



Legislative Assembly for the Australian Capital Territory

Standing Committee on Administration
and Procedure

Report on the conduct of Mr Cain MLA

Legislative Assembly for the Australian Capital Territory
Standing Committee on Administration and Procedure

Approved for publication

Report 11
10th Assembly
February 2024

About the committee

Establishing resolution

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, the committee shall inquire into and report on the operation of the standing orders and continuing resolutions of the Assembly by the end of the third year of an Assembly term, 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' services and facilities;
 - (B) the operation of the transcription service (*Hansard*);
 - (C) the availability to the public of Assembly documents; and
 - (D) management of the Assembly precincts including Work Health and
 - (iia) develop a guidance note for all Members outlining who is responsible for the various undertakings and activities of the Legislative Assembly, recognising the unique working environment of the Legislative Assembly, within 6 months of the commencement of a new term
 - (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.

Committee members

Ms Joy Burch MLA, Chair

Ms Nicole Lawder, Deputy Chair

Mr Andrew Braddock MLA

Ms Suzanne Orr MLA

Secretariat

Tom Duncan, Committee Secretary

Janice Rafferty, Assistant Secretary

Contact us

Mail Standing Committee on Administration and Procedure
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
CANBERRA ACT 2601

Phone (02) 6205 0173

Email LACommitteeAPC@parliament.act.gov.au

Website parliament.act.gov.au/parliamentary-business/in-committees

Terms of Reference

Continuing resolution 5AA

Commissioner for Standards



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

Resolution agreed by the Assembly 31 October 2013 (amended 3 August 2017, 22 August 2019, 10 February 2022 and 31 August 2023)

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.
- (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 they have 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) 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.

- (d) The Commissioner must report by 31 August each year to the Speaker on the exercise of the functions of the Commissioner.

Continuing resolution 5

Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory

5

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

Resolution agreed by the Assembly

25 August 2005 (amended 16 August 2006, 24 October 2013, 3 August 2017, 30 July 2019, 30 March 2021 and 31 August 2023)

- (A) 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.
- (B) 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 treat each other with courtesy and propriety, 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.
- (C) Consistent with the above principles, Members further undertake that they should:
- (1) 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.
 - (2) 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* (Cth);
 - (b) declare their private interests and those of their immediate family 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 at a time and 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) and any friendship, relationship or other circumstance 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.

- (3) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.
- (4) 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, and not accept any inappropriate benefit in connection with their activity as a Member.
- (5) 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).
- (6) 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.
- (7) In their capacity as an employer on behalf of the Territory under the *Legislative Assembly (Members' Staff) Act 1989*:
 - (a) seek to promote, and by their conduct reflect, an Assembly workplace that is collegiate, inclusive and diverse and in which health and safety risks are eliminated or minimised;
 - (b) 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);
 - (c) not employ a family member as defined in that Act;
 - (d) take all reasonable steps to ensure that, 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
 - (e) 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.
- (8) In all their dealings with staff of the Assembly, staff of other Members and members of the ACT Public Sector:
 - (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.
- (9) 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.
- (10) 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.
- (D) Through this Code of Conduct, Members express that they have zero tolerance for bullying, sexual and other harassment, sexual assault and discrimination¹ and pledge that they will not themselves engage in such conduct. Consistently with this, Members undertake that, in the course of their duties and activities as a Member, they will:
- (1) offer and provide support to a person who indicate they were making (or may wish to make) a complaint alleging bullying, sexual and other harassment, sexual assault or discrimination;
 - (2) seek to be sensitive to the needs and feelings of any such complainant and to recognise their possible need for trauma-informed care;
 - (3) as appropriate, seek expert advice and assistance as to the manner in which the Member should act in such circumstances;
 - (4) recognise and respect that it is the right of a complainant as to whether and how they seek and pursue official investigation of their complaint;
 - (5) respect the confidentiality of personal information concerning a complainant;
 - (6) not imply, threaten or take detrimental action against a person because they are, or have indicated that they may become a complainant;
 - (7) not offer any improper inducement to a person to not make, or to withdraw, such a complaint;
 - (8) seek to preserve any evidence that may be relevant to the investigation of such a complaint;
 - (9) fully cooperate with any official inquiry in connection with a complaint; and
 - (10) take appropriate action if they observe another person engaging in bullying, sexual and other harassment, sexual assault or discrimination.

- (E) Within the first six months after an election for the Assembly, the Assembly shall reaffirm its commitment to the principles, obligations and aspirations of this Code of Conduct.
- (F) Where a Member who had not voted on the most recent reaffirmation required under clause (E) is elected to the Assembly, that Member shall, before they make an inaugural speech or otherwise participates in parliamentary processes, affirm that they will abide by this Code of Conduct.
- (G) 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.

