



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Disclosure Log Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

Application Details	
Ref. No.	CMTEDDFOI 2023-430
Date of Application	12 December 2023
Date of Decision	29 January 2024
Processing time (in working days)	27
Fees	Waived
Decision on Access	Full Release
Information Requested (summary)	All communication in relation to the Fair Trading Commissioner.
Publication Details	
Original application	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision notice	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Documents and schedule	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision made by Ombudsman	N/A
Additional information identified by Ombudsman	N/A
Decision made by ACAT	N/A
Additional information identified by ACAT	N/A

From: [REDACTED]
To: [CMTEDD FOI](#)
Subject: FOI Request for communication regarding the Commissioner for Fair Trading
Date: Tuesday, 12 December 2023 3:54:04 PM

Good afternoon CMTEDD FOI team,

[REDACTED] I write to request, under the *Freedom of Information Act 2016*, copies of the following documents:

1. All communication, including emails, transcripts of meetings, briefs, letters etc between the office of the Attorney General, including the Attorney General himself, and Ms Kathy Leigh, Head of Service, in relation to the advice provided to the Attorney General by Ms Leigh dated 6 February 2023 in relation to the matter at Access Canberra involving the Commissioner for Fair Trading.
2. All communication, including emails, transcripts of meetings, briefs, letters etc on the appointment of Ms Derise Cubin as Fair Trading Commissioner.

Thanks,





ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI2023-430



FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 12 December 2023. In your request you sought access to the following information:

- 1. All communication, including emails, transcripts of meetings, briefs, letters etc between the office of the Attorney General, including the Attorney General himself, and Ms Kathy Leigh, Head of Service, in relation to the advice provided to the Attorney General by Ms Leigh dated 6 February 2023 in relation to the matter at Access Canberra involving the Commissioner for Fair Trading.*
- 2. All communication, including emails, transcripts of meetings, briefs, letters etc on the appointment of Ms Derise Cubin as Fair Trading Commissioner.*

Authority

I am an Information Officer appointed by the Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision within 30 working days of the access application being received. Therefore, a decision and response are due on 1 February 2024.

Decision on access

Searches were completed for relevant documents and several documents were identified that fall within the scope of your request.

Please note, under section 43(1)(6) of the Act, we can refuse to deal with requests for information already available to applicants. In line with section 45(e) of the Act, refusal of this information is because we previously provided you with documents regarding correspondence from the Minister, or his office between the ACT Attorney-General and the ACT Commissioner for Fair Trading. Please see CMTEDDFOI 2023-161 *'Annual Reports Hearings and any conflicts of interest that were declared (2020-21-Present), and any*

briefings, documentation and correspondence relating to the conflict of interest declared by the ACT Commissioner for Fair Trading on November 26, 2021'. This decision was published on the CMTDD disclosure log 5 July 2023. The link to the disclosure log is [Disclosure Log 2023 - Chief Minister, Treasury and Economic Development Directorate \(act.gov.au\)](https://act.gov.au/act/disclosure-log-2023-chief-minister-treasury-and-economic-development-directorate).

I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of the documents that fall within the scope of your request and the access decision for those documents. I have decided to grant access in full to these documents.

My access decisions are detailed further in the following statement of reasons and the documents released to you are provided as **Attachment B** to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decisions is below.

Statement of Reasons

In reaching my access decisions, I have taken the following into account:

- the Act
- the content of the documents that fall within the scope of your request
- the *Human Rights Act 2004*.

Exemption claimed

My reasons for deciding to grant access to the identified documents are as follows:

Public Interest

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interest lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when 'used in a statute, the term [public interest] derives its content from "the subject matter and the scope and purpose" of the enactment in which it [public interest] appears'. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

Factors favouring disclosure in the public interest (Schedule 2 section 2.1):

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- (i) *promote open discussion of public affairs and enhance the government's accountability.*
- (viii) *reveal the reason for a government decision and any background or contextual information that informed the decision.*

Having considered the factors identified as relevant in this matter, I consider that release of the information within the scope of the request may promote open discussion of public affairs and enhance the government's accountability. The release of the documents identified will provide contextual information relating to the appointment of the ACT Commissioner for Fair Trading.

I am satisfied there is public interest in the release of this information and have placed considerable weight on the above factors. I did not identify any factor favouring non-release and have decided to release this information to you in full.

Charges

I have waived fees associated with your access application because under [REDACTED] is not to be charged a fee for an access application.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log. Your personal contact details will not be published. You may view CMTEDD disclosure log at <https://www.cmtedd.act.gov.au/functions/foi/disclosure-log-2023>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is provided to you, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K Stuart', written in a cursive style.

