

# COMMISSIONER FOR STANDARDS REFERRAL PROCESS

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

MAY 2017

REPORT 3



## COMMITTEE MEMBERSHIP

Joy Burch MLA (Chair)

Tara Cheyne MLA

Shane Rattenbury MLA

Andrew Wall MLA

## SECRETARIAT

Tom Duncan (Secretary)

Janice Rafferty (Assistant Secretary)

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## RESOLUTION OF APPOINTMENT

In 1995 the Legislative Assembly for the Australian Capital Territory ('the Assembly') amended Standing Order 16, which established the Standing Committee on Administration and Procedure ('the Committee').

Standing Order 16 authorises the Committee to inquire into and report on, among other things, the practices and procedure of the Assembly.

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# RECOMMENDATIONS

## RECOMMENDATION 1

- 5.1 The Committee recommends that the Speaker and Deputy Speaker be removed from the role of reviewing complaints prior to their possible referral to the Commissioner and that Continuing Resolution 5AA, the protocols, complaint guidelines and the Schedule for the Appointment of the Commissioner be amended accordingly.

## RECOMMENDATION 2

- 5.2 The Committee recommends that the revised Continuing resolution 5AA, protocols, guidelines and appointment schedule provided at Appendix E of this report be adopted.



# 1. BACKGROUND

1.1. At its meeting on 16 February 2017 the Legislative Assembly resolved:–

“That the Standing Committee on Administration and Procedure inquire into and report on strengthening the Commissioner for Standards’ role by streamlining the referrals process for complaints against MLAs.”

1.2. At its meeting on 23 February 2017 the Committee noted the resolution of the Assembly of 16 February 2017 and discussed the proposed conduct of the inquiry. It was agreed that the Commissioner for Standards, the Ethics and Integrity Advisor, the Chief Minister, the Leader of the Opposition and the Leader of the Greens be asked to comment on the current process. Background information on the House of Commons Commissioner for Standards would also be prepared for Members.

1.3. Responses were received from:

- Chief Minister
- Ethics and Integrity Advisor
- Commissioner for Standards

1.4. Copies of the responses are attached to this report.

## 2. ISSUES

- 2.1. The position of Commissioner for Standards was established through a continuing resolution of the Legislative Assembly agreed to on 31 October 2013 and amended on 9 June 2016.
- 2.2. The resolution states that:—
- (4) The functions of the Commissioner are to:
    - (a) investigate specific matters referred to the Commissioner—
      - (i) by the Speaker in relation to complaints against Members; or
      - (ii) by the Deputy Speaker in relation to complaints against the Speaker;
    - (b) report to the Standing Committee on Administration and Procedure;
- 2.3. If a member of the public, the ACT Public Service or Members of the Assembly believe that there has been a breach of the Members' Code of Conduct by a Member they may write to the Speaker, or if the complaint is regarding the Speaker, the Deputy Speaker.
- 2.4. If the Speaker (or Deputy Speaker) receives a complaint about a Member pursuant to paragraph (5) (or (7) of the resolution and the Speaker ( or Deputy Speaker) believes on reasonable grounds that—
- (a) there is sufficient evidence as to justify investigating the matter; and
  - (b) the complaint is not frivolous, vexatious or only for political advantage;
- the Speaker (or Deputy Speaker) may refer the complaint to the Commissioner for investigation and report.
- 2.5. The resolution then sets out conditions and processes for the Commissioner to follow.
- 2.6. The Standing Committee on Administration and Procedure developed and published on the Assembly website protocols and procedures to be followed by the Commissioner and the complainant.
- 2.7. When establishing the position of Commissioner for Standards, the Committee was concerned that there was a possibility that if there was no vetting process for complaints there was a risk that the Commissioner would be overwhelmed by any number of frivolous as well as legitimate complaints.
- 2.8. Since the role of Commissioner for Standards was established in 2013 there have been four referrals by the Speaker to the Commissioner:—
- Ms Burch, June 2015
  - Mr Barr, August 2016
  - Mr Hanson MLA, August 2016
  - Dr Bourke, MLA, September 2016

