



Australian Government  
Merit Protection Commissioner



MERIT  
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# Merit and Integrity in the APS

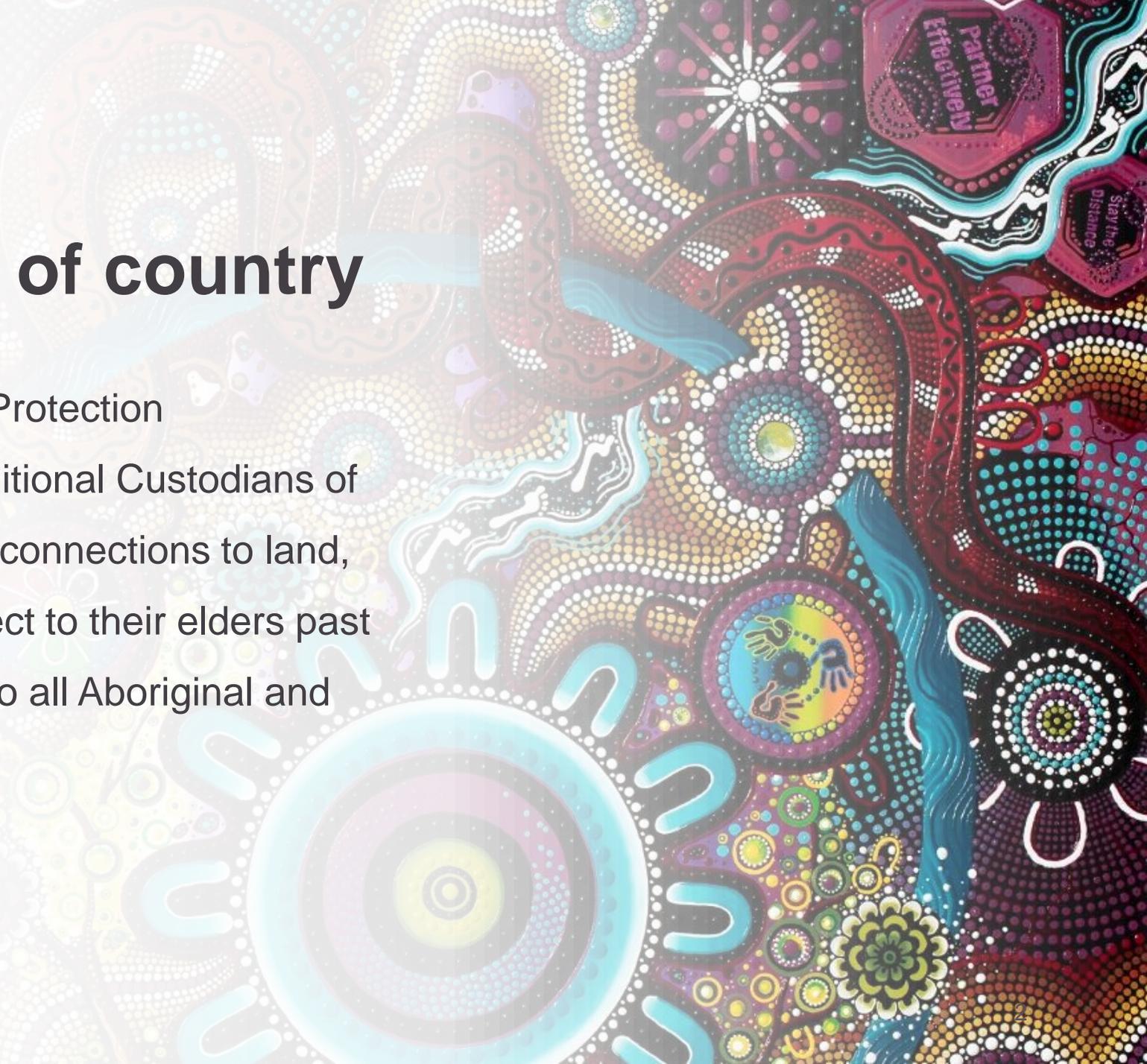
ACT Small Agencies HR Forum

10 November 2021



# Acknowledgement of country

In the spirit of reconciliation the Merit Protection Commissioner acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their elders past and present, and extend that respect to all Aboriginal and Torres Strait Islander peoples today.



# Merit and Integrity in the APS

What is it?

