

COMMISSIONER FOR STANDARDS

ANNUAL REPORT 2021/2022

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, leaving it to the Commissioner to determine whether any investigation was warranted.

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 on substantially similar terms on 15 October 2016 and 15 January 2021.

Protocol

Following my initial appointment I prepared a draft protocol concerning the manner in which 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 and amended in August 2017 and February 2022. It may be viewed on the Assembly's website: https://www.parliament.act.gov.au/__data/assets/pdf_file/0003/1949151/Protocols-for-investigating-complaints-against-members-agreed-by-Assembly-on-10-February-2022.pdf

The protocol includes the statement that:

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.

It has not yet proven necessary to engage in face to face hearings to address any of the complaints that have been referred to me, though I have received oral evidence by telephone.

Complaints

I dealt with the following complaints during the year ended 30 June 2021. .

- On 18 June 2021 I received a complaint by Ms Suzanne Orr MLA concerning the conduct of Mr Mark Parton MLA, the Deputy Speaker, in posting a video on Tik Tok which showed him adjourning the public proceedings of the Assembly for lunch and then revealed a bag prominently displaying the name of a well known fast food supplier. This image was accompanied by a sound track commonly used in the supplier's commercial advertising. Mr Parton was then shown proceeding to eat some or all of the bag's contents. It was alleged that the video promoted the product, contravened the *Legislative Assembly Broadcasting Framework and Guidelines* ('the Guidelines') and compromised the credibility of his role. The matter had been raised with him by the Speaker and he had provided a letter of explanation in which he denied the existence of any commercial arrangement with the supplier. However, since the *Legislative Assembly (Broadcasting) Act 2001* requires anyone exercising rights to broadcast public proceedings of the Legislative Assembly to comply with the Guidelines, if a Member were to commit a breach of the Guidelines, he or she would also contravene the requirement of the Code of Conduct to act only in conformity with all laws applicable in the Territory. Consequently, I wrote to Mr Parton inviting him to make any further statements and present any arguments that he might consider appropriate. Mr Parton responded on 8 July 2021, indicating that he had never been involved in any commercial agreement with the supplier. He explained that he had attempted to "humanise" Members of the Assembly in his social media engagements and that the video had been intended to show the public that Members had the same kind of food for lunch as other people. The inclusion of the material relating to the supplier had been intended to make the content of the video "engaging and shareable." I accepted his assurance that he had had no commercial relationship with the supplier and was not satisfied that he acted as he did with a view to promoting the supplier's commercial interests. However, 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. Mr Parton argued that video was accurate, but I found that his usage of the video footage nonetheless constituted a breach of paragraph 3 of the Guidelines and, accordingly, a breach of paragraph 2 of the Code of Conduct. My report dated 26 July 2021 was duly adopted by the Standing Committee on Administration and Procedure.
- On 4 May, 2022 the Speaker referred to me a resolution that had been moved and affirmed by the Assembly on 3 May 2022 concerning the conduct of Mr Johnathan Davis MLA. The motion noted (a) that Mr Davis had circulated a letter in the electorate regarding the Greens federal election candidates; (b) that he had used his Legislative Assembly contact details; (c) that a letter to MLAs from the Clerk of the Assembly had been circulated on 11 April 2022 regarding use of Assembly resources for federal campaigning; and (d) that using Assembly contact details as part of federal electioneering involves a breach of the Member's code of conduct. Mr Davis explained that, whilst 5,000 letters were printed and approximately 4,000 were distributed, no use was made of stationery, printing facilities or other resources of the Office of the Legislative Assembly (OLA). He added that he had been advised by his staff that no telephone calls or emails had been received in relation to his letter, the Greens'

federal candidates or the federal election. Mr Davis explained that, in writing to people in his electorate promoting the Greens candidates for the federal election, he used an opportunity to remind his constituents that he served in the Assembly as a member of the ACT Greens and to offer them the opportunity to contact him if they had any “local” issue that they wish to discuss. He did not claim that this was his only, or even the primary, motivation for the sending the letters, but his explanation for the inclusion of his Assembly contact details was neither implausible nor inconsistent with the statements in the opening paragraphs of his letter. The provision of Assembly contact details to enable constituents to speak with a Member of the Assembly about issues of concern to ACT constituents would obviously not involve any breach of the obligations in paragraph (7) of the Code and his Assembly details had been used only in relation to issues of that kind, with his personal email address used in relation to other parts of the letters. I was not satisfied that they were included in Mr Davis’ letter for an inappropriate purpose and on 6 May 2022 I recommended that the complaint be dismissed.

Other matters

In February 2022 paragraph 2 of the protocol was amended to read:

If the Commissioner receives a complaint and the Commissioner believes on reasonable grounds that there is insufficient evidence to justify an investigation or that the complaint is frivolous, vexatious or only for political advantage, the Commissioner will inform the complainant that the matter will not be further investigated. The Commissioner will also inform (without revealing the complainant’s identity or the nature of the complaint) both the committee and the Member the subject of the complaint that a complaint has been received but not further investigated.

K J Crispin QC

Commissioner for Standards

1 July 2022