

The Auditor-General  
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Performance Audit

# **Managing Underperformance in the Australian Public Service**

[Across Entities](#)

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Canberra ACT

23 May 2017

Dear Mr President

Dear Mr Speaker

The Australian National Audit Office has undertaken an independent performance audit across entities titled *Managing Underperformance in the Australian Public Service*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely



Rona Mellor PSM  
Acting Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## **AUDITING FOR AUSTRALIA**

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# Contents

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Summary and key learnings .....	7
Background .....	7
Conclusion .....	7
Supporting findings .....	8
Key learnings .....	11
Summary of entity responses .....	13
<b>Audit Findings.....</b>	<b>17</b>
<b>1. Background .....</b>	<b>19</b>
Introduction .....	19
Legal and regulatory framework for managing underperformance .....	19
Underperformance in the Australian Public Service.....	21
Characteristics of audited agencies .....	22
Stages of underperformance management.....	24
Audit approach .....	25
<b>2. The effectiveness of agencies' management of underperformance .....</b>	<b>27</b>
Do employees consider that underperformance is effectively managed in their agency?.....	27
Does agency data indicate that underperformance is effectively managed?.....	31
What barriers do agencies need to address to better manage underperformance? .....	45
<b>3. Underperformance management procedures .....</b>	<b>48</b>
Do agencies' performance management procedures contribute to the effective management of underperformance? .....	48
Do agencies' underperformance procedures contribute to the effective management of underperformance? .....	50
Do agencies' documented performance and underperformance procedures for Senior Executive Service employees contribute to the effective management of underperformance?.....	56
Do agencies' documented probation procedures contribute to the effective management of underperformance? .....	58
Key learnings .....	59
<b>4. Underperformance management practices .....</b>	<b>60</b>
Do agencies' performance management practices effectively underpin the management of underperformance? .....	60
Do agencies effectively support managers to address underperformance?.....	69
Do agencies have effective practices to hold managers accountable for their performance management responsibilities?.....	75
Key learnings .....	78
<b>Appendix 1 Entity responses .....</b>	<b>81</b>



# Summary and key learnings

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## Background

1. Performance management of employees is critical to supporting a high-performing Australian Public Service (APS). While the management of underperformance is only one aspect of an effective performance management framework, it is important because underperforming employees negatively impact efficiency, productivity and morale.

2. In conducting the audit, the ANAO examined the management of underperformance in eight agencies: Attorney-General's Department; Australian Taxation Office; Department of Agriculture and Water Resources; Department of Industry, Innovation and Science; Department of Social Services; Department of Veterans' Affairs; IP Australia; and the National Film and Sound Archive.

3. In relation to managing underperformance, APS agencies face a similar environment to many other organisations in Australia, public and private. Like many organisations, APS agencies are covered by the unfair dismissal provisions in the *Fair Work Act 2009* and a range of other relevant legislation including state and federal work, health and safety laws and the *Australian Human Rights Commission Act 1986*. A key difference, however, is that APS agencies are covered by the *Public Service Act 1999* that provides for specific requirements and confers additional rights of review for APS employees.

4. The objective of the audit was to assess the effectiveness of the management of underperformance in the Australian Public Service and identify opportunities for improvement. To form a conclusion on the audit objective the following high-level criteria were adopted:

- How effectively are audited agencies managing underperformance?
- Do the agencies' documented underperformance procedures contribute to the effective management of underperformance?
- Do the agencies' management practices contribute to the effective management of underperformance?

## Conclusion

5. There is significant room for improvement in the management of underperformance in each of the eight audited agencies, although some agencies have managed underperforming employees better than others.

6. Underperformance is generally not effectively dealt with in performance management processes, including during the probation period in most agencies, and structured underperformance processes have been infrequently used. Managers have often avoided addressing underperformance due to a lack of incentives, support and capability. Some agencies have used redundancies or incentives to retire as alternatives to underperformance procedures and while these may be cost-effective approaches in situations of excess staffing or in particularly complex cases, they should not be used to replace or undermine ongoing, robust underperformance management procedures.

7. Most agencies could streamline their underperformance procedures to remove repetition and prescription while still ensuring procedural fairness, although provisions in three agencies' enterprise agreements restrict flexibility in this regard. In addition, some agency procedures contain requirements that are in excess of those required by legislation or regulation for Senior Executive Service or non-ongoing employees. Not all agencies have transparent procedures for their Senior Executive Service employees, and probation procedures could be improved in all eight agencies.

8. Agency practices have contributed to the less than effective management of underperformance. In respect of performance management practices, there is scope for all agencies to improve managers' commitment to dealing with underperformance, clear communication of performance expectations and provision of feedback to employees. To strengthen practices to manage underperformance, there is scope for most agencies to improve the support to and capability of managers, including through the provision of training in managing performance (including underperformance) and the early involvement of appropriately skilled human resource professionals in underperformance cases. There is considerable room for improvement in all agencies' practices to hold managers accountable for their responsibilities to manage underperformance.

## Supporting findings

### The effectiveness of agencies' management of underperformance

9. Employee perception data from the eight agencies indicates that only a minority of employees agreed that their agency deals with underperformance effectively, with agreement rates ranging from 14 to 30 per cent in 2016. For the Australian Public Service as a whole, less than a quarter of employees agreed that their agency effectively deals with underperformance. Compared to other census items assessing attitudes and opinions, this issue had the lowest employee perceptions. Perceptions were more positive in relation to employees agreeing that their supervisor appears to manage underperformance well with over half of employees in IP Australia, the Department of Social Services, the National Film and Sound Archive and the Department of Industry, Innovation and Science agreeing in 2016. Comparisons with available Australian and international benchmarks on employee perceptions suggest that the Australian Public Service agencies achieve relatively low results.

10. Human resources data from the eight agencies indicates that there is significant room for improvement in the management of underperformance in each of the eight audited agencies, although some agencies have dealt with it better than others. In most agencies underperformance is not being accurately identified and the proportion of employees undergoing structured underperformance processes is very low<sup>1</sup> in all agencies. Probation processes are not generally

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1 The proportion of employees whose performance is rated as less than effective is less than would be reasonably expected, although proportions vary among agencies (from 0.1 to 3.1 per cent of all employees rated from 2012–13 to 2015–16). The proportion of employees who are formally managed for underperformance is even smaller for each of the eight agencies.

used robustly to test the suitability of newly appointed employees<sup>2</sup> (except in the Australian Taxation Office and the National Film and Sound Archive). The use of redundancies and incentives to retire may be cost-effective in situations of excess staffing or in particularly complex cases, however, they should not be used to replace or undermine ongoing, robust underperformance management procedures as they can be uneconomical, create perverse incentives and generate resentment in other employees. The outcomes of structured underperformance processes have been varied—a high percentage of cases have resulted in performance improvement, other employees have left their agency through retirement or termination processes, with a range of other outcomes including employees transferring within the Australian Public Service. Notwithstanding the range of outcomes, agencies have generally managed underperformance processes in line with procedural fairness requirements.<sup>3</sup>

11. The main barriers to more effectively managing underperformance relate to agencies' general management culture (that has tended to focus on compliance with end of cycle discussions rather than the quality and frequency of feedback), and the lack of incentives facing, support for and capabilities of, many senior and middle level managers. These barriers have limited the effectiveness of agencies' management of underperformance in performance management processes, as well as in structured underperformance processes.

### **Underperformance management procedures**

12. Agencies' documented performance management procedures adequately support managers to manage underperformance of non-Senior Executive Level staff. All eight agencies' procedures encourage ongoing, regular feedback outside of formal review points and early identification of, and prompt action to address, potential underperformance. Most agencies could more effectively support managers by providing: clearer and/or more concise guidance on the outcomes and behaviours that distinguish fully effective and unsatisfactory performance (Australian Taxation Office, Department of Agriculture and Water Resources, Department of Veterans' Affairs, IP Australia and National Film and Sound Archive); and links to relevant information (all agencies other than the Australian Taxation Office).

13. Agencies' underperformance procedures could better support managers to manage underperforming ongoing non-Senior Executive Level employees. None of the eight agencies' procedures provide clear guidance on the support and assistance available to managers from human resources professionals. Most agencies could streamline their procedures to remove time consuming repetition and prescription while still ensuring procedural fairness. Three agencies are restricted, however, because of provisions in their enterprise agreements. The Department of Industry, Innovation and Science could streamline provisions for non-ongoing employees.

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2 While not all of the eight agencies could provide data, the proportion of employees with performance issues that left during their probationary period was low except in the ATO and NFSA. In combination with information on agencies' procedures, it appears that most agencies did not use probation to robustly assess performance to test job fit and the appropriateness of recruitment decisions.

3 As indicated by the low rate of successful Comcare claims, unfair dismissal claims and reviews of actions (five per cent or less of employees with known performance issues in all agencies from 2012–13 to 2015–16).

14. All agencies have documented performance and underperformance management procedures that cover Senior Executive Service (SES) employees except the National Film and Sound Archive (which only has two SES positions). The SES procedures of the Department of Agriculture and Water Resources, Department of Industry, Innovation and Science and IP Australia are not transparent. The Department of Veterans' Affairs has scope to streamline its procedures for managing underperformance of SES employees as these employees do not have access to unfair dismissal provisions.

15. There is scope for all eight agencies to improve their probation procedures. Two agencies (Attorney-General's Department and Department of Agriculture and Water Resources) only provide limited guidance to managers via the pro forma report that managers complete for probationary employees, and the Department of Social Services only has procedures for its entry level programs. Only the Department of Veterans' Affairs clearly informs managers that probationary employees do not have access to unfair dismissal provisions.

### **Underperformance management practices**

16. The effectiveness of the management of underperformance through performance management processes varies with the importance placed on it by senior managers and the capability of individual employees. However, the relatively low level of employees who agree that underperformance is managed effectively in their agency, the low level of employees rated as 'less than effective' in most agencies and the barriers to managing underperformance indicate that performance management practices do not effectively underpin the management of underperformance. In particular, there is scope for all agencies to improve: the extent to which managers openly demonstrate commitment to performance management; how managers provide employees with clear and consistent performance expectations; and the quality and quantity of feedback being received by employees. Recent evaluations of, and changes to, agency performance management systems are likely to have contributed to improvements in employee perceptions of seven of the eight agencies over the four year period 2012–13 to 2015–16.

17. Agencies' practices that support managers to manage underperformance are a key component of addressing barriers to the effective management of underperformance, particularly those relating to manager capability and commitment. While all agencies offer some support to managers through training and with assistance through the structured processes for managing underperformance, some agencies (particularly IP Australia) offer more active support and higher levels of training than others. Generally, those agencies that offer higher levels of support and training have more positive employee perceptions about the management of underperformance. The early involvement of appropriately skilled human resource professionals in underperformance processes delivers a range of benefits including acting as a quality assurance mechanism, ensuring managers and employees are adequately supported, and keeping processes within timeframes.

18. There is considerable room for improvement in all agencies' practices to hold managers accountable for their performance management responsibilities. Only two agencies (Department of Social Services and National Film and Sound Archive) reported that they have recently used multi-source feedback or other means of gathering evidence on which to accurately assess individual manager's performance management skills. While most agencies

(excluding the Attorney-General’s Department and the National Film and Sound Archive) include some metrics on performance management in their human resources reporting to senior management, none of the eight agencies include general metrics relating to probation management and, with the exception of the Australian Taxation Office and the Department of Social Services, do not include training participation rates. Only the Australian Taxation Office collects survey data on the quality and quantity of feedback (in addition to relevant questions in the Australian Public Service Commission’s annual employee census) but this data is not included in its management reports.

## Key learnings

19. The key learnings are organised around the four categories of barriers to underperformance management identified in Chapter 2.

### Procedures

20. Based on the audit findings, the ANAO has identified a range of key learnings relating to agencies’ documented performance, underperformance and probation procedures that can apply to the eight and other APS agencies.

#### Box 1: Key learnings to address barriers relating to ‘Management culture’

To demonstrate senior management commitment to agency performance management arrangements, including underperformance management:

- it is good practice for agencies to have transparent and clearly documented procedures relating to underperformance for all employees, including SES employees; and
- underperformance management processes for SES employees can be more streamlined than non-SES processes as SES employees do not have access to unfair dismissal provisions—but should still satisfy key procedural fairness requirements.

#### Box 2: Key learnings to address barriers relating to ‘Support to managers’

To effectively support managers, agency procedures should:

- be streamlined and not unnecessarily repeat processes;
- not contain requirements that are in excess of those required by good practice, legislation or regulation, for example, for SES and short-term non-ongoing employees;
- communicate clear expectations of the duration of key processes;
- provide guidance and examples that distinguish health and misconduct issues from underperformance;
- provide clear guidance on the support and assistance available to managers from human resources professionals; and
- provide better guidance on managing the performance of probationary employees.

### **Box 3: Key learnings to address barriers relating to ‘Manager capability’**

To assist managers to implement underperformance procedures, it would be beneficial to have links to tools such as checklists, flowcharts and tips and tricks; and links to other guidance on fitness for duty, misconduct, and probation on agency intranet sites.

### **Box 4: Key learnings to address ‘other’ barriers**

Performance gaps can be difficult to identify in a specific and objective way for some types of APS work. To assist managers to measure performance gaps, agency procedures would benefit from:

- examples on measuring performance gaps that contextualise the work requirements for the agency; and
- emphasising the importance of managers’ documenting performance gaps by having examples of work that do not meet the required standard to provide feedback to the employee and to document underperformance for record keeping and review purposes.

## **Practices**

21. The ANAO has identified a range of key learnings relating to agencies’ practices for managing underperformance that can apply to the eight and other APS agencies.

### **Box 5: Key learnings to address barriers relating to ‘Management culture’**

- Pursue initiatives to establish the practice of more frequent and constructive feedback including by: increasing investment in related training; monitoring the quality and quantity of feedback; and implementing multi-source feedback mechanisms.
- Set targets for the quality and quantity of feedback and require action plans to be developed in areas where monitoring indicates the quality and quantity of feedback is below target levels.
- Pursue initiatives to increase the commitment of senior managers to performance management including by:
  - increasing investment in relevant training of SES staff;
  - using mechanisms to gather evidence on senior managers’ people management skills, for example, 360 degree surveys and employee pulse surveys; and
  - establishing targets for the quality and quantity of feedback received by employees and including targets in managers’ performance agreements.
- Place more weight on accurately assessing applicants for manager positions on their people management skills in recruitment and selection processes.



**Box 6: Key learnings to address barriers relating to 'Support to managers'**

- Ensure human resource capability to actively support managers at all stages of underperformance management.
- Require human resource staff to have visibility of underperformance processes once structured processes commence to ensure active support to managers, provide quality assurance over processes, promote adherence to timeframes, and avoid processes having to be repeated to ensure procedural fairness requirements.
- Tangible recognition of the additional workload and stress on managers during underperformance processes is required.

**Box 7: Key learnings to address barriers relating to 'Manager capability'**

- Invest in relevant and regular training in managing performance (including underperformance) for both existing and potential managers including at the SES level.
- Provide coaching and a range of other active supports to managers during underperformance processes.

**Box 8: Key learnings to address 'other' barriers**

- Use human resource professionals to provide assistance to managers with measuring and documenting performance gaps (that is the gap between fully effective and less than effective).
- Use human resource professionals to actively assist the manager during underperformance processes to manage sick and personal leave taken by the underperforming employee, including by engaging with health professionals and assisting in making any reasonable adjustments required as quickly as possible.
- The presence of appropriately skilled human resource professionals in review meetings between the manager and the underperforming employee can assist in preventing claims of bullying and harassment.

**Summary of entity responses**

22. A summary of entity's responses are below, with full responses provided at Appendix 1.

**Attorney-General's Department**

The Attorney-General's Department welcomes the findings of the ANAO audit into underperformance across the APS (the audit). The department is currently reviewing its performance framework and related systems, policies, procedures and supporting guidance following the commencement of the *Attorney-General's Department Enterprise Agreement 2016*.

Following this review process, and informed by the key learnings from this audit, the department will seek to implement initial changes to its performance framework for the 2017-18 performance cycle. The department is keenly committed to promoting a high performance

culture built on ongoing performance and development feedback and conversations, and to ensure clarity and support in addressing poor performance as quickly as possible.

### **Australian Public Service Commission**

The APSC welcomes the ANAO audit report on Managing Underperformance in the APS and the opportunity to comment on the content and findings of the report. The collaborative approach adopted by the ANAO and its receptiveness to APSC input were much appreciated.

The APSC agrees that there is room for improvement in the management of underperformance in the APS, and supports the audit findings. We emphasise that the management of underperformance takes place within a broader context of organisational culture and leadership. This will impact the effectiveness of any measures to improve the management of underperformance, as will the support offered to managers of people more generally.

We are concerned that the selective use of data from the APS Employee Census in Figures 2.1 and 2.2 of the report may lead to people to misinterpret employee views on how underperformance is managed. The decision not to include the large proportion of respondents who neither agree nor disagree with these items could present a more negative perception by employees than is the case. This has been discussed with the ANAO.

Performance management is an area of particular focus for the APS. Agencies are trialling and implementing a number of initiatives to provide managers with the skills and tools they need to become more effective people managers.

### **Australian Taxation Office**

The ATO welcomes this review and considers the report supportive of our overall approach to managing underperformance within the ATO. Particularly pleasing to see is the strong performance of the ATO in managing employees through probation and the alignment of more recent ATO developments to the best practice processes highlighted in the report. As the ATO continues to look for improvement opportunities, the ATO also recognises the important responsibility which employees have to meet, or seek support to meet, their performances requirements.

The review considers the procedures and practices agencies use to identify and deal with underperformance for employees. The review also notes the frameworks and challenges which agencies face when managing underperformance. The ATO agrees with the key learnings contained in the report, including the advice to streamline processes where possible, improve transparency of processes, provide information and ongoing support to managers who supervise underperforming staff and to effectively use probation for new employees who do not meet the requisite standards. The ATO has been and will continue to strengthen its management of underperformance in light of the findings of this report. [Further comment in Appendix 1].

### **Department of Agriculture and Water Resources**

The information provided in the proposed audit report on Managing Underperformance in the Australian Public Service highlights the importance of making changes to the way performance is managed across the department to ensure the department is positioned towards creating and maintaining a high performing culture.

The department notes in conclusions drawn from the audit that there is significant room for improvement in the management of underperformance, across a number of key areas, such as

the management of underperformance during probation periods and structured underperformance processes.

The department acknowledges the need for change in the management of SES performance management processes, to streamline and provide greater transparency, as well as providing a greater level of support to managers and building manager capability in all areas of employee performance. These areas, along with other recommendations in the proposed audit report, will be incorporated into the current review into the department's Performance Management Framework and associated processes.

## **Department of Industry, Innovation and Science**

The Department of Industry, Innovation and Science acknowledges the findings and key learnings of the Australian National Audit Office's (ANAO) report on *Managing Underperformance in the APS*.

## **Department of Social Services**

The Department of Social Services is pleased to have been one of the eight agencies audited in the managing underperformance in the Australian Public Service Audit in 2016.

I encourage all employees and managers to take ownership of the audit findings and to work towards building a culture that celebrates high performance, supports managers to hold difficult conversations, and encourages employees to remain open to feedback and accept responsibility for their performance and improvements when needed.

## **Department of Veterans' Affairs**

The Department of Veterans' Affairs notes the finding of the report and considers that, with inclusion of editorial comments, it provides a fair representation of departmental processes.

The key learnings from this audit will be used to bring about improvements in underperformance management in the department.

## **IP Australia**

IP Australia welcomes the key learnings of this review and acknowledges the importance of effective underperformance management in the APS. We acknowledge that there is need for improvement in managing underperformance across the APS and we appreciate the report's recognition of the substantive and significant improvements IP Australia has recently made to our overall performance management framework.

We see value in the report's compilation of information on the varied approaches to underperformance management across the eight APS agencies and will reference this when considering further refinements and improvements to IP Australia's processes.

## **National Film and Sound Archive of Australia**

The NFSA agrees with the conclusions of the report and supports the key learnings identified which it will take into consideration when next it reviews the NFSA Performance Management and Development Policy and Procedures, which include the management of underperformance.

The NFSA regards the key learnings of the audit report to be essential feedback required for the agency to become a higher performing organisation.



## **Audit Findings**



# 1. Background

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## Introduction

1.1 Performance management of employees is critical to supporting a high-performing Australian Public Service (APS). While the management of underperformance is only one aspect of an effective performance management framework, it is important because underperforming employees negatively impact efficiency, productivity and morale.

## Legal and regulatory framework for managing underperformance

1.2 In relation to managing underperformance, APS agencies face a similar environment to many other organisations in Australia, public and private. A key difference, however, is that APS agencies face requirements arising from the *Public Service Act 1999* (PS Act). The *Public Governance, Performance and Accountability Act 2013* also requires agency heads as the accountable authority to promote the proper use and management of public resources.