- 2.9. In all four cases the Commissioner recommended that the complaint be dismissed.
- 2.10. It is the role of the Speaker in the process of referral of matters to the Commissioner for Standards that has been questioned by Members of the Assembly and led to the resolution of February 2017 moved by Mr Gentleman MLA.
- 2.11. In two referrals, the Standing Committee on Administration and Procedure, when considering the Commissioner's report and the correspondence from the Speaker to the Commissioner, expressed some concern in relation to the commentary provided by the Speaker in relation to the complaints. In one instance a Member of the Committee provided a dissenting report to the Committee's report which was critical of the correspondence to the Commissioner.
- 2.12. The dissenting report indicated that the Speaker's correspondence to the Commissioner had, in effect, "amounts to 'drafting instructions' and analysis to the Commissioner."
- 2.13. The Standing Committee of Administration and Procedure in its Reports Nos. 11 and 12 —The Conduct of Mr Hanson ML and The Conduct of Dr Bourke MLA made the following recommendation:—

The Committee recommends that the Standing Committee on Administration and Procedure for the 9<sup>th</sup> Assembly reconsider the role of the Speaker and Deputy Speaker in the referral of a possible breach of the Code of Conduct to the Commissioner for Standards.

## 3. SUBMISSIONS

### CHIEF MINISTER

- 3.1. The submission from Chief Minister provided some background to the establishment of the position of Commissioner for Standards. It touched on the role of the Speaker as a “gatekeeper” in the process and highlighted the inconsistencies in approach that had been identified in past cases.
- 3.2. The Chief Minister, through his submission, reflected on the requirement of impartiality of a Speaker in all matters and raised the possibility of requiring the appointment of the Commissioner for Standards to be by 2/3rds majority of the Assembly.

### ETHICS AND INTEGRITY ADVISOR

- 3.3. In the July 2012 report of the *Review of the Code of Conduct for Members of the Legislative Assembly for the Australian Capital Territory*, Mr Skehill expressed concern that unmeritorious complaints might be too readily made and that affected Members might be subjected to adverse publicity. The volume of complaints might mean that they could not be speedily resolved.
- 3.4. However, he noted that experience has not reflected his concern and that the small number of matters referred to the Commissioner meant that all were resolved in a timely manner.
- 3.5. He recommended that the role of the Speaker and Deputy Speaker in the referral process be removed completely, so that all future complaints were required to be referred to the Commissioner for Standards without assessment by the Speaker or Deputy Speaker.

### COMMISSIONER FOR STANDARDS

- 3.6. Dr Crispin, the Assembly’s Commissioner for Standards, in his submission to the Committee agreed that it was appropriate to remove the “gatekeeper” role from the Speaker and/or Deputy Speaker. He indicated that he felt that there may still be a risk of complaints that should be peremptorily dismissed.
- 3.7. He offered a proposal to amend the Protocol that allowed the Commissioner to dismiss a claim without the accused Member being involved.

## 4. DISCUSSION

- 4.1. The Committee, through its role in receiving the final reports of the Commission for Standards and in reporting to the Assembly its recommendations on the report has an intimate knowledge of the issues under consideration. In addition the Committee was responsible for the development and adoption of the current continuing resolution, the appointment process for the Commissioner, and the protocols.
- 4.2. Rather than re prosecute the issue, the Committee reviewed the four previous reports and the dissenting report prepared by Mr Hinder MLA and the considered the matters raised in the submissions.
- 4.3. The Committee agreed that the Speaker and Deputy Speaker be removed from the role of reviewing complaints prior to their possible referral to the Commissioner and that Continuing Resolution 5AA, the protocols, complaint guidelines and the Schedule for the Appointment of the Commissioner be amended accordingly.
- 4.4. Having removed the gatekeeper role, the Committee was concerned that there was now a risk that members of the public could have direct access to the Commissioner, that the Commissioner's private address would become public and that there was no monitoring of the process.
- 4.5. It was suggested that the Clerk be the point of contact to which complaints could be addressed. This would protect the privacy of the Commissioner and allow the Office of the Legislative Assembly to assist the Commissioner in logging and processing the correspondence being received.
- 4.6. The Committee also took the opportunity of clarifying the appointment process for the Commissioner in terms of when the Speaker should call for expressions of interest. It also clarifies the process of public notification of when a matter is being investigated by the Commissioner.

