

ACT AUDITOR-GENERAL'S OFFICE



ACT
Government

Ms Amanda Bresnan
Chair
Select Committee on Privileges
Legislative Assembly Building
Civic Square, London Circuit
GPO Box 1020
Canberra ACT 2601

Dear Ms Bresnan

I am writing in response to your letter of 24 October in which you afford me the opportunity to respond to the Select Committee on Privileges 2011 (the Privileges Committee) regarding Mr Hargreaves' submission. I have not been provided with a full copy of Mr Hargreaves submission.

These seem to also be issues raised by Mr Smyth in his submission which, I note, has been published in full without my being afforded a prior opportunity to respond to it. I respond in this letter.

The Privileges Committee's letter refers to a quote from Mr Hargreaves' submission - *the approach from Dr Cooper and (name withheld) was inappropriate*. I assume this refers to my conversation with Ms Le Couteur at the public meeting on the evening of 31 May 2011, referred to in my letter of 12 October 2011 to the Privileges Committee. If this is the case there was no-one else involved in that conversation, so I am unable to comment further on the reference to another person.

As stated in my letter of 12 October 2011 to the Privileges Committee:

'I was at a community event in the Legislative Assembly on the evening of 31 May 2011. While at that event, I spoke to Ms LeCouteur as I would normally have expected to do in my then role as Commissioner for Sustainability and the Environment with any members of the Legislative Assembly present at such a function. Ms LeCouteur expressed concern to me regarding the Chief Minister's press release announcing my nomination. I informed Ms LeCouteur that I had been contacted by the media, and outlined my response as above. All information discussed with Ms LeCouteur was already in the public domain.'

I make some further comments about that conversation. While I did not make notes on our conversation, I recall that when I spoke with Ms Le Couteur, I opened the conversation with a general introductory comment that included asking if I had done anything wrong because my impression was she had been avoiding me at the function.

As I have noted at such functions I would normally talk to Ms Le Couteur, but at this function it was my impression that she was avoiding me.

In responding to this opening comment, it was Ms Le Couteur who raised the issue of her concern about the Chief Minister's press release. I did not raise the issue of my possible appointment as Auditor-General, or the Chief Minister's press release; Ms Le Couteur did. When I approached her I had no intention of discussing with her my possible appointment. I discussed this only because Ms Le Couteur raised it.

As I have previously stated we then went on to discuss this issue, but what we discussed was information that was already in the public domain. The email of 1 June 2011 from me to the Chief Minister and Ms Le Couteur, which I specifically asked to be distributed to the members of the Public Accounts Committee, evidences the subject matter of that conversation. Furthermore, I indicated in the conversation with Ms LeCouteur that I would inform the Chief Minister of our conversation and did so via an email dated 1 June 2011 (copy attached).

My recollection of these events is supported by the contemporaneous email and more recent letter from Ms Le Couteur. In the email of 31 May 2011, which is Attachment D, to Attachment Q, of the Statement by the Chief Minister to the Committee dated 18 October 2011, Ms Le Courteur states in relation to these events that she 'went out of her way to avoid' me, and that it was she who raised the issue of the Chief Minister's press release and my subsequent media interviews. She describes the press release and interviews as creating a very awkward situation - not my conversation with her.

In her letter of 11 October 2011 to the Privileges Committee, Ms Le Couteur also confirms that she would normally greet me at such functions, that on this occasion she tried to avoid me, and that seeing what she was doing I came over to talk to her. She states that she explained that it was an awkward situation for her to talk to me. There is no suggestion that I initiated any conversation about my possible appointment, or the Chief Ministers press release.

I note these statements not as any criticism of Ms Le Couteur but simply to draw to the attention of the Privileges Committee that her and my recollections of events are the same, and that there is no evidence that I raised the issue of my possible appointment, or the Chief Ministers press release.

You advise that Mr Hargreaves states that the 'Chair received approaches from ... [myself] and experienced discomfort to such a degree that she felt compelled to share that discomfort with other members' of the Committee. This statement gives a misleading impression of the events. As stated, I would normally talk to Ms Le Couteur at such functions; at this function she was avoiding me; I asked her about this; and she raised the issue of the Chief Minister's press release and my media interviews; which we then discussed. This version of event is supported by the email and letter of Ms Le Courteur. Mr Hargreaves was not at the meeting and can have no independent recollection of it.