# An early definition of Merit



*“...all appointments and promotions shall be based upon a just and equitable system excluding all political or other patronage, throwing all appointments open to rich and poor alike, and establishing merit combined with fitness as the only basis of selection.”*

# Today's definition of merit in the APS



## ***Public Service Act 1999***

- s. 10A(1)(c) – The APS makes decisions relating to engagement and promotion that are based on merit. A decision is based on merit if:
- (a) all eligible members of the community were given a reasonable opportunity to apply to perform the relevant duties; and
  - (b) an assessment is made of the relative suitability of the candidates to perform the relevant duties, using a competitive selection process; and
  - (c) the assessment is based on the relationship between the candidate's work-related qualities and the work-related qualities genuinely required to perform the relevant duties; and
  - (d) the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the relevant duties: and
  - (e) the assessment is the primary consideration in making the decision.

# A broader application of 'Merit'



A meritorious decision is one where the decision-maker has considered the following questions:

- Is it legal? (i.e. an appropriate exercise of a delegation by a person with authority)
- Is it evidence based? (i.e. does it weigh up independent and credible data or information using a variety of decision-making tools)
- Is it timely?
- Is it transparent? (i.e. are there records to support a conclusion that is logical and reasonable)
- Is it sustainable (i.e. not a short term fix that creates longer term problems)
- Is it ethical? (i.e. while being legally correct, it is also the right thing to do)

(Annwyn Godwin, Former MPC, AJPA, vol 70, no. 3, p. 319)

# A broader application of 'Merit' cont...



## Independent Review of the APS

“To support the APS to best undertake its role, in the Westminster tradition, this review recommends that core principles – apolitical, stewardship, openness, integrity and **adherence to merit** – be distilled and set out in the *Public Service Act 1999*. Doing so will provide clear guidance to the APS and its leaders and employees. It will reaffirm the Westminster tradition of the APS”

“Legislative principles should give **merit** and stewardship broader meaning than their current application. In the *Public Service Act 1999*, the **merit principle** is focused on engagement and promotion decisions pursuant to the APS Employment Principles. **Merit** is one of the factors that distinguishes the unique role of the APS as an institution, distinct from that of ministers and their advisers. Legislating an APS principle of merit would give it broader application in guiding all the organisation does”  
(Our Public Service Our Future, Independent Review of the APS, 2019, p.91)

# APS Review – Principle of ‘Adherence to merit’



## Independent Review of the APS

Recommendation 5 – Amend the *Public Service Act 1999* to reflect key principles for the APS.

***Adherence to merit:** Ensuring that all decisions, particularly relating to procurement, provision of services and employment, are ethical and accountable. Ensuring that decision-making processes take into account all relevant aspects, including evidence, equity, legality, value for money, outcomes, and outputs.*

(Our Public Service Our Future, Independent Review of the APS, 2019, p.92, p.96)

# How does merit fit with integrity?



## Well what is public sector integrity?

- Public integrity refers to the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritizing the public interest over private interests in the public sector (OECD).
- Integrity involves leadership, modelling, accountability, being transparent, engaging with ethical decision-making and effective delivery (APS staff focus group, Report into consultations regarding APS approaches to ensure institutional integrity, 2020).
- Integrity in public administration is not simply the lack of corruption but also actively developing systems and a culture which make it difficult for corruption to take root; helping ensure that those given responsibility by the public carry out their duties in a moral manner, holding the public interest as paramount. (ICAC, SA)

# Public Integrity



# Back to “how does merit fit with integrity?”



- Merit in recruitment and in decision-making is part of the integrity framework or landscape.
- Merit in employment-related decision-making is fundamental to good people management and building positive organisational integrity.
- If you can't make fair and merit-based employment decisions, you will not succeed in building your institutional integrity.
- You can't build organisational integrity, without your biggest asset being on board, and that is your people.
- A key fundamental of good-decision making is merit, and a key fundamental of integrity is accountability and being open to scrutiny
- That is what the Review of Action Scheme is – it promotes fair employment-decision and it is a system of accountability ; it is open to scrutiny (both internal and external)

# Building harmonious workplace culture

# Government policy on Review of Actions



## 5.1 General policy about review

- (1) It is the policy of the Australian Government that APS Agencies should achieve and maintain workplaces that encourage **productive and harmonious working environments**.
- (2) It is intended that this Part should provide for a **fair system of review** of APS actions.
- (3) Employees' concerns are intended to be dealt with **quickly, impartially, and fairly**.
- (4) The review processes are intended to be consistent with the use of **alternative dispute resolution** methods to reach satisfactory outcomes where appropriate.
- (5) Nothing in this Part is intended to prevent an application for review from being resolved by **conciliation or other means at any time before the review process is completed**.