## 5. RECOMMENDATIONS

### RECOMMENDATION 1

- 5.1 The Committee recommends that the Speaker and Deputy Speaker be removed from the role of reviewing complaints prior to their possible referral to the Commissioner and that Continuing Resolution 5AA, the protocols, complaint guidelines and the Schedule for the Appointment of the Commissioner be amended accordingly.

### RECOMMENDATION 2

- 5.2 The Committee recommends that the revised Continuing resolution 5AA, protocols, guidelines and appointment schedule provided at Appendix B of this report be adopted.

Joy Burch MLA, Chair

May 2017

# APPENDIX A: ORIGINAL COMMISSIONER FOR STANDARDS— CONTINUING RESOLUTION 5AA

## *Continuing resolution 5AA*

### COMMISSIONER FOR STANDARDS

This resolution provides for the appointment of a Legislative Assembly Commissioner of Standards.

#### Resolution agreed by the Assembly

31 October 2013

#### COMMISSIONER FOR STANDARDS

That this Assembly requests the Speaker to appoint a Legislative Assembly Commissioner for Standards on the following terms:

- (1) The Speaker must, after each Assembly is elected or whenever the office becomes vacant, appoint a Commissioner for the life of that Assembly and the period of three months after each election. The initial appointment is for the term of the 8<sup>th</sup> Assembly and the period of three months after the election at the conclusion of that term.
- (2) Before appointing a Commissioner, the Speaker must consult with the Chief Minister, the Leader of the Opposition and Crossbench Members.
- (3) The Commissioner may be dismissed only following a resolution of the Legislative Assembly resolving to require the Speaker to end the Commissioner's appointment—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the Commissioner's functions.

However, a motion for such a resolution may only be debated after the Standing Committee on Administration and Procedure ('the Committee') has reported to the Assembly that it is satisfied that the Commissioner is unfit for the office or unable to fulfil the Commissioner's functions.

- (4) The functions of the Commissioner are to:
  - (a) investigate specific matters referred to the Commissioner—
    - (i) by the Speaker in relation to complaints against Members; or

- (ii) by the Deputy Speaker in relation to complaints against the Speaker;
  - (b) report to the Standing Committee on Administration and Procedure; and
  - (c) if the Assembly is not sitting when the Commissioner provides a report to the Committee, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation. *(Inserted 9 June 2016)*
- (5) Members of the public, members of the ACT Public Service and Members of the Assembly may make a complaint to the Speaker about a Member's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests.
- (6) If the Speaker receives a complaint about a Member pursuant to paragraph (5) and the Speaker believes on reasonable grounds that—
- (a) there is sufficient evidence as to justify investigating the matter; and
  - (b) the complaint is not frivolous, vexatious or only for political advantage;
- the Speaker may refer the complaint to the Commissioner for investigation and report.
- (7) Members of the public, members of the ACT public service and Members of the Assembly may make a complaint to the Deputy Speaker about the Speaker's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests.
- (8) If the Deputy Speaker receives a complaint about the Speaker pursuant to paragraph (7) and the Deputy Speaker believes on reasonable grounds that—
- (a) there is sufficient evidence to justify investigating the matter; and
  - (b) the complaint is not frivolous, vexatious or only for political advantage;
- the Deputy Speaker may refer the complaint to the Commissioner for investigation and report.
- (9) In exercising the functions of Commissioner the following must be observed:
- (a) The Commissioner must not make a report to the Committee if the Member or the Speaker about whom the complaint was made has agreed that he or she has failed to register or declare an interest if—
    - (i) in the Commissioner's opinion the interest involved is minor or the failure was inadvertent; and

- (ii) the Member concerned has taken such action to rectify the failure as the Commissioner may have required within any procedure approved by the Committee for this purpose.
  - (b) The Commissioner must not make a report to the Committee unless the Commissioner has—
    - (i) given a copy of the proposed report to the Member or the Speaker who is the subject of the complaint under investigation;
    - (ii) the Member or the Speaker has had a reasonable time to provide comments on the proposed report; and
    - (iii) the Commissioner has considered any comments provided by the Member or the Speaker.
  - (c) The Commissioner must report by 31 August each year to the Speaker on the exercise of the functions of the Commissioner.
- (10) The Committee must review the operation of the Commissioner after two years following the initial appointment of the Commissioner and report to the Assembly in the last sitting period in 2016. *(Amended 9 June 2016)*

