Statement by Mark Francis Cormack

Terms of Reference

1. On Tuesday 16 June 2009 a motion was passed in the Legislative Assembly as follows:

   That:

   (1) pursuant to standing order 276, a Select Committee on Privileges be established to examine whether:

   (a) a breach of privilege or contempt has been committed by Mr Mark Cormack, Chief Executive of ACT Health, in relation to a letter he sent to Mr Hanson on 25 May 2009; or

   (b) the letter was an appropriate response in the circumstances of Mr Hanson's media release of 21 May 2009;

   (2) the Committee shall report back to the Assembly on 18 August 2009;

   (3) the Committee shall be composed of:

   (a) one member nominated by the Government;

   (b) one member nominated by the Crossbench; and

   (c) one member nominated by the Opposition;

   notified to the Speaker by 4 p.m. on Tuesday, 16 June 2009.

2. The Assembly has subsequently appointed as members of the Select Committee on Privileges (Committee) Ms Hunter MLA (Chair), Mr Smyth MLA and Mr Corbell MLA.

3. On 3 July, I received a letter from the Chair of the Committee inviting me to make a written statement in respect of the matters referred to the Committee. This is my statement.

Background

4. On or about 21 May 2009 I had a short telephone discussion with the Minister for Health, Katy Gallagher MLA. During that conversation the Minister alerted me to a media release from Mr Jeremy Hanson MLA which was published on the Canberra Liberals website. It was entitled "Another Gallagher Cover Up".

5. I subsequently read the release on or about 21 May 2009. It alleged that a document released by the "ACT Department of Health" (in fact ACT Health) under the *Freedom of*

Information Act 1989 (FOI Act), with deletions relating to personal information, had been "censored by the government to try to avoid [an] embarrassing fact becoming public".

6. The document in question was an email by a lessee of a parcel of land adjacent to the site of a planned "Bush Healing Farm" to be built and ultimately managed by the Department. The author of the email made representations to the Chief Minister in respect of the project and within the email were references to "winery", "cellar door" and "bed and breakfast". These references related to possible planned development by the lessee on that parcel of land. These references were deleted from the email when subsequently released under FOI. For completeness, the lessee's stated plans were not a permitted use of the property, and there had been no development application submitted for consideration.

7. Mr Hanson's media release stated that "[t]he only rational explanation" for the removal of this information "was to cover up the government's embarrassment" and that the deletions showed "yet another case of a shameful attempt to cover up the Minister's embarrassment by misuse of process".

8. The allegations were later repeated and expanded upon by Mr Hanson in media interviews with ABC (ABC 666 Canberra, "18:00 News", 21/05/09), 2CC (2CC, "8:00" News and "9:00" News, 22/05/09) and WIN (WIN, "6:00 News", 22/05/09). He said that the Government had "blacked out elements [of the email] to cover up their embarrassment" and they had "tried to cover their tracks, cover up with freedom of information documents that are blacked out inappropriately".

9. The press release still appears in the "Newsroom" section of the Canberra Liberals website (http://www.canberraliberals.org.au/html/s02_article/article_view.asp?art_id=736&nav_cat_id=186&nav_top_id=55 accessed 10/07/09). (See Attachment A)

10. I was concerned about these allegations. These concerns were

    a. That they indicated to me that Mr Hanson MLA did not understand the way that the FOI Act operated and was administered in the ACT public service, in that they suggested that the Minister played a role in the management of this FOI request.

b. Having regard to the proper operation of the FOI Act and the fact that decisions regarding release of information held by an agency were the sole responsibility of Chief Executives, that they could reasonably be interpreted as suggesting that I lacked independence or was susceptible to improper influence by the Minister.
c. That they alleged not merely a legal or factual error in the administration of the FOI Act, but a wilful misapplication of the personal information exemption for political purposes.
d. That they had the capacity to undermine public confidence in the administration of the ACT Public Service, my Department (ACT Health) and, potentially, in the broader management of the health system.

