

COMMISSIONER FOR STANDARDS ANNUAL REPORT 2019/2020

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 the following complaints during the 2019/2020 financial year.

- On 3 September 2019, I received a complaint alleging that a Minister may have misled the Assembly in answers to a Questions on Notice Paper. On 12 September 2019, I wrote to the Complainant advising him that my responsibility does not extend to the investigation of breaches allegedly committed by statements that were the subject of parliamentary privilege. Members of the Assembly enjoy the same privileges and immunities as members of the Commonwealth House of Representatives which includes absolute privilege for statements made in the course of parliamentary proceedings. Such privilege applies not only to statements made in speeches or oral discussions during proceedings of the Assembly, but also to any other statements that form part of the proceedings. Accordingly, I have no authority to investigate whether any such statements were soundly based and appropriate. Since the questions and answers so recorded in Hansard are part of the proceedings of the Assembly, they were subject to privilege and I was obliged to decline to investigate the complaint.
- On 18 October, I received two anonymous complaints concerning tweets issued by a Member, two concerning climate change [protests and one concerning ACT light rail. I reviewed the texts but found that they contained no statements capable of constituting a breach of the *Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory*. One of the complainants also the Member had used obscene language in describing climate change protestors, including children. However, he did not explain when, where or in what circumstances these terms were allegedly used or who allegedly heard them. In other circumstances, I would have sought further particulars of the allegations, but as the complaint was made anonymously, this was not possible. Consequently, I was obliged to conclude that there was insufficient particularity to warrant an investigation.

Other activities

On 22 July 2019 I made a substantial written submission to the Independent Review of the *Public Interest Disclosure Act 2012*.

During the course of the year I also contributed a chapter, “Law, values and moral influence” to a book, *The Impact of Law on Character Formation, Ethical Education, and the Communication of Values in Late Modern Pluralistic Societies*, ed by John Witte and Micahel Welker, shortly to be published in Germany (Leipzig: Evangelische Verlagsanstalt GmbH)

K J Crispin QC
Commissioner for Standards
31 August 2020