

REPORT ON THE CONDUCT OF MR COE, MLA

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

FEBRUARY 2021

REPORT 2

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RESOLUTION OF APPOINTMENT

The Standing Committee on Administration and Procedure Committee is established pursuant to Standing Order 16:

16. (a) A Standing Committee on Administration and Procedure is established at the commencement of each Assembly to:
 - (i) undertake self-referred inquiries or inquiries referred by the Assembly and, in addition, in the third year of an Assembly term the committee shall inquire into and report on the operation of the standing orders and continuing resolutions of the Assembly with a view to ensuring that the practices and procedures of the Assembly remain relevant and reflect best practice;
 - (ii) advise the Speaker on:
 - (A) Members' entitlements including facilities and services;
 - (B) the operation of the transcription service (Hansard);
 - (C) the availability to the public of Assembly documents;
 - (D) the operation of the Assembly library;
 - (iii) arrange the order of private Members' business, Assembly business and Crossbench Executive Members' business;
- (b) the Committee shall consist of:
 - (i) the Speaker;
 - (ii) the Government whip;
 - (iii) the Opposition whip; and
 - (iv) a representative of the crossbench (or if a single party, the whip of that party);
- (ba) Should a whip be unable to attend a meeting, the Party nominated deputy whip may attend in their place;
- (c) the Speaker shall be the Chair of the Committee; and
- (d) the Committee shall have the power to consider and make use of the evidence and records of the Standing Committee on Administration and Procedure appointed during the previous Assemblies.

TERMS OF REFERENCE

Continuing resolution 5AA

COMMISSIONER FOR STANDARDS

This resolution provides for the appointment of a Legislative Assembly Commissioner of Standards.

Resolution agreed by the Assembly

31 October 2013 (as amended 9 June 2016, 3 August 2017 and 22 August 2019)

COMMISSIONER FOR STANDARDS

That this Assembly requests the Speaker to appoint a Legislative Assembly Commissioner for Standards on the following terms:

- (1) The Speaker must, after each Assembly is elected or whenever the office becomes vacant, appoint a Commissioner for the life of that Assembly and the period of six months after each election. The appointment is for the term of the Assembly and the period of six months after the election at the conclusion of that term. The Speaker may decide not to seek expressions of interest if only one term has been served by the Commissioner.
- (2) Before appointing a Commissioner, the Speaker must consult with the Chief Minister, the Leader of the Opposition and Crossbench Members.
- (3) The Commissioner may be dismissed only following a resolution of the Legislative Assembly resolving to require the Speaker to end the Commissioner's appointment—
 - (a) for misbehaviour; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the Commissioner's functions.

However, a motion for such a resolution may only be debated after the Standing Committee on Administration and Procedure ('the Committee') has reported to the Assembly that it is satisfied that the Commissioner is unfit for the office or unable to fulfil the Commissioner's functions.

- (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; and
- (4A) The Committee will inquire into and report on any report provided to it by the Commissioner pursuant to subparagraph 4(b) of this resolution.
- (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. *(Amended 22 August 2019)*
- (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.

CODE OF CONDUCT FOR ALL MEMBERS OF THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

This resolution provides for a code of conduct for Members of the Legislative Assembly.

25 August 2005 (amended 16 August 2006, 24 October 2013, 3 August 2017, 30 July 2019)

Resolution agreed by the Assembly

The Members of the Legislative Assembly for the Australian Capital Territory acknowledge that, in a parliamentary democracy they cannot command, but must constantly strive to earn and maintain, the respect and support of those who have elected them to their positions of honour and privilege as Members.

In committing to this Code of Conduct, Members undertake, to the community and to one another, that they shall not act in a manner inconsistent with their duties and obligations as Members and that the following principles shall guide their conduct as Members in all matters:

- (1) Members should at all times act with integrity, honesty and diligence.
- (2) 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.
- (3) Members should uphold the separation of powers and the rule of law
- (4) 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.
- (5) Members should be reasonably accessible to the people of the electorate they have been elected to serve, and should represent their interests conscientiously.
- (6) Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny.
- (7) Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective and efficient use of those resources.

- (8) Members should respect the dignity and privacy of individuals, and not disclose confidential information to which they have official access other than with consent or as required by law.
- (9) Members should observe proper standards of parliamentary conduct, and observe respect for differences and fairness in their political dealings.
- (10) Members should promote and support these principles by leadership and example, in order to maintain and support public trust and confidence in the integrity of the Assembly and the conduct by its Members of public business.