11. I thought about the potential impact of this document on the reputation of ACT Health, its senior officers and of myself as its Chief Executive. I believed that any person with an understanding of the workings of government, and FOI in particular, on reading this public domain document would conclude that ACT Health, its officers or myself as its Chief Executive had acted improperly and, possibly, unlawfully. This prospect concerned me deeply.

12. On or about 22 May 2009 I had a brief telephone conversation with the Minister. During this conversation I expressed my concerns about this release. Ms Gallagher expressed similar concerns. I advised that I wished to think about the matter over the new couple of days and what response could be taken. I advised the Minister that I was concerned at its potential reporting in the media.

13. In considering how to respond to this matter I took into account the following issues.
    a. First, that the matter had been raised in the public arena and was not subject to any parliamentary privilege.
    b. Secondly, that I felt that the public record needed to be corrected without undue delay. This was due to the risk of loss of reputation for ACT Health, its officials and myself as Chief Executive.
    c. Thirdly, I had promptly advised the Minister of my concerns and was confident that she fully appreciated these concerns. I did not advise her how she should respond to this matter. She did not direct me how to respond on behalf of ACT Health.

d. Fourthly, that I did not want the matter to become the subject of further political dispute, or public debate.
e. Fifthly, that I believed that Mr Hanson had made an inadvertent mistake in his release, perhaps due to his inexperience as a Member of the ACT Legislative Assembly and lack of familiarity with some aspects of the FOI processes.

14. On this basis I decided that I would write a letter to Mr Hanson clearly outlining my concerns; explaining how FOI is administered and processes available to applicants to have FOI decisions reviewed; clarifying my actions and that of ACT Health in the matter; explaining the adverse impact that the statements could have on ACT Health and myself; offering an opinion on how the concerns could be remedied and inviting Mr Hanson to respond. The letter was sent on 25 May 2009. (See Attachment B)

15. It is a reasonable and appropriate course of action for a Chief Executive to write to a Member of the Legislative Assembly (MLA) on matters of a factual nature where necessary, in particular to the shadow Minister for Health. In fact Mr Seselja and other MLAs have written directly to me and other Chief Executives. I believe this practice is consistent with the Westminster conventions.

16. I chose a direct correspondence approach for a number of reasons. As stated above I wished to avoid any further political response to the matter, and I believed a factual explanation would assist in this matter. Also I had met Mr Hanson on a number of occasions and believed that I had established a good professional rapport with him. Indeed I had spent a significant time with Mr Hanson providing him with briefings on a range of matters relevant to his new shadow portfolio.

17. It is for this reason that I personalised the salutation in the letter. I had hoped that this response would enable Mr Hanson to correct the factual errors and respond in a manner which avoided any undue public or political attention to his mistake in publishing such an inaccurate statement. In short I felt that the matter could unduly embarrass Mr Hanson and that a letter was the least public means of bringing the matter to his attention.

18. I received a letter from Mr Hanson dated 28 May 2009 in response to my letter of 25 May 2009 (Attachment C). In this letter, Mr Hanson reasserted his allegation that words had

been inappropriately deleted from the email. He asserted that it was his role as an MLA to "highlight such issues to the public", that "[m]inisterial responsibility requires Ms Gallagher to be accountable for the administration of her Department" and that it was overall "quite unreasonable to assert that [his] comments were in any way directed at [me] or any other ACT Health official". I observe, however that he effectively confirmed his publicly stated view that ACT Health had behaved in a politically motivated manner. This is evidenced by his statement "[i]n my view information of a politically sensitive nature has been removed, as opposed to 'personal information' as is required under the Act". The clear imputation, in my view, was that whoever was responsible for administering the FOI Act had improperly misused the legislation to avoid embarrassing the Minister and the Government generally.

19. Mr Hanson in his letter of 28 May 2009 also states that he, as a non-executive member of the Legislative Assembly, "should not be subjected to letters from departmental officials demanding retraction of statements that are critical of the government".