### **Public Service Act 1999 and Regulations, and Australian Public Service Commissioner's Directions**

1.3 APS agencies are covered by the PS Act and Regulations and the Australian Public Service Commissioner's Directions. The 2013 amendments to the PS Act and Directions<sup>4</sup> increased the obligations for agencies to have formal performance management processes to ensure that each employee has a written performance agreement and regular performance discussions. These processes and discussions must be consistent with the APS Values, Code of Conduct and the Employment Principles that are all set out in the PS Act. APS managers, particularly agency heads and Senior Executive Service employees, who fail to adequately deal with underperformance are not upholding aspects of the APS Values and the Employment Principle that requires effective performance from each employee.<sup>5</sup>

1.4 The performance management obligations imposed on agency heads and managers by the PS Act are one of the differences facing APS agencies compared to other Australian organisations (arguably imposed, however, in the absence of the market forces that drive performance management in the private sector). Another difference is that APS employees have a right to a review of actions relating to management decisions. For example, an employee can seek a review of a management decision relating to a performance rating of 'unsatisfactory' or a decision to place an employee on a performance improvement plan. An initial review of action is conducted by the agency and, if the employee is not satisfied, they can apply for a secondary review to the Merit Protection Commissioner. An employee cannot, however, seek a review of a termination

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4 For a detailed exposition of these amendments see Australian Government Solicitor, *Dealing effectively with unsatisfactory performance in the Australian Public Service*, No.106, [Internet], 2015, AGS, available from <<http://ags.gov.au/publications/legal-briefing/br106.html>> [accessed 13 January 2017]. The Australian Public Service Commissioner further amended his Directions, including changes to Division 2 dealing with Performance Management, with effect from 1 December 2016. The amendments streamline and simplify content but do not change the fundamental obligations in relation to performance management.

5 Australian Government Solicitor, 2015, *ibid*, p. 5.

decision from the Merit Protection Commissioner—that must be done via an unfair dismissal application to the Fair Work Commission.

### **Fair Work Act 2009**

1.5 APS agencies are covered by the unfair dismissal provisions in the *Fair Work Act 2009* in relation to terminating the employment of an underperforming employee. These provisions require procedural fairness to be followed. Otherwise any termination can be found to be 'harsh, unjust or unreasonable', with remedies including reinstatement and payment of compensation. Key features of procedural fairness include:

- the employee must receive a warning (generally written) about unsatisfactory performance that identifies the performance issues;
- the warning must make it clear that the employee's employment is at risk unless performance improves;
- the employee must be given a genuine chance to improve their performance (however, no fixed period between the warning and termination is specified); and
- if a decision is subsequently made to terminate the employee for underperformance, the employee must be advised of this and given a chance to respond, for example, to outline any extenuating circumstances such as illness.

1.6 These processes apply to employees who are covered by an award or an enterprise agreement or who earn less than the high income threshold (\$138 900 at 1 July 2016)<sup>6</sup> after six months of employment (12 months for businesses with fewer than 15 employees).

1.7 The processes do not apply to independent contractors, irregular casuals, probationary employees and high income employees not covered by an award or enterprise agreement.

### **Enterprise agreements**

1.8 APS agencies are usually covered by enterprise agreements that can specify additional processes relating to performance management. These additional processes are enforceable by the Fair Work Commission.

### **Internal procedures**

1.9 APS agencies also usually have procedures that are set out in administrative or policy documents. If an enterprise agreement states that an underperformance process will be carried out in accordance with a specified policy document then any breach of the process in the document will be a breach of the enterprise agreement. The Australian Government Solicitor advises, furthermore, that even where procedures are not legally enforceable under an enterprise agreement, there is potential for the procedures set out in policy documents to give rise to procedural rights which are enforceable under administrative law.<sup>7</sup>

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6 Around three per cent of APS employees earned more than the high income threshold in 2015 but were covered by unfair dismissal provisions because they were included in their agency's enterprise agreement.

7 Australian Government Solicitor, 2015, pp. 18–19.



## Employee action

1.10 All Australian employees have a range of actions they can take in relation to their performance management including under federal or state unfair dismissal legislation, the *Australian Human Rights Commission Act 1986* and the *Disability Discrimination Act 1992*. Administrative law and laws relating to breach of contract can provide other avenues of redress.<sup>8</sup> APS employees can also request a review of actions under the PS Act as discussed in paragraph 1.4.

1.11 Some APS employees being managed for underperformance make allegations of bullying and harassment against their manager. These allegations require examination under the PS Act (Code of Conduct) and, in some circumstances, the *Public Interest Disclosure Act 2013*.

## Underperformance in the Australian Public Service

1.12 The term ‘underperformance’ is not used in the PS Act, rather the term is ‘unsatisfactory performance of duties’, which is not defined in the Act. In accordance with its ordinary meaning ‘unsatisfactory performance’ would extend to any situation where an employee does not have the capacity or ability to satisfactorily perform duties.<sup>9</sup> An employee can be performing to the best of their ability and still be performing unsatisfactorily.<sup>10</sup>

1.13 The Australian Government Solicitor advises APS agencies against using underperformance processes for breaches of the Code of Conduct, or where there is a health issue that should be dealt with by way of management of a medical problem.<sup>11</sup>

1.14 The key purpose of actively managing underperformance is to assist the employee to be able to consistently meet the performance expectations of their job and work level standard and thereby ensure the performance and productivity of the agency. It is only when it becomes clear after a reasonable period of active assistance that the employee is unable to meet expectations that the focus of underperformance management shifts to considering other remedies including reclassification to a lower classification or termination.

## Causes of underperformance

1.15 The causes of underperformance in the APS are varied. Under the PS Act employees have a personal responsibility to achieve the performance expectations of their job. Some performance problems relate to personal and/or physical and mental health issues facing employees. Cases of underperformance that also include some medical, personal or minor misconduct aspects (such as minor absenteeism or minor behavioural issues) can be particularly complex to manage.

1.16 One root cause of underperformance occurs when recruitment processes fail to select candidates that closely match the capabilities and personal attributes required for the work at the agency, combined with the under-use of probationary periods to actively test the suitability of newly appointed employees. Other causes relate to inadequate management skills where job

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8 Australian Government Solicitor, 2015, pp. 19–20, for a full, detailed list of avenues of redress.

9 *ibid*, p. 13.

10 *ibid*, p. 13.

11 *ibid*, p. 15.

expectations and tasks are not clearly specified and explained and where employees do not receive regular, constructive feedback on their performance so that any performance gaps can be addressed early. A lack of access to training and development to ensure employees keep skills and capabilities up to date as work design and technology changes can also lead to underperformance, although some employees have difficulties successfully adapting to changes that require new capabilities despite access to training.

## **Characteristics of audited agencies**

1.17 In conducting the audit, the ANAO examined the management of underperformance in eight agencies: Attorney-General's Department (AGD); Australian Taxation Office (ATO); Department of Agriculture and Water Resources (DAWR); Department of Industry, Innovation and Science (DIIS); Department of Social Services (DSS); Department of Veterans' Affairs (DVA); IP Australia (IP); and the National Film and Sound Archive (NFSA). These agencies were selected to provide a mix of agencies according to size, function, satisfaction with the management of underperformance and performance as indicated by employee views and agency self-reporting, as well as the extent of other ANAO audit coverage of the agency. Table 1.1 sets out characteristics of the eight agencies.

**Table 1.1: Characteristics of audited agencies, 2016**

Agency Characteristics										
Agency	Functions	No. of staff <sup>a</sup>	Major occupations	APS		EL		SES		Median service length
				No.	% of total	No.	% of total	No.	% of total	
AGD	Policy advice and programs on legal framework, national security and emergency management	2 003	Administration; Legal & parliamentary; Strategic policy	1 074	54	760	38	169	8	6
ATO	Regulator—principal revenue collection agency, administers major aspects of Australia's superannuation system	20 384	Compliance & regulation; Information & communications; Service delivery	15 820	78	4 343	21	221	1	13
DAWR	Policy, regulator, programs on agriculture, fisheries and forestry, including biosecurity	5 034	Compliance & regulation; Project & program; Strategic policy	3 884	77	1 057	21	93	2	10
DIIS	Policy advice, program delivery on driving economic growth, productivity and competitiveness	2 734	Administration; Project & program; Strategic policy	1 488	54	1 178	43	68	2	7
DSS	Social policy, programs, services on social security, families, communities, disability carers and housing	2 362	Administration; Project & program; Strategic policy	1 409	60	889	38	64	3	11
DVA	Policy strategy, program management and service delivery to assist the veteran and defence force communities	2 006	Strategic policy; Administration; Project & program; Service delivery	1 610	80	366	18	30	1	14
IP	Grants patent, trade mark, industrial design and plant breeder's rights	1 178	Administration; Engineering & technical; ICT	798	68	369	31	11	1	9
NFSA	Develops, preserves and presents Australia's national audiovisual and related collections	199	Information & knowledge	164	82	33	17	2	1	10

Note: Percentage totals may not add to 100 due to rounding.

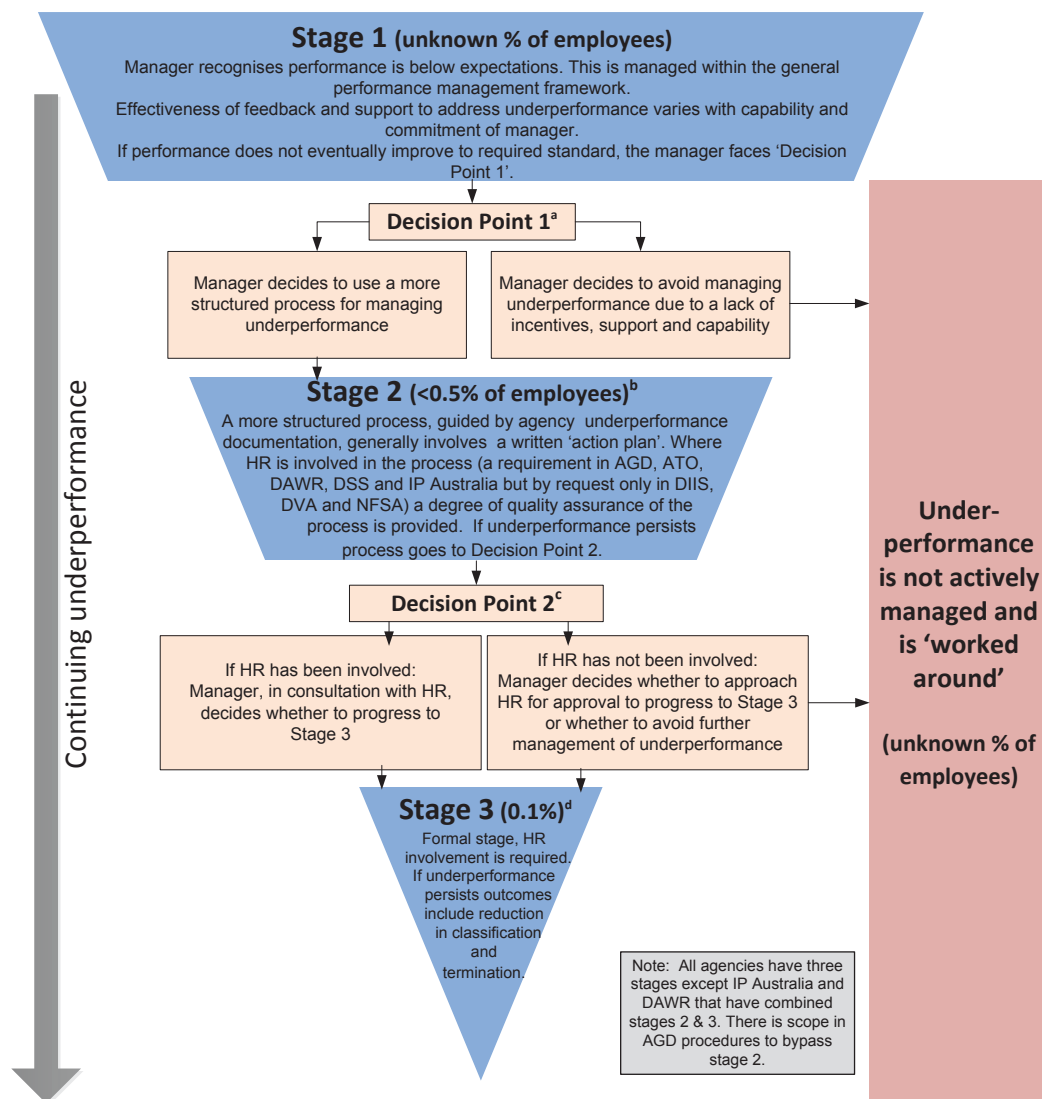
Note a: All APS employees—both ongoing and non-ongoing.

Source: Australian Public Service Commission, *Australian Public Service Statistical Bulletin, State of the Service Series 2015–16*, and ANAO analysis of Australian Public Service Commission's employee census data. Data for DIIS and IP Australia provided by these agencies.

## Stages of underperformance management

1.18 Figure 1.1 sets out three stages of underperformance management identified by the ANAO. The figure highlights the key role that managers have in supporting employees whose performance falls below expectations and in deciding whether or not underperforming employees enter into more structured or formal underperformance procedures. There is an unknown percentage of employees whose underperformance is not actively managed and is 'worked around'. Less than one per cent of employees in the eight agencies enter stages 2 and 3 of underperformance management. Chapter 2 provides more discussion and data on underperformance processes.

Figure 1.1: Three stages of underperformance management



Note a: Progressing from Stage 1 to 2 in some agencies requires approval from the human resources unit (HR).

Note b: Exact percentage of employees undergoing stage 2 processes is unknown but 0.5% is an upper estimate.

Note c: Progressing from Stage 2 to 3 requires formal approval in all agencies.

Note d: Average percentage of employees for eight agencies.

Source: ANAO analysis.

## Audit approach

### Audit objective, criteria and scope

1.19 The objective of the audit was to assess the effectiveness of the management of underperformance in the Australian Public Service and identify opportunities for improvement.

1.20 To form a conclusion on the audit objective the following high-level criteria were adopted:

- How effectively are audited agencies managing underperformance?
- Do the agencies' documented underperformance procedures contribute to the effective management of underperformance?
- Do the agencies' management practices contribute to the effective management of underperformance?

1.21 The audit focussed on eight agencies' management of underperformance over the four financial years 2012–13 to 2015–16. The audit scope did not include agencies' performance management systems more generally but did include their interaction with the management of underperformance. The focus on underperformance rather than performance management more broadly was in part because of ongoing work being undertaken by the Australian Public Service Commission in the latter area.<sup>12</sup> Some agencies, notably the Australian Taxation Office and IP Australia, have recently implemented significant changes to their performance management frameworks (see Table 4.3 that summarises change to agencies' performance management systems over the four year period). Accordingly, some of the data examined in the audit relates in part to superseded schemes and/or transitional periods. The analysis of procedures and policies in Chapter 3, however, is of agencies' most current performance and underperformance frameworks.

## **Audit methodology**

1.22 The major audit tasks included:

- analysing data from the Australian Public Service Commission's annual employee census and annual agency survey, agencies' own human resource databases and available benchmarking data from Australia and overseas;
- reviewing relevant agency documentation including policies, procedures, internal and external evaluations/reviews of agencies' performance management frameworks and conducting a literature review; and
- interviewing corporate support staff from each agency, employee representatives with coverage in the APS and relevant academics.

1.23 The audit was conducted in accordance with the ANAO Auditing Standards at a cost to the ANAO of approximately \$530 000.

1.24 The team members for this audit were Linda Kendell, Robyn Clark, Luke Josey, Benjamin Readshaw and Andrew Morris.

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12 In June 2016 the APSC released on its website *Optimising performance in the APS*, which outlined a set of guiding principles to assist agencies to design or redesign their performance management frameworks, shifting the focus from compliance and towards regular and effective outcomes-focused conversations. <<http://www.apsc.gov.au/home/news-and-events/optimising-employee-performance-in-the-aps>> [accessed 22 March 2016].

## 2. The effectiveness of agencies' management of underperformance

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### Areas examined

This chapter examines the available data relevant to agencies' management of underperformance and identifies the key barriers to more effective management.

### Conclusion

There is significant room for improvement in the management of underperformance in each of the eight audited agencies, although some agencies have managed underperforming employees better than others.

Underperformance is generally not effectively dealt with in performance management processes, including during the probation period in most agencies, and structured underperformance processes have been infrequently used. Managers have often avoided addressing underperformance due to a lack of incentives, support and capability. Some agencies have used redundancies or incentives to retire as alternatives to underperformance procedures and while these may be cost-effective approaches in situations of excess staffing or in particularly complex cases, they should not be used to replace or undermine ongoing, robust underperformance management procedures.

### Areas for improvement

Given the barriers to managing underperformance the main areas for improvement are those that will:

- encourage an effective performance management framework that results in frequent, informal conversations between managers and their staff that are aimed at improving employees' performance (rather than complying with process requirements); and
- actively support, recognise and reward managers who are willing to manage performance and underperformance and create a culture that makes managers who do not manage performance and underperformance more accountable.

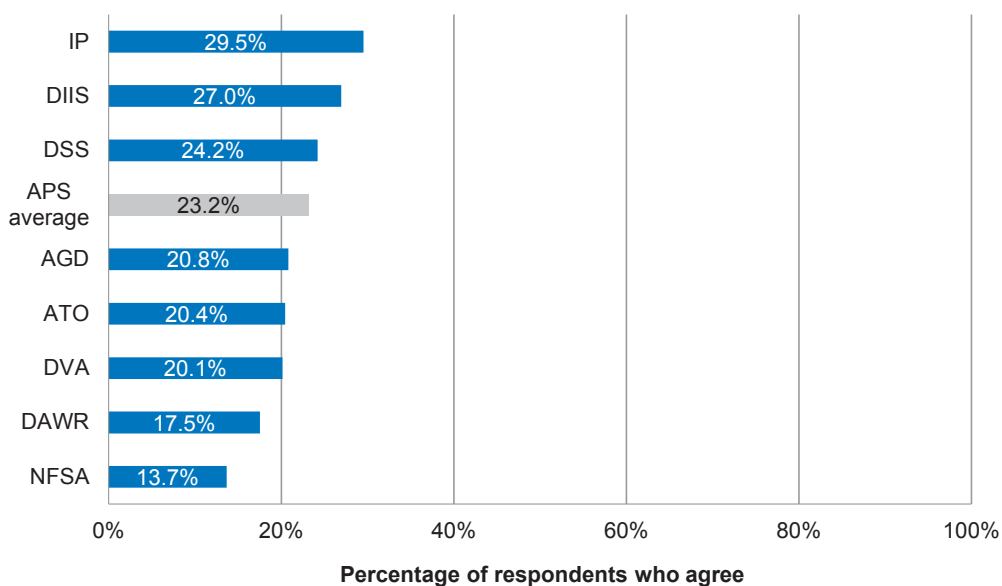
### Do employees consider that underperformance is effectively managed in their agency?

Employee perception data from the eight agencies indicates that only a minority of employees agreed that their agency deals with underperformance effectively, with agreement rates ranging from 14 to 30 per cent in 2016. For the Australian Public Service as a whole, less than a quarter of employees agreed that their agency effectively deals with underperformance. Compared to all other census items assessing attitudes and opinions, this issue had the lowest employee perceptions. Perceptions were more positive in relation to employees agreeing that their supervisor appears to manage underperformance well with over half of employees in IP Australia, the Department of Social Services, the National Film and Sound Archive and the Department of Industry, Innovation and Science agreeing in 2016. Comparisons with available Australian and international benchmarks on employee perceptions suggest that the Australian Public Service agencies achieve relatively low results.

## Data from the Australian Public Service Commission's employee census

2.1 The Australian Public Service Commission (APSC) conducts an annual employee census that asks employees a number of questions on a range of public administration issues including performance management generally and underperformance management specifically. Figure 2.1 and Figure 2.2 present data on employees' perceptions on how well their agency and supervisor managed underperformance for the eight agencies.<sup>13</sup> Employees' perceptions on their agency's management were significantly worse than their supervisor's management of underperformance across all agencies. At the APS-wide level, the percentage of employees who agreed with the statement 'my agency deals with underperformance effectively' was the lowest compared with all other attitude and opinion items on similar agree/disagree scales. It is important to note that employee perceptions in this area are likely to be affected by wider organisational or cultural issues and by the impact of privacy and confidentiality concerns. For example, other employees are unlikely to know what management activity is being undertaken as it is not appropriate for a manager to discuss underperformance matters with other staff members.