# Shaping a harmonious workplace culture



## Is a harmonious workplace utopia?

A fair and harmonious workplace will have challenges.

People coming together in a workplace brings conflict, differences of opinions, power struggles etc. People are complex.

Good leaders understand the connection between good people management/building satisfying and fair workplaces AND achieving a successful, productive business.

# The perfect business model



- Strategy, vision and clear objectives
- A picture of success and a clear plan to get there
- Structure that is built around strategy
- Dynamic, responsive and evolving
- Strong governance and accountability
- Lived values and esprit de corps
- Strong organisational culture and integrity
- A place where ideas and innovation are recognised
- A workplace where people are respected and valued
- A workplace that is fair and equitable

# Foundations of a good workplace



## Building safe and fair workplaces

- Minimum standards set in legislation, regulations, determinations (e.g FW Act, NES, WH&S)
- Industrial Relations Commission and Fair Work Commission and Ombudsman
- In the Commonwealth – Public Service Act and Regulations / Standards, policy and directions issued by the Australian Public Service Regulations

## The key

Understand people are usually the biggest and most expensive asset in the delivery of work.  
Move beyond compliance.

# The APS values and employment principles



The Public Service Act 1999 sets out the APS values (section 10) and APS employment principles (section 10A)

## **Our values**

Committed to service, ethical, respectful accountable and impartial

## **Employment principles**

Fair employment decisions with a fair system of review; engagement and promotion based on merit; flexible, safe and rewarding workplaces where communication, consultation and cooperation and input from employees on matters that affect their workplaces are valued.

# About the MPC and the ROA scheme

# Office of the Merit Protection Commissioner



## Who we are

The MPC is an independent statutory office holder providing employment services to the Australian Public Service and the Parliamentary Service.

## What we do

- **Review of Actions**
  - Review of workplace decisions
  - Review of promotion decisions
- **Complaints and inquiries**
  - Complaints about final entitlements
  - Complaints about the handling of Public Interest Disclosures about misconduct
  - Investigations into the breaches of the Code of Conduct
- **Employer services**
  - Independent Selection Advisory Committee's
  - Recruitment services

# Promotion review lifecycle



## APS Gazette

Start - notice of the promotion is posted in the APS Gazette.

## Application

14 days to apply. We register and assess valid application.

## Website notice

Website notice posted every Friday before 2pm.

## Notice of review

Notice of review sent to participants

## Statement of claim

14 days for participants to submit a statement.

14 days for agency to send the applications and documents created throughout the recruitment process.

## Committee

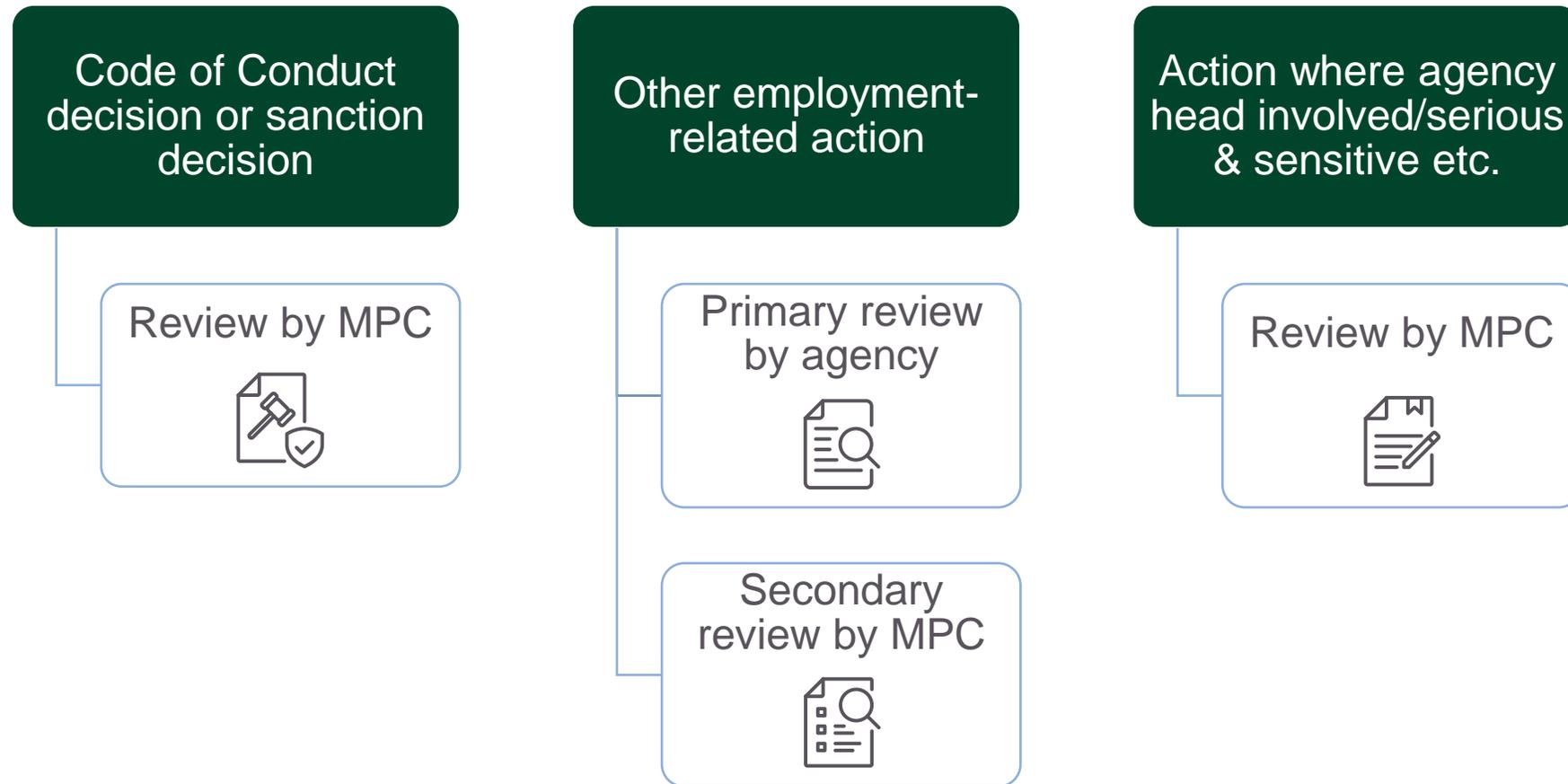
A Promotion Review Committee (PRC) is established and assesses all information.