Consistent with the above principles, Members further undertake that they should:

- (11) Treat all citizens of the Australian Capital Territory with courtesy, and respect the diversity of their backgrounds, experiences and views. In particular, Members should by their words and actions demonstrate, and by their example and leadership encourage and foster others to show, respect for the peaceful, temperate and lawful exercise by all members of the community of their shared and individual rights and entitlements, including freedom of religion, freedom of association and freedom of speech.
- (12) 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, take all reasonable steps to resolve any such conflict or perception of a conflict that does arise, and:
 - (a) comply with section 15 of the [Australian Capital Territory \(Self-Government\) Act 1988 \(Cwth\)](#);
 - (b) declare their pecuniary interests and ensure that their declaration is kept up to date pursuant to the resolution of the Assembly 'Declaration of Private Interests of Members' agreed to on 7 April 1992 (as amended or replaced from time to time); and
 - (c) disclose in a manner appropriate to the circumstances any other financial or non-financial interest that they may hold, or which they may be reasonably perceived to hold (other than as a member of the public or of a broad class of persons) which a reasonable observer, informed of that interest, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.
- (13) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.

- (14) Not solicit to undertake, or undertake, any activity as a Member in return for the provision, promise or expectation of any improper benefit to the Member or to another person.
- (15) Take care to consider the rights and reputations of others before making use of their unique protection of parliamentary privilege consistent with the resolution of the Assembly 'Exercise of freedom of speech' agreed to on 4 May 1995 (as amended or replaced from time to time).
- (16) Not use information received by them as a Member that is not in the public domain in breach of any obligation of confidence applicable to their receipt of that information unless required by law, or improperly for the private benefit of themselves or another person.
- (17) In their capacity as an employer on behalf of the Territory under the [Legislative Assembly \(Members' Staff\) Act 1989](#):
 - (a) familiarise themselves and comply with the terms and conditions on which their personal staff are engaged and with all applicable policies and practices (including those related to occupational health and safety, discrimination, harassment and bullying, equal employment opportunity and use of information technology);
 - (b) not employ a family member as defined in that Act;
 - (c) direct their personal staff to be mindful of the Member's commitment to this Code of Conduct, and to assist the Member to comply with this Code of Conduct; and
 - (d) direct their personal staff to comply with any code of conduct applicable to those staff from time to time.
- (18) In all their dealings with staff of the Assembly and members of the ACT Public Service:
 - (a) extend professional courtesy and respect; and
 - (b) recognise the unique position of impartiality and the obligations of Public Service officials.
- (19) Only make a complaint about the compliance of another Member with this Code of Conduct where they believe there are reasonable grounds to suspect non-compliance and not make any such complaint that is frivolous or vexatious or only for political advantage.

- (20) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member.
- (21) Within the first six months after an election for the Assembly, the Assembly shall reaffirm its commitment to the principles, obligations and aspirations of the code. Where a new member is elected to fill a vacancy the new member shall, before he or she makes an inaugural speech, affirm that he or she will abide by the code.

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RECOMMENDATIONS

RECOMMENDATION 1

- 5.2 The Committee recommends that, having been found to have breached the requirements of diligence in paragraphs (1) of the Code of Conduct and transparency in paragraph (6):**
- (a) Mr Coe be requested to apologise in writing, through the Speaker to the Assembly for his actions; and**
 - (b) Members be reminded of their obligations as employers, as detailed in Section 17 (c) of Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory, that Members personal staff be mindful of the Member's commitment to the Code, and to assist the Member to comply with the Code of Conduct.**

1 INTRODUCTION

- 1.1 On being made aware of a possible misuse of Assembly facilities, the Speaker, on 7 October 2020, contacted the Member concerned seeking an explanation. Having received no response, the Speaker wrote again on 9 October 2020 requesting a reply by 12 noon 12 October 2020.
- 1.2 On 12 October 2020, having received no response, the Speaker provided the relevant information to the Clerk as a possible breach of the *Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory* (the Code of Conduct). The matter was referred to the Commissioner for Standards, the Honourable Dr Ken Crispin QC later that day, pursuant to paragraph (5) Continuing Resolution 5 (Commissioner for Standards).
- 1.3 The Commissioner conducted an investigation into the matter and provided his report to the Standing Committee on Administration and Procedure on 4 December 2020.
- 1.4 A copy of the Commissioner's report is attached at Appendix A.