1—In this Code "discrimination" means differential treatment of a person based on personal attributes such as gender; family responsibilities, parental status (having or not having children); marital status or relationship status; pregnancy; breastfeeding; sexual orientation; gender identity; religious belief; affiliation or activity; industrial activity; disability (including temporary disability); race; age; association with someone who has one of these attributes; or other attributes unrelated to the person's education, qualifications, experience, capacity or performance.

About this inquiry

Under Continuing Resolution 5 and 5AA, complaints against Members who may have breached the Members Code of Conduct (The Code) can be raised with the Commissioner for Standards, who will determine if an investigation is required, and if so, provide a report of the investigation to the Standing Committee on Administration and Procedure (The Committee).

Contents

| | |
|--|-------------|
| About the committee | i |
| Establishing resolution | i |
| Committee members | ii |
| Secretariat | ii |
| Contact us | ii |
| Terms of Reference | iii |
| Continuing resolution 5AA | iii |
| Commissioner for Standards | iii |
| Continuing resolution 5 | vi |
| Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory | vi |
| About this inquiry | xi |
| Recommendations | xiii |
| 1. Introduction | 1 |
| 2. Conduct of the Commissioner's inquiry | 2 |
| 3. The Commissioner's findings | 6 |
| 4. The Committee's consideration of the Commissioner's report and recommendations | 8 |
| Appendix A: Report of the Commissioner for Standards | 11 |

Recommendations

Finding 1

Mr Cain, in seeking to gain a benefit for a family member, had breached the Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory.

Recommendation 1

The Committee recommends that Mr Cain apologise in the Chamber for seeking to gain a benefit for a family member after the report is considered by the Assembly.

Recommendation 2

The Committee recommends that the Office of the Legislative Assembly update its internal forms and documents to specify that the definition of family include in-laws.

Finding 2

Mr Cain, having circulated an email of a political nature from an Assembly email address had breached the *Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory*.

Finding 3

Mr Cain, in failing to ensure that staff were not undertaking activities that would be contrary to his commitment to the code, had breached the Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory.

Recommendation 3

The Committee recommends that Mr Cain apologise in the Chamber for the inappropriate use of Assembly resources, including staff for political messaging after the report is considered by the Assembly.

Recommendation 4

That Continuing Resolution 5A—*Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory* be amended by omitting paragraph (C) (7) (d) and substituting “(d) ensure that, as far as practicable, their personal staff are aware of the Member’s commitment to this Code of Conduct, and the obligations placed on them and the Member to comply with this Code; and”

1. Introduction

- 1.1. On 30 November 2023 the Commissioner for Standards received a complaint from Ms Tara Cheyne MLA, concerning the engagement by Mr Peter Cain MLA of his son-in-law as an intern in his office.
- 1.2. The intern was engaged for the period 27 September 2021 to 26 November 2021. There has been no suggestion that the usual procedures were not followed. The suggested breaches of the Code relate to the relationship between Mr Cain and the intern.
- 1.3. On 4 December 2023, Ms Cheyne again contacted the Commissioner concerning the preparation and dissemination of an email by staff in Mr Cain’s Office.
- 1.4. Ms Cheyne suggested that the apparent widespread issue of the email involved a misuse of public resources as the bulk of the text involved criticism of the current “Labor-Greens” Government and the promotion of a new Liberal political policy. The last paragraph invites recipients to suggest community projects, but it does so in the context of that new political policy and invites recipients to contact Mr Cain or visit the stated website which is, of course, the website of a political party.
- 1.5. The Commissioner conducted an investigation into both matters and provided his report to the Standing Committee on Administration and Procedure on Thursday, 11 January 2024.
- 1.6. 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, August 2019, February 2022 and 31 August 2023).
- 2.2. In relation to the first matter raised, the Commissioner wrote to Clerk seeking information relating to the engagement of interns which was duly provided.
- 2.3. He then wrote to Mr Cain on 1 December 2023 enclosing a copy of the first complaint (employment/engagement of a family member).
- 2.4. On 4 December 2023 the Commissioner received a second complaint raising issues regarding the preparation and dissemination of an email which may involve a breach of the Code of Conduct. The Commissioner forwarded that complaint the same day.
- 2.5. Mr Cain responded to both complaints on 6 December 2023 and as required, a copy of the Commissioner's report was provided by the Commissioner to Mr Cain on 11 December 2023.
- 2.6. Mr Cain sought confirmation that the paragraphs of the Code of Conduct referred to in the Commissioner's draft report were those in place at the time of the engagement of the intern (September 2021). He was advised that the relevant paragraphs of the Code at issue were as quoted.
- 2.7. It should be noted that the Code of Conduct was amended on 31 August 2023 and there were changes to the numbering of the paragraphs.
- 2.8. The changes relevant to this report are

Paragraph (4)—now Paragraph(B) (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.

