



Australian Government
Merit Protection Commissioner



**MERIT
PROTECTION
COMMISSIONER**

Annual Report of the Merit Protection Commissioner 2022–23



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's Annual Report for the reporting period ending 30 June 2023 as required by section 51 of the *Public Service Act 1999*. This report details the activities of the Merit Protection Commissioner during the year.

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

Yours sincerely

Kirsteen Banwell

Acting Merit Protection Commissioner

5 October 2023

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Merit Protection Commissioner's foreword

It is with pleasure that I present the Merit Protection Commissioner's (MPC) annual report for what has been another busy and productive year.

Halfway through the year we faced some unexpected challenges, including the resignation of the previous MPC, Linda Waugh. Since that time the role of Acting Merit Protection Commissioner has been shared between myself and Mark Davidson. Together, with our hard-working and motivated staff, we successfully navigated those challenges, ending the year with great results on timeliness – even with an increase in applications for review and requests for our employer services.

The MPC holds a unique position in supporting the Australian Public Service (APS) to meet the government's reform agenda priorities. We do this primarily through our role in the Review of Actions scheme as defined in the *Public Service Act 1999* and the *Public Service Regulations 2023*. Conducting reviews is our core work. In performing this work, we assist the APS to be a trustworthy employer that acts with fairness and is accountable and transparent in how it makes decisions that directly impact on its staff.

The Review of Actions scheme concerns merit and its application across employment-related decisions and recruitment practices. Through merits review of individual decisions we work with government agencies to strengthen administrative decision-making, address poor behaviour, and continuously improve the quality and standard of recruitment and performance.

Merit in decision-making is a strong focus in our annual report. In this past year, we received 1,120 applications for review, involving 27 agencies. Of the applications subject to a merits review, we identified deficiencies or issues in 27% of matters. All our recommendations to agencies to change their decisions were accepted. This report provides insight into how we conduct that work.

For the scheme to be effective, it relies on agencies to see the untapped value of complaints and reviews as a source of intelligence, a means of continuous improvement and a test of the fairness of decisions made about their staff. From our experience, this can only be achieved through senior officers fostering a culture of disclosure, and reassuring staff (through their actions and behaviours) that they are committed to addressing and resolving disputes, and admitting when something has gone wrong.

Our work in reviewing individual decisions is only part of what we do. We also offer recruitment services to agencies. This year, we had MPC recruitment specialists sit on 21 panels. The section on employer services has more details about our cost-recovery service.

Transparency and accountability are cornerstones of a healthy public service. This office is committed to being good stewards of the values and principles of the APS. We genuinely look forward to working closely with the Australian Public Service Commission (APSC) on implementing its reform agenda.

Kirsteen Banwell

Acting Merit Protection Commissioner


At a glance


At a glance

 **75** stakeholder engagement opportunities

 **126,499** unique web page visits

 **1,107** contacts with our office

Review of workplace decisions
27% of decisions varied or set aside 

Review of promotion decisions
5.55% of decisions set aside 

180 applications for review of workplace decisions

Top agencies

- Services Australia **64**
- National Disability Insurance Agency **22**
- Australian Taxation Office **19**

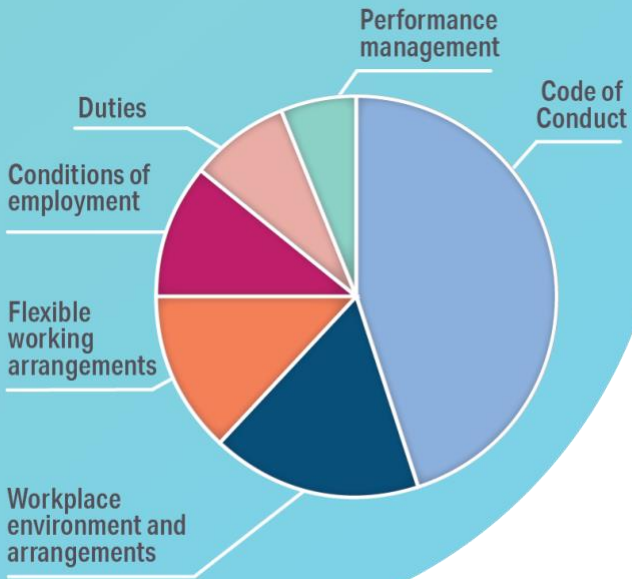


1120 applications under the Review of Actions scheme

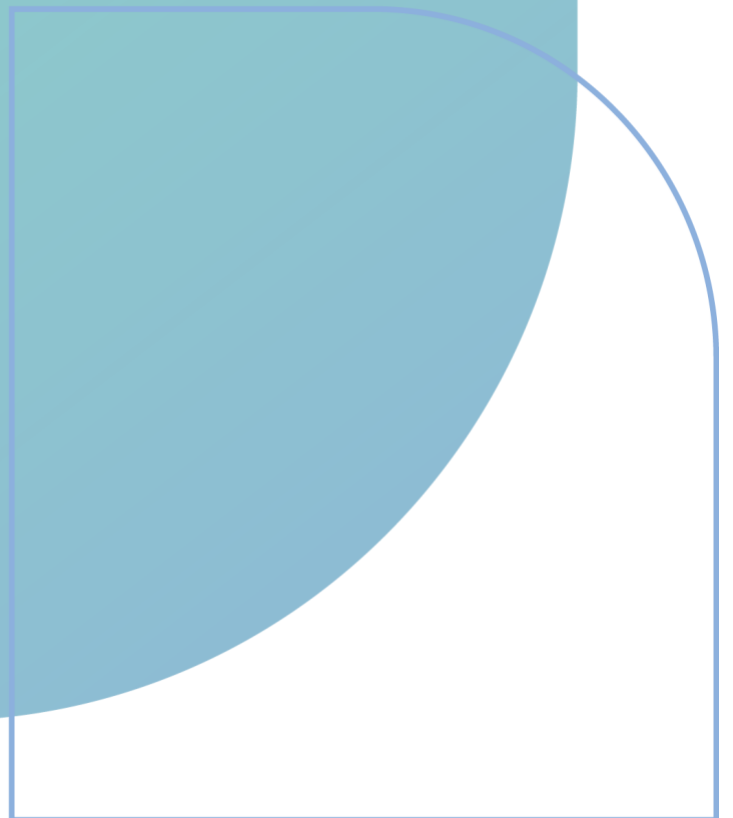
935 applications for review of a promotion

Top agencies

- Australian Taxation Office **540**
- Services Australia **222**
- Department of Home Affairs **76**
- Australian Bureau of Statistics **33**



1. Overview



About us

The MPC is an independent statutory office holder established under Part 6 of the *Public Service Act 1999* to perform a set of functions for the APS. These functions are concerned with the implementation of, and compliance with, the APS employment framework and principles. This is achieved principally through reviews of workplace decisions affecting APS employees and through promotion reviews. The MPC has other complaint and inquiry functions. It also provides recruitment and employment-related services to employers.

The staff of the office of the MPC are employees of the APSC. Under section 49(2) of the Public Service Act, the staff necessary to assist the MPC must be made available by the APS Commissioner and be people engaged under that Act. The APSC provides corporate support, information systems and services to the MPC. The MPC is co-located with the APSC in its Canberra and Sydney offices.

Our vision

To be an independent and impartial public service leader for advancing fair and merit-based employment-related actions and decisions.

Our purpose

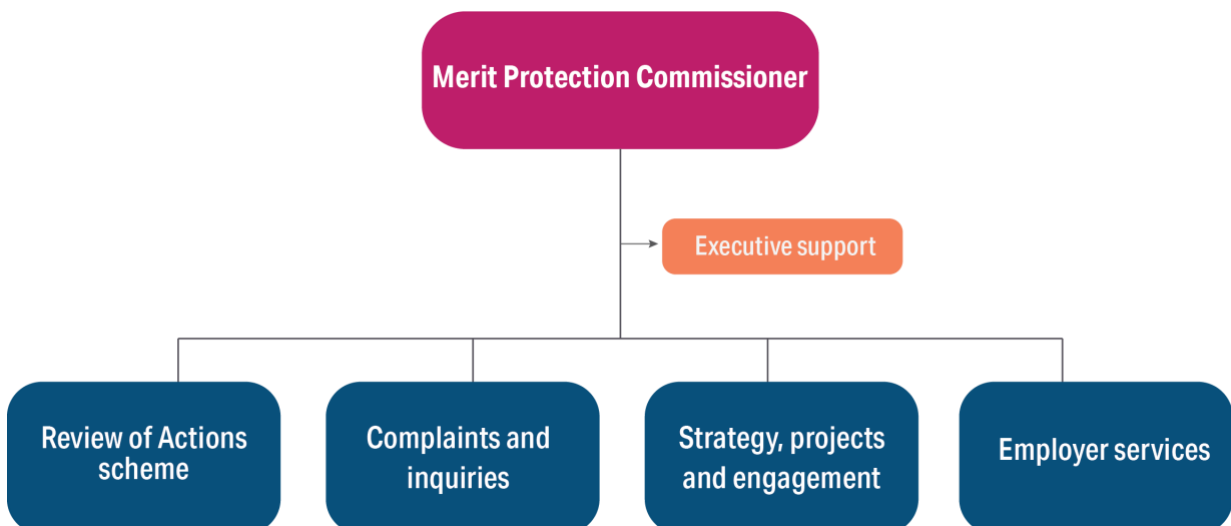
The MPC stands for fair and correct employment-related decisions in the Australian public sector. We assist agencies and departments in meeting their obligations under the APS Values, Employment Principles and Code of Conduct to provide fair, flexible and rewarding workplaces.

We are there for AFP employees to check if they have been fairly and reasonably retired on invalidity grounds, without their consent.

Our staff and structure

The high-level organisational structure of the office of the MPC is in Figure 1.

Figure 1: Organisational structure



This year we conducted our operation with a small, dedicated team of nine staff, down from a staffing level of 13.7 as reported in last year's annual report.

We use an organisational structure that best supports the performance of our statutory functions, having regard to where the bulk of work is done.

Since the resignation of the previous Merit Protection Commissioner, Linda Waugh, in December 2022, the role of Acting Merit Protection Commissioner has been shared between two senior MPC staff.

We maintain a pool of skilled casual employees engaged on an as-needed basis. We use this pool for our recruitment services to agencies, and when convening promotion review committees. The casual employees also run Independent Selection Advisory Committees (ISAC) and conduct Code of Conduct investigations as required. We have 14 casual employees.

Our Ministers

As of 30 June 2023 our Minister is Senator the Hon Katy Gallagher, Minister for Finance, Minister for the Public Service, Minister for Women.

The Hon Patrick Gorman MPC was appointed Assistant Minister for the Public Service on 31 May 2023.

Our legislation and statutory functions

The MPC's statutory functions are set out under Part 6 of the Public Service Act and parts 4 and 6 of the Public Service Regulations 2023 (the Public Service Regulations). These regulations were remade this reporting year, coming into force on 30 March 2023 and replacing the Public Service Regulations 1999. For the purpose of exercising our statutory functions (and in accordance with the transition provisions), all applications and requests for services received before 30 March 2023 were handled in accordance with Public Servant Regulations 1999.

The Public Service Regulations 2023 did not substantially change the operation of the Review of Actions scheme.

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 functions are set out in Appendix A. This section summarises each function.

Review of Actions scheme

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).

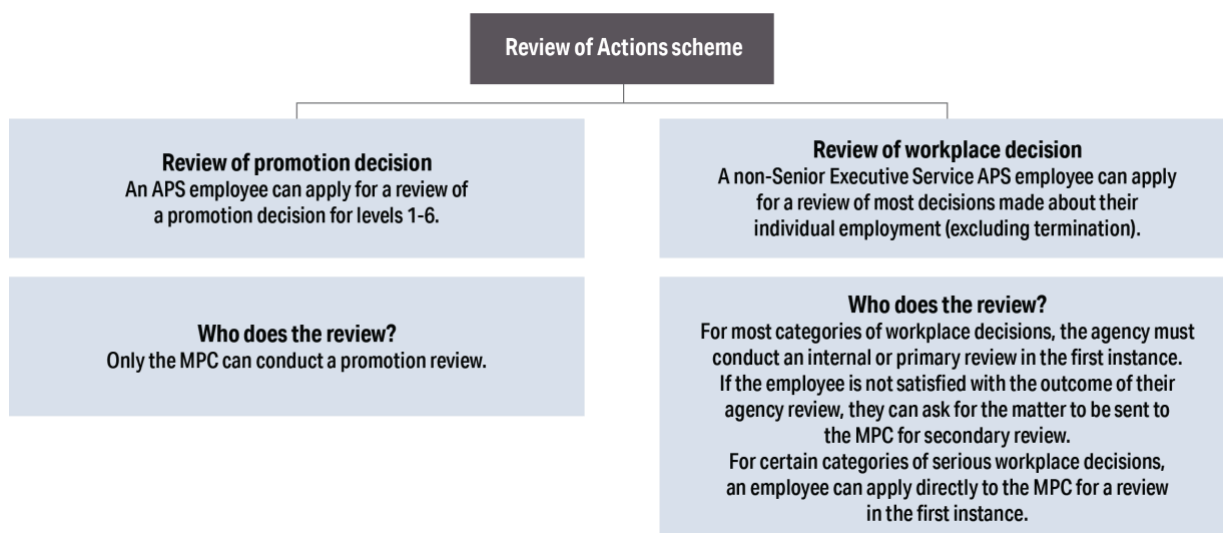
Our reviews are independent, fair and conducted in accordance with the Australian Government's general policy about reviews in the Public Service Regulations. The general policy states that:

- 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.

The Review of Actions scheme is concerned with two types of actions that may be reviewed by the APS agency or the MPC. These are detailed in Figure 2.

Figure 2: The Review of Actions scheme – who conducts the review



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 exercise. Promotion reviews are only available for promotions up to APS 6 and have strict eligibility criteria, which are discussed in Chapter 2, Review of promotion decisions.

Unlike promotion reviews, a review of a workplace decision leads to a recommendation. 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.

In this part of the scheme, certain decisions must be first reviewed by the agency before they can come to the MPC. Others that are significant for the employee (for example, a finding that an employee has breached the Code of Conduct) can come directly to the MPC.

The timeframes and eligibility criteria to seek a review of a workplace decision depends on the nature of the decision, complexity of the matter and on the individual circumstances of the applicant. More information about these reviews is set out in Chapter 2: Performance in reviewing APS actions.

Review of involuntary retirement decisions for AFP employees

The MPC can review certain decisions taken by the AFP 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 *Australian Federal Police Act 1979* 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.

Complaints and inquiries

The MPC may 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 how their final payment was calculated. The MPC can investigate these complaints if it cannot be otherwise resolved.

The MPC can also 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 APS Code of Conduct by the APS 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 only 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. They are provided on a cost-recovery basis. The key services the MPC can provide to employers are summarised in the rest of this section.

Independent Selection Advisory Committees

On request, we can provide APS agencies with an ISAC, which is where the MPC conducts an entire recruitment and selection process on their behalf. The establishment of an ISAC is made under the Public Service Act. Committees are independent, merit-based and cost-effective.

An ISAC is useful for specialised recruitments or for smaller agencies. It can also be useful for large or sensitive recruitment processes where confidence in the process, time management or impartiality is a critical factor. ISACs can only be established for recruitment for positions up to APS 6.

A unique feature of an ISAC is that any resulting promotion decision is not subject to a promotion review by a Promotion Review Committee.