Katharine Stuart
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate
29 January 2024



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference NO.

- 1.All communication, including emails, transcripts of meetings, briefs, letters etc between the office of the Attorney General, including the Attorney General himself, and Ms Kathy Leigh, Head of Service, in relation to the advice provided to the Attorney General by Ms Leigh dated 6 February 2023 in relation to the matter at Access Canberra involving the Commissioner for Fair Trading.
- 2.All communication, including emails, transcripts of meetings, briefs, letters etc on the appointment of Ms Derise Cubin as Fair Trading Commissioner.

CMTEDDFOI 2023-430

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-2	Email correspondence: RE: AC21_8 For Urgent Clearance 21_04172 - DG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment	18 January 2021	Full Release		Yes
2	3-7	Email correspondence: AC21_7 - For Urgent Clearance - 21_041 72 - DG Brief- Richard Glenn JACS - New Commissioner for Fair Trading Appointment	18 January 2021	Full Release		Yes
3	8-11	Email correspondence: FW: AC21_7 - For Urgent Clearance - 21_04172 - DG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment	18 January 2021	Full Release		Yes
4	12-20	Email correspondence: As discussed	22 January 2021	Full Release	Parts of this document are outside of the scope.	Yes
5	21-22	Email correspondence: Re: Consideration of conflict-of-interest allegation	05 February 2023	Full Release		Yes
6	23-25	Email correspondence: FW: Request for advice - Access Canberra matter	06 February 2023	Full Release		Yes
7	26-29	Email correspondence: Fwd: Correspondence from Shane Rattenbury MLA	08 December 2023	Full Release		Yes
8	30-31	Screen shot text messages - HoS to MG	21 July- 20 November	Full Release		Yes
Total No of Docs						
8						

From: "Pryce, David"
Sent: 18/01/2021 10:25 AM
To: "Short, Rachael" <Rachael.Short@act.gov.au>
Cc: "Snowden, David" <David.Snowden@act.gov.au>; "Matthews, Catherine" <Catherine.Matthews@act.gov.au>
Subject: RE: AC21_8 For Urgent Clearance 21_04172 - DG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment

OFFICIAL

Cleared via objective, thanks.

David Pryce | Deputy Director-General
Head of Access Canberra
Phone: 02 6205 9898 | Email: david.pryce@act.gov.au
Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Canberra City, ACT 2601 | www.act.gov.au/accessCBR



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From: Short, Rachael <Rachael.Short@act.gov.au>
Sent: Monday, 18 January 2021 10:01 AM
To: Pryce, David <David.Pryce@act.gov.au>
Cc: Short, Rachael <Rachael.Short@act.gov.au>; Snowden, David <David.Snowden@act.gov.au>; Matthews, Catherine <Catherine.Matthews@act.gov.au>
Subject: AC21_8 For Urgent Clearance 21_04172 - DG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment

OFFICIAL

Hi David P

For Clearance

Please find attached a minute which has been prepared re the New Commissioner for Fair Trading Appointment

Once cleared, this will be urgently progressed to DG JACS.

Thanks
Rachael

Rachael Short | Executive Officer
Deputy Director-General, David Pryce
Executive Group Manager, Regulatory Compliance, David Snowden
Phone: 02 5124 6022 Ex: 46022 | Email: rachael.short@act.gov.au
Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government



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From: Snowden, David <David.Snowden@act.gov.au>

Sent: Monday, 18 January 2021 9:41 AM

To: Short, Rachael <Rachael.Short@act.gov.au>

Subject: 21_04172 - DDG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment

OFFICIAL

From: "Short, Rachael" <Rachael.Short@act.gov.au>
Sent: 18/01/2021 10:31 AM
To: "Beddoe, Julie" <Julie.Beddoe@act.gov.au>; "Cowan, Nicola" <Nicola.Cowan@act.gov.au>
Cc: "Short, Rachael" <Rachael.Short@act.gov.au>; "Snowden, David" <David.Snowden@act.gov.au>; "Pryce, David" <David.Pryce@act.gov.au>; "Matthews, Catherine" <Catherine.Matthews@act.gov.au>
Subject: AC21_7 - For Urgent Clearance - 21_04172 - DG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment
Attachments: 21_04172 - DDG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment.docx, Attachment A - Fair Trading (Australian Consumer Law) Commissioner Appointment 2021 (No 1).docx
Importance: High

OFFICIAL

Hi Julie and Nicola

Please find attached a Minute to DG JACS re the New Commissioner for Fair Trading Appointment.

Please let me know if you have any questions.

