



Legislative Assembly for the Australian Capital Territory

Standing Committee on Administration
and Procedure

Report on the conduct of Mr Rattenbury MLA and Ms Davidson MLA

Legislative Assembly for the Australian Capital Territory
Standing Committee on Administration and Procedure

Approved for publication

Report 12
10th Assembly
May 2024

About the committee

Establishing resolution

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, the committee shall inquire into and report on the operation of the standing orders and continuing resolutions of the Assembly by the end of the third year of an Assembly term, 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' services and facilities;
 - (B) the operation of the transcription service (*Hansard*);
 - (C) the availability to the public of Assembly documents; and
 - (D) management of the Assembly precincts including Work Health and
 - (iia) develop a guidance note for all Members outlining who is responsible for the various undertakings and activities of the Legislative Assembly, recognising the unique working environment of the Legislative Assembly, within 6 months of the commencement of a new term
 - (iii) arrange the order of private Members' business and Assembly business; and
 - (iv) as required by continuing resolutions of the Assembly, consider, inquire and report on matters relating to citizen's right of reply, claims of parliamentary privilege, reports of the Commissioner for Standards and the Ethics and Integrity Adviser and the implementation of Latimer House Principles.
- (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.

Committee members

Ms Joy Burch MLA, Chair

Ms Nicole Lawder, Deputy Chair

Mr Andrew Braddock MLA

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Terms of Reference

Continuing resolution 5AA

Commissioner for Standards



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

Resolution agreed by the Assembly 31 October 2013 (amended 3 August 2017, 22 August 2019, 10 February 2022 and 31 August 2023)

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.
- (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 they have 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) 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.

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

Continuing resolution 5

Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory

5

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

Resolution agreed by the Assembly

25 August 2005 (amended 16 August 2006, 24 October 2013, 3 August 2017, 30 July 2019, 30 March 2021 and 31 August 2023)

- (A) 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.
- (B) 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 treat each other with courtesy and propriety, 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.
- (C) Consistent with the above principles, Members further undertake that they should:
- (1) Treat all people 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.
 - (2) 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* (Cth);
 - (b) declare their private interests and those of their immediate family and ensure that their declaration is kept up to date, as required by Continuing Resolution 6 (as amended or replaced from time to time); and
 - (c) disclose at a time and in a manner appropriate to the circumstances any 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) and any friendship, relationship or other circumstance which a reasonable observer, informed of that matter, might perceive as giving rise to a conflict of interest with the performance of the Member's duty as a Member.

- (3) Ensure that outside occupational or other pursuits do not unreasonably impact on their duties as a Member.
- (4) 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, and not accept any inappropriate benefit in connection with their activity as a Member.
- (5) 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).
- (6) 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.
- (7) In their capacity as an employer on behalf of the Territory under the *Legislative Assembly (Members' Staff) Act 1989*:
 - (a) seek to promote, and by their conduct reflect, an Assembly workplace that is collegiate, inclusive and diverse and in which health and safety risks are eliminated or minimised;
 - (b) 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);
 - (c) not employ a family member as defined in that Act;
 - (d) ensure that, as far as practicable, their personal staff are aware of the Member's commitment to this Code of Conduct, and the obligations placed on them and the Member to comply with this Code; and
 - (e) not seek to require or encourage their personal staff to engage in any conduct that may amount to a breach of any code of conduct applicable to those staff from time to time.
- (8) In all their dealings with staff of the Assembly, staff of other Members and members of the ACT Public Sector:
 - (a) extend professional courtesy and respect;
 - (b) act consistently with accepted workplace conduct standards; and

- (c) recognise the unique position of impartiality and the obligations of public sector officials, including members of the ACT Public Service.
 - (9) 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.
 - (10) 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.
- (D) Through this Code of Conduct, Members express that they have zero tolerance for bullying, sexual and other harassment, sexual assault and discrimination¹ and pledge that they will not themselves engage in such conduct. Consistently with this, Members undertake that, in the course of their duties and activities as a Member, they will:
- (1) offer and provide support to a person who indicate they were making (or may wish to make) a complaint alleging bullying, sexual and other harassment, sexual assault or discrimination;
 - (2) seek to be sensitive to the needs and feelings of any such complainant and to recognise their possible need for trauma-informed care;
 - (3) as appropriate, seek expert advice and assistance as to the manner in which the Member should act in such circumstances;
 - (4) recognise and respect that it is the right of a complainant as to whether and how they seek and pursue official investigation of their complaint;
 - (5) respect the confidentiality of personal information concerning a complainant;
 - (6) not imply, threaten or take detrimental action against a person because they are, or have indicated that they may become a complainant;
 - (7) not offer any improper inducement to a person to not make, or to withdraw, such a complaint;
 - (8) seek to preserve any evidence that may be relevant to the investigation of such a complaint;
 - (9) fully cooperate with any official inquiry in connection with a complaint; and
 - (10) take appropriate action if they observe another person engaging in bullying, sexual and other harassment, sexual assault or discrimination.
- (E) Within the first six months after an election for the Assembly, the Assembly shall reaffirm its commitment to the principles, obligations and aspirations of this Code of Conduct.

- (F) Where a Member who had not voted on the most recent reaffirmation required under clause (E) is elected to the Assembly, that Member shall, before they make an inaugural speech or otherwise participates in parliamentary processes, affirm that they will abide by this Code of Conduct.

- (G) At the end of each Assembly the Code of Conduct shall be reviewed by a suitably qualified person, appointed by the Speaker, in consultation with the Standing Committee on Administration and Procedure.

1—In this Code "discrimination" means differential treatment of a person based on personal attributes such as gender; family responsibilities, parental status (having or not having children); marital status or relationship status; pregnancy; breastfeeding; sexual orientation; gender identity; religious belief; affiliation or activity; industrial activity; disability (including temporary disability); race; age; association with someone who has one of these attributes; or other attributes unrelated to the person's education, qualifications, experience, capacity or performance.

About this inquiry

Under Continuing Resolution 5 and 5AA, complaints against Members who may have breached the Members Code of Conduct (The Code) can be raised with the Commissioner for Standards, who will determine if an investigation is required, and if so, provide a report of the investigation to the Standing Committee on Administration and Procedure (The Committee).

The Committee, in considering any reports from the Commissioner, is mindful that the Commissioner, while conducting an investigation, may only make determinations and recommendations on the conduct of Members, not their staff regardless of the circumstances.

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Recommendation

Recommendation

That Continuing Resolution 5A—*Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory* be amended by omitting (C) (7) (d) and substituting:

“(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”

1. Introduction

- 1.1. On 7 February 2024, the Commissioner for Standards received a complaint from the Chief Minister, Mr Andrew Barr MLA, concerning the recent report by Ms Lynelle Briggs AO, entitled *Review, Pursuant to Assembly Resolution, Relating to the Handling of Certain Allegations made against a Member*. The review undertaken by Ms Briggs was in response to a resolution of the Assembly of 28 November 2023. Her report was provided to the Speaker at approximately 9:30 am on Tuesday, 6 February 2024, was immediately circulated to all Members, pursuant to the terms of the resolution, and tabled by the Speaker following Question Time that day.
- 1.2. In his correspondence Mr Barr noted that the report raised some issues he felt required further investigation as to whether Mr Shane Rattenbury MLA and Ms Emma Davidson MLA had committed a breach of the Code of Conduct.
- 1.3. The Commissioner had previously received a request for an investigation into the matter on 10 November 2023, which he declined to investigate citing that the person complained about was no longer a member and that the activities involved were not undertaken as part of their role as a member. In addition, the Commissioner was aware that the matter had been referred to the AFP.
- 1.4. The Commissioner commenced an investigation primarily based on the report of Ms Briggs which provided a helpful timeline of events, and provided his report to the Clerk on Friday, 26 April 2024 and was circulated to the Standing Committee on Administration and Procedure on Monday, 29 April 2024.
- 1.5. 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, August 2019, February 2022, 31 August 2023 and 6 February 2024).
- 2.2. The Commissioner received the complaint on 7 February 2024. In light of the review conducted by Ms Briggs, the Commissioner used the timeline of relevant events in her report to form the basis of his report.
- 2.3. The Commissioner provided a draft copy of his report to both Ms Davidson and Mr Rattenbury inviting them to respond, advise of any correction required and any comments they wished to make.
- 2.4. The Commissioner provided his report to the Standing Committee on Administration and Procedure on Monday, 29 April 2024.