## APPENDIX B: SUBMISSION—CHIEF MINISTER

**Andrew Barr MLA**  
**Minister**



Member for Kurrajong  
Treasurer  
Minister for Economic Development  
Minister for Tourism and Major Events

Ms Janice Rafferty  
Assistant Secretary  
Standing Committee on Administration and Procedure  
PO Box 1020  
CIVIC SQUARE ACT 2601

Dear Ms Rafferty

Thank you for your letter of 10 March 2017 about the strengthening of the Commissioner for Standards' role by streamlining the referrals process for complaints against MLAs. I am pleased to take this opportunity to make a submission for the Committee's consideration.

The MLA code of conduct was introduced through Legislative Assembly continuing resolution 5 of August 2005. Other than motions of no-confidence and general criticisms within the assembly, there was no mechanism available for impartial external review of alleged breaches of the code.

To address this deficiency, the Commissioner for Standards was introduced in October 2013 to provide this review mechanism and as an appropriate avenue for complaints against MLAs.

The initial extensive consultation on the introduction of this role saw robust debate for the preferred referral method of complaints to the Commissioner. Given the anticipated frequency of allegations of breaches of the code, it was determined that a vetting mechanism be implemented. The mechanism was that complaints would be received initially by the Speaker who, after assessing the complaints, would refer the complaints to the Commissioner for Standards if it was appropriate to do so.

The Hare-Clarke electoral system has resulted in minority government in almost every assembly since self-government. Political necessity dictates that in a number of these cases the presiding officer of the assembly may be a member of the opposition.

The participation of the Speaker as a "gatekeeper" presents a range of difficulties. The role of the Speaker as the presiding officer of the assembly is to be impartial. However, as demonstrated in any number of jurisdictions both domestic and international, the level of neutrality varies greatly. For example, in the previous assembly the Speaker received 3 individual complaints against Members of the Legislative Assembly (MLAs) which could be perceived to have been handled inconsistently depending on the political affiliation of the MLA against whom the complaint was made.

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This was explored at length in Mr Jayson Hinder's dissenting report contained in the Standing Committee on Administration and Procedure Report 11 of 2016 – ***The Conduct of Mr Hanson MLA***.

The major source of concern in Mr Hinder's dissenting report was that two referrals of complaints against labor MLAs were very straightforward and consistent with continuing resolution 5AA. The subsequent referral of a complaint against Mr Hanson however, included a comprehensive commentary on the merits of the complaint and a statement to the effect that the referral was only being made in the interests of *demonstrating* impartiality.

Given the very low number of complaints over the life of the 8<sup>th</sup> Assembly, combined with the difficulties facing the Speaker in referring potentially politically damaging complaints to the Commissioner for Standards, this demonstrates that the adoption of a direct referral model would eliminate potential commentary and bias.

The people of the ACT can reasonably expect MLAs to conduct themselves in a manner consistent with the dignity of the Assembly and in accordance with the MLA code of conduct. The ability for MLAs, public servants and members of the public to direct complaints about departures from behavioural expectations should be preserved.

A process of direct referrals would be seen to enhance the independence of the Commissioner's role, however some thought needs to be given to the nature of the appointment process of the Commissioner. The current mechanism of a Speaker appointment, albeit with cross party consultation, may carry with it the same impartiality concerns as raised by the referral model. It may be worth considering a move to an appointment requiring a two thirds majority resolution of the assembly or some other appointment method to establish complete independence and impartiality.

In making this submission I wish to acknowledge the continuing hard work of MLAs, and the generally strong level of compliance with the MLA code of conduct. I also acknowledge the outstanding contribution Dr Crispin has made and continues to make in the role and confirm that nothing raised in this submission suggests that the Commissioner's impartiality has been compromised in any way. I am confident that the Committee will adopt a referral model that eliminates the possibility of party politics encroaching on the independence of this important integrity assurance role.