2 CONDUCT OF THE COMMISSIONER'S INQUIRY

- 2.1 The Commissioner's investigation was conducted in accordance with the protocols adopted by the Standing Committee on Administration and Procedure on 24 March 2015 (revised August 2017 and August 2019). The Commissioner wrote to Mr Coe on 13 October 2020, enclosing copies of the letters from the Speaker and invited his response.
- 2.2 Details of the ongoing correspondence between Mr Coe and the Commissioner are provided in the Commissioner's report (Appendix A). It should be noted the difficulty the Commissioner had in receiving appropriate responses to his requests for information.
- 2.3 Having considered all of the material he drafted a report which he sent to Mr Coe. The Commissioner considered the response of Mr Coe, and then forwarded a copy of his report to this Committee.

3 THE COMMISSIONER'S FINDINGS

The Commissioner found as follows:

- 3.1 In relation to Paragraph (1) of the Code of Conduct (Members should at all times act with integrity, honesty and diligence)—

“In the circumstances, the possibility of error cannot be wholly discounted and I am not satisfied to the requisite standard that he failed to act with due honesty in carrying out the printing.

However, it seems inescapable that he did not act with due diligence when his attention was drawn to the increased level of printing by the Speaker. Whilst I have no reason to doubt his statement that his Office had printed large amounts of documents in some earlier months, the printing to which the Speaker referred had occurred during a single week just prior to the election. I accept that he may have had no memory of using the wrong printer. Indeed, during his conversation with me he seemed reluctant to accept that this could have occurred and to have been struggling to imagine some other possible explanation. Nonetheless, the Speaker's letters should obviously have alerted him to at least the likelihood that had used the wrong printer. Despite his preoccupation with the imminent election and any uncertainty about what had occurred, he should have responded to her letters, providing what limited explanation he could and offering to repay the cost of any printing improperly undertaken at the Assembly's expense.

In my opinion, his failure to do so constituted a breach of this provision.”

- 3.2 In relation to Paragraph (2) of the Code of Conduct (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)—“I am not satisfied that Mr Coe knowingly acted in a manner that contravened this provision”.
- 3.3 In relation to Paragraph (6) of the Code of Conduct (Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny)—“In my opinion, Mr Coe's failure to respond to the Speaker's letters and to subsequently address the likelihood that he had improperly incurred the expense of printing pamphlets and/or other political documents also involved a breach of the obligation of transparency”.
- 3.4 In relation to Paragraph (7) of the Code of Conduct (Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective and efficient use of those resources)—“Whilst I am satisfied that he misused public resources, I am not satisfied that he did so intentionally”.

- 3.5 In relation to Paragraph (20) of the Code of Conduct (Members further undertake that they should cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member)—“Mr Coe did ultimately co-operate with my investigation”.
- 3.6 In conclusion the Commissioner found that—“In my opinion Mr Coe breached the requirements of diligence in paragraphs (1) of the Code and transparency in paragraph (6)”.
- 3.7 The Commissioner also advised that a referral to the Integrity Commission was not warranted.

4 THE COMMITTEE'S CONSIDERATION OF THE COMMISSIONER'S REPORT

- 4.1 The Committee, in accordance with continuing resolution 5AA, has considered the report of the Commissioner for Standards relating to the alleged inappropriate use of Assembly resources by Mr Coe.
- 4.2 The Committee agrees with the Commissioner's assessment. The Committee, in its discussion of the Commissioner's report (which is attached to this report and on which Mr Coe had the opportunity to comment on) was mindful of possible impacts on Mr Coe or others noted in the report. The Committee discussed the remedies available to it and possible recommendations.
- 4.3 The Committee resolved that the Speaker write to Mr Coe advising of the Committee's intention to publish the Commissioner's report in full, noting that in all previous alleged breaches on the Code, the Commissioner's report had also been published in its entirety. The Speaker wrote to Mr Coe in December 2020.
- 4.4 Further, it was agreed that the staff of Members who were unsuccessful at the October 2020 election be reminded of the availability of the EAP services. The Committee was informed that the Office of the Legislative Assembly contacted all staff who did not get reappointed in the 10th Assembly on this matter.
- 4.5 The Committee noted that the scope of the Commissioner's investigation was constrained in respect to Mr Coe's staff members in that *"it was concerned with any conduct of Mr Coe's staff only insofar as it was relevant to the complaint against him."* Also the employment of these staff members had ceased by the time of the investigation and they were no longer bound by any relevant code of conduct. The Committee notes that during the course of the investigation, the former staff did not return the Commissioner's phone calls and that only two responded to his emails.
- 4.6 The Committee did discuss whether there should be a repayment and has been advised that the amount in question had been repaid.

