

## **Creation of the Position**

The June 1999 *Report of the Select Committee on the Report of the Review of Governance* supported the adoption of a code of conduct and the appointment of an ethics commissioner for all Members of the Legislative Assembly for the Australian Capital Territory.

These matters were subsequently referred to the Assembly's Standing Committee on Administration and Procedure, together with a discussion paper entitled *A Parliamentary Ethics Adviser for the ACT Legislative Assembly*. Following the 2001 report of that Committee on that reference and a further report by it in 2004, a code of conduct was adopted by the Assembly, on the motion of the then Speaker, on 25 August 2005.

A motion requesting that the Speaker appoint an Ethics and Integrity Adviser for Members of the Legislative Assembly was agreed on 10 April 2008 (Standing Resolution 6A). That resolution specified that such appointment would be only for the period of the Assembly in which the appointment was made. Subsequently, on 21 August 2008, that resolution was amended to provide that an appointment was to be "for the life of the Assembly and the period of three months after each election". This amendment was designed to ensure that an Adviser would be available to all, but especially new, Members immediately after each election.

## **Appointment of Adviser**

Following the passage of Standing Resolution 6A, advertisements calling for expressions of interest in appointment as Ethics and Integrity Adviser for Members of the Legislative Assembly for the Australian Capital Territory were placed in the national and local press.

Interviews were conducted by a committee comprising the then Speaker (Mr Wayne Berry), the ACT Human Rights and Discrimination Commissioner (Dr Helen Watchirs) and the Clerk of the Assembly (Mr Tom Duncan).

On 25 June 2008 the then Speaker appointed me to the position of Ethics and Integrity Adviser for the period ending on 18 October 2008. Following the amendment to Standing Resolution 6A on 21 August 2008, that appointment was extended to 18 January 2009.

In January 2009 the current Speaker reappointed me as Ethics Integrity Adviser for the life of the Seventh Assembly and the following three months.

## **Terms of Appointment**

Continuing Resolution 6A sets out various terms of appointment for the Ethics and Integrity Adviser. These are supplemented by the Instruments of Appointment made by the former and current Speakers. In particular, these instruments provide for the remuneration of the Adviser and require that a deed of confidentiality and conflict of interest be executed by the Adviser.

Remuneration is set at the rate of \$12,000 per annum and \$300 per hour for time spent in excess of 40 hours per annum (each adjusted annually for increases in the Consumer Price Index). In the period under review, I have devoted in excess of 40 hours per annum to the duties of the Adviser position, but have chosen not to claim the hourly rate for that excess period.

## Activities

During the period of the Sixth Assembly, my advice was sought on a number of occasions by one Member. One of the requests for advice would have required the provision of legal advice and, consistent with Standing Resolution 6A, I informed the Member that I could not respond to that request. I was however able to provide the advice sought on each other occasion. I was also approached by a second Member asking me to make contact in a few days' time. When I did so, that Member advised that the issue prompting the initial contact had "moved on" and that advice was not required at that time, although it might be required at some future date.

In the period of the Seventh Assembly, to 30 June 2009, my advice was sought by 4 Members.

In the year to 30 June 2010, my advice was sought individually by only one two Members. Additionally, my advice was sought by a resolution of the Assembly as a whole in relation to Standing Order 156.

The requests for advice from individual Members related to:

- whether or not certain proposed party political activities would be consistent with the Member's duties as an MLA; and
- what a Member should do when, in the course of their duties as a Member, they identified what they perceived to be an inappropriate disclosure of official information.

The resolution concerning Standing Order 156 essentially called for the provision of legal advice. While that falls outside my terms of appointment under Standing Resolution 6A, I nevertheless took the view that the subsequent Assembly resolution seeking that advice should prevail. I therefore provided a detailed advice, the essence of which was that Standing Order 156 (which mirrors section 15 of the *Australian Capital Territory (Self-Government) Act 1998* (Cth)):

- 1 confers no authority of the Speaker and is to be administered by the Assembly as a whole;
- 2 is drafted in lamentably poor terms;
- 3 cannot be read and applied literally;
- 4 must be interpreted in a purposive manner; and
- 5 when so interpreted:
  - operates where a Member is a party to a contract with the Territory in a personal capacity, but not where the Member is a party to a contract on behalf of the Territory;
  - also operates where a Member, while not a party to a contract with the Territory, has an interest in such a contract of a nature recognised by law which interest arises in a personal capacity but does not operate where the Member's interest is simply a matter of curiosity or of political connection; and
  - applies only where the contract or interest is so materially related to the subject of Assembly discussion or voting in that it gives rise to a reasonably held apprehension that the Member's participation may be biased by concern for personal gain or the avoidance of personal loss.

During the 2009/2010 year I also:

- participated in a 2-day conference at Parliament House Canberra organised by the ANU Parliamentary Studies Centre entitled *Ethics and Integrity in Parliament: Emerging Perspectives*;
- engaged in discussions with an officer of the Victorian Department of Premier and Cabinet in relation to ACT experience with the Adviser position - I had previously made a submission to the Law Reform Committee of the Parliament of Victoria in connection with its review of the *Members of Parliament (Register of Interests) Act 1978 (Vic)*; and
- liaised with the Acting Clerk in relation to advice sought from him by an Assembly committee in relation to a possible matter of conflict of interest.

None of the requests for advice I have received since the inception of the Adviser's position has related to the remuneration of other entitlements of Members.

Instead, requests for advice, over the period of both the Sixth and the Seventh Assemblies, have related to issues such as:

- whether it was appropriate for a Member to engage in certain party political activities;
  - the interrelationship between a Member's duties as a Member and their intended post-separation employment;
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- the interrelationship between a Member's pre-election activities and their duties as a Member;
  - whether a conflict of interest could arise between a Member's duties and a shareholding of a member of their family;
  - whether it was appropriate for a Member to accept a certain offer of hospitality; and
  - whether it was appropriate for a Member to participate in the proceedings of a Committee of the Assembly given their pre-existing involvement in and views on the matters to be considered by that Committee.

So far as I am aware, no Member to whom I have provided advice has:

- publicly disclosed either that they had sought my advice or the substance of the advice provided; or
- acted inconsistently with the advice provided.