Yours sincerely



Andrew Barr MLA  
Chief Minister

31 MAR 2017

# APPENDIX C: SUBMISSION—ETHICS AND INTEGRITY ADVISOR



## Ethics and Integrity Adviser

Ms Janice Rafferty  
Assistant Secretary  
Standing Committee on Administration and Procedure  
Legislative Assembly for the Australian Capital Territory

Dear Ms Rafferty

I refer to Mr Duncan's letter of 1 March 2017 requesting that I provide a view on the current process for referral of complaints against Members to the Commissioner for Standards.

In the 31 July 2012 report of the *Review of the Code of Conduct for Members of the Legislative Assembly for the Australian Capital Territory*, I recommended that the Speaker (or Deputy Speaker if the Speaker would encounter an actual or reasonably perceived conflict of interest in dealing with a particular matter) should have what has since been referred to as a "gatekeeper" role. Under this, only those complaints against Members that the Speaker/Deputy Speaker considered were not unfounded, frivolous or vexatious were required to be referred to the Commissioner for consideration and report.

In making that recommendation, I was concerned that unmeritorious complaints of this nature might be too readily made, that affected Members might be unduly subjected to adverse public comment while such a complaint remained unresolved, and that the volume of such complaints might mean that they could not be speedily resolved.

Experience with the current Code of Conduct and the operations of the Commissioner for Standards have, I think, demonstrated that those concerns are not as great as might earlier have been feared.

So far as I am aware, there have been very few (if any) complaints where the Speaker has exercised the "gatekeeper" role.

The number of complaints by Members against Members referred to the Commissioner has been very few. The provision of the Code under which Members undertake not to make a complaint about another Member unless they believe there are reasonable grounds to suspect non-compliance with the Code and to not make a complaint that is frivolous or vexatious or only for political advantage may have been effective in limiting the number of such complaints.

And complaints by non-Members against Members for breach of the Code that have been referred to the Commissioner have been a relative rarity.

Further, experience also shows that the Commissioner has been able to consider and report on those complaints that have been referred to him on a timely basis, thereby limiting the period for which a "targeted" Member may be thought to be "under a cloud".

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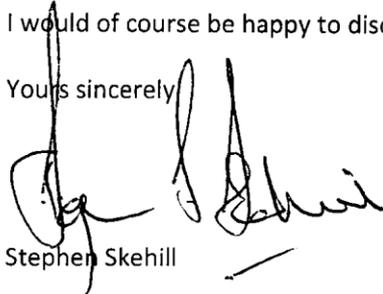
In light of this my present view is that the "gatekeeper" role, while sound in theory and principle, is not necessary in practice.

Moreover, the manner of non-exercise of that role by the Speaker became a matter of some political controversy in one case of which I am aware. I make no comment on whether or not that controversy was warranted, other than to say that I am confident that the Commissioner was uninfluenced by the circumstances in which the controversy arose. Nevertheless, the potential for future controversy of this nature is in my view undesirable.

In light of all of the above, I would support a change to the present arrangements to remove the "gatekeeper" role of the Speaker/Deputy Speaker, so that all future complaints were required to be referred to the Commissioner without assessment by the Speaker/Deputy Speaker.

I would of course be happy to discuss this matter with the Committee if that was desired.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Stephen Skehill', written over the printed name.

Stephen Skehill

9/3/17

APPENDIX D: SUBMISSION—COMMISSIONER FOR  
STANDARDS

*The Hon Dr K J Crispin QC*

PO Box 3117  
Tuross Head NSW 2537  
k.crispin@bigpond.com  
Tel: 0438 240 306

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19 March 2017

Ms Janice Rafferty,  
Assistant Secretary,  
Standing Committee on Administration and Procedure,  
Legislative Assembly for the Australian Capital Territory

Dear Ms Rafferty.

### **Referral of complaints against Members**

I am writing in response to Mr Duncan's letter of 1 March 2017 concerning the current process for referral of complaints against Members of the Assembly to the Commissioner for Standards.

In my view, the process has proven to be generally satisfactory. The complaints referred to me have raised some interesting issues about the application of the Code of Conduct and, I think, demonstrated that there are real advantages in a system that permits prompt resolution with the aid of an independent Commissioner.