3. The Commissioner's findings

- 3.1. The Commissioner recommended that no finding be made that either Ms Davidson or Mr Rattenbury committed any breach of the Code of Conduct.
- 3.2. In considering the Briggs Report and in further discussion with Mr Rattenbury and Ms Davidson in light of the referral for a possible breach of conduct, the Commissioner's findings are summarised as 'there are some obvious grounds for concern about the manner in which this matter was handled.'
- 3.3. The Commissioner noted that he had no reason to doubt Mr Bromley acted in good faith, however the Commissioner thought the course Mr Bromley adopted was inappropriate. He also noted that whilst Mr Rattenbury had no personal contact with the young person, he was leader of the ACT Greens and he clearly assumed the primary responsibility for dealing with the issues raised.

Committee comment

- 3.4. The Committee, in considering any reports from the Commissioner, is mindful that the Commissioner, while investigating this matter may only make determinations and recommendations on the conduct of Members, not their staff regardless of the circumstances.
- 3.5. The Committee also notes the comment by the Commissioner that whilst Mr Rattenbury may have had the power to suspend Mr Davis from the party, he had no power to relieve him of his responsibilities as a Member or to direct him not to return to his Assembly office.

Issue 1—Paragraph (B) (1)

- 3.6. Paragraph (B) (1) of the Code of Conduct states that:
Members should at all times act with integrity, honesty and diligence.
- 3.7. Ms Briggs in her review suggested that Speaker should have been formally advised of the matter sooner. However, the Commissioner believed that the brief delay did not indicate a lack of diligence. The Committee noted ideally where possible, the Speaker be consulted or notified prior to media being the source of information.

Issue 2—Paragraph (B) (2)

- 3.8. Paragraph (B) (2) of the Code of Conduct states that:
Members should act only in the interest of, and with respect for, the people of the Australian Capital Territory and in conformity with all laws applicable in the Territory.
- 3.9. The Commissioner discussed the role of the Greens Chief of Staff in his interviewing and questioning the potential complainant. He noted that neither Mr Rattenbury nor Ms Davidson were present at any of the meetings and that they should have had reasonable expectation that the interviews would be conducted with due sensitivity. Ms Briggs noted the questions asked of the young person by Mr Bromley were "intrusive and predictably distressing" and their purpose was to ascertain the nature of the allegations, not the welfare of the young person. Whilst Ms Briggs was critical of the delay in referring the young person to trauma support services this was not considered by the Commissioner to be a breach of paragraph (B) (2) by Mr Rattenbury or Ms Davidson.

Issue 3—Paragraph (B) (4)

- 3.10. Paragraph (B) (4) of the Code of Conduct states 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.

- 3.11. Despite the Commissioner's criticism of the manner in which the matter was handled, he had no reason to doubt that Ms Davidson and Mr Rattenbury were well motivated in seeking to ascertain the nature of the allegations. He did not discount the obvious political motivations, however, compliance with the principle expressed in Paragraph (B) (4) does not require an absence of political concern it only requires that Members act in a manner that they believe will be in the public interest. In the Commissioner's opinion, the evidence did not reveal a breach of this requirement.

Issue 4—Paragraph (B) (8)

- 3.12. Paragraph (B) (8) of the Code of Conduct states that:

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.

- 3.13. This paragraph relates to the disclosure of the confidential information revealed by the young person and their right to confidentiality. The young person did not consent to the disclosure to the Police. Although Ms Briggs stated such a report to the Police should have happened immediately, the Commissioner considered Paragraph 8.36 of the *Child safety code of conduct and policy* which relates to the reporting of certain complaints to the Australian Federal Police. Being a policy and not a law, he highlighted a potential conflict with the Code of Conduct.
- 3.14. The Commissioner recommended that the Standing Committee decline to make any finding that Mr Rattenbury should be taken to have acted in breach of the requirement on Paragraph (B) (8).

Issue 5—Paragraph (D) (1)

- 3.15. Paragraph (D) (1) of the Code of Conduct states that:

(Members will) offer and provide support to a person who indicate they were making (or may wish to make) a complaint alleging bullying, sexual and other harassment, sexual assault or discrimination.

- 3.16. The obligation of this section of the Code applies only in relation to bullying, sexual and other harassment, sexual assault or discrimination and is focussed on the plight of people who have been a victim of these types of trauma.
- 3.17. This section, as it applies to Members, is limited as neither Member had any contact with the young person. However Ms Davidson, in her initial response to the rumours was to inquire through her staff after their welfare and indicate that they should be put in contact with the relevant resources and or supports.
- 3.18. Mr Rattenbury reported to the Commissioner that he believed that the young person had no complaints about Mr Davis and that he reported the matter to encourage others who may have had unwanted or troubling experiences.
- 3.19. The Commissioner noted that any delay in the offering of support was due to the belief that the young person's relationship with Mr Davis was consensual and legal. However, the Committee notes that in circumstances such as these, particularly where the young person had expressed a desire for the Greens Party to act in a way that facilitated accountability for the actions of Mr Davis, that the offering of support to those affected is good practice.

Issue 6—Paragraph (D) (2)

3.20. Paragraph (D) (2) of the Code of Conduct states that:

(Members will) seek to be sensitive to the needs and feelings of any such complainant and to recognise their possible need for trauma-informed care.

3.21. The issue here relies on the belief by the Members that the young person was not initially making a complaint about bullying, sexual and other harassment, sexual assault or discrimination.

3.22. The Commissioner found that both Mr Rattenbury and Ms Davidson, responded with sensitivity to the young person, however, it could have been handled better.

Issue 7—Paragraph (D) (3)

3.23. Paragraph (D) (3) of the Code of Conduct states that:

Members will, as appropriate, seek expert advice and assistance as to the manner in which the Member should act in such circumstances.

3.24. Whilst the Code suggests that Members seek expert advice, in this circumstance, it is unclear that any such “expert” existed when dealing with rumours of misconduct with unknown people. The Greens Chief of Staff, having sought advice from the Police reasonably assumed it was correct. While the Commissioner comments that no such ‘expert’ may exist, the Committee felt it important to highlight the role of the Ethics and Integrity Advisor and indeed the Clerk in supporting and advising Members. Additionally, the Clerk may have been able to seek confidential legal advice to provide some guidance on how to respond.

Issue 8—Paragraph (D) (4)

3.25. Paragraph (D) (4) of the Code of Conduct states that:

(Members will) recognise and respect that it is the right of a complainant as to whether and how they seek and pursue official investigation of their complaint.

3.26. The Commissioner acknowledged that the confusion that exists between the Crimes Act and Assembly policy led to the rights of the young person being overridden.

3.27. However, while the Commissioner has formed this view, it is important to note no Assembly policy was utilised at the time of handling this matter and rather, the policy was only actioned by the ACT Greens after the media had reported on the issue.

4. The Committee’s consideration of the Commissioner’s report

4.1. The Committee, at its meeting on 2 May 2024 and in accordance with continuing resolution 5AA, considered the report of the Commissioner for Standards relating to complaints against Mr Rattenbury and Ms Davidson relating to the *Review, Pursuant to Assembly Resolution, Relating to the Handling of Certain Allegations made against a Member*.

4.2. The Commissioner found that neither Mr Rattenbury nor Ms Davidson had breached the code of conduct. It did note that the Commissioner stressed that matters should and could have been handled more appropriately.

- 4.3. The Committee encourages all Members to be aware of their responsibilities and obligations as Members and employers.
- 4.4. The Committee, in discussing the Commissioner's report and findings, noted the recent amendments to the Code of Conduct (effective 9 October 2023) specifically relating to the management of complaints alleging bullying, sexual and other harassment, sexual assault or discrimination. The Committee felt that had the Members involved in the original matter undertaken the actions listed in the Code of Conduct promptly, the impact on the individual involved may have been lessened.
- 4.5. The Committee also noted that the issue of Members being responsible for the actions of their staff. This instance has highlighted again that it was the action/s of staff whose 'course of action was inappropriate' has caused much distress and concern.
- 4.6. The actions of the Green's Chief of Staff, while discussed in the Commissioner's report, were not the subject of his analysis of the events. Much was said in both the Brigg's Review and the Commissioner's report on the conduct and actions of Mr Bromley. While the actions of Mr Bromley are discussed in the Commissioner's report and in the Briggs report, the Members Code of Conduct relates to members and not staff. The Committee notes that Members have a responsibility for their staff as PCBUs and as supervisors, and also note staff act under both direction and instructions, and these actions broadly represent their Member.
- 4.7. The Committee is of the strong view that, as it has noted in previous responses to reports of the Commissioner for Standards, Members, as employers are responsible for the actions and activities of their staff. This is not dissimilar to that of Ministerial responsibility for the actions of directorates and agencies.
- 4.8. The Committee is developing a wider response to matters raised in the Briggs Review, comments from the Commissioner for Standards and the Ethics and Integrity Advisor and the Government Solicitor.