Thanks Rachael

Rachael Short | Executive Officer
Deputy Director-General, David Pryce
Executive Group Manager, Regulatory Compliance, David Snowden
Phone: 02 5124 6022 Ex: 46022 | Email: rachael.short@act.gov.au
Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government
GPO Box 158, Civic ACT 2601 | www.act.gov.au/accessCBR



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CMTEDD INTERNAL MINUTE



ACT
Government

Chief Minister, Treasury and
Economic Development

Date	18 January 2021	File No: Obj 20/04172
<hr/>		
To	Director-General, Justice and Community Safety Directorate	
<hr/>		
From	Deputy Director-General Access Canberra, Chief Minister, Treasury and Economic Development Directorate	
<hr/>		
Subject	Appointment—New Commissioner for Fair Trading	
<hr/>		

Critical date and reason

1. **19 January 2021** — The current Commissioner for Fair Trading, Mr David Snowden, Executive Group Manager Access Canberra, is retiring from the ACT Public Service on 20 January 2021 and the new appointment will need to be notified on the ACT Legislation Register.

Recommendations

2. That you:
 - Note the content of this minute; and

NOTED/PLEASE DISCUSS

- Sign the appointment instrument at Attachment A appointing Ms Derise Cubin, Executive Branch Manager Access Canberra, as the Commissioner for Fair Trading.

SIGNED/NOT SIGNED/PLEASE DISCUSS

Richard Glenn..... / /

Background

3. Section 32 of the *Fair Trading (Australian Consumer Law) Act 1992* (the Act) requires the director-general to appoint a public servant as the Commissioner for Fair Trading (the Commissioner).
4. The administrative unit responsible for the Act under the *Administrative Arrangements 2020 (No 3)* is the Justice and Community Safety Directorate. This means that you have the authority to make the appointment of the Commissioner.

Issues

5. Mr Snowden is retiring from the ACT Public Service on 20 January 2021. A new appointment is required to ensure operational continuity in this role.
6. It is proposed that Ms Derise Cubin, Executive Branch Manager Access Canberra, be appointed as the Commissioner, as she is the most suitable person within Access Canberra to be appointed to this position.
7. It is recommended that you sign the instrument at [Attachment A](#) appointing Ms Derise Cubin as Commissioner for Fair Trading.

Consultation

8. The Minister for Consumer Affairs, Mr Shane Rattenbury MLA, was consulted on the proposed appointment on 15 January 2021.
9. Mr Christopher Phillipson, Solicitor, Office of the ACT Government Solicitor (x 50964) has reviewed the appointment instrument on 15 January 2021.

Work Health and Safety

10. Nil.

Financial

11. Nil.

Risks/ Sensitivities

12. Nil

Media

13. It is not anticipated that this appointment will attract media attention.

David Pryce

Action Officer: Cath Matthews
Phone: x 53464

Australian Capital Territory

Fair Trading (Australian Consumer Law) Commissioner Appointment 2021 (No 1)

Notifiable Instrument NI2021-

made under the

Fair Trading (Australian Consumer Law) Act 1992, section 32 (Commissioner for fair trading)

1 Name of instrument

This instrument is the *Fair Trading (Australian Consumer Law) Commissioner Appointment 2021 (No 1)*.

2 Commencement

This instrument commences on 21 January 2021.

3 Appointment

I appoint Derise Cubin as the Commissioner for Fair Trading.

4 Revocation

This instrument revokes the *Fair Trading (Australian Consumer Law) Commissioner Appointment 2019 (No 4) NI2019-559* made on 27 August 2019.

Richard Glenn
Director-General
Justice and Community Safety Directorate

January 2021

CMTEDD INTERNAL MINUTE



ACT
Government

Chief Minister, Treasury and
Economic Development

Date 18 January 2021 File No: Obj 20/04172

To Director-General, Justice and Community Safety Directorate

From Deputy Director-General Access Canberra, Chief Minister, Treasury and
Economic Development Directorate

Subject Appointment—New Commissioner for Fair Trading

Critical date and reason

1. **19 January 2021** — The current Commissioner for Fair Trading, Mr David Snowden, Executive Group Manager Access Canberra, is retiring from the ACT Public Service on 20 January 2021 and the new appointment will need to be notified on the ACT Legislation Register.

Recommendations

2. That you:
 - Note the content of this minute; and

~~NOTED~~/PLEASE DISCUSS

- Sign the appointment instrument at Attachment A appointing Ms Derise Cubin, Executive Branch Manager Access Canberra, as the Commissioner for Fair Trading.