The Committee, having agreed with the Commissioner's assessment

- (a) recommends an apology by the Member concerned; and
- (b) a reminder to all Members of Section 17 (c) of the Code of Conduct relating to Members' staff.

5 THE COMMITTEE'S RECOMMENDATION

5.1 The Committee, considered the Commissioner's report at its meeting on 7 December 2020 and recommends as follows:

Recommendation 1

5.2 The Committee recommends that, having been found to have breached the requirements of diligence in paragraphs (1) of the Code of Conduct and transparency in paragraph (6):

- (a) Mr Coe be requested to apologise in writing, through the Speaker to the Assembly for his actions; and
- (b) Members be reminded of their obligations as employers, as detailed in Section 17 (c) of Code of Conduct for all Members of the Legislative Assembly for the Australian Capital Territory, that Members personal staff be mindful of the Member's commitment to the Code, and to assist the Member to comply with the Code of Conduct.

Joy Burch MLA

Chair

9 February 2021

APPENDIX A – REPORT OF THE COMMISSIONER FOR STANDARDS

REPORT INTO A COMPLAINT AGAINST MR ALISTAIR COE MLA

Background

1. The Office of the Legislative Assembly's Human Resources and Entitlements team normally extracts records of the number of documents printed and copied in each Member's office at the end of each month. These print and copy counts are then reported to Members to assist them to monitor their use of their Office Support Allocation. However, during periods leading up to Assembly elections, the team adopted a practice of monitoring printing and copying at more regular intervals and reporting any unusually high levels of usage to the Speaker.
2. On 7 October 2020 the Speaker received a report revealing that the print/copy count for the multi-function device in the office of Mr Alistair Coe MLA, then Leader of the Opposition, had increased since Thursday 1 October (spanning just four business days) by 8,674, including 8,600 colour prints. The report compared that usage to the average movement in print/copy counts for all other non-Executive members' offices, which was just 63 over the same period. It also compared the usage over the four business days to the total monthly print/copy counts for Mr Coe's office in the past six months, which increased on average by 3,693/ month.
3. The Speaker immediately wrote to Mr Coe seeking an explanation. On 9 October 2020 she wrote to him again asking for the explanation to be provided as soon as possible and specifically requesting a response by 12 noon on Monday 12 October 2020. There was no reply.

The complaint

4. The complaint was referred to me by the Clerk of the Assembly later that day.

The application of the Code

5. The *Code of Conduct for All Members of the Legislative Assembly for the Australian Capital Territory* (the Code) applies to Members who undertake that the principles expressed in it "shall guide their conduct as Members in all matters." It does not apply to others who may be staff members or supporters of political parties but who have not themselves been elected to the Legislative Assembly. Hence, my investigation was concerned with any conduct of Mr Coe's staff only insofar as it was relevant to the complaint against him.

The investigation

6. I wrote to Mr Coe on 13 October, enclosing copies of the letters and inviting his response. He promptly replied, stating that he was focused on the then imminent election, had a full schedule and did not then have the capacity to interview his staff in order to provide a comprehensive response. He asked whether it would be acceptable for him to provide a response by close of business on Tuesday 20 October. I agreed to this request.

7. Mr Coe wrote to me again on 20 October 2020, stating that:

Further to our earlier correspondence, regrettably it's proving difficult to get to the bottom of this. Most of my staff have cleared-out their offices as they are presently unemployed and in varying states of disappointment. In fact, I too am packing up my office ahead of imminent changes in the Opposition.

I am happy to be guided by you. Whilst I understand my office printing, stationery and IT budget can cover this printing expense, I am happy to personally pay for it.

I would appreciate your advice.

8. It was not, of course, appropriate for me to negotiate any repayment of apparently excessive expenditure, whether knowingly authorised by him or otherwise. In response to his email, I explained that my role was limited to the investigation of complaints concerning possible breaches of the Members' Code of Conduct or the rules relating to the registration or declaration of interests, that I was not required to explore any other issues and that I would not presume to offer advice about them. In an endeavour to get him to engage with this issues, I asked whether he was at least able to assure me that he did not authorise any misuse of such facilities.
9. There was no immediate reply but, in response to a further letter of 3 November, he assured me that "I have not authorised any misuse of the resources." This response was obviously not wholly satisfactory, since it was not accompanied by any explanation for the unusual level of printing during the period in question.
10. I wrote to the Speaker on 10 November seeking further information and, following her prompt reply, wrote to I wrote to Mr Coe again on 16 November, inviting him to provide any further information or any possible explanation for this sudden aberration in the level of printing. I also alerted him to the fact that I would need to contact some of his staff to see whether any of them could cast some light on what occurred.
11. I subsequently left messages for his chief of staff, Mr Kryger, and several other members of his current and former staff asking them to return my calls. None did so.
12. I wrote to Mr Coe again on 19 November, noting that his staff had not returned my calls and that he had not responded to my most recent email. I made the obvious point that, in the absence

