

COMMISSIONER FOR STANDARDS ANNUAL REPORT 2020/2021

The position of Commissioner for Standards

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

- (1) *The functions of the Commissioner are to:*
- (a) *investigate specific matters referred to the Commissioner-*
 - (i) *by the Speaker in relation to complaints against Members; or*
 - (ii) *by the Deputy Speaker in relation to complaints against the Speaker; and*
 - (b) *report to the Standing Committee on Administration and Procedure.*

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

Appointment

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

I was reappointed on substantially similar terms on 15 October 2016 and 15 January 2021.

Protocol

Following my initial appointment I prepared a draft protocol concerning the manner in which investigations made in the course of my duties would be undertaken. The protocol was duly adopted by the Standing Committee on Administration and Procedure on 24 March 2015 and may be viewed on the Assembly's website: https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/715452/Protocols-for-investigation-complaints-against-members-150817.pdf.

The protocol includes the statement that:

It is the Commissioner's intention to rely upon written material and not to hold any face to face discussions or otherwise receive oral evidence unless such a course proves necessary for the fair and satisfactory completion of a particular investigation.

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

Complaints

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

- On 6 October 2020 I received a complaint from a candidate for the then pending 2020 election ('the candidate') who said that her photograph had been taken by a passenger in a car whilst she was erecting a corflute and that on the following day she had received a call on her mobile phone from Mr James Milligan MLA. She had asked him how he had obtained her phone number, which was not publicly listed, and said that he had replied "I am an MLA; I have access to everyone's information." She said that Mr Milligan had then claimed to have evidence of her stealing his signs and that he had informed the Australian Federal Police (AFP). She maintained that she had not stolen any signs and did not believe that the matter had been referred to the AFP. When Mr Milligan lost his seat in the election, an issue of principle arose as to whether a complaint should be pursued against someone who was no longer a Member of the Assembly. I referred this issue to the Standing Committee on Administration and Procedure which ruled that the investigation could continue. However, the complaint was subsequently withdrawn. Mr Milligan was re-elected to the Assembly on 26 March 2021 by a count back of votes to fill a casual vacancy caused by the resignation of former Liberal leader Alistair Coe MLA, but the candidate informed me that she did not wish to revive her complaint.
- On 12 October 2020 I received a complaint from the Speaker concerning an apparently excessive use of Assembly printing facilities by Mr Alexander Coe MLA, who was then Leader of the Opposition. The Speaker had sought an explanation but that had not been provided. The investigation was delayed because the election was then imminent and Mr Coe sought additional time to respond. After further correspondence and a telephone conversation, he wrote to inform me that he was uncertain what had occurred but that he may have inadvertently used the wrong printer. I found that was overwhelmingly likely that at least a substantial portion of the sudden surge in the level of printing in his office was due to the printing of political advertising material. This would obviously have been a misuse of government resources and facilities. During our telephone conversation I formed the impression that he had attempted to answer my questions honestly. However, the conversation left me somewhat concerned for his welfare and I was inclined to accept his statement that he had mental health problems. On 3 December 2020, I provided a report indicating that I was not satisfied to the requisite standard that he had acted dishonestly in carrying out the printing. Nonetheless, I found that he had breached the requirements of diligence and transparency imposed by the Code of Conduct by failing to respond to the Speaker's requests for an explanation. I offered Mr Coe an opportunity to comment on a draft copy of my report and he indicated that he accepted my findings. He subsequently resigned from the Assembly, apologised and paid for the relevant quantity of printing.

- On 28 April 2021 I received a complaint from a member of the public alleging that a Minister had failed to respond to his representations adequately and that the Chief Minister had declined to intervene. Having considered the issues the complainant had raised, I concluded that there were no grounds for an investigation. I wrote to him, explaining that I was authorised only to investigate allegations that Members of the Legislative Assembly had breached the Code of Conduct or the rules governing the registration or declaration of interests. I had no authority to review government policy or decisions made by Ministers in the ordinary course of their duties.
- On 11 May 2021 Mr Milligan wrote to me concerning notice of a motion to be moved in the Legislative Assembly. The foreshadowed motion concerned media reports that, following the October 2020 election in which Mr Milligan lost his seat in the Assembly, he had sent emails to constituents seeking to promote his business. Whilst he had subsequently been re-elected to fill a casual vacancy, he said that the emails had been sent when he was no longer a Member of the Assembly and he expressed the view that he had not contravened any statutory provision or the Code of Conduct. Nonetheless, he purported to refer the matter to me and asked me to consider the issues raised by the foreshadowed motion. I responded on 12 May 2021, explaining that I was authorised only to investigate relevant complaints. No such complaint had been referred to me and I had no authority to comment upon the merits of a proposed motion in the Assembly or investigate conduct that was not the subject of a complaint.
- However, on 13 May the Assembly passed two resolutions: the first, essentially calling upon Mr Milligan to explain a number of matters, including how his constituent list had been used after the October 2020 election; and the second, referring the matter to me and authorising me to investigate. Whilst the relevant allegation had been the subject of a number of press reports, there had apparently been no letters of complaint to the Assembly and my enquiries enabled me to identify only one recipient who suggested that his email address had actually been obtained from Mr Milligan's constituent list. He was a credible witness, but he readily conceded that this suggestion was based on an assumption that Mr Milligan could not have obtained the address from other sources. Mr Milligan denied that he had misused his constituency list and suggested a number of other contact lists from which this email address and others to which the relevant emails had been sent may have been drawn. Since the Code of Conduct does not impose obligations on former Members and the evidence did not establish that Mr Milligan had inappropriately used information derived from his constituent list, I recommended that the complaint be dismissed.
- On 18 June 2021 I received a complaint by Ms Suzanne Orr MLA concerning the conduct of Mr Mark Parton MLA, the Deputy Speaker, in posting a video on Tik Tok which showed him adjourning the public proceedings of the Assembly for lunch and then revealed a bag prominently displaying the name of a well known fast food supplier. This image was accompanied by a sound track commonly used in the supplier's commercial advertising. Mr

Parton was then shown proceeding to eat some or all of the bag's contents. It was alleged that the video promoted the product, contravened the *Legislative Assembly Broadcasting Framework and Guidelines* ('the Guidelines') and compromised the credibility of his role. The matter had been raised with him by the Speaker and he had provided a letter of explanation in which he denied the existence of any commercial arrangement with the supplier. However, since the the *Legislative Assembly (Broadcasting) Act 2001* requires anyone exercising rights to broadcast public proceedings of the Legislative Assembly to comply with the Guidelines, if a Member were to commit a breach of the Guidelines, he or she would also contravene the requirement of the Code of Conduct to act only in conformity with all laws applicable in the Territory. Consequently, I wrote to Mr Parton inviting him to make any further statements and present any arguments he might consider appropriate. I have not yet received his response and the investigation remains unresolved.

- On 24 June 2021 I received a further complaint from a Member of the Assembly alleging that another Member had breached an obligation of confidentiality. However, I formed the view that there was not sufficient evidence to warrant an investigation.

Other activities

During the course of the financial year I accepted the invitation of the Ethics and Integrity Advisor to comment on proposed amendment of the Code of Conduct and offered some preliminary advice concerning ethical obligations of former Members of the Assembly. I also participated in discussions as one of the ACT patrons of the Justice Reform Initiative.

K J Crispin QC
Commissioner for Standards
1 July 2021