

# REPORT ON THE CONDUCT OF MR PARTON, MLA

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

AUGUST 2021

REPORT 6



# THE COMMITTEE

## COMMITTEE MEMBERSHIP

Joy Burch MLA (Chair)

Andrew Braddock MLA

Jeremy Hanson MLA

Suzanne Orr MLA

## SECRETARIAT

Tom Duncan (Secretary)

Janice Rafferty (Assistant Secretary)

## CONTACT INFORMATION

Telephone 02 6205 0173

Facsimile 02 6205 3109

Post GPO Box 1020, CANBERRA ACT 2601

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

Website [www.parliament.act.gov.au](http://www.parliament.act.gov.au)

## RESOLUTION OF APPOINTMENT

The Standing Committee on Administration and Procedure Committee is established pursuant to Standing Order 16:

16. (a) A Standing Committee on Administration and Procedure is established at the commencement of each Assembly to:
  - (i) undertake self-referred inquiries or inquiries referred by the Assembly and, in addition, in the third year of an Assembly term the committee shall inquire into and report on the operation of the standing orders and continuing resolutions of the Assembly with a view to ensuring that the practices and procedures of the Assembly remain relevant and reflect best practice;
  - (ii) advise the Speaker on:
    - (A) Members' entitlements including facilities and services;
    - (B) the operation of the transcription service (Hansard);
    - (C) the availability to the public of Assembly documents;
    - (D) the operation of the Assembly library;
  - (iii) arrange the order of private Members' business and Assembly business; and
  - (iv) as required by continuing resolutions of the Assembly, consider, inquire and report on matters relating to citizen's right of reply, claims of parliamentary privilege, reports of the Commissioner for Standards and the Ethics and Integrity Adviser and the implementation of Latimer House Principles.
- (b) the Committee shall consist of:
  - (i) the Speaker;
  - (ii) the Government whip;
  - (iii) the Opposition whip; and
  - (iv) a representative of the crossbench (or if a single party, the whip of that party);
- (ba) Should a whip be unable to attend a meeting, the Party nominated deputy whip may attend in their place;
- (c) the Speaker shall be the Chair of the Committee; and
- (d) the Committee shall have the power to consider and make use of the evidence and records of the Standing Committee on Administration and Procedure appointed during the previous Assemblies.

## TERMS OF REFERENCE

### Continuing resolution 5AA

#### COMMISSIONER FOR STANDARDS

<p>This resolution provides for the appointment of a Legislative Assembly Commissioner of Standards.</p>
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#### Resolution agreed by the Assembly

**31 October 2013 (as amended 9 June 2016, 3 August 2017 and 22 August 2019)**

#### 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
- (4A) The Committee will inquire into and report on any report provided to it by the Commissioner pursuant to subparagraph 4(b) of this resolution.
- (5) Anyone 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. The Integrity Commissioner established pursuant to the [\*Integrity Commission Act 2018\*](#) may also refer matters to the Commissioner for Standards for consideration via the Clerk of the Legislative Assembly about matters the Integrity Commissioner considers should be referred. *(Amended 22 August 2019)*
- (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 may investigate the matter and report to the Committee. If the Commissioner considers that the complaint is more properly the purview of the Integrity Commissioner, the Commissioner shall refer the matter to the Integrity Commissioner.
- (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.

CODE OF CONDUCT FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

This resolution provides for a code of conduct for Members of the Legislative  
Assembly.

**25 August 2005 (amended 16 August 2006, 24 October 2013, 3 August 2017, 30 July 2019)**

**Resolution agreed by the Assembly**

The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.

In committing to this Code of Conduct, Members undertake, to the community and to one another, that they shall not act in a manner inconsistent with their duties and obligations as Members and that the following principles shall guide their conduct as Members in all matters:

- (1) Members should at all times act with integrity, honesty and diligence.
- (2) Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- (3) Members should uphold the separation of powers and the rule of law
- (4) Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends.
- (5) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.
- (6) Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny.
- (7) Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective and efficient use of those resources.

