

REPORT INTO A COMPLAINT AGAINST MR MARK PARTON MLA

1. On 18 June 2021 I received a complaint from Ms Suzanne Orr MLA concerning the conduct of Mr Mark Parton MLA in posting a video on Tik Tok. The video initially showed him acting in his role as Deputy Speaker to adjourn public proceedings of the Assembly for lunch, but then revealed a paper bag prominently displaying the name of a well known fast food supplier ('the supplier'). The image of the bag was accompanied by a sound track commonly used in the supplier's commercial advertising. Mr Parton was then shown eating food presumably obtained from the supplier and taken from bag. Ms Orr alleges that the video promoted the supplier's product, contravened the *Legislative Assembly Broadcasting Framework and Guidelines* ('the Guidelines') and compromised the credibility of his role. She also expresses wider concern as to the interaction of the use of social media with the duties and responsibilities of Members.

The investigation

2. I experienced some difficulty in gaining access to the video, but was able to view it after seeking assistance from Ms Orr, Mr Parton and the Clerk of the Assembly. The latter portion of the video does look and sound like a commercial advertisement. Indeed, the soundtrack, and perhaps the image of the bag, seems to have been directly downloaded from one of the supplier's television advertisements.
3. Mr Parton also provided me with a copy of a letter he had written to the Speaker on 18 June 2021. The letter stated, inter alia, that:

The video does not constitute commercial advertising or sponsorship. Commercial advertising or sponsorship would involve a transaction between me and a commercial entity and no such transaction has occurred.

...

In my engagement with community on social media platforms I have always attempted to 'humanise' the role of an MLA. I've always attempted to show that as elected members, although we may be involved in the mechanics of politics and government, we're just regular people and that's what I was attempting to display with that video.

...

As an MLA and as Deputy Speaker, I think it's extremely important to make this parliament and its members as accessible as we can to all members of the community and I've always tried to achieve that, sometimes in unorthodox ways. I would point out that there was once a time when a politician setting up a Facebook page and posting on that platform was considered quite radical.

4. Having considered this explanation and the content of the video, I wrote to Mr Parton on 23 June 2021, indicating that I had decided to investigate the complaint. I enclosed a copy of the

letter of complaint from Ms Orr and invited him to make any further statements and/or present any arguments he considered appropriate concerning the issues raised in the letter. I also suggested that the video gave rise to at least two obvious questions. First, whether the portion of the video covering part of the public proceedings of the Assembly was used for commercial advertising or sponsorship. I suggested that in this context the concept of “sponsorship” might extend to the promotion of a product or person even in the absence of any commercial relationship. Second, whether the use of the recording might otherwise have breached the guideline that recording and/or broadcasting of Assembly or committee proceedings “shall be for the purpose only of making fair and accurate reports of those proceedings”

5. Mr Parton responded by an email dated 8 July 2012, though due to a problem apparently caused by a computer program update I received it only on 13 July. In relation to the first question I had raised, he again stated that he had never been involved in any commercial agreement with the supplier and added that he had written to the supplier in an attempt to obtain confirmation of this fact. He explained that he had always attempted to “humanise” Members of the Assembly in his social media engagements. The video in question had been essentially intended to say: “when the Assembly adjourns for lunch, we eat lunch. Furthermore, we tend to eat what regular people eat.” The inclusion of the material relating to the supplier had been intended to make the content of the video “engaging and shareable” and this had obviously been successful because the video had been shared more than a hundred times and gathered some 30,000 views. He said that food is often featured in his videos. He also suggested that if the concept of “sponsorship” were to be taken to extend to the promotion of a product or person even in the absence of any commercial relationship, many Members of the Assembly would be “captured” by it. He said that it was common for Members to make positive statements about businesses and organisations during Assembly proceedings and then to broadcast those proceedings in social media videos. In support of this contention, he cited two examples “of undoubtedly many instances where Assembly proceedings, in which Members spruik a product or person, are posted onto social media platforms.” In relation to the second of the questions I had raised, he said that the video had been a fair and accurate report of proceedings.
6. A draft report was sent to Mr Parton on 16 July 2021 and he was invited to make further comments or submissions prior to its finalisation. Mr Parton responded to this invitation on 22 July 2021, making a number of contentions which I will mention and address in the discussion of the relevant issues.