20. Further, he states that the issue "arose from public hearings conducted by the [Estimates] Committee and may in due course involve a matter of [parliamentary] privilege".

The FOI Act & Personal Affairs Information

21. While it is strictly not relevant to the Terms of Reference for the Committee inquiry, I offer the following comments regarding the operation of the FOI Act and the decision of my delegate to delete references to "winery", "cellar door" and "bed and breakfast" in the email.

22. Section 41 of the Act states that a document is exempt if its release would involve an unreasonable disclosure of "personal information", being information about a person whose identity is apparent or can be ascertained from the information contained in the document. The expression "personal information" is broader than "personal affairs information" which was the expression used prior to the *Freedom of Information Amendment Act 2007*.

23. While the correctness of the decision in this instance is ultimately irrelevant to this inquiry, I submit that information relating to planned development by an individual lessee could, when connected with an identified adjoining property, allow the lessee to be identified by a significant section, or a reasonably knowledgeable member, of the community. Moreover,

while it is of a commercial nature, it could still be characterised as information "about" the lessee for the purposes of the statutory definition of "personal information".

24. Accordingly, contrary to the suggestion made by Mr Hanson MLA, there was a "rational explanation" for the relevant deletions and, I respectfully submit, no basis to suggest that the deletions were a misuse of process motivated to avoid embarrassment to government. The decision, even if it was ultimately not upheld by the Civil and Administrative Tribunal on any review, was nevertheless made in good faith and without regard to the improper considerations that were alleged to have motivated the application of the FOI Act.

25. Moreover, having been advised by me (in my letter of 25 May 2009) that all decisions as to the release of information under FOI are ultimately my responsibility, it is difficult to interpret Mr Hanson's various allegations as anything other than suggestions that ACT Health has acted in a political manner rather than consistent with the law.

26. I observe that it was open to Mr Zed Seselja MLA, as the FOI applicant, to challenge the decision to delete the references from the email on the basis that the information was not "personal information" or, indeed, that its disclosure was reasonable in the circumstances.

27. This course of action was ultimately taken by Mr Selelja, when in a letter dated 26 May 2009 (received by ACT Health 3 June 2009) he sought a review of the decision to exempt parts of the FOI (including the relevant sections of the email) under Section 41 of the FOI Act. The subsequent management review of the original decision to exempt the sections, as requested by Mr Seselja, upheld the original decision to exempt them under Section 41.

28. It is regrettable that this appropriate course of inquiry, pursued by Mr Seselja, was taken some five days after his colleague, Mr Hanson had chosen to address his concerns about the same matters through the publication of his media release of 21 May 2009.

29. Similarly, I observe that any other concerns held by Mr Seselja or Mr Hanson in relation to the procedures that were adopted in this case could have been addressed to the Minister, and could have been the subject of an investigation and a report tabled in the Assembly, without recourse to any allegation of impropriety on the part of myself or my Department.

30. Again, such an approach was not adopted.

The role of the Minister and the Chief Executive

31. Again, while I submit that it is unnecessary for the purposes of this reference, I make the following observations as to the role of the Minister and Chief Executive under the FOI Act.

32. The FOI Act distinguishes between the responsibility of a Minister for documents held by their Office and the responsibility of a Chief Executive for documents held by an Agency. Among other things, this promotes independent assessment of requests for access through a functional separation between the political and administrative arms of government. In fact this FOI application was sent direct to me by Mr Seselja. The Minister has no part in this process

33. To those with any knowledge or experience in this area, criticism of the handling of an FOI request by an Agency is, necessarily, criticism of the Chief Executive and the Department.

34. This does not, with respect, undermine the responsibility of any Minister to the Assembly. Principles of ministerial responsibility are fundamental to the Westminster system and it is axiomatic that a Minister is accountable, generally, to the Assembly for the acts of a Chief Executive, specifically in relation to discharging the important functions under the FOI Act.