**Figure 2.1: 'My agency deals with underperformance effectively', 2016**

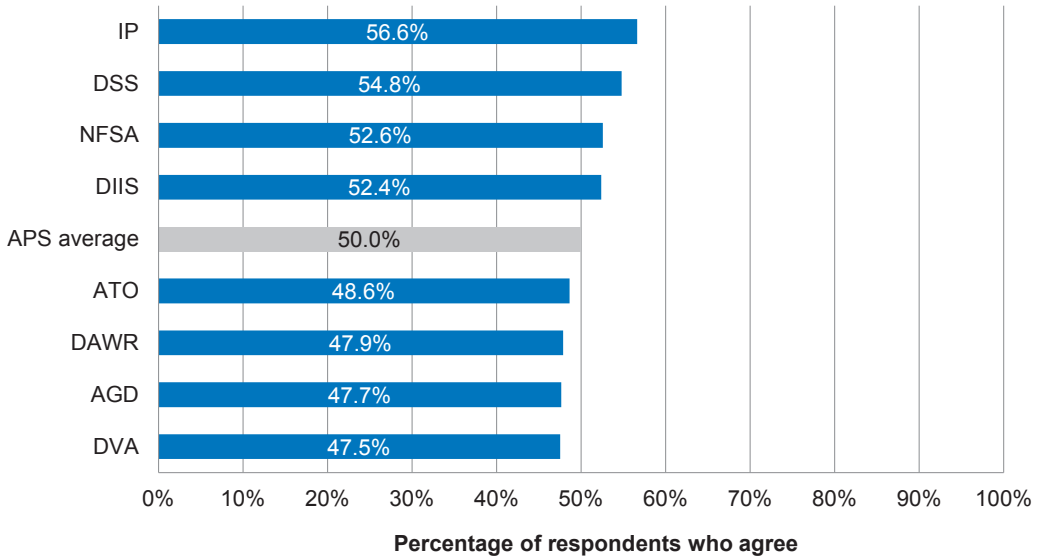


Source: ANAO analysis of data provided by the APSC.

13 The audit report presents data on the proportions of employees who agree with the relevant question in the APSC's census. Data is also collected in the census on the proportions of employees who disagree or who neither agree or disagree with the question. However, this additional data is not included to improve clarity in the presentation of data.



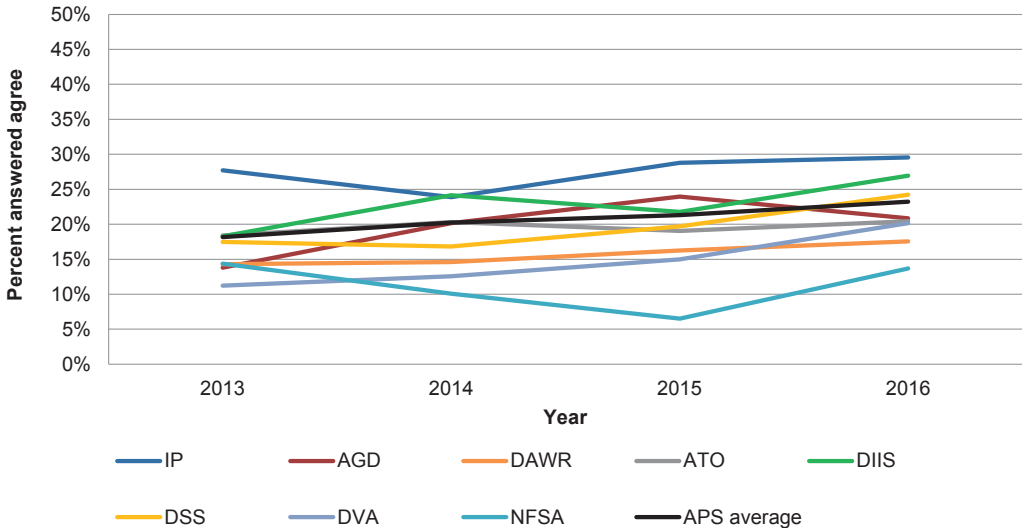
**Figure 2.2: 'My supervisor appears to manage underperformance well in my group', 2016**



Source: ANAO analysis of data provided by the APSC.

2.2 Figure 2.3 presents data on employee perceptions on their agencies' management of underperformance over the last four years. The average result for the APS as a whole has been on an upward trend. Most of the eight agencies have also improved their result over the four years. The only exception was the NFSA whose 2015–16 result was slightly below its 2012–13 result.

**Figure 2.3: 'My agency deals with underperformance effectively', 2012–13 to 2015–16**



Source: ANAO analysis of data provided by the APSC.

2.3 The causes behind the improving trend are difficult to determine given the many interrelated factors that impact on employees' perceptions in this area. It is likely, however, that the changes made as a result of responding to internal and external reviews of agencies' performance management frameworks, as set out in Table 4.3 in Chapter 4, have had some positive impact, noting that NFSA was the only agency not making any changes to its performance or underperformance framework over the period.

### Australian and international benchmarking data

2.4 A number of Australian and international organisations also conduct surveys that ask employees about their views on the management of underperformance. Table 2.1 outlines the relevant questions and the results of the surveys for various groupings of those organisations.

**Table 2.1: Employee perceptions benchmarking data, 2015 (percentage of employees agreeing with question)**

Question	Irish civil service	APS	USA federal service	UK civil service	Qld public service	Public sector world	Australia	Private sector world
Poor performance is effectively addressed throughout the department	12%	-	-	-	-	-	-	-
My agency deals with underperformance effectively	-	21%	-	-	-	-	-	-
In my work unit, steps are taken to deal with a poor performer who cannot or will not improve	-	-	28%	-	-	-	-	-
Poor performance is dealt with effectively in my team	-	-	-	39%	-	-	-	-
I am confident that poor performance will be appropriately addressed in my workplace	-	-	-	-	40%	-	-	-
Poor performance is dealt with effectively where I work	-	-	-	-	-	40%	46%	48%

Note: The table includes only results from employee surveys that used a similar five point scale to the one used by the APSC employee census (strongly agree, agree, neither agree or disagree, disagree, strongly disagree).

Source: APSC 2015 Employee Census; Working for Queensland Employee Opinion Survey 2015; Irish Civil Service Employee Engagement Survey 2015; United Kingdom Civil Service People Survey 2015; United States of America Federal Employee Viewpoint Survey 2015; and Australia, Private Sector worldwide and Public Sector worldwide data is drawn from the ORC International's Perspectives database. ORC International is an independent market research company that specialises in employee research for public and private sector organisations. The APSC, the Queensland Public Service Commission and the UK Civil Service engaged ORC International to coordinate their respective employee surveys.

2.5 As there is no exact match to the APS question 'my agency deals with underperformance effectively', as shown in Table 2.1, it is not possible to be definitive about the relative position of employee perceptions on underperformance in the APS compared to other sectors. However,

ORC International (that provided the benchmarking data for the 'Australia', 'Private sector worldwide' and 'Public sector worldwide' groupings<sup>14</sup>) rated the match between the question for the APS and the question for these three groups as a category 2 match, that is, there was a match for two of construct, context and/or intent (the best match—a category 1 match would be where there was a match for all three of construct, context and intent). These three groups recorded results significantly higher than the APS (all had 40 per cent or more of staff agreeing with the question compared with 21 per cent for the APS). The only group that had a lower result than the APS was the Irish Civil Service at 12 per cent of employees.

## Does agency data indicate that underperformance is effectively managed?

Human resources data from the eight agencies indicates that there is significant room for improvement in the management of underperformance in each of the eight audited agencies, although some agencies have dealt with it better than others. In most agencies underperformance is not being accurately identified and the proportion of employees undergoing structured underperformance processes is very low<sup>a</sup> in all agencies. Probation processes are not generally used robustly to test the suitability of newly appointed employees<sup>b</sup> (except in the Australian Taxation Office and the National Film and Sound Archive). The use of redundancies and incentives to retire may be cost-effective in situations of excess staffing or in particularly complex cases, however, they should not be used to replace or undermine ongoing, robust underperformance management procedures as they can be uneconomical, create perverse incentives and generate resentment in other employees. The outcomes of structured underperformance processes have been varied—a high percentage of cases have resulted in performance improvement, other employees have left their agency through retirement or termination processes, with a range of other outcomes including employees transferring within the Australian Public Service. Notwithstanding the range of outcomes, agencies have generally managed underperformance processes in line with procedural fairness requirements.<sup>c</sup>

Note a: The proportion of employees whose performance is rated as less than effective is less than would be reasonably expected, although proportions vary among agencies (from 0.1 to 3.1 per cent of all employees rated from 2012–13 to 2015–16). The proportion of employees who are formally managed for underperformance is even smaller for each of the eight agencies.

Note b: While not all of the eight agencies could provide data, the proportion of employees with performance issues that left during their probationary period was low except in the ATO. In combination with information on agencies' procedures, it appears that most agencies did not use probation to robustly assess performance to test job fit and the appropriateness of recruitment decisions.

Note c: As indicated by the low rate of successful Comcare claims, unfair dismissal claims and reviews of actions (five per cent or less of employees with known performance issues in all agencies from 2012–13 to 2015–16).

### Performance ratings data

2.6 An indicator of how agencies are managing underperformance is the proportion of employees who are rated as underperforming, that is, rated as 'less than effective'. Table 2.2 indicates that for most agencies very low levels of employees have been rated as 'less than

14 These groupings were based on the following number of individual organisations: 'Australia' 58 organisations; 'Private sector worldwide' 189 organisations; and 'Public sector worldwide' 301 organisations.

effective' at the end of year performance cycles over the past four years.<sup>15</sup> The unweighted average<sup>16</sup> for the eight agencies was 1.27 per cent of employees per year. Two agencies, DSS and AGD, had significantly higher proportions of employees rated less than effective at around three percent annually over the four years.

**Table 2.2: Percentage of employees rated less than effective once, and more than once, during the period 2012–13 to 2015–16**

Agency	Number of employees rated less than effective— Total over four years	Percentage of employees <sup>a</sup> rated less than effective— Average annual over four years	Of the employees rated less than effective— percentage that were rated so more than once
DSS	338	3.06	19.2
AGD	176	2.73	11.2
DVA	149	1.88	10.0
DAWR	173	0.92	18.5
ATO <sup>b</sup>	408	0.67	7.4
IP	20	0.46	13.3
DIIS <sup>c</sup>	42	0.33	NA
NFSA	1	0.11	NA

Note: NA means data is not available. DIIS and NFSA were unable to extract this data from their data systems.

Note a: Employees covered by the agencies' performance management scheme.

Note b: ATO performance ratings data was not available for 2015–16.

Note c: DIIS performance ratings for SES employees were only available for 2014–15 and 2015–16.

Source: ANAO analysis of data provided by agencies.

2.7 Table 2.2 also includes data on the proportion of employees that were rated as 'less than effective' more than once over the past four year periods. An employee being rated as 'less than effective' more than once is likely to be an indication that underperformance is not being managed in a timely and effective way although changes in jobs and/or managers may contribute to such a rating being given twice. Both DAWR and DSS had relatively high proportions of employees in this category—18.5 per cent and 19.2 per cent respectively—however, both DAWR's and DSS' performance scales include a 'less than effective' rating<sup>17</sup> that indicates an employee may be adjusting to a new role but is meeting most expectations. The agency with the lowest proportion of employees rated 'less than effective' twice was the ATO at 7.4 per cent. Ideally, nearly all employees who receive a rating of 'less than effective' would either receive assistance to sustainably improve their performance or, if unable to meet expectations, be managed through a more structured underperformance process within a 12 month period.

15 Over the period examined, 'Less than effective' in seven agencies included more than one ratings category, for example 'requires development' and 'unsatisfactory'. In IP Australia there was only one rating category for less than effective performance.

16 An unweighted average was used, rather than a weighted average, to reflect the diversity of the eight agencies.

17 DAWR's scale contains a rating of 'developmental' and DSS' scale contains a rating of 'developing towards performs well'.

2.8 The ANAO conducted a literature review in relation to the proportion of employees that could be expected to be rated as unsatisfactory or 'less than effective' in a large organisation. Many global corporations and other large organisations have used a forced distribution performance evaluation system that assumes a normal distribution or bell (symmetrical) curve for employee performance. Under this system, managers, using a three or five point rating scale, were forced to rate a fixed proportion of staff as unsatisfactory and the same proportion of staff as outstanding performers, for example, 10 per cent of staff in each category.<sup>18</sup> Despite not having a forced distribution system the Irish Civil Service anticipated in 2013, using a five point scale, that the performance of up to 10 per cent of staff would be rated as 'unsatisfactory' and up to 20 per cent would be rated as 'needs to improve'.<sup>19</sup> In 2014, 0.05 per cent of Irish Civil Service employees were rated as 'unsatisfactory' and 0.56 per cent as 'needs to improve'. The Irish Department of Public Expenditure and Reform concluded that the actual ratings 'would seem to indicate that line managers are not realistically assessing the performance of staff'.<sup>20</sup>

2.9 A 2014 survey conducted by Deloitte Consulting indicated that there has been a move away from forced distribution performance evaluation systems. The survey indicated that '70 per cent of respondents stated that they are either currently evaluating or have recently reviewed and updated their performance management systems'.<sup>21</sup>

2.10 The results of the literature review were inconclusive on the proportion of employees that might be anticipated to be performing below expectations in large organisations. The weight of evidence collected for the audit suggests, however, that less than one per cent of employees being rated as less than effective (as is the case in five out of the eight APS agencies) is below the proportion of underperforming employees:

- A majority of the human resource or corporate staff interviewed for the audit agreed that the proportions of staff identified as underperforming under-represented the extent of underperformance in their agency.
- Professor Deborah Blackman, University of NSW, advised that, based on her research for the Australian Public Service Commission's (APSC's) Strengthening the Performance Framework project, the proportion of staff being formally rated as less than effective significantly underestimated the actual proportions of staff performing below expectations.<sup>22</sup>

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18 Estimates suggest that up to 20 per cent of all USA business organisations and up to 25 per cent of Fortune 500 firms used some type of forced distribution performance evaluation systems. SM Stewart, ML Gruys and M Storm, 'Forced distribution performance evaluation systems: Advantages, disadvantages and keys to implementation', *Journal of Management & Organization*, Volume 16, Issue 1, March 2010, p. 168.

19 Department of Public Expenditure and Reform, *Annual Evaluation of PMDS - Review of completion rates and ratings distributions for 2013*, [Internet], Dublin, 2013, p. 2, available from <<http://hr.per.gov.ie/pmids-2013/>> [accessed 31 January 2017].

20 *ibid*, p. 2.

21 Deloitte Consulting LLP and Bersin by Deloitte, *Global Human Capital Trends 2014—Engaging the 21st-century workforce*, [Internet], Deloitte, 2014, p. 45, available from <<https://www2.deloitte.com/global/en/pages/human-capital/articles/human-capital-trends-2014.html>> [accessed 12 January 2017].

22 Professor Blackman conducted 25 focus groups and 90 interviews of APS employees and managers for the project work undertaken in collaboration with the APSC. An overview of the results were published in D West and D Blackman, 'Performance Management in the Public Sector', *Australian Journal of Public Administration*, Vol.74, no.1, 2015, pp. 73–81.

- The Department of Communications and the Arts, which over recent years has implemented a proactive underperformance management strategy, advised it has been successful in identifying and engaging in the resolution of underperformance cases. The strategy supports timely, open and honest conversations about performance, with specialist human resource staff advising, coaching and guiding managers and staff to achieve the most appropriate outcomes. The Department advised that in 2014–15 it rated 37 employees (around nine per cent of ongoing employees) as ‘not meeting expectations’ during the performance management cycle. In 2015–16, 52 employees were also rated as ‘not meeting expectations’, which again comprised around nine per cent of ongoing employees. The Department advised that that it has effectively resolved more than 90 per cent of these cases through coaching conversations, structured ‘back on track’ plans and formal performance improvement plans.
- Research undertaken in the United States of America (USA) is also of some relevance. A USA Office of Personnel Management survey of supervisors estimated that poor performers constituted 3.7 per cent of the federal public sector workforce and a USA Merit Protection Board survey found that employees perceived 14.3 per cent of their co-workers to be performing below reasonably expected levels.<sup>23</sup>

### **Employees undergoing underperformance management**

2.11 Table 2.3 shows the average annual percentage of employees undergoing structured underperformance processes (stage 2 and stage 3 processes as outlined in Figure 1.1) over the past four years. It is clear that the proportion of employees undergoing structured underperformance processes is very low in all eight agencies and lower than the proportion of staff being rated as less than effective. In relation to stage 3 processes, the highest percentage was 0.28 per cent of employees for the NFSA with the lowest being 0.03 per cent for the ATO. The unweighted average annual proportion for the eight agencies was 0.13 per cent.

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23 United States Government Accountability Office, Audit Report No.GAO-05-812R, *Poor Performers in the Federal Workplace*, [Internet], USA, June 2005, p. 2, available from <<http://www.gao.gov/products/GAO-05-812R>> [accessed 9 September 2016].

**Table 2.3: Percentage of employees undergoing formal underperformance management processes, 2012–13 to 2015–16**

Agency	Number of employees	Average annual percentage of ongoing staff	Number of employees	Average annual percentage of ongoing staff
	Stage 2		Stage 3	
AGD <sup>a</sup>	14	0.29	11	0.23
ATO	342	0.43	23	0.03
DAWR	NA	NA	12	0.07
DIIS <sup>b</sup>	NA	NA	23	0.20
DSS	13	0.14	9	0.09
DVA <sup>a</sup>	11	0.15	3	0.04
IP <sup>c</sup>	6	0.13	6	0.13
NFSA	NA	NA	2	0.28

Note: NA means data is not available.

Note a: AGD and DVA did not have complete records of stage 2 processes so the data for stage 2 underestimates the actual number.

Note b: DIIS provides general guidance for managers around stage 2 but no specific procedures are prescribed.

Note c: IP Australia streamlined stage 2 and 3 in July 2016 as part of a new performance management scheme. Data refers to previous scheme.

Source: ANAO analysis of data provided by agencies.

2.12 Table 2.4 presents data on underperformance processes by classification group. For all eight agencies except IP Australia and DIIS, the APS 1 to 6 levels had the highest proportion of employees being managed for underperformance. For all eight agencies, there were no SES employees managed under formal underperformance processes.

**Table 2.4: Formal underperformance processes by classification, 2012–13 to 2015–16**

Agency	APS	EL	SES	APS	EL	SES
	Percentage of ongoing employees Stage 2			Percentage of ongoing employees Stage 3		
AGD <sup>a</sup>	0.36	0.24	0.00	0.29	0.19	0.00
ATO	0.55	0.17	0.00	0.04	0.00	0.00
DAWR	NA	NA	NA	0.08	0.02	0.00
DIIS <sup>b</sup>	NA	NA	NA	0.15	0.28	0.00
DSS	0.15	0.14	0.00	0.12	0.06	0.00
DVA <sup>a</sup>	0.14	0.17	0.00	0.05	0.00	0.00
IP <sup>d</sup>	0.19	0.00	NA	0.13	0.15	0.00
NFSA	NA	NA	NA	0.35	0.00	0.00

Note: NA means data is not available.

Note a: AGD and DVA did not have full records of stage 2 processes so the data for stage 2 underestimates the actual number.

Note b: DIIS provides general guidance for managers around stage 2 but no specific procedures are prescribed.

Note c: The performance of IP Australia's SES employees is managed by DIIS. IP Australia streamlined stage 2 and 3 in July 2016 as part of a new performance management scheme. Data refers to previous scheme.

Source: ANAO analysis of data provided by agencies.

## Alternatives to underperformance management processes

2.13 While the proportion of staff in formal underperformance processes is very low, agencies also manage underperformance through other means. Most agencies (except IP Australia and the NFSA) have made some use of redundancies to target poorly performing non-SES staff. In addition there are provisions under the *Public Service Act 1999* (PS Act) that allow agencies to offer SES employees an incentive to retire where the employee no longer has the skills to perform at their SES classification.

### *Redundancies*

2.14 The majority of the eight agencies over the four year period examined in the audit have been required to manage significant excess staffing situations and concomitant large scale redundancies due to a diverse range of circumstances. Table 2.5 indicates that three agencies (DSS, NFSA and the ATO) managed the redundancy of an average of over five per cent of their ongoing staff in each of the four years 2012–13 to 2015–16. Where there are excess staff, agencies must act in accordance with the APS employment framework, which includes the PS Act, the APS Bargaining Framework and agency enterprise agreements. The APSC has also issued guidelines<sup>24</sup> that require agencies to offer voluntary redundancies strategically to ensure retention of employees who are highly valued and have the skills needed for future work of the agency. The guidelines explicitly state that agencies should not use excess staff arrangements as an alternative to dealing with underperformance.

2.15 Table 2.5 indicates that all agencies with the exception of NFSA and IP Australia have provided redundancies to staff who were rated as less than effective in the performance cycle prior to receiving their redundancy (data was unavailable for DIIS). This practice in AGD was particularly high with 17.5 per cent of those staff taking redundancies having been rated less than effective. AGD, DSS, ATO, and DAWR have a higher proportion of ongoing employees who have been rated as less than effective who have received a redundancy than the proportion of ongoing employees who have been managed in stage 3 of their formal underperformance procedures (that is comparing column 5 in Table 2.5 and column 5 in Table 2.3).

