



LEGISLATIVE ASSEMBLY

FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

RESPONSE TO RECOMMENDATIONS OF THE SELECT COMMITTEE ON AN INDEPENDENT INTEGRITY COMMISSION 2018

In its report, the Select Committee on an Independent Integrity Commission 2018, directed several recommendations to the Standing Committee on Administration and Procedure.

The standing committee's responses to those recommendations are set out below.

Also included is the committee's advice on other matters related to the select committee's recommendations.

SELECT COMMITTEE RECOMMENDATION 16

The Committee recommends that the Standing Committee on Administration and Procedure examine the level and manner of support to the Speaker in performing her statutory roles under Officer of the Assembly legislation.

Response of the Standing Committee on Administration and Procedure

The committee agrees and will continue to monitor the level and manner of support that is made available to the Speaker in the performance of the Speaker's statutory roles under relevant legislation.

The committee notes that in relation to the appointment of an Integrity Commissioner and an Inspector of the Integrity Commission, the Speaker will be supported by a recruitment consultant and a transition support manager who will be engaged/appointed on a temporary basis.

SELECT COMMITTEE RECOMMENDATION 30

The Committee recommends that the Standing Committee on Administration and Procedure develop amendments to continuing resolution 5AA to permit the Legislative Assembly Commissioner for Standards to refer matters to the Commission and to receive and act on referrals from the Commission.

Response of the Standing Committee on Administration and Procedure

The committee agrees. It has considered and agreed to an amendment to continuing resolution 5AA to be put before the Assembly, which provides a procedural basis for the Legislative Assembly Commissioner for Standards to refer matters to the Integrity Commission and to receive and act on referrals from the Integrity Commission. The Commissioner for Standards was consulted on the proposed amendments.

Accordingly, the Speaker has lodged a notice of motion in order that the Assembly may consider the

proposed amendments to the continuing resolution.

SELECT COMMITTEE RECOMMENDATION 37

The Committee recommends that the Standing Committee on Administration and Procedure consider the arrangements necessary for an independent process to advise on claims of parliamentary privilege that arise during Commission investigations and present a proposal to the Assembly.

Response of the Standing Committee on Administration and Procedure

The standing committee agrees.

It has considered a draft resolution to establish a process by which claims of parliamentary privilege that arise during the exercise of the Integrity Commission's powers and functions might be dealt with. The committee is attracted to an independent arbitration process, similar to that which operates in respect to public interest immunity claims pursuant to standing order 213A.

That draft resolution and explanatory material is attached and is the subject of a notice of motion by the Speaker.

The committee supports the inclusion of a provision in the resolution empowering the Speaker to enter into a memorandum of understanding with an incoming Integrity Commissioner to provide additional detail relating to the administration of these requirements if that is needed. Any memorandum would not be inconsistent with a resolution that had been passed by the Assembly.

OTHER MATTERS

SELECT COMMITTEE RECOMMENDATION 36

The Committee recommends that the ACT Government explore whether specific provision needs to be made in the legislation to permit the Commissioner to make use of Members' declarations of interest.

Response of the Standing Committee on Administration and Procedure

The committee notes the Government's response to this recommendation, which is as follows:

The Government has further explored whether a specific provision is needed within the Bill to permit the Integrity Commissioner to make use of the MLA declarations of interest. However an amendment to the Bill is not necessary.

The Integrity Commissioner can access the declarations of interest made by MLAs as a result of continuing resolution 6(3). Under the examination provisions, the Commission may inform itself of anything in the way it consider appropriate. This could include accessing these declarations of interest. This also applies to preliminary inquiries.

The committee observes that while there is nothing stopping any person from 'accessing' declarations of interest (indeed all declarations are published on the Assembly's website), nothing in the revised exposure draft bill would permit the Commissioner to 'impeach or question' any information that is contained in a declaration. Declarations are made pursuant to Assembly resolution and fall within the

scope of 'proceedings in Parliament' which are protected by reason of s 16 of the *Parliamentary Privileges Act 1987* (Clwth).

Under the current draft bill, no findings could be made or inferences drawn by an Integrity Commission on the basis of a member's declaration of interest (the Commission's examination powers do nothing to alter the Assembly's privileges in this regard—only express provision may achieve this purpose).

INCONSISTENCY BETWEEN CLAUSES

The committee notes that clauses 7 and 291(a)(iv) of the revised draft bill are incompatible.

Clause 7 provides that the privileges of the Assembly are not affected by the legislation, yet clause 291(a)(iv) explicitly derogates from the Assembly's contempt power (the contempt power forms part of the privileges of the Assembly).

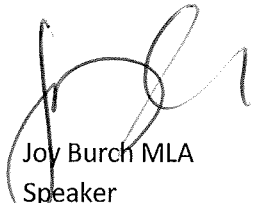
Under the existing contempt provisions of the Assembly, a contempt must amount to or be intended or be likely to amount to an improper interference with the free exercise by the Assembly or a committee of its authority or functions, or with the free performance by the member of the member's duties as a member. It is difficult to envisage an occasion where the making of a complaint against a member would meet any of these tests.

So as not call into question the powers, privileges and immunities that are conferred under s 24(3) of the Self-Government Act, the committee recommends that clause 291(a)(iv) be deleted.

The Office sought the advice of the Solicitor-General in advising the committee on this matter.

RESOLUTION OF APPOINTMENT FOR OVERSIGHT COMMITTEE

The Speaker has lodged a notice of motion in order that the Assembly may consider terms of reference for the establishment of a standing committee to oversee the commission and the inspector of the commission.



Joy Burch MLA
Speaker

27 November 2018