- (8) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law.
- (9) Members should observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- (10) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

Consistent with the above principles, Members further undertake that they should:

- (11) Treat all people with courtesy, and respect the diversity of their backgrounds, experiences and views. In particular, Members should by their words and actions demonstrate, and by their example and leadership encourage and foster others to show, respect for the peaceful, temperate and lawful exercise by all members of the community of their shared and individual rights and entitlements, including freedom of religion, freedom of association and freedom of speech.
- (12) Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:
  - (a) comply with section 15 of the [Australian Capital Territory \(Self-Government\) Act 1988 \(Cwth\)](#);
  - (b) declare their private interests and ensure that their declaration is kept up to date as required by Continuing resolution 6 (as amended or replaced from time to time); and
  - (c) disclose in a manner appropriate to the circumstances any financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) which a reasonable observer, informed of that matter, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.
- (13) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.

- (14) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person.
- (15) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
- (16) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information unless required by law, or improperly for the private benefit of themselves or another person.
- (17) In their capacity as an employer on behalf of the Territory under the [Legislative Assembly \(Members' Staff\) Act 1989](#):
- (a) familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);
  - (b) not employ a family member as defined in that Act;
  - (c) take all reasonable steps to ensure, as far as practicable, their personal staff are mindful of the Member's commitment to this Code of Conduct, and assist the Member to comply with this Code of Conduct; and
  - (d) not seek to require or encourage their personal staff to engage in any conduct that may amount to a breach of any code of conduct applicable to those staff from time to time.
- (18) In all their dealings with staff of the Assembly and members of the ACT Public Service:
- (a) extend professional courtesy and respect;
  - (b) act consistently with accepted workplace conduct standards; and
  - (c) recognise the unique position of impartiality and the obligations of public sector officials, including members of the ACT Public Service.

- (19) Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.
- (20) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.
- (21) Within the first six months after an election for the Assembly, the Assembly shall reaffirm its commitment to the principles, obligations and aspirations of the code.
- (22) Where a new member who has not voted on the most recent reaffirmation required under clause (21) is elected to the Assembly, that member shall, before he or she makes an inaugural speech, or otherwise participated in parliamentary processes, affirm that he or she will abide by the code.
- (23) At the end of each Assembly the Code of Conduct shall be reviewed by a suitably qualified person, appointed by the Speaker, in consultation with the Standing Committee on Administration and Procedure.

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# RECOMMENDATIONS

## Recommendation 1

- 4.3** The Standing Committee on Administration and Procedure recommends that Mr Parton apologise for breaching the Code of Conduct to the Assembly in the Chamber immediately after the report is considered by the Assembly.

## Recommendation 2

- 4.6** The Standing Committee on Administration and Procedure recommends that:
- (1)** Members familiarise themselves with the Broadcasting Guidelines and be mindful of those conditions when considering broadcasting Assembly and Committee related footage; and
  - (2)** the Committee undertake a review of the Broadcasting Guidelines with a view to provide clarity to the Guidelines and the matters raised in the Commissioner's report.

# 1 INTRODUCTION

- 1.1 Some time prior to 18 June 2021, Mr Mark Parton, MLA posted a video on TikTok showing him, as Deputy Speaker in the Chair, suspending Assembly proceedings for lunch and then crossing to footage displaying a well known fast food supplier.
- 1.2 Having been alerted to the existence of the TikTok post, the Speaker wrote to the Mr Parton on 18 June 2021 requesting the post be deleted and reminding him of his role as Deputy Speaker in upholding and maintaining a level of dignity and respect to the institution.
- 1.3 On 18 June 2021 the Commissioner for Standards received a complaint from Ms Suzanne Orr, MLA alleging that the footage promoted a commercial product, contravened the Assembly broadcasting guidelines and compromised the credibility of the role of Deputy Speaker.
- 1.4 The Commissioner conducted an investigation into the matter and provided his report to the Standing Committee on Administration and Procedure on 26 July 2021.
- 1.5 A copy of the Commissioner's report is attached at Appendix A.