The application of the Act and the Guidelines

7. Section 5 of the *Legislative Assembly (Broadcasting) Act 2001* (‘the Act’) provides that:
 - (1) *A person may broadcast, or record for broadcast, all or part of public proceedings of the Legislative Assembly or a committee of the Assembly.*

(2) The Legislative Assembly may, by resolution, determine the way rights given by subsection (1) must be exercised.

(3) If the Legislative Assembly makes a determination under subsection (2), a person exercising rights under subsection (1) must comply with the determination.

8. The Guidelines are effectively a determination made pursuant to the power provided by subsection 5(2) of the Act. That is clear from paragraph 10 of the Guidelines which states:

The Assembly has, by continuing resolution 3 agreed to by the Assembly on 7 March 2002 and amended on 17 March 2005, 23 June 2005, 11 February 2010 and 29 November 2018, determined the way rights given by subsection 5 (1) of the Act must be exercised.

9. Both section 5 of the Act and the Guidelines made pursuant to it apply only to the recording or broadcast of public proceedings of the Assembly. The latter portion of the video that may seem to promote the product of a commercial entity clearly reveals actions and sounds that occurred after the public proceedings of the Assembly had been adjourned for lunch. Hence, if that portion of the video were to be considered in isolation, no breach of the Guidelines could be established. However, the earlier portion of the video does reveal a part of the public proceedings and, in my opinion, that portion effectively introduces the portion that follows. Whilst that portion is very brief, it does reveal Mr Parton and his role in adjourning the proceedings of the Assembly for lunch. Indeed, the obvious concern generated by the video is that it seems to link his role in the Assembly with his apparent endorsement of the product in question.

The Code of Conduct and its application to the Guidelines

10. Paragraph (6) of *Continuing resolution 5AA* ('the Continuing Resolution') authorises the Commissioner for Standards to investigate complaints about a Member's compliance with the *Code of Conduct for All Members of the Legislative Assembly* ('the Code of Conduct') or the rules relating to the registration or declaration of interests. The Continuing Resolution does not expressly authorise me to investigate allegations of conduct said to have contravened the Guidelines. However, paragraph 2 of the Code of Conduct provides that:

Members should act only in the interests of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.

11. Since section 5(3) of the Act provides that anyone exercising rights to broadcast public proceedings of the Assembly must comply with the Guidelines, a Member who commits a breach of the Guidelines also contravenes the requirement in paragraph 2 of the Code of Conduct to act "only in conformity with all laws applicable in the Territory".

Paragraph 8 of the Guidelines

12. Paragraph 8 of the *Legislative Assembly Broadcasting Framework and Guidelines* (‘the Guidelines’) provides that:

Any recording and subsequent broadcasting or publication of any extract of the audio, vision or text from any of the proceedings of the Assembly or any of its committees must be a fair and accurate record of those proceedings. Any recording must not be used for:

- (a) advertising for or by political parties;*
- (b) electioneering; or*
- (c) commercial advertising or sponsorship.*

13. I accept Mr Parton’s assurance that he had no commercial relationship with the supplier. A video recording could perhaps be held to have been used for the purpose of commercial advertising even if person responsible for the actual broadcast was not paid for his or her services, but I have no reason to reject Mr Parton’s explanation for his conduct and hence do not accept that he acted as he did with a view to promoting the commercial interests of the supplier.
14. More difficult issues may arise in relation to the use of the term, “sponsorship”. This term usually refers to the provision of financial support for some person or organisation, but in some circumstances it may also refer to other forms of support. Such support may take many forms (see, for example those suggested by the *Sponsorship Collective*: <https://sponsorshipcollective.com/15-things-sponsors-can-give-you-besides-cash/>). However, it is arguable that the adjective “commercial” was also intended to qualify the term, “sponsorship”. In any event, sponsorship will usually, if not always, involve an ongoing arrangement of some kind (see for example, <https://smallbusiness.chron.com/advertisement-vs-sponsorship-17459.html>) that is intended to permit one party to promote the interests of another. For present purposes, it is unnecessary to attempt to define the scope of the term within the context of this provision because, as mentioned, I am not satisfied that Mr Parton acted as he did with the intention of promoting the interests of the supplier.

