuss complex matters, emerging trends and observations on their employment-related decision-making
- 8 presentations, including 2 webinars, with HR leaders and recruitment practitioners from across the APS, including from the Attorney-General's Department and Defence, on changes to the Public Service Regulations relating to merit and promotion reviews, and on the functions of the MPC and its role
- a presentation at the National Investigations Symposium in Sydney on merit, misconduct and workplace culture in the APS.

The MPC is a member of the government's Integrity Agencies Group, chaired by the APS Commissioner. This group serves to ensure that integrity is at the centre of APS work and that the APS approach to integrity is integrated and transparent. The group met twice during the year.

Review of Actions and Code of Conduct Community of Practice

The MPC continues to support the Review of Actions and Code of Conduct Community of Practice. Our purpose is 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.

The community of practice is governed by a steering committee. Our role is to provide secretariat support and advice. This involves maintaining the membership list, providing support to agencies where possible, and leading the planning for future meetings.

Membership continues to grow and now sits at around 300 members. Meetings are held quarterly and cover topics of interest to the community. Feedback from our members is consistently positive. The topics and attendance are in Table 18.

Table 18: Community of practice sessions, 2024–25

Presentation topics	Host	Attendance
Navigating Workplace Conflict: alternative dispute resolution in Defence	MPC	157
Managing high-conflict employees	MPC	172
Promotion review reform, stewardship, assessing allegations	MPC	192
Communicating with high-conflict employees	MPC	165

Feedback

Feedback is critically important to improving our service delivery and making sure we meet our obligations to be a responsive and effective regulator. Given the nature of merits reviews, the MPC does not seek feedback on the outcome of a review; instead, we focus on the process and how the applicant felt they were treated. We ask for feedback on the quality of our communication, particularly on review scope, clarity of our reasons for decisions, and timeliness.

We send all applicants whose matters are subject to a completed review a confidential survey they can complete online.

Accountability

The APSC is included in the Department of the Prime Minister and Cabinet's portfolio budget statements. The APS Commissioner is responsible for the APSC's financial and human resources and for assessing the level of its achievement against its outcome.

The MPC has managerial responsibility for the work of the APSC employees who are made available to assist the MPC in exercising its functions.

Business continuity plan

We have a business continuity plan, prepared in accordance with the APSC's risk management and business continuity framework. The purpose is to:

- provide guidance for recovering critical business processes at the MPC in the event of a disruption
- define roles and responsibilities of key staff in relation to incident management
- define procedures to minimise the impact of disruptions on critical business functions or activities

- The plan covers disruption responses relating to the review of workplace and assessment decision processes in line with the MPC's statutory functions for the APS, the Parliamentary Service and the AFP.

We conduct a review of our business continuity plan annually.

Financial arrangements and corporate support

The MPC is neither a Commonwealth entity nor an accountable authority for the purposes of the PGPA Act. Rather, the Merit Protection Commissioner 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 APS Commissioner. The MPC does not have a separate budget allocation and depends on the APSC for staffing and resources to undertake its functions.

The MPC and the APS Commissioner have a memorandum of understanding for the provision of staff and corporate services.

Freedom of information and privacy

This year we responded to 4 requests for information under the *Freedom of Information Act 1982* (FOI Act), being:

- one request for documents relating to applicant information and review of a workplace decision
- 2 requests for documents relating to an inquiry under Part 6 of the Public Service Act
- one request for a PowerPoint presentation given by the Merit Protection Commissioner to attendees at the National Investigations Symposium 2025.

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

Judicial reviews

During 2021–22, the MPC was joined as a respondent in an application filed in the Federal Court of Australia seeking judicial review of a workplace decision taken by an APS agency under the Public Service Act and Public Service Regulations. As at 30 June 2025, the application was ongoing. This matter will soon be discontinued.

In May 2024 an application in the Federal Circuit and Family Court of Australia was filed seeking judicial review of a recommendation made by the MPC about breaches of the APS Code of Conduct by the applicant. This matter was discontinued in April 2025.

