

## COMMISSIONER FOR STANDARDS ANNUAL REPORT 2018/2019

### **The position of Commissioner for Standards**

By Continuing Resolution 5AA made on 31 October 2013, the Assembly requested the Speaker to appoint a Legislative Assembly Commissioner for Standards on certain terms. The resolution stated that:

- (1) *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; and*
  - (b) *report to the Standing Committee on Administration and Procedure.*

The Continuing resolution was amended on 3 August 2017 to eliminate the earlier requirement for the Speaker to determine whether there were adequate grounds for the referral of a complaint to the Commissioner.

### **Appointment**

I was appointed as the inaugural Commissioner for Standards by an instrument made by the Speaker on 6 March 2014. Conditions of my appointment were specified in an attached schedule, which provided that my appointment would commence on that day and end three months after the election of the 9th Legislative Assembly.

I was reappointed by the current Speaker on substantially similar terms following the election of the 9th Legislative Assembly on 15 October 2016.

### **Protocol**

Following my initial appointment I prepared a draft protocol concerning the manner in which an investigations made in the course of my duties would be undertaken. The protocol was duly adopted by the Standing Committee on Administration and Procedure on 24 March 2015.

The protocol includes the statement that:

*It is the Commissioners 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.*

It has not yet proven necessary to receive oral evidence to address any of the complaints that have been referred to me.

## Complaints

I received three complaints during the 2018/19 financial year.

- The first complaint, which I received on 29 June 2018, alleged that a Member had dishonestly made a false statement on a Facebook page and had subsequently refused to correct it. I wrote to the Member later that day, inviting her to respond to the complaint and received her response on 11 July 2018. Since no factual dispute emerged other than the beliefs and perceptions of the Member against whom the complaint had been made, I was able to resolve the matter without seeking further evidence. After reviewing the relevant material and considering the competing contentions, I was not satisfied that the Member had acted dishonestly. I duly provided her with a draft report and offered her the opportunity to make further comments as required by the Continuing resolution. I submitted my final report on 26 July 2018 recommending that the complaint be dismissed.
- The second complaint, which was referred to me on 9 October 2018, was based upon contentions that remarks made by a Member during the course of a speech to the Legislative Assembly contravened various clauses of the *Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory* (the Code). I took the view that my role as Commissioner for Standards does not extend to investigating allegations concerning the propriety of statements made during the course of proceedings before the Assembly. Members of the Assembly enjoy the same privileges and immunities as members of the Commonwealth House of Representatives (see section 24 of the *Australian Capital Territory (Self-Government) Act 1988*) which includes absolute privilege for statements made in the course or parliamentary proceedings. It is true that rule 15 of the Code enjoins Members to “take care to consider” the rights and reputations of others who might be affected by their statements before speaking in the Assembly. However, I was not persuaded that I have authority to investigate whether any such statements were soundly based and appropriate. Accordingly, I declined to investigate the matter. However, after due discussion with me, Mr Duncan, the Clerk of the Assembly, wrote to the complainant informing him of Continuing Resolution 4 which allows an aggrieved person to apply for a citizens' right of reply.
- The third complaint, which was received on 15 March 2019, raised issues of perceived harassment. I wrote to the complainant on 16 March 2019 indicating that I could not embark upon an investigation without greater specificity of the facts upon which the complaint was based and statements from the other people said to have been present. I also noted that mediation had been suggested and that the complainant had indicated that she was not averse to that suggestion. I was subsequently advised that the issues had been resolved and the complaint was withdrawn.

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### **Other activities**

On 4 November I wrote to the Standing Committee on Administration and Procedure to raise the issue of principle identified in the second complaint, and indicated that I would be reluctant to intrude into areas otherwise within the exclusive province of the Assembly without an indication from the Committee that my role was intended to include the investigation of alleged abuses of privilege. I also suggested an amendment to the Continuing resolution that would permit me to dismiss trivial or otherwise inappropriate complaints even if they could not be described as "frivolous, vexatious or only for political advantage. The Speaker subsequently confirmed that the Committee had agreed that complaints concerning statements made during the course of Assembly should be left to the Speaker. The continuing resolution was duly amended to permit me to decide whether investigations were warranted. It was also amended to permit me to refer complaints to the ACT Integrity Commissioner when appropriate.

During the course of the financial year I chaired the Appointment Advisory Panel for the appointment of the ACT Integrity Commissioner.

I also presented a paper at a conference in Heidelberg, Germany, on the influence of law and legal systems on ethics and community standards.



K J Crispin QC  
Commissioner for Standards  
31 August 2019