Recruitment services

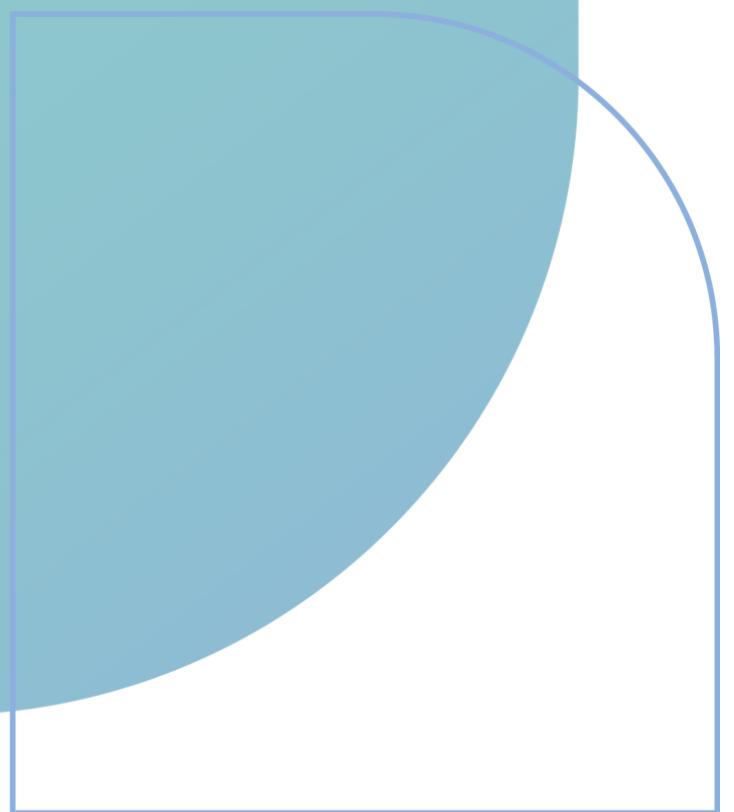
We can provide specialised recruitment services to APS and non-APS Commonwealth entities, as well as state and territory agencies and departments. Our services include highly skilled and independent

convenors or panel members who can assist with recruitment and make sure it is merit-based and complies with legislative requirements.

Workplace investigations and merits reviews of workplace decisions

One of our core functions 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.

2. Performance in reviewing APS actions



Year-end totals for reviews

During 2022–23, we received 1,120 applications from APS employees seeking a review of a workplace decision that had affected their employment, or a review of a promotion decision.

Of the 1,120 applicants:

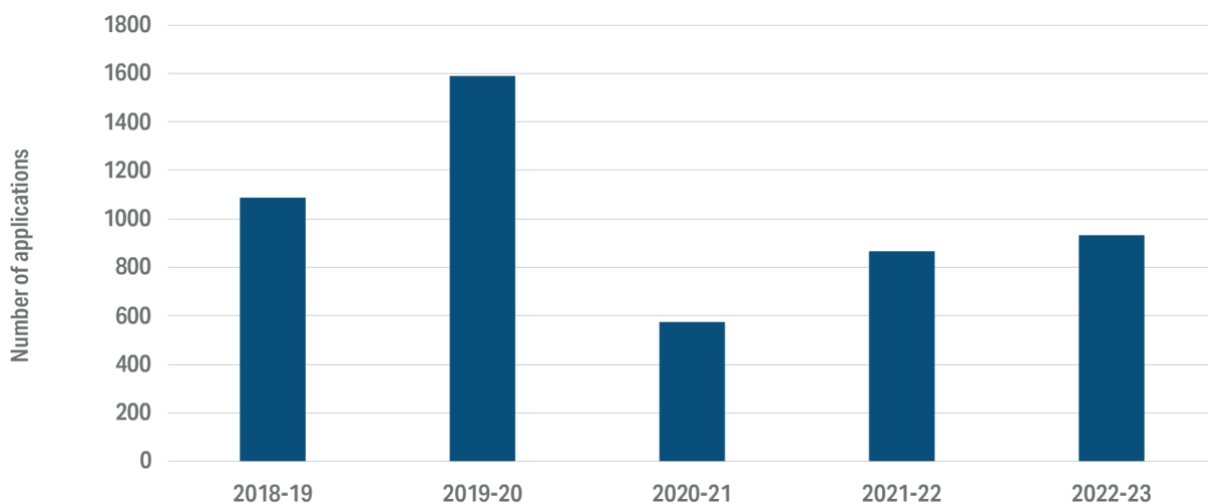
- 935 applied for a review of a promotion decision
- 88 applied for a secondary review of a workplace decision that had already been subject to their APS agency’s primary review
- 61 applied for an MPC direct review of a determination that they had breached the APS Code of Conduct and/or subsequent sanction decision
- 31 applied for an MPC direct review of a workplace decision on the basis it was not appropriate for the agency to conduct a primary review
- 5 complained about their final entitlements on separation from the APS.

Trends in application numbers

Applications for review of promotion decisions

Application numbers vary from year to year depending on the frequency and volume of recruitment activities undertaken by the larger agencies, as shown in Figure 3. The number of applications for review of a promotion decision was higher by 69 applications this year than in 2021–22. This trend is also seen in Figure 7, later in this chapter, which further breaks down application numbers by month over four years.

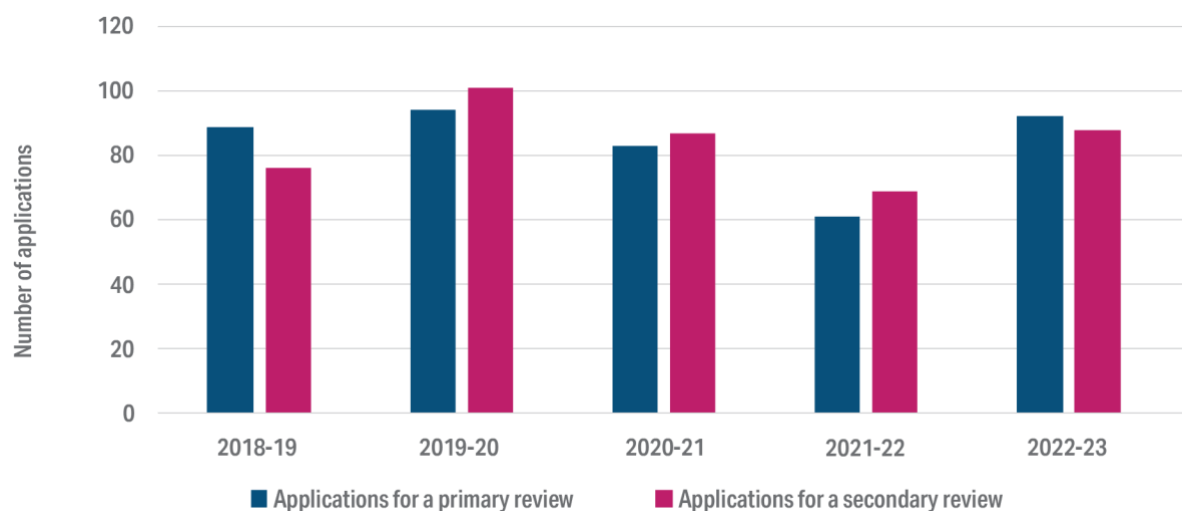
Figure 3: Total applications for a review of a promotion decision, over five years



Applications for review of workplace decisions

The number of applications received for review of workplace decisions and the trend over five years is shown in Figure 4. The increase in both the number of applications made directly to the MPC and applications for a secondary review is back to the numbers received before the COVID-19 pandemic. Applications for secondary reviews remain the larger number of applications received.

Figure 4: Total applications for a review of a workplace decision, over five years



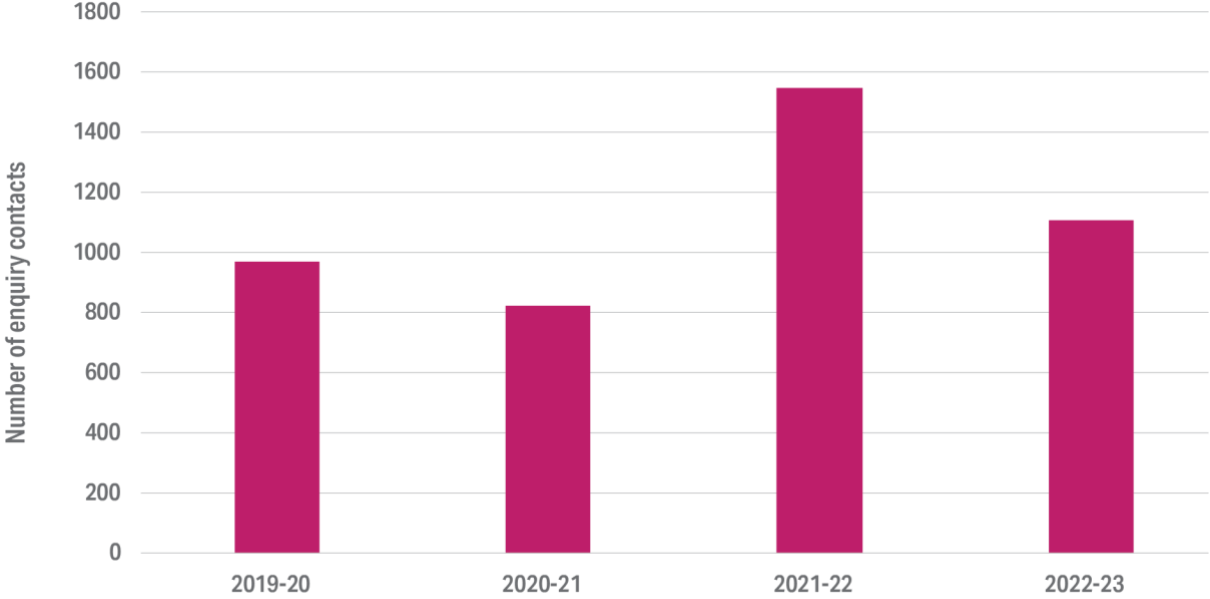
Contact with us

We provide a telephone and email enquiry service to APS employees and agencies. Most enquiries are from employees seeking advice on eligibility criteria, 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 review processes.

Wherever possible, we try to resolve the enquirer's issue. If we are not able to, we refer them to the appropriate agency.

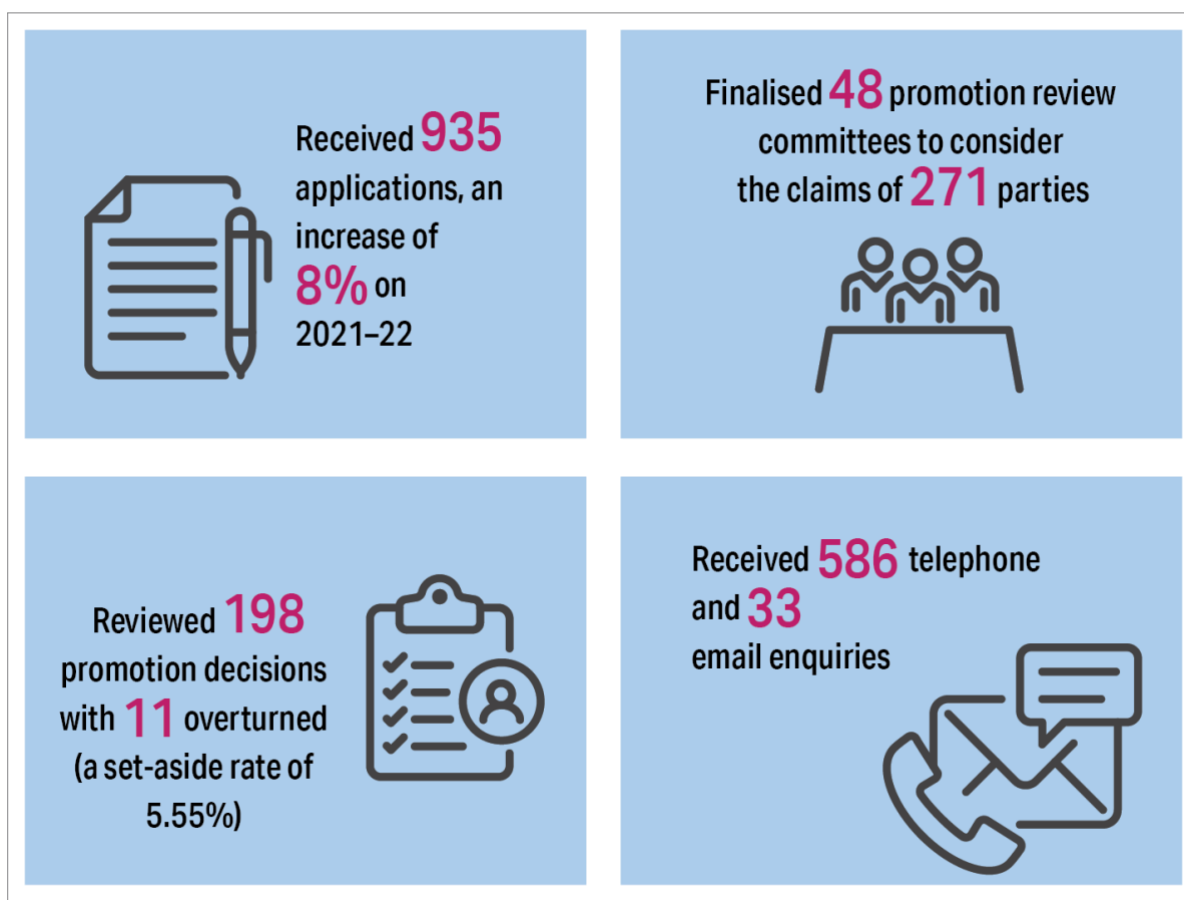
This year our small team of review officers responded to 1,138 enquiry contacts (Figure 5). These consisted of 959 telephone enquiries and 148 emails. We also received and responded to 31 contacts on matters that were misdirected or not within our jurisdiction.

Figure 5: Number of contacts with our office over four years



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

Review of promotion decisions



Merit in 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
- the 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 other important 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 deciding on 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 6 is a decision the MPC can review.

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

- 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
- A merit list indicates the relative suitability of candidates in a ranked order of merit.

Merit pools and lists are valid for 18 months from the date the original vacancy was published 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 can be reviewed if the position is at or below APS 6.

The value of merit in recruitment

The Review of Actions scheme is one of accountability and scrutiny. It forms part of the broader integrity framework for the APS. In relation to promotion decisions, the scheme is a mechanism that provides an independent check and balance that promotion decisions are based on merit and arising from a fair and open recruitment process (for positions up to APS 6).

In last year's annual report, we reported on how the promotion review function identified an unintended consequence for agencies when using automated processes to complete large-scale recruitment processes. We saw an increased use of artificial intelligence-assisted and automated processes that removed the human element from selection. As a result, we undertook a project on the use of these techniques in merit-based recruitment and this year published guidance material for APS agencies seeking to use new technologies.

Merit and review of promotion decisions

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 also depends on the location of the role applied for.

To be eligible, an applicant must meet all of these conditions:

- 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 only applies in circumstances when each of these 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 applicants who were unsuccessful in getting the position can apply for a review of the promotion decision. We call these ‘unsuccessful applicants’.

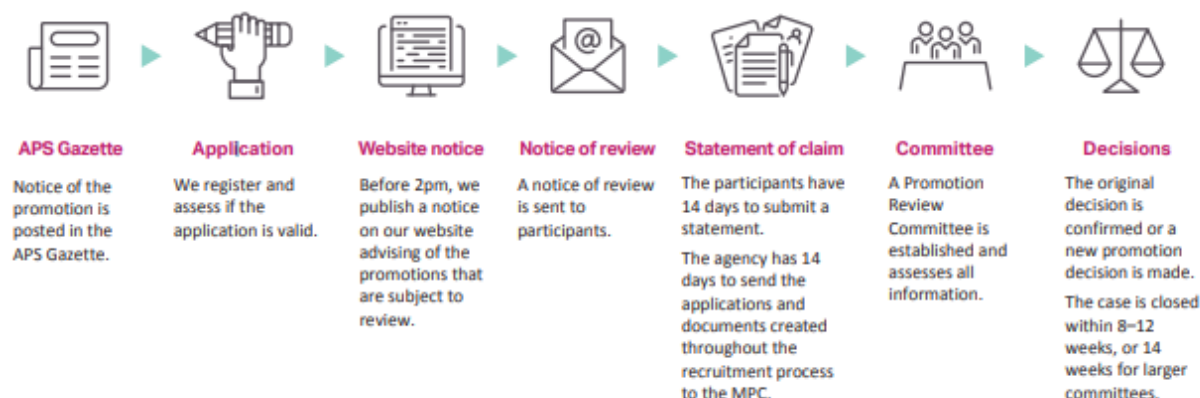
In some circumstances, a person who has won a promotion and who also meets the eligibility criteria applies for a promotion review. This only occurs when an agency undertakes a large recruitment activity to fill numerous roles, often across multiple locations.

Bulk recruitment rounds are common in larger agencies such as the Australian Taxation Office (ATO) and Services Australia and can be used to fill hundreds of positions across the country through a single recruitment exercise. In those circumstances, successful promotees may exercise their right to seek a review of another employee’s promotion decision, in case their own promotion is overturned. If their promotion is confirmed by a Promotion Review Committee their ‘protective’ application will lapse and no further action taken.