of some compelling evidence to the contrary, the extraordinary volume of the printing immediately prior to the recent election suggested that it consisted of political pamphlets and other publications intended for use in his campaign for re-election. I observed that this would clearly have been inappropriate and, depending on the knowledge and understanding of those involved, might have amounted to a fraud on the Assembly. I acknowledged his assurance that he did not personally authorise any misuse of resources but said that I found it difficult to believe that some 8,600 colour-printed documents could have been produced within his office over a period of four days without his knowledge or that of his chief of staff and that he was still unable to offer me a candid explanation for what had occurred. Accordingly, I asked him to answer the following questions:

1. *What was printed?*
 2. *Were some or all of the documents printed for use in political campaigning or for other purposes unrelated to your duties as a Member of the Assembly?*
 3. *Who authorised the printing?*
 4. *Who carried out the printing?*
 5. *When did you first become aware that the printing had been undertaken within your office?*
 6. *Who told you, or confirmed your assumption, that this had occurred?*
 7. *When did you first realise that the cost of at least some of the printing should not have been met by the Assembly?*
 8. *Why did you not respond to the Speaker's letter of 7 October 2020 with a candid explanation of what had occurred?*
 9. *Following receipt of the Speaker's letter, did you make any attempt to ascertain the cost of printing that had been inappropriately met by the Assembly or, prior to your email to me on 20 October 2020, offer to pay for it?*
13. I also advised Mr Coe that the complaint may have raised issues about whether he had complied with various requirements of the Code of Conduct, including the principles stated in paragraphs (1), (2), (6) and (7) and with the undertaking stated in paragraph (20). I invited him to comment on the application of these principles and on any possibility that his conduct may have breached them, even if only by failing to candidly reveal what occurred, and appropriately respond to the inappropriate use of public resources. I sought a response by close of business on Monday, 23 November 2020.

14. Mr Coe rang me on 21 November and explained that he had been on leave for a few days and had just opened my most recent emails. He said that he had been going through a difficult time emotionally, but would do his best to sort out what had occurred and respond to the issues I had raised. During the course of the discussion, he said that he thought there had been other occasions on which comparable levels of printing had been undertaken in his office. He also said that he had terminated the employment of all of his staff but had recently re-engaged a junior member and would ask her to make enquiries for him next week. I indicated that I would wait until Monday, 30 November.
15. I formed the view that he was struggling emotionally and had been ignoring the investigation because he had felt unable to confront the issues raised and their potential implications.
16. After obtaining personal contact details, I sent emails to all of Mr Coe's former members of staff. Only two responded. I made further attempts to contact Mr Coe's former chief of staff but he again failed to return my call.
17. On 27 November Mr Coe wrote to me and to the Speaker in the following terms

I am sorry about the time that has elapsed regarding the printing issue. Much of the campaign remains a haze. As you are aware, I've struggled before and after the election with my mental health which will be the cause of my resignation from the Assembly. I also understand that numerous former members of my staff who are now unemployed are also doing it tough.

Whilst my office has printed similar amounts in the past (for example, July 2018: 10,500; November 2018: 13,000; and, March 2019: 12,000), I take full responsibility for the printing that occurred. As an aside, I understand that double-sided printing counts as two prints. Whilst I had a private/personal/self-funded printer in the office, I am concerned that I sent political printing to the wrong printer (ie the Assembly printer). The printing would've been suburb specific messages. I am sorry for the delay in getting this to you. I am struggling and not thinking particularly clearly at the moment.

Of course, as I have previously indicated I will pay the cost of all the printing in question, be it the 6 cents per colour print that the Assembly usually charges or another rate. I will liaise with the Office of the Legislative Assembly to arrange the payment.

Standard of Proof

18. The Standing Committee is, of course, free to approach the resolution of this matter in any manner it deems appropriate. However, allegations of serious but not criminal misconduct are usually resolved by reference to what is often, if inaccurately, referred to as 'the *Briginshaw v Briginshaw* standard of proof'. As Justice Dixon explained in the High Court decision of that name:

“Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences. Everyone must feel that, when, for instance, the issue is on which of two dates an admitted occurrence took place, a satisfactory conclusion may be reached on materials of a kind that would not satisfy any sound and prudent judgment if the question was whether some act had been done involving grave moral delinquency” (*Briginshaw v Briginshaw* [1938] HCA 34, 60 CLR 336 at 362).

