

**ACT COMMISSIONER FOR STANDARDS
ANNUAL REPORT 2023/2024**

The position of Commissioner for Standards

By Continuing Resolution 5AA made on 31 October 2013, the Assembly requested the Speaker to appoint a Legislative Assembly Commissioner for Standards ('the Commissioner') on certain terms. The Continuing resolution was amended on 3 August 2017 and 22 August 2019. The resolution initially required the Speaker to determine whether there were adequate grounds for the referral of a complaint to the Commissioner, but this requirement was eliminated by the amendment in 2017, leaving it to the Commissioner to determine whether any investigation is warranted.

The resolution now states, inter alia, that:

(4) *The functions of the Commissioner are to:*

(a) investigate complaints about Members lodged via the Clerk to the Commissioner;

(b) report to the Standing Committee on Administration and Procedure;

...

(5) *Anyone may make a complaint to the Commissioner via the Clerk of the Legislative Assembly about a Member's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests. The Integrity Commissioner established pursuant to the Integrity Commission Act 2018 may also refer matters to the Commissioner for Standards for consideration via the Clerk of the Legislative Assembly about matters the Integrity Commissioner considers should be referred.*

(6) *If the Commissioner receives a complaint about a Member pursuant to paragraph (5) and the Commissioner believes on reasonable grounds that—*

(a) there is sufficient evidence as to justify investigating the matter; and

(b) the complaint is not frivolous, vexatious or only for political advantage;

the Commissioner may investigate the matter and report to the Committee. If the Commissioner considers that the complaint is more properly the purview of the Integrity Commissioner, the Commissioner shall refer the matter to the Integrity Commissioner.

(7) *In exercising the functions of Commissioner the following must be observed:*

(a) The Commissioner must not make a report to the Committee if the Member about whom the complaint was made has agreed that he or she has failed to register or declare an interest if —

(i) in the Commissioner'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

Commissioner may have required within any procedure approved by the Committee for this purpose.

(b) The Commissioner must not make a report to the Committee unless the Commissioner 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 Commissioner has considered any comments provided by the Member.

(c) The Commissioner must report by 31 August each year to the Speaker on the exercise of the functions of the Commissioner.

Appointment

I was appointed as the inaugural Commissioner by an instrument made by the Speaker on 6 March 2014. Conditions of my appointment were specified in an attached schedule, which provided that my appointment would commence on that day and end three months after the election of the 9th Legislative Assembly.

I was reappointed on substantially similar terms on 15 October 2016 and 15 January 2021.

Protocol

Following my initial appointment I prepared a draft protocol concerning the manner in which investigations made in the course of my duties would be undertaken. The protocol was adopted by the Standing Committee on Administration and Procedure ('the Committee') on 24 March 2015 and amended in August 2017 and February 2022. It may be viewed on the Assembly's website.

The protocol includes the statement that:

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.

It has not yet proven necessary to engage in face to face hearings to address any of the complaints that have been referred to me, though I have received some evidence by telephone.

In February 2022 paragraph 2 of the protocol was amended to read:

If the Commissioner receives a complaint and the Commissioner believes on reasonable grounds that there is insufficient evidence to justify an investigation or that the complaint is frivolous, vexatious or only for political advantage, the Commissioner will inform the complainant that the matter will not be further investigated. The Commissioner will also inform (without revealing the complainant's identity or the nature of the complaint) both the committee and the Member the subject of the complaint that a complaint has been

received but not further investigated.

The Code of Conduct

The Code of Conduct was substantially amended on 31 August 2023, with provisions added to specifically address issues relating to bullying, sexual and other harassment, sexual assault and discrimination.

Complaints

I dealt with the following complaints during the year ended 30 June 2024.