~~SIGNED~~/NOT SIGNED/PLEASE DISCUSS

Richard Glenn.....*[Signature]*..... 18/1 / 21

From: "Matthews, Catherine" <Catherine.Matthews@act.gov.au>
Sent: 19/01/2021 7:24 PM
To: "Pryce, David" <David.Pryce@act.gov.au>; "Snowden, David" <David.Snowden@act.gov.au>; "Cubin, Derise" <Derise.Cubin@act.gov.au>
Cc: "Short, Rachael" <Rachael.Short@act.gov.au>
Subject: FW: AC21_7 - For Urgent Clearance - 21_04172 - DG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment
Attachments: Brief - Fair Trading Commissioner - Seeking approval for appointment - signed.pdf, Instrument - Fair Trading Commissioner - Appointment - signed.pdf

OFFICIAL

Hi All

Just a quick FYI. I have requested urgent notification of the Commissioner for Fair Trading appointment.

PCO have already reviewed the instrument and have advised that it will be fine to be notified tomorrow, so that the appointment can commence on 21 January 2021. The NI Number is NI2021-31.

I'll let you know if there are any issues.

Cheers
Cath

Cath Matthews | A/g Director, Government Business & Coordination

Phone: 02 6205 3464 | Email: catherine.matthews@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government

Cosmopolitan Building, 21 Bowes Street, Woden | GPO Box 158, Canberra ACT 2601 | www.act.gov.au/accessCBR



From: Cowan, Nicola <Nicola.Cowan@act.gov.au>
Sent: Tuesday, 19 January 2021 9:58 AM
To: Short, Rachael <Rachael.Short@act.gov.au>; Beddoe, Julie <Julie.Beddoe@act.gov.au>
Cc: Snowden, David <David.Snowden@act.gov.au>; Pryce, David <David.Pryce@act.gov.au>; Matthews, Catherine <Catherine.Matthews@act.gov.au>
Subject: RE: AC21_7 - For Urgent Clearance - 21_04172 - DG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment

OFFICIAL

Good morning Rachael

Please find attached the Brief and Instrument re the New Commissioner for Fair Trading Appointment signed by Richard.

Kind regards
Nicki

Nicola Cowan

Executive Assistant to Richard Glenn

Director-General
Justice and Community Safety Directorate
GPO Box 158, Canberra ACT 2601
e nicola.cowan@act.gov.au w www.justice.act.gov.au
T (02) 6207 0501



From: Short, Rachael <Rachael.Short@act.gov.au>
Sent: Monday, 18 January 2021 10:31 AM
To: Beddoe, Julie <Julie.Beddoe@act.gov.au>; Cowan, Nicola <Nicola.Cowan@act.gov.au>
Cc: Short, Rachael <Rachael.Short@act.gov.au>; Snowden, David <David.Snowden@act.gov.au>; Pryce, David <David.Pryce@act.gov.au>; Matthews, Catherine <Catherine.Matthews@act.gov.au>
Subject: AC21_7 - For Urgent Clearance - 21_04172 - DG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment
Importance: High

OFFICIAL

Hi Julie and Nicola

Please find attached a Minute to DG JACS re the New Commissioner for Fair Trading Appointment.

Please let me know if you have any questions.

Thanks Rachael

Rachael Short | Executive Officer
Deputy Director-General, David Pryce
Executive Group Manager, Regulatory Compliance, David Snowden
Phone: 02 5124 6022 Ex: 46022 | Email: rachael.short@act.gov.au
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CMTEDD INTERNAL MINUTE



ACT
Government

Chief Minister, Treasury and
Economic Development

Date	18 January 2021	File No: Obj 20/04172
<hr/>		
To	Director-General, Justice and Community Safety Directorate	
<hr/>		
From	Deputy Director-General Access Canberra, Chief Minister, Treasury and Economic Development Directorate	
<hr/>		
Subject	Appointment—New Commissioner for Fair Trading	
<hr/>		

Critical date and reason

1. **19 January 2021** — The current Commissioner for Fair Trading, Mr David Snowden, Executive Group Manager Access Canberra, is retiring from the ACT Public Service on 20 January 2021 and the new appointment will need to be notified on the ACT Legislation Register.

Recommendations

2. That you:
 - Note the content of this minute; and

~~NOTED~~/PLEASE DISCUSS

- Sign the appointment instrument at Attachment A appointing Ms Derise Cubin, Executive Branch Manager Access Canberra, as the Commissioner for Fair Trading.

~~SIGNED~~/NOT SIGNED/PLEASE DISCUSS

Richard Glenn.......... 18/1 / 21

Australian Capital Territory

Fair Trading (Australian Consumer Law) Commissioner Appointment 2021 (No 1)

Notifiable Instrument NI2021-

made under the

Fair Trading (Australian Consumer Law) Act 1992, section 32 (Commissioner for fair trading)

1 Name of instrument

This instrument is the *Fair Trading (Australian Consumer Law) Commissioner Appointment 2021 (No 1)*.