Recommendation

That Continuing Resolution 5A—*Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory* be amended by omitting (C) (7) (d) and substituting:

“(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”

Joy Burch MLA

Chair

May 2024

Appendix A: Report of the Commissioner for Standards

COMPLAINT RE MR SHANE RATTENBURY MLA & MS EMMA DAVIDSON MLA

1. On 7 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 Chief Minister noted that the report raised 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 for All Members of the Legislative Assembly for the Australian Capital Territory* (the Code of Conduct).
2. Whilst the Chief Minister did not make any allegations against either Mr Rattenbury or Ms Davidson, I have treated the referral as a complaint and dealt with it in accordance with established procedures.
3. The issues raised by the referral relate to the manner in which Mr Rattenbury and Ms Davidson responded to rumours that another Member of the Assembly, Mr Johnathan Davis MLA, had engaged in sexual contact with younger people and to their responses to one person who was subsequently identified. I will refer to that person simply as “the young person” though he was eighteen years old when his identity was ascertained.

The sequence of events

4. Ms Briggs’ report provides a helpful timeline of the relevant events and for present purposes I have assumed that it provides an accurate and adequate account of the events described. I have quoted some portions in italics and mentioned others in abbreviated form.

Friday 27 October

Evening: A small group of Assembly staffers discussed rumours about Johnathan Davis MLA’s possible sexual contact with people as young as 15-17. That was news to one of the Greens staff members present.

Saturday 28 October

Afternoon: On hearing the rumours for the first time, that Greens staff member spoke in person to Ms Emma Davidson MLA to advise her of possible illegality by Mr Davis. The staff member told Ms Davidson that they had heard rumours that Mr Davis had sex with young men, and possibly with a 15 year old.

Ms Davidson remembers the discussion as being told that “possibly the young person involved was 17 when it happened but is now older, or that there may have been someone aged 15 at some time in the past”. Ms Davidson said that what she heard was “only rumours” of inappropriate sexual contact and “not allegations” and they “were non- specific....without enough detail to know who was involved or whether it needed to be reported to police or other

authorities”.

She told the staff member that if anyone was in contact with a young person who had a traumatic experience, they should know that they can report illegal behaviour to the police, and where to access trauma services. She said that the rumour should be reported to Mr Bromley.

Sunday 29 October

Ms Davidson was concerned about the welfare of the young person/people potentially involved and with that of her close friend, Mr Davis, who had an important position as MLA that he cherished and which he could lose if the rumours were true. She described their relationship to me as very good friends of eight years standing; “he was like my little brother”. Despite this, she told me that she had “no idea what he was doing” in terms of online dating with much younger people.

Ms Davidson told no one else of the rumours. She did not advise Mr Shane Rattenbury or the Government Leader, Mr Andrew Barr, of the rumours, nor did she discuss them with Mr Davis or take the rumours to the police as they were “non-specific” and “unsubstantiated”. Her primary concern in hearing the rumours was to ensure that they were acted upon promptly and that the young person involved whose identity she did not know was informed of the trauma support services and their right to report criminal activity to police. Yet, Ms Davidson did not feel she was in a position to investigate the rumours herself because of her close relationship with Mr Davis and her commitments as a Minister. So, she arranged a meeting for the next business day (Monday) with Mr Guy Bromley, the Greens Executive Chief of Staff.

Mr Bromley holds the highest level of staff authority across all six Greens MLA offices (a practice unique to the Greens) and it is the Greens’ standard practice for him to receive and respond to important issues and complaints, including those regarding Greens Members and their staff. He performs a similar role to that of other chiefs of staff to many party leaders— as a bit of a “fixer”.

5. Ms Briggs’ report records a meeting on the following morning.

Monday 30 October

8.30 am Ms Davidson accompanied the Greens staff member who advised her of the rumours and another Greens staff member also aware of the rumours to meet with Mr Bromley to enable him to hear the rumours and take appropriate action.

During the meeting, the Greens staff member told Mr Bromley about the rumours, namely that Mr Davis was alleged to have slept with people aged under 18 and possibly as young as 15, but that they had no evidence to prove it. This is the first time Mr Bromley had heard the rumours, although he was well aware that Mr Davis was an open and proud “sex positive” gay man on Grindr and other dating apps, “as were others working in the Assembly”.

6. In a subsequent report to the Leader of the ACT Greens, Mr Bromley explained:

“But we could not act on rumour alone. We wanted to ensure that he received natural justice

and that were the rumours to be baseless, he did not have his reputation tarnished or questioned.” Ms Davidson and Mr Bromley advised the two staff members that if they had any information suggesting that illegal activity with people under 16 or non-consensual sex had taken place, they should report it to the police. At this stage, neither staff member considered that they had such information. Nor did Mr Bromley or Ms Davidson. At this point in the meeting, the other Greens staff member declined to have any further involvement.

7. A further meeting occurred later that day.

5.30 pm Mr Bromley and Ms Davidson met and agreed that it was important to preserve any potential evidence and ensure that Mr Davis could hear the not yet substantiated accusations in person before they took the matter to the Greens Party Room. Ms Davidson told me that, rather than her reporting directly to Mr Rattenbury, she intended to take the matter to the Greens Party Room meeting, which was the usual way the Greens do their business—namely, they take decisions collectively.

8. During the next few days Mr Bromley made further enquiries about the rumours.

By the end of the week, it was apparent to Ms Davidson that Mr Bromley’s review had gone nowhere because the young person potentially involved had “not been willing to make an allegation or confirm any facts relating to the rumour”. This meant that they still didn’t have a name, age, when the activity occurred, or what the activity was, which meant that they “still had no way of knowing if this needed a police report, report to the Clerk, or who else it should go to”.

9. Ms Briggs’ report explains that Ms Davidson then took further action to resolve the matter.

Sunday 5 November

6pm: Ms Davidson decided to report the rumour to the Greens Party Room meeting scheduled for the next day as a potential Code of Conduct breach, but she didn’t want to do so without giving Mr Davis a heads up. She raised this with Mr Bromley then texted Mr Davis and asked him to meet her early the next morning on the pretext of catching up.

Monday 6 November

8:15am: Ms Davidson met with Mr Davis and asked him to accompany her to a meeting with Mr Bromley ostensibly to discuss a problem she was having.

8:40am: Mr Bromley, Ms Davidson and Mr Davis met. Mr Davis was told of the rumours in the meeting by Mr Bromley. Mr Bromley and Ms Davidson told Mr Davis to tell Mr Rattenbury, and tell the Greens Party Room at 10am that morning.

9am: Mr Davis told Mr Rattenbury that there had been serious allegations of a sexual nature made against him. He mentioned sexual relations with younger men and made reference to possible minors. Mr Rattenbury asked him if there was any substance to the rumours and asked a number of questions that went to the veracity of the rumours.

Mr Davis assured Mr Rattenbury that he had not done anything illegal and that the Grindr app

he used to pick up people removed that possibility because Grindr only allowed people who were above 18 to use the site. Being unfamiliar with the app and not being familiar with the culture of people using the app, Mr Rattenbury did not think to ask Mr Davis whether younger people breached the rules to get onto the app or what age identification Grindr requires. Nor did he ask Mr Davis for access to his phone; had he done so, he may have seen for himself the nature of the online activities that Mr Davis was rumoured to have been engaged in.

10am: The matter was not raised at the Greens Party Room meeting because it was very sensitive and Mr Rattenbury had been surprised and somewhat taken aback by the allegations and wanted to think about how to handle the situation.

Over the course of the day: Between commitments, Mr Rattenbury had short conversations with Ms Davidson and Mr Bromley, and it was apparent to him that there were different versions and emphases between them and Mr Davis about the matter, and that Ms Davidson and Mr Bromley had different perspectives. Their account was significantly more concerning than the account given to him by Mr Davis.

However, like the others, Mr Rattenbury was afraid that there was no clarity as to whether or not illegal activities had occurred and insufficient information to enable him to act against Mr Davis. "At first flush it appeared from what Mr Davis had said that it didn't involve criminal conduct, but I wanted it looked at more closely." The significant discrepancy in their accounts and the potentially serious nature of the rumours relayed to him by Ms Davidson and Mr Bromley was the basis for his decision to have an internal review.

Shortly thereafter, Mr Rattenbury asked Mr Bromley to conduct an internal review to "find out what we were dealing with" and "do it quickly". In particular, Mr Rattenbury asked for clarity about the accusations and that the review be concluded urgently, within four days (namely by cob Friday 10 November). He said that legal issues needed to be checked with officials as relevant.

Mr Rattenbury's involvement and decision to undertake the internal review facilitated staff action to locate young people who might be prepared to speak to Mr Bromley.