35. In the present case, while Mr Hanson called upon the Minister to "explain", consistent with principles of ministerial responsibility, his allegations were directed at "the government". As I have noted, the natural imputation is that ACT Health was responsible for the misconduct.

36. This was the very conclusion drawn by the media, where the Canberra Liberals were said to have "accused the Health Department of attempting to hide the fact it knew its planned ... facility would be built next to a vineyard which planned to operate a cellar door" and to have identified "a culture of secrecy in the Government and the Public Service".

37. I submit it was therefore misleading for Mr Hanson to later suggest, in his letter of 28 May, that I had "misinterpreted" or "extrapolated" his earlier remarks in an "erroneous" manner.

To the media, and to the audience listening to these reports, the allegations clearly were directed at me as the person ultimately responsible for the decision on the FOI request.

Powers, Privileges and Immunities of the Assembly

38. I observe that the Terms of Reference for this inquiry require the Committee to consider whether a "breach of privilege" or "contempt" was committed in the present circumstances.

39. Given its relevance to my decision to write to Mr Hanson, and to the terms of my letter, I take this opportunity to clarify my understanding of the law of parliamentary privilege.

40. First, the statements by Mr Hanson in his media release, and subsequent comments in the media interviews, cannot, I submit, be protected by any "parliamentary" freedom of speech. While statements within the Assembly cannot be "questioned or impeached in any court or tribunal", any statements outside the Assembly are not, I understand, similarly protected. This proposition appears to have been clearly established in Australian courts (see Ian Harris (Ed), *House of Representatives Practice*, 5th Edition, Canberra, 2005, p 713).

41. The present issues, I therefore submit, revolve solely around the question of contempt.

42. The power of the Assembly to deal with contempt is expressly given by section 24 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) (Self-Government Act) which provides that, until the Assembly enacts a law dealing with its powers, they are the same as those "for the time being", or from time to time, of the House of Representatives, its members and committees. Such a law has not been made by the Assembly and on this basis, the Assembly (largely) has the same powers as presently exist within the House of Representatives and the *Parliamentary Privileges Act 1987* (Cwth) (Privileges Act) applies.

43. I note that section 21 of the Self-Government Act, gives the Assembly power to make standing orders with respect to the conduct of business within the Assembly. It does not appear to give any power to make standing orders dealing with contempt or, in any event, standing orders which give broader powers than exist within the House of Representatives.

44. The relevant powers of the House of Representatives appear to have been confined by sections 4 and 6 of the Privileges Act and those limitations apply to any treatment of issue by the Assembly. Section 4 of the Privileges Act provides that conduct does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free performance by a member of his or her duties. Section 6 provides that words or acts shall not be taken to be an offence against a House by reason only that they are defamatory or critical of the House, a committee or a member.

45. For present purposes, the expression "offence against a House" here refers to "contempt".

46. For the Assembly, contempt is canvassed within Chapter 26 of the *Standing Orders and Temporary Orders and Continuing Resolutions of the Legislative Assembly*, April 2009. Standing Order 227 provides "general guidance" as to the matters constituting contempt, noting, in effect, that contempt may be constituted by various means including by improper interference with the free performance of a Member's function (Order 277(a)) or improper, intimidatory or threatening influence upon the conduct of a Member (Order 277(b)).

47. Standing Order 278 lists criteria for determining when allegations of contempt should be referred by the Assembly to a Select Committee on Privileges. Referrals should occur "only where it is necessary to provide reasonable protection ... for Members against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature" (Order 278(a)).

48. Consideration must be given to "any other remedy" which may be available (Order 278(b)).

49. Even if a finding of contempt is available, consideration must be given to whether a person who committed the relevant act had any reasonable excuse for so doing (Order 278(c)(ii))

50. I note that the policy of restraint evident in Order 278(a) is consistent with the guidelines that were recommended by the Joint Select Committee on Parliamentary Privilege in 1984 and presented to the House of Representatives in 1987. The Committee recommended in effect that the power to punish for contempt should only be exercised where punishment is "essential" to provide "reasonable protection" from "improper obstruction" which was likely to cause "substantial interference" with the functions of a Member (Ian Harris (Ed), *House*

of Representatives Practice, 5th Edition, Canberra, 2005, p 727). A similar approach also appears to be reflected in the language of section 4 of the Privileges Act.