## 2 CONDUCT OF THE COMMISSIONER'S INQUIRY

- 2.1 The Commissioner's investigation was conducted in accordance with the protocols adopted by the Standing Committee on Administration and Procedure on 24 March 2015 (revised August 2017 and August 2019). The Commissioner indicated that he had viewed a copy of the video. In his report to the Committee the Commissioner also advised that he been provided with a copy of a letter Mr Parton had written in response to the Speaker's letter of 18 June 2021.
- 2.2 The Commissioner wrote to Mr Parton on 23 June 2021 advising that he had decided to investigate the complaint included the original complaint letter; and invited Mr Parton to provide any further statements and/or arguments in addition to those made in his letter to the Speaker on 18 June 2021.
- 2.3 Dr Crispin proposed two questions:-
  - (1) "whether the portion of the video covering part of the public proceedings of the Assembly was used for commercial advertising or sponsorship. I suggested that in this context the concept of "sponsorship" might extend to the promotion of a product or person even in the absence of any commercial relationship"
  - (2) "whether the use of the recording might otherwise have breached the guideline that recording and/or broadcasting of Assembly or committee proceedings 'shall be for the purpose only of making fair and accurate reports of those proceedings' "
- 2.4 Mr Parton's response was received by the Commissioner on 13 July 2021. A draft report was sent to Mr Parton on 16 July and Mr Parton provided a number of comments.

### 3 THE COMMISSIONER'S FINDINGS

3.1 The Commissioner noted at Paragraph 10 of his report that “*Continuing resolution 5AA* (‘the Continuing Resolution’) authorises the Commissioner for Standards to investigate complaints about a Member’s compliance with the *Code of Conduct for All Members of the Legislative Assembly* (‘the Code of Conduct’) or the rules relating to the registration or declaration of interests. The Continuing Resolution does not expressly authorise him to investigate allegations of conduct said to have contravened the Guidelines. However, paragraph 2 of the Code of Conduct provides that *Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.*”

3.2 Paragraph 8 of the *Legislative Assembly Broadcasting Framework and Guidelines* (‘the Guidelines’) provides that:

*Any recording and subsequent broadcasting or publication of any extract of the audio, vision or text from any of the proceedings of the Assembly or any of its committees must be a fair and accurate record of those proceedings. Any recording must not be used for:*

- (a) advertising for or by political parties;*
- (b) electioneering; or*
- (c) commercial advertising or sponsorship.*

3.3 The Commissioner accepted Mr Parton’s assurance that he held no commercial relationship with the supplier.

3.4 Paragraph 3 of *Guidelines for recording and broadcasting the public proceedings of the Legislative Assembly and its committees* provides that “*Recording and/or broadcasting of the Assembly or committee proceedings shall be for the purposes only of making fair and accurate reports of those proceedings.*”

3.5 The Commissioner and Mr Parton offered differing views on the intention of the requirement that recordings and broadcasting be for the purposes of fair and accurate reports on those proceedings. The Commissioner was of the view that while the recording was a “fair and accurate record” its broadcast in a TikTok served another purpose and it is that aspect that the Commissioner found a breach of the Guidelines and hence the Code of Conduct.

3.6 The Committee also noted that the Speaker had written to a number of MLAs regarding breaches of the Broadcasting Guidelines and requested the offending social media posts be removed. This led to discussion on the scope of the current guidelines and consideration if the guidelines have sufficient clarity for the evolving use of social media.

3.7 Two other aspects of the Code of Conduct were considered by the Commissioner namely:

*Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends; and*  
*Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests*

3.8 Whilst not directly related to the original complaint, the Commissioner stated that “In my opinion, Mr Parton’s actions could have led reasonable members of the public to suspect that he might have some relationship with the supplier capable of giving rise to a conflict of interest if his role as a Member had required him to make decisions likely to affect the interests of the supplier.”