10. A Greens staff member subsequently approached the young person who was initially very apprehensive about a meeting but was eventually willing to speak to Mr Bromley on the basis that his identity, photographs and other identifying material would be kept private and not be provided to the police under any circumstances.
11. The young person met with Mr Bromley at 2.30 pm on Tuesday 7 November at a university venue suggested by the staff member who was also present to support the young person. Ms Briggs described the meeting in the following terms:

Mr Bromley thanked the young complainant for coming forward and provided the assurances the complainant sought about the protection of his privacy and that his story and identity would not be provided to the police to avoid a police interrogation or public investigation per the complainant's wishes. The complainant explained to Mr Bromley that in agreeing to come forward, he wanted to see an internal review or external investigation (not involving the police), with consideration being given to whether Mr Davis's actions were an abuse of power.

The complainant provided Mr Bromley with a lot of information and evidence about his consensual encounters with Mr Davis while he was 16 and 17 (although Mr Bromley recalls mention of age 17 only). These encounters were arranged on a number of apps—Tinder, Snapchat, text messages, Grindr, Instagram, Hinge, Twitter. He said that Mr Davis knew he was under 18 and that he persistently pursued him for sex and that he solicited nude photos from him. He alleged that Mr Davis had had sexual relations with other young men arranged through various platforms and other means; some under 16. The allegations were of a very serious nature.

12. Ms Briggs' reported that during the course of the meeting the young person became increasingly concerned about the public nature of the place where they were sitting, which was very close to other students on nearby tables, and about "very vulnerable questions" he was asked. He felt that Mr Bromley had been abrasive and said that he had been traumatised. Mr Bromley explained that he had thought the young person had chosen the meeting place, that he had wanted to ask clarifying questions and obtain detail about what had occurred and that this information had been readily provided. He acknowledged that there had been a power difference at the meeting and said that he tried to keep the tone reasonable, asking open questions and doing so calmly, though he accepted that he had asked a lot of the young person in pursuit of information. The other Greens staff member at the meeting did not regard Mr Bromley's approach as abrasive, but agreed that the young person had felt intimidated. Despite his concerns, the young person agreed to keep in touch with Mr Bromley and they liaised with each other over the course of the next few days.
13. Ms Briggs' report provides a detailed account of the events that followed, though I will cite only those relevant to my own investigation.

Wednesday 8 November

Mr Bromley provided Mr Rattenbury with an update on the meeting with the complainant, but omitted personal identification details, as requested by the complainant. By this time, the story was starting to emerge, but neither was ready to make a judgement.

Thursday 9 November

Early afternoon: The Greens Party Room (absent Ms Davidson who was in Perth) was briefed on the nature of the allegations, the steps taken, the information gathered to that point, and the intended timeline and approach once Mr Bromley had completed his report. The Greens Party Room did not direct Mr Bromley to advise the police.

3pm: Staff meeting between Mr Rattenbury, Mr Bromley and Greens staff members with some knowledge of the rumours and allegations, including Mr Davis's staff who were concerned about his welfare and the nature of the allegations. In a challenging and somewhat mismanaged conversation, Mr Bromley and Mr Rattenbury were reluctant to pass judgement based on Mr Davis's positive sexuality and referenced the range of sexual behaviour that people engaged in. Outraged, the Greens staff present expressed frustration

and asked “why isn’t he gone already”; telling Mr Rattenbury to sack Mr Davis. Neither Mr Rattenbury nor Mr Bromley responded in the meeting in the affirmative to the staff members’ pleas, but their depth of feeling left a deep impression on Mr Rattenbury.

Mr Rattenbury was told after the meeting by a staff member that some of the Green’s staff had known for about six months that there were allegations circulating at the ANU about Mr Davis’s interest in very young men, and that they (incorrectly) thought that Mr Rattenbury and Mr Bromley would’ve also been aware of the allegations.

After the meeting: Mr Rattenbury and Mr Bromley considered the situation. Mr Bromley was concerned about fair process and possible defamation, and suggested to Mr Rattenbury that Mr Davis should stand down while he sought the facts and finalized his review.

While having been concerned previously that there needed to be due process, Mr Rattenbury was now convinced that Mr Davis needed to stand down, except that Mr Davis was an elected representative and the channels to enable a stand down were unclear. Mr Rattenbury decided to use what he described euphemistically as “his reserve powers as leader”, which would enable him to assert his moral authority and get Mr Davis to stand down that evening. Mr Rattenbury said that would mean that Mr Davis would have no MLA responsibilities, no public duties and not return to his Assembly office until further notice.

8pm: Mr Rattenbury and Mr Bromley visited Mr Davis with the intention that he be relieved of his duties until further notice. They sought information from Mr Davis about the allegations, but didn’t receive it. Mr Davis’s mental health and personal safety were a concern, but it was clear to them that Mr Davis understood the gravity of the situation.

Mr Rattenbury told Mr Davis that “he was being stood down, the effect of which was that Mr Davis should continue to stay away from the Assembly and not undertake any duties in his role as a Greens MLA”. He agreed.

9:25pm: The Canberra Times contacted the Greens Communications Directors in Mr Rattenbury’s office and asked for comment on a story about Mr Davis. They immediately called Mr Rattenbury, which was just as he and Mr Bromley were leaving Mr Davis’s home, so Mr Davis was then aware that the media had been informed.

9:45pm: Phone hookup between Mr Rattenbury, Mr Bromley and two advisers from Mr Rattenbury’s office who were then appraised in some detail of the situation they were dealing with. They discussed what was to be done.

...

A Greens Party Room meeting was organized for the next day that was to also include the two Communications Directors.

...

They considered who was to be told, including the Chief Minister, the Speaker and the Clerk of the Assembly, but it was already late at night, so they decided to contact them the next day.

Friday 10 November

7:15-7:30am: Mr Bromley reported to the Chief Minister's Office as part of the Parliamentary and Governing Agreement "no surprises" policy and provided a broad overview of what was alleged. In the conversation between Mr Bromley and Chief Minister's Chief of Staff, Mr Bromley told them that he intended to make a report to the police about the allegations that morning. This conversation triggered a number of calls between the Chief Minister's Chief of Staff, the soon to be Acting Chief Minister's Chief of Staff, the Acting Chief Minister and Mr Bromley.

7:35am: Mr Rattenbury texted the Chief Minister, Mr Andrew Barr MLA, who was commencing leave, seeking a suitable time for a conversation.

8:15am: The Chief Minister called Mr Rattenbury and was advised formally of the situation by Mr Rattenbury in line with his obligations under the Parliamentary and Governing Agreement. The Chief Minister received the news calmly, noted what was being done to manage the situation, and did not direct Mr Rattenbury as to how it should be handled.

8am: While all of this was going on and in line with an agreement reached with Mr Rattenbury the night before, Mr Bromley returned to Mr Davis's house for a welfare check and to ensure that he got to the doctor and had the support he needed in view of the press coverage anticipated that day.

Simultaneously at 8am: The Greens Party Room met and agreed that Mr Rattenbury's advice that Mr Davis should "stand down" from his MLA duties was appropriate, which in effect meant that he would not engage in any public duties and not return to his office until further notice. They directed that the rumours and now allegations should be reported to the police. The Greens Party Room also committed to fulfilling all their reporting requirements as swiftly as possible.

10-10:50 am: Mr Bromley did not attend the Party Room meeting and went to see ACT Policing to report the young complainant's allegations because he was concerned about the content of the information, that he did not feel capable to appropriately investigate the allegations, and there was a possibility that something might come out subsequently about illegal activity, so he wanted these particular allegations to be on the police record.

10-10:50 am: Mr Bromley went to see ACT Policing to report the young complainant's allegations.

10:04 am: The Director of the Government Communications Unit was provided with a copy of the ACT Greens Statement that they provided to the media that morning. That statement said:

"A number of complaints were brought to my attention at the beginning of the week. I immediately asked a member of my senior staff to investigate these complaints, and I have stood Johnathan down indefinitely while that work continues.

We do not have any evidence of illegal activity, but if there has been I encourage those

people to contact the police.

Out of respect for the privacy of everyone involved in this matter, I will not be commenting any further at this time.”

14. Mr Bromley sent the young person a text message at 10:17 am whilst waiting at the police station, but he did not immediately receive the message due to an inability to use the phone whilst working. When he later returned missed telephone calls from an unfamiliar number he was alarmed to find that he was speaking to a police officer who was responding to the report from Mr Bromley. The young person told them that he had not asked for this and hung up. Hours later, he received another call from a different police officer. He told that officer that he had not wanted a report to be made to the police and asked for it to be removed from their files along with any personal information that Mr Bromley may have provided contrary to his wishes. He asked how much of his information was on the police system, but the officer refused to tell him unless he came into the station. He declined to do so and asked that he not be further contacted by police.
15. At 10.58 am the Greens Whip, Mr Andrew Braddock MLA, wrote to the Clerk of the Assembly advising him that the Greens Party Room had decided that the allegations against Mr Davis should be referred to the Commissioner for Standards and the Clerk immediately did so.
16. I responded later that day, indicating that I had declined to investigate the allegations against Mr Davis for two reasons. First, my role is limited to the investigation of actions undertaken by people as Members of the Assembly. That is clear from Continuing Resolution 5AA, paragraph 5 of which refers to complaints “about a Member’s compliance with the Members’ Code of Conduct or the rules relating to the registration or declaration of interests.” The Code of Conduct states: “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” (emphasis added). 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 AFP and I thought it would be inappropriate for me to initiate a parallel investigation, even if 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 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.
17. At 11:20 am: Text messages were exchanged between the Speaker and Mr Braddock about a Canberra Times article that had been published at 10.27 am.
18. On 13 November the Greens made a formal report to the Speaker as required by paragraph 8.35 of the *Child Safety code of conduct and policy*.