Steps in assessing an application for a promotion review

The purpose of conducting reviews of promotion decisions is to make sure the person with the most merit was promoted to a role. The MPC must complete a number of important steps for the review of a promotion decision (Figure 6).

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.apsiobs.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

We assess applications received to determine whether eligibility criteria have been met. Ineligible applicants and those who make invalid applications are advised in writing of the assessment outcome. All applications for a promotion review (from either unsuccessful or successful employees in the recruitment round) are made and assessed in the same way under the legislation.

3. A publication notice is published on our website

Every Friday, we publish a notice on our website listing details of promotions where a valid application for review has been received. A case is created for valid promotion review applications.

4. Parties are notified

We provide written notification to parties to a review. The agency responsible for the recruitment is also notified in writing that we will convene a committee to make a decision.

5. A statement of claim may be submitted and agency information must be provided

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 the Promotion Review Committee all the documents and evidence relating to how the original recruitment panel reached its decision on who had the most merit. The MPC collates this information and provides it to the Committee.

6. A Promotion Review Committee is established

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

7. A decision is made

The Public Service Regulations require a Promotion Review Committee 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
- relationship between each person's work-related qualities and the work-related qualities genuinely required for the duties
- relative capacity of each person to achieve outcomes related to the duties.

A Promotion Review Committee decides who has the greatest merit to perform the duties of the role. It considers all relevant recruitment records, including the role description, essential criteria, referee reports, the selection report and statements of claim. A Committee may decide it requires more information to inform its assessment so may conduct interviews or seek additional referee checks.

Once a decision is reached, the Promotion Review Committee records its decision. This decision is final and must be complied with by the agency.

Applications for reviews of promotion decisions

I was extremely stressed about this process and if it wasn't for the exceptional service and character of your staff answering the enquiry line and emails, I would have struggled tenfold. Your staff are amazing. I mainly dealt with [staff names] and cannot compliment their service enough.

APS employee applying for a promotion review

We received 935 applications for review of a promotion decision during the year. Figure 7 shows the number received by month over the previous three years. The number of applications fluctuate significantly throughout each year, due to the volume and number of recruitment activities undertaken by APS agencies.

Figure 7: Applications received for a review of a promotion over three years



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

In most instances, these applications lapse and do not proceed to review. If a promotion notice in the APS Gazette only attracts applications from applicants also 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 seek a review). As shown in Table 1, 623 of all eligible 736 applications received and assessed in 2022–23 were made by successful candidates. The totals in Table 1 do not include applications otherwise assessed as ineligible, withdrawn or yet to be assessed as at 30 June 2023.

Table 1: Eligible applications for promotion review received, by successful and unsuccessful applicants, over three years

| Applications received | 2020–21 | 2021–22 | 2022–23 |
|-----------------------------------|------------|------------|------------|
| Successful candidate (protective) | 433 | 617 | 623 |
| Unsuccessful candidate | 61 | 116 | 113 |
| Total | 494 | 733 | 736 |

Table 2 lists the outcomes of all 935 applications received this financial year for a promotion review (including ineligible applications). A higher than usual number of applications were not assessed at the end of the financial year. This was due to the consistently high workload of applications to assess received in April to June (Figure 7).

Of the 935 applications received, 435 eventually lapsed and are closed, with no further action taken. (Table 2). Despite a lapsed application not proceeding to review, the application will still have been through an assessment process, including conducting checks to determine eligibility.

Table 2: Outcome of applications for a promotion review, over three years

| Application outcomes | 2020–21 | 2021–22 | 2022–23 |
|-----------------------------|------------|------------|------------|
| Lapsed | 326 | 486 | 435 |
| Case created | 168 | 247 | 301 |
| Ineligible | 70 | 120 | 140 |
| Withdrawn | 6 | 8 | 22 |
| Received – not yet assessed | 6 | 5 | 37 |
| Total | 576 | 866 | 935 |

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

Promotion review cases

After we assess an application as being eligible, we prepare a ‘case’. A case is how we track applications to a particular agency, vacancy and location. It 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 the Promotion Review Committee to support its decision-making.

This year, 92 cases were created. Of those, 48 proceeded to review of the promotion decision (involving 271 individual parties). A total of 21 cases created did not proceed to a promotion review because the applications lapsed or were withdrawn. The remaining 15 cases were ongoing at the end of the financial year (Table 3).

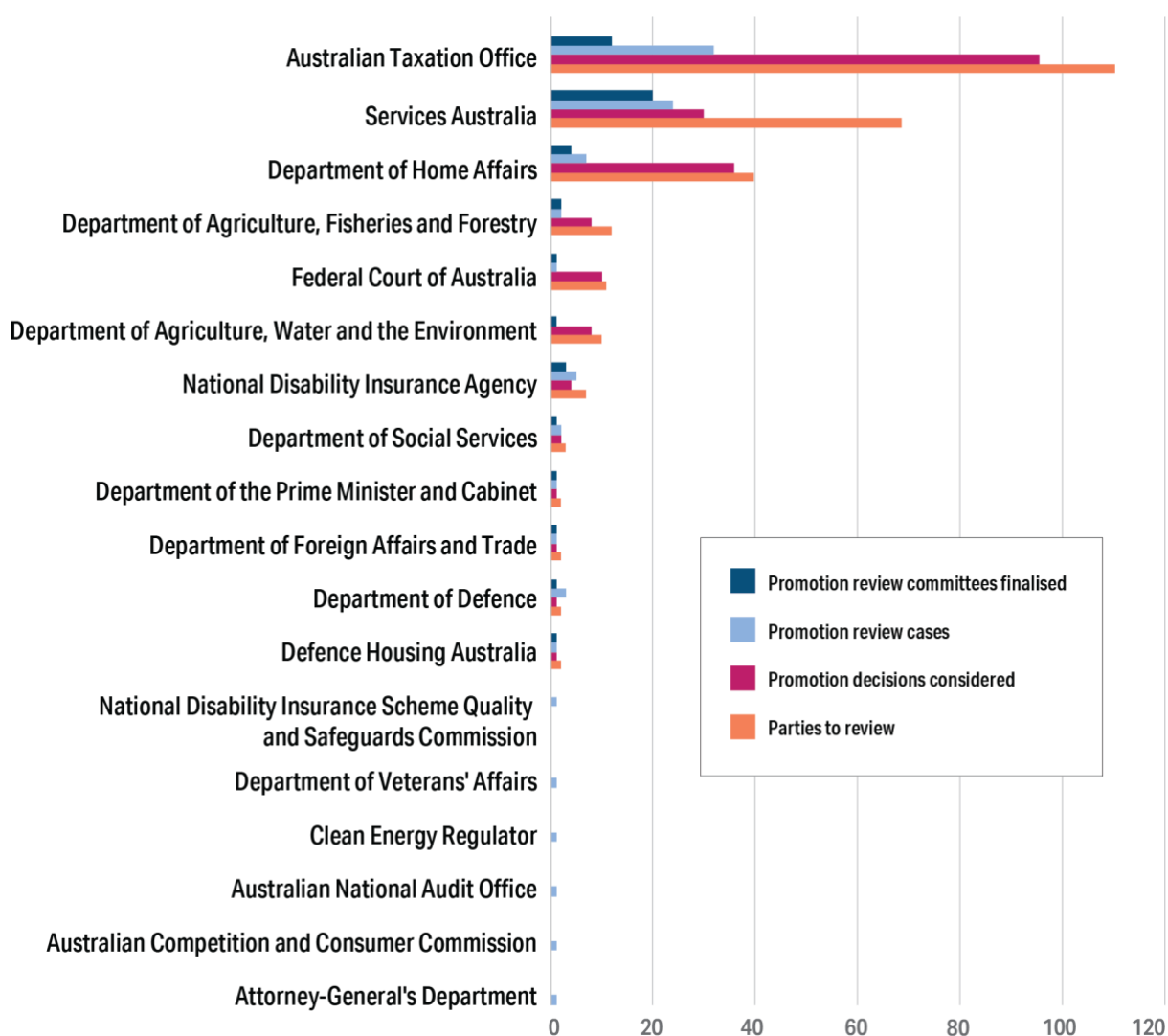
Table 3: Promotion review case outcomes

| Promotion review cases | 2020–21 | 2021–22 | 2022–23 |
|-----------------------------|----------------------------|----------------------------|----------------------------|
| Case proceeded to a review | 34 (involving 196 parties) | 42 (involving 327 parties) | 48 (involving 271 parties) |
| Lapsed withdrawn or invalid | 21 | 29 | 29 |
| Ongoing | 5 | 7 | 15 |
| Total | 60 | 78 | 92 |

In 2022–23, the case with the largest number of individual applicants subject to a promotion review, as a result of a single recruitment exercise, was 92 parties. It was 70 parties in 2021–22, and 70 in 2020–21.

Figure 8 breaks down the number of review cases by agency, with the number of decisions, total number of parties, and finalised promotion review committees. ATO employees were the largest users of the scheme, followed by Services Australia employees.

Figure 8: Promotion review workload by agency, 2022–23



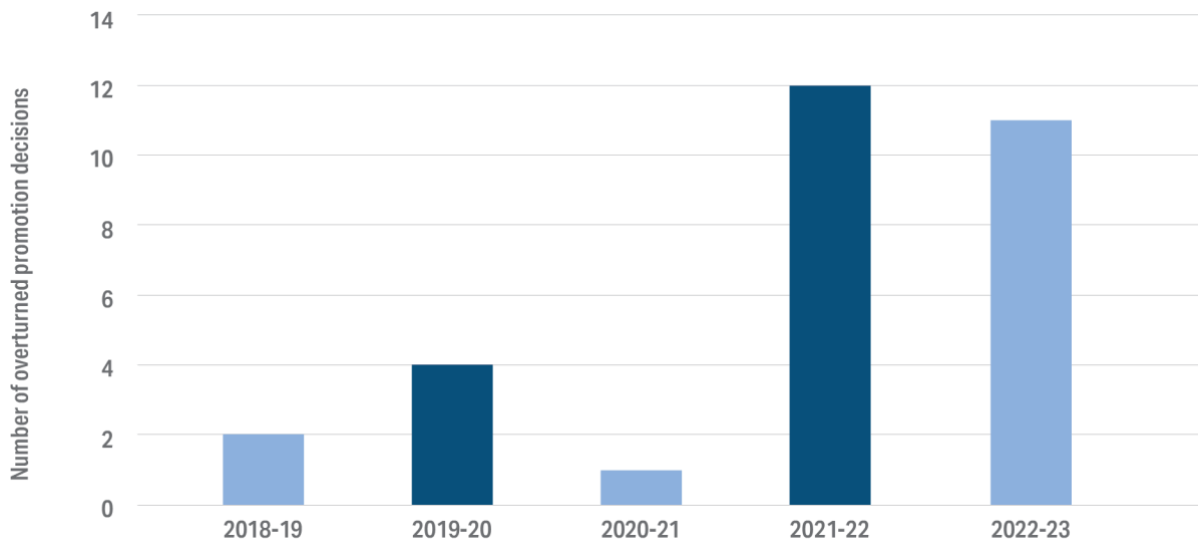
Outcomes of reviews of promotion decisions

In most cases, a Promotion Review Committee will confirm the original promotion decision. However, when committee members decide an applicant seeking review has more merit, they are required to make a new promotion decision.

Historically, the number of promotion decisions overturned has been very low, noting many promotion decisions are not ever subject to review.

In 2021–22, there were a total of 12 decisions set aside. This year's result was similar. As shown in Figure 9, there were 11 promotion decisions overturned, which makes up 5% of total applications reviewed. With only two years of data, it is too early to determine if this increase in decisions being set aside is an emerging trend. It is worth noting that we have not made any process changes to how a promotion review is conducted.

Figure 9: Number of overturned promotion decisions, over five years



A promotion review is a merits review, not a review of the selection process. If there are problems with the selection process the Promotion Review Committee may ask the agency nominee to give the agency constructive feedback. If there are significant or systemic flaws, the MPC may advise the agency of any concerns identified through the process. Under the scheme, the MPC has no authority to identify procedural issues or suggest how to improve a recruitment process.

When considering merit in the context of an application for review a Promotion Review Committee considers the:

- applicant's claim that they have greater merit in relation to the particular employment opportunity than that of the promotee
- promotee's statement and claim to the opportunity.

Assessing the work-related qualities to determine merit

The consideration of comparative 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.

At review completion, the Promotion Review Committee completes a report with 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.

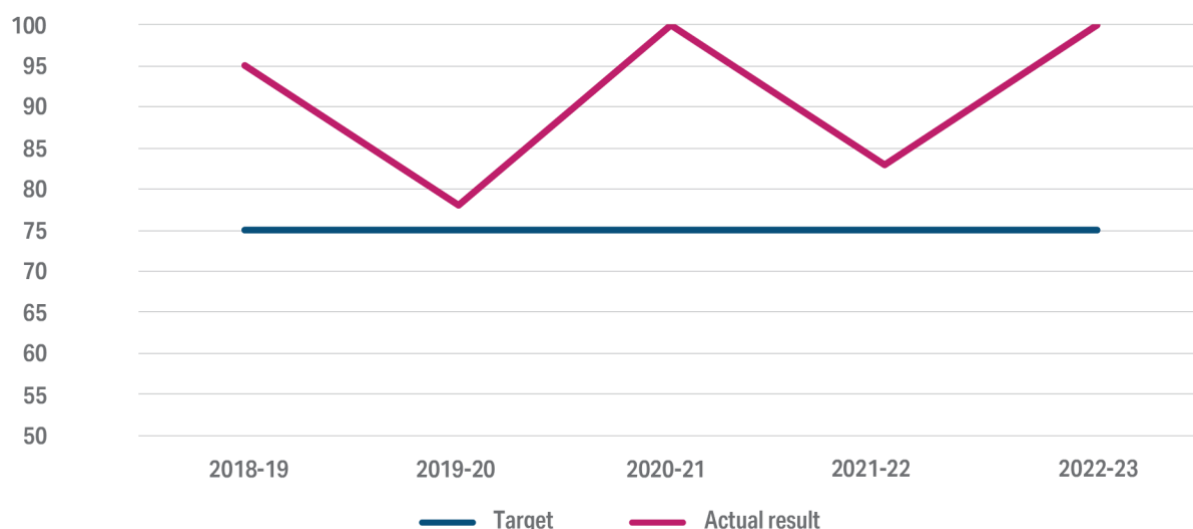
Timeliness of reviews of promotion decisions

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

- eight 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.

Despite experiencing a high number of applications, we completed 100% of reviews for promotion decisions within the target timeframes (Figure 10). This is a positive result considering the number of applications and that there are only two staff members on the team.

Figure 10: Percentage of promotion reviews completed in time, over five years



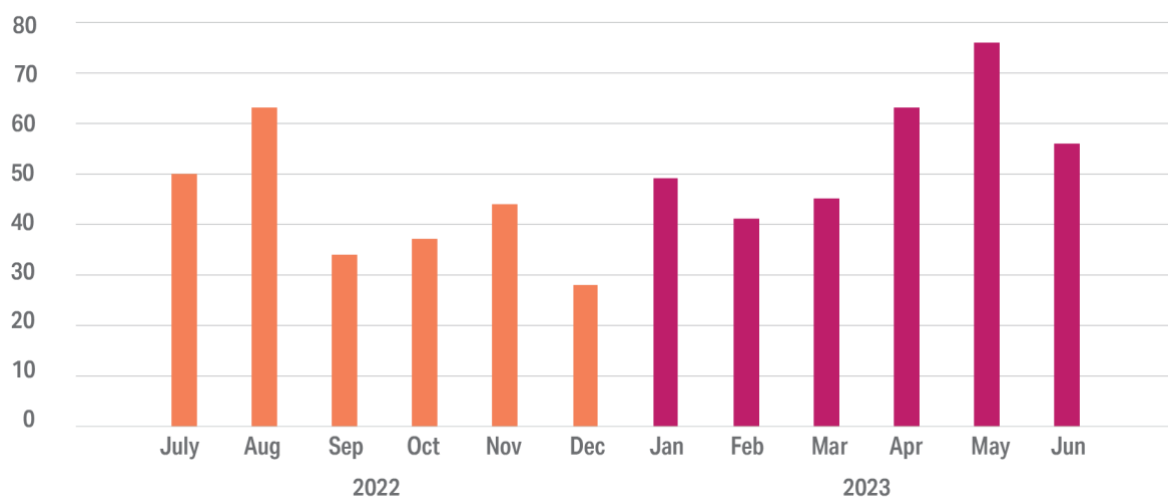
Contact with us about promotion reviews

We collect data on the number of enquiries we receive from employees, agencies and applicants about promotion reviews.