3.9 While the Commissioner found that Mr Parton had not made, nor was not likely to make decisions in relation to the interests of the supplier, that perception may exist.

3.10 The Commissioner conclusions are:

1. In my opinion, Mr Parton’s usage of the video footage of him adjourning the proceedings of the Assembly in the circumstances previously outlined constituted a breach of paragraph 3 of the Guidelines and, accordingly, a breach of paragraph 2 of the Code of Conduct.
2. I think Mr Parton clearly misunderstood the guideline expressed in paragraph 3 of the Guidelines and the Standing Committee may wish to take this into account in determining what action, if any, should be taken.

## 4 THE COMMITTEE'S RECOMMENDATIONS

- 4.1 The Committee, considered the Commissioner's report at its meeting on 2 August 2021. In its discussion, the Committee accepted Commissioner's report and noted the conclusions he made in paragraphs 31 and 32.
- 4.2 In relation to the breach of the code of conduct by Mr Parton, as determined by the Commissioner, the Committee agreed to request Mr Parton apologise to the Assembly in the Chamber immediately after the presentation and consideration of this report at the first available opportunity.

### **Recommendation 1**

- 4.3 **The Standing Committee on Administration and Procedure recommends that Mr Parton apologise for breaching the Code of Conduct to the Assembly in the Chamber immediately after the report is considered by the Assembly.**
- 4.4 The Committee discussed the guidelines and the interpretations applied by both Mr Parton and the Commissioner. It was agreed that the Committee undertake to review the guidelines as part of the major review of standing orders later this Assembly.
- 4.5 Also discussed was the need for all Members to be familiar with the Broadcasting Guidelines and to be mindful of those conditions when contemplating broadcasting Chamber and Committee related footage.

### **Recommendation 2**

- 4.6 **The Standing Committee on Administration and Procedure recommends that:**
- (1) Members familiarise themselves with the Broadcasting Guidelines and be mindful of those conditions when considering broadcasting Assembly and Committee related footage; and**
  - (2) the Committee undertake a review of the Broadcasting Guidelines with a view to provide clarity to the Guidelines and the matters raised in the Commissioner's report.**

Joy Burch MLA  
Chair  
August 2021

## APPENDIX A – REPORT OF THE COMMISSIONER FOR STANDARDS

### REPORT INTO A COMPLAINT AGAINST MR MARK PARTON MLA

1. On 18 June 2021 I received a complaint from Ms Suzanne Orr MLA concerning the conduct of Mr Mark Parton MLA in posting a video on Tik Tok. The video initially showed him acting in his role as Deputy Speaker to adjourn public proceedings of the Assembly for lunch, but then revealed a paper bag prominently displaying the name of a well known fast food supplier ('the supplier'). The image of the bag was accompanied by a sound track commonly used in the supplier's commercial advertising. Mr Parton was then shown eating food presumably obtained from the supplier and taken from bag. Ms Orr alleges that the video promoted the supplier's product, contravened the *Legislative Assembly Broadcasting Framework and Guidelines* ('the Guidelines') and compromised the credibility of his role. She also expresses wider concern as to the interaction of the use of social media with the duties and responsibilities of Members.

#### *The investigation*

2. I experienced some difficulty in gaining access to the video, but was able to view it after seeking assistance from Ms Orr, Mr Parton and the Clerk of the Assembly. The latter portion of the video does look and sound like a commercial advertisement. Indeed, the soundtrack, and perhaps the image of the bag, seems to have been directly downloaded from one of the supplier's television advertisements.
3. Mr Parton also provided me with a copy of a letter he had written to the Speaker on 18 June 2021. The letter stated, inter alia, that:

*The video does not constitute commercial advertising or sponsorship. Commercial advertising or sponsorship would involve a transaction between me and a commercial entity and no such transaction has occurred.*

...

