

Senate Committee: Education and Employment

**QUESTION ON NOTICE
Additional Estimates 2015 - 2016**

Outcome: Agency: ACARA

Department of Education and Training Question No. SQ16-000638

Senator Ludwig, Joe provided in writing

ACARA: Departmental Staff Misconduct

Question

Since the change of Prime Minister on 14 September, 2015:

1. Please provide a copy of the departmental staff code of conduct.
2. Have there been any identified breaches of this code of conduct by departmental staff?
 - (a) If yes, list the breaches identified, broken by staffing classification level.
 - (b) If yes, what remedy was put in place to manage the breach? If no remedy has been put in place, why not?
 - (c) If yes, when was the breach identified? By whom? When was the Minister made aware?
 - (d) If yes, were there any legal ramifications for the department or staff member? Please detail.

Answer

The Australian Curriculum, Assessment and Reporting Authority (ACARA) has provided the following response.

1. Code of conduct attached
2. No

1. Title

Code of Conduct 3.0

2. Purpose

The Code of Conduct (referred to as the Code) outlines the expected professional and personal behaviour of all employees, executives and affiliates while representing ACARA and achieving ACARA's mission.

The Code is intended to promote integrity and ethical behaviour and to guide employees, executives and affiliates' dealings with colleagues, stakeholders and members of the public.

The Code stands beside and does not exclude or replace other legally binding obligations.

2.1 ACARA's Mission and Values

The Code reflects, and is intended to both advance the mission of ACARA, namely that through world-class school curriculum, assessment and reporting, ACARA is improving the learning of all young Australians, as well as to secure the observance of its values of:

Respect – we value each other and what we bring to ACARA's work, and recognise and accept our diverse backgrounds, and different points of view

Integrity – we are honest, ethical and fair in all our dealings with one another, our stakeholders and our partners in the community

Collaboration – we solve problems together, we communicate with each other, we share information, and we all work towards the bigger picture

Professionalism – we strive at all times to maintain the highest standards of work, to deal with one another sensitively, and to respect the various principles and protocols of our work

Passion – we believe in the work we do and its power to make a difference

3. Scope

The Code has broad application. It applies as a condition of employment for all employees and executives; or, a condition of engagement for affiliates. It covers all circumstances when employees, executives and affiliates are performing work, duties or functions for ACARA including working remotely, attending functions, conferences, travel, conducting social media activities and any other circumstances when a person is representing ACARA.

• The Code applies to:

- All employees including full-time, part-time, and casual employees as defined in the ACARA Enterprise Agreement 2012-2016 (EA). Employees are covered by the terms and conditions of the EA as well as an employment agreement.
- All executives. Executives are covered by the terms and conditions of an employment agreement.

- All affiliates including secondees and temporary staff engaged by recruitment agencies. Affiliates are not governed by the EA nor do they have a direct employment relationship with ACARA.
- In some instances, aspects of the Code may be applied to contractors or independent consultants through their contractual arrangements.

4 Definitions and Interpretation

- **Policy** means an ACARA policy as introduced, altered or replaced by ACARA from time to time
- **Manager** means:
 - (a) an employee or executive member's direct supervisor; or;
 - (b) an affiliate's nominated ACARA contact in relation to their engagement.

- **Legislation**

A reference to any legislation includes subordinate legislation made under it, and includes that legislation and subordinate legislation as amended or replaced from time to time.

For additional definitions, refer to individual clauses in this policy and also; the [Definitions Clause 11](#) of the EA.

4. Duty to Observe the Code of Conduct

All employees, executives and affiliates are required to observe the following rules of conduct in relation to:

- Personal and Professional Behaviour
- Equity and Respectful Treatment
- Ethical Decision Making
- Resources and Reputation of ACARA
- Conflicts of Interest

5. Personal and Professional Behaviour

The behaviour and conduct of employees, executives and affiliates must align with ACARA's mission, values and the principles enunciated in the Purpose clause of this policy. All employees, executives and affiliates are required to comply with all applicable legislation, industrial instruments, professional codes of conduct or practice, and ACARA policies (including related documents), including by:

- observing standards of equity and respect in relation to equal opportunity, anti-discrimination, harassment and bullying;
- complying with [ACARA's Place of Work Policy](#);
- using ACARA's resources responsibly, efficiently and effectively;
- protecting ACARA's reputation in the wider community;
- protecting ACARA's interests in intellectual property arising from its curriculum, assessment and reporting materials and research;

- maintaining, developing and sharing knowledge and understanding of their area of expertise or professional field;
- exercising their best professional and ethical judgement and carrying out their duties and functions with integrity and objectivity;
- acting with honesty, diligence and conscientiousness to meet ACARA's objectives;
- acting fairly and reasonably, and treating staff, affiliates, visitors to ACARA and members of the public with respect, impartiality, courtesy and sensitivity;
- maintaining a cooperative and collaborative approach to working relationships;
- maintaining appropriate standards of behaviour, language and dress in the workplace; and
- not incurring any liability on the part of ACARA without proper authorisation.

7 Equity and Respectful Treatment

ACARA is committed to a workplace that provides dignity and respect. Employees, executives and affiliates are required to:-

- comply with *ACARA's Anti-Harassment and Anti-Bullying Policy*;
- comply with *ACARA's Equal Employment Opportunity, Anti-Discrimination and Affirmative Action Policy*;
- comply with *ACARA's Grievance Policy*
- treat employees, executives, affiliates, visitors and members of the public with respect;
- not allow personal relationships to negatively impact professional relationships;
- act and communicate professionally and courteously in all of their dealings;
- refrain from acting in any way that would unfairly harm the reputation and career prospects of other employees or affiliates; and
- consider the appropriateness of intervening constructively and reporting where a colleague's behaviour is clearly in breach of the Code.

- **Criminal Charges and Offences**

Employees, executives and affiliates are required to report to the CEO, COO or the Board Secretary, if they are convicted of a criminal offence whilst they are employed, appointed or engaged by ACARA.

- **Work, Health and Safety**

ACARA is committed to providing a safe, healthy and productive workplace. Employees, executives and affiliates also have a duty to ensure their safety and the safety of others at work. All employees, executives and affiliates must comply with *ACARA's Work, Health and Safety Policy*; *ACARA's Drug and Alcohol Policy*; and related policies, guidelines, procedures and practices.

- **Recruitment and Selection**

Recruitment and selection must meet the principles and the standards of merit selection – being fair, ethical and effective. Employees and executives when participating in recruitment and selection either as a recruiting manager, panel member or a candidate are required to comply with *ACARA's Recruitment and Selection Policy*; and related policies, guidelines, procedures and documents.

8 Ethical Decision Making

When making decisions in the course of their duties or functions, employees, executives and affiliates are required to consider:

6. Whether the decision complies with the legal obligations of ACARA employees or executives including, but not limited to, Division 4 of Part 3 of the *Commonwealth Authorities and Companies Act 1997* which imposes duties of care and diligence and good faith, restrictions on improper use of position or of information, and a duty to disclose relevant personal interests (to seek to avoid a conflict of interest);
7. whether there are any conflicts of interest arising from the decision; and
8. the possible impact of the decision on others and on the reputation of ACARA.

(a) **Fraud and Corruption Prevention**

Employees, executives and affiliates are required to:-

- Minimise ACARA's exposure to fraud and corruption, by abiding by *ACARA's Fraud Control Policy*; and
- Report any suspected fraud, corrupt, criminal, unethical conduct, ineffective administration practices or waste of public money.

Disclosures should be made to the CEO, COO, Director, Communications and Strategic Relations, or Board Secretary. See also clause 11 on disclosure responsibilities under the *Public Interest Disclosure Act 2013*.

Employees, executives and affiliates must not victimise, harass nor discriminate against another colleague who makes a disclosure under this clause.

9 Resources and Reputation of ACARA

All employees, executives and affiliates have a duty at all times to uphold the good reputation of ACARA.