19. Ms Davidson and Mr Davis remained in contact as they were friends and she was worried about him. She suggested that he should ensure that he had friends and family around him and should consider his options “post being an MLA should it come to that.”
20. Ms Briggs noted that throughout the review she conducted there had been conjecture that the Greens leadership should have been aware of Mr Davis’s potentially illegal engagement with young men because it was common knowledge at the ANU and among Assembly staff and because “other political parties had prepared draft press releases in preparation for his fall.” However, she was unable to find any evidence that his alleged activities with young people aged under 18 were known by senior leaders of any political party and was assured that draft press releases had not been prepared by either the Labor or the Opposition parties.

Grounds for concern

21. There are some obvious grounds for concern about the manner in which this matter was handled.
22. The advice Ms Davison gave to the staff members who told her of the rumours was entirely appropriate.
23. Her decision to refer the rumours to Mr Bromley was understandable. She explained that she had been apparently concerned about the welfare of any young person who may have been involved in a sexual relationship with Mr Davis. She had thought that there was a need to discover whether there was any credible basis for the rumours and to ensure that any young victims who could be identified were informed of the trauma support services available to them and of their right to report any criminal conduct to police. However, she correctly recognised the potential conflict of interest created by her friendship with Mr Davis and apparently saw the Greens Chief of Staff as an appropriate person to make enquiries.
24. Opinions may differ as to whether she should have immediately informed the police of the rumours that Mr Davis may have had a sexual relationship a person, “possibly as young as 15.” The legal obligation imposed by 66AA of the *Crimes Act* to report relevant information to the police arises applies only when a person “obtains information that leads to the person reasonably believing that a sexual offence has been committed against a child.” There is nothing in the factual history recounted in Ms Briggs’ report to suggest that Ms Davidson had then formed a belief that an offence had actually been committed and the unverified rumour of Mr Davis having had sex “possibly with a 15 year old” would not have provided a reasonable basis for such an affirmative belief. Of course, it will usually be appropriate for a Member to report possible criminal conduct even in the absence of legal compulsion, but it is unclear whether such a report would have had any practical utility. Ms Briggs notes that ACT Policing adhered to a “victim centric approach” for sexual assault allegations, which means that the onus is on a victim to report the matter directly to the police or to seek support services such as the Canberra Rape Crisis Centre. Police resources are often overstretched and officers may have little time to pursue rumours, especially when they suggest only a possibility that an offence might have occurred.

25. Other ethical issues may also arise when the conduct is of a sexual nature, it has been revealed that the apparent victims are adults and they are opposed to having the matters reported. The AFP the policy may reflect concern that victims of sexual offences are emotionally vulnerable and that many find police interviews and judicial processes traumatising. Whilst there is no other legally permissible option when the apparent victim is still a child, there is a strong view that victims should generally be free to decide whether to bear the emotional cost of participating in such proceedings.
26. As Ms Briggs correctly noted, a complaint about an MLA in relation to their conduct towards a child or young person must be referred to the Speaker, but this requirement and others specified in paragraphs 8.31 to 8.37 of the *Child safety code of conduct and policy* apply only to actual complaints and at the time of Ms Davidson's involvement here had been no complaint, only rumours of misconduct with unknown people.
27. Ms Briggs nonetheless suggests that Ms Davidson "should have taken advice and reported what she had heard to Mr Rattenbury and to the Chief Minister as a basis for possible reporting to the police and the Speaker, as the rumours potentially involved a 15 year old." Whilst it may have been prudent for Ms Davidson to have informed Mr Rattenbury and the Chief Minister when she first heard of the rumours, there is nothing in the Code of Conduct that required her to do so.
28. It is also unclear why Ms Briggs thought that this may have formed a basis for reporting the matter to the police and/or the speaker. Members should recognise that they are personally responsible for compliance with any reporting obligations and they are not absolved from any such responsibility by informing or taking advice from the leader of their party, the chief Minister or other senior ministers. In the present case, the reporting obligations did not require Ms Davidson to inform either the police or the Speaker of the rumours and, in my opinion, her decision to wait until some enquiries had been pursued and she could make a more informed judgment about the need to make a report was not unreasonable. In any event, I am not required to make any judgment about the wisdom of her responses to the difficult situation in which she was placed; I am concerned only with whether they involved one or more breaches of the Code.
29. Irrespective of any consideration of whether the police should have been informed, there was an obvious need for at least some enquiries to enable the Greens to make some assessment of the reliability of the rumours, if only to permit decisions to be made about Mr Davis' continued standing within the party and whether any restrictions should be placed upon his participation in party events or activities that might involve contact with children or young people. It was also appropriate to inform him of the rumours and permit him to respond to them. I agree with Ms Briggs that the safety of young people should always have priority over other considerations, but this does not mean that other considerations should be wholly ignored.
30. Protection of an alleged victim and fairness to a person against whom an allegation has been made should not be seen as alternatives, though in this instance it should have been recognised that the scope for an effective adjudication of the issues was limited by the need to refrain from

interviewing the young person about what had occurred.

31. Mr Rattenbury apparently became aware of the allegations only when informed of them by Mr Davis on 6 November 2023. Mr Rattenbury saw the rumours and allegations against Mr Davis as “our problem, that we needed to think about and deal with because we are the people first and primarily with responsibility for it”. Whilst Mr Davis assured him that he had not done anything illegal, Mr Rattenbury asked Mr Bromley to conduct an internal review to obtain “clarity about the accusations.” Mr Rattenbury told Ms Briggs that he had not thought about the policies or procedures relating to complaints of sexual misconduct with children but in the circumstances he faced saw the rumours and allegations as a matter for the party to manage. Her report does not explain whether that was simply an initial response to hearing of the rumours or whether it was an attitude that was maintained after the identity of the young person had been ascertained.
32. In his response to an earlier draft of this report, Mr Rattenbury stressed that prior to the meeting of 7 November with the young person there had been no reason to believe he was making or may have wished to make a complaint. When contacted, he had indicated that he did not regard himself as a victim and that his contact with Mr Davis had been consensual. Mr Rattenbury said that from the moment he became aware there was a specific person who was willing to speak about his knowledge of Mr Davis’ conduct, he sought to be sensitive to his needs and feelings by taking the information he provided seriously. He also said that he was strongly attuned to the possible need to provide trauma-informed care, whilst respecting the young person’s acknowledgement that the relationship with Mr Davis had been consensual.
33. I have no reason to doubt that Mr Bromley acted in good faith. He was given a difficult task, apparently with little guidance as to how he should proceed and could reasonably have assumed that the only way he could clarify the nature of any allegations against Mr Davis was by interviewing the young person. I also note that Mr Bromley told Ms Briggs that he had put a great deal of thought and consultation into his engagements with the young person, and that he progressed his investigation as sensitively as possible with reference to trauma-informed principles and using knowledge acquired through his volunteering work “at Lifeline and in the UK’s Nightline”. Nonetheless, I think the course he adopted was inappropriate in the following respects.
 - In my view, if he met with the young person, it should only have been only for the purpose of ensuring that he was advised of available support services and of his right to report any relevant matters to the police.
 - He should not have given the young person any undertaking that neither his identity nor the events that he described would not be disclosed to the police.
 - He should not have questioned the young person about sexual activity with Mr Davis. The venue was inappropriate and, whilst he presumably intended to cause no offence, some of his questions caused the young person significant distress. Any such questioning should have been left to police officers trained to deal with such matters effectively and sensitively.
 - When he decided to report the young person’s identity and disclosures to the police in breach of the undertaking, he should first have contacted him, apologised and explained

why he felt obliged to do so. The young person should not have been exposed to the risk of being surprised by a phone call from the police.