15. Consequently, I am unable to find that there has been any breach of paragraph 8 of the Guidelines.

Paragraph 3

16. Paragraph 3 of *Guidelines for recording and broadcasting the public proceedings of the Legislative Assembly and its committees*, which is attachment B to the Guidelines, (‘paragraph 3 of the guidelines’) provides that:

Recording and/or broadcasting of the Assembly or committee proceedings shall be for the purposes only of making fair and accurate reports of those proceedings.

17. In response to my comments raising this issue, Mr Parton said: “There is nothing in the video that portrays something that did not happen. The video is entirely fair and accurate.” That may be true, but it does not address the limitation on usage actually imposed by paragraph 3 of the Guidelines. The paragraph does not suggest that a Member may use videos for any purpose provided only that they are fair and accurate reports of public proceedings of the Assembly. It rather provides that any recording or broadcasting may be undertaken only for the purposes of making such fair and accurate records.
18. It may be suggested that this paragraph is concerned only with the initial recording or broadcast of videos and that it does not purport to regulate their subsequent usage. However, the posting of a video for use on social media would seem to involve further recording and broadcasting and there is no obvious reason to assume that this guideline was not intended to apply to any such actions. Such posting is therefore permissible only for the purposes of broadcasting fair and accurate records of the proceedings.
19. In this instance, the earlier portion of the video was clearly recorded or broadcast on Tik Tok by Mr Parton, not for the purposes of making a fair and accurate report of the proceedings, but rather for the purposes of identifying himself as a person with authority to adjourn proceedings of the Assembly and of introducing the latter portion of the video. Hence, in my opinion, his conduct involved a breach of paragraph 3 of the Guidelines.
20. In further submissions made in response to the draft report, Mr Parton protested that the complaint had not suggested that the video had been posted for reasons other than to make a fair and accurate representation of proceedings. He said that he had sought advice from a number of “individuals with legal, government and parliamentary experience” who had expressed the view is that if this issue had not been mentioned in the complaint, it seemed “odd” that I had considered it. In my opinion, this contention must be rejected. Mr Parton quoted the relevant port of the complaint as: “I am concerned the video promotes a product in contravention of the Legislative Assembly Broadcasting Framework and Guidelines.” This is not quite accurate. The relevant portion actually states: “I am concerned the video promotes a product **and** in contravention of the Legislative Assembly Broadcasting Framework and Guidelines” (emphasis added). Hence, I do not take this aspect of the complaint to be limited in the manner suggested. In any event, a complaint of this kind should not be construed strictly like a statement of claim or indictment in legal proceedings. Complainants may normally be expected to provide reasonably clear explanations of the conduct in question, but they should not be seen as having an obligation to specify exactly why they believe that such conduct was inappropriate. Of course, when matters proceed to investigation, the Members against whom the complaints have been made must be given adequate explanation of any apparent issues likely to give rise to findings against them and adequate opportunity to

address them. In this case, Mr Parton was duly alerted to the issue about the application of paragraph 3 of the Guidelines by my letter of 23 June 2021 and by the provision of the draft report.

21. Mr Parton also argued that I have taken an incorrect or overly technical interpretation of the relevant provision of the broadcast guidelines. He said that:

I'm well aware that use of Assembly on Demand footage can only be published if it is a fair and accurate representation of proceedings and I set out to do just that when I published my video. Interestingly, your conclusion does not at any point suggest that the video is not fair and accurate, but that because of some additional perceived intent then the guideline has been breached.

I fear that you could be opening a massive can of worms here. A ruling of this nature would lead to a complete cessation of members posting any footage from the chamber because it would be possible to adjudge that they were doing so for some other reason other than making a fair and accurate representation of proceedings.

22. Mr Parton cited further examples of Members having posted videos of Assembly proceedings and suggested that if I were to maintain that he had breached the code then he would be referring these instances to me, “with potentially more to come”, to determine whether they would also be likely to be found to be in breach of the Guidelines. With due respect to Mr Parton, I would be unable to ignore the actual words of the guideline even if I shared his view that that the application of the principle so expressed was likely to open a “can of worms”. The guideline clearly does not permit a fair and accurate recording or broadcasting of Assembly proceedings to be used for any purpose, as he seems to have assumed. On the contrary, it provides that any such recording and/or broadcasting shall be **for the purposes only** of making fair and accurate reports of those proceedings (emphasis added). However, I do not accept that the correct application of the guideline would lead to a complete cessation of relevant footage online. Whilst the guideline could be interpreted in a manner that would have such an effect, I am inclined to think that this was not intended. The words of the guideline do not require such an implication and, if this had been intended, there would have been no need for other guidelines concerned with the usage of such material, such as the requirement in paragraph 2 that it not be used for political or commercial advertising. Furthermore, the examples Mr Parton has cited suggest that at least Members have not understood it to have such an effect.