19. I have made my own appraisal of the issues on that basis.

Possible breaches of the Code

20. The complaint raises questions about Mr Coe’s compliance with a number of the provisions of the Code.

(1) *Members should at all times act with integrity, honesty and diligence*

21. It seems overwhelmingly likely that at least a substantial portion of the sudden surge in the level of colour printing in Mr Coe’s office was attributable to the printing of political advertising material for use by Mr Coe and/or his party in the then imminent election. Whilst he still seems to struggle to accept that material of this nature was printed on the printer provided for his use as a Member of the Assembly, he has been unable to suggest any other need for such a level printing.
22. This would obviously have been wholly inappropriate. Indeed, the conscious and deliberate use of resources of the Assembly for such purposes would be “corrupt conduct” as defined in section 9 of the *Integrity Commission Act 2018*.
23. Mr Coe has not denied that the printing in question was carried out by him or at his direction. However, as mentioned earlier, he has assured me that he did not authorise any misuse of the Assembly’s resources. The crucial question is whether he nonetheless intentionally misused the printing facilities provided by the Assembly or whether he made an honest mistake.
24. Mr Coe claims to have suffered from mental health problems and to have had another printer in his office for personal use. In these circumstances, the possibility of error must be considered. The telephone conversation I had with him left me somewhat concerned for his welfare and I am inclined to accept that he has had mental health problems. Whilst I did not have the benefit

of a face to face interview with him and he seemed unable to provide wholly adequate responses, I nonetheless thought that he had answered my questions honestly.

25. In the circumstances, the possibility of error cannot be wholly discounted and I am not satisfied to the requisite standard that he failed to act with due honesty in carrying out the printing.
26. However, it seems inescapable that he did not act with due diligence when his attention was drawn to the increased level of printing by the Speaker. Whilst I have no reason to doubt his statement that his Office had printed large amounts of documents in some earlier months, the printing to which the Speaker referred had occurred during a single week just prior to the election. I accept that he may have had no memory of using the wrong printer. Indeed, during his conversation with me he seemed reluctant to accept that this could have occurred and to have been struggling to imagine some other possible explanation. Nonetheless, the Speaker's letters should obviously have alerted him to at least the likelihood that had used the wrong printer. Despite his preoccupation with the imminent election and any uncertainty about what had occurred, he should have responded to her letters, providing what limited explanation he could and offering to repay the cost of any printing improperly undertaken at the Assembly's expense.
27. In my opinion, his failure to do so constituted a breach of this provision.
28. I accept that his mental health problems may have made it difficult for him to face the issue raised by the Speaker's letters and respond appropriately. I assume that the Standing Committee will take this possibility into account in determining what, if any, action should be taken in relation to the complaint.

(2) 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

29. I am not satisfied that Mr Coe knowingly acted in a manner that contravened this provision.

(6) Members should be transparent in, and accountable for, their decisions and actions and should submit themselves to appropriate scrutiny

30. In my opinion, Mr Coe's failure to respond to the Speaker's letters and to subsequently address the likelihood that he had improperly incurred the expense of printing pamphlets and/or other political documents also involved a breach of the obligation of transparency.

(7) Members should make only proper use of those public resources to which they have access and should do so in a manner designed to make effective, efficient and economic use of those resources.

31. Whilst I am satisfied that he misused public resources, I am not satisfied that he did so intentionally.

Members further undertake that they should ...

(20) Cooperate fully with any official inquiry that may be commenced in connection with their compliance with this Code of Conduct, or that of another Member

32. Mr Coe did ultimately co-operate with my investigation.

Conclusion

33. In my opinion Mr Coe breached the requirements of diligence in paragraphs (1) of the Code and transparency in paragraph (6).

Other matters

34. A draft copy of this report was forwarded to Mr Coe on 1 December and he was invited to make any comments or submissions he thought appropriate. He responded on 3 December, stating that he accepted my findings. He added:

I am sorry for the frustrations that you have experienced undertaking your investigation. The personal challenges brought on by the election are unlike anything else I have experienced. Thank you for your patience.

35. I am not satisfied that referral to the Integrity Commission is warranted.

Ken Crispin QC

Commissioner for Standards

3 December 2020