

# Document 2



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AUSTRALIAN PUBLIC SERVICE COMMISSIONER

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**Dr Gordon de Brouwer**  
**Commissioner**

The Hon Anthony Albanese MP  
Prime Minister of Australia

**Hand Delivered**

Dear Prime Minister

**Outcome of inquiry into alleged misconduct by Mr Michael Pezzullo AO, Secretary of the Department of Home Affairs**

On 26 September 2023, I appointed Ms Lynelle Briggs AO as my delegate under section 41(2)(m) of the *Public Service Act 1999* (the Act) to conduct an inquiry in accordance with section 41A(1) of the Act into alleged breaches of the APS Code of Conduct by the Secretary of the Department of Home Affairs, Mr Michael Pezzullo AO.

Ms Briggs has completed her inquiry and prepared a report of her findings and recommendations.

Section 41A(2)(a) of the Act requires me to report on the results of that inquiry to you. For that purpose, please find **enclosed**:

- (i) Advice **s. 42**  
**s. 42**
- (ii) The key findings of the inquiry, including the aspects of the APS Code of Conduct to which those findings relate, and the recommendations of that inquiry (Attachment B).
- (iii) The full report of the inquiry prepared by Ms Briggs. I am providing you with the full report so that you may better understand the basis of the findings in relation to the APS Code of Conduct, and the recommendations arising from those findings (Attachment C).
- (iv) Advice as to the other persons who will be provided with a copy of the full report (Attachment D).

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Ms Briggs has determined that Mr Pezzullo has breached the Code in respect of five overarching allegations. Specifically, that Mr Pezzullo:

- used his duty, power, status or authority to seek to gain a benefit or advantage for himself.
- engaged in gossip and disrespectful critique of Ministers and public servants.
- failed to maintain confidentiality of sensitive government information.
- failed to act apolitically in his employment.
- failed to disclose a conflict of interest in respect of procurement involving an entity associated with Mr Scott Briggs.

Ms Briggs recommends the sanction of termination of Mr Pezzullo's employment.

Further information on handling

Section 72A of the Act provides strict restrictions on the disclosure of information obtained as part of the inquiry. In addition, the *Privacy Act 1988* also applies to the use and disclosure of personal information obtained during the inquiry.

The normal practice for Code investigations is that the names of individuals, and the details of the investigation are kept confidential. Generally, Code investigations are an employment matter, and privacy protections are in place to enable constructive engagement by witnesses in the process and protect the wellbeing of the employee.

We are in uncharted territory in the case of Mr Pezzullo in that his employment relationship as a Secretary is with you as Prime Minister and there is significant public interest in the outcome and the process. The attachments mentioned above seek to balance the need for a Secretary's accountability to you, the need for transparency to the public, and the legislative protections afforded to individuals.

To this end, it is proper that Ms Briggs' breach findings and recommended sanction are made public, and the attachments provide material to that end. It is also proper that the report itself is not made public, in accord with the intention of section 72A of the Act and in keeping with Privacy Act obligations.

The report is detailed, contains very sensitive information and was prepared in the expectation that the prohibitions on disclosure apply. Release of the report, and the information referred to in the report, may also signal to the whole public sector that Code investigations (including inquiries undertaken in accordance with section 41A) could be made public. This could undermine the effectiveness of the hundreds of investigations that occur every year, and potentially jeopardise workplace integrity, conditions and performance.

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If the review does end up in the public domain, I will need to provide formal guidance to the public service on the protection of information obtained in a Code process.

Professor Davis, Mr Walter and myself are available to brief you or Mr Gartrell on these matters.

Yours sincerely

s 11C(1)(a) - personal privacy - additional redaction made for publishing on disclosure log