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24 APSC, *Managing redeployment in the APS: guidelines for agencies*, April 2011, [Internet], APSC, available from <<http://www.apsc.gov.au/managing-in-the-aps/recruitment-and-selection/aps-redeployment-policy/managing-redeployment-guidelines>> [accessed 13 January 2016].



**Table 2.5: Redundancies, 2012–13 to 2015–16**

Agency	Total redundancies over four years <sup>a</sup>	Average annual percentage of staff receiving redundancies	Percentage of redundant staff rated less than effective <sup>b</sup>	Percentage of total staff rated less than effective and made redundant <sup>b</sup>
DIIS	503	4.4	NA	NA
IP	26	0.6	0.0	0.00
NFSA	48	6.5	0.0	0.00
DVA	118	1.6	2.9	0.03
ATO	4086	5.5	3.1	0.12
DAWR	572	3.2	4.5	0.14
DSS	655	6.9	8.2	0.37
AGD	240	4.8	17.5	0.74

Note a: Includes SES incentives to retire.

Note b: Calculations only use employees whose performance ratings were known. DIIS was unable to provide performance rating data for any redundant employees but advised that it does not offer redundancy to employees rated as less than effective; AGD was unable to provide performance rating data for 12.1 per cent of redundant employees; ATO 24.7 per cent; DAWR 6.8 per cent; DVA 42.4 per cent; and IP Australia 19.2 per cent.

Source: ANAO analysis of data provided by agencies.

2.16 Given the finding that underperforming staff are not always accurately identified in performance management processes, the data in Table 2.5 understates the use of redundancies as a way of managing underperforming staff. All agencies, except DIIS, advised that in excess staffing situations, after inviting employees to register expressions of interest for redundancies, as required in the provisions of their enterprise agreements, agencies then decide on who will be made an offer, taking into account a range of factors including an assessment of relative performance. Staff who may be underperforming but have been inaccurately rated as effective by managers would be generally included in those offered redundancies. DIIS advised that when it determines which staff are excess to requirements it either identifies staff whose functions are no longer required or conducts a skills and capability review with emphasis on retaining valued staff with the skills required for future work.

2.17 The ATO actively uses a clause in its enterprise agreement that states staff will be declared excess that cannot be effectively used because of technological or other changes, or changes in the nature, extent or organisation of the functions of the agency. These are called 'non bona fide' redundancies indicating that it is not the position that is redundant rather it is related to the employee. Table 2.6 indicates that these redundancies are commonly used, accounting for 13.1 per cent of all ATO redundancies over the four year period from 2012–13 to 2015–16. Table 2.6 shows that an annual average of 0.7 per cent of ongoing employees received a non bona fide redundancy over the period 2012–13 to 2015–16 compared to 0.03 per cent of employees being managed under stage 3 underperformance process over the same period (see Table 2.3), indicating that the ATO has used non bona fide redundancies significantly more than formal underperformance procedures.

**Table 2.6: ATO redundancies, 2012–13 to 2015–16**

Financial year	Average staffing level	Total redundancies	Non bona fide redundancies	Percentage of non bona fide redundancies in total redundancies	Percentage of non bona fide redundancies in total ongoing <sup>a</sup> staff
2012–13	21 440	151	58	38.4	0.3
2013–14	22 022	860	128	14.9	0.6
2014–15	19 068	2369	204	8.6	1.1
2015–16	18 482	706	147	20.8	0.8
<b>Total/ average</b>	<b>20 253</b>	<b>4086</b>	<b>537</b>	<b>13.1</b>	<b>0.7</b>

Note a: Includes SES employees to enable comparison with Table 2.3.

Source: ANAO analysis of data provided by the ATO.

2.18 In some circumstances it is a cost-effective decision for agencies to make redundancy payments to underperforming employees particularly in situations of excess staffing. Even outside of situations of excess staffing, in some complex cases and/or when circumstances require prompt action, the costs, including the time and effort involved in managing an employee through underperformance procedures, may be in excess of the costs of offering a redundancy.<sup>25</sup> In general, however, redundancies should not be used to replace or undermine ongoing, robust underperformance management procedures. It can be uneconomic, create perverse incentives as well as causing resentment in better performing employees.

#### *Incentives to retire for SES employees*

2.19 Agency Heads have the discretion to offer a SES employee an incentive to retire under section 37 of the PS Act. APSC policy advice states that such incentives may be offered in a number of limited circumstances which include where the SES employee no longer has the skills to perform at their SES classification (in contrast to the APSC advice that voluntary redundancies should not be used as an alternative to dealing with underperforming non-SES employees). The ANAO has estimated that of the 3.3 per cent of all APS SES employees that received an incentive to retire on average in each of the four years 2011–12 to 2014–15, around one third of them were received on the basis that the SES employee no longer had the skills to perform at their SES classification. This data broken down for the eight agencies in the audit is not available.

2.20 Incentives to retire should be used sparingly in circumstances where the SES employee no longer has the skills to perform at their SES classification. In such circumstances consideration should be given to the fact that underperformance management procedures for SES employees

25 Corporate staff in AGD estimated that managing an employee through stages 2 and 3 of its underperformance procedures takes from half to one day per week of a manager's time. In the very small number of cases where an employee makes an application for unfair dismissal to the Fair Work Commission (an avenue of redress not open to SES employees) or the courts, the overall cost of litigation is significant and includes costs such as dealing with related requests under the *Freedom of Information Act* as well as legal costs which can run to hundreds of thousands of dollars.

should be less time consuming and complex as SES employees do not have access to unfair dismissal provisions.

### **Outcomes of underperformance processes**

2.21 Table 2.7 presents outcomes for the employees who have been managed under stage 2 and stage 3 underperformance processes. For the five agencies that could provide data on outcomes for stage 2 processes, the outcomes varied among agencies, although there were significant proportions of staff reported as having been able to improve performance to effective levels in all five agencies. For employees in stage 3 processes, in most agencies a majority of staff either left the agency via redundancy (17.4 per cent), resignation or retirement (19.6 per cent), with only 13.0 per cent of staff having their employment terminated. Only 17.4 per cent of employees in stage 3 processes were reduced in classification. A small number of employees were able to transfer to other agencies (4.3 per cent) during stage 3 and some employees were reported as being able to improve their performance even in stage 3 (for example 28 per cent in the ATO).

**Table 2.7: Outcomes of underperformance processes**

Outcome	ATO	AGD	IP	NFSA	DSS	DIIS <sup>a</sup>	DAWR	DVA	All agencies
<b>Stage 2</b>	<b>Percentage of employees in stage 2 processes subject to respective outcome</b>								
Dealt with as medical issue	10.1				7.7			9.1	9.5
Machinery of Government change		7.1							0.3
Move to next formal stage	6.7	35.7			61.5			36.4	10.3
New role within agency	7.8				7.7			9.1	7.5
Performance improvement	52.2	28.6	33.3		23.1			45.5	49.9
Redundancy (involuntary/voluntary)	14.8	14.3	33.3						14.1
Resignation	4.3	7.1	16.7						4.4
Other <sup>b</sup>	4.1	7.1	16.7						4.1
<b>Total number in stage 2 process</b>	<b>345</b>	<b>14</b>	<b>6</b>		<b>13</b>			<b>11<sup>d</sup></b>	<b>389</b>
<b>Stage 3</b>	<b>Percentage of employees in stage 3 processes subject to respective outcome</b>								
Dealt with as medical issue	8.0								2.2
Machinery of Government change						13.0			3.3
Performance improvement	28.0					17.4	33.3		16.3
Reduction of classification	4.0	16.7	33.3		44.4	8.7	33.3	33.3	17.4
Redundancy (involuntary/voluntary)	20.0	25.0		100	11.1	21.7			17.4
Resignation or retirement	20.0	41.7	33.3		22.2	8.7		66.7	19.6
Termination	12.0	16.7	16.7		11.1	13.0	16.7 <sup>e</sup>		13.0
Transfer to other APS agency			16.7			13.0			4.3
Other <sup>c</sup>	8.0				11.1	4.3	16.7		6.5
<b>Total number in stage 3 process</b>	<b>25</b>	<b>12</b>	<b>6</b>	<b>2</b>	<b>9</b>	<b>23</b>	<b>12</b>	<b>3</b>	<b>92</b>

Note: Percentage totals may not add to 100 due to rounding. IP Australia streamlined stage 2 and 3 in July 2016 as part of a new performance management scheme. Data refers to previous scheme.

Note a: DIIS was unable to provide data on all outcomes for employees undergoing stage 3 processes. Data on outcomes for employees rated unsatisfactory was used instead. Some of these employees whose outcome was 'redundancy' may have returned to satisfactory performance before the redundancy was taken as it is DIIS' policy that no employees undergoing formal underperformance processes should be offered redundancies, but this data is unavailable.

Note b: Includes: dealt with as misconduct; none; promotion to other area; termination; and transfer to other APS agency.

Note c: Includes: dealt with as misconduct; new role within agency; and none.

Note d: DVA did not have complete records of stage 2 processes so the data for stage 2 underestimates the actual number.

Note e: One employee who was terminated as a result of underperformance processes was later reinstated to their position.

Source: ANAO analysis of data provided by agencies.

## Probation

2.22 The PS Act provides that agencies may impose conditions of engagement, one of which is probation.<sup>26</sup> The probationary period is an important part of the recruitment and selection process of new employees. It provides an opportunity to confirm an employee's suitability to the agency and job, for both the employer and the employee. Action to cease employment during probation is a legitimate action which recognises that not all selection decisions result in an outcome that is right for the employer or the employee. It is important that agencies use this period proactively to manage any performance issues that may arise.<sup>27</sup> If performance issues cannot be fully resolved, the employee's ongoing employment should not be continued. APS employees in the first six months of their employment are not eligible to lodge an unfair dismissal claim with the Fair Work Commission although key procedural fairness provisions still apply. While probationary employees may apply for a review of actions under the PS Act of a performance management outcome, the review rights lapse once their employment ceases. A review application does not stay any proposed action by an agency, for example, an agency would not be obliged to extend employment to allow a review to be finalised.

2.23 All agencies except AGD routinely apply probation to all new ongoing employees, excluding ongoing transfers and promotions between agencies.<sup>28</sup> AGD only systematically imposes probation as a condition of engagement on entry level program employees, for example, graduates. It is important that agencies impose probation on all new engagements because probationary employment should be terminated where performance issues arise and cannot be resolved.

2.24 Two agencies (ATO and DIIS) have automated the probation process and another (IP Australia) is in the process of doing so to help ensure that performance assessments are

26 Section 22 of the PS Act provides for conditions of engagement, including conditions dealing with probation, citizenship, formal qualifications, security and character clearances, and health clearances. IP Australia for example imposes competency testing within a specified timeframe as a condition for continuing employment of examiner trainees.

27 The APSC issued strengthened guidance on the importance of the probationary period in November 2016. <<http://www.apsc.gov.au/working-in-the-aps/conditions-of-engagement/probation>> [accessed 6 December 2016].

28 Probation does not apply to ongoing APS employees who are transferred or promoted within or between agencies.

completed within the probationary period. In five agencies (DAWR, DSS, DVA, IP Australia and NFSA), there is central oversight of probation processes with reminder emails sent to managers at the appropriate review points. AGD has central oversight but advised that there were issues regarding the usefulness of probation reports, in particular, the accuracy of performance assessments.

2.25 Table 2.8 presents data on the percentage of employees on probation over the four year period 2012–13 to 2015–16 who left their agency during their probation period. While probationary employees leave for a variety of reasons, one of these is for underperformance. It is not possible to draw firm conclusions from the data in Table 2.8 on how actively agencies are using probation as a mechanism to test the suitability of employees because low separations for employees may reflect superior recruitment processes rather than low use of probation to test the suitability of new employees. The data indicates however that managers in the NFSA and ATO, and to a lesser extent IP Australia, are actively using the probation period to manage underperformance. In combination with information on agencies’ procedures, the data suggests that the majority of agencies are not using probation to robustly assess performance to test job fit and the appropriateness of recruitment decisions. As mentioned in Chapter 4, the outcomes of probation in this context should be included in periodic management reporting on performance management.

**Table 2.8: Percentage of employees on probation who left during their probation period for performance related reasons, 2012–13 to 2015–16**

Agency	Total number of probationary employees	Total number of probationary employees who separated	Number of probationary employees with performance issues who separated	Probationary employee separations with performance issues as a percentage of all probationary employees
AGD	139	1	0	0
ATO	2 022	279	67	3.3
DAWR	462	79	NA	NA
DIIS	83 9	1	0	0.0
DSS	570	18	1	0.2
DVA	395	9	1	0.3
IP	244	8	3	1.2
NFSA	52	5	2	3.8

Note: NA means data is not available. DAWR was unable to extract this data from their data systems.

Source: ANAO analysis of data provided by agencies.

### **Comcare claims, reviews of actions and unfair dismissal claims**

2.26 Table 2.9 presents data on a number of the avenues that employees are able to take in response to performance management—Comcare claims<sup>29</sup>, reviews of actions and unfair dismissal claims from 2012–13 to 2015–16. Agencies were asked to provide data on the number of such claims/reviews that were related to an employee's performance management, as the number of claims and the proportion that are successful is an indicator of whether agencies are handling performance issues effectively and consistently with procedural fairness requirements.

2.27 Table 2.9 shows that the numbers of such claims are relatively small or zero for all agencies and that the proportions of such claims that are actually successful are even smaller. When all claims in Table 2.9 are aggregated for each agency over the four years and expressed as a percentage of all employees rated as less than effective (that is employees with known performance issues) over the same period it can be seen that IP Australia (15.0 per cent<sup>30</sup>), DAWR (8.1 per cent) and the ATO (7.4 per cent) had the highest rates of employees with known performance issues lodging reviews. The rate of successful claims, however, is five per cent or less of employees with known performance issues in all agencies (see last column of Table 2.9) indicating that agencies are generally handling performance issues consistent with procedural fairness requirements.

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29 Performance management and counselling are reasonable administrative actions and employees are excluded from receiving compensation from any injuries sustained from such processes under the *Safety, Rehabilitation and Compensation Act 1988* unless such processes are conducted in an unreasonable manner.

30 15 per cent represents only three employees.

**Table 2.9: Comcare claims, reviews of actions, unfair dismissal claims relating to performance management, 2012–13 to 2015–16**

Agency	Comcare claims <sup>a</sup>			Reviews of actions			Unfair dismissal claims				% of staff rated less than effective	
	Number of claims lodged	Number of claims reviewed	% of reviewed claims successful	Number of reviews lodged	Number of reviews undertaken	% of under-taken reviews overturning agency decision	Number of claims lodged	Number of claims not with-drawn	% of claims not with-drawn overturning agency decision	% of claims not with-drawn that were settled	Total claims and reviews made	Claims and reviews that overturned agency decision or were settled
AGD	4	4	0	3 <sup>b</sup>	1	0	1	1	0	100	4.5	0.6
ATO	21 <sup>c</sup>	19	32	13 <sup>d</sup>	8	25	9 <sup>e</sup>	5	0	80	7.4 <sup>f</sup>	2.7 <sup>f</sup>
DAWR	5 <sup>g</sup>	4	25	8	8	25	1	1	0	100	8.1	2.3
DIIS <sup>h</sup>	0	–	–	0	–	–	1	1 <sup>i</sup>	0	0	2.4	0.0
DSS	3	3	0	6 <sup>j</sup>	5	0	1	1	0	100	3.0	0.3
DVA	0	–	–	0	–	–	0	–	–	–	–	–
IP	1	1	0	0	–	–	2	2	0	50	15.0	5.0
NFSA	0	–	–	0	–	–	0	–	–	–	–	–

Note a: Data for Comcare claims is only for 2014–15 and 2015–16.

Note b: One employee was transferred to another role and one employee was discontinued due to termination of employment.

Note c: Two cases were undetermined at the time the data was received.

Note d: One review was resolved informally; one request was rejected as a result of health issues; one request was rejected due to an employee being transferred; and two requests were rejected because they were not lodged within the required timeframe.

Note e: Four claims were withdrawn.

Note f: Calculation for ATO excludes data from 2015–16 as performance ratings data was not available.

Note g: One claim was withdrawn.

Note h: DIIS performance ratings for SES employees were only available for 2014–15 and 2015–16.

Note i: The claim is ongoing.

Note j: One process from 2015–16 has not yet been completed.

Source: ANAO analysis of data provided by agencies.



## What barriers do agencies need to address to better manage underperformance?

The main barriers to more effectively managing underperformance relate to agencies' general management culture (that has tended to focus on compliance with end of cycle discussions rather than the quality and frequency of feedback), and the lack of incentives facing, support for and capabilities of, many senior and middle level managers. These barriers have limited the effectiveness of agencies' management of underperformance in performance management processes, as well as in structured underperformance processes.

2.28 The barriers to underperformance management identified in the literature review<sup>31</sup>, and by those interviewed<sup>32</sup> for the audit, were similar. Different research/individuals/groups had different perspectives about the relative importance of these barriers and not all barriers were mentioned by all sources, however, there was a surprising degree of unanimity.

2.29 The 10 most commonly identified barriers are set out in Table 2.10. They have been classified into four categories: management culture; support to managers; manager capability; and other barriers. These barriers have been used to inform the criteria used in Chapters 3 and 4 to assess agencies' underperformance procedures and practices to assist in achieving the audit's objective of identifying factors that can assist agencies to address the barriers and improve the management of underperformance.

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31 See paragraphs 2.8 to 2.10.

32 Corporate managers and human resource staff in the eight agencies, Professor Deborah Blackman, and officials and delegates from the Community and Public Sector Union.

**Table 2.10: Barriers to managing underperformance**

Category	Barrier	Explanation
<p><b>Management culture</b></p>	<p>Performance management systems are focused on compliance with procedures rather than on improving performance</p>	<p>A culture of regular informal performance discussions and feedback has not been established in most APS agencies, in part, because it is not seen as a priority by many senior managers. The formal feedback sessions required in performance management systems are treated as a compliance exercise by many managers and employees and are seen as taking time and effort away from the 'real' work of outputs/tasks. As a result underperformance is generally not tackled early, any negative feedback in the formal review points may come as a surprise to employees, and employees may not receive timely and adequate support to improve their performance.</p>
	<p>Lack of senior manager commitment to performance management including underperformance management</p>	<p>SES cadre do not always lead by example in relation to commitment to performance management including by the active management of poor performance by their direct reports and by giving regular, informal feedback to their employees. At times, attempts to undertake formal underperformance processes are undermined by more senior managers by, for example, decisions such as moving the underperforming employee to a different area<sup>a</sup>, not acknowledging the extra workload involved in performance management, or by writing inaccurate 'export' references to assist underperforming employees to find another job.</p>
	<p>Managers are generally not rewarded for their people management skills and are not held accountable for their people management responsibilities</p>	<p>Managers are generally promoted on the basis of their technical or job-specific skills. Performance agreements for managers often exclude an assessment of people management skills or if it is included, tasks/outputs are emphasised in practice. Not addressing an underperforming employee is not generally seen as underperformance on the part of the manager. There are no consequences for managers who give inaccurate 'export' references.</p>
<p><b>Support to managers</b></p>	<p>Managing underperformance is usually emotionally stressful, relatively complex and unfamiliar—managers do not feel adequately supported</p>	<p>Managers find the processes for managing underperformance unfamiliar and complex, they find difficult conversations stressful and may find keeping the process confidential from other team members difficult. They may also be reluctant to commence formal underperformance procedures because of the adverse impact on the personal and financial circumstances of the underperforming employee. Managers new to an area can be faced with an employee who has been underperforming for a long time but who has been rated as effective. This adds to the complexity of managing underperformance. Managers have reported receiving different advice and support from human resource staff on the requirements for underperformance management, causing confusion and frustration.</p>

Category	Barrier	Explanation
	Managing underperformance takes time and the manager's workload is usually not reduced to compensate	Staff in the Corporate area of AGD estimated, based on feedback from relevant managers, that undertaking underperformance procedures (stages 2 and 3) takes between half and one day per week.
<b>Manager capability</b>	Effective performance management conversations require a particular skill set and regular practice	Many managers do not feel that they have the skills to conduct difficult performance conversations. They are fearful of reprisal claims of bullying and harassment. A culture of regular, informal performance discussions has not been established in most agencies so many managers are not building-up these skills over the course of their careers.
<b>Other barriers</b>	Performance gaps can be difficult to identify in a specific and objective way for some of the types of work done in the APS (for example, policy development, research)	Guidance and assistance to managers on this issue is limited and reference to the work level standards or capability frameworks is not very helpful given their generalised, high level nature. The Community and Public Sector Union advised this can make managers focus on matters that are more objective like spelling and grammar rather than the intellectual structure and content of work—which makes the process less acceptable to employees.
	Employees using certified sick leave during underperformance processes	Merit Protection Commission staff advised that a lack of clear evidence about the gap in performance was one of the most common problems with the underperformance cases undergoing secondary reviews of actions.
	Mobility of teams and managers	It is not uncommon for employees undergoing underperformance processes to access certified sick leave as either an avoidance technique or because undergoing the procedure itself can exacerbate underlying medical conditions (particularly mental health conditions) or create stress-related conditions. From the manager's and agency's perspective this results in a drawn-out, complex process with difficult judgements to be made about how to best to progress the case.
	Multiple avenues for redress for employee undergoing underperformance processes	Higher levels of employee and manager mobility between teams and tasks can make managing underperformance more difficult. There is less incentive to manage if the underperforming employee is likely to move on in a few months and each new manager needs time to make an assessment of team members' performance.