However, I am inclined to agree with Mr Skehill's view that, in the light of the experience gained over the last three years, the "gatekeeper" role currently performed by the Speaker or Deputy Speaker could now be discontinued. I recognise, of course, that there may still be complaints that should be peremptorily dismissed. Some may be fanciful. In an earlier life as a barrister, I was once accused of failing to prevent a judge from having a heart attack due to the black magic allegedly wielded by my opponent. Others may reflect a misinterpretation of the Code of Conduct or raise issues that have already been determined. However, prompt resolution of such complaints could be facilitated by the provision of timely and perhaps relatively brief reports.

Paragraph 1 of the Protocol is intended to ensure that Members are treated fairly by being informed of any complaints against them and given time to respond to them, but this need not, in my view be taken to require a pointless exchange of correspondence about complaints that are clearly untenable. Judges do not call upon defendants to present make any submissions when they find that there is 'no case to answer' and I see no reason to adopt a more inflexible approach to wholly misconceived complaints.

If it were thought necessary, this could be explicitly recognised in the Protocol by amending Paragraph 1 in the following manner:

Upon receipt of a complaint referred by the Speaker or Deputy Speaker of the Legislative Assembly the Commissioner, ***unless of the view that the complaint is obviously unsustainable,*** will forward a copy to the member or speaker against whom the complaint has been made ("the

member”) with an accompany letter inviting him or her to submit a written response within a stipulated period.

I would, of course, be happy to discuss any aspect of the procedure with you or with the Committee

Yours sincerely,



K J Crispin QC

Commissioner for Standards

# APPENDIX E: REVISED COMMISSIONER FOR STANDARDS— CONTINUING RESOLUTION 5AA, PROTOCOLS, COMPLAINTS GUIDELINES AND APPOINTMENT SCHEDULE

## *Continuing resolution 5AA*

### COMMISSIONER FOR STANDARDS

This resolution provides for the appointment of a Legislative Assembly Commissioner of Standards.

#### **Resolution agreed by the Assembly**

**31 October 2013, as amended May 2017**

#### **COMMISSIONER FOR STANDARDS**

That this Assembly requests the Speaker to appoint a Legislative Assembly Commissioner for Standards on the following terms:

- (1) The Speaker must, after each Assembly is elected or whenever the office becomes vacant, appoint a Commissioner for the life of that Assembly and the period of six months after each election. The appointment is for the term of the Assembly and the period of six months after the election at the conclusion of that term. The Speaker may decide not to seek expressions of interest if only one term has been served by the Commissioner.
- (2) Before appointing a Commissioner, the Speaker must consult with the Chief Minister, the Leader of the Opposition and Crossbench Members.
- (3) The Commissioner may be dismissed only following a resolution of the Legislative Assembly resolving to require the Speaker to end the Commissioner's appointment—
  - (a) for misbehaviour; or
  - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the Commissioner's functions.

However, a motion for such a resolution may only be debated after the Standing Committee on Administration and Procedure ('the Committee') has reported to the Assembly that it is satisfied that the Commissioner is unfit for the office or unable to fulfil the Commissioner's functions.

- (4) The functions of the Commissioner are to:
  - (a) investigate complaints about Members lodged via the Clerk to the Commissioner;
  - (b) report to the Standing Committee on Administration and Procedure; and
  - (c) if the Assembly is not sitting when the Commissioner provides a report to the Committee, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.
- (5) Members of the public, members of the ACT Public Service and Members of the Assembly may make a complaint to the Commissioner via the Clerk of the Legislative Assembly about a Member's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests.
- (6) If the Commissioner receives a complaint about a Member pursuant to paragraph (5) and the Commissioner believes on reasonable grounds that—
  - (a) there is sufficient evidence as to justify investigating the matter; and
  - (b) the complaint is not frivolous, vexatious or only for political advantage; the Commissioner will investigate the matter and report to the Committee.
- (7) In exercising the functions of Commissioner the following must be observed:
  - (a) The Commissioner must not make a report to the Committee if the Member about whom the complaint was made has agreed that he or she has failed to register or declare an interest if —
    - (i) in the Commissioner's opinion the interest involved is minor or the failure was inadvertent; and
    - (ii) the Member concerned has taken such action to rectify the failure as the Commissioner may have required within any procedure approved by the Committee for this purpose.
  - (b) The Commissioner must not make a report to the Committee unless the Commissioner has—
    - (i) given a copy of the proposed report to the Member who is the subject of the complaint under investigation;
    - (ii) the Member has had a reasonable time to provide comments on the proposed report; and
    - (iii) the Commissioner has considered any comments provided by the Member.
  - (c) The Commissioner must report by 31 August each year to the Speaker on the exercise of the functions of the Commissioner.