*In my engagement with community on social media platforms I have always attempted to 'humanise' the role of an MLA. I've always attempted to show that as elected members, although we may be involved in the mechanics of politics and government, we're just regular people and that's what I was attempting to display with that video.*

...

*As an MLA and as Deputy Speaker, I think it's extremely important to make this parliament and its members as accessible as we can to all members of the community and I've always tried to achieve that, sometimes in unorthodox ways. I would point out that there was once a time when a politician setting up a Facebook page and posting on that platform was considered quite radical.*

4. Having considered this explanation and the content of the video, I wrote to Mr Parton on 23 June 2021, indicating that I had decided to investigate the complaint. I enclosed a copy of the

letter of complaint from Ms Orr and invited him to make any further statements and/or present any arguments he considered appropriate concerning the issues raised in the letter. I also suggested that the video gave rise to at least two obvious questions. First, whether the portion of the video covering part of the public proceedings of the Assembly was used for commercial advertising or sponsorship. I suggested that in this context the concept of “sponsorship” might extend to the promotion of a product or person even in the absence of any commercial relationship. Second, whether the use of the recording might otherwise have breached the guideline that recording and/or broadcasting of Assembly or committee proceedings “shall be for the purpose only of making fair and accurate reports of those proceedings”.

5. Mr Parton responded by an email dated 8 July 2012, though due to a problem apparently caused by a computer program update I received it only on 13 July. In relation to the first question I had raised, he again stated that he had never been involved in any commercial agreement with the supplier and added that he had written to the supplier in an attempt to obtain confirmation of this fact. He explained that he had always attempted to “humanise” Members of the Assembly in his social media engagements. The video in question had been essentially intended to say: “when the Assembly adjourns for lunch, we eat lunch. Furthermore, we tend to eat what regular people eat.” The inclusion of the material relating to the supplier had been intended to make the content of the video “engaging and shareable” and this had obviously been successful because the video had been shared more than a hundred times and gathered some 30,000 views. He said that food is often featured in his videos. He also suggested that if the concept of “sponsorship” were to be taken to extend to the promotion of a product or person even in the absence of any commercial relationship, many Members of the Assembly would be “captured” by it. He said that it was common for Members to make positive statements about businesses and organisations during Assembly proceedings and then to broadcast those proceedings in social media videos. In support of this contention, he cited two examples “of undoubtedly many instances where Assembly proceedings, in which Members spruik a product or person, are posted onto social media platforms.” In relation to the second of the questions I had raised, he said that the video had been a fair and accurate report of proceedings.
6. A draft report was sent to Mr Parton on 16 July 2021 and he was invited to make further comments or submissions prior to its finalisation. Mr Parton responded to this invitation on 22 July 2021, making a number of contentions which I will mention and address in the discussion of the relevant issues.

### ***The application of the Act and the Guidelines***

7. Section 5 of the *Legislative Assembly (Broadcasting) Act 2001* (‘the Act’) provides that:
  - a) *A person may broadcast, or record for broadcast, all or part of public proceedings of the Legislative Assembly or a committee of the Assembly.*

- b) *The Legislative Assembly may, by resolution, determine the way rights given by subsection (1) must be exercised.*
- c) *If the Legislative Assembly makes a determination under subsection (2), a person exercising rights under subsection (1) must comply with the determination.*
8. The Guidelines are effectively a determination made pursuant to the power provided by subsection 5(2) of the Act. That is clear from paragraph 10 of the Guidelines which states:

*The Assembly has, by continuing resolution 3 agreed to by the Assembly on 7 March 2002 and amended on 17 March 2005, 23 June 2005, 11 February 2010 and 29 November 2018, determined the way rights given by subsection 5 (1) of the Act must be exercised.*

9. Both section 5 of the Act and the Guidelines made pursuant to it apply only to the recording or broadcast of public proceedings of the Assembly. The latter portion of the video that may seem to promote the product of a commercial entity clearly reveals actions and sounds that occurred after the public proceedings of the Assembly had been adjourned for lunch. Hence, if that portion of the video were to be considered in isolation, no breach of the Guidelines could be established. However, the earlier portion of the video does reveal a part of the public proceedings and, in my opinion, that portion effectively introduces the portion that follows. Whilst that portion is very brief, it does reveal Mr Parton and his role in adjourning the proceedings of the Assembly for lunch. Indeed, the obvious concern generated by the video is that it seems to link his role in the Assembly with his apparent endorsement of the product in question.