Note a: Moving an underperforming employee to a different area may be a valid approach if the new position is a better match of skills and experience or there is a personality clash. However, sometimes moving an employee is a way of avoiding a decision to actively manage underperformance.

Source: ANAO analysis.

## 3. Underperformance management procedures

### Areas examined

This chapter examines whether agencies' documented performance, underperformance and probation procedures adequately support managers to manage underperformance.

### Conclusion

Most agencies could streamline their underperformance procedures to remove repetition and prescription while still ensuring procedural fairness, although provisions in three agencies' enterprise agreements restrict flexibility in this regard. In addition, some agency procedures contain requirements that are in excess of those required by legislation or regulation for Senior Executive Service or non-ongoing employees. Not all agencies have transparent procedures for their Senior Executive Service employees, and probation procedures could be improved in all eight agencies.

### Areas for improvement

The ANAO has identified a range of key learnings to improve procedures relating to underperformance (see Key learnings in Boxes 1 to 4 in the Summary and key learnings section of the report).

### Do agencies' performance management procedures contribute to the effective management of underperformance?

Agencies' documented performance management procedures adequately support managers to manage underperformance of non-Senior Executive Level staff. All eight agencies' procedures encourage ongoing, regular feedback outside of formal review points and early identification of, and prompt action to address, potential underperformance. Most agencies could more effectively support managers by providing: clearer and/or more concise guidance on the outcomes and behaviours that distinguish fully effective and unsatisfactory performance (Australian Taxation Office, Department of Agriculture and Water Resources, Department of Veteran's Affairs, IP Australia and National Film and Sound Archive); and links to relevant information (all agencies other than the Australian Taxation Office).

### Employee procedures

3.1 Agencies' performance management procedures were analysed against five criteria that underpin the effective management of underperformance (Table 3.1). These criteria were distilled from better practice guidance disseminated by the APSC and Fair Work Ombudsman.<sup>33</sup>

33 APSC, *Sharpening the focus, Managing Performance in the APS*, 2006 [Internet] APSC, available from <<http://www.apsc.gov.au/publications-and-media/current-publications/managing-performance>>; APSC, University of Canberra and UNSW, *Strengthening the Performance Framework: Towards a High Performing Australian Public Service*, 2013 [Internet] APSC, available from <<http://www.apsc.gov.au/publications-and-media/current-publications/strengthening-performance>>; and Fair Work Ombudsman, *Best Practice Guide 09 Managing Underperformance*, 2013, [Internet] FWO, available from <<https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/managing-underperformance>> [all accessed 13 January 2017].

**Table 3.1: Criteria for assessing agency performance management procedures**

Performance management procedures:
Provide guidance on what outcomes and behaviours distinguish fully effective performance from unsatisfactory performance
Have appropriate links to relevant information, for example underperformance and probation procedures and guidance on managing fitness for duty and misconduct
Encourage ongoing, regular feedback outside of formal review points
Encourage early identification of and action to address potential underperformance
Require that performance ratings of less than effective automatically trigger underperformance processes

Source: ANAO analysis.

3.2 All eight agencies' procedures perform well against criteria relating to encouraging ongoing, regular feedback outside of formal review points, encouraging early identification of and prompt action to address potential underperformance and automatic triggers for underperformance procedures. In all but the ATO, a performance rating of less than effective automatically triggers underperformance processes under performance management procedures. Under the ATO's new Compass performance management system there are only two performance ratings, 'on track' and 'not on track'. Where an employee receives a 'not on track' rating the focus is on providing the employee with tailored support to improve performance, consistent with stage 1 of Figure 1.1. The ATO's underperformance procedures are triggered where an employee does not achieve the required standard within an agreed timeframe.

3.3 Table 3.2 summarises criteria where agencies could more effectively support managers to identify underperformance.

**Table 3.2: Assessment of agency performance management procedures against selected criteria**

Provide guidance on what outcomes and behaviours distinguish fully effective performance from unsatisfactory performance			
Very clear and concise Includes examples of less than effective performance	Concise—would be clearer with a range of examples	Rating descriptions are not clear or concise Includes examples of less than effective performance	
AGD, DIIS, DSS	ATO, DVA, IP, NFSA	DAWR	
Have appropriate links to relevant information, e.g. underperformance procedures, fitness for duty, misconduct and probation			
Links to under-performance procedures	Links to fitness for duty procedures <sup>b</sup>	Links to misconduct procedures	Links to probation procedures
AGD <sup>a</sup> , ATO, DIIS, DSS, DVA	AGD, ATO, DVA	ATO, DSS, DVA	ATO, DIIS

Note a: AGD has a single policy for performance and underperformance management.

Note b: The AGD and DSS procedures and ATO underperformance procedures provide guidance on where health may be a contributing factor in underperformance.

Source: ANAO analysis of information provided by agencies.

## Do agencies' underperformance procedures contribute to the effective management of underperformance?

Agencies' underperformance procedures could better support managers to manage underperforming ongoing non-Senior Executive Level employees. None of the eight agencies' procedures provide clear guidance on the support and assistance available to managers from human resources professionals. Most agencies could streamline their procedures to remove time consuming repetition and prescription while still ensuring procedural fairness. Three agencies are restricted, however, because of provisions in their enterprise agreements. The Department of Industry, Innovation and Science could streamline provisions for non-ongoing employees.

3.4 Agency underperformance management procedures were analysed against 12 criteria that support effective management of underperformance and/or address barriers to managing underperformance (Table 3.3).<sup>34</sup> These criteria were distilled from better practice guidance disseminated by the APSC and Fair Work Ombudsman.<sup>35</sup>

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34 NFSA does not have underperformance procedures and relies on the relevant enterprise agreement provisions.

35 APSC, *Sharpening the focus, Managing Performance in the APS*, 2006 [Internet] APSC, available from <<http://www.apsc.gov.au/publications-and-media/current-publications/managing-performance>>; APSC, University of Canberra and UNSW, *Strengthening the Performance Framework: Towards a High Performing Australian Public Service*, 2013 [Internet] APSC, available from <<http://www.apsc.gov.au/publications-and-media/current-publications/strengthening-performance>>; and Fair Work Ombudsman, *Best Practice Guide 09 Managing Underperformance*, 2013, [Internet] FWO, available from <<https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/managing-underperformance>> [all accessed 13 January 2017].

**Table 3.3: Criteria for assessing agencies' underperformance management procedures**

Underperformance management procedures:
Emphasise the importance of and clearly communicate procedural fairness principles
Provide a single comprehensive source of information on managing underperformance
Provide tools to assist managers
Exempt probationary employees
Provide clear guidance on the support and assistance available to managers
Do not contain inappropriate repetition
Are not restricted by agency enterprise agreement
Agency underperformance management procedures provide guidance and examples that distinguish health and misconduct issues from underperformance
Communicate clear expectations of the duration of key processes
Provide guidance and examples on measuring the gap between the employee's performance and the required standard at the relevant classification level
Emphasise that managers need to have examples of the underperforming employee's work that does not meet the required standard to: <ul style="list-style-type: none"> <li>• provide feedback to the employee; and</li> <li>• document underperformance for record keeping and review processes</li> </ul>
Exempt short-term non-ongoing employees

Source: ANAO analysis.

### Criteria where agencies perform well

3.5 Overall, agencies performed well against the four criteria that are highlighted in blue in Table 3.3. Procedural fairness principles are clearly reflected in key procedural steps although not all agencies' procedures explain what procedural fairness is or provide managers with a summary of the key procedural requirements.

3.6 With two exceptions (DIIS and DVA), agencies had a single comprehensive underperformance management document. In DIIS, managers must consult two documents—the underperformance policy and a guide for managers, while in DVA managers must consult three documents—the performance procedures as these address stage 2, the underperformance procedures that address stage 3, and the Performance Improvement Plan Guide.

3.7 Some agencies' underperformance management procedures provide links to tools to assist managers, including checklists (ATO and DVA) and flow charts for one or more of the stages of underperformance management (DIIS, DSS and DVA). DIIS has also developed tips and tricks and informal strategies for managers. Some agencies (for example IP Australia) have developed such tools but have not linked them to the relevant procedures.

3.8 All agencies' procedures exempted probationary employees from their underperformance procedures.

## Criteria where agencies could improve

3.9 All agencies could improve against one or more of the remaining eight criteria that are highlighted in grey in Table 3.3. One of the key barriers to managing underperformance is the support provided to managers. None of the eight agencies' underperformance procedures provided managers with clear guidance on the support and assistance available from human resources professionals. While most agency human resources areas will provide assistance on request (discussed in Chapter 4), this support and related services are not fully outlined in procedures.

3.10 Figure 1.1 in Chapter 1 conceptualises the three stages of underperformance management (noting that two agencies, DAWR and IP Australia, have streamlined stages 2 and 3 into one process). In five agencies (ATO, DIIS, DSS, DVA and NFSA) there is scope to streamline procedures to remove time consuming repetition, particularly between stages 2 and 3 (Table 3.4). In AGD the relevant procedures state that in particular circumstances (that is, where an employee has been rated as 'does not meet performance targets') the manager should proceed directly to stage 3 as long as stage 1 has been conducted appropriately, which in these cases minimises repetition. However, to the extent that stages 2 and 3 are used sequentially repetition will occur.

**Table 3.4: Agency underperformance management procedures and repetition/red tape**

Employee is offered support in all stages and their performance is assessed in all stages	Employee's performance is assessed in all stages	No repetition
NFSA	AGD <sup>a</sup> , ATO, DIIS <sup>b</sup> , DSS, DVA	DAWR, IP

Note a: Analysis is based on cases that involve both stages 2 and 3.

Note b: DIIS provides general guidance for managers around stage 2 but no specific procedures are prescribed.

Source: ANAO analysis of information provided by agencies.

3.11 The NFSA conducts essentially the same process in stages 1, 2 and 3. At each stage employees receive support and development opportunities and have their performance assessed, raising the question of why a separate third stage is required if stages 1 and 2 have been conducted consistent with procedural fairness requirements. The procedures for five agencies (AGD, ATO, DIIS, DSS and DVA)<sup>36</sup> require that an employee's performance be assessed in stages 1 and 2 (as well as supporting the employee to improve performance) making it unclear why a separate stage 3, which focuses on assessment only, is necessary if the assessment at earlier stages was properly conducted and records kept.

3.12 The scope to streamline underperformance procedures is restricted in some agencies by their enterprise agreement. With one exception (DSS), agencies' underperformance procedures were prescribed, at least in part, by an enterprise agreement (Table 3.5).

36 The remaining two agencies (DAWR and IP Australia) have more streamlined procedures, with a two-stage underperformance process. DIIS provides general guidance for managers around stage 2 but no specific procedures are prescribed.



**Table 3.5: Selected performance and underperformance management provisions from agencies' enterprise agreements**

Prescribes performance ratings	Prescribes performance ratings that trigger under-performance procedures	Prescribes the number of stages	Prescribes timeframes for one or more stages	Prescribes review points in stage 3
DAWR, DVA, IP, NFSA	AGD, DIIS, DVA, IP, NFSA	ATO, DAWR, NFSA	AGD, ATO, DAWR, DIIS, DVA, NFSA	ATO, DAWR, NFSA

Note. Agencies' enterprise agreements may also prescribe a range of other matters such as the employees covered by the procedures, procedural fairness requirements, and possible actions where performance does not achieve the required standard.

Source: ANAO analysis of information provided by agencies.

3.13 The level of prescription in agencies' enterprise agreements varies significantly. Three agencies (ATO, DAWR and NFSA) have enterprise agreements that contain prescriptive processes and procedural requirements that restrict all stages of underperformance. Agencies are already constrained by a range of legislation and regulation (Chapter 1) and including additional requirements in their industrial agreements and/or procedures would unnecessarily increase complexity.<sup>37</sup> In some agencies the prescription in enterprise agreements is not overly restrictive in practice as they prescribe only the performance ratings including the rating that triggers the underperformance procedures (DVA and IP Australia) or a duration for stage 3 that is appropriate (AGD, DIIS and DVA).

3.14 Table 3.6 sets out the duration of each of the three stages in agencies' underperformance procedures. It is important that agencies communicate clear expectations of the duration of each stage to shape managers' and employees' expectations and to help ensure that underperformance is addressed in a timely way. In setting these durations, agencies must provide employees with enough time to have a reasonable opportunity to address their performance gaps consistent with procedural fairness requirements. What is a reasonable duration will vary with the type and complexity of work and thus will vary among agencies. It may be appropriate for agencies to set minimum and maximum durations (as AGD and DIIS do in stages 2 and 3) to allow for variations in the type and complexity of work and in the personal circumstances of employees.

3.15 None of the eight agencies' procedures specify timeframes for the duration of all three stages of underperformance management (Table 3.6). Six agencies' enterprise agreements (Table 3.5) prescribe the duration of one or more of the three stages for managing underperformance (AGD, ATO, DAWR, DIIS, DVA and NFSA). While IP Australia sets a timeframe for stage 1 only, the relevant procedures require that timeframes are set for individual cases. The longest possible duration of eight months or more for stages 2 and 3 are in AGD (but only where stages 2 and 3 are used sequentially) and NFSA. These durations appear to be in excess of what is necessary to provide an employee with a reasonable opportunity to achieve the required standard particularly when combined with the duration of management in stage 1.

37 ATO and NFSA have advised that in the current bargaining round their draft enterprise agreements contain streamlined procedures for managing underperformance.

**Table 3.6: Agency underperformance management policies, procedures and guidance communicate clear expectations of the duration of key processes**

Stage	AGD <sup>a</sup>	ATO	DAWR	DIIS	DSS	DVA	IP	NFSA
Stage 1	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified	Specifies minimum of 4 weeks and maximum of 6 months	Not specified
Stage 2	Specifies duration—within 3 months but no more than 6 months	Not specified	Specifies 2 months duration <sup>b</sup>	Specifies minimum of 6 weeks and maximum of 10 weeks	Specifies minimum of 4 weeks unless otherwise determined	Specifies 2 months duration	Not specified	Specifies 6 months (for 'Requires development rating' only)
Stage 3	Specifies minimum of 6 weeks and maximum of 13 weeks	Specifies maximum of 8 weeks unless otherwise determined	Not applicable	Specifies minimum & maximum—not less than 1 month & not greater than 2 months	Specifies 4 weeks duration unless otherwise determined	Specifies 2 months duration	Not applicable	Specifies 8 weeks duration for an employee who has completed a stage 2 review period; and 12 weeks for an employee rated 'Does not meet expectations'. <sup>c</sup>

Note a: In AGD there is scope to proceed directly to stage 3 in certain circumstances.

Note b: DAWR has a two stage process and its procedures only specify the duration of the second (final) stage.

Note c: The NSFA Enterprise Agreement 2012–2014 prescribes two ratings below meeting expectations: 'Requires development' and 'Does not meet expectations'. Where an employee is rated 'Requires development', the employee is provided with support over a six month period with the aim of achieving the 'Meets expectations' rating. Where the employee does not achieve this rating, the employee is subject to the stage 3 procedures. Where an employee is rated 'Does not meet expectations', the employee is immediately subject to the stage 3 procedures.

Source: ANAO analysis of information provided by agencies.

3.16 The shortest timeframe of two months is in DSS (stages 2 and 3 combined) and in DAWR, which only has one formal stage of underperformance management. These shorter timeframes may be appropriate to give employees a reasonable opportunity to achieve the required standard depending on the type and complexity of work and if the quality of the management and support in stage 1 is adequate.

3.17 There is also scope for most agencies to provide better guidance and examples on measuring the gap between the employee's performance and the required standard at the relevant classification level (Table 3.7).

**Table 3.7: Agency underperformance management procedures provide guidance and examples on measuring the performance gap**

Provides contextualised guidance	Provides limited guidance	Does not provide adequate guidance
AGD, DAWR, IP	DIIS, DSS, DVA	ATO, NFSA

Source: ANAO analysis of information provided by agencies and data provided by the APSC.

3.18 Three agencies provide guidance contextualised to the work of the agency to assist managers measure the gap between an employee's performance and the required standard at the relevant classification level. AGD has developed detailed performance expectations by classification level and its underperformance policy contains links to this guidance. DAWR has also developed detailed work level standards for all job types by classification but does not provide links to this guidance in the relevant underperformance policy. IP Australia is relatively unique among the eight agencies included in the audit, in that a large proportion of its workforce produces outputs that are subject to quality and quantity minimum performance requirements as outlined in individual performance agreements. Thus performance gaps in IP Australia are relatively easier to specify. Three agencies' procedures (DIIS, DSS and DVA) provide limited assistance by using the APSC's generic work level standards but do not provide practical examples that contextualise the work requirements for the agency. The remaining two agencies (ATO and NFSA) do not contain guidance or links to guidance on measuring the performance gap. Where agencies provide additional guidance on their intranet sites, underperformance procedures should contain links to such guidance.

3.19 Only three agencies' procedures (ATO, DIIS and DSS) emphasised that managers need to have examples of work that does not meet the required standard both to provide feedback to the employee and to document underperformance for record keeping and review purposes.

3.20 To better inform managers about underperformance processes, there is also scope for four agencies to provide guidance and examples that distinguish health and misconduct issues from underperformance (AGD, DAWR, IP Australia and NFSA).

3.21 The treatment of underperforming non-ongoing employees can be complex. Advice from the APSC indicates that non-ongoing APS employees engaged for a specified term or task who have their employment terminated by the agency prior to the expiry of the term or prior to the completion of the tasks will generally have rights to lodge an unfair dismissal claim if they have been employed on a regular and systematic basis for longer than six months.

3.22 The APSC also advises that agencies should ensure that, where non-ongoing employees are likely to have a period of employment that will exceed six months, performance and

underperformance management arrangements are in place for these employees. The APSC further advises that agencies can either include these longer-term non-going employees in their general underperformance procedures or include arrangements in non-ongoing employees' employment contracts that would apply if the engagement were to be terminated early.

3.23 Applying agency underperformance procedures to short-term non-ongoing employees is likely to be in excess of legislative requirements as these employees do not generally have access to unfair dismissal provisions. Only the NFSA excludes short-term non-ongoing employees from its underperformance procedures but do so where the engagement is less than three months rather than six months, while DIIS includes all non-ongoing employees in its underperformance procedures. The remaining six agencies exclude all non-ongoing employees from their underperformance procedures.

### **Do agencies' documented performance and underperformance procedures for Senior Executive Service employees contribute to the effective management of underperformance?**

All agencies have documented performance and underperformance management procedures that cover Senior Executive Service (SES) employees except the National Film and Sound Archive (which only has two SES positions). The SES procedures of the Department of Agriculture and Water Resources, Department of Industry, Innovation and Science and IP Australia are not transparent. The Department of Veterans' Affairs has scope to streamline its procedures for managing underperformance of SES employees as these employees do not have access to unfair dismissal provisions.

3.24 It is important that the performance arrangements for SES employees, including underperformance management, are transparent and clearly documented as the: SES has a key role in modelling and supporting agency performance management arrangements; and performance of SES employees has a disproportionate impact on the performance of an agency, given this group's managerial and leadership responsibilities.

3.25 Agency performance and underperformance procedures for SES employees were analysed against criteria developed by the ANAO having regard to the better practice guidance disseminated by the APSC<sup>38</sup> and agency practices for non-SES employees. IP Australia's SES employees are covered by the DIIS SES performance management arrangements, including for underperformance management.

3.26 Agency performance management procedures for SES employees were analysed against the three criteria in Table 3.8.

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38 APSC, *Sharpening the focus, Managing Performance in the APS*, 2006 [Internet] APSC, available from <<http://www.apsc.gov.au/publications-and-media/current-publications/managing-performance>>; and APSC, University of Canberra and UNSW, *Strengthening the Performance Framework: Towards a High Performing Australian Public Service*, 2013 [Internet] APSC, available from <<http://www.apsc.gov.au/publications-and-media/current-publications/strengthening-performance>> [both accessed 13 January 2017].

**Table 3.8: Criteria used to assess agency performance management procedures for Senior Executive Service employees**

SES performance management procedures:
Are clearly documented
Are similar to the performance management procedures for non-SES employees
Are readily accessible on the agency's intranet site

Source: ANAO analysis.

