

JURISDICTION REPORT FROM SOUTH AUSTRALIA

HOUSE OF ASSEMBLY

A MEMBER BY ANY OTHER NAME...

On the 2nd of August 2018 the Member for Elder, Ms Carolyn Habib MP, advised by way of a personal explanation to the House that she now wished to be known by her married name as Mrs Carolyn Power.

Mrs Power had married a few months prior to the 2018 State Election and stated that to avoid confusion during her campaign she had continued to use her maiden name.

Mrs Power had also been the Liberal candidate at the 2014 State Election for the seat of Elder. During that campaign, flyers were circulated by the then incumbent Labor MP Annabel Digance featuring the slogan 'Can you trust Habib?' this was seen at the time by Mrs Power as being "... a thinly veiled racist attack against my surname,". The Labor Party though denied this assertion.

During the personal explanation, Mrs Power again referred to her disappointment at the conduct of the 2014 campaign and the pride she had in being elected under her maiden name. The opposition responded to this provocation during a personal explanation by threatening to withdraw leave.

Mrs Power is only the second female member of the House of Assembly to change her name while in office due to a change in relationship circumstances.

In 1986 Hon. Jennifer Cashmore AM advised the House by way of a personal explanation of the breakdown of her marriage and intention to revert to her maiden name. Cashmore was first elected as Jennifer Adamson in 1977.

PETITION – DELIVERED BY POST

On Wednesday 5 December 2018, the Leader of the Opposition (Mr Malinauskas) presented Petition Number 36 to the House, titled Completion of Torrens to Torrens Project Landscaping from 720 residents of South Australia.

The Petition itself was no different in content to any of the previous 35 Petitions of the 54th Parliament, 1st Session, except that this was the first occasion that a petition was printed on one side of a DL size card, (approx.11cm high x 22.5cm Length), the DL size card having enough space for 4 signatures per household. The other side of the card had a return address to the Leader of the Oppositions electorate office with a postage paid stamp printed on the top right hand corner. It appeared that the petition was circulated to households in the Leader's electorate via Australia Post, and the respondents returning it via the same method.

This appears to be a new method of collecting signatures for a petition using Australia Post as a vehicle for distributing and returning pages of petitions to Members electorate offices, prior to them being presented to the House.

As a footnote, the Standing Orders Committee of the House of Assembly is currently inquiring into the use of e-petitions.

ATTORNEY GENERAL – ICAC INVESTIGATIONS

During the Estimates Committee hearings on Thursday 27 September 2018, the Minister for Planning was asked a series of questions concerning the whereabouts of senior officers from Renewal SA, a statutory corporation established by the Government to facilitate unique development opportunities for the private sector through access to government land holdings.

The Minister refused to answer the questions, referring to a statement he had made in the House in the previous sitting week.

The Minister was understandably reluctant to provide any more information as it appears that the Officers, who were the subject of the questions, were under investigation by the ICAC Commissioner.

While section 6 of the ICAC Act states that:

Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.

out of an abundance of caution, the Minister was at pains to ensure he didn't prejudice any investigation by answering questions concerning the Officers during the Estimate process. The Opposition Members on the Committee became increasingly agitated at the non-answers and at one stage the Chair suspended the sitting to enable tempers to cool.

Following these testy scenes in the Parliament, the Attorney-General (Hon V Chapman) made a statement, released to the press and subsequently retrieved, concerning the investigation. Her office originally told media the statement could be published, however, it contacted outlets later in the day to say it was not suitable for publication.

Section 56 of the Independent Commissioner Against Corruption Act 2012, in part, states:

A person must not, except as authorised by the Commissioner or a court hearing proceeding for an offence against this Act, publish, or cause to be published—

(a) information tending to suggest that a particular person is, has been, may be, or may have been, the subject of a complaint, report, assessment, investigation or referral under this Act; or

Maximum penalty:

(a) in the case of a body corporate—\$150 000;

(b) in the case of a natural person—\$30 000.

Later the same day the Commissioner released his own statement authorising media to publish the Attorney's comments, but noted that:

the ICAC Act is designed in such a way that a person [who is] the subject of a corruption investigation ought not suffer reputational harm until such time the person is charged.

The Attorney's statement said that in:

...respect of questions about Renewal SA executives... I confirm that I have enquired of the Independent Commissioner Against Corruption, Mr Bruce Lander QC, as to whether there is any further information that can be made available on this matter. He confirmed that there is not.