### ***The Code of Conduct and its application to the Guidelines***

10. Paragraph (6) of *Continuing resolution 5AA* ('the Continuing Resolution') authorises the Commissioner for Standards to investigate complaints about a Member's compliance with the *Code of Conduct for All Members of the Legislative Assembly* ('the Code of Conduct') or the rules relating to the registration or declaration of interests. The Continuing Resolution does not expressly authorise me to investigate allegations of conduct said to have contravened the Guidelines. However, paragraph 2 of the Code of Conduct provides that:

*Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.*

11. Since section 5(3) of the Act provides that anyone exercising rights to broadcast public proceedings of the Assembly must comply with the Guidelines, a Member who commits a breach of the Guidelines also contravenes the requirement in paragraph 2 of the Code of Conduct to act "only in conformity with all laws applicable in the Territory".

**Paragraph 8 of the Guidelines**

12. Paragraph 8 of the *Legislative Assembly Broadcasting Framework and Guidelines* (‘the Guidelines’) provides that:

*Any recording and subsequent broadcasting or publication of any extract of the audio, vision or text from any of the proceedings of the Assembly or any of its committees must be a fair and accurate record of those proceedings. Any recording must not be used for:*

- (a) advertising for or by political parties;*
- (b) electioneering; or*
- (c) commercial advertising or sponsorship.*

13. I accept Mr Parton’s assurance that he had no commercial relationship with the supplier. A video recording could perhaps be held to have been used for the purpose of commercial advertising even if person responsible for the actual broadcast was not paid for his or her services, but I have no reason to reject Mr Parton’s explanation for his conduct and hence do not accept that he acted as he did with a view to promoting the commercial interests of the supplier.

14. More difficult issues may arise in relation to the use of the term, “sponsorship”. This term usually refers to the provision of financial support for some person or organisation, but in some circumstances it may also refer to other forms of support. Such support may take many forms (see, for example those suggested by the *Sponsorship Collective*: <https://sponsorshipcollective.com/15-things-sponsors-can-give-you-besides-cash/>). However, it is arguable that the adjective “commercial” was also intended to qualify the term “sponsorship”. In any event, sponsorship will usually, if not always, involve an ongoing arrangement of some kind (see for example, <https://smallbusiness.chron.com/advertisement-vs-sponsorship-17459.html>) that is intended to permit one party to promote the interests of another. For present purposes, it is unnecessary to attempt to define the scope of the term within the context of this provision because, as mentioned, I am not satisfied that Mr Parton acted as he did with the intention of promoting the interests of the supplier.

15. Consequently, I am unable to find that there has been any breach of paragraph 8 of the Guidelines.

**Paragraph 3**

16. Paragraph 3 of *Guidelines for recording and broadcasting the public proceedings of the Legislative Assembly and its committees*, which is attachment B to the Guidelines, (‘paragraph 3 of the guidelines’) provides that:

*Recording and/or broadcasting of the Assembly or committee proceedings shall be for the purposes only of making fair and accurate reports of those proceedings.*