23. In my opinion, the concern expressed by Mr Parton reflects a failure to recognise the distinction between purpose and motive. If a video has been broadcast for the purpose of revealing what was said during the course of Assembly proceedings, the motivation will usually be irrelevant, unless, of course, it is to engage in political or commercial advertising or some other improper usage. Accompanying commentary will also usually be irrelevant unless it reveals that the broadcast was not only for the purpose of making a fair and accurate

record of the relevant proceedings or it provides evidence of improper usage. Hence, to take but a few examples, the guideline would not prevent Members from downloading videos of Assembly proceedings and using them to promote or criticise government policy. I might mention, in passing, that the promotion of a company or product is not always inappropriate. For example, it is currently in the public interest for governments to promote the Pfizer and AstraZeneca vaccines. On the other hand, the guideline would prevent Members from downloading videos, not to reveal what was said during the course of proceedings, but to display images of others in order to denigrate them by reference to their appearance or to factors such as sex, race, or apparent sexual preference.

24. In the present case, I do not, of course, suggest that Mr Partin downloaded the video for such base purposes. I have concluded only that the relevant portion was not broadcast for the purpose of providing a fair and accurate report of Assembly proceedings but for the purposes mentioned in paragraph 19 of this report. Accordingly, I adhere to my view that he committed a breach of the Guidelines and hence a breach of paragraph 2 of the Code of Conduct.
25. Mr Parton expressed concern at my conclusion that an “extremely minor and extremely technical” breach of the broadcast guidelines involves a breach of paragraph 2 of the Code of Conduct. He maintains that he did not intend to commit such a breach and I accept that assurance. However, that is not the decisive issue. He did intend to post the video and in my view that action involved a breach of paragraph 2. He suggests that this provision of the Code of Conduct should not be taken to apply to minor aspects of the law such as illegal parking. This concern is again misconceived. Paragraph 2 is concerned with acts by Members that relate to their role as Members and there is no obvious reason to posit an implied limitation on the requirement Members should act in accordance with all ACT laws.

Other provisions of the Code of Conduct

26. The Code of Conduct does not contain any provision that directly addresses conduct that may be seen as “compromising the credibility of a Member’s role”.
27. Paragraph 4 provides that:
- Members should always act in the public interest, make decisions and choices on merit, and not seek to gain financial or other benefit for themselves, their family or friends*
28. This provision obviously applies to all decisions and choices made by Members in relation to their duties and responsibilities as Members of the Assembly, including those relating to the making and use of recordings of Assembly proceedings, but there is no evidence that Mr Parton sought financial gain or any other inappropriate benefit by acting as he did.
29. Paragraph 12 records the Members’ undertaking that they should:

Actively seek to avoid or prevent any conflict of interest, or the perception of such a conflict, arising between their duties as a Member and their personal affairs and interests ...

30. Whilst the continuing resolution does not authorise me to consider generalised allegations that a Member may have undermined the credibility of his position, I am required to consider whether his or her conduct may have given rise to an impermissible conflict of interest. The undertaking recorded in paragraph 12 applies to the perception of any such conflicts, whether arising in relation to the making and use of recordings of Assembly proceedings or otherwise. In my opinion, Mr Parton's actions could have led reasonable members of the public to suspect that he might have some relationship with the supplier capable of giving rise to a conflict of interest if his role as a Member had required him to make decisions likely to affect the interests of the supplier. However, there is no evidence that he has made or is likely to have to make such decisions and hence no relevant conflict of interest has been established.

Conclusions

31. In my opinion, Mr Parton's usage of the video footage of him adjourning the proceedings of the Assembly in the circumstances previously outlined constituted a breach of paragraph 3 of the Guidelines and, accordingly, a breach of paragraph 2 of the Code of Conduct.
32. I think Mr Parton clearly misunderstood the guideline expressed in paragraph 3 of the Guidelines and the Standing Committee may wish to take this into account in determining what action, if any, should be taken.

(The Hon Dr) Ken Crispin QC
ACT Commissioner for Standards
26 July 2021