Paragraph (7)—now Paragraph (B) (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, efficient and economic use of those resources.

Paragraph (12)—now Paragraph (C) (2)

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.

Paragraph (17)—now Paragraph (C) (7) (c)

not employ a family member as defined in that Act;

- 2.9. Mr Cain’s substantive response was received on 4 January 2024.
- 2.10. Following consideration of Mr Cain’s response, the Commissioner provided a revised draft report on 6 January 2024. Mr Cain replied on 10 January 2024 stating he had nothing further to add.

Complaint 1—engagement of a family member

- 2.11. In relation to the first matter, Mr Cain’s response relied on the provisions of the *Legislative Assembly (Members’ Staff) Act 1989* (the Act) relating to the definition of a “family member”.
- 2.12. Section 10(2) of the Act also provides that “a member of the Assembly must not employ a person who is a family member of the member.”
- 2.13. The dictionary to the Act defines “family member” to mean—
- (a) *a domestic partner of the person; or*
 - (b) *a parent or step-parent of the person; or*
 - (c) *a parent or step-parent of the person’s domestic partner; or*
 - (d) *a child or step-child of the person; or*
 - (e) *a child or step-child of the person’s domestic partner; or*
 - (f) *a brother, sister, half-brother or half-sister of the person; or*
 - (g) *a grandparent of the person; or*
 - (h) *an uncle, aunt or cousin of the person*
- 2.14. Mr Cain’s son-in-law, the intern that is the subject of the complaint, does not fall within any of these descriptions. Hence, he cannot be regarded as a family member in terms of the Act and consequently, and Mr Cain argued that he does not breach Paragraph 17 (now Paragraph (C) (7) (c)) of the Code of Conduct (as at September 2021) which requires members not to employ a “family member” as defined in the Act.
- 2.15. Mr Cain’s response also relied on clause 1.3 of the Assembly’s Vocational Placement Agreement, which states that: *The parties agree that there is no intention to create an employment relationship between the Office of the Legislative Assembly and the Participant under this Agreement.*
- 2.16. In his report the Commissioner goes on to discuss paragraph (4) of the Code of conduct which states:
- 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.*
- 2.17. This paragraph applies to acts intended to cause or permit any financial or other benefits to be gained by anyone falling within the broad description of Members, their

family or friends. Whilst Mr Cain argued that the arrangement with the intern had not caused anyone else to be disadvantaged, the Commissioner was of the view that a benefit had been gained at the expense of others who would miss out on comparable benefits.

Complaint 2—Email issued on 17 November 2023

2.18. Ms Cheyne, in her second complaint, proposed that the widespread issuance of an email from Mr Cain breached the Code of Conduct.

2.19. The email was in the following terms:

“Putting Your Suburbs First - A Message from Peter Cain MLA,

My name is Peter Cain and I'm the local Liberal Member for Ginninderra.

Household rates are increasing year after year under this Labor-Greens Government, but when you look around your suburb it's hard to see where all the money is going.

When I'm out and about in Ginninderra, people are telling me that they're tired of this Labor-Greens Government neglecting them and neglecting their local community.

That's why on Monday, the Leader of the Canberra Liberals, Elizabeth Lee, announced the Putting Your Suburb First policy which will invest \$100 million back into the suburbs of Canberra.

Every single suburb in Canberra will be eligible for funding for local projects that will directly benefit local residents, local communities and the local environment. This is not business as usual - this policy is about investing Canberrans' hard-earned rates back into their suburbs.

*The **Putting Your Suburb First** policy recognises that each suburb is unique and it's people like you, the people who live there that know what your community needs. This policy will put the choice firmly in the hands of the community on what they want to see in their own neighbourhood.*

If you have a community project that you would like to see in your suburb, please get in touch at cain@parliament.act.gov.au and let us know, or you can visit www.elizabethlee.com.au/newcbr and nominate a local project through the website.

Kind regards,

Peter Cain MLA

Liberal Member for Ginninderra

Shadow Attorney-General

Shadow Minister for Planning and Land Management

Shadow Minister for Multicultural Affairs

Assistant Shadow Treasurer

Assistant Speaker

2.20. Paragraph (7) of the Code of Conduct states that:

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, efficient and economic use of those resources.

