

Agency head complaints—Considerations

1. Is the complaint about an APS agency head?

Check whether the complaint relates to an APS agency:

a. If the complaint relates to an APS agency, but not to the head of that agency:

- Is the complaint about a non-agency head statutory office holder? See [Attachment 1](#) to determine whether the statutory office holder is bound by the Code of Conduct.
- Is it about an employee in an agency? If so, advise the complainant that their complaint should be made to the relevant agency head.

b. If the complaint relates to the head of a non-APS agency:

- advise the complainant that their complaint should be made to the agency Minister, and/or (if applicable) the Board overseeing the agency.

In some cases the Commissioner may wish to refer the matter to the relevant party himself.

2. Is the allegation of a breach of the APS Code of Conduct?

- What is being alleged? Has the complainant provided enough information for us to advise the Commissioner on whether to conduct an inquiry?
- Does further information need to be sought from the complainant? If so, see [Attachment 2](#) for template correspondence that may be adapted for this purpose. *[Attachment 2 will be based on past correspondence to complainants in similar circumstances]*

3. What outcome is the complainant seeking?

- Do they want the Commissioner to undertake a Code of Conduct inquiry?
- Is the outcome they are seeking consistent with the Commissioner's functions and powers under the Act?
- Is the complaint amenable to informal resolution? See [Attachment 3](#) for considerations. *[Attachment 3 will be adapted from the Commissioner brief on this matter once approved]*

4. Is conducting a s.41A inquiry in the public interest?

In considering this, you may have regard to the elements in subregulation 6.3(2) of the PS Regulations—see [Attachment 4](#).

[Draft Attachment 4 is below:]

Attachment 4

Is conducting a s.41A inquiry in the public interest?

Regulation 6.3(2) considerations:

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

- Considering whether a complaint is vexatious:

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:

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 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.

[End draft Attachment 4]

5. No inquiry recommended

- Example brief to Commissioner
- Example letter to complainant
- Example letter to agency head

[Relevant examples of Ministerial correspondence are in PWS—can include some if useful]

6. Considering recommending an inquiry?

- Consult Legals
- Brief GM IPEP [Example brief]

7. Recommend commencing an inquiry

- Example brief to Commissioner
- Example RFQ for potential investigators; list of potential investigators; advice on selecting an investigator
- Example letter to complainant
- Example letter to agency head

[If an inquiry is completed, reporting requirements are set out in s.41A(2) of the Act]