

APPENDIX 5

**Guidelines for Managing Allegations
of Misconduct Against ASC Officers**

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PURPOSE

The purpose of these guidelines is to set out principles for handling of complaints made by members of the public against the conduct of ASC officers. The guidelines are directed to ensuring that officers of the ASC maintain high standards of behaviour and conduct when dealing with members of the public.

While all complaints, both oral and written, will be assessed, people wishing to lodge a complaint (complainants) are encouraged to put any complaints in writing setting out the name of the officer involved and the circumstances surrounding the alleged conduct.

CODE OF CONDUCT

ASC officers are bound by the standard of conduct set out in the *Guidelines on Official Conduct of Commonwealth Public Servants*. In brief, there are three main principles in these guidelines:

- (a) an officer should perform their duties with professionalism and integrity;
 - (b) fairness and equity are to be observed by all officers in dealing with colleagues and members of the public; and
 - (c) real or apparent conflict of interest is to be avoided.
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OVERVIEW

The overriding principle to be applied is that allegations are properly and impartially assessed, while at the same time procedural fairness is provided to ASC officers who are accused of improper conduct.

In the first instance, all complaints will be referred to the SES officer or divisional head responsible for the division or branch in which the staff member works. This officer will review the complaint and will determine whether the complaint warrants further investigation and, if so, how the complaint is to be assessed and by whom.

Investigations are to be conducted in a fair, open and objective manner with the purpose of establishing the facts. The officer shall be notified of

the complaint and be given an opportunity to make submissions in relation to it at the earliest time possible without jeopardising the investigation. The officer shall have a right to union or legal representation, at their own expense, in any discussions or submissions concerning the complaint, if they so elect. On conclusion of the investigation, both the complainant and the officer shall be advised in writing of the result and the complainant shall be advised that they have a right of review of the decision via the Commonwealth Ombudsman. The officer should, in most cases, be provided with a copy of the final report. An exception may be in cases where criminal prosecution has been recommended. The officer has the rights of review set out in the Public Service Act.

The ASC has set a standard of 14 days for investigation and reporting on all complaints, commencing from the time the matter is received.

Different procedures will apply depending on the seriousness of the allegation.

MORE SERIOUS ALLEGATIONS

More serious allegations involve allegations of abuse of office or powers and allegations of breach of legislation, whether criminal or not. Conduct which might fall into the category of more serious allegations would include intimidation, physical assault, using one's office for personal gain, breach of confidentiality provisions (s127 ASC Law), breach of privacy in violation of the Information Privacy Principles in the Privacy Act 1988 and fraud.

As a general rule, investigations of complaints will be conducted using ASC resources. However, where there is reasonable cause to suspect that an ASC officer may have committed offences under either state or federal law, it will usually be more appropriate to refer the matter to the Australian Federal Police.

The Regional Commissioner or equivalent will nominate an officer to carry out the internal investigation. That person will usually be an SES officer and should have had no significant previous connection with the alleged offender.

Upon conclusion of the investigation a report detailing the findings of fact, statement of reasons and a recommendation will be forwarded to the Regional Commissioner or equivalent, who will review the report and determine the appropriate course of action.

Where an investigation of alleged misconduct discloses prima facie evidence of a breach of state or federal law amounting to a criminal

offence, then the matter should be referred to the Commonwealth Director of Public Prosecutions (DPP). If the person is convicted of an offence then disciplinary action may follow. If the matter is not referred to the DPP or the DPP declines to take action or the action taken is unsuccessful, the conduct may still constitute wilful misconduct. Allegations of this sort should be dealt with according to the Public Service Act and the processes are set out in the Act.

LESS SERIOUS COMPLAINTS

Complaints about ASC staff members' conduct which are not considered to be in the category of more serious allegations, are to be dealt with by the SES officer or divisional head responsible for the division in which the staff member works. These allegations might include breaches of appropriate standards of personal conduct, for example, rude or threatening behaviour, and breaches of administrative directions and public service or ASC guidelines on official conduct.

The reviewing officer will be responsible for determining whether the complaint constitutes a serious complaint as detailed above. This officer will also be responsible for determining what action, if any, is to be taken in respect of the complaint.