2 Commencement

This instrument commences on 21 January 2021.

3 Appointment

I appoint Derise Cubin as the Commissioner for Fair Trading.

4 Revocation

This instrument revokes the *Fair Trading (Australian Consumer Law) Commissioner Appointment 2019 (No 4)* NI2019-559 made on 27 August 2019.



Richard Glenn
Director-General
Justice and Community Safety Directorate

(8 January 2021

From: "Pryce, David"
Sent: 22/01/2021 10:09 AM
To: "Wright, Robert" <Robert.Wright@act.gov.au>; "Drejer-White, Maggie" <Maggie.Drejer-White@act.gov.au>
Subject: As discussed
Attachments: Outside Scope
RE: AC21_7 - For Urgent Clearance - 21_04172 - DG Brief - Richard Glenn
JACS - New Commissioner for Fair Trading Appointment

OFFICIAL

Regards,

David Pryce | Deputy Director-General
Head of Access Canberra

Phone: 02 6205 9898 | Email: david.pryce@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government

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Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

Outside Scope

From: "Cowan, Nicola" <Nicola.Cowan@act.gov.au>
Sent: 19/01/2021 9:58 AM
To: "Short, Rachael" <Rachael.Short@act.gov.au>; "Beddoe, Julie" <Julie.Beddoe@act.gov.au>
Cc: "Snowden, David" <David.Snowden@act.gov.au>; "Pryce, David" <David.Pryce@act.gov.au>;
"Matthews, Catherine" <Catherine.Matthews@act.gov.au>
Subject: RE: AC21_7 - For Urgent Clearance - 21_04172 - DG Brief - Richard Glenn JACS - New
Commissioner for Fair Trading Appointment
Attachments: Brief - Fair Trading Commissioner - Seeking approval for appointment - signed.pdf,
Instrument - Fair Trading Commissioner - Appointment - signed.pdf

OFFICIAL

Good morning Rachael

Please find attached the Brief and Instrument re the New Commissioner for Fair Trading Appointment signed by Richard.

Kind regards
Nicki

Nicola Cowan

Executive Assistant to Richard Glenn

Director-General

Justice and Community Safety Directorate

GPO Box 158, Canberra ACT 2601

e nicola.cowan@act.gov.au w www.justice.act.gov.au

T (02) 6207 0501



From: Short, Rachael <Rachael.Short@act.gov.au>
Sent: Monday, 18 January 2021 10:31 AM
To: Beddoe, Julie <Julie.Beddoe@act.gov.au>; Cowan, Nicola <Nicola.Cowan@act.gov.au>
Cc: Short, Rachael <Rachael.Short@act.gov.au>; Snowden, David <David.Snowden@act.gov.au>; Pryce, David <David.Pryce@act.gov.au>; Matthews, Catherine <Catherine.Matthews@act.gov.au>
Subject: AC21_7 - For Urgent Clearance - 21_04172 - DG Brief - Richard Glenn JACS - New Commissioner for Fair Trading Appointment
Importance: High

OFFICIAL

Hi Julie and Nicola

Please find attached a Minute to DG JACS re the New Commissioner for Fair Trading Appointment.

Please let me know if you have any questions.

Thanks Rachael

Rachael Short | Executive Officer

Deputy Director-General, David Pryce

Executive Group Manager, Regulatory Compliance, David Snowden

Phone: 02 5124 6022 Ex: 46022 | Email: rachael.short@act.gov.au

Access Canberra | Chief Minister Treasury and Economic Development Directorate | ACT Government

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From: "Georgeson, Matthew"
Sent: 05/02/2023 8:48 PM
To: "Leigh, Kathy" <Kathy.Leigh@act.gov.au>
Cc: "Rattenbury, Shane" <Shane.Rattenbury@act.gov.au>
Subject: Re: Consideration of conflict of interest allegation

Thanks very much Kathy
Matt

On 5 Feb 2023, at 8:44 pm, Leigh, Kathy <Kathy.Leigh@act.gov.au> wrote:

Matthew
We received the advice this morning.
I'll have a letter to the Minister tomorrow.
I'm comfortable that the matter has been handled appropriately.
Kathy

Kathy Leigh | Head of Service and Director-General
Phone: [02 6205 0246](tel:0262050246) | Email: kathy.leigh@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

Begin forwarded message:

From: "Leigh, Kathy" <Kathy.Leigh@act.gov.au>
Date: 31 January 2023 at 2:34:53 pm AEDT
To: "Georgeson, Matthew" <Matthew.Georgeson@act.gov.au>
Subject: Fwd: Consideration of conflict of interest allegation

Matthew
I've now been promised the advice this week.
Kathy

Kathy Leigh | Head of Service and Director-General
Phone: [02 6205 0246](tel:0262050246) | Email: kathy.leigh@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

Begin forwarded message:

From: "Leigh, Kathy" <Kathy.Leigh@act.gov.au>
Date: 27 January 2023 at 11:16:42 pm AEDT
To: "Georgeson, Matthew" <Matthew.Georgeson@act.gov.au>
Cc: "Rattenbury, Shane" <Shane.Rattenbury@act.gov.au>
Subject: Re: Consideration of conflict of interest allegation

Thanks Matt
I have sought legal advice but still not received it.
I will chase on Monday.
Kathy

Kathy Leigh | Head of Service and Director-General
Phone: [02 6205 0246](tel:0262050246) | Email: kathy.leigh@act.gov.au

Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5 Canberra Nara Centre | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

On 27 Jan 2023, at 5:10 pm, Georgeson, Matthew <Matthew.Georgeson@act.gov.au> wrote:

Dear Karhy. You will recall that Minister Rattenbury last year asked you to consider an allegation of a conflict of interest in Access Canberra, involving the current and former fair trading commissioners. Could you please give an indication of how your consideration is progressing and when you think you may be able to provide advice? Thank you,
Matt

From: "Kalleske, Sarah" <Sarah.Kalleske@act.gov.au> on behalf of "Leigh, Kathy" <Kathy.Leigh@act.gov.au>
Sent: 06/02/2023 3:44 PM
To: "RATTENBURY" <RATTENBURY@act.gov.au>
Cc: "Georgeson, Matthew" <Matthew.Georgeson@act.gov.au>
Subject: FW: Request for advice - Access Canberra matter
Attachments: HoS response to Minister Rattenbury - Request for advice - Access Canberra matter.pdf

OFFICIAL: Sensitive

Good afternoon Minister

Kathy Leigh has asked me to forward the attached response letter to you in relation to your request for advice to her about the Access Canberra matter.

Kind regards
Sarah

Sarah Kalleske | Executive Assistant to Kathy Leigh, Head of Service and Director-General
Phone: 02 6205 0241 | Email: sarah.kalleske@act.gov.au
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 5, 220 London Circuit, Canberra ACT 2601 | GPO Box 158 Canberra ACT 2601 | www.act.gov.au

From: Rattenbury, Shane <Shane.Rattenbury@act.gov.au>
Sent: Tuesday, 29 November 2022 6:45 AM
To: Leigh, Kathy <Kathy.Leigh@act.gov.au>; ACT Public Sector Standards Commissioner <ACTPublicSectorStandardsCommissioner@act.gov.au>
Cc: Georgeson, Matthew <Matthew.Georgeson@act.gov.au>
Subject: Request for advice
Importance: High

Dear Kathy and Ian

Could I please seek your advice on a matter that has been brought to my attention.

I seek your advice on: a) the appropriateness of the alleged conduct in Access Canberra; b) recommended action I should take as the Minister responsible for relevant areas of Access Canberra; and c) the appropriate way to respond to the legal and other questions I am receiving about this matter.

An allegation has been made by Ms Louise Curtis and her legal representatives that a conflict of interest was not dealt with appropriately in Access Canberra. The crux of this allegation is that the current Fair Trading Commissioner inappropriately attended a meeting without declaring that she is married to the former Fair Trading Commissioner, Mr David Snowden. The claim is made in the context of other legal action taken by Ms Curtis against the Commissioner. There is a history of interactions between Ms Curtis and Access Canberra, relating to Ms Curtis' former business, dating back several years. One of Ms Curtis' emails also alleges "doctoring of documents" and "perjury" (without further context).

My summary of action I have taken leading up to this request for further advice is as follows:

- My office received emails from Ms Curtis about the alleged conflict of interest. My office inquired with Access Canberra, and was alerted to the existing conflict of interest protocol that was in place. I received this advice and wrote to Ms Curtis noting this protocol.
- I received further correspondence from Ms Curtis specifying her concern that the protocol was not in place at the time a particular meeting took place (on 6 July 2021). My office sought further advice from Access

Canberra about these details. My office received further verbal advice, and subsequent written advice, from Access Canberra, clarifying that the relevant meeting on 6 July 2021 was a “without privilege” meeting, which occurred before legal proceedings had named Mr Snowden, and therefore the Fair trading Commissioner’s attendance at the meeting was not inappropriate. The protocol was enacted after legal proceedings were formally commenced.