3.27 All agencies except DVA and NFSA have SES performance management procedures that are similar or the same in nature to the performance framework for non-SES employees. All of these six agencies except DAWR make their SES performance management procedures transparent, that is, they are available to all employees on the intranet. NSFA does not have procedures but only has two SES employees. DVA does also not have separate SES performance management procedures but does have individual contracts for SES employees that specify the requirement to maintain a performance agreement.

3.28 Agency underperformance management procedures for SES employees were analysed against the three criteria in Table 3.9.

**Table 3.9: Criteria used to assess agency underperformance management procedures for Senior Executive Service employees**

SES underperformance management procedures:
Are documented
Are streamlined
Are readily accessible on the agency's intranet site

3.29 All agencies have documented underperformance procedures for their SES employees except NFSA (that only has two SES positions). DIIS (and IP Australia) do not have separate underperformance procedures for SES employees but have an underperformance clause included in the common law contract covering SES.

3.30 Of the agencies that have documented underperformance procedures for their SES employees, six have streamlined provisions compared to those for non-SES staff that recognise SES employees do not have access to unfair dismissal provisions although key procedural fairness requirements still apply.<sup>39</sup> DVA however applies the same underperformance procedures for their SES employees and therefore there is scope to develop more streamlined provisions for managing underperformance of SES employees.

3.31 Table 3.10 summarises whether agencies' SES underperformance management procedures are accessible to all employees.

39 Australian Government Solicitor, *Dealing effectively with unsatisfactory performance in the Australian Public Service*, No.106, [Internet], 2015, AGS, available from <<http://ags.gov.au/publications/legal-briefing/br106.html>> [accessed 13 January 2017].

**Table 3.10: Senior Executive Service underperformance management arrangements are accessible to all employees**

SES underperformance management documentation is readily accessible on the agency's intranet site		
Yes	No	No procedures
AGD, ATO, DSS, DVA	DAWR, DIIS, IP <sup>a</sup>	NFSA

Note a. The performance of IP Australia's SES employees are managed under DIIS procedures.

Source: ANAO analysis of information provided by agencies.

## Do agencies' documented probation procedures contribute to the effective management of underperformance?

There is scope for all eight agencies to improve their probation procedures. Two agencies (Attorney-General's Department and Department of Agriculture and Water Resources) only provided limited guidance to managers via the pro forma report that managers complete for probationary employees, and the Department of Social Services only has procedures for its entry level programs. Only the Department of Veterans' Affairs clearly informs managers that probationary employees do not have access to unfair dismissal provisions.

3.32 Table 3.11 assesses agencies' probation procedures against four criteria distilled from good practice based on APSC and Fair Work Ombudsman guidance.<sup>40</sup>

**Table 3.11: Criteria for assessing agencies' probation procedures**

Probation procedures:
Provide clear guidance that probation is to confirm an employee's suitability to the agency and the job, for the employer and the employee
Require that any performance issues must be satisfactorily addressed within the probation period or the employment is terminated
Clearly communicate that probationary employees cannot claim unfair dismissal
Clearly communicate a streamlined underperformance process, consistent with procedural fairness requirements

Source: ANAO analysis.

3.33 There is significant scope for all eight agencies to improve their probation procedures. While five of the eight agencies had separate probation procedures (ATO, DIIS, DSS, DVA and IP Australia), one (DSS) only had procedures for its entry level programs. Another agency (NFSA) relied on the relevant enterprise agreement provisions, and two (AGD and DAWR) provided limited guidance to managers with the pro forma report that managers complete for probationary employees.<sup>41</sup>

40 APSC, *Probation*, [Internet], APSC, available from <<http://www.apsc.gov.au/working-in-the-aps/conditions-of-engagement/probation>>; and Fair Work Ombudsman, *Probation*, [Internet], FWO, available from <<https://www.fairwork.gov.au/employee-entitlements/types-of-employees/probation>> [both accessed 13 January 2017].

41 In February 2017, DAWR advised the ANAO that its probation procedures were under review.

3.34 Most agencies' procedures (AGD, ATO, DAWR, DIIS, DVA and IP Australia) provided clear guidance on the purpose of probation and, while all probation processes incorporated procedural fairness principles, agency procedures may benefit from more explicit advice on the importance of these principles. Only DVA's procedures clearly communicate that probationary employees do not have access to unfair dismissal provisions. Most agencies' procedures, but not those of DAWR, DSS and DVA, provided clear guidance that any underperformance issues must be satisfactorily addressed within the probation period or the employment should be terminated. The ATO policy notes that terminating probationary employees is less complex, without providing further details.

### Key learnings

3.35 Based on the audit findings, the ANAO has identified a range of key learnings relating to agencies' documented performance, underperformance and probation procedures that can apply to the eight and other APS agencies. The key learnings are organised around the four categories of barriers identified in Chapter 2 and are presented in Boxes 1 to 4 of the Summary and Key Learnings section of the report.

## 4. Underperformance management practices

### Areas examined

This chapter examines agency practices for managing underperformance associated with the three stages of underperformance management outlined in Chapter 1. These include the management of underperformance within performance management practices (stage 1), the practices that agencies use to encourage managers to address underperformance through performance management processes and more structured processes; and the practices for holding managers accountable for their performance management responsibilities.

### Conclusion

Agency practices have contributed to the less than effective management of underperformance. In respect of performance management practices, there is scope for all agencies to improve managers' commitment to dealing with underperformance, clear communication of performance expectations and provision of feedback to employees. To strengthen practices to manage underperformance, there is scope for most agencies to improve the support to and capability of managers, including through the provision of training in managing performance (including underperformance) and the early involvement of appropriately skilled human resources professionals in underperformance cases. There is considerable room for improvement in all agencies' practices to hold managers accountable for their responsibilities to manage underperformance.

### Areas for improvement

The ANAO has identified a number of key learnings to improve practices relating to the management of underperformance (see Key learnings in Boxes 5 to 8 in the Summary and key learnings section of the report).

### Do agencies' performance management practices effectively underpin the management of underperformance?

The effectiveness of the management of underperformance through performance management processes varies with the importance placed on it by senior managers and the capability of individual managers. However, the relatively low level of employees who agree that underperformance is managed effectively in their agency, the low level of employees rated as 'less than effective' in most agencies and the barriers to managing underperformance, as discussed previously, indicate that performance management practices do not effectively underpin the management of underperformance. In particular, there is scope for all agencies to improve: the extent to which managers openly demonstrate commitment to performance management; how managers provide employees with clear and consistent performance expectations; and the quality and quantity of feedback being received by employees. Recent evaluations of, and changes to, agency performance management systems are likely to have contributed to improvements in employee perceptions of seven of the eight agencies over the four year period 2012–13 to 2015–16.

4.1 As discussed in Chapter 1, under stage 1 of managing underperformance a manager identifies that an employee's performance is below expectations and manages this within the



performance management framework. The effectiveness of this management of underperformance varies with the importance placed on it within the agency's management culture and the capability of individual managers. Ideally, however, the large majority of instances where employees are performing below expectations would be effectively dealt with at this stage via the practices of clear explanations of performance expectations and the performance gap, regular and constructive feedback, access to appropriate formal and on-the-job training and any other reasonable support required by the employee. It may also be appropriate to consider alternative approaches in this stage such as redeployment within the agency in the cases of a mismatch of skills or personality clashes, rather than waiting until the structured stages of underperformance management which are usually more resource intensive and more emotionally charged.

4.2 The range of evidence presented in Chapter 2, including employee perceptions on the effectiveness of underperformance management and the barriers to managing underperforming employees, indicates that managers are not achieving the goal of dealing effectively with many of the instances where employees perform below expectations. This reflects, in part, on the effectiveness of the general performance management framework. Key practices in relation to general performance management that are examined in this section are the:

- commitment of managers to performance management;
- clarity and consistency of performance expectations;
- provision of feedback; and
- periodic review/evaluation of agencies' performance management frameworks to improve procedures and practices.

The first three of these practices are among the more important factors influencing employees' perceptions of whether their agency deals with underperformance effectively, as shown in Table 4.1. The table sets out the correlation between a range of the variables discussed in this chapter and employee perceptions on whether their agency deals with underperformance effectively, using a Pearson's correlation coefficient.<sup>42</sup>

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42 The Pearson's correlation coefficient is a statistical measure of the strength of the linear relationship between two variables. It answers the question 'as one variable increases what happens to the other variable?'. The coefficient's value lies between -1 and 1. A value of zero denotes no correlation and the closer the value is to 1 or -1 the stronger is the positive or negative correlation respectively. The existence of a strong correlation does not imply a causal link between the variables—just that they are related. A correlation coefficient of more than 0.7 percent indicates a strong relationship. Available from <<http://www.statstutor.ac.uk/resources/uploaded/pearsons.pdf>> [accessed 19 November 2016].

**Table 4.1: Correlation with the percentage of employees that agree their agency deals with underperformance effectively**

Variable	Pearson's correlation coefficient
The percentage of employees agreeing that their supervisor appears to manage underperformance well in their workgroup	0.92
The percentage of employees agreeing that their supervisor openly demonstrates commitment to performance management	0.86
The percentage of employees agreeing that their supervisor provides them with clear and consistent performance expectations	0.84
The percentage of employees agreeing that their agency' performance management procedures provide them with clear guidelines for measuring performance	0.83
The percentage of employees agreeing that they know where they can find suitable support and guidance regarding performance management when required	0.73
Hours of training per employee <sup>a</sup>	0.73
The percentage of employees agreeing that their supervisor provides them with regular and constructive feedback <sup>b</sup>	0.72
The percentage of employees agreeing that their most recent formal performance feedback will help to improve their performance <sup>b</sup>	0.54

Note: Unless otherwise indicated, analysis used data for the years 2013–14 to 2015–16.

Note a: Analysis uses data for the years 2014–15 to 2015–16.

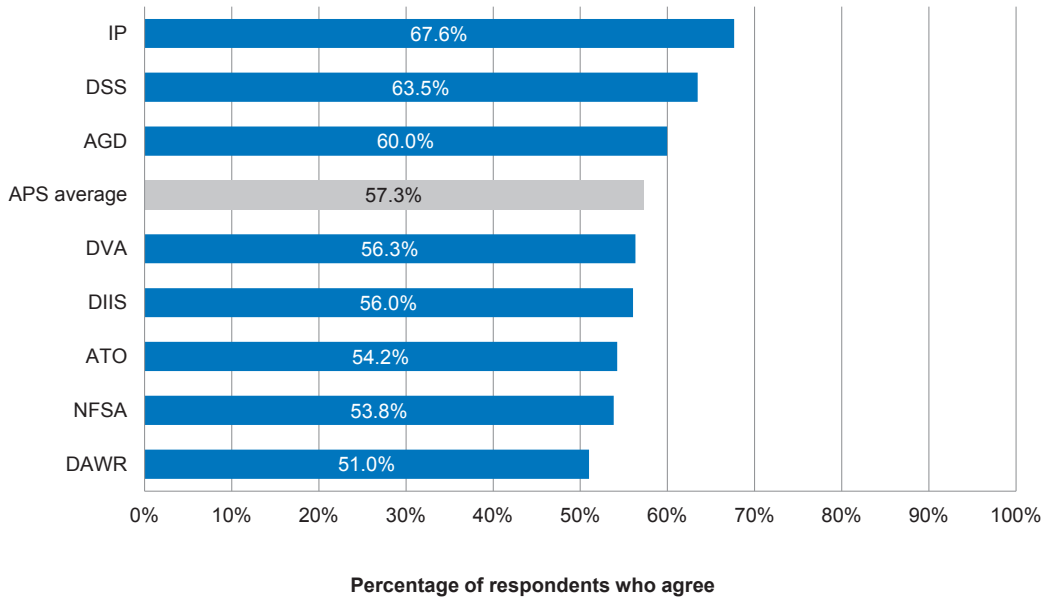
Note b: Analysis uses data for the years 2012–13 to 2015–16.

Source: ANAO analysis of data provided by agencies and the APSC.

### Managers' commitment to performance management

4.3 A manager's commitment to performance management is one of the factors that is most strongly positively correlated with employees' views on how effectively underperformance is managed (Table 4.1). Figure 4.1 indicates that in all agencies over half of employees report that their supervisor openly demonstrates commitment to performance management. However, there is still room for improvement in most agencies to take measures aimed at improving commitment including by investing more in relevant training, particularly to the SES classification group, and by having mechanisms that make managers more accountable for their performance management responsibilities (as discussed later in this chapter).

**Figure 4.1: 'My supervisor openly demonstrates commitment to performance management', 2016**

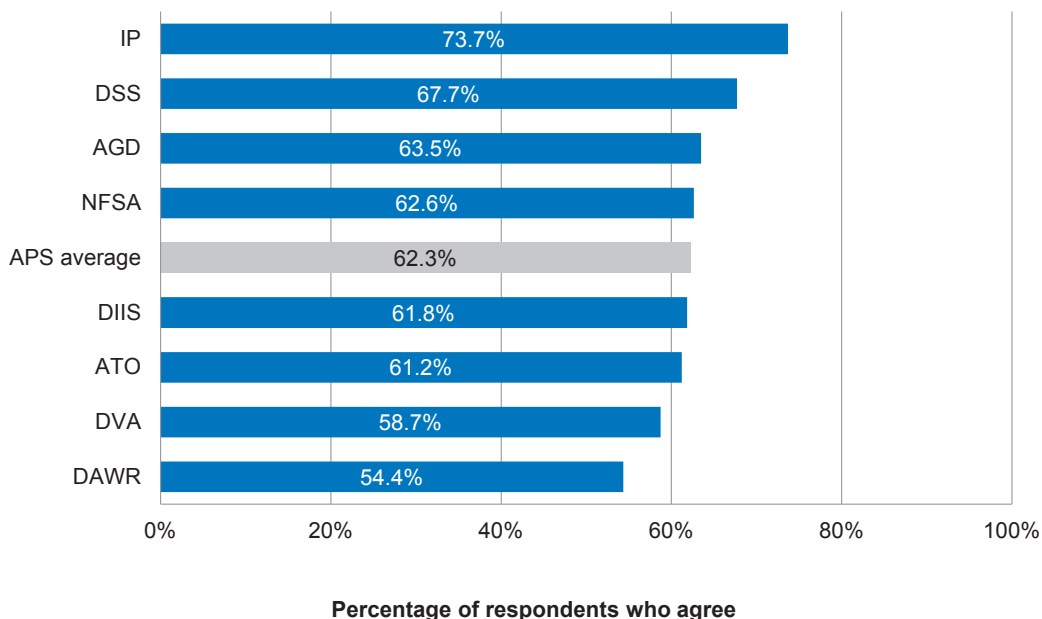


Source: ANAO analysis of data provided by the APSC.

### Clear and consistent performance expectations

4.4 Figure 4.2 presents data on employee views on whether their supervisor provides them with clear and consistent performance expectations. IP Australia and DSS achieve results significantly above the APS average with over two thirds of employees in these agencies agreeing that their supervisor provides them with clear and consistent performance expectations. Measures to improve the communications of performance expectations to employees are likely to also improve employees' views on the effectiveness of underperformance management as the correlation in Table 4.1 indicates a very strong positive relationship between the two.

**Figure 4.2: 'My supervisor provides me with clear and consistent performance expectations', 2016**



Source: ANAO analysis of data provided by the APSC.

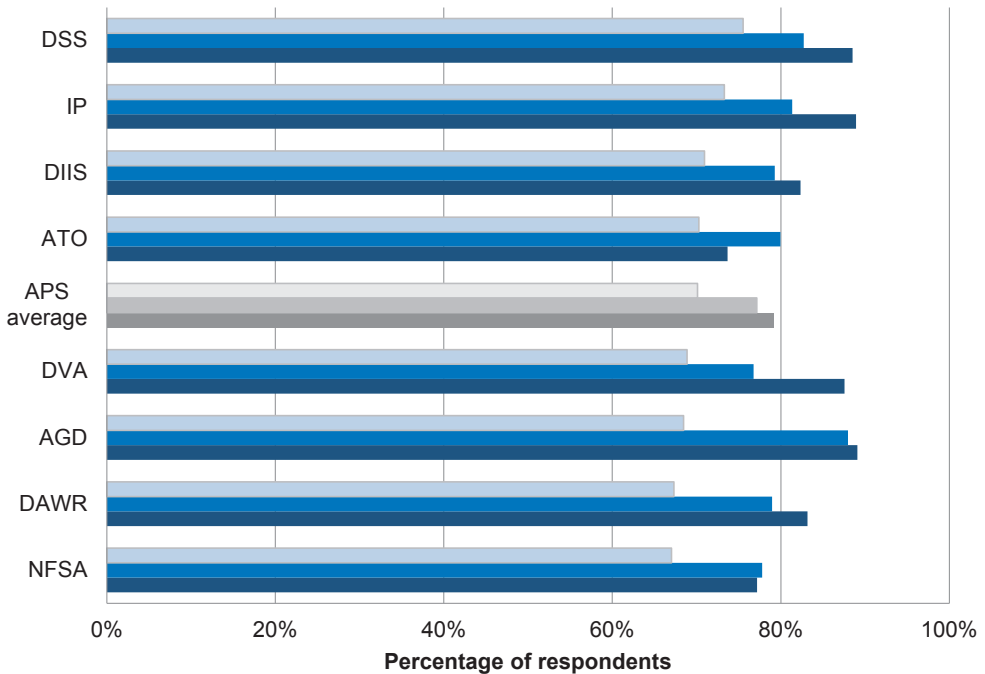
## Feedback

4.5 Another practice that is fundamental to managing underperformance is how employees receive feedback on their performance. The APSC employee census asks employees questions about receiving feedback and the usefulness of that feedback to improving their performance. Figure 4.3 shows that over three quarters of employees in all eight agencies received some form of feedback in 2016.<sup>43</sup> In all agencies except the ATO<sup>44</sup> and NFSA over 80 per cent of employees reported that they received formal performance feedback, however, only three agencies (IP Australia, DSS and AGD) achieved this percentage for both formal and informal feedback. In all agencies the practice of supervisors providing regular and constructive feedback was lower than formal and informal feedback, varying from a high of 75.5 per cent in DSS to a low of 67.0 per cent in NFSA.

43 The eight agencies do relatively well in the percentage of employees who report receiving feedback. Comparative data for the Western Australia, Victoria, Queensland and NSW public sectors is 62%, 71%, 59% and 55% respectively. Data contained in WA Public Service Commission, *State of the Sectors 2015: Creating opportunities* [Internet], p. 44, WA PSC, available from [https://publicsector.wa.gov.au/sites/default/files/documents/state\\_of\\_the\\_wa\\_public\\_sector\\_2015\\_creating\\_opportunities\\_full\\_report.pdf](https://publicsector.wa.gov.au/sites/default/files/documents/state_of_the_wa_public_sector_2015_creating_opportunities_full_report.pdf) [accessed 13 January 2017].

44 The ATO advised that the 2016 data was affected by the transitional period moving to the new Compass performance system and as a result of the focus on encouraging regular feedback there is likely to have been some confusion among employees about what constitutes 'formal' feedback in the new system.

**Figure 4.3: Employees receiving feedback, 2016**

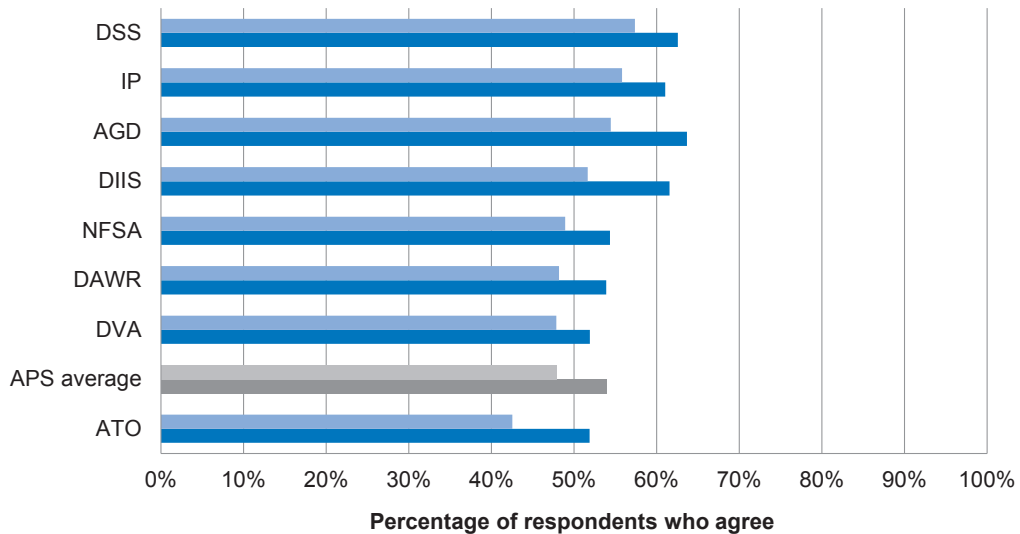


- My supervisor provides me with regular and constructive feedback (per cent who agree or strongly agree)
- In the last 12 months, have you received informal performance feedback in your current agency? (per cent who answered 'yes' or 'yes regularly')
- In the last 12 months, have you received formal individual performance feedback in your current agency? (per cent who answered 'yes')

Source: ANAO analysis of data provided by the APSC.

