

Official: Sensitive

1. AGENCY HEAD & SOH COMPLAINTS

PROCESS AND CONSIDERATIONS - GUIDANCE NOTES

OVERVIEW OF PROCESS

This document provides detailed considerations for the process set out in [1. Att A Process Flowchart](#) :

Initial handling

0. Complaint received

Preliminary considerations

1. Is the complaint about an APS agency head or a statutory office holder?
(A) Does the complaint relate to interactions between the SOH and an APS employee(s)? [Applies only for SOH complaints]
2. Are there interactions with the APS Code of Conduct that need further consideration:
(A) Are the allegations aligned to the APS code of conduct requirements?
(B) Are the allegations supported by relevant facts/evidence that on face value might indicate a potential breach of the Code of Conduct?

3. Is the outcome the complainant seeking consistent with the commissioner's statutory functions?

Further Considerations:

4. Consider the most appropriate and proportionate approach?
5. What response would be appropriate and proportionate in the circumstances? Is an inquiry necessary, or can the matter be dealt with in a less formal manner?
4. Is conducting a s.41a inquiry in the public interest?
Consider the most appropriate and proportionate approach?
5. What response would be appropriate and proportionate in the circumstances? Is an inquiry necessary or can the matter be dealt with in a less formal manner?
6. ~~6.7.~~

Key Documents and Templates

ATTACHMENTS

- A [1. Att A Process Flowchart](#)
- B [1. Att B Powers to Inquire](#)
- C [1. Att C Informal Resolution Considerations](#)
- D [1. Att D Reg 6.3\(2\) Considerations](#)
- E [1. Att E Samples of Previous Handling and Words](#)

RECORD OF AH/SOH INQUIRIES

- X [AH Complaints Correspondence Record'](#)

TEMPLATES

- A [x \[Template A\] Correspondence Overview](#)
- B [x \[Template B\] Detailed Allegations Matrix](#)
- C [x \[Template C\] Reg 6 Considerations](#)

s 47C and s 47F

Formatted: Highlight

Formatted: Indent: Left: 1.27 cm, No bullets or numbering

INITIAL CHECKS & HANDLING

0. COMPLAINT RECEIVED

Acknowledgement of Receipt

Acknowledgement Letters

- a. Send acknowledgement letter / email to correspondent.
- b. If Referral, send acknowledgement letter / email to referrer:
 - *General referrals* - eg: forwarded from another inbox, or from a person or organisation that is assisting the correspondent:
 - Email or phone call to acknowledge receipt.
 - *VIP referrals* – eg: Minister or Agency Head:
 - Commissioner Response.

s 47C and s 47F

Administrative Record-Keeping

Log Incoming Correspondence and Records:

- Create Sharehub Folder in [1. Agency Head and SOH](#) using the convention [AH/SOH]_Year_Surname of Complainant (Agency_Surname of AH/SOH)
- Open '[AH Complaints Correspondence Record](#)' and add a new tab (Copy 'Template' tab and rename).
- The following templates may be useful for more complex complaints:
 - [x \[Template A\] Correspondence Overview.](#)
 - [x \[Template B\] Detailed Allegations Matrix.](#)

PRELIMINARY CONSIDERATIONS

Preliminary considerations are intended to determine whether the matter is within the scope of the Commissioner's statutory functions to consider, and what further action, if any, is required.

1. IS THE COMPLAINT ABOUT AN APS AGENCY HEAD OR A STATUTORY OFFICE HOLDER?

(a) Is the complaint about an APS Agency Head?

- Does the complaint relates to an APS agency (see [APS agency listing](#)).
- Is the person either the Secretary of the Department, or listed as agency head in enabling legislation:

>> IF 'YES':
continue to
'Step 2B':

PS Agency Head (PS Act s7) means:

- (a) the Secretary of a Department; or
- (b) the Head of an Executive Agency; or
- (c) the Head of a Statutory Agency.

For Executive or Statutory Agencies, check enabling legislation for reference such as:

For the purposes of the Public Service Act 1999:

*_the [Office Title] and the staff of the [Agency] together constitute a [Agency Type]; and
_the [Office Title] is the Head of that [Agency Type].*

Official: Sensitive

(b) Is the complaint about a non-agency head statutory office holder?

An office or appointment prescribed by the regulations (PS Act s 14(3)):

- o An office is prescribed if it is held by a person engaged or employed under an Act (PS Reg 2.2(1)).
 - o An appointment is prescribed if it is an appointment of a person under an Act (PS Reg 2.2(2)).
- AND
- o the appointment is not an appointment as Agency Head, a judicial appointment, or an appointment as a member of the ADF, AAT, NNTT, FWC, or VRB

>> IF 'YES':
continue to
'Step 2A'.

If so, does the complaint relate to interactions between the SOH and an APS employee(s)?

A SOH is bound by the Code of Conduct (s.14(2)) to the extent prescribed in the regulations (s.14(2A)), namely that:

- the SOH is assisted by or deals with APS employees in a supervisory capacity or another capacity related to the SOH's day-to-day working relationship with APS employees (Reg-2.2(3)(a))
 - o *This means the Code only applies to SOHs in their dealings with APS employees—NOT in relation to all their statutory functions. This helps ensure complementary conduct requirements between SOHs and the APS employees they work with*
- The SOH is bound by the Code as if the Code referred to the SOH's office appointment and matters related to it (Reg 2.2(4)).
 - o *So 'APS employee' in the Code transposes to 'SOH', and 'APS employment' to 'the SOH's office or appointment'.*

CHECK: for any inconsistencies between the requirement of the Code and an Australian law that relates to the SOH's office / appointment Code of Conduct?