Information Publication Scheme

Our information publication plan is published on our website. We will conduct a review of our plan in 2026 to make sure our information is accurate and up to date, and to confirm our compliance with the FOI Act.

Part 5: The year ahead



Our key priorities

Our key priorities are driven by the statutory functions we perform, and by challenges and trends facing the APS. They are to:

- uphold high standards of integrity and conduct within the APS through our Review of Actions scheme
- use our experience as an educational opportunity by making recommendations to improve processes or outcomes
- support agencies to build their capability and improve their processes, helping them to meet their obligations as an employer
- provide expert and impartial services to assist agencies to make high-quality and timely recruitment decisions and effectively manage misconduct allegations or workplace disputes.

We will continue our engagement strategy to:

- work with agencies to raise APS employees' awareness of their entitlements and see the benefits of the Review of Actions scheme
- work collaboratively with agencies to strengthen the understanding and application of merit in recruitment through our own-motion audit function
- build on membership of the Review of Actions and Code of Conduct Community of Practice and attendance at its sessions
- promote our employment services and support compliance with the merits principle by assisting APS agencies in conducting high-quality recruitment processes (for example, ISACs and providing highly experienced recruitment panel convenors and members).

We will continue to evaluate our service delivery and foster a culture of continuous improvement through:

- using the potential of AI and a new case management system to improve the timeliness and effectiveness of our work
- building our workforce capability through continuous training and development opportunities
- continuing to receive and use applicant and agency feedback about our reviews of workplace decisions to inform our work.

Appendices

Appendix A: The Merit Protection Commissioner's statutory functions

Table A.1: Functions and statutory authorities

Function of the Merit Protection Commissioner	Statutory authority
Review of Actions scheme – Code of Conduct and other workplace decisions	Public Service Act 1999 Section 33 and subsection 50(1)(d) Subsection 50(1)(d) (provides for review functions to be prescribed by regulations) Public Service Regulations 2023 Part 4, Divisions 1 and 3
Review of Actions scheme – promotion and engagement	Public Service Act 1999 Section 33 and subsection 50(1)(d) Public Service Regulations 2023 Part 4, Divisions 1 and 2
Review agency determinations that a former employee breached the Code of Conduct for behaviour they engaged in while an employee	Public Service Act 1999 Section 33 and subsection 50(1)(d) Public Service Regulations 2023 Part 6, Division 2
Review the actions of statutory office holders, other than agency heads, that relate to an employee's APS employment	Public Service Act 1999 Section 33 and subsection 50(1)(d) Public Service Regulations 2023 Part 6, Division 2

Function of the Merit Protection Commissioner	Statutory authority
Inquire into: - a public interest disclosure alleging a breach of the Code of Conduct - the Australian Public Service Commissioner for an alleged breach of the Code of Conduct - an APS action as requested by the Public Service Minister - whether a current or former APS employee has breached the Code of Conduct	<i>Public Service Act 1999</i> Subsection 50(1)(a) Subsection 50(2) Public Service Regulations 2023 Part 6, Division 1 <i>Public Service Act 1999</i> Subsection 50(1)(b) <i>Public Service Act 1999</i> Subsection 50(1)(c) and subsection 50(2) <i>Public Service Act 1999</i> Subsection 50(1)(ca) and section 50A Public Service Regulations 2023 Part 6, Division 3
Investigate complaints by former employees relating to entitlements on separation	<i>Public Service Act 1999</i> Subsection 50(1)(e) Public Service Regulations 2023 Part 6, Division 2
Establish an independent selection advisory committee	Public Service Regulations 2023 Part 6, Division 2
Provide recruitment and employment-related services to a (non-APS) person or body on a fee-for-service basis	<i>Public Service Act 1999</i> Subsections 50(1)(e) and subsection 50(3) Public Service Regulations 2023 Part 6, Division 2
Review the decision of the AFP Commissioner to compulsorily retire AFP employees on invalidity grounds	<i>Australian Federal Police Act 1979</i> Sections 32 and 33 Australian Federal Police Regulations 2018

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 our functions is on our website: www.mpc.gov.au.