4.6 Figure 4.4 presents data on employees’ views on the usefulness of the formal and informal feedback in helping to improve performance. In all eight agencies informal feedback was considered more useful compared to formal feedback. Four agencies (DSS, IP Australia, AGD and DIIS) had over 60 per cent of their employees indicate that the most recent informal feedback would help them to improve their performance.

**Figure 4.4: Impact of performance feedback on performance, 2016**



- To what extent do you agree that your most recent formal performance feedback will help you improve your performance?
- To what extent do you agree that your most recent informal performance feedback will help you improve your performance?

Source: ANAO analysis of data provided by the APSC.

4.7 Table 4.2 presents data on the proportion of employees who did not receive any performance rating at the end of the latest performance cycle. Receiving a rating is a significant component of feedback within the formal performance cycle. While there are several valid reasons why staff do not receive formal feedback and ratings, such as being on long term leave, or having been in a job for only a short period, the differences between agencies and classification groups is notable. The NFSA has particularly high proportions of staff with no rating while SES employees in all agencies except the ATO, DVA and NFSA also have higher proportions with no rating.

**Table 4.2: Employees not receiving any rating at end of performance cycle, 2016<sup>a</sup>**

Agency	APS 1–6 %	EL 1–2 %	SES %
AGD <sup>b</sup>	NA	NA	NA
ATO <sup>c</sup>	27.0	15.0	0.0
DAWR	15.0	19.7	53.2
DIIS	17.9		30.1
DSS	19.0	2.0	11.7
DVA	18.9	15.7	5.9
IP	8.9	10.2	18.2
NFSA	68.1	41.2	0.0

Note a: Calculated as employees not receiving a rating as a percentage of total employees covered by performance management system. ATO data was not available for 2016—see note c.

Note b: AGD was unable to provide numbers of total employees covered by its performance management system at the end of the performance cycle due to structural changes.

Note c: The data for ATO is for 2013–14 as the ATO advised that 2014–15 was significantly affected by the transitional period moving to the new Compass performance system and as a result some performance ratings were not recorded in the system due to its imminent decommissioning.

Source: ANAO analysis of data provided by agencies.

4.8 The data in Figures 4.3 and 4.4, and Table 4.2 indicate that there is scope to improve the quality and quantity of feedback practices in all agencies.

### **Evaluations/review of performance management frameworks**

4.9 The periodic evaluation/review of agencies' performance management frameworks provides the opportunity and evidence to improve procedures and practices. Most agencies (except DSS) have been restricted to a greater or lesser degree in the changes that have been able to be made by provisions in their enterprise agreements (as outlined in Chapter 3) or by the priority needed to be given to harmonising performance frameworks following significant machinery of government changes (particularly AGD, DIIS and DSS).<sup>45</sup>

4.10 All agencies except NFSA have undertaken a form of review or evaluation of their performance management frameworks over the past four years. Table 4.3 below outlines these reviews as well as the broad changes made to performance and underperformance management systems.

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45 Several agencies involved in the audit have undergone significant machinery of government changes over the four year period 2012–13 to 2015–16: DIIS 18 changes; DSS 15 changes; and AGD six changes with the largest being the inclusion of former Australian Government Solicitor staff in July 2015. Performance management frameworks for AGD and the Australian Government Solicitor remained separate until February 2017 when a single enterprise agreement came into effect.

**Table 4.3: Evaluations of and changes to agency performance management frameworks**

Reviews/audits conducted by agencies			Changes by agencies	
Agency	APSC capability review	Number of internal/external reviews/audits	Changes made to performance management framework	Changes made to underperformance procedures
AGD	Yes (2014)	1 (2014)	Yes—introduced ‘Program for Performance Improvement’ for 2013–14 cycle New performance expectations introduced for 2014–15 cycle	Yes—incremental changes still in progress
ATO	Yes (2013)	2 <sup>a</sup> (2013, 2015)	Yes—new ‘Compass’ system introduced 1 July 2016 Compass uses two ratings, ‘on-track’ and ‘not-on-track’	No—separate review currently in progress
DAWR	Yes (2013)	1 (2015)	Yes—integration of two separate systems for 2014–15 cycle	Yes—incremental change
DIIS	Yes (2013)	1 (currently in progress)	Yes—incremental changes	Yes—incremental changes
DSS	Yes (FAHCSIA) (2013)	1 (2013)	Yes—harmonisation of various systems due to numerous machinery of government changes	Yes—further review currently in progress
DVA	Yes (2013)	2 (2014, 2015)	Yes—incremental changes	Yes—incremental changes
IP	Yes (2014)	1 (2015)	Yes—‘ACHIEVE’ program introduced for 2016–17 cycle	Yes—stages 2 and 3 combined and streamlined for 2016–17 cycle
NFSA	No	None	No	No

Note a: ATO sought external consultant advice to assess its performance management framework and used the APSC diagnostic implementation tool.<sup>46</sup>

Source: APSC publications<sup>47</sup> and ANAO analysis of information provided by agencies.

4.11 Figure 2.3 in Chapter 2 showed that all agencies, except NFSA, had increased the proportion of employees who agreed that their agency managed underperformance effectively over the four year period 2012–13 to 2015–16. These improvements in employee perceptions are

46 D Blackman, F Buick, M O'Donnell, J O'Flynn and D West, *Strengthening the Performance Framework: Diagnostic Implementation tool*, [Internet], APSC, Canberra, 2014, available from <<http://www.apsc.gov.au/publications-and-media/current-publications/diagnostic-implementation-tool>> [accessed 13 January 2017].

47 APSC capability review reports available from <<http://www.apsc.gov.au/priorities/capability-reviews>> [accessed 31 January 2017].



likely to be linked to the changes made to performance management frameworks as a result of the review activities listed Table 4.3.

## Do agencies effectively support managers to address underperformance?

Agencies' practices that support managers to manage underperformance are a key component of addressing barriers to the effective management of underperformance, particularly those relating to manager capability and commitment. While all agencies offer some support to managers through training and with assistance through the structured processes for managing underperformance, some agencies (particularly IP Australia) offer more active support and higher levels of training than others. Generally, those agencies that offer higher levels of support and training have more positive employee perceptions about the management of underperformance. The early involvement of appropriately skilled human resource professionals in underperformance processes delivers a range of benefits including acting as a quality assurance mechanism, ensuring managers and employees are adequately supported, and keeping processes within timeframes.

### Support for managers

4.12 The manager's role in effectively dealing with an underperforming employee is central as illustrated in Figure 1.1 in Chapter 1. People management, including managing underperforming employees, is a key skill and responsibility of managers. However, a culture of regular, informal performance discussions has not been established in most agencies so many managers are not building-up these skills over the course of their careers. Many managers report having difficulties with performance conversations with underperforming staff.<sup>48</sup> The infrequency of underperformance action increases the need for support, with managers finding underperformance procedures unfamiliar, time consuming and relatively complex. Most of the managers who had managed an employee through underperformance processes who participated in a focus group for the APSC's and University of NSW's 2013 research on performance management reported that the experience had been so difficult they would avoid managing an employee through such processes again.<sup>49</sup>

4.13 Research has highlighted the 'critical role of HR professionals in supporting managers in creating and maintaining a high-performance environment (coaching, training, mentoring) and supporting line managers, particularly in lifting the performance of those whose performance is unsatisfactory'.<sup>50</sup> However, agencies differ on where human resources staff are required to be involved in their underperformance process. All agencies require human resources staff involvement at stage 3 while AGD, ATO, DAWR, DSS and IP Australia require involvement from stage 2 (noting that DAWR and IP Australia have combined stages 2 and 3).

48 Professor Blackman of the University of NSW undertook 25 focus groups and 90 interviews of APS employees and managers for the project work undertaken in collaboration with the APSC. An overview of the results were published in D West and D Blackman, 'Performance Management in the Public Sector', *Australian Journal of Public Administration*, vol.74, no.1, 2015, pp. 73–81.

49 *ibid.*

50 *ibid.*, p. 75.

4.14 One advantage of earlier human resources involvement is that these staff, who are generally more experienced with the underperformance procedures, can assist managers to correctly diagnose key issues, including distinguishing underperformance issues from conduct or medical issues. Human resources staff can also assist managers to adhere to timeframes in underperformance processes. For example, human resource staff can ensure that while any claims of bullying and harassment made by underperforming employees against managers are appropriately examined, they can also support both the employee and manager to progress the performance management process according to schedule. They can also proactively manage personal/sick leave claims made by the underperforming employee to minimise delays and make any reasonable adjustments required in the workplace as quickly as possible.

4.15 Human resources staff can also form a view on the particulars of each case and where the manager's personality or capabilities appears to be a contributing issue may be able to suggest an alternative approach such as moving the employee to a different team, offering training or coaching to the manager, or using an independent assessor to assess the employee's performance. Once human resources staff are involved they can also provide a quality assurance role to help ensure processes, communications and record keeping are consistent with the agency's written procedures, particularly procedural fairness requirements, and that employees are receiving sufficient support. Several human resources staff indicated that it was not unusual for underperformance cases, if they had been managed by the manager without human resource involvement, to require considerable repetition of processes to make sure procedural fairness had been followed, up to the point when the case came to the attention of the human resource team. This can add to process timeframes and to the strain faced by both the manager and employee. The Community and Public Sector Union, however, indicated that in some cases where their delegates have been involved, human resources staff lacked the skills and knowledge to adequately support managers or employees. There was also some evidence of managers, particularly in larger agencies, receiving inconsistent advice from human resources staff, adding to the complexity and effort of underperformance processes.<sup>51</sup>

4.16 The corporate areas of all agencies reported that they offer managers a range of support in dealing with underperformance once they have visibility of the process. In addition to the written procedures and guidance available on intranets, all agencies' human resources teams will assist with coaching managers, providing advice, and commenting on performance improvement plans. Other practices are set out in Table 4.4.

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51 D West and D Blackman, 'Performance Management in the Public Sector', *Australian Journal of Public Administration*, vol.74, no.1, 2015, pp. 73–81.

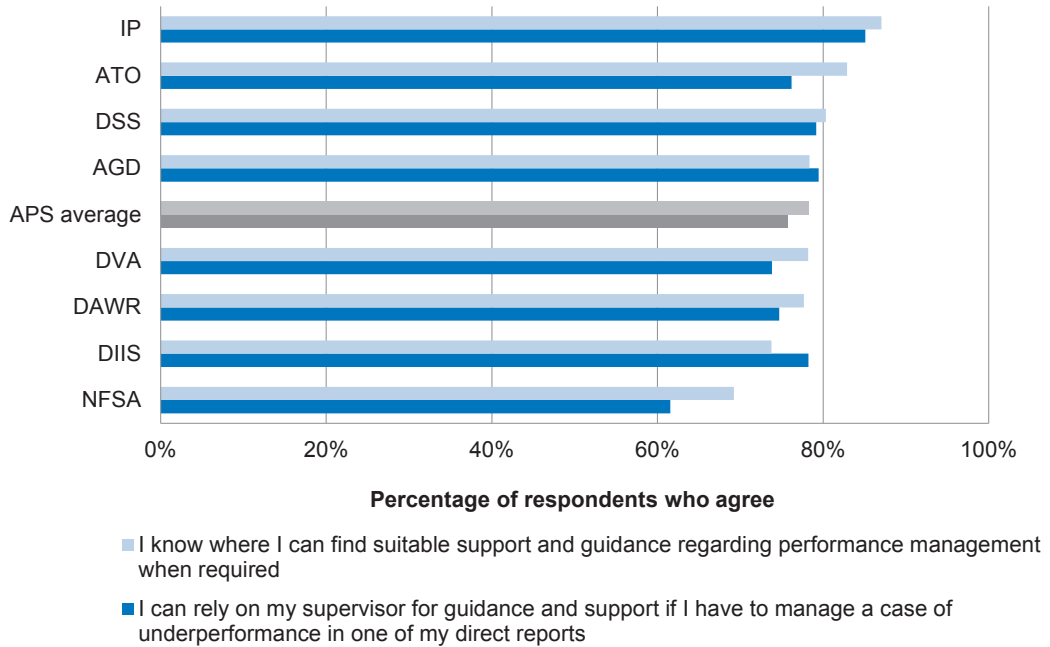
**Table 4.4: Support to managers of underperformance processes**

Agency	Proactive dissemination of information	Attendance at formal review meetings	Consultation of manager's manager to ensure adequate support
AGD	No	Yes—provides advice, records meeting	Yes
ATO	Yes—HR teams initiate check-ins with new managers regarding the performance of new employees	Yes—provides advice, records meeting	Yes—on a case-by-case basis
DAWR	No	On request	Usually
DIIS	Yes—conducts 'myth busting' by adding extra performance management information to training courses and management guides	Yes—provides advice, records meetings	Yes—on a case-by-case basis
DSS	Yes—conducts performance management-related presentations at branch meetings	Yes—provides advice, records meeting, facilitates discussion as necessary	Yes
DVA	No	On request	Yes
IP	Yes—conducts performance management-related presentations at branch meetings and training	Yes—provides advice, records meeting, facilitates discussion if necessary	Yes
NFSA	No	On request	No

Source: ANAO analysis of information provided by agencies.

4.17 Figure 4.5 presents results on managers' views on whether they can rely on their supervisor for support in managing underperformance and whether they know where to find support for managing performance more generally. IP Australia achieved results of over 80 per cent of managers agreeing that they have both types of support, with DSS and AGD also performing well on these measures. Generally, there is a positive relationship between managers' views on support and the level of support that agencies indicate they offer to managers as outlined in Table 4.4.

**Figure 4.5: Support for managers, 2016**



Source: ANAO analysis of data provided by the APSC.

### Support for employees

4.18 Any underperforming employee must be given a reasonable opportunity to improve their performance consistent with procedural fairness requirements. In all agencies the role of ensuring the employee is given reasonable opportunity and support is primarily performed by the manager of the employee in all stages of the underperformance process. This involves access to relevant development opportunities and the provision of regular, clear feedback. In some agencies the human resources area will assist the manager by providing or coordinating additional support for employees, generally on a case by case basis. The type of support provided by the eight agencies is set out in Table 4.5. Most agencies assist with internal redeployment but not external placement, and some provided career counselling or coaching.

**Table 4.5: Support for employees**

Agency	Career counselling/coaching	Internal redeployment assistance	External placement assistance
AGD	Yes	Yes—handled by a redeployment unit	No
ATO	non-SES: No SES: Yes—coach or mentor is allocated	Yes—handled by a redeployment unit	No
DAWR	non-SES: Yes—where issues relate to job fit (otherwise not typically offered) SES: Optional external coach	Yes—handled by human resources team	No
DIIS	Yes—where issues relate to job fit	Yes—handled by human resources team	No
DSS	Yes—on request	Yes—handled by human resources team	No
DVA	Yes—can form part of performance improvement plan	Yes—handled by a redeployment unit	On occasion—facilitated by human resources where skills thought to be suited to an external role
IP	Yes—where issues relate to job fit	Yes—handled by human resources team	No
NFSA	No	No	Yes—supported by human resources, but must be arranged by employee (short term/non-ongoing secondments only)

Source: ANAO analysis of information provided by agencies.

4.19 One APS agency not included in this audit, the Department of Communications and the Arts, indicated that it routinely offers both external coaching services and careers advice to all employees once they have been identified as not meeting performance expectations and finds these are cost effective interventions that help employees return to effective performance, identify their strengths and preferences and/or consider alternative career options.

## Training

4.20 A key way that agencies can support managers with performance and underperformance management is to invest in relevant training. All eight agencies invested resources in face-to-face training on performance management for both managers and employees in the two years 2014–15 and 2015–16, although the level of investment varied markedly among agencies. IP Australia invested more than twice as much as any other agency (11.9 hours per employee across the two year period) while DSS and DAWR invested the lowest amounts at around one hour per employee.

**Table 4.6: Face-to-face performance and underperformance management related training over the period 2014–15 and 2015–16 (hours per ongoing employee)**

Agency	APS	EL	SES	Total
IP <sup>a</sup>	9.0	18.2	3.7	11.9
AGD	NA	NA	NA	4.7
ATO	1.3	4.6	0.4	2.9 <sup>b</sup>
DIIS	0.6	4.7	0	2.4
DVA	0.8	2.5	2.5	1.3
NFSA	0.6	3.1	5.0	1.1
DSS	0.3	2.2	0	1.0
DAWR	0.7	2.1	1.3	1.0

Note a: IP Australia's training was impacted by preparation for its new performance management system in 2016.

Note b: ATO total includes hours per ongoing employee for two courses where attendance was unable to be broken down by classification.

Source: ANAO analysis of data provided by agencies.

4.21 In most agencies the Executive Level classification group received the highest level of training with the exception of DVA and NFSA where SES employees received the same or higher levels of training. Given the importance of SES employees openly demonstrating commitment to performance management including by example with their own practices of providing feedback with their direct reports, it would be appropriate to direct more training to this classification group particularly in those agencies with no or very low levels of investment in SES employees in the past two years (DIIS, DSS and ATO). Additional investment in training is likely to improve employees' perceptions of the management of underperformance given the strong positive correlation between training and employee perceptions in this area (see Table 4.1).

4.22 The ATO, DSS, DVA, IP Australia and NFSA have also implemented electronically-delivered training, including courses based on performance and underperformance management related topics, however not all of these agencies were able to provide participation data.

### Independent assessors

4.23 In most agencies it is the manager who makes the formal written assessment of the performance of the employee against work level standards. IP Australia, however, generally appoints an independent assessor to provide an assessment of the performance of the employee. An internal employee who is one classification level above the employee with performance issues, and who has sufficient knowledge of the work involved, is appointed as the independent assessor. The independent assessor attends review point meetings, monitors the employee's work and makes a written assessment of whether the employee meets or does not meet the relevant work level standard. AGD, in its last revision of the underperformance procedures added in the possibility of using an independent assessor/facilitator to potentially make the process easier for managers. AGD reported that the role tends to be used where the relationship between manager and employee has broken down or the case is particularly complex. DIIS noted that an employee can request someone other than the manager to make the performance assessment but this is not commonly used.

4.24 An independent assessor can take some of the pressure off the manager and make the difficult job of assessing and documenting performance against work expectations more objective. If an internal assessor is used, it also gives more employees exposure to the skills required in managing underperformance processes. On the other hand it is likely to involve additional resources and, as NFSA commented, the knowledge of the job required to be an assessor may not be available internally especially in small, specialist agencies. The use of independent assessors, if used selectively, may also be seen as a reflection of a lack of capability of an individual manager and may undermine their authority in the eyes of the underperforming employee.

### **Do agencies have effective practices to hold managers accountable for their performance management responsibilities?**

There is considerable room for improvement in all agencies' practices to hold managers accountable for their performance management responsibilities. Only two agencies (Department of Social Services and National Film and Sound Archive) reported that they have recently used multi-source feedback or other means of gathering evidence on which to accurately assess individual manager's performance management skills. While most agencies (excluding the Attorney-General's Department and the National Film and Sound Archive) include some metrics on performance management in their human resources reporting to senior management, none of the eight agencies include general metrics relating to probation management and, with the exception of the Australian Taxation Office and the Department of Social Services, do not include training participation rates. Only the Australian Taxation Office collects survey data on the quality and quantity of feedback (in addition to relevant questions in the Australian Public Service Commission's annual employee census) but this data is not included in its management reports.

#### **Holding managers accountable**

4.25 One of the key ways that agencies hold managers accountable for performance management is through the use of performance indicators in managers' performance agreements. The 2016 APSC agency survey indicates ATO, DIIS, DVA and NFSA reported that they include key performance indicators on performance management in managers' performance agreements throughout their entire agency. ATO, DAWR, DIIS, DVA and NFSA reported that they include equivalent agency-wide performance indicators in more senior managers' performance agreements throughout their entire agency.

4.26 Most human resources staff noted, however, that in practice little weight is generally given to a manager's people or performance management skills compared to the weight given to technical or job-specific skills and job outcomes in performance assessments. Only two agencies (DSS and NFSA) reported that they have recently used multi-source feedback such as 360 degree surveys of managers' people management skills or other means of gathering evidence on which to accurately assess individual manager's management skills. However, three agencies (ATO and DIIS currently, and IP Australia in the recent past) conduct periodic pulse surveys of employees to supplement the results from the APSC's employee census. Only the ATO's survey asks questions on the quality and quantity of feedback although both DIIS and IP Australia seek employees' views on the performance of their managers.