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

The volume of calls increased steadily through the latter half of the year. This aligned with the increased number of applications received in those months (Figure 11). These applications were from a particular recruitment action undertaken by two of the larger agencies and reflect the cyclical nature of this work.

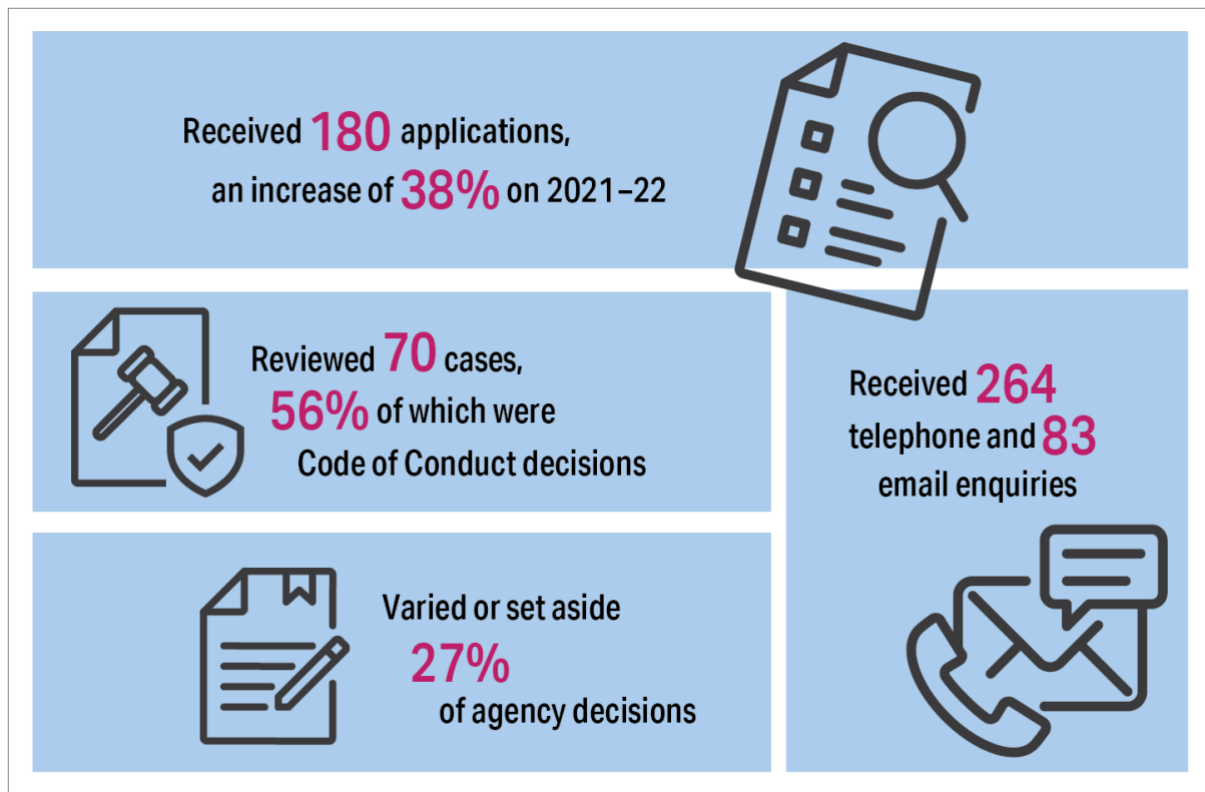
Figure 11: Promotion review telephone enquiries by month, 2022-23



Of the 586 promotion review telephone enquiries we received:

- 162 concerned the promotion review process (28%)
- 119 concerned 'successful' or 'protective' promotion review applications (20%)
- 88 concerned 'statements of claims' for promotion review committees (15%)
- 118 concerned promotion review applications (20%)
- 55 concerned advice about the MPC, entitlements and recruitment practices (9%)
- 44 were out of scope, or 'other' (8%).

Review of workplace decisions



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 only – 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 workplace decision that affects an APS employee's employment. At the employee's request, we review decisions:

- that an employee has breached the Code of Conduct, as well as any subsequent sanction decision relating to the breach
- 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.

Who conducts the review

An employee can apply directly to the MPC to review a workplace decision in certain circumstances, but always for decisions about the Code of Conduct. For the remainder of decisions, the agency is responsible for conducting an initial (primary) review. The MPC can review these types of decisions if the employee is not satisfied with the outcome of the agency's review.

Applying directly to the MPC for a review

An APS employee can apply directly to the MPC for a review of a decision where an agency has determined that the employee (or in certain circumstances, a former employee) has breached the Code of Conduct and/or the resulting sanction decision.

The other limited circumstances where an employee can apply directly to the MPC for a review without first applying to their agency is when:

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

Such applications need to be supported by additional information or evidence that one of these reasons exists before the application is accepted. The MPC carefully assesses these applications and, where appropriate, seeks more information from the applicant and/or the agency to determine if the application meets the criteria. If not, we advise the applicant to seek a primary review with their agency.

Applying for a secondary review through the agency

Unless a decision or circumstance meets the criteria in the previous section, an APS employee is required to first ask their agency to review the decision. 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 can ask the agency to refer their matter to the MPC to conduct a secondary review. The agency must forward the application to the MPC within 14 days. We then take a 'fresh look' at the original decision.

Employees can also apply for a secondary review where their agency head has declined a request to conduct a primary review of a decision (for example, if the agency assesses that the action or decision is non-reviewable).

Steps to review a workplace decision

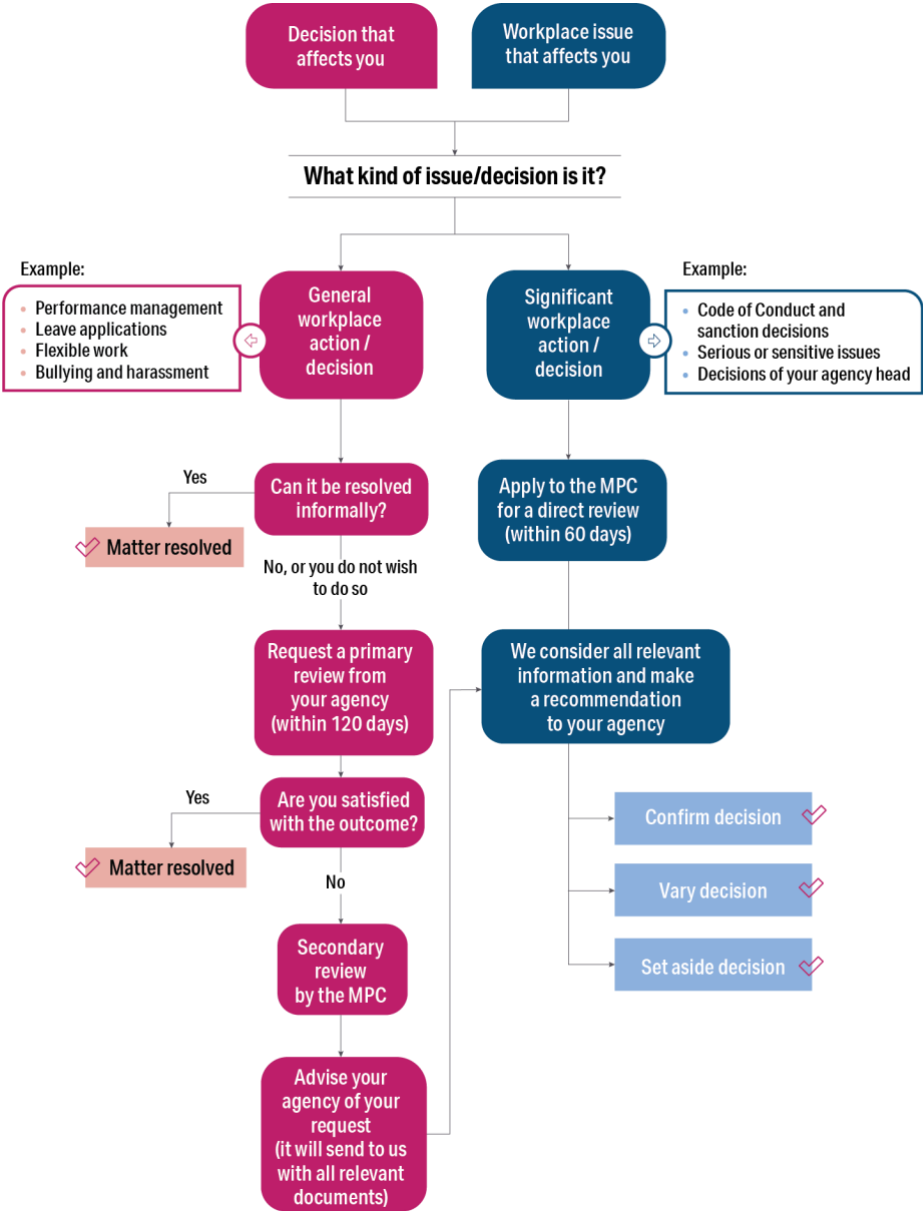
All reviews conducted by the MPC are independent, fair and merit-based. Our role is to stand in the shoes of the original decision-maker and take a fresh look at the relevant facts, law and policy relied on to reach the decision. We must have regard to the individual circumstances of each matter. We can ask the agency or the employee for additional information or evidence to assist with the review. This depends on the issue or decision we are reviewing. Each review is unique.

Once we complete our review, we make a recommendation to the agency that they:

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

Figure 12 illustrates the lifecycle of a review, from application through to recommendations. It shows the pathways for decisions depending on the circumstances of the matter.

Figure 12: Review of workplace decisions lifecycle



Applications for review

We assessed 191 applications for a review of a workplace decision. Assessment outcomes were that:

- 70 applications proceeded to review
- 106 did not meet the eligibility criteria for review
- 15 were withdrawn before a review was finalised.

As at 30 June 2023, we had 15 applications on hand to assess. The number of applications for review of a workplace decision received and finalised for three years, and the number of agencies involved, are shown in Table 4.

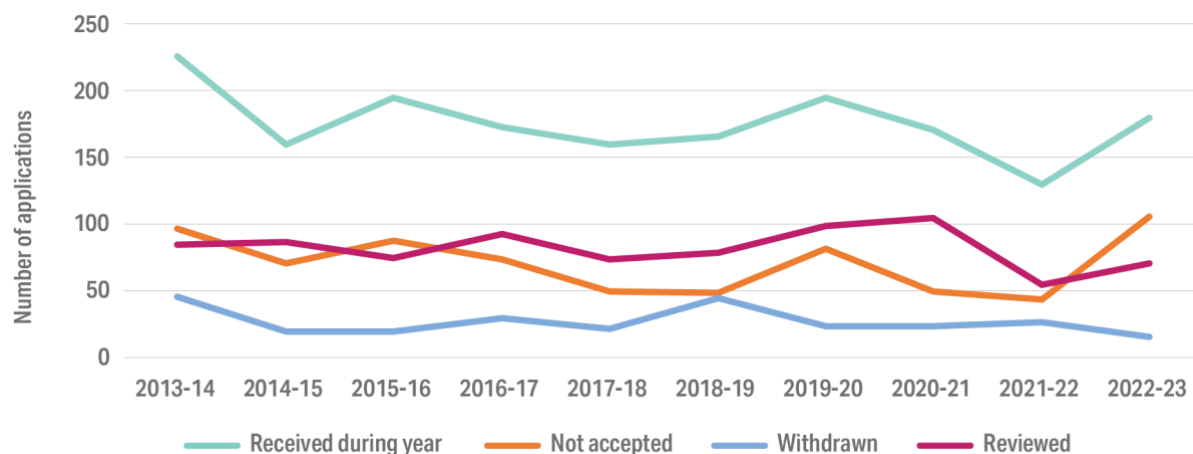
Table 4: Workplace decision review applications received and finalised, and the number of agencies involved, 2020–21 to 2022–23

| Application outcomes | 2020–21 | 2021–22 | 2022–23 |
|----------------------|---------|---------|---------|
| Received | 170 | 130 | 180 |
| Finalised | 177 | 123 | 191 |
| Agencies involved | 28 | 26 | 27 |

The trend in the number of applications we receive for review can be seen in Figure 13. As demonstrated in the line graph, we have experienced an increase in applications, with a corresponding increase in the number of applications assessed as not being eligible for review.

Last year we noted a sharp decline in applications at the start of the COVID-19 pandemic. Interestingly, this year we experienced a continued upward trend in applications, which almost takes us back to pre-pandemic numbers. Given this increase, it was pleasing to have met our key performance targets on timeliness.

Figure 13: Workplace decision review applications received and outcomes over 10 years



Reasons applications are not accepted

All applications for review are assessed to determine if they meet the eligibility criteria set out in the Public Service Regulations. This year, 106 applications were assessed as not eligible for review. The primary reasons a decision may not be, or may cease to be reviewable, are that:

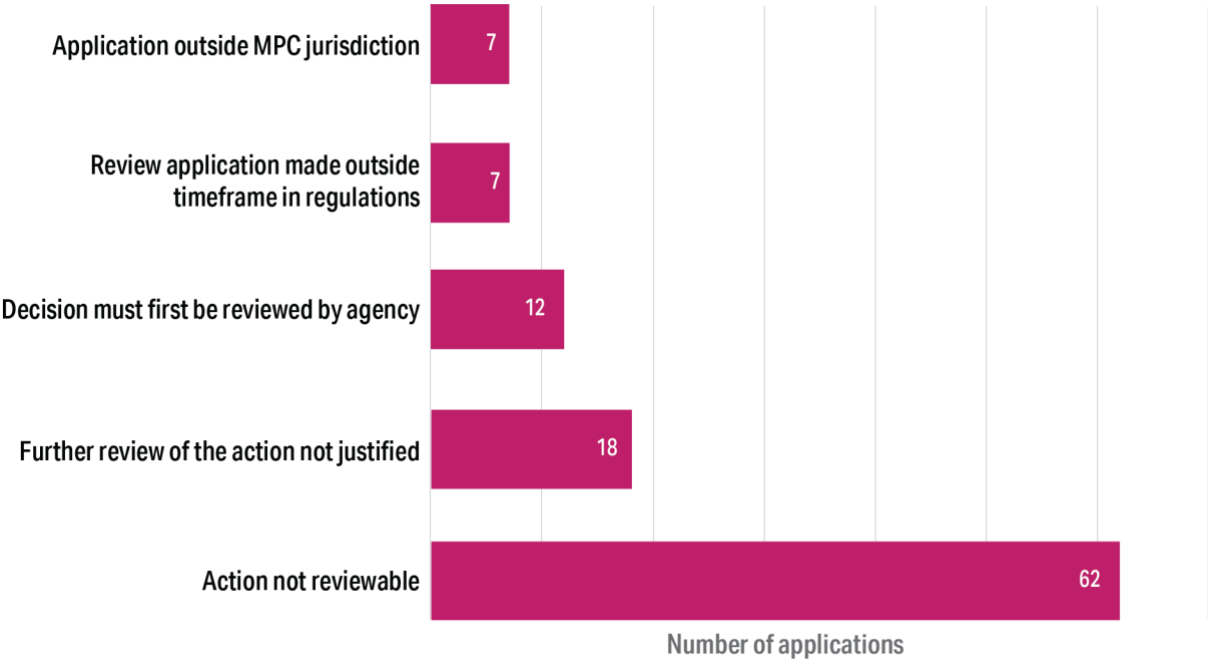
- the decision was excluded under the Public Service Regulations, for example, it was the result of a machinery of government change, or the decision was about policy or the direction of the agency
- no special circumstances relating to the decision or the applicant enabled the MPC to conduct a direct review, before the agency performed its own internal review
- the applicant made their application out of time, without evidence of an exceptional circumstance to explain the delay
- the decision did not justify a review, taking into account all circumstances.