2.21. The email was circulated from the cain@parliament.act.gov.au email address by a staff member in Mr Cain's office.

2.22. Mr Cain, in his response, acknowledges that the "email was sent by a staffer in my office without my personal review."

2.23. Mr Cain maintains that the purpose of the email was "to engage with the community and elicit feedback on potential projects within the electorate." However, the bulk of the text involved criticism of the current "Labor-Greens Government" and invited recipients to contact Mr Cain or visit the website of a political party.

3. The Commissioner's findings

Complaint 1—engagement of a family member

- 3.1. The Commissioner found that the issues raised by the complaint 1 (engagement of a family member) were concerning.
- 3.2. The Commissioner examined the definitions of “family member” as stated in the *Legislative Assembly (Members’ Staff) Act 1989* (the Act). He found that the intern did not fall within the description of family.
- 3.3. He also determined that the intern’s placement did not fall within the definitions of consultant or contractor in the Act (section 20(2)), nor Clause 1.3 of the Assembly’s vocational Placement Program. On that basis, paragraph 17 (now (C)(7)(c)) of the code of conduct had not been breached.
- 3.4. The Commissioner then undertook an analysis of paragraph (4) (now (B)(4)) of the code which states:

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.
- 3.5. He noted that the second part of the clause related to decisions and actions that intend to benefit family members. In addition he commented that the word “family” in paragraph (4) is not accompanied by any reference to the definition in the Act however in the context of this paragraph, the normal accepted interpretation of family is taken to include sons-in-law.
- 3.6. The Commissioner noted that, despite Mr Cain’ assurance that he sought to treat the intern the same as other interns, the vocational placement itself was clearly intended to be of benefit to him. It was intended fulfil a requirement of his (the intern’s) course of study (see clause 1.2 of the Vocational Placement Agreement) and presumably to give him valuable experience.
- 3.7. The Commissioner concluded that Mr Cain’s actions in actively seeking the placement of his son-in-law in the internship program was a breach of the Code of Conduct.
- 3.8. The complaint against Mr Cain also raised the provisions of paragraph (12) (now (C) (2)) of the Code which states that Members must:

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.
- 3.9. The Commissioner did not identify any such conflicts in this instance.
- 3.10. The Commissioner concluded that Mr Cain did commit a breach of the Code of Conduct in facilitating his son-in-law’s engagement as an intern.

Complaint 2—Email issued on 17 November 2023

- 3.11. The Commissioner recognised the rights of Members to use the resources provided to them as Members for the preparation and dissemination of communications to constituents that relate to their roles and responsibilities as Members. They are free to make any political statements they wish but they may not use the public resources of the Assembly to produce and disseminate them.
- 3.12. The email issued under the cain@parliament.act.gov.au account was, in the Commissioner’s view political in nature. He dismissed Mr Cain’s assertion that the email’s purpose was “to engage with the community and elicit feedback on potential project within the electorate”.
- 3.13. The email involved criticism of the current “Labor-Greens Government” and the promotion of new Liberal policy. It invites the community make suggestions to the cain@parliament email address or to visit a website www.elizabethlee.com.au/newcbr.
- 3.14. The Commissioner formed the view that the email was political in nature and its preparation and dissemination did involve the misuse of public resources.
- 3.15. The Commissioner reflected that the Code of Conduct relates to the conduct of members only and Mr Cain took no personal responsibility for the email. Mr Cain maintained: *“This email was sent by a staffer in my office without my personal review”*.
- 3.16. The Commissioner’s commented

“Whilst Members may bear vicarious legal responsibility for actions of their staff, there is nothing in the Code to suggest that Members may be taken to have breached relevant principles by reason of the conduct of others. I have no reason to doubt Mr Cain’s explanation that the email was not sent by him and that he had not reviewed it prior to its dissemination. Consequently, I am unable to find that he has personally taken any action involving a misuse of public funds.”
- 3.17. The Commissioner recommended that the complaint be dismissed but suggested that Members be reminded to institute effective procedures in their offices to prevent any inappropriate use of Assembly facilities and resources.

4. The Committee’s consideration of the Commissioner’s report and recommendations

- 4.1. The Committee, at its meeting on 5 February 2024 and in accordance with continuing resolution 5AA, considered the report of the Commissioner for Standards relating to two complaints against Mr Cain relating to the engagement of family members and the alleged inappropriate use of Assembly resources.