34. In my opinion, the young person's indication that he wanted an internal review or external investigation was clearly a complaint, albeit one he did not want communicated to the police. This was recognised Mr Rattenbury, if not at the debriefing with Mr Bromley that occurred on the afternoon of the meeting at least within a few days. In his response to my draft report he said that:

By the time Mr Bromley's report to me was finalised on Friday 10 November, it was clear, particularly from that day's media reporting, that the 18-year-old no longer viewed his engagement with Mr Davis in positive terms. At that point my office also considered this person to be a complainant, as reflected in the text of the report Mr Bromley provided to me, in our decision to make a report to police, and in our direct communication of available support services to the 18-year-old, sent by Mr Bromley via text message that morning.

35. He also explained that, in finalising his report to him, Mr Bromley wanted to ensure that the young person was referred to as a complainant, despite his insistence at the meeting of November 7 that he was not making a complaint.
36. Ms Briggs concluded that the Greens did not wilfully and improperly withheld information from the authorities, but rather that they were surprised by the rumours and decided to investigate them to see if there was any evidence of potential criminality that might warrant reporting. I have no reason to doubt that conclusion.
37. The mistakes that were made in this matter do not seem to have reflected a general lack of ethical responsibility for the welfare of the young person, but differences of opinion and some uncertainty as to how to proceed.
38. There also seems to have been a widespread failure to understand the reporting requirements that arise in relation to possible offences against children. Even Ms Briggs' careful report seems to reflect some confusion. She correctly states that 66AA of the *Crimes Act* specifies that any adult who "reasonably believes" that a sexual offence has been committed against a child is required to make a report to the police, but suggests that a child is "someone aged 0-15 years." In fact, the dictionary to the Act relevantly defines the word "child" to mean "a person who has not attained the age of 18 years." The confusion may be understandable because 16 is the age of consent. However, there are some offences that relate to older children. Ms Briggs elsewhere acknowledges this, suggesting that police possible criminal activity of a sexual nature against a person under 16 and illegal message exchanges under 18 should be reported. I mention this only because section 66AA imposes an important obligation, breach of which is punishable by a maximum penalty of 2 years imprisonment, and it needs to be clearly understood by Members and staff.
39. After noting that Mr Bromley had said he had subsequently received advice from the ACT Government Solicitor that he had not had a mandatory reporting obligation, Ms Briggs said:

I assume that this advice from the Government Solicitor was based on the age (over 16) of the young complainant at the time he had sexual relations with Mr Davis and not about the exchange between the ages of 16 and 17 of sexually explicit device content.

I note that ACT Policing in an email to Mr Bromley advised him that “mandatory reporting obligations for sexual offending only relates to children, not adults as per s66AA Crimes Act 1900”. There is therefore evident confusion about what is illegal and what is not because different parameters can come into play with different cases or issues.

40. In view of this apparent confusion, I should perhaps explain that the legal effect of section 66AA is actually clear. Any reasonable belief that a sexual offence has been committed against a child, that is a person under 18, must be reported. Consensual sexual conduct with a child of 16 or 17 is generally not an offence, but the term “sexual offence” refers to any offence under part 3 of the Act, including the use, publication or possession of child exploitation material (sections 64(3), 64A and 65) and these offences apply to the exploitation of children under 18. Hence, they must be reported even if the child is between 16 and 18 years of age. However, subsection (2) provides, in effect, that the reporting obligation does not apply if a person obtains the relevant information when the alleged victim is no longer a child and reasonably believes the alleged victim does not want a police officer to be told about the belief. Since the young person was over 18 when interviewed and plainly did not want any of his disclosures reported to the police, it seems clear that this exception applied. That is presumably why the ACT Government Solicitor advised Mr Bromley that he had had no legal obligation to report any belief he may have formed as to whether a relevant offence had been committed
41. I should also mention my view that, whilst Mr Rattenbury may have had power to suspend Mr Davis from the party, he had no power to relieve him of his responsibilities as a Member or to direct him not to return to his Assembly offices.

The application of the Code of Conduct

42. Whilst Ms Briggs was concerned with what more could have been done in response to the young persons’ approach to the Greens, my own role is more limited. I am concerned only with questions of whether two Members should be taken to have acted unethically by breaching particular requirements of the Code of Conduct. Their conduct must, of course, be considered in the context of their own knowledge and perceptions at the relevant times, not by reference to the knowledge of Mr Bromley or other members of the Greens or perceptions later formed by Ms Briggs in the light of an extensive and considered investigation.
43. The Code of Conduct does not address the manner in which Members should respond to rumours concerning the conduct of political colleagues unrelated to their roles as Members, but there are a number of principles that may be considered.

Paragraph (B)(1)

Members should at all times act with integrity, honesty and diligence.

44. Ms Briggs suggested that there failure to formally advise the Speaker of the complaint until 13 November, though she acknowledges that there had been an exchange of text messages between Mr Braddock and the Speaker after the first Canberra Times article appeared on 10 November.
45. Mr Rattenbury does not seem to have clearly understood that the young person had made a complaint until then and, whilst paragraph 8.35 requires that a complaint be referred to the Speaker, it does not require that this be done by the provision of a formal report. I think the Speaker should have been informed earlier, preferably by Mr Rattenbury, but I do not believe that any relatively brief delay reflected a lack of diligence involving a breach of the requirement expressed in this paragraph.

Paragraph (B) (2)

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

46. The manner in which the interview was conducted by Mr Bromley suggests that he was primarily concerned with ascertaining the nature of the allegations against Mr Davis rather than with the welfare of the young person. Whilst I do not doubt that he tried to conduct the interview sensitively, the questions he asked were intrusive and predictably distressing. Of course, neither Ms Davidson nor Mr Rattenbury were present at the interview and the Code of Conduct does not impose vicarious ethical responsibility on Members for actions taken by staff that they neither authorised nor expected.
47. Ms Davidson was in Perth on Ministerial business between 8 and 10 November and had no role in authorising Mr Bromley to undertake the review or, apparently, in responding to what was revealed by it. Her earlier response to learning of the rumours plainly reflected due concern for the welfare of any young person who might be identified.
48. There is no reason to suppose that Mr Rattenbury should have anticipated that the interview with the young person would be conducted without due sensitivity. Furthermore, the duty expressed in paragraph (B)(2) of the Code requires that Members act not only in the interests of individuals but also in the interests of the people of the Territory general and it is at least arguable that the quest for truth was in their interests. As suggested earlier, there was a need for the Greens to make decisions about Mr Davis' continued standing within the party and whether any restrictions should be placed upon his participation in party events or activities involving contact with children or young people. A review might have revealed continuing conduct that needed to be addressed urgently and even offences subject to reporting requirements
49. Whilst, as mentioned earlier, opinions may differ as to whether the rumours should have been immediately reported to the police, there is no reason to doubt that the approach taken by Ms Davidson in first attempting to discover whether there was a factual basis for them was intended to be in the interests of the people of the Territory.
50. Ms Briggs was critical of some aspects of the Greens' responses to the young person such as

the delay in referring him to trauma support services, but whatever failings may have occurred do not, in my opinion, demonstrate that either Ms Davidson or Mr Rattenbury failed to act in the accordance with the principles expressed in paragraph (B)(2).

Paragraph (B)(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.

51. Despite my criticisms of the manner in which this matter was handled, I have no reason to doubt that Ms Davidson and Mr Rattenbury were well motivated in seeking to ascertain the nature of the allegations. Of course, I do not discount the obvious political motivations. The Greens needed to know whether there was likely to be a scandal that would have an adverse effect on the party's standing and whether they needed to take decisive action to forestall it. However, compliance with the principle expressed in paragraph (b)(4) does not require an absence of political concern, it requires only that Members act in a manner that they believe will be in the public interest. In my opinion, the evidence does not reveal a breach of this requirement.

Paragraph(B)(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.

52. The information revealed by the young person was clearly confidential. In indicating that he wanted some form of inquiry, he may be taken to have permitted disclosure for that purpose, but that does not mean that his right to confidentiality was otherwise waived. He clearly did not consent to the disclosure to the police and it was not required by section 66AA or any other law.
53. Paragraph 8.36 of the *Child safety code of conduct and policy* then provided that where a complaint relates to a matter that is potentially criminal in nature, it must be reported to the Australian Federal Police. At face value, this appeared to require that any complaints made by adults who were victims of inappropriate conduct when children must be reported to the police even against their will. However, since a policy is not a law there was a potential for conflict between the operation of this provisions and the requirement of confidentiality in paragraph (B)(8) of the Code of Conduct.
54. Whilst Ms Davidson presumably took no part in the decision to report the matter to the police, Mr Rattenbury clearly acquiesced in that decision. He has explained that, following his advice, Mr Bromley asked the police officer to consult with the officer in charge about whether Mr Bromley was legally obligated to provide the information disclosed by the young person when he had expressly asked that it not be shared with police. The police told Mr Bromley he was obligated to share the 18-year-old's information and Mr Bromley accepted he was legally required to do so. It would have been preferable for legal advice to have been obtained, but the decision to seek advice from a senior police officer about obligations to report matters to the police was not unreasonable. Furthermore, the view expressed seems to

have been commonly held.