Assessing whether an action is eligible for review can be complex and is often time-consuming. This depends on the individual circumstances of each application and the volume of documentation to

consider. Section 33 of the Public Service Act provides a broad scope of review, which covers a wide range of possible actions. For example, an action can include an inaction or omission. It also has to be an action relating directly to the applicant’s employment.

For applications not accepted, the MPC provides written reasons for our decision and advice on any other course of action that may be available to resolve the applicant’s concerns. Figure 14 breaks down the reasons we did not accept 62 applications for review during 2022–23.

Figure 14: Reasons workplace decision review applications were not accepted, 2022–23



The Regulations describe the type of actions that are not, or cease to be, reviewable actions. One reason the MPC can determine that an application ceases to be reviewable is when we consider that review or further review is not otherwise justified in all the circumstances. Case study 1 provides an example of an action that, on assessment, did not justify a review.

Case study 1: An action that did not justify a review

An employee made a complaint about the behaviour of their supervisor, which had occurred a few years before. The agency assessed the complaint and declined to take action.

The employee applied to their agency for a primary review of the decision to take no action. The agency decided that a review of the decision was not justified in all circumstances presented.

The employee then applied to the MPC for a secondary review of the original decision.

The MPC’s assessment also determined that a review of the original decision to decline the complaint was not justified. The factors the MPC takes into account when making this type of assessment include whether:

- a tangible outcome would likely be achieved
- the preferred outcome had already been achieved

- the resources required to review the matter could not otherwise be justified.

In this case, the MPC decided that a secondary review was not justified because the complaint was over 12 months old, the supervisor no longer worked at the agency and the passage of time would likely mean that evidence gathered through further investigation would not be reliable or have probative value.

For these reasons, the MPC decided not to conduct a secondary review. The application was assessed as not reviewable. The MPC advised the applicant, providing the reasons for its decision.

Types of workplace decisions by agency

We received applications for review from employees across 27 APS agencies. The largest agencies by number of employees – Services Australia, Department of Defence, Department of Home Affairs and ATO – comprised almost 55% of APS employees and 75% of review applications made to our office.

As demonstrated in Table 5, the second highest number of applications were made by employees from the National Disability Insurance Agency. This is quite high when considering the number of employees engaged at that agency and compared to the number of applications received from the larger agencies.

There are many reasons an agency may see an increase in applications for review, some of which are positive. For example, where an agency has a clear policy to make their staff aware of the entitlement to seek a review, and staff feel supported to do so, this may result in an increase in applications.

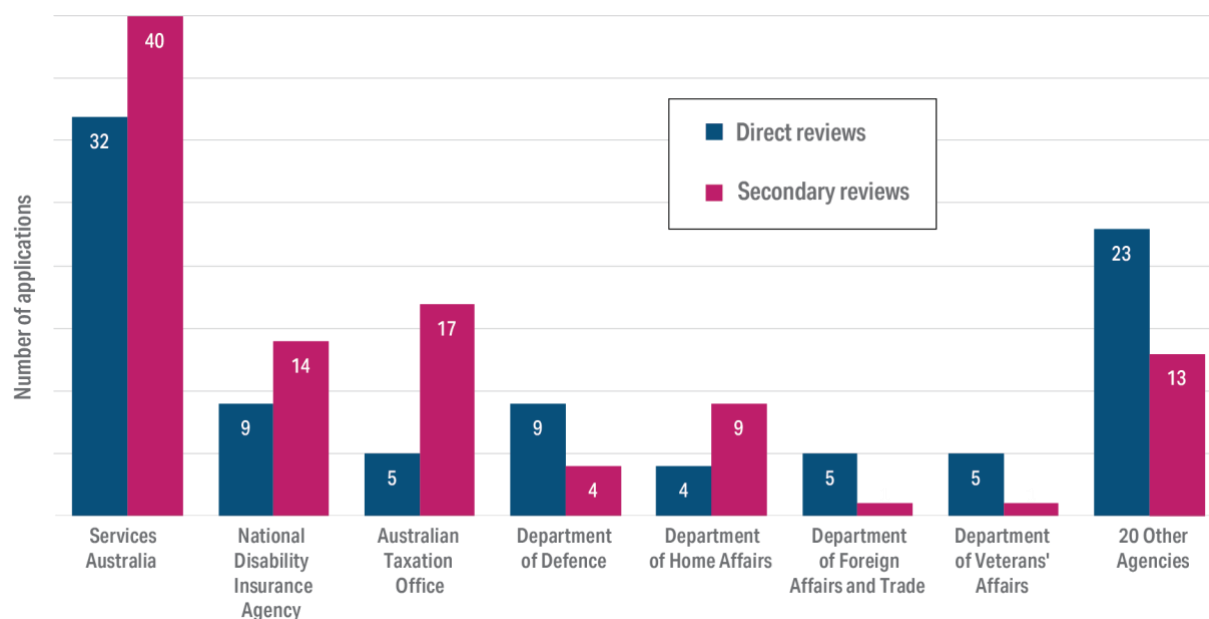
Table 5: Agencies with the highest number of applications and total number of employees, 2022–23

| Agency | Applications | Employees |
|--------------------------------------|--------------|-----------|
| Services Australia | 64 | 32,296 |
| National Disability Insurance Agency | 22 | 5,066 |
| Australian Taxation Office | 19 | 20,242 |
| Department of Home Affairs | 16 | 13,858 |
| Department of Defence | 15 | 16,887 |

The columns in Figure 15 show how many applications the MPC received, by agency, and whether the application requested a direct (primary) review or a secondary review (on the basis that the employee was not satisfied with the outcome of their agency's primary review).

As with previous years, Services Australia continued to have the highest number of applications to the MPC for both primary and secondary reviews. The 'other agencies' category comprised 20 agencies that received less than six applications for review.

Figure 15: Number of applications for review of a workplace decision, finalised by category, 2022–23



Outcomes of reviews of workplace decisions

In 2022–23, we completed 70 merits reviews of workplace decisions to determine if the original decision was correct and preferable in all circumstances. This total includes two matters facilitated to resolution before the reviews were complete. The Public Service Regulations provide for the opportunity to resolve a dispute at any stage of the review process, where it is appropriate and where a satisfactory outcome can be reached.

Conducting a merits review is resource-intensive. It requires considerable skill and deep understanding of the principles of administrative decision-making. It also requires careful analysis of each matter’s circumstances and the drafting of a report with detailed reasons for our decision.

Of the 70 merits reviews we conducted in the year:

- 49 resulted in the MPC agreeing with the original decision and recommending that the agency decision or action be upheld
- 19 resulted in recommendations that the original decision under review be varied or set aside
- two reviews began but were resolved through facilitated resolution, achieving a mutually agreed outcome by employee and employer.

All recommendations to set aside or vary were accepted and implemented by agencies.

Table 6 shows the percentage of reviews where the MPC recommended the original decisions be set aside or varied. The table presents numbers for the last five reporting years and breaks decisions down by Code of Conduct reviews, secondary reviews and direct reviews where the MPC agrees to handle a review that would otherwise be undertaken by the agency.

There was a notable drop in the number of secondary review decisions recommended to be set aside or varied last year, down from 32% to 10%. This year the percentage increased slightly to 17% but is still considerably lower than previous years. It is not possible, based on only two years of data, to conclude what this change means. It is clear, however, that over the last two reporting years the MPC and agencies have reached the same conclusion about a decision – which is a positive outcome. This

may indicate an uplift in the capability of agencies to conduct primary reviews, although the MPC would need to see these levels continue over the coming years to determine if this is the case.

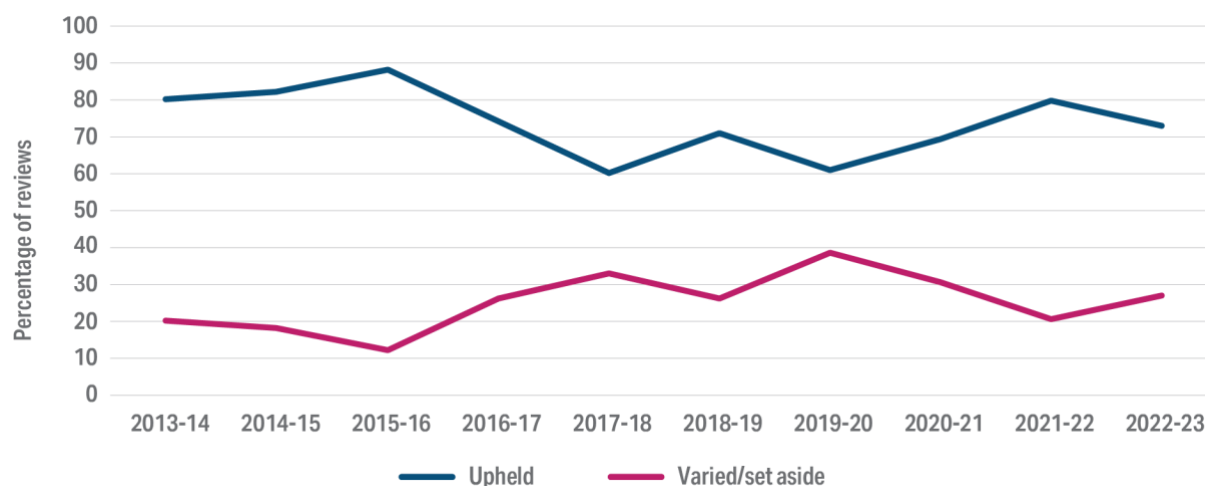
Table 6: Percentage of workplace agency decisions set aside or varied, 2018–19 to 2022–23

| Percentage of decisions set aside or varied | | | | | |
|---|---------|---------|---------|---------|---------|
| Review category | 2018–19 | 2019–20 | 2020–21 | 2021–22 | 2022–23 |
| Code of Conduct | 37 | 48 | 30 | 33 | 36 |
| Secondary review by MPC | 19 | 25 | 32 | 10 | 17 |
| Direct review by MPC | n/a* | 33 | 25 | n/a* | 0 |

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

Figure 16 is a visual representation of the percentage of review outcomes to vary, set aside or confirm a decision over the past 10 years.

Figure 16: Percentage of agency workplace decisions set aside/varied or upheld, over 10 years



The MPC recommends that an agency set aside a decision or vary an aspect of the decision for reasons, including:

- 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.

Case study 2 is an example of where the MPC set aside a decision after the review process identified the agency had not complied with a critically important procedural obligation.

Case study 2: Failure to afford procedural fairness

An agency imposed a sanction of a reprimand on an employee. This followed a finding that the employee had breached the Code of Conduct by failing to treat their colleagues with respect and courtesy.

Before deciding to impose a reprimand, the agency provided the employee with its preliminary view on the sanction and invited the employee to respond. The decision-maker stated that one factor under consideration was their concern about the employee's response to the investigation.

In their response the employee, noting that they had engaged in the investigation in a respectful and co-operative way, had admitted to the conduct, apologised and undertook to treat colleagues with respect. They asked for specific details on the decision-maker's concern about the employee's response.

The decision-maker did not respond to the employee's request for details and proceeded to make the decision – imposing the proposed reprimand.

The employee was from a non-English speaking background, and it was apparent they did not understand the decision-maker's preliminary reasons. They asked for more particulars.

In circumstances where a respondent indicates they do not understand the basis of a particular factor and asks for more detail, care should be taken to ensure that sufficient information is provided to allow the person to make effective use of their right to respond and present arguments.

The employee should have been given specific details of the decision-maker's concerns under consideration. The failure to do so amounted to a denial of procedural fairness.

Whether we confirm or recommend to vary or set aside a decision, the MPC provides the employee and the agency with a report clearly outlining the reasons for our recommendation.

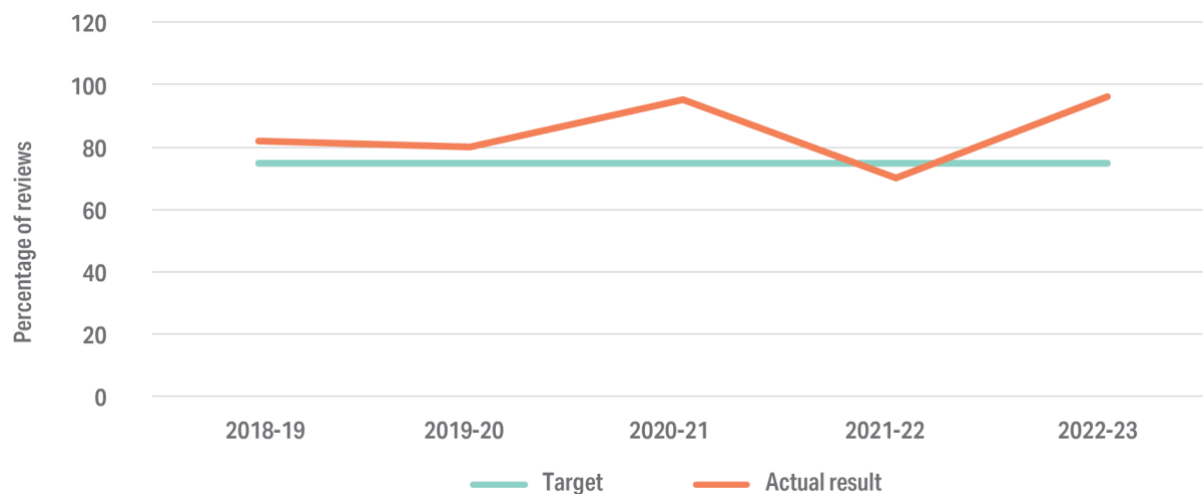
Timeliness of reviews of workplace decisions

The Public Service Regulations state that reviews must be completed as quickly and informally as practicable. Timeliness is an important measure of our performance and effectiveness.

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 do not count the time a case is on hold. A case is only 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 not available 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 3 days only – a marked improvement from last year's average of 18 days.

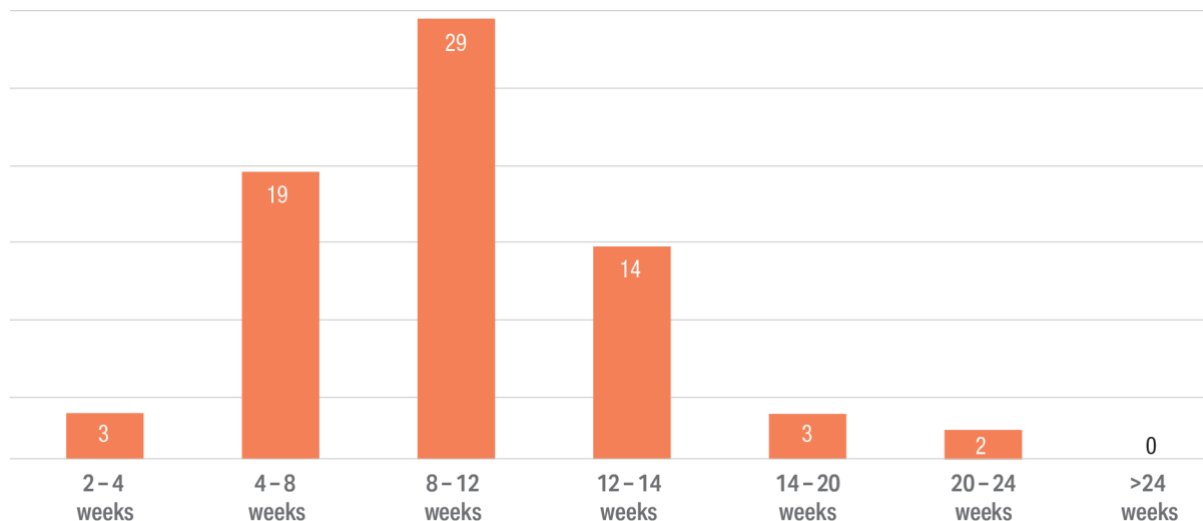
We exceeded our target by completing 96% of reviews of workplace decisions within 14 weeks. This is a great outcome for a small team of reviewers and for all parties to the review process. Figure 17 illustrates the improvement for 2022–23.

Figure 17: Percentage of reviews of workplace decisions completed within 14 weeks, over five years



We also report our timeliness performance for reviews of workplace decisions by the total number of weeks each review takes to complete. As shown in Figure 18, most reviews conducted in 2022–23 were completed within eight to 12 weeks (including 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 the important requirement to adhere to procedural fairness and in writing comprehensive reports that clearly explain the reasons for our decision.