Complaint 1—Engagement of a family member

- 4.2. The Committee agrees with the Commissioner’s assessment of this complaint. The Committee, in its discussion of the Commissioner’s report, noted that while the strict definitions of the *Legislative Assembly (Members’ Staff) Act 1989* does not refer “in-laws”, common usage defines family as those related by blood and marriage, among others.
- 4.3. The Commissioner found that Mr Cain had breached Paragraph (B)(4) the Code of Conduct:
- 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.*
- 4.4. The Committee agrees with the Commissioner finding.

Finding 1

Mr Cain, in seeking to gain a benefit for a family member, had breached the Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory.

Recommendation 1

The Committee recommends that Mr Cain apologise in the Chamber for seeking to gain a benefit for a family member after the report is considered by the Assembly.

- 4.5. The Committee also discussed the need for clarity in the definition of “family” that is used by the Assembly in its internal forms and the standing orders.

Recommendation 2

The Committee recommends that the Office of the Legislative Assembly update its internal forms and documents to specify that the definition of family include in-laws.

Complaint 2—Email issued on 17 November 2023

- 4.6. In relation to the second complaint, the Committee agreed with the Commissioner’s assessment that the email was essentially political in nature. In defending the allegation that he misused Assembly resources Mr Cain disavowed himself of responsibility for the email because he had not sent the email himself and had not reviewed it prior to its dissemination.

- 4.7. The Code of Conduct, which only applies to the conduct of members, in the Commissioner’s view, cannot be breached by the conduct of others.
- 4.8. The Committee however takes a slightly different view, citing the principles of ministerial responsibility where Ministers are responsible for the actions of their relevant directorate/s.
- 4.9. The Committee formed the view that the fact that Mr Cain explained that he had not sent the email and that he had not reviewed it prior to its dissemination does not abrogate him of the responsibility to ensure the resources provided to him as a Member are not misused.
- 4.10. In its discussion the Committee considered the language used in the Code at Paragraph (C) (7) (d) and (e) and the Commissioners’ strict interpretation of the Code. The Committee reflected on its earlier decision to ask another member to apologise to the Assembly for a similar incident.
- 4.11. The Committee, despite the Commissioner’s recommendation that the complaint be dismissed, formed the view that Mr Cain should apologise to the Assembly. It also considered the need to clarify the code of conduct so a member is responsible for the actions of their staff. In the Committee’s view, Mr Cain had failed to ensure that his personal staff were mindful of his commitment to the code, and that Mr Cain and his staff should have been aware of this Committee’s recent report on a similar issue.¹

Finding 2

Mr Cain, having circulated an email of a political nature from an Assembly email address had breached the *Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory*.

Finding 3

Mr Cain, in failing to ensure that staff were not undertaking activities that would be contrary to his commitment to the code, had breached the Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory.

Recommendation 3

The Committee recommends that Mr Cain apologise in the Chamber for the inappropriate use of Assembly resources, including staff for political messaging after the report is considered by the Assembly.

- 4.12. In its discussion of the two complaints, the Committee considered the matter of the Code only applying to the conduct of Members and not their staff. The Committee was of the view that Members have a responsibility to ensure that the resources provided to them are

¹ Standing Committee on Administration and Procedure – Report 8 – Report on the conduct of Ms Vassarotti MLA – May 2023

used in a proper manner. This includes the actions of their staff. To suggest Mr Cain was unaware of the email is disingenuous. It is hard to imagine that the staff initiated, crafted and disseminated the email without Mr Cain’s input, or that they would have done so of their own accord.

- 4.13. The Committee discussed some options for amending the Code to provide some clarity in the language used in the Code at Paragraph (C) (7) (d) and (e) and the Commissioners ’s interpretation of the existing Code.

Recommendation 4

That Continuing Resolution 5A—*Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory* be amended by omitting paragraph (C) (7) (d) and substituting

“(d) ensure that, as far as practicable, their personal staff are aware of the Member’s commitment to this Code of Conduct, and the obligations placed on them and the Member to comply with this Code; and”

Joy Burch MLA

Chair

February 2024

Appendix A: Report of the Commissioner for Standards

COMPLAINTS AGAINST MR PETER CAIN MLA

1. Two complaints have been made against Mr Cain. The first arose from a statement he made on 29 November 2023 in which he mentioned that one of his sons-in-law had worked in his office as an intern. The second relates to an email issued in his name on 17 November 2023.