## ACT LEGISLATIVE ASSEMBLY

### **Protocol for investigation complaints against members**

The duties of the Legislative Assembly Commissioner for Standards are prescribed by any instrument of appointment made under the resolution of the Legislative Assembly for the Australian Capital Territory.

Paragraph 5 of the instrument of appointment also requires the Commissioner to maintain the confidentiality of information provided to him and any reports prepared in exercising the Appointee's role, though he may make public any report if the Member subject of the report gives permission for it to be made public or as required by the Assembly.

Consistent with these requirements, the Commissioner has formulated the following protocol.

1. Upon receipt of a complaint about a Member received by the Commissioner via the Clerk, if the Commissioner believes on reasonable grounds that—

(d) there is sufficient evidence as to justify investigating the matter; and

(e) the complaint is not frivolous, vexatious or only for political advantage;

the Commissioner shall investigate and report to the Committee. The Commissioner will forward a copy of the complaint to the Member against whom the complaint has been made ("the Member") with an accompany letter inviting him or her to submit a written response within a stipulated period.

If the Commissioner does not investigate the matter the Commissioner shall write to the complainant explaining why the matter is not being investigated and shall also inform the Member concerned of the complaint and the reason why it was dismissed.

2. Should the terms of the complaint seem unclear, the Commissioner may seek clarification from the complainant and, in any event, may indicate particular points or issues that the Member might wish to address in his or her response.
3. The Member shall be free to respond personally or to have an advocate respond on his or her behalf.
4. In either event, the Commissioner will expect the Member to ensure that the response promptly addresses the complaint and any related issues raised by the Commissioner and that it does so as fully and accurately as possible. It should be understood that the Commissioner will usually have no personal knowledge of what has occurred and will be dependent upon the response for information as to which allegations, if any, are disputed and the nature and extent of any such dispute. The

response should also reveal any grounds upon which the Member relies in support of his or her contention that the conduct in question was duly authorized or otherwise permissible and any further facts that the Member feels should be taken into account. A response that merely offers a general denial of impropriety or raises retaliatory criticism of the complainant without dealing with the relevant facts and the issues will be inadequate and may leave the Member unnecessarily exposed to the risk of adverse findings.

5. Should the Member seek further time to formulate an appropriate response, he or she may write to the Commissioner requesting an extension of the period stipulated, and explaining the reasons why such additional time is said to be necessary.
6. Any such request will be duly considered and the Commissioner will advise the Member in writing of his decision to extend or maintain the previously stipulated period.
7. Upon receipt of any response to the complaint or upon the expiration of the stipulated period the Commissioner will decide whether he has sufficient information and/or evidence to complete his investigation.
8. If the Commissioner decides that he needs further information and/or evidence, he may write to the complainant, the Member and/or any other person who may have knowledge of the relevant facts requesting the production of documents, answers to specific questions or other assistance.
9. Any responses, statements or other evidence received by the Commissioner can be expected to be made public, though the Commissioner and the Committee may consider any reasonable request for confidentiality to be maintained if there are exceptional circumstances or the relevant information proves irrelevant to the outcome of the investigation.
10. It is the Commissioner's intention to rely upon written material and not to hold any face to face discussions or otherwise receive oral evidence unless such a course proves necessary for the fair and satisfactory completion of a particular investigation.
11. Upon completion of the investigation the Commissioner may either draft a proposed report or decline to make a report if satisfied of the matters referred to in paragraph 3 of the instrument of appointment.
12. A copy of any proposed report will be given to the Member and he or she will be invited to provide comments on it within a further stipulated period.