Dr Gordon de Brouwer PSM

23 November 2023

PRIME MINISTER

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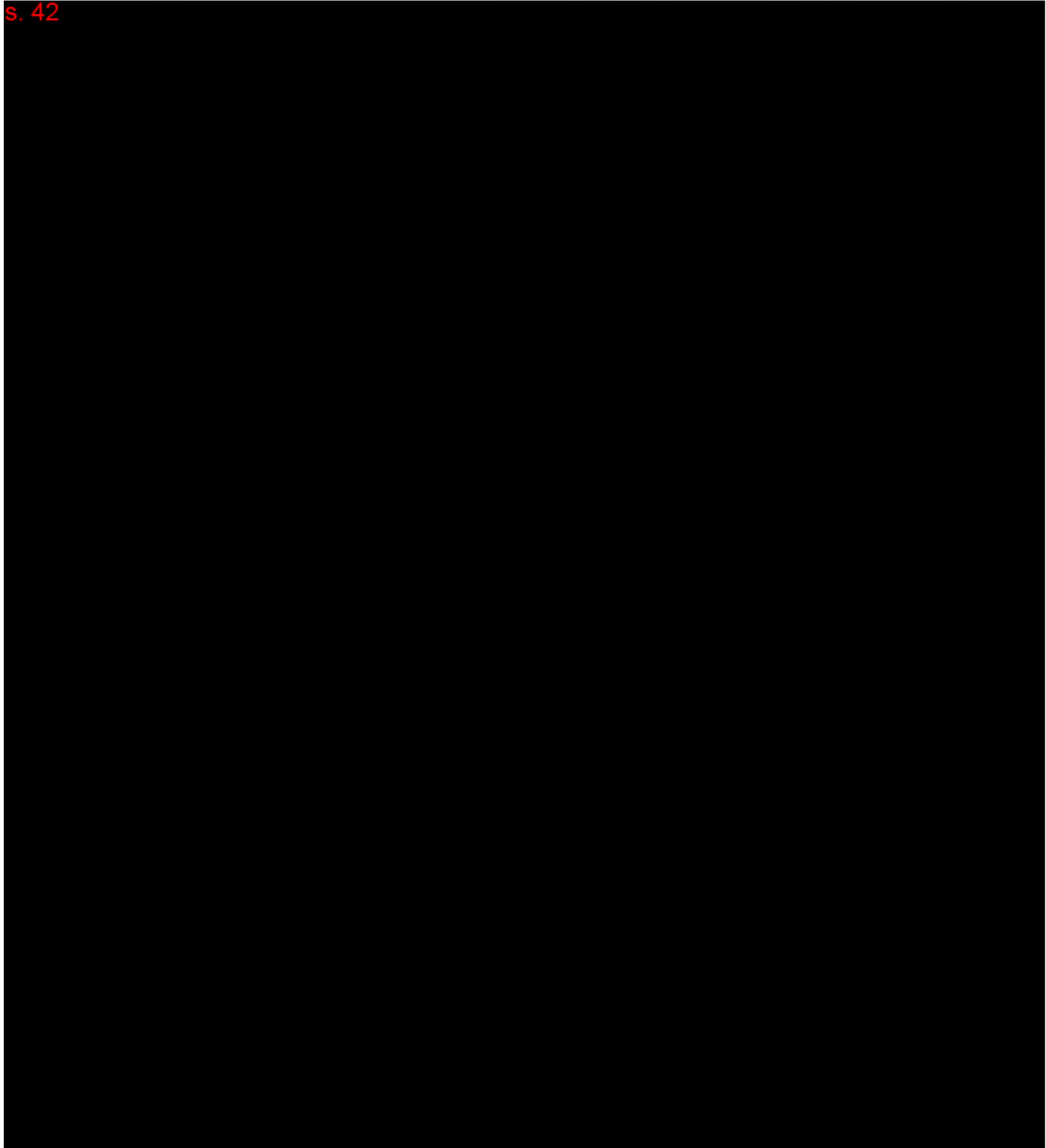