The course of the investigation

2. On 30 November 2023 I received the first complaint by Ms Tara Cheyne MLA, raising issues about whether Mr Cain's conduct in arranging for the internship of his son-in-law may have involved a breach of one or more of the obligations imposed upon Members by *The Code of Conduct for All Members of the Legislative Assembly for the Australian Capital Territory* (the Code).
3. I wrote to the Clerk of the Assembly (the Clerk) on 30 November 2023 seeking certain information concerning the engagement of interns. He responded on 1 December 2023 providing the information I had sought.
4. I then wrote to Mr Cain, also on 1 December, enclosing a copy of the complaint and seeking a prompt response. The letter of complaint mentioned some issues relating to matter of process and the knowledge of other Members, but I informed Mr Cain that I was not presently concerned with issues of that kind, though he was, of course, free to advert to any matter he considered relevant.
5. On 4 December 2023 I received the second complaint by Ms Cheyne, raising issues about whether the preparation and dissemination of the email issued on 17 November 2023 may have involved breaches of the Code.
6. I wrote to Mr Cain about this complaint later that day.
7. Mr Cain responded to both complaints on 6 December 2023.
8. I sent Mr Cain a draft report on 11 December 2023 and invited him to make any further comments he might consider appropriate.
9. He replied on 12 December, stating that he would respond as soon as possible. He wrote to me again on 15 December, noting that only the current version of the Code appears on the ACT Legislative Assembly website and seeking a copy of the version the Code applicable on 27 September 2021, that being the date upon which his son-in-law, Mr Timothy Stevenson, was engaged as an intern. He indicated that he would have more to say when the appropriate version of the Code had been confirmed. After obtaining confirmation from the Clerk, I replied on 18 December, advising Mr Cain that the paragraphs of the Code referred to in the draft report had been in the form

quoted since 30 March 2021 and stating that I looked forward to receiving any further comments from him in due course.

10. Mr Cain's substantive response was provided by email on 4 January 2024.
11. I made some changes to the draft report and wrote to him again on 6 January 2024 to offer him an opportunity to make further comments.
12. He replied on 10 January 2024, indicating that he had nothing further to add.

The complaint concerning the engagement of Mr Stevenson as an intern

13. Mr Stevenson was engaged as an intern for the period 27 September 2021 to 26 November 2021. There has been no suggestion that the usual procedures were not followed. The suggested breaches of the Code relate to the relationship between Mr Cain and Mr Stevenson.

Paragraph 17 of the Code

14. The relevant portion of paragraph 17 of the Code requires members not to employ a "family member" as defined in the *Legislative Assembly (Members' Staff) Act 1989* (the Act).
15. Section 10(2) of the Act also provides that "a member of the Assembly must not employ a person who is a family member of the member."
16. The dictionary to the Act defines "family member" to mean—
 - (a) a domestic partner of the person; or
 - (b) a parent or step-parent of the person; or
 - (c) a parent or step-parent of the person's domestic partner; or
 - (d) a child or step-child of the person; or
 - (e) a child or step-child of the person's domestic partner; or
 - (f) a brother, sister, half-brother or half-sister of the person; or
 - (g) a grandparent of the person; or
 - (h) an uncle, aunt or cousin of the person
17. Mr Cain's son-in-law, Mr Stevenson, does not fall within any of these descriptions. Hence, he cannot be regarded as a family member to whom section 5(2) applies.
18. Furthermore, whilst people described as "interns" may in some circumstances and statutory contexts be accepted as employees, a person such as Mr Stevenson who is undertaking an unpaid vocational placement with a Member of the Assembly cannot be so regarded. As Mr Cain has pointed out, this is confirmed by clause 1.3 of the Vocational Placement Agreement, which Act states that: *The parties agree that there is no intention to create an employment relationship between the Office of the Legislative Assembly and the Participant under this Agreement.*

19. I should mention that section 20 (2) of the Act also provides that a member of the Assembly must not engage a consultant or contractor who—
 - (a) *if the consultant or contractor is an individual—is a family member of the member; or*
 - (b) *if the consultant or contractor is a corporation—has a director or other officer who is a family member of the member.*
20. However, as mentioned earlier, Mr Stevenson is not a family member as defined by the Act and he was not engaged as a consultant or contractor in the relevant sense.
21. Hence, there is no basis for a finding that Mr Cain committed a breach of the Act or paragraph 17 of the Code.

