



## Shane Rattenbury MLA

Attorney-General

Minister for Consumer Affairs

Minister for Water, Energy and Emissions Reduction

Minister for Gaming

Member for Kurrajong

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### Committee Members

Standing Committee on Justice and Community Safety Committee

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### Committee Members

Standing Committee on Economic and Gender Economic Equality

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

Dear Committee Members

I am writing regarding a line of questioning relating to the Commissioner for Fair Trading during my attendance at the Annual Reports committee on 17 November 2023 in my capacity as Minister for Consumer Affairs. I wrote similarly to the Estimates Committee on 31 July 2023.

I note in particular that in Committee hearings this year, both Mr Cain and Ms Lee made various assertions about an alleged conflict of interest involving the Commissioner for Fair Trading. In doing so they asserted as 'facts' an interpretation of events that was inaccurate, including characterising a key meeting inaccurately. In making these assertions, Mr Cain and Ms Lee also personally named public servants. In this regard I ask that the Committee members review the transcripts, and standing order 264B, and consider whether further action is warranted.

As one of several examples, at the Committee hearing on 17 November, Mr Cain said:

“the fair trading commissioner did not declare she was married to the former trading commissioner *while presiding over a dispute involving that person*, who was her husband. That is the fact.”

In the same session, Mr Cain described the situation as “a senior officer *managing a dispute between a commercial entity and the former commissioner, who was her husband.*”

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Mr Cain specifically names both parties during this session.

As another example, at the Committee hearing on 24 November, Mr Cain and Ms Lee say:

MR CAIN: Ms Leigh, if you were supervising Ms Cubin ... would you have been concerned that she was attending *to mediate a dispute involving her husband?*

MS ORR: Chair, I seek your advice on whether this is hypothetical and therefore not allowed.

MS LEE: This is actually not hypothetical.

I reiterate the following information to the Committee, summarising information provided by Access Canberra, to assist the Committee's understanding of this issue.

### **Attendance at the 6 July 2021 meeting**

In June 2018, the former Commissioner for Fair Trading (Mr Snowden) initiated an investigation into a business as a result of consumer complaints in relation to that business. That investigation progressed but following confirmation that the business was to be deregistered, the former Commissioner determined that no further action would be taken and the investigation was subsequently closed in August 2020.

On 21 January 2021, the Territory was made aware of a potential claim for compensation in relation to the investigation.

On 27 May 2021, correspondence from the legal representative of the business sought to articulate a claim for compensation, but the proper basis of that claim was unclear. To progress the matter, the current Commissioner (Ms Cubin) attended a 'without prejudice' meeting on 6 July 2021 along with ACT Government Solicitor's representatives so that the legal issues in the matter and particulars of any potential claim against the Territory could be discussed. It was made clear prior to the meeting that the Territory was not able to make settlement offers at this stage but did consider that a discussion between the parties should enable the progression of the matter. I emphasise that *at this time the basis of the potential claim was not clear nor was it clear who would be the subject or respondent to any claim.*

Separate to the potential legal claim mentioned above, on 4 November 2021, proceedings were filed in the ACT Civil and Administrative Tribunal seeking a range of orders, including the release of certain information. I emphasise that it was these proceedings that named the Commissioner for Fair Trading and other individuals as respondents.

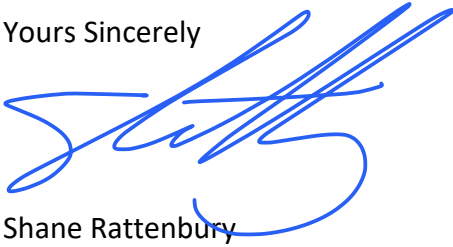
As a result of the ACAT proceedings naming the statutory office and individuals, Ms Cubin completed a conflict of interest disclosure declaration relating to that matter on 24 November 2021. On 30 November 2021 the Head of Access Canberra (Mr Pryce) implemented a Standard Operating Procedure (SOP) in response to this matter.

In providing the above information about the nature and timeline of the complaint and legal proceedings, I emphasise that Mr Cain and Ms Lee have been inaccurate in their characterisation of the situation.

I lastly emphasise, as noted numerous times before, that Access Canberra determined that it has taken appropriate actions in relation to this matter. In response to complaints from an external party, I sought independent confirmation from the Head of Service, who wrote to me on 6 February 2023 indicating that she had looked into the matter and advised that *“the Commissioner’s attendance at the meeting on 6 July 2021 was appropriate. I am also satisfied that Access Canberra has appropriately managed any subsequent potential for conflict of interest in this matter.”*

I request that the Committee take note of the matters I have raised.

Yours Sincerely



Shane Rattenbury

3 December 2023