55. Even with the benefit of hindsight, Ms Briggs thought that the Greens should have reported the matter to the police. Her only criticism of this action was that it had been too late. She explained her view in the following statement:

There is no easy answer to the police reporting and handling conundrum. However, the proper and respectful way forward will always be to report to the police possible criminal activity of a sexual nature against a person under 16 and illegal message exchanges under 18, and to inform the young person that their health and safety is paramount in making the report, then to ensure that arrangements are made to support them through the police and judicial process if it comes to that.

56. I do not agree that the expressed will of a person who is an adult should be overridden when earlier sexual activity is reported that would have constituted an offence when it occurred. On the contrary, I think Members are bound by the principle expressed in paragraph (B)(8) to respect the dignity and privacy of a person revealing such conduct and refrain from disclosing it except with consent or as required by law.
57. Since the young person plainly did not consent to the disclosure and it was not required by section 66AA, there was at least a technical failure to comply with this requirement. The crucial question is whether there should be a finding that suggests unethical conduct when the relevant act was actually undertaken in good faith and in reliance upon advice from the police that it was required by a statutory provision with criminal sanctions for non-compliance. In appropriate circumstances, courts may decline to convict a person even when an offence has clearly occurred. It has long been recognised that ethical principles may be applied with greater flexibility than the provisions of criminal statutes and in my opinion a similar approach should be adopted in the circumstances.
58. I recommend that the Standing Committee decline to make any finding that Mr Rattenbury should be taken to have acted in breach of the requirement in paragraph (B)(8).
59. Similar considerations arise in relation to the requirements for confidentiality in paragraph (C)(6) and paragraph (D)(5) of the Code of Conduct.

Paragraph (D)(1)

(Members will) offer and provide support to a person who indicate they were making (or may wish to make) a complaint alleging bullying, sexual and other harassment, sexual assault or discrimination.

60. It is not clear whether the requirements expressed in this paragraph applied in the circumstances known to either Ms Davidson or Mr Rattenbury. The obligation recognised in paragraph (D)(1) applies only in relation to complaints or potential complaints alleging “bullying, sexual and other harassment, sexual assault or discrimination.” A complaint about a consensual sexual relationship with a person who has reached the age of consent would not fall

within this description.

61. Since the obtaining of sexual explicit photos of a child under 18 years of age would not necessarily involve bullying, harassment, assault or discrimination, it is not clear that the requirements expressed in this paragraph would apply, though I would be inclined to interpret the paragraph liberally and accept that they apply to any criminal offence of a sexual nature involving children. However, it is also unclear whether the conduct described by the young person involved any such an offence. He said merely that Mr Davis had solicited nude photos from him. Since he was only 16 or 17 years old when this occurred the receipt of such photos may have involved an offence such as possessing child exploitation material (see section 65 of the Crimes Act 1900), but the police would need to see the photographs and interview the young person to determine whether there is adequate evidence that any offences were committed.
62. Furthermore, it is not clear that Mr Rattenbury knew of this allegation at the relevant times. Ms Briggs report seems to suggest that the young person told Mr Bromley during the meeting on 7 November, but there is no detailed account of the meeting and, in recounting what was said, she interpolated at least some statements that were clearly made when she interviewed the young person during the course of her investigation. On the other hand, Mr Rattenbury maintains that an allegation of illegal image sharing was not immediately clear in the information provided to Mr Bromley. I am unable to resolve the apparent conflict of recollections and perceptions without interviewing the young person and in all the circumstances I think this would be inappropriate even if I knew his identity. Furthermore, Mr Rattenbury was not at the meeting and it would have been Mr Bromley's memories and perceptions that were conveyed to him in subsequent conversations. Mr Bromley did not then reveal the young person's identity and his report that was not finalised until 10 November.
63. The young person told Ms Briggs said that his motivation in agreeing to the meeting had been to stop any potential misuse of power by Mr Davis, who he described as "very persistent" and "using coercive behaviour." These comments suggest harassment, but they were introduced by the somewhat curious phrase, "as he later retold it to me". I am not sure whether this was intended to imply that the young person had claimed to have previously told Mr Bromley the same thing and, if this was intended, whether she had some reservation about the accuracy of his memory of having done so. In any event, it is not clear that any statements to that effect were reported to Mr Rattenbury.
64. Of course, the demands of compassion should not be constrained by perceptions about the limited scope of ethical rules that have been drawn, however carefully, with a particular focus in mind. Paragraph (D)(1) is obviously focussed on the plight of people who have been victims of particular forms of conduct known to cause significant trauma and to require special sensitivity and care. Such ethical statements serve important purposes but, as Sir Gerard Brennan once said, ethics can never be wholly reduced to rules. Trauma can be caused in many ways and the dictates of compassion may require responses that extend beyond those required by even the most perceptively drafted statements of principle. Whatever the nature of his relationship with Mr Davis and the legal implications of the acts he reported, the young person was obviously apprehensive about contacting the Greens and distressed by what had occurred. He needed to be treated sensitively and to be given advice about the availability of appropriate

support.

65. However, my role is limited to considering whether there have been breaches of the Code of Conduct and for the reasons stated above, I am unable to be wholly satisfied that requirements in paragraph (D)(1) of the Code of Conduct applied in the circumstances known to either Ms Davidson or Mr Rattenbury. Nonetheless, despite my doubts as to its applicability, I have taken the view that I should provide a brief account of their responses to the young person in the light of the principles articulated in this paragraph, rather than risk leaving a perhaps unfair impression that either may have avoided accountability due to what may seem to be a technicality.
66. In my opinion, the principles expressed in this paragraph and others in section (D) of the Code of Conduct must be taken to apply to Members interacting with a complainant or potential complainant and to Members who have assumed the primary responsibility for dealing with a complaint. It will obviously require Members to respond courteously and with due sensitivity, having regard to the nature of the allegations made, the emotional impact the reported actions may have had on the complainant and the stress of reporting them. In some cases it will require a Member to refer complainants to police and/or relevant support services. However, the necessary personal involvement of Members will obviously depend upon the circumstances and responses already made by others. Members should be attuned to the likelihood that complainants may not wish to be contacted unnecessarily when they have already received due support from the Member with whom they have had personal contact and have been informed of services available to them.
67. Ms Davidson was concerned about the welfare of the then unidentified young person who was the subject of the rumours. As mentioned earlier, her first response to hearing of them was to tell the staff member who had mentioned them that if anyone was in contact with a young person who had a traumatic experience, they should know that they could report illegal behaviour to the police, and where to access trauma services. That concern was at least one of the factors that led her to ask Mr Bromley to make enquiries about the rumours and the identity of the young person to whom they related. She had no personal contact with the young person and did not deal with the complaint. In view of the conflict of interest she properly identified, it would have been inappropriate for her to have done so.
68. Mr Rattenbury points out that Ms Davidson had given these directions to her staff even before he was aware of the rumours. He suggests that this action should be regarded as having been undertaken on his behalf and that of other Members who were subsequently informed of the rumours, though he did not suggest that this absolved him of any further responsibility for the welfare of the young person. I am not wholly persuaded by this contention, though the directions given by Ms Davidson and her earlier discussions with Mr Bromley may have formed part of the context in which Mr Rattenbury was required to address the relevant issues.
69. He maintains that he had initially had no reason to believe the young person was making or may have wished to make a complaint. Of course, one might normally assume that anyone contacting the Greens in response to such rumours may be doing so in order to make a complaint. However, Mr Rattenbury points out that prior to the meeting on 7 November the young person had been very reluctant to speak to Mr Bromley, had done so only after eliciting

an undertaking that what he said would not be reported and had indicated that he did not regard himself as a victim. This may have suggested that, if he did intend to make a complaint, it was not about being the victim of serious misconduct of the kind mentioned in paragraph (D)(1).

70. Whilst Mr Rattenbury had no personal contact with the young person, he was the leader of the ACT Greens and he clearly assumed the primary responsibility for dealing with the issues raised at the meeting.

71. In his response to me, he explained that:

... I did provide advice to Mr Bromley both before and after this meeting, as I wanted to ensure appropriate sensitivity was applied to his conversations with anyone who might be able to provide information about Mr Davis' conduct.

In advance of meeting the 18-year-old, Mr Bromley explained to me that an 18-year-old had approached a Greens staff member, saying that they had met with Mr Davis consensually, and that they did not have any complaints about their interactions, but thought they may be helpful in encouraging others to come forward who had unwanted or troubling experiences with Mr Davis.

72. Arrangements were made for the staff member who had initially been contacted by the young person to attend the meeting on 7 November in order to provide support for him.