9.1 Public Comment

Employees, executives and affiliates must:-

- not make any public comment on behalf of ACARA or represent themselves as being spokespersons for ACARA, unless expressly authorised by the CEO to do so. All public comments of this nature should be coordinated by the CEO, in liaison with the Director, Communications and Strategic Relations and as agreed by the CEO;
- consider carefully whether any private comments made relating to ACARA's work conflict with our values or ACARA's stated position on matters; and

- refrain from making public comment in a private capacity on ACARA's activities where the comment could reasonably be perceived as being made on behalf of ACARA or a Government.

If the responsibility for comment is conferred to an employee, executive or affiliate, it is expected that those comments will be within their broad area of expertise. These expectations are not intended to restrict the right of any individual to freely express their opinions in their private capacity, or as a member or representative of any professional, community or representative body, unless there is a risk that the opinion might be attributed to ACARA or the person is identifiable as an ACARA employee, executive or affiliate.

- **Private Publication of Articles**

Employees, executives and affiliates must not publish material that is work related or touches upon work which is associated with ACARA unless:-

- the matter is discussed with their manager and General Manager;
- a draft copy of the material is provided to the Director, Communications and Strategic Relations for review and comment and approval; and
- the material is not linked to ACARA unless expressly authorised by the CEO.

- **Appropriate use of ACARA Information, Communications and Technology Resources (ICT)**

ACARA's ICT resources are for ACARA work purposes and therefore ACARA reserves the right to monitor and view data stored or transmitted. Employees, executives and affiliates are required to comply with *ACARA's Information and Communication Technology, Security and Usage Policy* and related policies, guidelines, procedures and practices.

- **Intellectual Property**

ACARA relies on its intellectual property to deliver its mission. All employees, executives and affiliates play an important role in ensuring ACARA's Intellectual Property is protected and are required to comply with *ACARA's Intellectual Property Policy*.

- **Protection of confidential information**

ACARA stores and collects confidential information and this information must not be provided to unauthorised people. Access to information is to be limited to those who need to know in order to conduct their duties or functions and must be kept secure. Employees, executives and affiliates are required to:

- Comply with *ACARA's Privacy Policy* and the *Privacy Act 1988* (Cth); and
- Comply with section 70 of the *Crimes Act 1914* (Cth), namely 'Disclosure of information by Commonwealth officers'; and
- Comply with any confidentiality obligations in other relevant legislation.

9.2 Record Keeping

All employees, executives and affiliates have a responsibility to: -

- Create and maintain full, accurate and honest records of their activities, decisions and business transactions;

9. capture or store records in accordance with [ACARA's Information Management and Record Keeping Policy](#); and
10. maintain confidentiality with all ACARA related documents and information that is not publicly available or has yet to be published by ACARA.

10 Conflicts of Interest

All employees, executives and affiliates are required to:

- 10 Comply with [ACARA's Conflicts of Interest Policy](#);
- 11 disclose all facts to ACARA giving rise to an actual, potential or perceived conflict of interest and complete a [Conflicts of Interest Disclosure Statement](#), if required.

(a) **Secondary employment or engagement as a volunteer**

All employees, executives and affiliates must recognise their relationship with ACARA. Engaging in other employment or volunteering activities may have the potential to compromise or to be seen to compromise their duties with ACARA. Therefore, employees, executives and affiliates are required to complete a *Secondary Employment and Volunteer Engagement Disclosure Form* in relation to other work they are engaged in, or are proposing to engage in – whether paid or unpaid. (A form is not required if ACARA was aware of the other employment or volunteer activities at the time the employee, executive or affiliate was engaged.) Managers and General Managers need to assess any conflict of interest or work, health or safety risks associated with secondary employment and respond to mitigate these risks accordingly.

(b) **Acceptance and Declaration of Gifts, Benefits and Bribes**

Employees, executives and affiliates may be offered a gift or benefit in relation to their work for ACARA, including as a payment of money, as an act of gratitude. Sound judgement must be exercised when deciding whether to accept a gift or benefit. The acceptance of a gift or benefit must not alter decision making.

Any gift or benefit that cannot be considered as occasional and token should be declined stating that it is ACARA's requirement that such gifts or benefits should not be accepted. If this is not possible because of the environment in which the gift or benefit is offered, the gift or benefit may be accepted on behalf of ACARA, and it should then be retained by the relevant business unit and declared and registered on [ACARA's Register of Gifts and Benefits](#).