When Parliament resumed on 16 October, the Attorney-General faced constant questioning in the House concerning whether or not she had breached the Act and if she was being investigated by the Police. She advised that:

I did issue a public statement on that day, and I stand by it, and I confirm that, when the opposition kept raising this spectre of alleged breach of the act, I obtained legal advice from the Crown Solicitor's Office. It has not been disclosed for obvious reasons. I have read it. I have taken the advice, and I am satisfied that I am not in breach of any part of the Act. (Hansard 16 October p. 2763)

On 15 November, the Opposition in the Legislative Council tabled legal advice which stated that the Attorney-General, in publishing her statement to the media prior to an authorisation by the Commissioner, was clearly in breach of the Act. The Opposition characterised her position as untenable and called on the Attorney-General to step-down while the matter was investigated by the Police.

When tabling the advice, the Shadow Attorney-General referred to a report published in *The Advertiser* that said detectives were investigating whether Ms Chapman breached the ICAC Act. The Police Commissioner would not comment on whether police were looking into the matter.

Despite repeated calls for the Attorney-General to table the legal opinion from the Crown Solicitor's Office, she refuses to do so.

The matter continued to be raised in the House, with numerous calls by the Opposition for the Attorney to resign or step-aside while the matter was being investigated.

Following a statement from SA Police that it had referred a possible breach of the ICAC Act by the Attorney-General to the Director for Public Prosecutions, the Opposition vigorously questioned the Attorney on the matter.

On Thursday 28 February, the Attorney-General tabled a Ministerial Statement on the alleged breach and police investigations.

On 4 March, the Police Commissioner announced that he had received a formal response from the Director of Public Prosecutions and as a result of that advice, there would be no further investigations or other action taken in relation to the allegations. While the DPP had referred the request for legal advice to an independent lawyer to avoid any question of conflict, the Opposition continues to call for more answers on who the independent lawyer was and has also raised concerns regarding an informal meeting between the Premier and the Commissioner of Police at a sporting event which the Opposition characterised as an attempt to expedite the investigation.

PUBLIC FUNDING FOR CANDIDATES CONTESTING A BY-ELECTION

Leading up to the last sitting day of the House of Assembly for 2018, the former Premier, Hon Jay Weatherill, advised the House that it was his intention to resign as the Member for Cheltenham. At this stage there was no indication that the former Attorney General, Hon John Rau, would be resigning as the Member for Enfield.

For public funding to be made available to candidates contesting a by-election, there is a requirement under the Electoral Act 1985 (the Act), for a capped expenditure period to be established. Section 130A of the Act sets out the definition of the capped expenditure period and the time at which it commences in respect to a by-election, being “on the day on which the vacancy giving rise to the election is announced in the House of Assembly by, or on behalf of, the Speaker and ending 30 days after polling day for that election.” For a candidate to be eligible for public funding, s.130Q (3) of the Act, requires that an agent of a candidate or group has lodged a certificate under section 130Y of the Act, to receive funding in respect of the election. Pursuant to s.130Y of the Act, for a by-election, a certificate needs to be lodged with the Electoral Commissioner by the agent of a registered political party, on or before 5 pm on the day on which the capped expenditure period commences.

The receipt of letters of resignation from the Members for Cheltenham and Enfield were received by the Speaker on 17 December 2018. With the House having adjourned on 6 December 2018 and the next sitting day scheduled for 12 February 2019, it was not possible to satisfy the requirement of the Electoral Act, to “announce” the vacancies in the House of Assembly prior to the scheduled dates for the two by-elections on 9 February 2019.

As per the normal practice for by-elections, upon the receipt of the letters of resignation from Members, the Speaker circulated a media release on 17 December 2018, referring to the resignations of the former members for Cheltenham and Enfield, setting out his intention to issue writs for by-elections and advising of the relevant details to be included on the writs.

Because there was no “announcement in the House” and no expressed reference to the vacancies as outlined in the Act, it was considered that the media release is arguably not sufficiently close to the conceptual requirement of an announcement in accordance with s. 130A of the Act, where Parliament is adjourned.

To satisfy the requirement of the Act to make an “announcement in the House,” it was considered prudent for the Speaker to announce the vacancies to Members of the House of Assembly by way of an email. To ensure that the notice is publicised more widely, it was also circulated to the same media outlets who were in receipt of the earlier media release. The announcement was circulated on 2 January 2019. The delay in making the announcement was to ensure that political parties had sufficient time to go through the process of preselecting candidates, as the name of a candidate must be included on the certificate lodged with the Electoral Commissioner.

This was the first time the new public funding provision of the Electoral Act was applied to a by-election. It was clear that the current provisions of the Electoral Act as they relate to the “capped expenditure period” for a by-election are unworkable in a practical sense and will need to be amended