17. In response to my comments raising this issue, Mr Parton said: “There is nothing in the video that portrays something that did not happen. The video is entirely fair and accurate.” That may be true, but it does not address the limitation on usage actually imposed by paragraph 3 of the Guidelines. The paragraph does not suggest that a Member may use videos for any purpose provided only that they are fair and accurate reports of public proceedings of the Assembly. It rather provides that any recording or broadcasting may be undertaken only for the purposes of making such fair and accurate records.
18. It may be suggested that this paragraph is concerned only with the initial recording or broadcast of videos and that it does not purport to regulate their subsequent usage. However, the posting of a video for use on social media would seem to involve further recording and broadcasting and there is no obvious reason to assume that this guideline was not intended to apply to any such actions. Such posting is therefore permissible only for the purposes of broadcasting fair and accurate records of the proceedings.
19. In this instance, the earlier portion of the video was clearly recorded or broadcast on Tik Tok by Mr Parton, not for the purposes of making a fair and accurate report of the proceedings, but rather for the purposes of identifying himself as a person with authority to adjourn proceedings of the Assembly and of introducing the latter portion of the video. Hence, in my opinion, his conduct involved a breach of paragraph 3 of the Guidelines.
20. In further submissions made in response to the draft report, Mr Parton protested that the complaint had not suggested that the video had been posted for reasons other than to make a fair and accurate representation of proceedings. He said that he had sought advice from a number of “individuals with legal, government and parliamentary experience” who had expressed the view is that if this issue had not been mentioned in the complaint, it seemed “odd” that I had considered it. In my opinion, this contention must be rejected. Mr Parton quoted the relevant part of the complaint as: “I am concerned the video promotes a product in contravention of the Legislative Assembly Broadcasting Framework and Guidelines.” This is not quite accurate. The relevant portion actually states: “I am concerned the video promotes a product **and** in contravention of the Legislative Assembly Broadcasting Framework and Guidelines” (emphasis added). Hence, I do not take this aspect of the complaint to be limited in the manner suggested. In any event, a complaint of this kind should not be construed strictly like a statement of claim or indictment in legal proceedings. Complainants may normally be expected to provide reasonably clear explanations of the conduct in question, but they should not be seen as having an obligation to specify exactly why they believe that such conduct was inappropriate. Of course, when matters proceed to investigation, the Members against whom the complaints have been made must be given adequate explanation of any apparent issues likely to give rise to findings against them and adequate opportunity to

address them. In this case, Mr Parton was duly alerted to the issue about the application of paragraph 3 of the Guidelines by my letter of 23 June 2021 and by the provision of the draft report.

21. Mr Parton also argued that I have taken an incorrect or overly technical interpretation of the relevant provision of the broadcast guidelines. He said that:

*I'm well aware that use of Assembly on Demand footage can only be published if it is a fair and accurate representation of proceedings and I set out to do just that when I published my video. Interestingly, your conclusion does not at any point suggest that the video is not fair and accurate, but that because of some additional perceived intent then the guideline has been breached.*

*I fear that you could be opening a massive can of worms here. A ruling of this nature would lead to a complete cessation of members posting any footage from the chamber because it would be possible to adjudge that they were doing so for some other reason other than making a fair and accurate representation of proceedings.*

22. Mr Parton cited further examples of Members having posted videos of Assembly proceedings and suggested that if I were to maintain that he had breached the code then he would be referring these instances to me, “with potentially more to come”, to determine whether they would also be likely to be found to be in breach of the Guidelines. With due respect to Mr Parton, I would be unable to ignore the actual words of the guideline even if I shared his view that that the application of the principle so expressed was likely to open a “can of worms”. The guideline clearly does not permit a fair and accurate recording or broadcasting of Assembly proceedings to be used for any purpose, as he seems to have assumed. On the contrary, it provides that any such recording and/or broadcasting shall be **for the purposes only** of making fair and accurate reports of those proceedings (emphasis added). However, I do not accept that the correct application of the guideline would lead to a complete cessation of relevant footage online. Whilst the guideline could be interpreted in a manner that would have such an effect, I am inclined to think that this was not intended. The words of the guideline do not require such an implication and, if this had been intended, there would have been no need for other guidelines concerned with the usage of such material, such as the requirement in paragraph 2 that it not be used for political or commercial advertising. Furthermore, the examples Mr Parton has cited suggest that at least Members have not understood it to have such an effect.