Paragraph (4) of the Code

22. Paragraph (4) states 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.

23. There is no reason to suppose that Mr Cain did not believe that Mr Stevenson’s placement with him was in the public interest or that Mr Stevenson was less deserving of such a placement than other interns. However, the principle expressed in the second clause of this paragraph extends to decisions intended to benefit family members irrespective of any such considerations. The principle does not, of course, prevent Members from making decisions of broad application that may benefit their family or friends along with other members of the ACT community or broad sections of it. Nor does it disqualify family members or friends of a Member from beneficial engagement with the Assembly. It requires only that any decision to engage them be made in the public interest and based upon merit and that it not be made by that Member. However, the principle that Members may not make decisions intended to benefit their family or friends is not qualified by any consideration relating to the merits of a particular engagement or the character and competence of the person so engaged.
24. The word “family” in paragraph (4) is not accompanied by any reference to the definition in the Act and, in the context of this paragraph, clearly bears its normal meaning which I think must be taken to include sons-in-law.
25. I have no reason to doubt Mr Cain’s assurance that he sought to treat Mr Stevenson the same as other interns. However, the vocational placement itself was clearly intended to be of benefit to him. It was intended fulfil a requirement of his course of study (see clause 1.2 of the Vocational Placement Agreement) and presumably to give him valuable experience. Hence, in my view, it involved a breach of paragraph (4) of the Code.

26. Mr Cain resisted this conclusion on two grounds. First, having noted my conclusion that Mr Stevenson was not a family member to whom section 5(2) of the Act applied, he suggested that it would be unusual for a resolution of the Assembly to prohibit something allowed under a law of that Assembly. This argument fails to take into account the fact that the relevant words of paragraph (4) express an ethical rather than a legal principle and the field of ethics is inevitably more wide than the ambit of legal regulation. Ethics deal with questions of how people should behave, whilst laws generally deal with questions of how they should be required to behave and legal sanctions for breach. More fundamentally, the Act applies only to the employment of family members of the kind specifically mentioned in the dictionary to the Act, whilst paragraph (4) of the Code applies to acts intended to cause or permit any financial or other benefits to be gained by anyone falling within the broad description, “themselves, their family or friends.” In my opinion, a son-in-law clearly falls within this broad description.
27. Secondly, he explained that the arrangement with Mr Stevenson had not caused any other applicant to be denied an internship or otherwise disadvantaged. In support of this contention he provided a list of other intern arrangements between February 2021 and November 2023, which he suggested demonstrated his generous outreach to the student community. He argued, in essence, that paragraph (4) of the Code should not be interpreted in manner that precludes such a “non-discriminatory” arrangement. I am unable to accept this argument. The principles stated in paragraph (4) apply irrespective of whether the benefits for Members, their family or friends would be gained at the expense of others who would miss out on comparable benefits as a consequence.
28. The Standing Committee may take the view that the breach of this principle by Mr Cain may be seen as less serious than would have been the case had another applicant been excluded as a consequence. A breach involving engagement as an unpaid intern may also be seen as less serious than one involving employment as a staff member paid from public funds. Nonetheless, Mr Cain’s actions, in approaching the education team within the Office about the proposed placement and agreeing to act as the host of Mr Stevenson’s internship, were clearly intended to enable a family member to gain a benefit.
29. In my opinion, this was sufficient to constitute a breach of the relevant principle.

Paragraph (7) of the Code

30. Paragraph (7) states that: *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, efficient and economic use of those resources.*
31. There is no evidence to suggest that Mr Stevenson’s placement involved any improper or ineffective, inefficient or uneconomical use of public resources.

Paragraph (12) of the Code

32. The portion of paragraph (12) mentioned in the complaint states that Members must:
- 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.*
33. Whilst the engagement of family members or friends may give rise to conflicts of interest, no such conflict has been identified in the present case.

Conclusion

34. I recommend that the Standing Committee accept that Mr Cain did commit a breach of paragraph (4) of the Code in facilitating Mr Stevenson's engagement as an intern.

The complaint concerning the email issued on 17 November 2023

35. The email issued on 17 November 2023, which was the subject of the second complaint, was headed "Putting Your Suburbs First - A Message from Peter Cain MLA," was in the following terms:

My name is Peter Cain and I'm the local Liberal Member for Ginninderra.

Household rates are increasing year after year under this Labor-Greens Government, but when you look around your suburb it's hard to see where all the money is going.

When I'm out and about in Ginninderra, people are telling me that they're tired of this Labor-Greens Government neglecting them and neglecting their local community.

That's why on Monday, the Leader of the Canberra Liberals, Elizabeth Lee, announced the Putting Your Suburb First policy which will invest \$100 million back into the suburbs of Canberra.

Every single suburb in Canberra will be eligible for funding for local projects that will directly benefit local residents, local communities and the local environment. This is not business as usual - this policy is about investing Canberrans' hard-earned rates back into their suburbs.

*The **Putting Your Suburb First** policy recognises that each suburb is unique and it's people like you, the people who live there that know what your community needs. This policy will put the choice firmly in the hands of the community on what they want to see in their own neighbourhood.*

If you have a community project that you would like to see in your suburb, please get in touch at cain@parliament.act.gov.au and let us know, or you can visit www.elizabethlee.com.au/newcbr and nominate a local project through the website.