Review of workplace decisions and complaints

Table B.1: Review and complaints workload, 2024–25

Type	Code of Conduct	Primary reviews	Secondary reviews	Former employee Code of Conduct	Total	Final entitlement complaints	Total
On hand at start of year	20	2	10	1	33	0	33
Received during the period	91	48	103	3	245	3	248
Total cases	111	50	113	4	278	3	281
Reviewed	58	5	23	3	89	1	90
Facilitated resolution	0	0	1	0	1	0	1
Not accepted	22	41	74	0	137	2	139
Lapsed or withdrawn	12	2	6	0	8	0	8
Total finalised during period	92	48	103	3	246	3	249
On hand at end of the year	19	2	10	1	32	0	32

Table B.2: Timeliness in handling reviews and complaints, 2024–25 compared with 2023–24

Review type	2023–24		2024–25	
	Average time to complete reviews (weeks)	Completed within target timeframes (%)	Average time to complete reviews (weeks)	Completed within target timeframes (%)
Code of Conduct	11	91	10	93
Former employees – Code of Conduct	8	100	10	66
Direct reviews	5	100	8	100
Secondary reviews	9	97	10	96
Total reviews	9	95	10	93
Complaints about final entitlements	4	100	4	100

Note: We report separately on reviews of workplace decisions (direct to MPC and secondary reviews) and complaints about entitlements on separation.

Table B.3: Subject matter of Code of Conduct reviews completed, 2024–25

Subject matter	Percentage	Number
Dishonesty: lack of honesty and integrity	45	66
Lack of respect and courtesy	20	29
Misuse of Commonwealth property; unauthorised access to information	12	17
Lack of care and diligence	6	9
Failure to follow a direction	5	8
Misuse of authority to seek gain or advantage	5	7
Failure to declare or avoid a conflict	3	4
Non-compliance with law (in connection with APS employment)	2	3
Breach of confidentiality / other	2	3

Table B.4: Subject matter of reviewed cases (other than Code of Conduct), 2024–25

Subject matter	Secondary subject matter	Number
Conditions of employment	Leave, bonus, salary, special payment and entitlements	15
Performance management	Appraisal, process	4
Workplace environment	Bullying and harassment, complaint handling	5
Duties	Relocation	1
Total		25

Table B.5: Applications for reviews and complaints completed, by agency, 2024–25

Agency	Code of Conduct	Direct MPC review	Secondary review	Total	Complaints about entitlements
Services Australia	19	2	6	27	0
Department of Defence	9	0	4	13	0
Australian Taxation Office	5	0	2	7	0
National Disability Insurance Agency	4	1	2	7	0
Department of Home Affairs	2	0	3	5	0
Attorney-General's Department	4	0	0	4	0
Other agencies (28)	18	2	6	26	1
Total	61	5	23	89	1

Review of promotion decisions

Table B.6: Status of promotion review cases, 2024–25

Promotion review cases	
On hand at start of year	37
Created during the period	61
Total caseload	98
Reviewed by promotion review committee	73
Invalid (for example, applicant not an ongoing APS employee)	5
Lapsed (for example, a protective application where no unsuccessful application received) or withdrawn	14
Total finalised during period	92
On hand at end of year	6
Target completion time (weeks)	8 or 12
Number completed within target time	56
Percentage completed within target time	77%

Table B.7: Promotion review caseload, by agency, 2024–25

Agency	Services Australia	Australian Taxation Office	Department of Home Affairs	National Disability Insurance Agency	Other	Totals
Applications received	206	44	36	11	46	343
Promotion review cases registered (not including cases on hand at start of year)	34	4	11	4	8	61
Number of promotion review committees formed and finalised cases reviewed	46	13	4	2	8	73
Parties to a promotion review process where a promotion review committee was formed and finalised	263	200	10	5	19	497
Promotion decisions subject to review	155	180	6	3	11	355
Promotion decisions set aside	9	1	0	0	1	11