23. In my opinion, the concern expressed by Mr Parton reflects a failure to recognise the distinction between purpose and motive. If a video has been broadcast for the purpose of revealing what was said during the course of Assembly proceedings, the motivation will usually be irrelevant, unless, of course, it is to engage in political or commercial advertising or some other improper usage. Accompanying commentary will also usually be irrelevant unless it reveals that the broadcast was not only for the purpose of making a fair and accurate

record of the relevant proceedings or it provides evidence of improper usage. Hence, to take but a few examples, the guideline would not prevent Members from downloading videos of Assembly proceedings and using them to promote or criticise government policy. I might mention, in passing, that the promotion of a company or product is not always inappropriate. For example, it is currently in the public interest for governments to promote the Pfizer and AstraZeneca vaccines. On the other hand, the guideline would prevent Members from downloading videos, not to reveal what was said during the course of proceedings, but to display images of others in order to denigrate them by reference to their appearance or to factors such as sex, race, or apparent sexual preference.

24. In the present case, I do not, of course, suggest that Mr Partin downloaded the video for such base purposes. I have concluded only that the relevant portion was not broadcast for the purpose of providing a fair and accurate report of Assembly proceedings but for the purposes mentioned in paragraph 19 of this report. Accordingly, I adhere to my view that he committed a breach of breach of the Guidelines and hence a breach of paragraph 2 of the Code of Conduct.
25. Mr Parton expressed concern at my conclusion that an “extremely minor and extremely technical” breach of the broadcast guidelines involves a breach of paragraph 2 of the Code of Conduct. He maintains that he did not intend to commit such a breach and I accept that assurance. However, that is not the decisive issue. He did intend to post the video and in my view that action involved a breach of paragraph 2. He suggests that this provision of the Code of Conduct should not be taken to apply to minor aspects of the law such as illegal parking. This concern is again misconceived. Paragraph 2 is concerned with acts by Members that relate to their role as Members and there is no obvious reason to posit an implied limitation on the requirement Members should act in accordance with all ACT laws.

### ***Other provisions of the Code of Conduct***

26. The Code of Conduct does not contain any provision that directly addresses conduct that may be seen as “compromising the credibility of a Member’s role”.
27. Paragraph 4 provides that:
- Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends*
28. This provision obviously applies to all decisions and choices made by Members in relation to their duties and responsibilities as Members of the Assembly, including those relating to the making and use of recordings of Assembly proceedings, but there is no evidence that Mr Parton sought financial gain or any other inappropriate benefit by acting as he did.
29. Paragraph 12 records the Members’ undertaking that they should:

*Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests ...*

30. Whilst the continuing resolution does not authorise me to consider generalised allegations that a Member may have undermined the credibility of his position, I am required to consider whether his or her conduct may have given rise to an impermissible conflict of interest. The undertaking recorded in paragraph 12 applies to the perception of any such conflicts, whether arising in relation to the making and use of recordings of Assembly proceedings or otherwise. In my opinion, Mr Parton's actions could have led reasonable members of the public to suspect that he might have some relationship with the supplier capable of giving rise to a conflict of interest if his role as a Member had required him to make decisions likely to affect the interests of the supplier. However, there is no evidence that he has made or is likely to have to make such decisions and hence no relevant conflict of interest has been established.

### **Conclusions**

31. In my opinion, Mr Parton's usage of the video footage of him adjourning the proceedings of the Assembly in the circumstances previously outlined constituted a breach of paragraph 3 of the Guidelines and, accordingly, a breach of paragraph 2 of the Code of Conduct.
32. I think Mr Parton clearly misunderstood the guideline expressed in paragraph 3 of the Guidelines and the Standing Committee may wish to take this into account in determining what action, if any, should be taken.

(The Hon Dr) Ken Crispin QC  
ACT Commissioner for Standards  
26 July 2021