



**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Communications**

[REDACTED]

Dear [REDACTED]

**Notice of Suspected Breaches of the Australian Public Service (APS) Code of Conduct**

The department has become aware of alleged conduct by you that may give rise to a breach of the APS Code of Conduct (Code) contained in section 13 of the *Public Service Act 1999* (PS Act).

The purpose of this letter is to advise you that an investigation under the procedures established by the Secretary under section 15(3) of the PS Act is being undertaken.

I have authorised Ms Barbara Deegan, a consultant of Ashurst, to investigate the allegations. [REDACTED] is the Breach Decision Maker for this matter.

**The allegations**

It is alleged that:

- 1) During the relevant period, you held an interest in South32, being ownership of shares.
- 2) You were involved in matters relating to South32 without having notified the department of your interest in South32.
- 3) On or around 22 October 2019, you notified [REDACTED] and [REDACTED] of a potential conflict of interest relating to South32, stating:

*I would like to report that I own a small parcel of South32 shares that I acquired on the spin-off of this company from BHP. This may be a perceived conflict of interest as I am currently negotiating with South32 on the sale of pimelia as a biodiversity offset.*

- 4) On or around 23 October 2019, [REDACTED] advised you that whilst advice from outside the unit was being sought in relation to the declaration, in the interim, he thought it would be appropriate to adopt the approach you had proposed and for you not to act as the financial delegate for the matter.
- 5) On or around 23 October 2019, [REDACTED] advised [REDACTED] that he had asked you to excuse yourself from any work involving the issue.
- 6) Between 23 October and 12 November 2019, you continued to be involved in matters relating to South32.

**SENSITIVE: PERSONAL**

- 7) On or around 12 November 2019, you received an email from [REDACTED] in which [REDACTED] stated that [REDACTED] had advised you should:
  - a. complete the Declaration of Personal Interests Form;
  - b. to remove the potential or perception of a personal conflict, excuse yourself from any work involving this issue (or acting as financial delegate) until the Ethics team has considered your Declaration Form and provided advice; and
  - c. clearly document any involvement you do have in the matter.
- 8) You completed an updated Declaration of Personal Interests Form on 21 November 2019.
- 9) You failed to ensure that your interest in South 32 was notified to, or recorded on, the Western Sydney Unit probity register.
- 10) You failed to adequately and consistently report your interest in South 32 when reporting conflicts of interest to the department.
- 11) You failed to clearly document your involvement with or related to South 32.
- 12) After 12 November 2019, you continued to be involved in matters relating to South32 in circumstances where the Ethics team had not considered your Declaration Form and provided advice.

If proven, this conduct could give rise to breaches of one or more of the following sections of the Code:

- (1) *An APS employee must behave honestly and with integrity in connection with APS employment.*
- (2) *An APS employee must act with care and diligence in connection with APS employment.*
- (7) *An APS employee must:*
  - (a) *take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment; and*
  - (b) *disclose details of any material personal interest of the employee in connection with the employee's APS employment.*
- (10) *An APS employee must not improperly use inside information or the employee's duties, status, power or authority to gain, or seek to gain, a benefit or an advantage for the employee or any other person.*
- (11) *An APS employee must at all times behave in a way that upholds:*
  - (a) *the APS Values and APS Employment Principles; and*
  - (b) *the integrity and good reputation of the employee's Agency and the APS.*

**SENSITIVE: PERSONAL**

In respect of section 13(11)(a) of the PS Act, this conduct might amount to a failure to uphold the 'Ethical' and 'Impartial' APS Values set out at section 10 of the PS Act:

*Ethical*

- (2) *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

**Formal direction**

You are directed not discuss the matters in this letter with other employees, including APS employees from other departments, other than myself or members of the Conduct and Performance Case Management Team and your support person.

**The investigation process**

Copies of the department's section 15(3) procedures mentioned above, and a copy of the department's Suspected Misconduct Guidelines are attached for your information.

I have also attached for your information a copy of Part 3 of the Act, which deals with the Code and related matters.

Ms Deegan will prepare a report with her findings of fact, which will be provided to the Breach Decision-Maker. Ms Deegan will be in touch with you shortly regarding the investigation and to give you a reasonable opportunity to make a statement in relation to the suspected breach. This statement may be made in person and/or in writing.

**Possible sanctions**

If a finding of breach of the Code is made, a sanction delegate will be appointed. The possible sanctions which may be imposed for breach of the Code are:

- termination of employment;
- reduction in classification;
- re-assignment of duties;
- reduction in salary;
- deductions from salary, by way of fine (up to a maximum of 2% of salary); or
- a reprimand.

An Agency Head or Delegate may also determine that no sanction be imposed or that a less formal response such as counselling or training is appropriate in the circumstances.

**Support Person**

You are entitled to have a support person of your choice, such as a colleague, friend, family member, union or legal representative during the Code process if you wish. However, please note that a support person cannot be a person who either is or may be a potential witness, or is otherwise involved, in any of the matters connected with these suspected breaches of the Code as outlined above.

**Personal Information**

In the course of the investigation, personal information about you may be collected by the investigator from you, other employees or other people, or from within documentary records held by the department or other sources.

**SENSITIVE: PERSONAL**

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Any personal information about other people given to you during this investigation will be for the purpose of ensuring that you properly understand the matters under investigation and have a fair opportunity to provide your perspective. You are not to use or disclose any information about the investigation, including personal information about any person, without the prior express approval from me.

If you are found to have breached the Code, information about any breach or sanction imposed may be used in the course of making future decisions about your employment with the department. Other use or disclosure may be authorised under reg 9.2 of the *Public Service Regulations 1999*.

**Employee Assistance Program**

I appreciate that the contents of this letter may be difficult for you. As such, you may consider it useful to talk to a professional counsellor. If you would like to talk to a professional counsellor, I would encourage you to contact the department's Employee Assistance Program on 1300 360 364.

Yours sincerely

Stephanie Bourke  
Assistant Secretary Human Resources and Property  
15 October 2020

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