

ACT LEGISLATIVE ASSEMBLY

Protocol for investigation complaints against members

The duties of the Legislative Assembly Commissioner for Standards are prescribed by the instrument of appointment made under the resolution of the Legislative Assembly for the Australian Capital Territory dated 31 October 2013.

Paragraph 2 of the instrument provides that:

(1) *The Appointee will:*

- (a) *investigate specific matters referred to him by the Clerk of the Legislative Assembly (Clerk) in relation to complaints against Members of the Legislative Assembly (Members); and*
- (b) *report to the Standing Committee on Administration and Procedure (the Committee).*

(2) *In carrying out the duties pursuant to this appointment, the Appointee shall exercise the care, skill and diligence that can reasonably be expected of a person having the same responsibilities under an equivalent appointment.*

Paragraph 3 provides, inter alia, that:

In exercising his functions under paragraph 1(b), the Appointee:

- (a) *must not make a report to the Committee concerning a complaint that a Member failed to register or declare an interest if the Member about whom the complaint was made has agreed that he or she failed to do so and —*
 - (i) *in the Appointee'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 Appointee may have required within any procedure approved by the Committee for this purpose.*
- (b) *must not make a report to the Committee unless he 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 Appointee has considered any comments provided by the Member.*

Clause 5 also requires the Commissioner to maintain the confidentiality of information provided to him and any reports prepared in exercising the Appointee's role, though he may make public any report if the Member subject of the report gives permission for it to be made public or as required by the Assembly.

Consistent with these requirements, the Commissioner has formulated the following protocol.

1. Upon receipt of a complaint referred by the Clerk of the Legislative Assembly the Commissioner will forward a copy to the member against whom the complaint has been made ("the member") with an accompanying letter inviting him or her to submit a written response within a stipulated period.
2. Should the terms of the complaint seem unclear, the Commissioner may seek clarification from the complainant and, in any event, may indicate particular points or issues that the member might wish to address in his or her response.
3. The member shall be free to respond personally or to have an advocate respond on his or her behalf.
4. In either event, the Commissioner will expect the member to ensure that the response promptly addresses the complaint and any related issues raised by the Commissioner and that it does so as fully and accurately as possible. It should be understood that the Commissioner will usually have no personal knowledge of what has occurred and will be dependent upon the response for information as to which allegations, if any, are disputed and the nature and extent of any such dispute. The response should also reveal any grounds upon which the member relies in support of his or her contention that the conduct in question was duly authorized or otherwise permissible and any further facts that the member feels should be taken into account. A response that merely offers a general denial of impropriety or raises retaliatory criticism of the complainant without dealing with the relevant facts and the issues will be inadequate and may leave the member unnecessarily exposed to the risk of adverse findings.
5. Should the member seek further time to formulate an appropriate response, he or she may write to the Commissioner requesting an extension of the period stipulated, and explaining the reasons why such additional time is said to be necessary.
6. Any such request will be duly considered and the Commissioner will advise the member in writing of his decision to extend or maintain the previously stipulated period.
7. Upon receipt of any response to the complaint or upon the expiration of the stipulated period the Commissioner will decide whether he has sufficient information and/or evidence to complete his investigation.
8. If the Commissioner decides that he needs further information and/or evidence, he may write to the complainant, the member and/or any other person who may have knowledge of the relevant facts requesting the production of documents, answers to specific questions or other assistance.
9. Any responses, statements or other evidence received by the Commissioner can be expected to be made public, though the Commissioner and the Committee may consider any reasonable request for confidentiality to be maintained if there are exceptional circumstances or the relevant information proves irrelevant to the outcome of the investigation.
10. 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.

11. Upon completion of the investigation the Commissioner may either draft a proposed report or decline to make a report if satisfied of the matters referred to in paragraph 3 of the instrument of appointment.
12. A copy of any proposed report will be given to the member and he or she will be invited to provide comments on it within a further stipulated period.
13. Any such comments will be duly considered and, if necessary, further investigation may be undertaken before the Commissioner finalizes the report and submits it to the Committee or, in the light of the response, determines that the provisions of clause 3 of the instrument of appointment apply and declines to make a report.
14. The Commissioner will not provide updates to complainants or to the press during the course of investigations.
15. If the Commissioner declines to make a report he will inform the Committee of that decision in writing and will also inform both the member and the complainant.
16. These protocols have been drafted with a view to ensuring that complaints can be investigated fully, fairly and efficiently. The Commissioner will not be influenced by any publicity and will ask complainants to await the results and not seek to agitate the same issues in the press at least until the investigation has been completed.

Adopted 24 March 2015 (Revised August 2017)

Standing Committee on Administration and Procedure