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**Attachment A**

s. 42

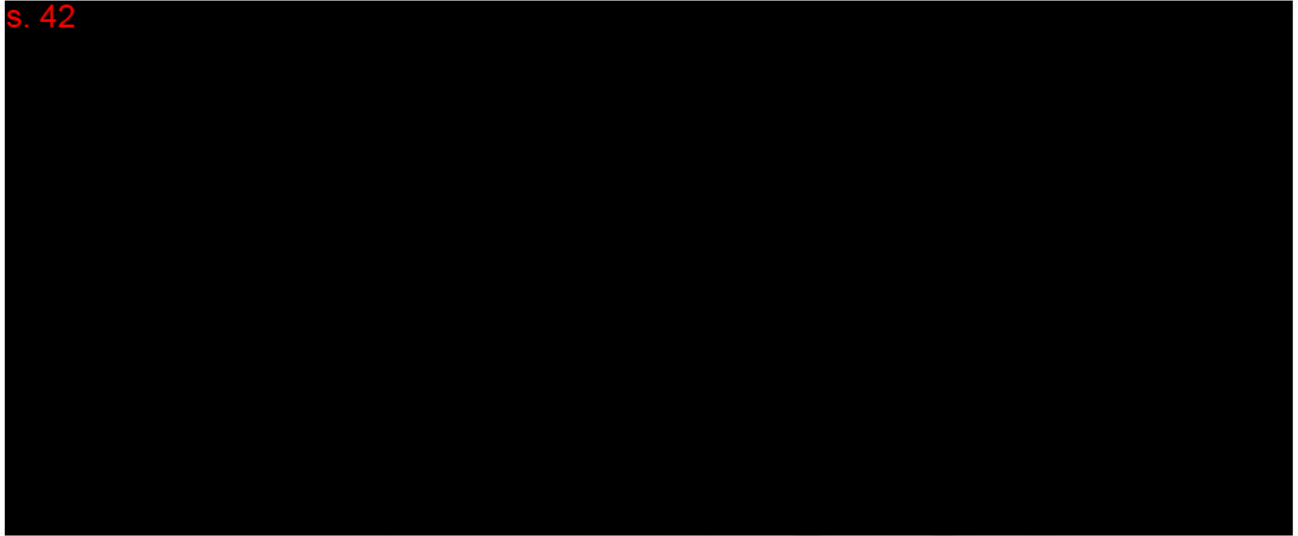




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s. 42



PRIME MINISTER



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**Attachment D**

**Advice as to the other persons who will be provided with a copy of the full report and summary report**

1. The report prepared by Ms Briggs makes findings that Mr Pezzullo breached the APS Code of Conduct and contains recommendations in relation to those findings, including recommendations for sanctions.

**Department of the Prime Minister and Cabinet**

2. Given the nature of those findings and recommendations, it is anticipated that the Prime Minister will wish to have advice from his Department about whether to recommend to the Governor-General that the Governor-General terminate Mr Pezzullo's appointment as Secretary under s 59(1) of the *Public Service Act 1999* (Act). Before making any such recommendation, the Prime Minister must have received a report about the proposed termination from the Secretary of the Department of the Prime Minister and Cabinet (PM&C) as required by s 59(3) of the Act. Such a report by the Secretary of PM&C is required to be prepared after consultation with me as required by s 59(4).
3. In the exercise of my discretion under s 72A(3) of the Act and s 103(4) of the *Public Service Regulations 2023*, I will provide the full report and the summary of the report to the PM&C Secretary to assist the latter to advise the Prime Minister about the taking of any steps under s 59, including the preparation of a report for the purposes of s 59(3). I will also provide a copy of the report and the summary to the First Assistant Secretary, Government Division, for the purpose of him assisting the Secretary in this regard.
4. Providing the report to the PM&C Secretary will also assist him to consult with me as required by s 59(4) in preparing a s 59(3) report.

**Chief of Staff**

5. In the exercise of my discretion under ss 72A(5) and (6) of the Act, I will provide the full report and the summary of the report to your Chief of Staff for the purpose of assisting you with your consideration of this matter, and any process commenced under s 59 of the Act.

**Mr Pezzullo**

6. I propose to provide a copy of the report and the summary to Mr Pezzullo, in the exercise of my discretion under ss 72A(5) and (6) of the Act.
7. Mr Pezzullo has been given the opportunity to respond to the findings and recommendations that are contained in the report, and the report takes his responses into account.



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8. The provision of the report and summary to Mr Pezzullo is consistent with the procedural fairness that he has been afforded to date, and I have formed the view, that it is in Mr Pezzullo's interests that he have access to the report (excluding transcripts of interviews of the people who provided evidence) and the summary in engaging in any s 59 process. Further, I have also formed the view that disclosure of limited personal information contained in the report is fair and reasonable in all the circumstances, given that this information has previously been disclosed to Mr Pezzullo in the context of providing him procedural fairness.
9. Given that the s 41A inquiry is complete, I am also satisfied that the disclosure of the report and the summary is unlikely to interfere with any review or inquiry under the Act.

**Relevant Ministers**

10. In the exercise of my discretion under ss 72A(5) and (6) of the Act, I will provide a copy of the full report and summary report to the Hon Minister Clare O'Neil MP, Minister for Home Affairs and Cyber Security and to Senator the Hon Katy Gallagher, Minister for the Public Service.
11. In respect of Minister of O'Neil, the disclosure of the report and summary report is made for the purpose of assisting Minister O'Neil exercise her duties and functions as the relevant portfolio minister of the Department of Home Affairs, and to enable Minister O'Neil to respond to questions about the inquiry and any impacts for that Department. Further, disclosure to Minister O'Neil is also necessary in the context of s 57 of the Act which relates to the role of Secretaries of a Department and given that the contents of the report contain information relevant to the management of the Department of Home Affairs, including with respect to the management of conflicts of interests.
12. I also satisfied that disclosure of the report and summary report to Minister Gallagher, as the Minister responsible for the APSC is appropriate in the circumstances. It is appropriate for Minister Gallagher to have full visibility of the conduct of the APSC and Ms Briggs as delegate in undertaking this inquiry, so that she is able to assess the conduct and performance of the APSC, and myself as Commissioner, and that she can provide advice to you on sound public administration.
13. Further, Minister Gallagher may be called on to answer questions (either in the Parliament or in the media) about the conduct of its inquiry (by the Agency within her portfolio) and therefore, it is in the interests of Minister Gallagher, the APSC and the public that she is informed of the details of the inquiry and its outcome.
14. Further, I have also formed the view that disclosure of personal information contained in the report is fair and reasonable in all the circumstances.