Figure 18: Number of weeks taken to complete reviews of workplace decisions, 2022–23



MPC direct review of workplace decisions

The MPC can conduct direct reviews for three categories of workplace decisions:

- Code of Conduct breach decisions and/or any subsequent sanction decision
- where it is not appropriate for the agency to do its own primary review in the first instance (for a range of reasons)
- where the action or decision was taken by a statutory office holder.

Code of Conduct

The MPC can conduct merits review of a determination that a current or former employee has breached the Code of Conduct and any decision to impose a sanction in relation to a breach determination. Each decision is counted as a separate review.

When the MPS reviews a determination that an employee has breached the Code of Conduct, we consider all evidence gathered during the agency's own investigation and additional information provided during the review by the employer and the employee. The review considers if:

- the agency's procedures for dealing with the 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 that the employee did what was alleged
- what the employee did amounts to a breach of the Code of Conduct.

If a sanction has been imposed, the MPC's review will consider if it 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. The MPC's review of sanction decisions provides assurance that decision-making is robust, fair and consistent with the APS Values and Employment Principles.

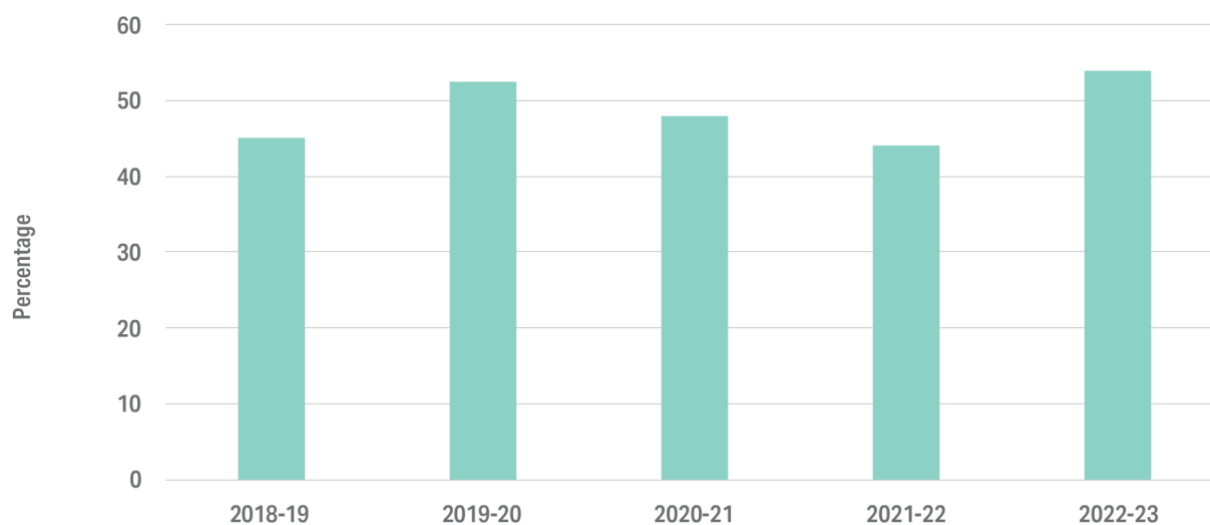
Every year the APSC conducts a survey and publishes a report with the outcomes. The [State of the Service](#) report identifies year-to-year trends in workforce participation and capability across the APS. The 2021–22 State of the Service reported that 604 employees across the APS were found to have breached the Code of Conduct by their agency.¹ Only a small proportion of employees in this circumstance ever seek a review of that decision.

This year, we received 61 applications from 47 employees seeking to have a merits review of a decision that they had breached the Code of Conduct or were issued a sanction. These reviews accounted for more than half (56%) of our total workload.

Figure 19 shows that the percentage of applications for merits review involving Code of Conduct determinations increased this year to the highest of total workplace decision reviews since 2019–20.

¹ *State of the Service Report 2021–22*, APSC, Chapter 1: Strong Foundations

Figure 19: Code of Conduct matters as a proportion of total workplace decisions reviews, 2018–19 to 2022–23



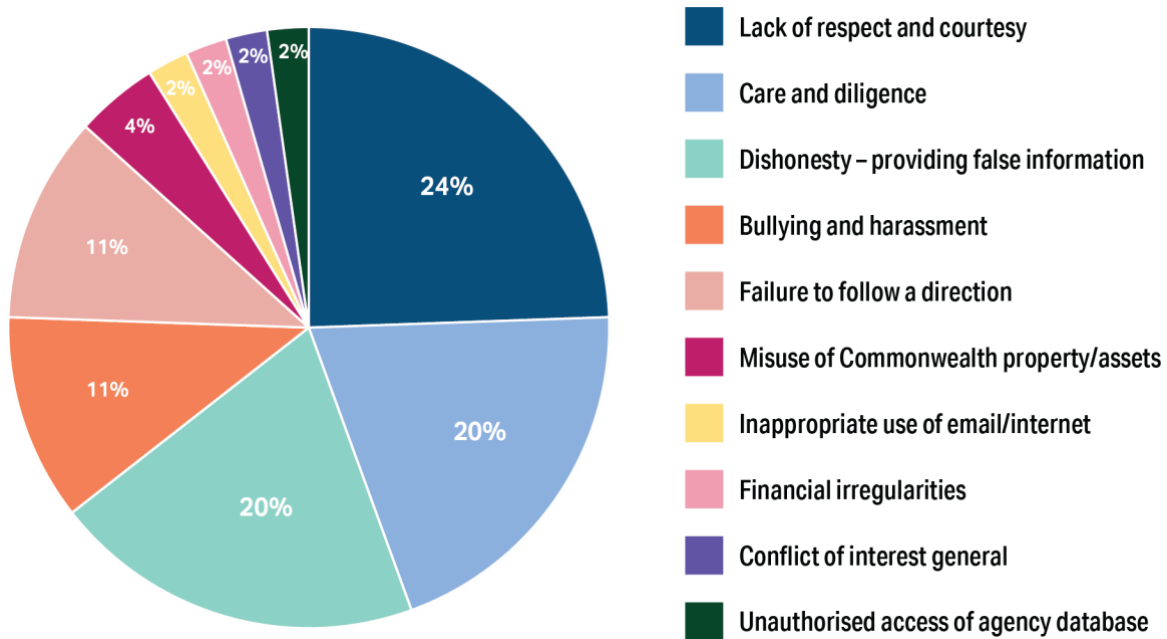
The recommendations of our reviews of Code of Conduct determinations and sanction decisions were:

- 25 confirmed the original breach or sanction decision
- five set aside the decision
- three varied the original decision.

Merits review of Code of Conduct determinations – by their very nature – cover a wide range of behaviours and conduct. The issues frequently reviewed were ‘lack of respect and courtesy’, ‘lack of care and diligence’ and ‘dishonesty’ (Figure 20). Together these issues made up more than 60% of applications.

A comprehensive breakdown of the categories of decisions is in Appendix B, Table B.7.

Figure 20: Reviews of Code of Conduct decisions, by issue, 2022–23



Case studies 3 and 4 illustrate the type of work the MPC performs.

Case study 3: A formal direction was not clear and specific

An employee and a colleague engaged in an email exchange about a matter in the workplace. At some stage, the colleague objected to the inappropriate comments and tone of the employee’s emails. However, the employee did not change their behaviour. Instead, they continued to send emails with similar types of comments.

A manager became aware of the emails and issued a direction to the employee to immediately cease the email communication. The next day the employee saw the colleague in the workplace and spoke to them using disrespectful and discourteous words.

The agency initiated an investigation into the employer’s conduct under its Code of Conduct procedures. The agency decided that the employee had breached the Code of Conduct by failing to comply with the manager’s lawful and reasonable direction. The basis of the breach decision was that the employee had spoken to their colleague the day after receiving the direction and had therefore failed to comply with the direction. The employee sought a review of the breach decision by the MPC.

A reasonable direction must be clear, specific and capable of being followed. It should be drafted in the language of command and must impose a clear and specific obligation. A poorly worded direction can make it difficult for an employee to follow, and for an agency to establish whether the direction was complied with or not.

The MPC, in its review, noted the direction referred only to email communications, not communications in general. The direction did not require the employee to cease all communications and did not prohibit verbal communications. The MPC was of the view that if the

manager had intended the direction to include all types of communications, it needed to be clearly articulated and not ambiguous to leave doubt as to what the employee was expected to do.

This case demonstrates that, when drafting a direction, it is critical for managers to consider exactly what behaviour they wish to address.

To assist agencies, the MPC has published a tip sheet on drafting clear employee directions which can be located on our website www.mpc.gov.au

Case study 4: Improper use of resources

An employee was found to have sent emails containing work-related information from their work email to their personal email address. It was alleged that the purpose was to gain, or seek to gain, a benefit or an advantage for themselves.

The agency determined that the conduct was in breach of the APS Code of Conduct. The employee sought a review of the decision that they had misused their position from the MPC.

The MPC recommended that the agency set aside the breach decision on the basis that there was insufficient evidence to support, on the balance of probabilities, that the employee had sent the information to achieve a benefit or advantage.

In the MPC's view, the allegation that an employee used insider information to seek to achieve a personal benefit is serious, as it incorporates elements of dishonesty. In line with case law precedent, it requires strong information and evidence to support a finding.

The agency's finding was based on indirect evidence and inferences. The MPC considered that the employee had presented a plausible (albeit inappropriate) explanation for sending the information to themselves which the agency did not investigate or consider as an option.

The MPC recommended another, more appropriate, finding be confirmed. This was that the employee had acted contrary to information and communication technology policies and procedures by sending emails marked 'OFFICIAL: Sensitive' to a personal email address without authorisation or a legitimate work-related purpose to do so. The MPC was satisfied that the conduct constituted a failure to use resources in a proper manner and/or for a proper purpose.

Direct (primary) review by the MPC

We assessed 34 applications to conduct a review of a workplace decision that would, in usual circumstances, be reviewed first by the agency. This included three applications received in the 2021–22.

The outcomes of the 34 applications were:

- 29 declined on the basis of being invalid or not meeting the criteria for a direct review
- 2 accepted for review
- 3 withdrawn or lapsed.

We had three applications on hand at 30 June 2023. The outcome of these will be reported in next year's annual report.

The range of reasons we do not accept an application for review under this section of the Public Service Regulations include that the:

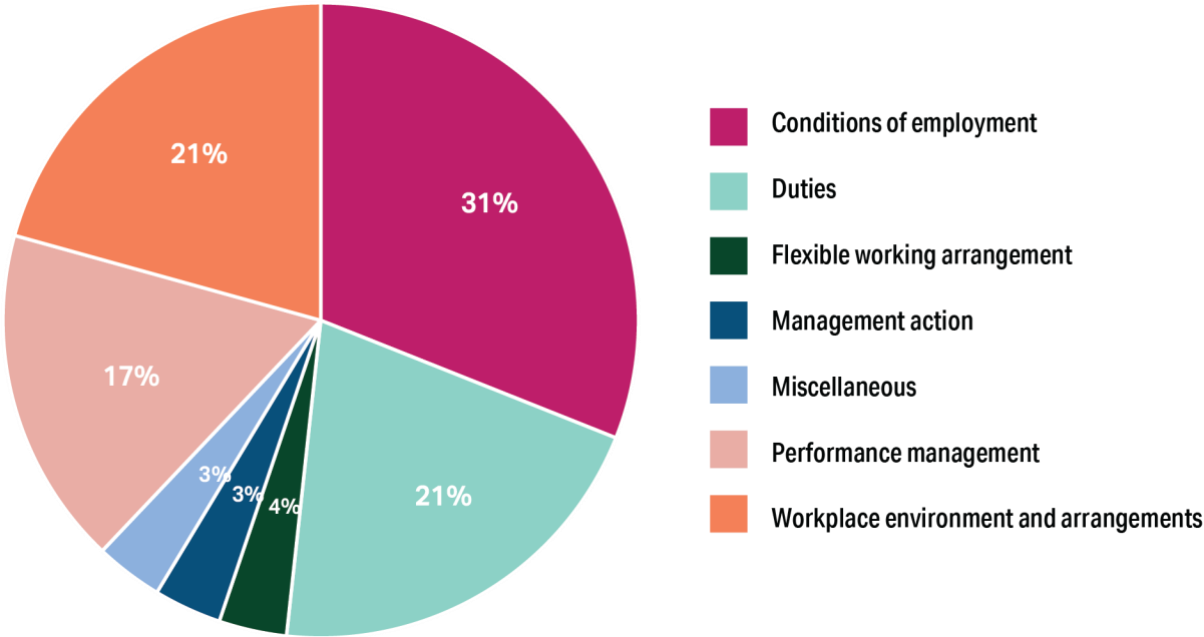
- applicant had sought a primary review from the agency and it was not yet complete, or the applicant had failed to seek a primary review from the agency
- agency head was not involved in the decision, the action was not serious or sensitive, and the action for which the review was sought was not claimed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

MPC secondary reviews of workplace decisions

This year we received 88 applications for a secondary review of a workplace decision. Of these, we reviewed 29 decisions, including one matter that was resolved before the review was completed.

Figure 21 and Appendix B, Table B.6, break down by issue the secondary reviews we completed this year.

Figure 21: MPC secondary reviews, by issue, 2022–23



As seen in Figure 21, the largest proportion of secondary reviews are about decisions involving one or more of the following:

- disputes about conditions of employment, which includes decisions about an employee’s allowances, accrual of flex time, fitness of duty and leave entitlements

- concerns about assignment of duties, such as decisions about medical report interpretation, return to work arrangements, and decision to suspend an employee (usually as a result of a Code of Conduct process having 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.

Case study 5 is an example of where the MPC agreed with the agency's primary review. The MPC confirmed the decision to issue counselling in response to inappropriate behaviour in the workplace as the correct and preferable decision in the circumstances.

Case study 5: Counselling for inappropriate behaviour

The employee sought a review of two decisions. The first decision was to issue them with formal counselling. The second was to retain a record of the counselling on their personnel file for 1.5 years.

The employee claimed there was no basis for the counselling. They claimed that it formed part of a broader campaign of harassment by management towards them. The employee also submitted that the decision to retain a record for 1.5 years was harsh and unreasonable.

On review, the MPC identified that the decision to impose formal counselling resulted from comments the employee had made to a manager in emails. There was evidence on file that two weeks before, the employee had been informally counselled about the need for respectful communication.

The emails that the employee had sent to the manager questioned the manager's leadership capability and ability to perform certain tasks. Conversely, no evidence was presented by the employee to support, to a reasonable standard, that the counselling was part of a broader campaign of bullying against them or otherwise unreasonable.

Given that the employee had received informal counselling for similar conduct, the MPC found it reasonable and appropriate to issue the employee with formal counselling.

The MPC was also found it reasonable to retain a record on the employee's personnel file as a central record to inform future management action should similar behaviour re-occur. This was also consistent with the agency's record-keeping obligations. As such, the MPC recommended that the decision be confirmed.

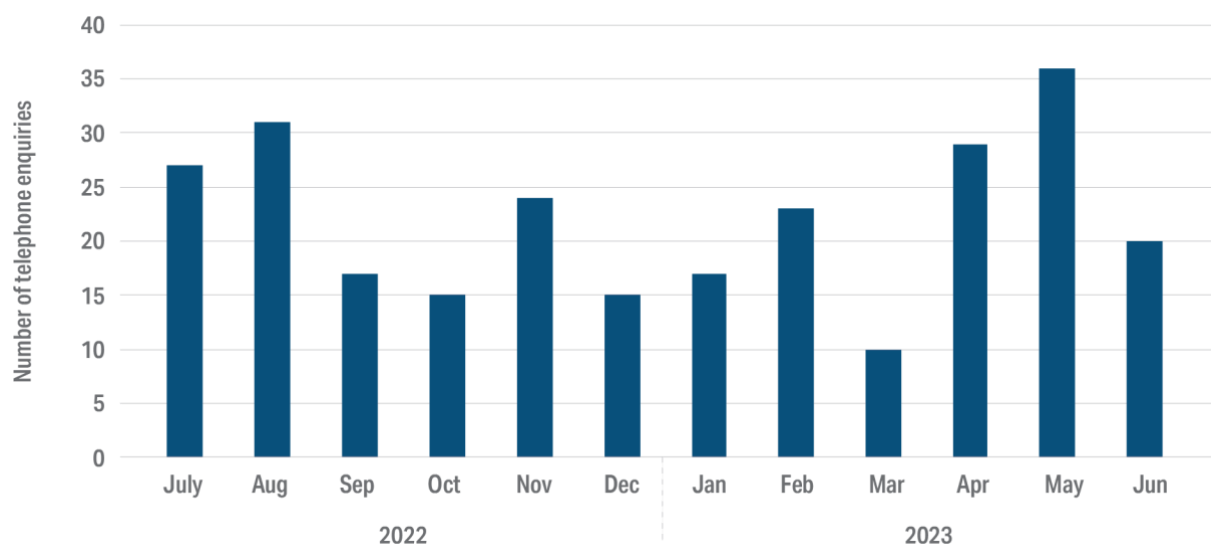
Contact with us

Every year we respond to phone and email enquiries about reviews of workplace decisions from employees and practitioners. We have a small team who respond to questions about the Review of Actions scheme.

