

41ST PARLIAMENT



Report 68

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Hon James Hayward MLC – Referral of a Matter of Privilege raised by Hon Sue Ellery MLC

Presented by
Hon Alanna Clohesy MLC (Chair)
October 2022

Standing Committee on Procedure and Privileges

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EXECUTIVE SUMMARY

- 1 A matter of privilege was raised by Hon Sue Ellery, the Leader of the House, on 19 May 2022 that Hon James Hayward had misrepresented to the Magistrates Court the practices and rules of the Legislative Council, and that this had the potential to bring the Council into ridicule or disrepute.
- 2 The President subsequently ruled that there was some substance to the matter and referred it to the Legislative Council's Procedure and Privileges Committee (**PPC**) for inquiry and report.
- 3 Hon James Hayward has been a Member of the Legislative Council since May 2021. He was a member of the Select Committee into Cannabis and Hemp (**Select Committee**) from 13 October 2021 until 24 July 2022.
- 4 On 9 May 2022, whilst awaiting trial on serious criminal charges, Hon James Hayward appeared before the Magistrates Court to make a bail conditions variation application to enable him to travel to Queensland with the Select Committee to attend the Australian Medicinal Cannabis Symposium.
- 5 An affidavit sworn by Hon James Hayward was presented to the Court in support of the bail conditions variation application. The affidavit contained the following paragraph:

If I am not permitted to attend the trip I will be unable to fulfil my responsibilities as a member of the Committee and will have to resign as a Committee member.
- 6 The application to the Court was successful and the hearing received media coverage and public comment, some of which was highly critical of a Member of Parliament facing serious criminal charges having their bail conditions amended to leave the State and attend a conference.
- 7 The PPC received private written submissions from Hon James Hayward and all members of the Select Committee into Cannabis and Hemp, and held a private hearing with Hon James Hayward.
- 8 The PPC has concluded that:
 - a. Hon James Hayward swore a statement in his affidavit to the Magistrates Court that implied the existence of some professional sanction if he did not attend the symposium.
 - b. Hon James Hayward obtained through the incorrect statement in the affidavit a benefit that may not have been available to other people.
 - c. Hon James Hayward's sworn affidavit to the Magistrates Court was incorrect and misleading. The PPC was satisfied that Hon James Hayward had an understanding of the rules relating to committee membership, and was aware at the time as a result of advice from multiple sources that it was neither mandatory nor expected that all members of a committee must travel in the event that the committee resolves to gather information elsewhere.
 - d. There was no reasonable excuse for the incorrect statement in Hon James Hayward's sworn affidavit. He claimed that his intent was to convey to the Magistrates Court that he had given the other members of the Select Committee a personal undertaking that he would resign his membership of

the Select Committee if he was unsuccessful in having his bail conditions varied.

- e. Hon James Hayward's concerns about disclosing committee deliberations did not extend to his revealing information to the court about the Committee's upcoming travel, prior to the information being authorised for release by the Committee.
 - f. There is currently no action being taken by either the Magistrates Court or the Western Australia Police Force in relation to this matter. There is therefore no alternative remedy available in the circumstances.
 - g. Hon James Hayward's actions proved to be a significant distraction to the work of the Select Committee, which led to an eventual breakdown in trust and the working relationship of the membership. This problem has in part been addressed by the resignation of Hon James Hayward from the Select Committee on 24 July 2022.
 - h. In this matter, the type of contempt against the Legislative Council is not one to which the Schedule 4 of the Legislative Council Standing Orders 'threshold test' is easily applicable. There are, however, other acts amounting to contempt under s1 of the *Parliamentary Privileges Act 1891* which, though they do not tend in a direct or obvious way to obstruct or impede the Council in the performance of its functions, have a tendency to produce such a result indirectly by bringing the House into odium, contempt or ridicule or by lowering its authority. The actions of Hon James Hayward fall into this category.
 - i. Members of Parliament are expected to ensure that they do not, by deliberate act or otherwise, use their position as a Member in matters that are of a private nature unrelated to their role or so as to derive any benefit or gain.
 - j. The PPC is satisfied that Hon James Hayward sought to gain a benefit by using his membership of the Select Committee to vary his bail conditions. Bail is an enforceable restriction. The benefit Hon James Hayward received was the alleviation of that restriction, achieved through the use of his position to suggest to the court that he was required to travel with the Committee.
 - k. The PPC is of the view that the actions of Hon James Hayward, in knowingly misrepresenting the rules of the Legislative Council for a benefit, has had the effect of bringing the work of the Select Committee, and the Legislative Council itself, into odium, contempt and ridicule, and represents a contempt of the Legislative Council.
- 9 The actions of Hon James Hayward have, by association, had an impact on the reputation of the Legislative Council and its committees. This matter has the potential to negatively affect all Members and the Legislative Council's standing in eyes of the public.
- 10 In the PPC's view this warrants a penalty that will reinforce to all members of the Legislative Council the importance of maintaining high standards of behaviour, and that they should act accordingly in their public and private activities, particularly where these intersect.

Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

FINDING 1

Page 10

Hon James Hayward was aware that there was no rule or procedure of the Legislative Council that would have compelled him to travel to Queensland, or terminated his membership of the Select Committee if he was unable to do so.

FINDING 2

Page 13

That Hon James Hayward used his position as a member of the Select Committee to gain a benefit not available to others.

FINDING 3

Page 17

That the actions of Hon James Hayward, in knowingly misrepresenting the practices and rules of the Legislative Council for a benefit, constitutes a contempt of the Legislative Council.

RECOMMENDATION 1

Page 17

That Hon James Hayward is found to be in contempt of the Legislative Council.

RECOMMENDATION 2

Page 18

That the Legislative Council discharge Hon James Hayward from the membership of any standing or select committee of the Legislative Council, and any joint standing or select committee of the Parliament of Western Australia for the remainder of the 41st parliament.

RECOMMENDATION 3

Page 18

That the Legislative Council:

- (a) suspends Hon James Hayward from the service of the Legislative Council for the remainder of 2022; and
- (b) orders that Hon James Hayward undergo further training on parliamentary privilege and ethics, overseen by the Clerk of the Legislative Council, by no later than 31 December 2022, and that the Clerk report to the House on the completion of such training.

1 Referral and terms of reference

1.1 On 19 May 2022, the Leader of the House raised a matter of privilege¹ in the Legislative Council following media reports relating to a bail conditions variation application hearing in the Magistrates Court involving Hon James Hayward. It was reported that on 9 May 2022 Hon James Hayward had presented a sworn affidavit containing a paragraph suggesting he would be required to resign from the Select Committee into Cannabis and Hemp (**Select Committee**) if he could not undertake interstate travel.

1.2 In raising the matter of privilege, the Leader of the House alleged that aspects of Hon James Hayward's affidavit had misrepresented to a court the practices and rules of the Legislative Council and that this conduct had the potential to bring the Council into disrepute.

1.3 On 14 June 2022 the President of the Legislative Council referred the matter to the Procedure and Privileges Committee (PPC) for inquiry and report, noting that:

On balance, I am of the view that the conduct as alleged is of such gravity that it requires investigation. Whilst acknowledging from the outset the practical issues that such an investigation may face, I refer the matter to the Procedure and Privileges Committee.²

1.4 On 15 June 2022 the PPC reported the following terms of reference to the House:

[That the PPC] is to inquire into the matter of privilege raised by Hon Sue Ellery MLC on Thursday, 19 May 2022 and:

- (a) determine whether the conduct of Hon James Hayward MLC constitutes a breach of privilege or is a contempt of the Council; and
- (b) if the PPC so finds, advise what penalties, if any, the Council might impose for the breach or contempt.³

2 Conduct of the inquiry

2.1 In conducting this inquiry, the PPC has been assisted by submissions and evidence provided by members of the Select Committee, relevant documents of the Select Committee meetings (provided by way of an Order of the Council on 15 June 2022)⁴, and the evidence of Hon James Hayward that was obtained in a private hearing. The PPC has also had regard to the transcript of Hon James Hayward's bail variation hearing on 9 May 2022.

2.2 The nature of this inquiry has required the PPC to carefully navigate a range of complex issues relating to natural justice and procedural fairness, the ability of the Council to regulate and determine matters within its exclusive cognisance and the principle of comity with the courts.