51. It is also reflected, I understand, in the relevant practices relating to the role of the Speaker. Standing Order 276 requires the Speaker to determine as soon as practicable whether a notice of an alleged contempt "merits precedence" over other business of the Assembly. According to Harris, before a matter can be given precedence for debate, he or she must be "satisfied", among other things, "a prima facie case of contempt ... has been made out". The Speaker is required to give an opinion and may, where appropriate, provide reasons (Ian Harris (Ed), *House of Representatives Practice*, 5th Edition, Canberra, 2005, p 745).

52. The policy of restraint may be a mandatory aspect of the power to punish for contempt. I submit that the legislation and standing orders are subject to certain limitations arising from the freedom of political communication implied in the Commonwealth Constitution. "Criticism of the views, performance and capacity of a member ... is at the very centre of the freedom of political discussion" (*Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104) and must be constitutionally protected, save in the most exceptional cases. Accordingly, I submit, the power to punish for contempt should be limited to that which is reasonably necessary for the proper exercise of the functions of a legislature, following the principles developed in relation to other aspects of the law of parliamentary privilege, such as the power to compel the production of documents (*Egan v Willis* (1998) 195 CLR 424).

53. I observe that, in the very limited instances in which words or conduct have been referred by the House of Representatives to Committee on a contempt matter, findings of contempt in relation to published commentary appear to have been only for conduct involving:

    a. "gross and malicious misrepresentations of the facts" (VP 1929-31/613),
    b. a "grave and unscrupulous attack on ... Parliament" (VP 1932-34/755), and
    c. "intended to influence and intimidate a Member in his conduct in the House and ... to impute corrupt conduct as a Member for the express purpose of discrediting and silencing him [where] ... no evidence of improper conduct" (VP 1954-55/184).

54. No findings of contempt appear to have been made in relation to private correspondence, although matters have been referred to a Committee where the conduct involved a threat

of legal proceedings (VP 1990-92/1311 "Nugent Case") or actual service of writs for libel (VP 1993-95/465 "Sciacca Case") or for defamation (VP 1993-95/1074 "Katter Case"). In none of these cases did a Committee make a finding that a contempt had been committed (Ian Harris (Ed), *House of Representatives Practice*, 5th Edition, Canberra, 2005, p 733).

55. In summary, I respectfully submit that there is a real issue as to the power of the Assembly to punish as contempt mere criticism of a Member, or even remarks that might be regarded as defamatory, unless the Assembly is reasonably satisfied that those remarks were in fact intended, or likely to amount, to an improper interference with the conduct of the Member. Only in this respect could a finding of contempt, and any punishment, be characterised as being reasonably necessary for the proper exercise of the functions of the Assembly.

Conclusions

56. In summary, I state the following

a. ACT Health correctly interpreted and applied the FOI Act in this application without reference to the Minister.
b. In doing so ACT Health exempted release of the specific words referred to by Mr Hanson, in a manner consistent with Section 41 of the FOI Act.
c. As Chief Executive of ACT Health, and therefore the accountable public official for the agency, I categorically deny any accusation of cover up or misuse of process in the management of this FOI application as alleged publically by Mr Hanson.
d. The media release of Mr Hanson is inaccurate and contains statements which could be interpreted as allegations of unlawful behaviour by ACT Health officials, including myself. Indeed, subsequent media commentary interpreted them thus.
e. These allegations are potentially damaging to the reputation of ACT Health, its officials, the ACT Public Service and myself.

Alleged Breach of Privilege

57. A threshold issue is whether Mr Hanson's statements in the media, and my response to them, are capable of being characterised as a "matter of privilege" in the relevant sense.