## **Management reporting**

4.27 Management reporting on performance management issues allows for consideration of such issues, and positions the agency to respond and make appropriate adjustments to their performance management framework. It is also another way, albeit more indirect, that managers can be held accountable for their people management responsibilities. Table 4.7 sets out the various ways the eight agencies report on performance related issues to senior management. All agencies, except NFSA, report periodically to senior managers on a range of human resource metrics including absenteeism, staff turnover rates, etc. Most agencies (excluding AGD) include some performance management metrics in these reports with DSS reporting on the largest number of performance related metrics. Only two agencies (ATO and DSS) regularly reported on participation in training.

4.28 Of the agencies that track human resource metrics, two advised of a requirement for solutions to be explored should concerns or issues be identified. DSS requires groups and branches to develop action plans addressing concerns identified in their metrics. DIIS advised that it engages external consultants to investigate the source of ongoing problems identified by their metrics.

4.29 None of the agencies reported generally on probation outcomes or, for those agencies conducting pulse surveys, on the results of such surveys.



**Table 4.7: Management reporting on performance management issues 2016**

Agency	General HR metric reporting including absences	HR metric reporting on performance management	HR liaison officers regular oral briefing of senior managers including on underperformance
AGD	Yes	No	Yes
ATO	Yes	Case management data but underperformance cases not separately identified Training participation data	No
DAWR	Yes	Performance agreement compliance Numbers of underperformance cases	Yes
DIIS	Yes	Performance agreement compliance <sup>a</sup> Performance ratings <sup>a</sup> Numbers of underperformance cases	Yes
DSS	Yes	Performance agreement compliance Performance ratings <sup>a</sup> Details of underperformance cases <sup>a</sup> Training participation data	Yes
DVA	Yes	Performance agreement compliance <sup>a</sup> Performance ratings <sup>a</sup>	No
IP	Yes	Details of underperformance cases	Yes
NFSA	No	No	Yes

Note a: Information is reported separately from general HR metric reporting.

Source: ANAO analysis of information provided by agencies.

## Key learnings

4.30 Based on the audit findings, the ANAO has identified a range of key learnings relating to agencies' practices for managing underperformance that can apply to the eight and other APS agencies. The key learnings are organised around the four categories of barriers identified in Chapter 2 and are presented in Boxes 5 to 8 of the Summary and key learnings section of the report.

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Rona Mellor PSM  
Acting Auditor-General

Canberra ACT  
23 May 2017

# Appendices



## Appendix 1 Entity responses

Formal responses received by ANAO following circulation of the draft report are reproduced in Appendix 1.

Responses were received from:

- Attorney-General's Department;
- Australian Public Service Commission;
- Australian Taxation Office;
- Department of Agriculture and Water Resources;
- Department of Industry, Innovation and Science;
- Department of Social Services;
- Department of Veterans' Affairs;
- IP Australia; and
- National Film and Sound Archive of Australia.



**Australian Government**  
**Attorney-General's Department**

**Secretary**

16/9707

26 April 2017

Mr Andrew Morris  
Acting Group Executive Director  
Australian National Audit Office  
19 National Circuit  
Barton ACT 2600

Dear Mr Morris

**Audit of Managing Underperformance in the Australian Public Service (APS)**

Thank you for providing a copy of the proposed ANAO Audit Report of Managing Underperformance in the APS.

The Attorney-General's Department welcomes the findings of the report with particular reference to the key learnings regarding the management of probationary employees, manager capability and management culture.

The department is currently reviewing its performance framework and related systems, policies, procedures and supporting guidance following the commencement of the *Attorney-General's Department Enterprise Agreement 2016*.

Following this review process, and informed by the key learnings from this audit, the department will seek to implement initial changes to its performance framework for the 2017-18 performance cycle. The department is keenly committed to promoting a high performance culture built on ongoing performance and development feedback and conversations, and to ensure clarity and support in addressing poor performance as quickly as possible.

Should you have any queries, please contact Helen Daniels, Assistant Secretary, Human Resources on (02) 6141 3565 or [helen.daniels@ag.gov.au](mailto:helen.daniels@ag.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to be 'IA Anderson'.

Iain Anderson  
Acting Secretary



**Australian Government**  
**Australian Public Service Commission**

Mr Andrew Morris  
 Acting Group Executive Director  
 Central Agencies Branch  
 Australian National Audit Office  
 GPO Box 707  
 Canberra ACT 2601

Dear Mr Morris *Andrew*

The APSC welcomes the ANAO audit report on Managing Underperformance in the APS and the opportunity to comment on the content and findings of the report. We appreciate the ANAO's collaborative approach and its receptiveness to our input.

People and performance management skills, including the management of underperformance, is an area requiring attention and improvement across the APS. The ANAO report sets out some key learnings that may help agencies improve in this area. To inform these key learnings, employee perception data captured through the APS Employee Census was analysed.

The relationship between objective measures of effective underperformance management and employee perception data is complex. The ANAO and APSC have worked together to ensure this complexity is understood.

Figures 2.1 and 2.2 of the report present only the proportion of respondents to the APS Employee Census who agree to the effective management of underperformance by their agency and supervisor. The full data shows that there are large proportions of respondents who neither agree nor disagree to these items. The APSC remains concerned that there is potential for people to misinterpret the information if only the proportion agreeing is provided. That is, there could be an assumption that the remaining respondents disagree. Footnote 13 to these figures refers to possible response options, yet this is not sufficient to reflect the proportions responding to each option.

Performance management is an area of particular focus for the APSC. There are a number of initiatives being conducted in conjunction with agencies to assist in providing employees with the skills and guidance they need to become good people managers.

- The APSC released *Optimising performance in the APS* in June 2016. This is a set of guiding principles to assist agencies to design or redesign their performance management frameworks, shifting the focus from compliance and towards regular and effective outcomes-focused conversations. It seeks to move away from annual or bi-annual meetings between supervisors and their staff, towards continuous feedback. This type of approach to performance management has been shown to significantly improve employee performance. The APSC is

working with agencies to showcase innovative and effective practices in performance management.

- In November 2016, the APSC issued strengthened guidance to agencies on the importance of using the probationary period to accurately assess job fit and performance before confirming the appointment of new employees.
- The APSC is working with senior HR professionals from across the APS in order to make an accurate assessment of HR capability. It is expected that this will reveal gaps in capability that will take some time and effort to address, including HR support to line managers. The assessment will form the basis of a plan to build greater capability into the future.

I also note that the APSC has worked with the ANAO to clarify the applicability of performance management procedures to non-ongoing employees.

Yours sincerely



Stephanie Foster  
Deputy Australian Public Service Commissioner

21 April 2017





**Australian Government**  
**Australian Taxation Office**

Ms Michelle Kelly  
Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Ms Kelly,

**AUSTRALIAN NATIONAL AUDIT OFFICE PERFORMANCE AUDIT ON MANAGING  
UNDERPERFORMANCE IN THE AUSTRALIAN PUBLIC SERVICE**

Thank you for your letter to Commissioner Jordan dated 23 March 2017 and for the opportunity to provide comments on the proposed report on Managing Underperformance in the Australian Public Service.

The ATO agrees with the 8 key learnings as presented in the section 19 report.

Attached is the ATO response to key learnings (Annexure 1) and a summary of our comments to be included in the report (Annexure 2).

I would like to thank the Australian National Audit Office audit team for the cooperative and professional manner they have adopted in working with us on this matter. I look forward to continuing the good working relationship developed in this performance audit.

If you require further information on this matter, please contact Assistant Commissioner, Dom Sheil on 02 6216 1849.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'JA Curtis'.

Jacqui Curtis  
Chief Operating Officer  
Australian Taxation Office

10 April 2017

## Annexure 1

Key Learning	ATO Comments
<b>PROCESS</b>	
<p>To demonstrate senior management commitment to agency performance management arrangement, including performance management, it is good practice for agencies to have transparent and clearly documented procedures relating to underperformance for all employees, and underperformance processes for SES employees can be more streamlined.</p>	<b>Agreed.</b>
<p>To effectively support managers, agency procedures should:</p> <ul style="list-style-type: none"> <li>• Be streamlined and not unnecessarily repeat processes;</li> <li>• Not contain excess requirements;</li> <li>• Communicate clear expectations of the duration of key processes;</li> <li>• Provide clear guidelines on differences in case types;</li> <li>• Provide clear guidance on the support and assistance available to managers from Human Resources; and</li> <li>• Provide better guidance on managing the performance of probationary employees.</li> </ul>	<b>Agreed.</b>
<p>To assist managers to implement underperformance procedures, it would be beneficial to have links to tools such as checklists, flowcharts and tips and tricks; and links to other guidance on fitness for duty, misconduct, and probation on agency intranet sites.</p>	<b>Agreed.</b>
<p>To assist managers to measure performance gaps, agency procedures would benefit from:</p> <ul style="list-style-type: none"> <li>• Examples on measuring performance gaps that contextualise the work requirements for the agency; and</li> <li>• Emphasising the important of managers' documenting performance gaps by having examples of work that do not meet the required standard</li> </ul>	<b>Agreed.</b>
<b>PRACTICES</b>	
<p>To address barriers relating to 'Management culture', agencies could:</p> <ul style="list-style-type: none"> <li>• Pursue initiatives to establish the practice of more frequent and constructive feedback including by: increasing investment in related training; monitoring the quality and quantity of feedback; and implementing multi-source feedback mechanisms.</li> </ul>	<b>Agreed.</b>

<ul style="list-style-type: none"> <li>• Set targets for the quality and quantity of feedback and require action plans to be developed in areas where monitoring indicates the quality and quantity of feedback is below target levels.</li> <li>• Pursue initiatives to increase the commitment of senior managers to performance management.</li> <li>• Place more weight on accurately assessing applicants for manager positions on their people management skills in recruitment and selection processes.</li> </ul>	<b>Agreed.</b>
<p>To address barriers relating to 'Support to managers', agencies could:</p> <ul style="list-style-type: none"> <li>• Ensure human resource capability to actively support managers at all stages of underperformance management.</li> <li>• Require HR staff to have visibility of underperformance processes once structured processes commence to ensure support to manage and quality assurance over processes.</li> <li>• Tangible recognition of the additional workload and stress on managers during underperformance processes is required.</li> </ul>	
<p>To address barriers relating to 'Manager capability', agencies could:</p> <ul style="list-style-type: none"> <li>• Invest in relevant and regular training in managing performance.</li> <li>• Provide coaching and a range of other active supports to managers during underperformance processes.</li> </ul>	
<p>To address barriers relating to 'other' barriers, agencies could:</p> <ul style="list-style-type: none"> <li>• Use HR to provide assistance to managers with measuring and documenting performance gaps.</li> <li>• Use HR to actively assist the manager during underperformance processes to manage sick and personal leave taken by underperforming employee.</li> <li>• The presence of appropriately skilled human resource professionals in review meetings between the manager and the underperforming employee can assist in preventing claims of bullying and harassment.</li> </ul>	

## **Annexure 2**

### **Summary of ATO's response**

The ATO welcomes this review and considers the report supportive of our overall approach to managing underperformance within the ATO. Particularly pleasing to see is the strong performance of the ATO in managing employees through probation and the alignment of more recent ATO developments to the best practice processes highlighted in the report. As the ATO continues to look for improvement opportunities, the ATO also recognises the important responsibility which employees have to meet, or seek support to meet, their performance requirements.

The review considers the procedures and practices agencies use to identify and deal with underperformance for employees. The review also notes the frameworks and challenges which agencies face when managing underperformance. The ATO agrees with the key learnings contained in the report, including the advice to streamline processes where possible, improve transparency of processes, provide information and ongoing support to managers who supervise underperforming staff and to effectively use probation for new employees who do not meet the requisite standards. The ATO has been and will continue to strengthen its management of underperformance in light of the findings of this report.

#### **Emphasis on documented processes**

The emphasis of the review has been on the documented management of underperformance within agencies. The ATO considers that using formal underperformance data to measure the 'effectiveness' of underperformance procedures necessarily limits analysis to formal structured processes only. The ATO also seeks to resolve performance management issues at an informal and early stage. The ATO acknowledges that, while outside the scope of this review, a significant part of managing underperformance is in the work of managers to informally manage and resolve performance concerns before they require formal processes.

#### **Our Compass platform**

One key part of the review reports on formal and informal performance appraisals undertaken by agencies. For a significant portion of the years covered by the report, the ATO was in a transitional period moving between performance systems. The ATO's new Compass platform promotes regular, informal performance discussions that will promote greater performance and reduces instances of underperformance from escalating.

#### **"Performance Clinics"**

The review highlights various aspects of the important role human resources practitioners' play. The ATO agrees with this and is currently trialling a program where human resources practitioners are engaged at an early stage through the use of "performance clinics". The clinics facilitate and assist managers with the formal underperformance stages. The clinics are focused on restoration of performance and engage both the employee and manager to identify the underlying reasons for underperformance. It is acknowledged that performance is influenced by a range of factors including the circumstances of the individual employee, management relationships, team dynamics, work environment and business processes. Tailored plans are developed and monitored, with action supported by a co-ordinated

response of human resources practitioners and other services such as coaching, mediation, and learning and development where appropriate.



**Australian Government**  
**Department of Agriculture  
and Water Resources**

SECRETARY

Mr Andrew Morris  
Acting Group Executive Director  
Performance Audit  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Mr Morris

Thank you for your correspondence to Daryl Quinlivan, dated 23 March 2017, providing the Department of Agriculture and Water Resources with the Australian National Audit Office's (ANAO) proposed audit report on *Managing Underperformance in the Australian Public Service* pursuant to section 19 of the *Auditor-General Act 1997*.

As highlighted in the report '*performance management of employees is critical to supporting a high-performing Australian Public Service*'. The information provided in the proposed audit report highlights the importance of making further changes to the way performance is managed across the department. These recommendations will be incorporated into the current review of the department's Performance Management Framework.

The department notes in conclusions drawn from this audit that there is significant room for improvement in the management of underperformance, across a number of key areas, such as the management of underperformance during probation periods and structured underperformance processes.

The key areas the department will initially focus on is the management of SES performance management processes, to streamline and provide greater transparency, as well as providing a greater level of support to managers and building manager capability in all areas of employee performance.

The department's summary response is provided at Attachment 1.

I would like to acknowledge the professionalism shown by the ANAO audit team and the engaging and consultative way in which they interacted with my staff throughout the audit process.

Yours sincerely



David Parker AM  
Acting Secretary

24 April 2017

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**Australian Government**  
**Department of Industry,  
Innovation and Science**

**Secretary**

Mr Andrew Morris  
Acting Group Executive Director  
Performance Audit  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Mr Morris

**Proposed Audit Report on Managing Underperformance in the APS**

Thank you for your letter dated 23 March 2017 seeking comment from the department on the proposed audit report on Managing Underperformance in the APS. In accordance with section 19 of the *Auditor-General Act 1997*, please find enclosed the department's response to the report.

We acknowledge the key learnings of the report.

A summary of editorial issues is at Attachment A and a summary response for inclusion in the body of the report is at Attachment B.

Thank you for the opportunity to comment on the proposed report.

Yours sincerely

A handwritten signature in black ink that reads "G. A. Beauchamp".

Glenys Beauchamp

15 May 2017



**Australian Government**  
**Department of Social Services**

Finn Pratt AO PSM  
Secretary

Mr Andrew Morris  
Acting Group Executive Director  
Central Agencies Branch  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600

Dear Mr Morris *Andrew*

Thank you for your email of 24 March 2017 providing the 'Proposed audit report under S.19 of the *Auditor-General Act 1997* on Managing Underperformance in the Australian Public Service (the APS)'.

The timing and findings of the audit are particularly valuable to my Department, given the multiple Machinery of Government changes which occurred over the period of time covered by the audit. DSS welcomes the report and notes the ANAO's findings and key learnings.

The 2016 APS Census Results show that over half of DSS employees agree their supervisors are effectively managing underperformance. Further work in this area will be done to improve this result.

I encourage all employees and managers to take ownership of the audit findings and to work towards building a culture that celebrates high performance, supports managers to hold difficult conversations, and encourages employees to remain open to feedback and accept responsibility for their performance and improvements when needed.

If you would like further information on the Department's response, please do not hesitate to contact Janean Richards, Group Manager, Corporate Services, on 02 6146 0178 or by email at [Janean.Richards@dss.gov.au](mailto:Janean.Richards@dss.gov.au).

Yours sincerely

A handwritten signature in blue ink, appearing to read 'F. Pratt'.

Finn Pratt

21 April 2017





Australian Government  
 Department of Veterans' Affairs  
 OFFICE OF THE SECRETARY

Mr Andrew Morris  
 Executive Director  
 Central Agencies Branch | Performance Audit  
 Australian National Audit Office  
 19 National Circuit  
 BARTON ACT 2600

Dear Mr Morris

Thank you for your letter of 23 March 2017, outlining the proposed audit report on Managing Underperformance in the Australian Public Service, prepared by the Australian National Audit Office (ANAO). The Department of Veterans' Affairs (DVA) notes the finding of the report and thanks the ANAO for the opportunity to respond.

The key learnings from this audit will be used to bring about improvements in DVA's processes for managing underperformance. In considering the ANAO's suggestions, DVA sees opportunity for improvement in a number of areas including, but not limited to:

- Streamlining DVA's Managing Underperformance processes to remove repetition.
- Improving guidance material for managers and consolidating all DVA Managing Underperformance policy and procedure material into a single comprehensive document.
- Increasing the early involvement of appropriately skilled human resource professionals in underperformance cases.
- More proactively using the Probation period for dealing with performance concerns.

Should you have any queries please contact Carolyn Spiers, Chief Audit Executive, on 02 6289 6003.

Yours sincerely

S. Lewis PSM  
 Secretary

7 April 2017

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Mr Andrew Morris  
Acting Group Executive Director  
Central Agencies Branch | Performance Audit  
Australian National Audit Office

**By email to:** [OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au](mailto:OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au)

Dear Mr Morris

Thank you for your email of 23 March 2017 seeking comment from IP Australia on the proposed audit report, Managing Underperformance in the Australian Public Service. In accordance with section 19 of the Auditor General Act 1997, please find enclosed our response to the report.

IP Australia welcomes the key learnings identified in the report and appreciates the recognition given to IP Australia for the work we have done in this area during and since the timeframe of the audit.

IP Australia acknowledges the importance of embedding a culture of sustainable high performance and the need for clear and pragmatic processes which support both staff and managers. Underperformance management is but one element of our broader approach to building the capability of IP Australia's people and the organisation.

As referenced in the report, in July 2016 following a comprehensive evaluation process, IP Australia introduced a new performance management scheme called Achieve. The new Program supports a culture of high performance through building genuine relationships; setting clear performance expectations; building capability; recognising achievement and performance and acknowledging this performance. When implementing the new scheme IP Australia invested significantly in education and support for our managers. A post implementation evaluation is scheduled for 2018.

The Achieve program is complemented by IP Australia's learning and development strategy which focuses on: leadership and talent development; management and workforce fundamentals and specialist expertise. In 2016 we also redeveloped our Talent Management Program and strengthened our core expertise in the area of competency based training.

Thank you for the opportunity to comment on the proposed report. IP Australia will review the key learnings and where appropriate incorporate them into future improvements of our performance management framework.

Yours sincerely

Patricia Kelly  
Director General  
20 April 2017

**Attachment A:** IP Australia Summary Response



Date

Mr Andrew Morris  
Acting Group Executive Director  
Central Agencies Branch  
Performance Audit  
Australian National Audit Office

### Letter of Reply

Dear Mr Morris,

Thank you for your email of 23 March providing a copy of the Australian National Audit Office's (ANAO) report on Managing Underperformance in the Australian Public Service issued under section 19 of the Auditor-General Act 1997. The National Film and Sound Archive (NFSA) appreciates the opportunity to participate in the ANAO's review of Managing Underperformance in the Australian Public Service and to respond to the report.

The NFSA agrees with the conclusions of the report and supports the key learnings identified. Of particular note was the identification that an agency's performance management culture, which focuses on compliance, competitive evaluation and end of year discussions rather than the quality and frequency of feedback and the provision of opportunities for development, can prove to be a key barrier to the better management of underperformance.

I welcome the finding that the majority of staff at the NFSA have a positive perception of the capability of their managers to effectively manage underperformance. I am also pleased that the audit identified that NFSA managers are actively using the probation period to manage underperformance, to assess the job fit of newly appointed employees and to test the appropriateness of recruitment decisions.

The NFSA regards the key learnings of the audit report to be essential feedback required for the agency to become a higher performing organisation with improved levels of staff engagement and commitment, with a working environment that thrives on trust and respect and where people feel valued and committed to organisational goals.

I would like to express my thanks for the professional and collaborative approach of the ANAO's audit team.

Yours sincerely,

Meg Labrum

A/g Chief Executive Officer

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