2.3 The inquiry raised questions regarding *sub judice* and comity between the Parliament and the courts. However, so far as the proceedings before the Magistrates Court are concerned, the PPC has sought to establish only what was actually submitted to the Court by and on

¹ Hon Sue Ellery, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 19 May 2022, p 2521.

² Hon Alanna Clohesy, President, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 14 June 2022, p 2619.

³ Western Australia, Legislative Council, Standing Committee on Procedure and Privileges, Report 67, *Referral of a Matter of Privilege raised by Hon Sue Ellery MLC - Terms of reference*, 15 June 2022, p 1.

⁴ Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 15 June 2022, p 2793.

behalf of Hon James Hayward and determine its impact, if any, on the privileges of the Legislative Council.

- 2.4 This inquiry is not concerned with the criminal charges that Hon James Hayward is facing and should in no way be seen as expressing an expectation to the courts that they should treat Members of Parliament in any particular way when exercising their independent decision-making.

3 What is a breach of privilege and what is a contempt of parliament?

- 3.1 The laws that underpin the Legislative Council include rules, practice, principles and Standing Orders that guide the Council in determining matters that affect its proper functioning. These have been developed over centuries to enable Houses of Parliament to deal with actions that have a tendency to bring the House and its proceedings into disorder or disrepute.
- 3.2 The laws include the concept of parliamentary privilege, a term that encompasses the rights and immunities that attach to the Houses and their members. One of these privileges is the inherent right of a House to defend itself where it has been obstructed in the execution of its functions, or where its members have been obstructed in the performance of their duties.
- 3.3 The terms breach of privilege and contempt, whilst related, are distinct elements of the framework that guide Houses in the use of penalties for breaches of the laws of parliament.
- 3.4 The term 'breach of privilege' has long been used to describe:
- an attack against a recognised privilege of the Legislative Council, such as any action that disregards or threatens the Council's freedom of speech immunity for what is said or done in the course of proceedings of the Parliament; and
 - the much wider concept of a "contempt of Parliament", where the work of the Legislative Council or its committees has been otherwise obstructed in some way.
- 3.5 A breach of privilege may result in a contempt, but a contempt will not necessarily involve a breach of privilege.
- 3.6 Erskine May defines a "contempt of Parliament" as:
- ... any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence.⁵
- 3.7 The referral of this matter of privilege required the PPC to determine whether Hon James Hayward has breached a privilege of the Council or has committed an act that is capable of constituting a contempt.

Criteria to be taken into account when determining matters relating to contempt

- 3.8 During the course of this inquiry the PPC has found that there has been no defined breach of privilege. Neither the Legislative Council nor its members or committees has suffered 'an attack against a recognised privilege' by the actions of Hon James Hayward.

⁵ *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 21st Ed., 1990, p 115.

- 3.9 Whether those actions constitute a contempt of the Legislative Council is another question.
- 3.10 Schedule 4 of the Standing Orders of the Legislative Council contains the following guidance for determining potential matters of contempt.

The Council shall take into account the following criteria when determining whether matters possibly involving contempt should be referred to the Procedure and Privileges Committee and whether a contempt has been committed, and requires the Procedure and Privileges Committee to take these criteria into account when inquiring into any matter referred to it –

- (a) the principle that the Council’s power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Council and its Committees and for Members against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Council;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt –
 - (i) knowingly committed that act; or
 - (ii) had any reasonable excuse for the commission of that act.

- 3.11 The PPC’s preliminary research did not uncover a specific contempt relating to ‘misrepresenting the practice and rules of [a House of Parliament]’. However, there are a broader range of contempts relating to acts that have a tendency to obstruct a House of Parliament by bringing it into odium, contempt or ridicule, which the PPC gives consideration to in the remainder of this report.

4 The Affidavit of Hon James Hayward

- 4.1 At the heart of this matter is whether the affidavit sworn by Hon James Hayward contained a deliberate misrepresentation of the practice and rules of the Legislative Council, and whether, in providing the same affidavit to the court, the member has acted in a manner that constitutes a contempt of the Legislative Council.