58. In my opinion, Mr Hanson has made inaccurate statements in the public arena which are potentially damaging to the reputation of ACT Health, its officials and me as its Chief Executive. The statements were not made in the context of any relevant "proceedings in parliament". My letter was an attempt to correct this in a private, civil and professional manner.

59. While Mr Hanson referred in his letter of 28 May to the matter being before the [Estimates] Committee, I note that my concerns arose from a media release and media interviews which made no reference to the Committee. My letter in response similarly makes no reference to the Committee, only the material put in the public domain by Mr Hanson.

60. There is, I respectfully submit, no matter of privilege here.

Alleged Contempt

61. The central issue is whether my letter could, or should, be characterised as a contempt.

62. In my letter to Mr Hanson of 25 May 2009, I drew to his attention "a number of concerns that I have with the accuracy of the information contained with the released and possible interpretations to be drawn by readers, commentators and the general public". I indicated in addition, that I "categorically reject as baseless and untrue the allegation that I or any of the ACT Health officers have participated in a "cover up" or "misuse of process". Given my concerns, I indicated my belief that it was "appropriate that [he] withdraw this allegation" and it was "appropriate that [he] take appropriate steps to clarify [his] public statement".

63. My letter made no demand of Mr Hanson. Nor did it try to apply any threat or intimidation. I did not threaten any legal proceedings. I did not, in my respectful submission, even attempt to "criticise" Mr Hanson in any way.

64. It simply sought to correct what appeared to be a misunderstanding of the relevant law and to dispute specific allegations about the way in which it had been ultimately administered.

65. I submit that my letter cannot be properly characterised as being intended or likely to improperly interfere with the free performance by Mr Hanson of his duties as a Member.

66. In conclusion I believe that my actions in discreetly and privately pointing out the factual errors in Mr Hanson's media release were appropriate. The matter is only in the public arena as a result of Mr Hanson's conduct. There is no interference in the Member's performance of his duties (Standing order 277a).There is no improper influence by "fraud, intimidation, force or threat of any kind... or by other improper means ..." with the Member's conduct (Standing order 277b) . Therefore there is no contempt.

Reference to the Committee

67. There is an issue as to the procedure by which this matter was referred to Committee.

68. In light of my statements above, there is a real question, I respectfully submit, as to the appropriateness of the decision to refer this matter to a Select Committee of Privileges.

69. The matter has been the cause of some professional concern and personal distress to me, and to ACT Health officials. It continues, in my view, to undermine the standing of my department specifically, the public service generally and my professional and personal reputation. It would have been open to me to publicly criticise Mr Hanson for the allegations he made in the media. Indeed, my right to do so is consistent, I submit, with the law on parliamentary privilege. If I was of the view that the comments were defamatory I could have issued legal proceedings against Mr Hanson. I did not. At the time, I judged that any public criticism or legal action would be inconsistent with my duty of loyalty and fidelity to the Minister and with the values of the ACT Public Service under the *Public Sector Management Act 1994*.

Final Remarks

70. It is open, I submit, to conclude that the absence of a proper understanding of the FOI Act, and a failure to adopt a proper parliamentary approach to any perceived defects in its administration, resulted in a series of serious allegations against ACT Health and me as its Chief Executive which improperly undermine public confidence in the government, the public service and the health system.

71. Even if some defect or error were to be shown in the administration of the FOI Act, that will not necessarily provide evidence of the significant wrongdoing asserted by Mr Hanson. What has been alleged is a "misuse of process" to "cover up the Minister's embarrassment" which to be sustained must, on any reasonable view, be supported by appropriate and probative evidence.

72. The decision by Mr Hanson to conduct his complaint in the court of public opinion, instead of using the mechanisms for public accountability which properly exist within the Assembly or the lawful means of review in the Civil and Administrative Tribunal should, I submit, be a matter of concern to the Committee as it undermines public confidence in the Assembly.