1. On 5 July 2023 I received the complaint against Mr Ed Cocks MLA raising issues about whether an amendment to a staff member's contract may have been intended to facilitate an improper expenditure of public resources for political campaigning and whether a staff member may have been instructed to incorrectly record hours of work. The Code of Conduct applies only to elected Members of the Assembly, not to staff members, and my investigation was concerned with the conduct of those members only insofar as it was relevant to the complaint against Mr Cocks. After due investigation, I concluded that the work undertaken on Mr Cocks's behalf was not overtly political in nature and seemed to reflect genuine attempt to ascertain the view of his constituents on a variety of issues. In my view, this fell within the legitimate scope of his role as a Member. The manner in which issues arising from this arrangement had been dealt with by his staff seemed to have been somewhat unsatisfactory, but Mr Cocks explained that he had no awareness of these issues prior to my correspondence with him and hence no opportunity to address them. This was confirmed by the staff involved. In my report of 13 July 2023, I recommended that the complaint be dismissed but the recommending that Members be reminded of their responsibilities to ensure that staff fully comply with appropriate procedures relating to the expenditure of public funds, including the maintenance of accurate records
2. On 14 September I received a complaint against Ms Rachel Stephen-Smith MLA and Mr Michale Pettersson MLA suggesting that they had breached the Code of Conduct in relation to a bill to decriminalise certain drugs. It was alleged that Ms Stephen-Smith had worked through a committee process and then by a private member's bill to avoid the normal substantive legislative processes, including the scrutiny that would normally have been given to a government bill. It was also alleged that she had colluded with Mr Michael Pettersson MLA, then chair of a relevant Legislative Assembly committee, to that ensure a desired recommendation was included in the final Committee report. I immediately wrote to the Standing Committee to raise what I was concerned might have been seen as a conflict of interest arising from my long standing support for drug decriminalisation. The matter was subsequently considered by the Standing Committee and I was informed of the Speaker's view that this did not create any impediment to my investigation of the complaint. I proceeded to consider the issues raised, but concluded that the evidence did not reveal any breach of the Code of Conduct and that my role did not extend to questioning political strategies or decisions relating to the introduction of bills into the Assembly.
3. On 10 November I received a complaint alleging that Mr Johnathan Davis MLA, had engaged in sexual contact with younger people. It was suggested that at least one may have been under the age of consent. I responded later that day, indicating that I had declined to investigate the

allegations for two reasons. First, my role is limited to the investigation of actions undertaken by people as Members of the Assembly rather than in their private lives. That is clear from the terms of Continuing Resolution 5AA and from the introductory words of the the Code of Conduct. It had not been suggested that there had been any connection between the suggested misconduct and Mr Davis' position as a Member. Second, the matter had been referred to the Australian Federal Police and I thought it would be inappropriate for me to initiate a parallel investigation, even if I had been authorised to do so. Any investigation I might have undertaken would have been dependent upon evidence from one or more young people alleged to have been victims of sexual offences by Mr Davis and, perhaps, from Mr Davis himself. I noted that neither the young person nor any other alleged victim had sought to have a complaint referred to me and I was concerned that any approach I might have made to them might have caused them unnecessary distress and perhaps raised questions about whether evidence subsequently obtained from them by investigating police officers might have been subtly influenced by my investigation. Mr Davis was advised that a complaint had been made against him but that it would not be further investigated.