73. Mr Rattenbury said that:

When Mr Bromley and I debriefed that afternoon, we discussed whether, in light of the information provided, the 18-year-old needed additional supports. Given that the 18-year-old had been clear that they regarded their contact with Mr Davis as consensual, we agreed that it would have been inappropriate to offer specific supports at that time. Inappropriate because, on the information provided to us, theirs was represented as a consensual and legal relationship.

74. However, on 9 November some Greens staff members met for drinks and invited the young complainant to join them, so they could provide him with support.

75. Mr Rattenbury went on to explain that:

Subsequent findings suggest illegal image sharing may have taken place, because the eighteen-year-old claimed that explicit images were shared between him and Mr Davis – which was not immediately clear in the information provided to Mr Bromley (contrary to Ms Briggs' report, which suggested that the chief reason was because of differing information on image sharing laws).

We did agree that Mr Bromley could continue to make an open offer of support to the 18-year-old which would help build trust that a senior ACT Greens representative was serious in considering the information they had shared. I consider that this approach – taking the matter seriously and maintaining contact over the ensuing days after the meeting – constitutes another form of support that satisfies paragraph (D)(1) of the code. The various analyses to

date have assumed that the provision of support requires referral to an external agency, and while I agree that will be appropriate in many circumstances, the Code does not explicitly prescribe 'external support', which we did later also provide.

....

At the time of conducting the meeting with the 18- year-old, we had no reason to believe he was making a complaint, but rather providing information that might lead us to complainants. This remained true during the meeting, although subsequent media reporting and retrospective analysis by Ms Briggs makes clear the 18-year-old views the experience differently now.

In making these observations, I do not wish in any way to diminish the experience of the young person or challenge their perspective. I seek only to be clear about the information we had available to us at the time, upon which myself and my colleagues acted.

76. Mr Rattenbury also said that:

By the time Mr Bromley's report to me was finalised on Friday 10 November, it was clear, particularly from that day's media reporting, that the 18-year-old no longer viewed his engagement with Mr Davis in positive terms. At that point my office also considered this person to be a complainant,

77. He responded by advising the party that Mr Davis should be asked to stand down and by sending his Ministerial Chief of Staff to accompany Mr Bromley to the police station in order to convey his advice about support services to be shared with the young person. This advice, which included contact information for Canberra Rape Crisis Centre and Victim Support ACT, was duly provided to the young person in Mr Bromley's text.
78. The police also said that they would offer him "EAP support," (presumably employee assistance support, usually provided for police officers suffering trauma-related stress);
79. On 13 November, Mr Bromley sent the young person a message, repeating his offer of support.
80. On the same day Mr Rattenbury discussed the matter with the Deputy Chief Minister and agreed that a joint approach to supporting complainants should be provided by the ACT Executive. He instructed his staff to inform him of any further complaints and ensure that appropriate offers of support were given, including potential offers of support from the Victims of Crime Commissioner.
81. He also affirmed a suggestion that Mr Bromley contact the Victims of Crime Commissioner to consider how ongoing and appropriate support might be offered to the young person and any further complainants. This occurred on Tuesday 14 November. The Victims of Crime Commissioner suggested that besides offering complainants a range of support services, her organisation may be able to offer further support appropriate to the situation. She advised him that it would not be immediately appropriate to have further engagement with the young person.
82. When Ms Briggs later provided information and advised him of concerns the complainant

held about the way the events had unfolded, he met with the Victims of Crime Commissioner and again discussed again how appropriate support might be offered to the young person. The Commissioner suggested that as Ms Briggs had become a trusted person for the complainant and she would be a useful person to broach a conversation about what further support might be needed. It was agreed that arrangements would be made for the Commissioner to contact Ms Briggs to discuss this issue.

83. Mr Rattenbury maintained that he had been strongly attuned to the possible need to provide trauma-informed care for the young person, while respecting his acknowledgement that his relationship with Mr Davis had been consensual. Apart from the matters already mentioned, he maintained that support had been provided by taking the matter seriously and maintaining contact during and the after the meeting.
84. Ms Briggs noted that following the announcement on 13 November, four other people had contacted the Greens with information about Mr Davis and all were provided with support.
85. I agree with Ms Briggs' observation that the young person should have been referred to available support services during his interview with Mr Bromley. The failure to do so, either then or immediately following the meeting, is explained on the basis that he and Mr Rattenbury thought it would have been inappropriate to have offered specific support at that time because they understood young person to have been speaking about a consensual and legal relationship. As mentioned earlier, Mr Rattenbury was not at the meeting and I have no reason to discount his explanation that this was the impression he had formed from his subsequent discussion with Mr Bromley. I think the young person should nonetheless have been advised to consult an appropriate counselling service because, whatever the legality of the relationship with Mr Davis, he had apparently been distressed by what had occurred and apprehensive about discussing it. However, the level of his distress may not have been adequately conveyed to Mr Rattenbury and paragraph (D)(1) does not require a Member to offer such advice to someone they understand to be complaint about a consensual and legal relationship.
86. Considered overall, the responses to the young person were generally supportive and, whilst more could have been done, I am not persuaded that either Ms Davidson or Mr Rattenbury breached the requirements specified in this paragraph.

Paragraph (D)(2)

(Members will) seek to be sensitive to the needs and feelings of any such complainant and to recognise their possible need for trauma-informed care.

87. Somewhat similar considerations arise in relation to this requirement. The phrase "any such complainant" obviously refers to a person making a complaint alleging bullying, sexual and other harassment, sexual assault or discrimination and, as I have explained, it is not clear that the conduct described by the young person fell into any of these categories.
88. Ms Davidson was clearly sensitive to the needs and feelings of the unknown young person who was the subject of the rumours and was concerned to ensure that they were told where they could gain access to trauma services. She had no apparent involvement with the young

person after he was identified and made the complaint.

89. As mentioned earlier, Mr Rattenbury told Ms Briggs that he had not thought about the policies or procedures relating to complaints of sexual misconduct with children and saw the rumours and allegations as a matter for the party to manage. I was initially inclined to regard this statement as compelling evidence of a lack of sensitivity. However, I think it is understandable that the leader of a political party would respond to unverified rumours of possible misconduct involving unknown people in that manner and think about possible avenues of support only when someone who may have suffered as a consequence of such conduct had been identified. I have no reason to discount Mr Rattenbury's assurances that he sought to respond with due sensitivity when subsequently informed that a young person had contacted a member of his staff and indicated that he was willing to speak about his relationship with Mr Davis.
90. Whilst I think the matter could have been handled better, I am not satisfied that the evidence, viewed overall, reveals a lack of due sensitivity to the needs of the young person.

Paragraph (D)(3)

(Members will) as appropriate, seek expert advice and assistance as to the manner in which the Member should act in such circumstances

91. Ms Davidson was in Perth from 8 to 10 November when Mr Bromley reported the matter to the police. Furthermore, Mr Rattenbury had by then assumed responsibility for dealing with the complaint and, in view of her friendship with Mr Davis, it would have been inappropriate for her to have taken part in any attempts to deal with it.
92. Mr Rattenbury could have consulted others, as Ms Briggs suggests, but I am not aware of anyone who would regard themselves as an expert in dealing with rumours of misconduct with unknown people. There is no reason to doubt that he was already aware of the available supportive services and needed no advice about them. It would have been preferable for legal advice to have been sought about reporting obligations prior to the decision to report the matter to the police, but Mr Rattenbury had told Mr Bromley that legal issues needed to be checked with officials and advice was sought from a senior police officer on 10 November. It might reasonably have been assumed that the police would understand what allegations were required to be reported to them.

Paragraph (D)(4)

Members will recognise and respect that it is the right of a complainant as to whether and how they seek and pursue official investigation of their complaint.

93. Mr Rattenbury and the other members of the Greens present at the party meeting on 10 November 2023 either failed to recognise this right in directing that the matter be reported to the police despite the young person's objections or concluded that it was overborne by legal and other requirements. However, in all the circumstances, including the confusion previously mentioned about the effect of section 66AA and potentially apparently conflicting policy requirements, I do not think that an adverse finding should be made in relation to this requirement.

Conclusions

94. I recommend that no finding be made that either Ms Davidson or Mr Rattenbury committed any breach of the Code of Conduct.
95. I might mention that this conclusion is consistent with Ms Briggs conclusion that from my reading, while it took some time for them to make reports, the actions of the Greens were largely in line with the Legislative Assembly's Child Safety Code of Conduct and Policy. Ms Briggs suggested that the failure to formally advise the Speaker of the complaint only on 13 November was a notable exception, but as mentioned earlier, I do not believe that any relatively brief delay involved a breach of the Code of conduct.

Other matters

96. A number of recommendations suggested by the events canvassed in Ms Briggs' report have been made in separate correspondence addressed to the Speaker.

Ken Crispin KC Commissioner
for Standards 26 April 2024