## Decision

The original decision is confirmed or a new promotion decision is made.

Case is closed within 8-12 weeks, or 14 weeks for larger committees.

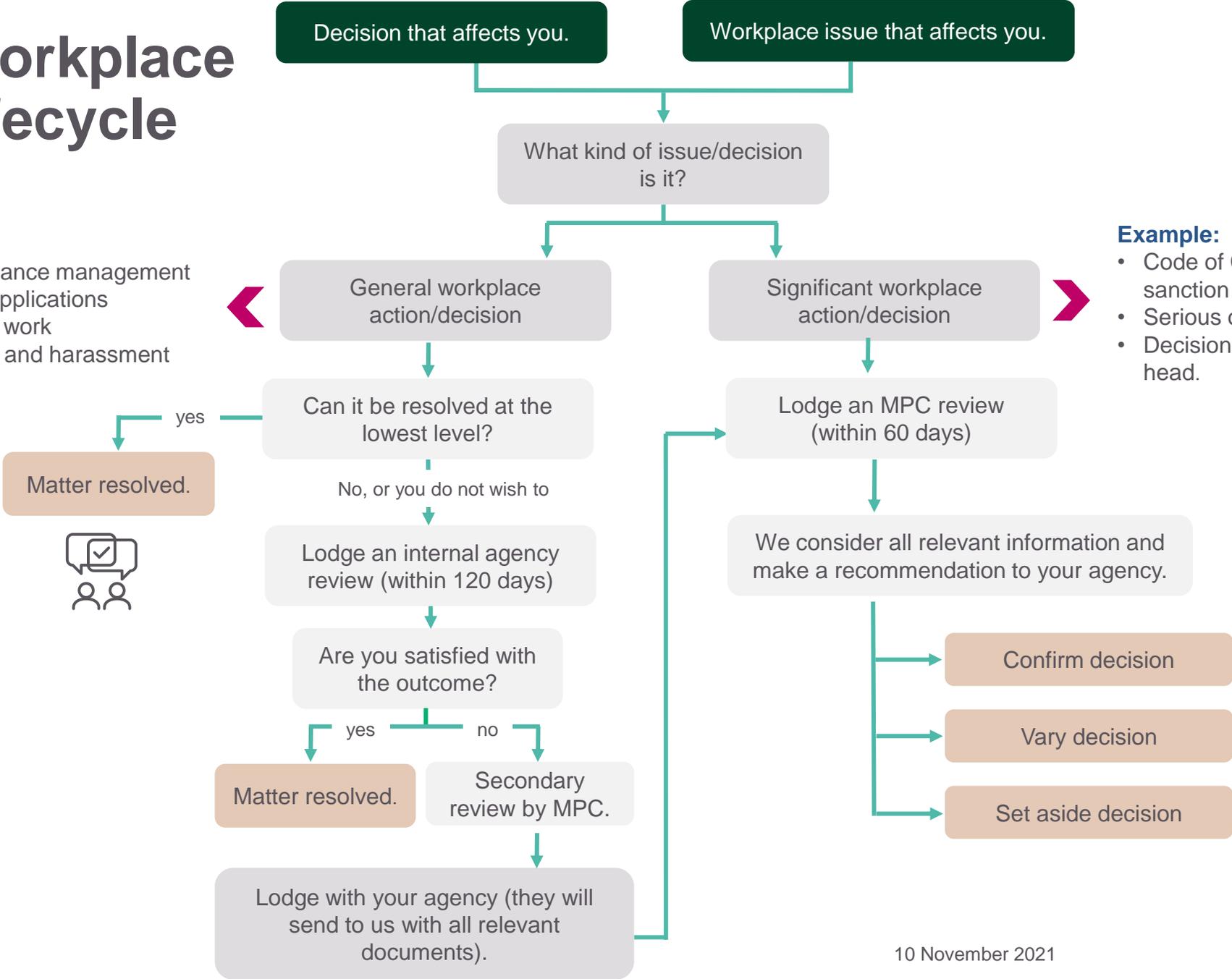
# Review of workplace decisions (other action)