4. On 28 November I received a complaint alleging that a Member of the Assembly had acted inappropriately whilst overseas. The complaint was made anonymously and the allegations were not accompanied by references to any supporting evidence. Since paragraph (6) of Resolution 5AA authorises me to conduct an investigation only if I believe on reasonable grounds that there is sufficient evidence as to justify investigating the matter. Accordingly, the Member was duly advised that a complaint had been made against him but that it would not be further investigated.
5. On 30 November 2023 I received a complaint alleging that Mr Peter Cain MLA had breached the Code of Conduct by arranging an internship for his son-in law. I found no evidence that any other applicant been excluded as a consequence and accepted that the inappropriate engagement as an unpaid intern may be seen as a less serious than the inappropriate employment of a staff member paid from public funds. However, I concluded Mr Cain had breached paragraph (4) of the Code of Conduct provides that Members may not seek to gain financial “or other benefit” for themselves, their family or friends.
6. On 4 December 2023 I received a further against Mr Cain concerning an email issued on 17 November 2023. I concluded that the email was essentially political in nature and that its preparation and dissemination by his staff had involved a misuse of public resources. However, the Code of Conduct is concerned only with the conduct of Members and Mr Cain explained that it was sent by a member of his staff without his prior review. I had no reason to disbelieve this explanation and recommended that the complaint be dismissed. This recommendation was subsequently the subject of some discussion with the Clerk of the Assembly and the Ethics and Integrity Advisor (see below under the sub-heading “other matters”).
7. On 7 February 2024 I February 2024, I received a letter from the Chief Minister, Andrew Barr MLA, referring to a recent report by Ms Lynette Briggs AO entitled *Review, Pursuant to Assembly Resolution, Relating to the Handling of Certain Allegations made against a Member* (the Briggs Report). The Briggs Report had raised a number of factual, legal and ethical questions concerning responses to the allegations made against Mr Johnathan Davis MLA (see paragraph 3). The Chief Minister noted that some issues that required further independent investigation and asked me to consider whether Mr Shane Rattenbury MLA or Ms Emma

Davidson MLA had committed any breach of the Code of Conduct. Whilst no specific allegations were made against either Mr Rattenbury or Ms Davidson, I treated the letter as a complaint, albeit a wide-ranging one, and dealt with it in accordance with the established protocol. Whilst the responses to the young person who had made the complaint against Mr Davis were generally supportive, it seemed obvious that there had been a widespread failure to understand the reporting requirements that arise in relation to possible offences against children and that the matter had not been handled well. However, I ultimately recommended that no finding be made against either Mr Rattenbury or Ms Davidson.

8. Also on 7 February 2024 I received a complaint concerning responses to a dispute with the ACT Government. I informed the complainant that I was authorised only to investigate complaints alleging breaches of the Code of Conduct by elected Members of the ACT Legislative Assembly and that my role does not extend to investigating the conduct of public servants or judicial officers, such as members of ACAT. I also explained that if she wished to pursue a complaint against the relevant Minister, personally, she would need to explain the relevant allegations with sufficient precision to enable me to form a judgement about whether they involve any potential breach of the Code of Conduct. On 9 February 2024 I received a reply from the complainant stating that she understood my position and would undertake to review the Code of Conduct in the coming week so she could make a more appropriate and specific complaint. No further letter was received.
9. On 13 February 2023 I received a complaint alleging that a Member had had an inappropriate sexual relationship with a younger person. The complaint was made anonymously from an email address that did not reveal the name of the sender. I ascertained that a copy of the letter referred to me recently had also been provided to the Australian Federal Police. I then responded to the email, declining to investigate the allegation and explaining that my role does not extend to investigating allegations concerning the private lives of people elected to the Assembly, only to allegations concerning conduct undertaken as Members of the Assembly. I also mentioned the need for some evidence warranting such an investigation and explained that an anonymous complaint based upon statements attributed to unidentified people would not constitute adequate evidence for the purpose of this requirement.
10. On 4 April 2024 I received a complaint alleging that a Member of the Assembly had failed to fulfil her duties as a Minister by failing to respond to an email and by referring the matter to an officer with responsibilities for the issues raised. In my view, the facts alleged in the complaint did not reveal sufficient evidence of a breach of the Code of Conduct. The Member was duly advised that a complaint had been made against her but that it would not be further investigated.
11. On 26 April 2024 I received a complaint about a series of unsolicited emails from a political party. The complainant said that she assumed her email address must have been leaked by an unknown member of the staff of a Minister. I explained that I was not authorised to investigate actions by political parties or staff. The email did not suggest that the Minister had personally leaked or authorised the leaking of the email address, that she had failed to give appropriate directions to her staff about the need for such addresses to remain confidential or that she had otherwise committed any breach of the Code of Conduct. Accordingly, I was unable to investigate the matter.