73. Finally, I submit that the manner and form in which this matter has come to the Committee can only weaken public confidence in the legislature as it represents, as I have tried to demonstrate, a departure from established conventions in the Westminster system.

Mark Francis Cormack
Chief Executive
ACT Health
20/07/09

Jeremy Hanson, MLA

Media Release

ANOTHER GALLAGHER COVER UP

The Minister for Health, Katy Gallagher, has to explain why documents relating to the winery being built next to the proposed Bush Healing Farm were censored to remove mention of the cellar door and winery, said Shadow Health Minister Jeremy Hanson.
The Minister had originally suggested that there were no plans to build a winery, cellar door and Bed and Breakfast on the site next to the Bush Healing Farm based on searches of Development Applications.

However, the Opposition has uncovered a document that shows the government was aware of these plans as early as July 2008, when the sale was completed in August of 2008. Worse, the document was censored by the government to try to avoid this embarrassing fact becoming public.

Under FOI, the government released a document dated 9 July 2008 and addressed to the Chief Minister. The identifying details of the person sending the document were properly blacked out. However, material details about the nature of the business were also censored.

The Opposition has now uncovered the uncensored version of this document and discovered that the words 'vineyard' and 'cellar door sales and a Bed and Breakfast establishment' were blacked out. The only rational explanation to remove these words was to cover up the government's embarrassment and there is no legitimate excuse for their removal.

'This shows yet another case of a shameful attempt to cover up the Minister's embarrassment by misuse of process," said Jeremy.

22 May 2009

ACT Health

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File No:

Mr Jeremy Hanson MLA
Shadow Minister for Health
ACT Legislative Assembly
Canberra ACT 2601

Dear Mr Hanson

Your media release 21 May 2009 "Another Gallagher Cover-up"

I am writing following the issuing by your office and continued publication on the Canberra Liberals website of the above media release.

I wish to make you aware of a number of concerns that I have with the accuracy of the information contained within the release and possible interpretations to be drawn by readers, commentators and the general public arising from the release.

Firstly, the management of matters relating to requests under the Freedom of Information (FOI) Act for documents held by ACT Health rests with ACT Health. The Minister for Health has played no role in the response to any request for access to documents under the FOI ACT, nor did the Minister exercise any decision making capacity in relation to this or any other application. You may not have been aware of this, so I an informing you of this now.

Secondly, any criticism that you or your colleagues have with the handling of any matter dealt with by ACT Health under the FOI Act should be directed to ACT Health in the first instance. As you may be aware the Act has a number of provisions available to applicants to seek a review of any decision taken by an agency in relation to any application. In the matter that you refer to in your media release, ACT Health is not aware of any action that the applicant has taken to formally address any concerns with the handling of this matter by us, consistent with the provisions of the Act. Again, you may not be aware of these provisions, so I am informing you of these provisions now.

Thirdly, you have asserted in writing, published and encouraged the public utterance and broadcasting of the following claim, *"this shows yet another case of a shameful attempt to cover up the Minister's embarrassment by misuse of process"*. Given that the Minister has played no role in this FOI application, and that the FOI application process has been handled exclusively by ACT Health, it would be reasonable for a member of the public to assume that ACT Health is the object of your claims of "cover up" and "misuse of process." I am prepared to accept that you may not have intended this interpretation. Nevertheless the interpretation is open to be made by a reasonable person.

Fourthly, (and for the sake of completeness) I categorically reject as baseless and untrue any allegation that I or any of the ACT Health officers responsible for dealing with this FOI application have participated in a "cover up" or "misuse of process".

In the light of the above I believe that it is appropriate that you withdraw this allegation, and this is best done by withdrawing the media release in its current form. I believe that it is also appropriate that you take appropriate steps to clarify your published statement.

While ever this matter remains unclarified by you, the reputation of the integrity of myself and that of the officers responsible for managing this FOI process has the potential to be unfairly called into question.

I look forward to your response.

Yours sincerely

Mark Cormack
Chief Executive
25 May 2009