Kind regards,

Peter Cain MLA

*Liberal Member for Ginninderra
Shadow Attorney-General
Shadow Minister for Planning and Land Management
Shadow Minister for Multicultural Affairs
Assistant Shadow Treasurer
Assistant Speaker*

36. Ms Cheyne suggests that the apparently widespread issue of this email involved a misuse of public resources.
37. In his letter of 6 December Mr Cain denied that he had intentionally acted in an appropriate manner and offered the following explanation:

In regard to the second complaint concerning my office's conduct in using Assembly resources, I similarly contest any suggestion that I have intentionally acted inappropriately but would be happy to receive your advice on my office's correspondence to constituents regarding the Canberra Liberals' 'Putting Your Suburb First' initiative (please see attached).

On 17 November 2023, my office sent a bulk email to a number of constituents, with whom my office had had interactions, to invite contributions to my office about local amenities or 5 infrastructure in Ginninderra that require additional attention or investment in line with the 'Putting Your Suburb First' initiative. The purpose of which was to engage with the community and elicit feedback on potential projects within the electorate.

This email was sent by a staffer in my office without my personal review. I have since counselled the staffer involved and all staff in my office regarding appropriate content to be sent from the office and discussed this situation with the Leader of the Opposition.

I reiterate that there was no intention for this email to be sent in a non-compliant manner. I welcome your advice on whether the email constituted political content and whether it was inappropriate to use the email address "cain@parliament.act.gov.au" for this purpose.

Paragraph (7) of the Code

38. As mentioned earlier, paragraph (7) of the Code states that: *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, efficient and economic use of those resources.*
39. The concept of "public resources" clearly extends to the time and labour of staff whose salaries are paid from public funds as well as computers and internet facilities. Such resources may be used by Members for the preparation and dissemination of communications to constituents that relate to their rights and responsibilities as Members. They may not be used for other purposes, such as political advertising or the promotion of political parties. Members are, of course, free to make whatever

political statements they wish, but they may not use the public resources of the Assembly to make and disseminate them.

40. It is not always possible to draw a clear delineation between communications made in the exercise of their role as Members of the Assembly and those made for political purposes. The democratic processes with which the Assembly is concerned are inherently political in nature and communications issued in the course of its legislative and administrative activities are inevitably influenced by political considerations and motivations. Consequently, recognition that some statement within an email or document may fairly be described as “political” does not necessarily warrant a conclusion that there has been a misuse of public resources. One must consider the overall thrust and purpose of the communication. If a communication is issued for purposes that genuinely fall within the scope of a Member’s duties and responsibilities, it may be difficult to regard the inclusion of some political commentary as involving a breach of the requirement in paragraph (7), at least in the absence of some evidence that this involved an additional use public resources. However, this does not mean that the inclusion of some reference to community engagement will effectively make any communication free from criticism.
41. Mr Cain maintains that the purpose of the email that is the subject of the current complaint was “to engage with the community and elicit feedback on potential projects within the electorate.” However, the bulk of the text involves criticism of the current “Labor-Greens” Government and the promotion of a new Liberal political policy. It is true that the last paragraph invites recipients to suggest community projects, but it does so in the context of that new political policy and invites recipients to contact Mr Cain or visit the stated website which is, of course, the website of a political party. Viewed overall, I think the email is essentially political in nature.
42. In my view, the preparation and dissemination of this email did involve a misuse of public resources.
43. However, the Code is concerned only with the conduct of Members and Mr Cain effectively disavows personal responsibility for the email. He explains that it was sent by a member of his staff without his prior review.
44. Whilst Members may bear vicarious legal responsibility for actions of their staff, there is nothing in the Code to suggest that Members may be taken to have breached relevant principles by reason of the conduct of others. I have no reason to doubt Mr Cain’s explanation that the email was not sent by him and that he had not reviewed it prior to its dissemination. Consequently, I am unable to find that he has personally taken any action involving a misuse of public funds.
45. I recommend that this complaint be dismissed.

Other matters

46. Mr Cain states that he has since counselled all his staff in his office concerning the content of communications that may be sent from his office and that he has discussed this situation with the Leader of the Opposition. Such reactive responses were obviously appropriate, but Members should recognise that they have a duty to take proactive measures to ensure that emails unrelated to their duties as Members are not drafted by staff during business hours and are not disseminated from Assembly email facilities.
47. I recommend that Members be reminded of their responsibility to institute effective procedures to prevent any inappropriate use of Assembly facilities.

Ken Crispin KC

Commissioner for Standards

11 January 2024