12. On 20 May 2024 I received a complaint alleging that a Member of the Assembly had been inappropriately removed from a parliamentary committee. Having considered the matter, I advised the complainant that, since the questions raised by the complaint did not involve any allegations that the other members of the committee had committed any breaches of the Code of Conduct, I was unable to investigate the matter.
13. On 16 June 2024 I received a complaint alleging that a Member who had attended an event, in his official capacity, proceeded to park in a disability car park. The complainant cited a number of the provisions in then Code of Conduct, including the requirement for Members to act in conformity with all laws applicable in the Territory. However, I have long taken the view that I should not investigate allegations of criminal or traffic offences and concluded that the same approach would be taken to allegations of parking offences, even those the inappropriate occupation of spaces reserved for the disabled. The Member was advised that a complaint had been made against him but that it would not be further investigated
14. On 28 June 2024 I received a further complaint alleging that a Member of the Assembly had acted inappropriately whilst overseas. The complaint remained unresolved as at 30 June 2024 (though it was dealt with on 2 July).

Other matters

- On 21 July 2023 I was advised that the Committee had received a complaint concerning my decision not to further investigate an earlier complaint against a Member of the Assembly concerning remarks attributed to her that the complainant had found offensive. In response, I explained that I had seen no reason to interpret the remarks as he had done and had concluded that there had been insufficient evidence of any breach of the Code. The complaint against me was duly dismissed.
- On 5 October 2024 I had a lengthy discussion with Mr Ian Govey AM concerning proposed recommendations made in response to the *Review of the Integrity Commission Act 2018 and the Public Interest Disclosure Act 2012* that were relevant to my role as Commissioner for Standards.
- On 16 January 2024 I received a letter from the Clerk of the Assembly responding to my recommendation concerning the complaint about the email prepared by Mr Cain's staff (paragraph 6 above) and drawing my attention to paragraph (7)(d) of the Code of Conduct which provides that Members shall "take all reasonable steps to ensure that, as far as practicable, their personal staff are mindful of the Member's commitment to this Code of Conduct, and assist the Member to comply with this Code of Conduct." In response, I explained what I saw as the limited effect of this sub-paragraph and confirmed that in my opinion the evidence had not established that Mr Cain had failed to comply with it. I also suggested that the Ethics and Integrity Advisor be consulted about a possible amendment to more effectively require Members to institute and maintain procedures to ensure that staff do not themselves misuse public resources.
- Following the release of the Briggs Report I had discussions with the Clerk of the Assembly and the Ethics and Integrity Advisor concerning some of the recommendations that had been made. I subsequently received a letter from the Speaker dated 14 February 2024 inviting me to express

my views to the Standing Committee. On 5 March 2024 I made a written submission, expressing disagreement with several of the recommendations and offering some alternative suggestions.

(The Hon Dr) Ken Crispin KC
Commissioner for Standards
10 July 2024

https://jamanetwork.com/journals/jamaophthalmology/article-abstract/2820255?utm_campaign=articlePDF&utm_medium=articlePDFlink&utm_source=articlePDF&utm_content=jamaophthalmol.2024.2296

1. The Speaker no longer has a “gatekeeper” role
2. The Code has been recently amended to require sensitivity and other responses to sexual harassment or bullying (7)(D) complaints against staff or public servants?
- 3 The Standing Committee has expressed the view that Members, as employers are responsible for the actions and activities of their staff.
4. A recommendation has been made for paragraph (7)(d) of thee Code has been recently amended to require Members to:

“(d) take all reasonable steps to ensure that, as far as practicable, their personal staff are mindful of the Member’s commitment to this Code of Conduct and, in the course of their duties, take no action for or on behalf of the Member or the Member’s Office which, if taken by the Member personally, would be contrary to this Code of Conduct; and”

This is not dissimilar to that of Ministerial responsibility for the actions of directorates and agencies.