Mr Smyth states in his letter of 13 October 2011 that the 'nominee for Auditor-General approached the chair at a function on the evening of 31 May 2011 to discuss the delay in the appointment ... As the Chair comments, she considered this approach to have been inappropriate. In the words of the Chair she was trying to avoid a *'very awkward situation'* ' (emphasis in the original). This statement gives a very misleading impression of the events. There is no suggestion by Ms Le Courteur that I approached her to discuss the appointment. In neither the email nor her letter does Ms Le Courteur suggest I acted inappropriately. Mr Smyth was not at the meeting and can have no independent recollection of it.

For these reasons I submit that my conduct was not inappropriate.

At any rate, I am advised that whether it was or was not inappropriate is irrelevant to the Committee's consideration as its terms of reference only allow it to examine whether there was improper interference with the free exercise by an Assembly Committee of its authority. This reflects the terms of s 4 of the *Parliamentary Privileges Act 1987* (Cth), which is in effect adopted by s 24 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth). These terms are also picked up by standing order 277(a) of the Standing and Temporary Orders of the Legislative Assembly for the Australian Capital Territory.

Furthermore, I am also advised that improper interference with the free exercise by the Committee of its authority requires actions much more serious than inappropriate behaviour. I understand that it is only in extraordinary circumstances that a private, consensual conversation could amount to any such improper interference. In this case, for the reasons I have given, there are no extraordinary circumstances and no basis for any such finding.

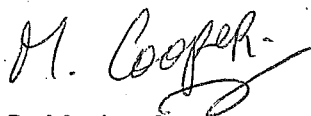
If the Privileges Committee proposes to make an adverse finding regarding my conduct, I request that the Committee provide to me details of the relevant conduct, all the evidence for that conduct, and the basis for the allegation that this conduct was an improper interference with the free exercise by an Assembly Committee of its authority, and give me an opportunity to consider this material and respond formally to it before any such finding is made, and published. I am advised that I am entitled to such a fair process.

There are three other matters I bring to the attention of the Privileges Committee. Firstly, in my previous submission I mentioned that *'contact with Ms Le Couteur by staff of my then Office of the Commissioner for Sustainability and Environment occurred during and prior to the abovementioned announcement...[regarding] a complaint Ms Le Couteur had lodged (initially with the Ombudsman who requested that it be considered by my then Office)'*. In fact, contact during this period was made through the Ombudsman's office, with contact from my then Office occurring when the complaint was formally transferred.

Secondly, in publishing submissions on the Assembly website, my private address was made public as part the material supplied by the Chief Minister. While this was promptly corrected once Mr Duncan was made aware of it, my privacy has been compromised.

Thirdly, I wrote *In Confidence* on my letter to the Privileges Committee, and the Committee accepted it on that basis; however I received no request for me to review that confidentiality before it was published.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Cooper', with a stylized flourish at the end.

Dr Maxine Cooper
Auditor-General

31 October 2011

Enclosed: Email dated 1 June 2011 to Chief Minister.

Cooper, Maxine

From: Schembri, Karen on behalf of GALLAGHER
Sent: Wednesday, 1 June 2011 2:35 PM
To: Cooper, Maxine
Subject: RE: AG Meeting with MS Le Couter

Dear Ms Cooper

Thank you for your email which will be provided to the Chief Minister.

regards

Karen Schembri | Office of the Chief Minister
t: 620 50840 | fx: 620 53030 | karen.schembri@act.gov.au | www.chiefminister.act.gov.au

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From: Cooper, Maxine
Sent: Wednesday, 1 June 2011 11:01 AM
To: GALLAGHER
Cc: Cappie-Wood, Andrew; Cirson, Adina
Subject: AG Meeting with MS Le Couter

Dear Chief Minister

Last night Ms Le Couteur and I were at a community. She was clearly frustrated (body language) and it was obvious she was avoiding me. We did end up meeting and outside the meeting room did speak about the AG.

Ms Le Couteur expressed her views about the media release being sent out prior to PAC's consideration. She said that the process is an issue and it is not an issue about me. She expressed the view that there were new staff in CM's office and maybe unaware of normal processes.

I did say that I find the very public process a bit uncomfortable and not one I have experienced before but it is the AG role and on reflection AGs publicly express their views then others respond so this is similar to that. While respecting that it is the Government's and CM process and therefore I could not speak about process I did offer, if the CM thinks appropriate, to meet with the PAC.

Last night I shared what I had said in the media with Ms Le Couteur (and today have sent an email to her with my notes for when I spoke with the media).

If I do meet with the PAC it would be appreciated if the meeting was focused on my skills for the role and not process.

I did say to Ms Le Couteur that I would be sending you the above information. I do not anticipate a response to this email.

Maxine Cooper