

ATTACHMENT C

_PUBLIC INTEREST CONSIDERATIONS:

Is conducting aN inquiry in the public interest?

a. Is the allegation vexatious, frivolous, misconceived, or lacking in substance?

- Considering whether a complaint is vexatious: A vexatious complaint is one that is pursued, regardless of its merits, solely to harass, annoy or subdue somebody; something that is unreasonable, without foundation, frivolous, repetitive, burdensome or unwarranted.
 - Does the complaint appear designed to cause annoyance or disruption, to harass one or more individuals, or to divert Commission resources excessively or repeatedly?
 - Is it part of a series of complaints that do not appear to be made in good faith?
- Considering whether a complaint is frivolous: Frivolous claims are those that are unsustainable, such as minor matters that are not motivated by any serious concerns.
 - Does it relate to conduct that a reasonable person would regard as acceptable?
 - Does it relate to a matter that is manifestly trivial?
- Considering whether a complaint is misconceived:
 - Does it relate to behaviour that is not a breach of the Code of Conduct, or which is not governed by the Code of Conduct?
 - Is it based on a misunderstanding of the requirements of the Code, or of an agency head's functions or obligations, or of established facts?
- Considering whether a complaint lacks substance:
 - Are the allegations vague, broad, or nonspecific?
 - Does the complainant express general dissatisfaction without a clear link to a potential breach of the Code?
 - Is the complainant unable to provide evidence for their allegations even after follow-up?

b. Has sufficient detail about the allegation been provided?

- Are the allegations specific about facts, behaviours, and incidents?
 - A detailed allegation is one that makes clear what is alleged to have happened, and when, and who is alleged to have engaged in the relevant behaviour.

- The volume of material provided in support of an allegation is not necessarily indicative of sufficient detail being provided.
- Consider whether the complainant has provided evidence in support of their claim—while this is not required in order for an allegation to be considered, it can be helpful in informing a decision about whether an inquiry is warranted.

c. Does the allegation refer to specific decisions or actions by the agency head?

- Is the allegation about the personal behaviour of the agency head, rather than the policy, strategy, nature, scope, resources or direction of the APS or an agency?
 - Consider this in the same way you might consider whether an allegation relates to the personal behaviour of an APS employee.

d. Does the allegation identify conduct which, if proven, would constitute a breach of the Code of Conduct?

- To what extent does the alleged behaviour map onto any element of the Code of Conduct? Is there any evidence of a prima facie breach?
- Consider whether, if the allegation is found to be true, it would amount to a breach of at least one element of the Code.

e. Does the allegation relate to a decision properly taken, or a policy properly adopted, by the agency head with which the person making the allegation disagrees?

- Does the allegation relate to policy or decisions that are properly the agency head's to make and enforce, and/or are consistent with government policy?
- Consider whether a decision or policy (that is the subject of the complaint) is consistent with legislation and the agency's functions, is logically coherent, and is consistent with the agency head's employer powers.

f. Is the cost of conducting an inquiry justified in the circumstances?

- Would the financial and resource outlay be proportionate to the magnitude of the suspected misconduct? How might a reasonable member of the public view the decision to conduct or not conduct an investigation on the basis of its cost?
- Consider whether the matter should be investigated in the context of the potential impact on public confidence in public administration.