- If there is any inconsistency between the requirements of the Code and an Australian law that relates to the SOH's office/appointment, the Code does not bind the SOH to the extent of the inconsistency (Reg 2.2(3)(b)).
 - *This is to ensure that a SOH's independence is not compromised by being bound by the Code*

(c) If the complaint relates to an APS agency, but not to the head of that agency:

- Is it about an employee in an agency?
 - o If so, advise the complainant that their complaint should be made to the relevant agency (either internally through existing channels, or via agency head).

>> Refer to
Agency.

(d) If the complaint relates to the head of a non-APS agency:

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

>> Refer Board
/ Minister.

2. ARE THERE ALLEGATIONS RELATING TO THE AH/SOH'S COMPLIANCE WITH THE APS CODE OF CONDUCT THAT MAY WARRANT FURTHER CONSIDERATION, BASED ON THE AVAILABLE FACTS? (Excluding any inconsistent provisions for SOHs)

(a) Are the allegations:

- i. *Clearly defined (who, what, when, where) / can it be readily understood what the allegations are about?*

- ii. *Aligned to one or more of the APS Code of Conduct requirements?*

Official: Sensitive

- Do the allegation/s relate to the personal behaviour of an Agency Head?
- Do they align to particular element/s of the Code of Conduct?

(a) Does the evidence (if provided) relate to the allegations?

- Has the complainant provided objective facts/evidence?
- If so, to what extent do the facts evidence support the claims / allegations the complainant has made?
 - Is there a clear alignment between the allegations and the evidence, and can the same conclusions (as those presented by the complainant) be drawn from these?
-

(b) Based on the above, would a reasonable person consider there to be some substance to the allegations (ie: that a potential breach of the Code of Conduct could/may have occurred);

- Would a reasonable observer consider there to be some substance to the allegations?

(c) If proven, would the alleged behaviour likely constitute a breach of the Code of Conduct, and if so how serious would the breach likely be considered?

- Would the conduct, if proven, likely be considered a breach of the Code of Conduct? If so, would it likely be considered a serious or minor breach?
 - Consider the gravity of the consequences that might flow on from a particular breach finding? eg: could there be potential ramifications for the agency / wider APS (similar to considerations set out in 'Handling Misconduct').

CHECK: Is further information required?

- Is there sufficient information to answer the questions above, and to recommend whether or not to conduct an inquiry? Consider:
 - The likelihood that the complainant might be adversely affected by the outcome if an inquiry were to not be recommended.
 - The nature and context of the allegations – is there likely to be further information that would either disprove or add substance to the allegation.

3. IS THE OUTCOME BEING SOUGHT CONSISTENT WITH THE COMMISSIONER'S STATUTORY FUNCTIONS?

- Does the complainant want the Commissioner to undertake a Code of Conduct inquiry? See [1. Att](#)
- Is the outcome being sought consistent with the Commissioner's functions and powers under the Act? For example: See [B Powers to Inquire](#)
 - While a complaint may be about an AH, the complainant may be seeking an inquiry into a matter that does not fall within Commissioner's remit – eg: challenging an AH's handling of a PID matter; or an outcome that is outside the scope of the Commissioner's functions (eg: Royal Commission, or other type of public inquiry).

s 47C and s 47F

s 47C and s 47F

FURTHER CONSIDERATIONS

4. WHAT RESPONSE WOULD BE APPROPRIATE AND PROPORTIONATE IN THE CIRCUMSTANCES?

Is an inquiry necessary, or can the matter be dealt with in a less formal manner?

Public confidence in the APS is maintained not only by the conduct of its employees and agency heads, but also by complaints being regarding behaviour that falls outside expected standards being responded to reasonably and proportionately.

Can the matter be resolved informally, or does it require more formal resolution / consideration:

- s 22 [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- s 22 [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]

See [1. Att C Informal Resolution Considerations](#) for more detail on each of these points.

s 47C and s 47F

5. IS CONDUCTING A S.41A INQUIRY IN THE PUBLIC INTEREST?

In considering this, you may have regard to the elements in sub-regulation 6.3(2) of the PS Regulations

- a. Is the allegation vexatious, frivolous, misconceived, or lacking in substance?
- b. Has sufficient detail about the allegation been provided?
- c. Does the allegation refer to specific decisions or actions by the agency head?
- d. Does the allegation identify conduct which, if proven, would constitute a breach of the Code of Conduct?
- 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?
- f. Is the cost of conducting an inquiry justified in the circumstances?

See [1. Att D Reg 6.3\(2\) Considerations](#) for further notes on each of these points.

RECOMMENDATIONS

5A. [NO] Inquiry not recommended?

- Brief AC IPEP
 - Either verbally or in writing, depending on complexity.
- Brief Commissioner
 - Either verbally or in writing, depending on complexity.
- Advise Complainant
 - Either via email or signed letter attached to email.
- Advise Agency Head
 - Depending on nature of allegation and formality with which complaint has been made.

5B. [YES] Considering recommending an inquiry?

- Consult Legals
- Brief AC IPEP
- Brief Commissioner
- Draft RFQ for potential investigators; list of potential investigators; advice on selecting an investigator.
 - The support required will be different for each investigation. For example, some investigations may need forensic accounting as well as legal support.
 - s 47E [REDACTED]
- Advise Complainant
- Advise Agency Head

FINALISATION AND REPORTING

8. Finalising an inquiry.

- Brief Commissioner
- Final handling depending on outcome

9. Reporting.

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