- On advice from Access Canberra, my office also replied to one of Ms Curtis’ emails that her inquiries were best directed to Access Canberra, as they related to a current litigation matter.
- I am informed by Ms Curtis that the matter has also been referred to the ACT Integrity Committee.

I have been cognisant of the fact that the letters from Ms Curtis and her legal representatives relate to live legal proceedings involving the Government. You will also have seen this most recent issue was raised in Annual Reports and subsequently reported in the media.

I have not yet replied to further emails from Ms Curtis and her legal representatives while I seek further advice on the issues.

I have attached for your background: emails from Ms Curtis and letters from her legal representative relating to this specific allegation, information provided to me so far by Access Canberra, and replies that I and my office sent to Ms Curtis.

I would appreciate your advice on this matter. I would like to be satisfied that the actions of Access Canberra have been appropriate. I would also appreciate advice on how to respond to the legal inquiries I am receiving.

Regards
Shane

Shane Rattenbury MLA

Attorney General; Minister for Energy, Water and Emissions Reduction; Minister for Consumer Affairs;
Minister for Gaming
ACT Greens Member for Kurrajong
t: 620 50005 | f: 620 50007 | rattenbury@act.gov.au |

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I acknowledge the Traditional Custodians of the Australian Capital Territory and across Australia, and pay respects to their Elders, past, present and future.



ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDD2023/487

Minister Shane Rattenbury MLA
Minister for Consumer Affairs
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Via email: rattenbury@act.gov.au

Dear Minister

Request for advice – Access Canberra matter

You have asked for my advice on a matter at Access Canberra involving the Commissioner for Fair Trading.

I have looked into this matter and am satisfied that the actions of Access Canberra have been appropriate. In particular, the Commissioner's attendance at the meeting on 6 July 2021 was appropriate. I am also satisfied that Access Canberra has appropriately managed any subsequent potential for conflict of interest in this matter.

On this basis, I believe there is no action that you need to take, as the Minister responsible for relevant areas of Access Canberra, in relation to this matter.

Should you receive any further questions on this matter, it would be appropriate for you to refer them to me.

Yours sincerely

[Faint signature and name of the Chief Minister]

From: "Georgeson, Matthew" <Matthew.Georgeson@act.gov.au>
Sent: 08/12/2023 3:48 PM
To: "Leigh, Kathy" <Kathy.Leigh@act.gov.au>
Subject: Fwd: Correspondence from Shane Rattenbury MLA
Attachments: Letter to EGEE and JCS Committee - Conflict of Interest.pdf

Dear Kathy. For your information, attached is a letter that the Minister sent to Committee members, providing clarifying information. I inform you because the letter refers to an issue you were asked about at annual reports hearings, and it also cites the advice you provided on this matter to the Minister.

Regards
Matt

Begin forwarded message:

From: RATTENBURY <RATTENBURY@act.gov.au>
Date: 4 December 2023 at 2:04:12 pm AEDT
To: LA Committee - JCS <LACommitteeJCS@parliament.act.gov.au>, LA Committee - EGEE <LACommitteeEGEE@parliament.act.gov.au>
Subject: Correspondence from Shane Rattenbury MLA

Good afternoon,

Please find attached correspondence from Shane Rattenbury, MLA.

Kind regards,

Office of Shane Rattenbury MLA

ACT Greens Member for Kurrajong

Attorney-General; Minister for Consumer Affairs; Minister for Gaming;

Minister for Water, Energy and Emissions Reduction

t: (02) 620 50005 | e: Rattenbury@act.gov.au

Follow Shane on [Facebook](#) and [Twitter](#)

We acknowledge the Traditional Custodians of the Australian Capital Territory and across Australia, and pay respects to their Elders, past, present and future.

**Shane Rattenbury MLA**

Attorney-General

Minister for Consumer Affairs

Minister for Water, Energy and Emissions Reduction

Minister for Gaming

Member for Kurrajong

Committee Members

Standing Committee on Justice and Community Safety Committee

LACommitteeJCS@parliament.act.gov.au

Committee Members

Standing Committee on Economic and Gender Economic Equality

LACommitteeEGEE@parliament.act.gov.au

Dear Committee Members

I am writing regarding a line of questioning relating to the Commissioner for Fair Trading during my attendance at the Annual Reports committee on 17 November 2023 in my capacity as Minister for Consumer Affairs. I wrote similarly to the Estimates Committee on 31 July 2023.