Background

- 4.2 The Council established the Select Committee into Cannabis and Hemp on 13 October 2021. The Committee consisted of five Members, including Hon James Hayward.
- 4.3 On 2 December 2021, Hon James Hayward was charged by WA Police with a number of offences. A magistrate granted bail to Hon James Hayward noting that the charges were serious and included strict conditions to be monitored closely by police.⁶
- 4.4 In February 2022, Hon James Hayward successfully applied to vary his bail to enable him to attend sittings of the Legislative Council and to perform his parliamentary duties unobstructed.⁷

⁶ Shine R and Menagh J, ‘WA Nationals MP and former Bunbury councilor James Hayward charged with child sex offences’, *ABC Online*, 2 December 2021.

⁷ Emily Moulton, ‘Accused MP will fight child sex claims’, *The West Australian*, 22 February 2022, p 3.

- 4.5 Hon James Hayward swore an affidavit on 29 April 2022 and submitted the same in support of a second bail variation hearing on 9 May 2022. The purpose of the second hearing was to allow him to travel interstate to attend a symposium related to the Select Committee's inquiry.
- 4.6 The second variation was granted by the Chief Magistrate on 9 May 2022.

The Select Committee's intention to travel

- 4.7 The PPC examined the Select Committee materials relating to its proposed travel arrangements, following an Order of the House on 15 June 2022.
- 4.8 The Select Committee minutes show that on 21 February 2022 the Select Committee discussed interstate travel to attend the United in Compassion Australian Medicinal Cannabis Symposium 2022 in Queensland. The minutes for this meeting also show that the possibility of international travel was discussed, and the subject of Hon James Hayward's capacity to travel was raised, including his ability to fully participate in Committee travel and his continuing contribution to the Committee as a whole.
- 4.9 During that meeting, the Select Committee resolved to seek advice from the Clerk in regard to Hon James Hayward's capacity to meet his parliamentary responsibilities in accordance with the bail conditions placed on him. In seeking that advice, the Advisory Officer noted that a member of the Select Committee had raised a question as to whether a court was entitled to deny a member of parliament any opportunity to participate in parliamentary proceedings given parliamentary sovereignty. The Acting Clerk's advice was provided in the following response:

The short answer is, as you have indicated, that it is solely within the discretion of the court both whether and how it varies Hon James Hayward's bail conditions to allow him to travel interstate with the Select Committee...I note that when a Western Australian parliamentary committee leaves the State, it is no longer capable of conducting "proceedings in Parliament". As such, there are absolutely no issues of contempt or breach of privilege that a court would need to concern itself with by denying a variation in his bail conditions. Hon James Hayward should, therefore, be treated just like any other person who seeks from the court the ability to travel as part of his employment.⁸

- 4.10 On 14 March 2022 the Select Committee considered the Acting Clerk's advice. The minutes of that meeting record that Hon James Hayward wished to remain on the Committee and had spoken with the President and the Clerks in regard to this desire. The minutes also reflect that he had sought legal advice with respect to the proposed Committee travel whilst under bail conditions, and that an interstate travel exemption was likely to be granted, although international travel may not be possible.

Select Committee consideration of a draft letter of support to vary bail conditions

- 4.11 On 19 April 2022, Hon James Hayward sought confidential advice from the Acting Clerk and assistance to draft a letter of support, on behalf of the Select Committee, to seek to vary his bail conditions so he could travel to Queensland with the Committee.
- 4.12 The confidential advice provided by the Acting Clerk to a Member of the Legislative Council was only considered as evidence by the PPC on the basis that it had been submitted by Hon

⁸ Select Committee documents obtained by order of the Council, dated 15 June 2022.

James Hayward to the Select Committee for its approval, and was among the Select Committee documents obtained by Order of the House.

4.13 The draft letter was intended to communicate the Select Committee's support for the bail variation to the Chief Magistrate and would clarify that the purpose of the travel would not be considered a proceeding of parliament.

4.14 The letter contained the following paragraph:

I advise that, as the Committee will be travelling outside of its jurisdiction, all of its various meetings during the travel will not be 'proceedings in Parliament' to which any issues of absolute priority of attendance arise in relation to Hon James Hayward that need to be brought to the Court's attention.⁹

4.15 Hon James Hayward intended to present the draft letter to the Select Committee at its next meeting for its approval.