13. Any such comments will be duly considered and, if necessary, further investigation may be undertaken before the Commissioner finalizes the report and submits it to the Committee or, in the light of the response, determines that the provisions of clause 3 of the instrument of appointment apply and declines to make a report.
14. The Commissioner will not provide updates to complainants or to the press during the course of investigations.
15. If the Commissioner declines to make a report he will inform the Committee of that decision in writing and will also inform both the Member and the complainant.
16. These protocols have been drafted with a view to ensuring that complaints can be investigated fully, fairly and efficiently. The Commissioner will not be influenced by any publicity and will ask complainants to await the results and not seek to agitate the same issues in the press at least until the investigation has been completed. When the Commissioner has accepted a complaint for investigation and the relevant Member has been informed, notification of an investigation shall be made on the Legislative Assembly website.

Adopted  
Standing Committee on Administration and Procedure

**A Commissioner for Standards is appointed by the Speaker, after consultation with the Chief Minister, the Leader of the Opposition and crossbench members, at the beginning of each Assembly. The Commissioner investigates complaints about breaches, by MLAs, of the Members' Code of Conduct or the rules governing the registration or declaration of interests.**

**Currently, the Assembly's Commissioner for Standards is the Honourable Ken Crispin QC.**

**The instrument appointing the Legislative Assembly Commissioner for Standards, and which prescribes the duties of the Commissioner, can be accessed at <http://www.parliament.act.gov.au/members/commissioner-for-standards>.**

## HOW TO MAKE A COMPLAINT

Write to the Clerk setting out the complaint and make sure to include any supporting evidence. The Clerk's address is on the back page of this leaflet.

The complaint should be received in hard copy, should be signed and show your full name and address.

## WHAT HAPPENS NEXT

If the Commissioner believes, on reasonable grounds, there is sufficient evidence to justify investigating the matter, and the complaint is not frivolous, vexatious or only for political advantage, the complaint will be investigated by the Commissioner for Standards.

Should the terms of the complaint seem unclear, the Commissioner may seek clarification from you.

The Commissioner's deliberations are confidential and are protected by parliamentary privilege.

## THE END OF THE PROCESS

If the Commissioner decides that:

- the Member has agreed that he or she has failed to register or declare an interest that is minor or inadvertent; or
- the Member has taken action to rectify the failure as the Commissioner may have required within any procedure approved by the Standing Committee on Administration and Procedure (the Committee) for this purpose;

the Commissioner will not present a report to the Committee and will advise you in writing of this decision.

If, however, the Commissioner finds that the breach of the Code of Conduct or the rules relating to the registration or declaration of interests is serious, the Commissioner will submit a report to the Committee.

The Committee will then determine what action will be taken against the Member and will include its recommendation in a report to the Legislative Assembly.

## PROTOCOLS FOR INVESTIGATING COMPLAINTS AGAINST MEMBERS

The protocols for investigating complaints, as endorsed by the Commissioner for Standards and the Standing Committee on Administration and Procedures, can be accessed at <http://www.parliament.act.gov.au/members/commissioner-for-standards>.

## CONTACT DETAILS

### Clerk

Address: Office of the Clerk  
Legislative Assembly for the ACT  
Civic Square  
London Circuit  
(GPO Box 1020)  
Canberra ACT 2601

Phone: (02) 6205 0173

Email: [clerk@parliament.act.gov.au](mailto:clerk@parliament.act.gov.au)

### Useful links

- Commissioner for Standards (<http://www.parliament.act.gov.au/members/commissioner-for-standards>)
- Code of Conduct for Members (<http://www.parliament.act.gov.au/members/commissioner-for-standards>)
- Ethics and Integrity Adviser (<http://www.parliament.act.gov.au/members/ethics-and-integrity>)
- Declarations of Members' Interests (<http://www.parliament.act.gov.au/members/declarations-of-interest>)
- Standing Committee on Administration and Procedure ([http://www.parliament.act.gov.au/in-committees/standing\\_committees/administration\\_and\\_procedure](http://www.parliament.act.gov.au/in-committees/standing_committees/administration_and_procedure))