# Review of workplace decisions lifecycle

- Example:**
- Performance management
  - Leave applications
  - Flexible work
  - Bullying and harassment

- Example:**
- Code of Conduct and sanction decisions.
  - Serious or sensitive issues.
  - Decisions of your agency head.



# Merit in the conduct of review (workplace decision)



- Object of merit review is to reach the ‘correct’ and ‘preferable’ decision
- Reviewer must have expert knowledge of scheme and apply that in their decision making
- Assess whether the decision is lawful, procedurally fair (relevant to the circumstances of each matter) and complies with the agency policy
- Assess the reasonableness and fairness of the decision
- Reach a conclusion to recommend to confirm, vary or set aside

# Tips and Observations for Practitioners



# Tips from our reviews of Code of Conduct



- Poorly drafted allegations (employee could not reasonably know what they are responding to)
- Changing allegations or adding allegations and not amending the notice of investigation / notice of suspected misconduct
- Changing the elements of the Code at point of final decision
- Poor management of conflicts of interest (e.g. a decision-maker who has past association with others)
- Outsourced investigations – not following s 15(3) procedures
- Considering irrelevant evidence
- Not explaining why an employees submission is not persuasive

# Tips from our reviews of performance ratings



- Performance agreement does not set out expectations that are later assessed
- Unclear or vague expectations
- Few or no performance conversations
- Poor management of process
- Noncompliance with policy
- No evidence supporting the claims of underperformance (e.g. work samples)

# General observations about performance management

## Effective Management

- Can be a link between toxic workplaces, conflict and confirmation or other bias in performance reviews
- In most circumstances, underperformance should not be managed or dealt with as a code of conduct matter
- Take a stepped approach to managing workplace underperformance – ensure you take steps to help employees improve their performance



## Systemic issues and prevention

- Alleged breaches of the Code of Conduct may indicate systemic issues and an unhealthy work environment.
- Bullying or similar allegations generally do not occur in isolation.
- Regular and frequent team meetings with clear topics and workplace issues to be discussed.
- Create an environment that support early conflict resolution - before behaviour becomes a code matter.
- Have clear communication standards and expectations for all levels.

# General observations from our review work cont.



## Leadership

- Develop our managers skills and ability to manage and support them
- Ensure there is effective communication in the workplace
- Look beyond individual cases and take pulse of culture
- “nip things in the bud” – don’t let small issues become big problems
- Lead by example and model good management

# Resources for you



- Head to our website [mpc.gov.au](https://mpc.gov.au) for guidance in taking employment related actions and conducting agency/department internal reviews of action.
- Head to the APSC website [apsc.gov.au](https://apsc.gov.au) and the APS Academy for more information on integrity and integrity craft.
- Invite us to deliver an information session at your agency/department.
- Provide information to new employees as part of their induction and encourage them to attend our free webinars on review entitlements.
- Arrange private training with us.

**Thank you**  
**Questions?**

## Contact us



Visit our website  
**[mpc.gov.au](http://mpc.gov.au)**



Call our enquiry line  
**(02) 8239 5330**



Send us an email  
**[review@mpc.gov.au](mailto:review@mpc.gov.au)**