4.16 On 25 April 2022, the Chair of the Select Committee telephoned the other members and advised them he had been asked by Hon James Hayward to circulate the draft letter for consideration.¹⁰

4.17 A submission received by the PPC indicates that the draft letter was not supported by at least one member, who stated:

I told [the Chair] I did not agree that a letter of support should be provided as there was not a requirement for [Hon James Hayward] to be physically present at the Symposium. It was agreed that the Select Committee should meet to discuss.¹¹

4.18 The draft letter was considered at a meeting on 2 May 2022 and was not approved. The minutes show that the Select Committee discussed whether the letter was necessary, and settled on the following decision:

The Chair moved that if required, Committee staff would inform either the Magistrate's Court or the lawyer representing Hon James Hayward MLC of travel details for the United in Compassion Symposium.

4.19 This is the first reference in the Committee's minutes to a resolution authorising information on the Committee's upcoming travel to be disclosed to anyone.

4.20 However, on 29 April 2022, four days before that meeting, Hon James Hayward had sworn an affidavit in support of his bail conditions variation application, which included the following relevant paragraphs: ...

4. I am a Member of Parliament ("MP"). I sit in the Upper House and am the member for the South-West region.

5. I am a member of the Upper House's Select Committee into Cannabis and Hemp ("the Committee").

6. The Committee's terms of reference include that the Committee is:

"to inquire into and report on the potential to amend the current legislation and regulations which apply to cannabis and hemp in Western Australia, with particular reference to –

⁹ Select Committee documents obtained by order of the Council, dated 15 June 2022.

¹⁰ Submission 3 from Hon Jackie Jarvis, Member, Select Committee into Cannabis and Hemp, 14 July 2022, p 2.

¹¹ Ibid.

- (a) the current barriers to pharmaceutical and nutraceutical use of cannabinoid products:
 - (b) medicinal cannabis, its prescription, availability and affordability; and
 - (c) the potential benefits and risks of permitting industrial hemp for human consumption.”
7. Parliament has authorised the Committee travelling to Queensland to investigate the use of and legislation surrounding medicinal cannabis in other jurisdictions within Australia.
 8. The main purpose of the trip is to attend the 2022 Australian Medicinal Cannabis Symposium which is being held on the Sunshine Coast from 21-22 May 2022. The symposium will include presentations by a variety of people from around Australia and overseas, for example, medical professionals, researchers, policy makers, and patients. In addition to watching the presentations there will be opportunities to speak to and ask questions of the other attendees. There will also be the opportunity to attend an industry trade exhibition.
 9. Four other members of the Committee and two Parliamentary staff will be travelling in addition to me.
 10. If I am not permitted to attend the trip I will be unable to fulfil my responsibilities as a member of the Committee and will have to resign as a Committee member.¹²
- 4.21 Despite the Select Committee’s decision to authorise staff to disclose the travel details only ‘if required’, Hon James Hayward had seemingly already provided committee information to his lawyers when instructing them to prepare and file his affidavit, which contained committee information, including:
- a) That the Select Committee was planning to attend the conference in Queensland
 - b) The travel details for the conference including the location and dates
 - c) Who would be travelling to the conference from the Committee
- 4.22 The Committee discusses these important disclosures further at paragraphs 5.4 and 5.5.
- 4.23 The bail conditions variation application hearing took place on 9 May 2022. The official transcript of the hearing relevantly states:

HER HONOUR: ... This is an application to vary bail for the accused, James Hayward. I note that the State does not oppose the application to vary bail. The application is to change, vary, two conditions just to allow travel to Queensland so that the accused can attend the 2022 Australian Medicinal Cannabis Symposium being held in the Sunshine Coast from 21 to 22 May 2022, and the application is to travel on 20 May to Queensland via Melbourne, and travel back to Perth on 23 May, via Melbourne, from Queensland.

As I understand it from the affidavit that has been filed in support of the application to vary bail, Mr Hayward is a Member of Parliament, a member for the South West Region. He is a Member of the Upper House's Select Committee into Cannabis and Hemp, and the Committee's terms of reference include inquiring

¹² Submission 5 from Hon James Hayward, 24 June 2022, Appendix 1 of letter from Hon James Hayward to the PPC, p 2.

into and reporting on current legislation and regulations which apply to cannabis and hemp in Western Australia.