We value the opportunity to engage directly with our stakeholders and use the data we collect to inform our education and communications strategy and improve our service delivery.

During the reporting period, the office recorded 264 telephone enquiries relating to reviews of workplace decisions, with the most received in May, followed by August and April (Figure 22). All up, this represents 28% of all telephone enquiries received to our review line. We received 83 (non-casework) email enquiries relating to reviews of workplace decisions.

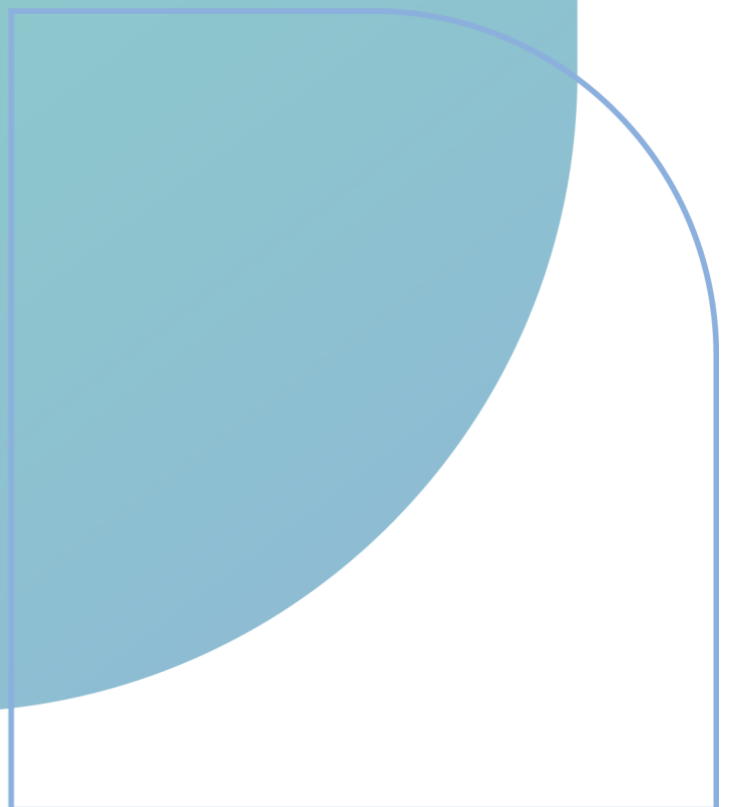
Figure 22: Number of telephone enquiries about reviews of workplace decisions, by month, 2022–23



Of the 264 telephone enquiries we received about reviews of workplace decisions:

- 24 were requests from an agency for information and advice
- 11 were questions about application timeframes
- 112 concerned questions about how to apply for a review and the process
- 14 related to the Code of Conduct
- 18 were recorded as 'other'
- 23 were about selection processes including procedural fairness and serious defects (not otherwise eligible for a promotion review)
- 62 were about decisions that may be subject to a secondary review.

3. Performance of other statutory functions



Complaints and inquiries

Complaints about final entitlements

We take complaints from former APS employees (including 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
- leave that has been accrued but not taken
- 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 complaints about 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 five complaints about final entitlements. Of these, three were not accepted and two were determined.

Case study 6 is an example of how we investigate complaints about final entitlements.

Case study 6: Resolving an overpayment

A former APS employee complained to the MPC about being asked to repay an overpayment by their former agency on their separation from the APS. The employee complained they had not received an adequate explanation about the overpayment.

The MPC made enquiries with the former agency and was told that the overpayment arose because the employee had continued to receive a salary post-separation from the APS. This was because a formal exit notice had not been completed. The agency provided evidence about the employee's circumstances and leave entitlements.

Complaints the MPC can investigate include concerns about an error or mistake in the calculation of the former employee's entitlements. The entitlement is directed at the question, 'Did I receive my correct entitlements when I left the APS?'

In this case, the MPC was of the view there was no mistake in the calculation and recommended to the agency that it uphold its decision about the former employee's entitlements on separation. The former employee rectified the overpayment.

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 APS 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 type of matters this year.

The MPC declined to accept to conduct an inquiry into four complaints where it was alleged a public interest disclosure had not been handled appropriately.

While we received a request to investigate an alleged breach of the Code of Conduct, it did not proceed as all parties did not agree to the MPC undertaking the investigation (a requirement under the legislation for the MPC to investigate).

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. Services are provided on a cost-recovery basis and include:

- 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.

We continue to see an increased uptake in APS agencies seeking to use our employer services. We provided convenors, independent panel members and support to 21 recruitment panels.

Feedback from agencies who 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.

Reviews of involuntary retirement decisions for AFP employees

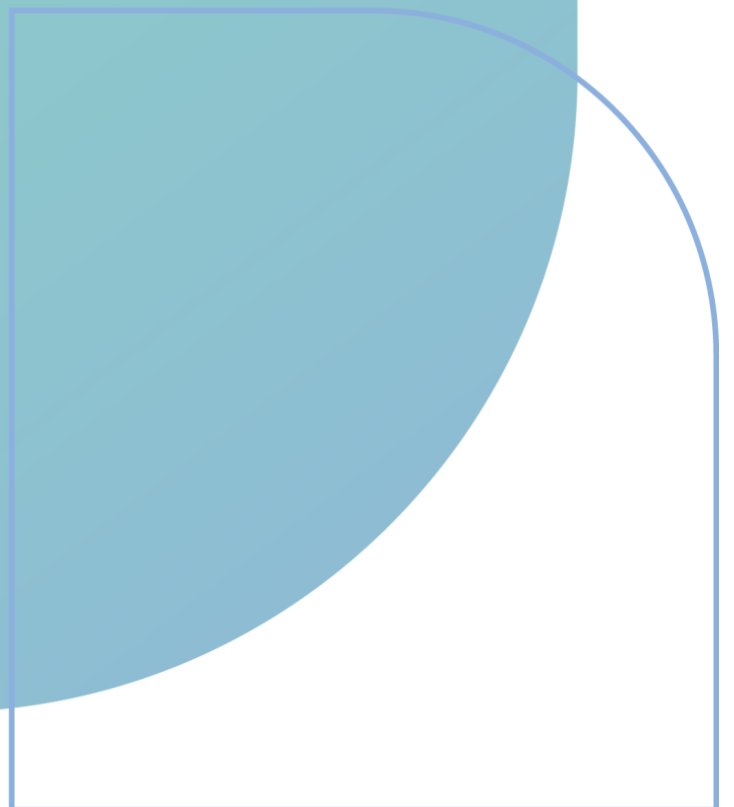
AFP employees employed under the *Australian Federal Police Act 1979* can apply to the MPC for a review of a decision by the AFP Commissioner to retire the employee due to physical or mental incapacity. When making these types of retirement decisions, the consent of the AFP employee is not required.

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

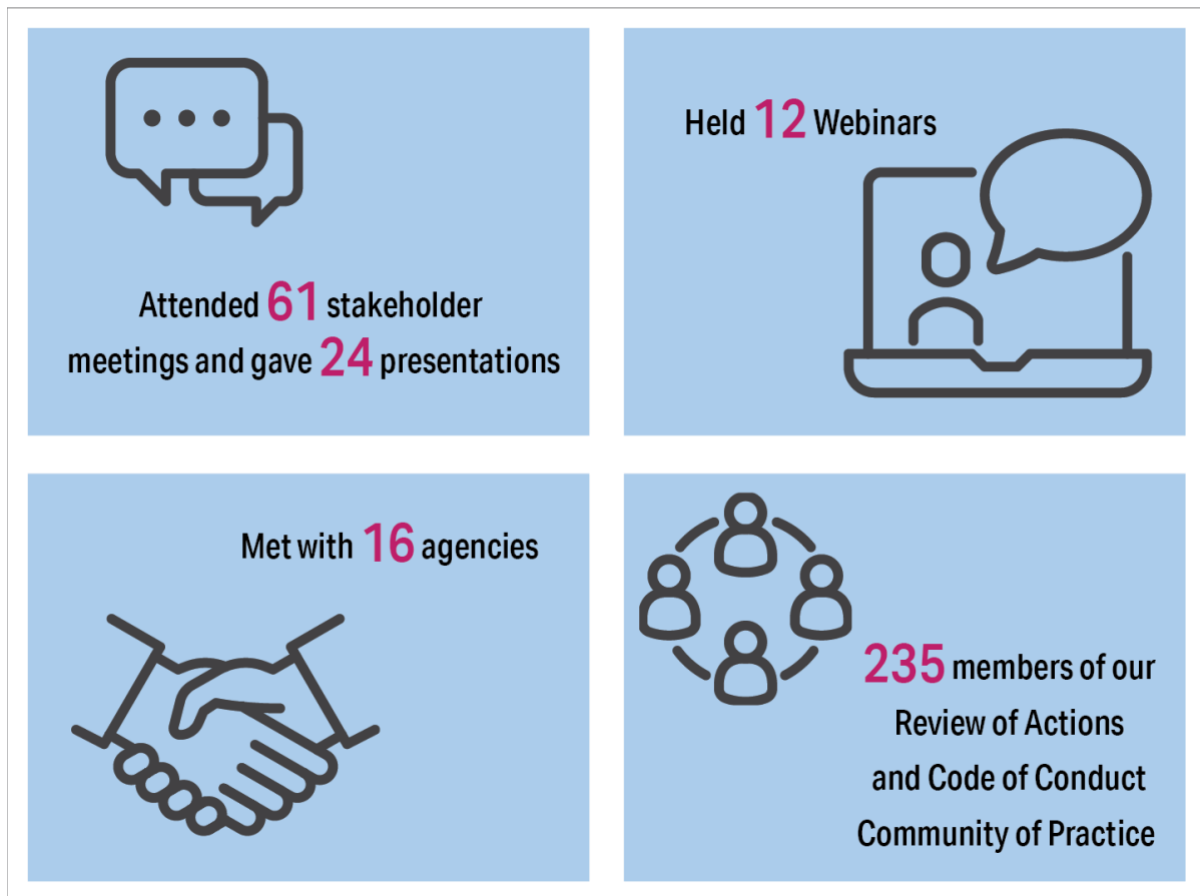
Our role is to make sure the retirement decision is based on sound evidence and is the correct and preferred decision, taking into account all individual circumstances.

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

4. Engagement, projects and accountability



Engagement



We understand the importance of engaging and consulting with our stakeholders, to work together on service improvements to achieve effective and productive workplaces in the APS. We had fewer contacts and engagements with our external stakeholders this year due to our reduced staffing levels and resources.

In 2023–24, we will 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

The MPC and staff participated in, and contributed to, the Capability Review of the APSC.

Throughout the year, we continued to meet with representatives from agencies who 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 24 presentations and engaged in forums for both employer and employee stakeholders. This included:

- participating in the APSC Senior Executive Service Orientation training sessions where we presented on the important role of SES as decision-makers in the Review of Actions scheme
- presentations to the APS Human Resources Professional Stream on both reviews of promotion decisions, and a separate session on the review of workplace decisions
- presenting webinars for APS employees on reviews of workplace decisions and promotion reviews
- participating on a panel with the APS Academy Craft series on Integrity in the APS
- presenting a session on 'What is merit' and Code of Conduct tips and traps for agencies
- a virtual presentation to the Chairman and commissioners of the Indonesian Civil Service Commission with the APSC International team.

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

Case summaries

Each year we identify topics from our review casework to develop informative and instructive case studies for our stakeholder groups. These include examples of good-quality decisions made by agencies that the MPC upheld and examples of errors or incorrectly applied policies resulting in decisions that we recommended set aside or varied.

This year we published 7 case summaries of decisions on employment-related issues that demonstrate how we make decisions and the factors we take into account. The full set of case summaries is on our [website](#).

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. Its 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 planning for future meetings.

Membership continues to grow and now sits at 235 members. Meetings are held quarterly, with this year's topics:

- Mitigating circumstances in sanction decisions
- Conducting reviews relating to performance reviews
- The art of assessment
- Recognising and responding to the emotional demands of review and complaint work.

Feedback was positive, particularly about the quality of presenters and the relevance of topics. Here is some feedback from practitioners who attended one session:

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

I find it very informative and interesting.

The presentations were great and very relevant to my role.

I find the Q&A time incredibly valuable.

Surveys and feedback

Applicants

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.

This year's survey response rate was 31%, consistent with last year. A common theme was frustration at our online application process due to ongoing technology and systems issues.

Pleasingly, with reviews of workplace decisions all respondents said they had been given a reasonable opportunity to make a submission in support of their application and 70% said they had been given adequate information at the start of the process to fully understand how the review would proceed. Another positive result was that 80% of all respondents said the reasons for decisions and the outcome of their review were clear.

A comment from the survey about our staff:

I was extremely stressed about this process and if it wasn't for the exceptional service and character of your staff answering the enquiry line and emails I would have struggled tenfold. Your staff are amazing ... and cannot compliment their service enough

Agencies

We conduct an annual survey of agencies on their experience of the review process, to track changes and improvements.

In June 2023, we sent a survey to teams and individuals who had contact with us during the year. The response rate was 10.5%, in line with last year.

This year, feedback was constructive and will be incorporated into our continual operational improvements. Of particular note is the numerous requests from practitioners for an updated version of our 'Not just about the process' manual on conducting APS reviews of employment-related decisions.

Along with producing a model review of actions policy, the updating and reissuing of the manual is a priority for 2023–24.

The process of reviews requires sharing documentation between agencies and applicants. The current technological limitations in attempting to do so can be frustrating for agencies and MPC staff. This is feedback from one agency:

At present, the process of submitting documents via email or post is extremely cumbersome and presents numerous challenges, particularly where there is a large number of documents or individual documents are of a large size. An online portal would make the document submission process much more efficient and timely.

Some examples of responses are:

I have noticed huge improvements over the years when working on Review of Action matters.

... MPC staff manning the phones on the advice line are very professional and courteous and willing to help where they can.

Website visits

We continue to update the key features of our website to improve accessibility, content and resources.

In 2022–23, we had 126,499 visits to our website.

In line with previous years, there remained considerable interest in our case studies and the pages providing detailed useful information on how the scheme works. This data tells us that in addition to applying for a review online, the website needs useful, resources and information about the Review of Actions scheme.

These statistics on unique page views indicate that most visits to our website are for practical advice on the role of the MPC:

- Review of Actions scheme: 21,759
- Promotion review notifications: 17,307
- Case studies: 14,795
- Am I eligible to apply for a review of a promotion decision: 5,106
- How do I apply for a review of a promotion decision: 4,009
- How to lodge review application: 4,000.

Raising awareness strategy

Increasing awareness of the MPC and its role is critical to achieving our vision to be an independent and impartial public service leader for advancing fair and merit-based employment-related actions and decisions.

In 2022–23, we continued our program of webinars for APS employees so they could learn key information about the review of workplace decisions and promotion decisions.

The webinars are awareness sessions for existing employees, as refresher training or as new information provided at inductions on the Review of Actions scheme and our statutory functions. We encourage agencies to incorporate attendance at our webinars into their induction programs and promote attendance to existing employees.

During the year we began developing a video of the webinars employees can access at any time. The video will be ready for release in August 2023.

Promotion Review Committee and Independent Selection Advisory Committee Convenor Conferences

Convenors of promotion review committees and Independent Selection Advisory Committees perform an important statutory function for the MPC. Our convenors are casual employees with expertise in both the principles and practical aspects of merit-based recruitment. As casual employees whose work is mostly performed remotely, our convenors are geographically dispersed. They are able to, however, access our office spaces in Sydney and Canberra. Convenors based elsewhere in Australia rely on technology to connect.