I note in particular that in Committee hearings this year, both Mr Cain and Ms Lee made various assertions about an alleged conflict of interest involving the Commissioner for Fair Trading. In doing so they asserted as 'facts' an interpretation of events that was inaccurate, including characterising a key meeting inaccurately. In making these assertions, Mr Cain and Ms Lee also personally named public servants. In this regard I ask that the Committee members review the transcripts, and standing order 264B, and consider whether further action is warranted.

As one of several examples, at the Committee hearing on 17 November, Mr Cain said:

"the fair trading commissioner did not declare she was married to the former trading commissioner while presiding over a dispute involving that person, who was her husband. That is the fact."

In the same session, Mr Cain described the situation as *"a senior officer managing a dispute between a commercial entity and the former commissioner, who was her husband."*

ACT Legislative Assembly London Circuit, GPO Box 1020, Canberra ACT 2601



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rattenbury@act.gov.au



@ShaneRattenbury



shanerattenburymla



shanerattenbury

Mr Cain specifically names both parties during this session.

As another example, at the Committee hearing on 24 November, Mr Cain and Ms Lee say:

MR CAIN: Ms Leigh, if you were supervising Ms Cubin ... would you have been concerned that she was attending *to mediate a dispute involving her husband?*

MS ORR: Chair, I seek your advice on whether this is hypothetical and therefore not allowed.

MS LEE: This is actually not hypothetical.

I reiterate the following information to the Committee, summarising information provided by Access Canberra, to assist the Committee's understanding of this issue.

Attendance at the 6 July 2021 meeting

In June 2018, the former Commissioner for Fair Trading (Mr Snowden) initiated an investigation into a business as a result of consumer complaints in relation to that business. That investigation progressed but following confirmation that the business was to be deregistered, the former Commissioner determined that no further action would be taken and the investigation was subsequently closed in August 2020.

On 21 January 2021, the Territory was made aware of a potential claim for compensation in relation to the investigation.

On 27 May 2021, correspondence from the legal representative of the business sought to articulate a claim for compensation, but the proper basis of that claim was unclear. To progress the matter, the current Commissioner (Ms Cubin) attended a 'without prejudice' meeting on 6 July 2021 along with ACT Government Solicitor's representatives so that the legal issues in the matter and particulars of any potential claim against the Territory could be discussed. It was made clear prior to the meeting that the Territory was not able to make settlement offers at this stage but did consider that a discussion between the parties should enable the progression of the matter. I emphasise that *at this time the basis of the potential claim was not clear nor was it clear who would be the subject or respondent to any claim.*

Separate to the potential legal claim mentioned above, on 4 November 2021, proceedings were filed in the ACT Civil and Administrative Tribunal seeking a range of orders, including the release of certain information. I emphasise that it was these proceedings that named the Commissioner for Fair Trading and other individuals as respondents.

As a result of the ACAT proceedings naming the statutory office and individuals, Ms Cubin completed a conflict of interest disclosure declaration relating to that matter on 24 November 2021. On 30 November 2021 the Head of Access Canberra (Mr Pryce) implemented a Standard Operating Procedure (SOP) in response to this matter.

In providing the above information about the nature and timeline of the complaint and legal proceedings, I emphasise that Mr Cain and Ms Lee have been inaccurate in their characterisation of the situation.

I lastly emphasise, as noted numerous times before, that Access Canberra determined that it has taken appropriate actions in relation to this matter. In response to complaints from an external party, I sought independent confirmation from the Head of Service, who wrote to me on 6 February 2023 indicating that she had looked into the matter and advised that *“the Commissioner’s attendance at the meeting on 6 July 2021 was appropriate. I am also satisfied that Access Canberra has appropriately managed any subsequent potential for conflict of interest in this matter.”*

I request that the Committee take note of the matters I have raised.

Yours Sincerely



Shane Rattenbury

3 December 2023

New iMessage

Cancel

To: [Matthew Georgensin](#)

Fri, 21 Jul at 18:37

Dear Kathy, FYI if you haven't already seen, today in the consumer affairs session of estimates, Mr Cain asked a lot of critical questions about the alleged conflict of interest in access Canberra, which you reviewed for Minister Rattenbury, so you may be asked further about it when you appear. In the meantime, happy weekend. Matt

Fri, 21 Jul at 20:37

Fri, 21 Jul at 20:37

Thanks Matt.

Read

Mon, 20 Nov at 09:01

Dear Kathy. Similar to my above message from July, the same issue repeated in annual reports on Friday, you were discussed again, I would expect Mr Cain to ask you about your reasoning on the conflict of interest issue.



Yes thanks Matthew.
My answer will be the same. I sought legal advice. I followed the legal advice. My letter to Minister reflected the legal advice.
Kathy

Delivered