Individual employees, executives and affiliates may accept occasional and token gifts or benefits, subject to the following requirements:

- Gifts or benefits may be accepted only if the recipient is satisfied that they cannot be compromised, or there is no risk that the recipient may be perceived as having been compromised, by doing so;
- The gift or benefit must never be in exchange for favours. This could be regarded as bribery, which is a crime. Bribery is receiving or offering any undue reward to or by a person to influence the way that a person acts. If an employee, executive or affiliate is offered a bribe, it is to be refused and the employee, executive or affiliate must immediately notify their direct manager;

- An employee, executive or affiliate who is in a position in the course of their ACARA work to confer a benefit on a third party must not accept a gift or benefit from that party;
- Where the value of the gift or benefit exceeds \$50, it must be declared and registered on [ACARA's Register of Gifts and Benefits](#);
- Where an affiliate provides a gift or a benefit directly to an employee or executive which exceeds \$50, it must be declared and registered on [ACARA's Register of Gifts and Benefits](#); and
- cash or gift vouchers must not be accepted from any third party which derives a commercial benefit from a contractual relationship with ACARA under any circumstances.

11 Public Interest Disclosures (PIDs)

The *Public Interest Disclosure Act 2013* (PID Act) applies to all ACARA employees and executives, and to affiliates when acting in connection with entering into or giving effect to the affiliate's contract with ACARA. The Act establishes a framework to encourage and facilitate the reporting of wrongdoing by public officials in the public sector, ensures that agencies properly investigate and respond to public interest disclosures, and provides protections to those who make certain public interest disclosures.

A public interest disclosure (Disclosure) is a disclosure about suspected wrongdoing in the public sector, but only if it is made in accordance with section 26 of the PID Act. This includes conduct such as breaches of a law; corruption; maladministration (which includes unreasonable and negligent conduct); risks to safety, a danger to the environment and plagiarism (relating to scientific research). It can also include conduct by a contracted service provider/supplier.

The discloser must believe on reasonable grounds there is wrongdoing or have information that tends to show wrongdoing and make a Disclosure to a proper authority. In the first instance, a Disclosure must be made to ACARA's authorised internal recipient/s for public interest Disclosures, or to a supervisor (there are some narrow exceptions where external Disclosure may be permissible without the individual making the Disclosure first having made their disclosure internally).

ACARA has a requirement under the Act to protect and support the discloser if the Disclosure is made in accordance with the Act. This includes protection against reprisal.

In the event that an ACARA employee, executive and/or affiliate makes a Disclosure to a supervisor, ACARA must allocate the matter for investigation. The person who is allocated to investigate the matter usually must investigate. The individual making the Disclosure will be informed if a decision is made to have a matter investigated or

not to investigate a matter, and why. ACARA will seek the approval of the individual making the Disclosure before disclosing their details to the person who is allocated to investigate the matter.

There are some circumstances in which the discloser has the ability to make an external disclosure if s/he 'believes on reasonable grounds' the internal response is inadequate or where the information concerns a substantial and imminent danger to the health or safety to persons, or to the environment.¹

11. Accountability

- **Employees, Executives and Affiliates are required to:**
 - Attend any relevant mandatory training relating to the Code from time to time;

- behave at all times in a way which upholds ACARA's Values;
 - behave honestly and with integrity;
 - act with care and diligence;
 - treat everyone with respect and courtesy, and without harassment;
 - comply with all applicable Australian laws;
 - comply with any lawful and reasonable direction given by someone in ACARA who has authority to give the direction;
 - maintain appropriate confidentiality;
 - take reasonable steps to avoid, any conflict of interest;
 - report any suspected breaches of the Code, or other ethical issues; and
 - read, understand and comply with this policy.
- **Managers and Executives are required to:**
 - Adhere to 12.1;
 - promote compliance with 12.1 and the Code;
 - directly assist or refer any queries that employees or affiliates may have regarding the Code to the CEO, COO, Board Secretary or Human Resources;
 - receive and report any suspected breaches of the Code, or other ethical issues to the CEO, COO, Board Secretary or Human Resources; and