For these reasons, we host a forum for our casual employees to come together to discuss matters and share their experiences. Over this year, convenors met in October 2022 and May 2023. Topics for discussion included the principles of inclusive interviews (supported by practical examples) and how to work towards building an APS workforce that reflects the diversity of the Australian community the government serves.

Feedback from attendees was positive, with one convenor stating they got a real sense of being part of a 'team', with everyone contributing to a productive catch-up.

Projects

The use of artificial intelligence and automated processes in recruitment

In 2022 we started a project with graduates placed at the APSC through the APS Graduate Development Program on the importance of merit and its implementation when using new technologies in recruitment.

Technological innovation has driven the introduction of artificial intelligence assisted and automated recruitment tools in APS recruitment. Outcomes learned through our promotion reviews enabled us to produce a resource to assist APS agencies in developing modern recruitment practices.

Like any emerging technology and new ways of doing things, artificial intelligence and automated processes bring a degree of risk and potential for unintended consequences. In APS recruitment the risk is a compromise of the merit principle and applying it secondary to other priorities such as efficiency.

As a result of the research project (including a literature review and surveying of APS agency recruitment teams), we published guidance material for using AI-assisted recruitment tools. A copy is on our website.

Piloting a new application process

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 won the promotion in the recruitment round).

This year, we partnered with the ATO to pilot a two-step process designed to improve the efficiency of the promotion review process and reduce the resources spent on applications that do not proceed to a review.

The pilot trialled a process where promotion review applications from successful candidates were only sought once an application was received from an unsuccessful candidate. We managed this through the Public Service Regulations, which allow the MPC to give an extension of time to a class of employees to apply for a review. This extension allows successful candidates to delay applying for a review until an application is received against their own promotion. In practical terms this removed the need for anyone applying for a protective, only to eventually have that application lapse.

The pilot found that the two-step process significantly reduced the amount of time and resources spent on submitting, receiving and assessing applications that would not proceed to review. This outcome will inform our work on any future improvements, and potential reforms to the Public Service Regulations on how merit-based recruitment can be regulated.

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.

During 2022–23, the MPC had managerial responsibility for the work of the APSC employees made available to assist us in exercising our functions.

Business continuity plan

This year we developed our own 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
- cover disruption responses relating to the review of workplace and assessment decisions processes in line with the MPC’s statutory functions for the APS, Parliamentary Service and AFP.

The plan will be reviewed 12 months after its release.

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 APS Commissioner. The MPC does not have a separate budget allocation and depends on the APSC for staffing and resources to undertake its functions.

For 2022–23, the MPC was allocated an annual budget (excluding corporate costs) of \$2,131 million. It has an average staffing level of 11.6.

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

Staffing and office locations

The MPC is based in Sydney and has staff in the APSC's Sydney and Canberra offices.

The small number of staff are organised along functional lines. This means staff perform more than one function and report 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. These staff may be engaged as required for irregular or intermittent duties (for example, to chair a Promotion Review Committee or undertake employer services work). In 2022–23, we had 14 casual employees.

Interaction with the APS Commissioner

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

The APS Commissioner is responsible for upholding high standards of integrity and conduct in the public service. The MPC assists by ensuring consistent standards of decision-making and people management practices across the APS. The MPC also provides an important assurance role for the APS. It does so by reviewing individual actions or decisions for consistency with the APS Values and other administrative law requirements, as well as by reviewing determinations of breaches of the Code of Conduct and/or sanctions.

Freedom of information and privacy

We received five requests for information under the *Freedom of Information Act 1982* during 2022–23:

- two were for information relating to the applicant's reviews of a workplace decision
- two were for papers relating to the review of a promotion decision by a Promotion Review Committee
- one related to a general data request about sanction decisions (this request was withdrawn after we provided additional information).

The MPC received two non-FOI requests.

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 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 Regulations. As of 30 June 2023, the application was ongoing. It is seeking a judicial review of a decision made by an APS agency and the related recommendation made by the MPC in regard to breaches of the APS Code of Conduct by the applicant.

Information Publication Scheme

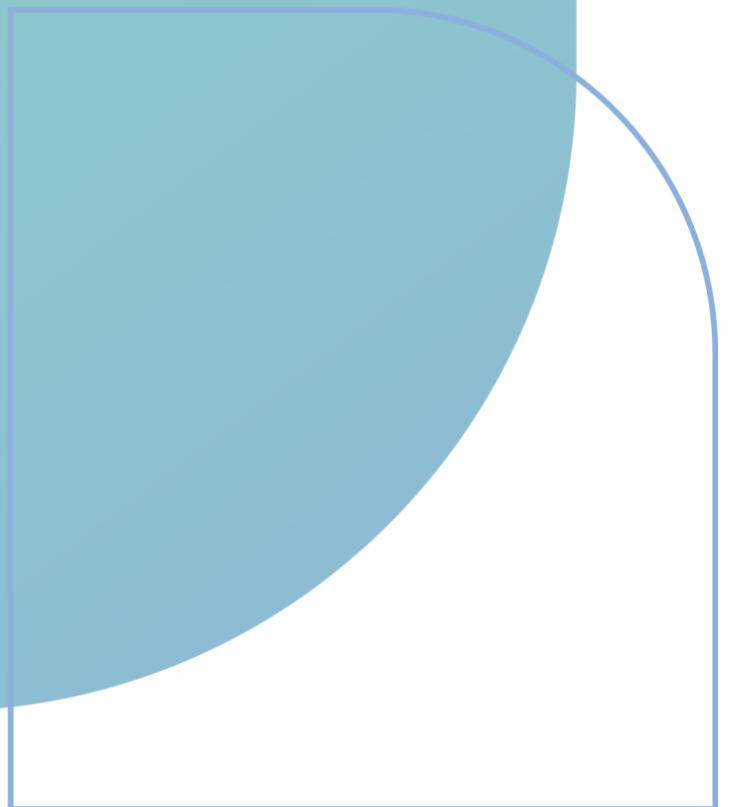
Since September 2021, we have published information about our information publication plan on our website.

Review of the decision by MPC to release information

On 26 July 2018, the MPC received a request under the Freedom of Information Act seeking access to documents. On 24 August 2018, we decided to grant full access to 51 documents and partial access to 23 documents. We refused access to 3 documents relying on the deliberative processes exemption and the personal privacy exemption in the Act. An internal review confirmed the original decision.

The applicant sought a review by the Information Commissioner of our decision. On 12 January 2023, the Information Commissioner published their decision in *ACT and Merit Protection Commissioner (Freedom of Information) [2023] AICmr 1 (12 January 2023)*, setting aside our original decision. The MPC complied and gave the applicant access to a further seven documents.

5. The year ahead



Our key priorities

The APS strives to be a model employer. This objective is underpinned by the APS Values and Employment Principles enshrined in the Public Service Act. The MPC plays an important role in ensuring these values and principles are 'lived' and complied with 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 challenges and trends facing the APS.

In the next financial year, the MPC 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 activities outlined in this section.

Engaging with and supporting our stakeholders

We will take action in accordance with our communication and engagement strategy to:

- continue our reach-out strategy with webinar sessions to raise APS employees' awareness of their entitlements and how the Review of Actions scheme operates
- build membership of the Review of Actions and Code of Conduct Community of Practice and focus on offering topics and presenters that engage and encourage attendance
- promote our employment services and support compliance with the merits principle by assisting APS agencies in conducting high-quality recruitment processes (for example, ISAC and providing highly experienced recruitment panel convenors and members)
- continue to inform APS agencies and employees of new initiatives, projects and resources.

Delivering services and resources

We will improve the delivery of services by offering targeted and useful resources to our partners and stakeholder including:

- develop information and training products to support our statutory functions for educational and awareness-raising purposes.
- publish a guide to the Review of Actions for human resource practitioners and decision-makers
- promote MPC's employer service and offer expert and high-quality, employment-related services to APS and non-APS Commonwealth entities
- publish tip sheets, case studies and other resources for agency decision-makers and APS employees.

Improving the way we work

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

- Ongoing review of our website, taking into account user experience and feedback and relevant data analytics in identifying improvements.

- Lobbying for a fit-for-purpose case management system for MPC reviews of workplace decisions, the management of complaints, and the management of inquiries.
- Surveying a sample of APS employees to establish baseline measures for awareness of review entitlements, the Review of Actions scheme, and MPC's role. This data will inform the development of resources and services, and how best to target our communications. Once established, we propose to conduct the survey annually so we can observe shifts and trends.
- Continuing to receive and use feedback about our reviews of workplace decisions from applicants and agencies to inform our work and continuously improve.
- Improving our feedback surveys of applicants and agencies to understand their experience and views of the promotion review process and system.

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, regulation 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 merits-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, regulation 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)(d)</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
- 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

Public Service Act 1999
 Subsection 50(1)(a)
 Subsection 50(2) (provisions relating to Merit Protection Commissioner’s powers when conducting the inquiry)
 Public Service Regulations 1999
 Part 7, Division 7.1 (regulations 7.1 and 7.1A)

Public Service Act 1999
 Subsection 50(1)(b)

Public Service Act 1999
 Subsection 50(1)(c) and subsection 50(2)

Public Service Act 1999
 Subsection 50(1)(ca) and section 50A
 Public Service Regulations 1999
 Part 7, Division 7.6 (Merit Protection Commissioner’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 Independent Selection Advisory

Public Service Regulations 1999
 Part 4

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

Public Service Act 1999
 Subsections 50(1)(e) and subsection 50(3)
 Public Service Regulations 1999
 Part 7, regulation 7.4

Review the decision of the AFP Commissioner to compulsorily retire AFP employees on invalidity grounds

Australian Federal Police Act 1979
 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 are on our website: www.mpc.gov.au

Review of promotion decisions

Table B.1 shows the status of promotion review cases for 2022–23 (as at 30 June), compared with 2021–22 (as at 30 June). Table B.2 shows the promotion review caseload by agency.

Table B.1: Status of promotion review cases 2022–23, compared with 2021–2122

| Promotion review cases | 2022–23 | 2021–22 |
|--|-----------|-----------|
| On hand at start of year | 7 | 5 |
| Created during the period | 85 | 73 |
| Total caseload | 92 | 78 |
| Reviewed by Promotion Review Committee | 48 | 42 |
| Invalid (for example, applicant not an ongoing APS employee) | 2 | 8 |
| Lapsed (for example, a protective application where no unsuccessful application received) or withdrawn | 27 | 21 |
| Total finalised during period | 77 | 71 |
| On hand at end of year | 15 | 7 |
| Target completion time (weeks) | 8 or 12 | 8 or 12 |
| Number completed within target time | 77 | 59 |
| Percentage completed within target time | 100% | 83% |

Table B.2: Promotion review caseload by agency, 2022–23

| Agency | Australian Tax Office | Services Australia | Department of Home Affairs | Australian Bureau of Statistics | Other agencies | Totals |
|---|-----------------------|--------------------|----------------------------|---------------------------------|----------------|--------|
| Cases registered (not including on hand at start of year) | 32 | 24 | 7 | 0 | 22 | |
| Promotion review committees finalised – cases reviewed | 12 | 20 | 4 | 0 | 12 | |

| Agency | Australian Tax Office | Services Australia | Department of Home Affairs | Australian Bureau of Statistics | Other agencies | Totals |
|---|------------------------------|---------------------------|-----------------------------------|--|-----------------------|---------------|
| Parties to review where Promotion Review Committee was finalised | 111 | 69 | 40 | 0 | 51 | |
| Promotion decisions subject to review | 96 | 30 | 36 | 0 | 36 | |
| Promotion decisions varied | 3 | 5 | 0 | 0 | 3 | |

Review of workplace decisions and complaints

Table B.3 provides information on the review of workplace decisions and complaints casework in 2022–23. Table B.4 provides information on our timeliness to complete our functions. Both tables compare results for 2022–23 with 2021–22.

Table B.3: Review and complaints workload 2022–23 with 2021–22

| Type | Code of Conduct | Direct reviews | Secondary reviews | Former employer Code of Conduct | Total reviews | Complaints about final entitlements | Total all types | |
|-----------------------------------|-----------------|----------------|-------------------|---------------------------------|---------------|-------------------------------------|-----------------|---------|
| | | | | | | | 2022–23 | 2021–22 |
| On hand at start of year | 7 | 3 | 16 | 0 | 26 | 0 | 26 | 19 |
| Received during the period | 59 | 31 | 88 | 2 | 180 | 5 | 185 | 134 |
| Total cases | 66 | 34 | 104 | 2 | 206 | 5 | 211 | 153 |
| Reviewed | 38 | 2 | 29 | 1 | 70 | 2 | 72 | 55 |
| Facilitated resolution | 1 | 0 | 1 | 0 | 2 | 0 | 2 | 1 |
| Not accepted | 10 | 29 | 67 | 0 | 106 | 3 | 109 | 44 |
| Lapsed or withdrawn | 9 | 3 | 3 | 0 | 15 | 0 | 15 | 28 |
| Total finalised | 57 | 29 | 99 | 0 | 191 | 5 | 196 | 127 |
| On hand at end of year | 9 | 0 | 5 | 1 | 15 | 0 | 15 | 26 |

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, 2022-23 compared with 2021-22

| Review type | 2022-23 | | 2021-22 | |
|-------------------------------------|--|--|--|--|
| | Average time to complete reviews (weeks) | Completed within target timeframes (%) | Average time to complete reviews (weeks) | Completed within target timeframes (%) |
| Code of Conduct | 10 | 92 | 10 | 80.95 |
| Former employees – Code of Conduct | 6 | 100 | 14 | 33.33 |
| Direct reviews | 8 | 100 | 0 | n/a |
| Secondary reviews | 10 | 93 | 11 | 83.33 |
| Total reviews | 10 | 96 | 11 | 79.63 |
| Complaints about final entitlements | 5 | 100 | 19 | 0 |

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

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, 2022-23

| Agency | Code of Conduct | Direct MPC Review | Secondary review | Total | Complaints about entitlements |
|---|-----------------|-------------------|------------------|------------|-------------------------------|
| Services Australia | 22 | 10 | 40 | 72 | 2 |
| National Disability Insurance Agency | 4 | 5 | 14 | 23 | 0 |
| Australian Taxation Office | 1 | 4 | 17 | 22 | 0 |
| Department of Defence | 6 | 3 | 4 | 13 | 0 |
| Department of Home Affairs | 1 | 3 | 9 | 13 | 0 |
| Department of Foreign Affairs and Trade | 5 | 0 | 1 | 6 | 0 |
| Other agencies (23) | 19 | 9 | 14 | 42 | 3 |
| Total | 58 | 34 | 99 | 191 | 5 |

Table B.6 shows the subject matter for all reviews, other than the Code of Conduct, completed in 2022–23.

Table B.6: Subject matter of reviewed cases (other than Code of Conduct), 2022–23

| Subject matter | Secondary subject matter | Number |
|---|---|--------|
| Conditions of employment | Flexible work arrangements – outposting | 1 |
| | Leave | 2 |
| | Other entitlements | 1 |
| | Salary | 3 |
| Duties | | 6 |
| Flexible working arrangement | Part-time work agreement | 1 |
| Management action | | 1 |
| Miscellaneous | | 1 |
| Performance management | Performance appraisal | 2 |
| | Performance pay | 1 |
| | Salary advancement | 2 |
| | Underperformance process | 1 |
| Workplace environment and arrangements | Bullying and harassment | 6 |
| | Not satisfied with the outcome of the complaint | 2 |

Table B.7 shows the subject matter of all Code of Conduct cases reviewed in 2022–23.

Table B.7: Subject matter of Code of Conduct reviews completed, 2022–23

| Subject matter | Number |
|---|-----------|
| Bullying and harassment | 5 |
| Care and diligence | 9 |
| Conflict of interest general | 1 |
| Dishonesty – providing false information | 9 |
| Failure to follow a direction | 5 |
| Financial irregularities | 1 |
| Inappropriate use of email and/or internet | 1 |
| Lack of respect and courtesy | 11 |
| Misuse of Commonwealth property and/or assets | 2 |
| Unauthorised access of agency database | 1 |
| Total number of subject matters identified | 45 |

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