Parliament has authorised a committee to travel to Queensland to investigate the use of and legislation surrounding medicinal cannabis in other jurisdictions with Australia. Four other members of the committee and two parliamentary staff will be travelling, in addition to Mr Hayward, and he has said in his affidavit that if he is not permitted to attend the trip, he will be unable to fulfil his responsibilities as a member of the committee and will have to resign as a committee member.

... So the conditions are varied in relation to two of the conditions. So in relation to the reporting condition, you are to report to the Australind Police Station every Monday, Wednesday and Friday between 8am and 4 pm, save that when the Western Australian Legislative Council is sitting. You are not required to report on Wednesdays and save that you are not required to report on Friday, 20 May 2022, or Monday, 23 May 2022. And in relation to the condition not to leave Western Australia, that has been varied to read:

Not to leave Western Australia, except for the purposes of travelling to Queensland with the Select Committee into Cannabis and Hemp between 20 and 23 May 2022, and whilst in transit through Melbourne Airport, you shall not leave the precincts of Melbourne Airport.

Do you understand those conditions?

ACCUSED: I do."¹³

5 Did Hon James Hayward knowingly misrepresent the practice and rules of the Legislative Council?

5.1 The PPC notes that the actual language in the affidavit, and specifically paragraph 10, is different to the quote contained in a widely published news article that triggered the raising of this matter of privilege in the Council. That media report used the term "deemed" when describing the impact of Hon James Hayward not being able to attend the symposium. The media report stated:

If he could not attend the conference, the court was told, then he would be deemed unable to fulfil his responsibilities as a committee member and would have to resign.¹⁴

5.2 The word "deemed" was neither spoken by counsel nor written in the affidavit. Notwithstanding the inaccuracy of the quote, the PPC is of the view the wording used in the affidavit gave the impression that Hon James Hayward would be required to resign if unable to travel with the Committee.

5.3 In evidence to the PPC, however, Hon James Hayward asserted that there is nothing in the statement as expressed in paragraph 10 that misrepresents a rule or procedure of the Legislative Council. Instead, he explained the words reflected his personal belief as to his ability to remain on the Select Committee and contribute to the inquiry if he was prevented from the information gathering purpose of the travel:

It was never my intention to mislead the court in relation to my bail application. The information in my affidavit was short and succinct. I did not at any time tell the court I would be sacked or I would be subject to any other disciplinary action. I did

¹³ Tabled Paper 1332, Legislative Council, 14 June 2022, p 2-5.

¹⁴ Tim Clarke, 'Bail curbs go to pot', *The West Australian*, 10 May 2022, p 16.

not mention anything about the practices and the rules of the Legislative Council. The reality is I felt compelled to resign from the committee if I was not permitted to travel because of the expectations placed upon me by its members. Given the context, what I said in my affidavit makes sense. I did not include all the details in my affidavit because deliberations of the committee are subject to privilege.¹⁵

- 5.4 However, the Committee notes (as outlined in paragraph 4.21) that this same concern was not shown for the outcomes of the Committee's deliberations as to when, how and what the arrangements were for the Committee's travel to Queensland for the Symposium.
- 5.5 The Committee does not make this point to explore a further contempt that may have been committed but rather to demonstrate the inconsistency between Hon James Hayward's claims that he was always trying not to disclose committee deliberations in making a vague statement to the court and his willingness to disclose multiple committee deliberations in the same document. It appears as if Hon James Hayward was willing to disclose substantial committee information that was favourable to his application and to minimise and obscure information that was detrimental to his application.

Paragraph 10

- 5.6 The PPC deliberated on the content of paragraph 10 at length. The two key limbs of the paragraph are found in the underlying assumptions, that if Hon James Hayward was not permitted to travel he would:
- be unable to fulfil [his] responsibilities as a member; and
 - would have to resign from the Select Committee.
- 5.7 Neither of these assumptions are correct.
- 5.8 The PPC notes that the purpose of Hon James Hayward's affidavit was to encourage a favourable determination in support of his bail variation application. However, the PPC also considers that some of the paragraphs of the affidavit were unnecessary, and others misleading.
- 5.9 Central to this view is the content of paragraph 10 which states:
- If I am not permitted to attend the trip I will be unable to fulfil my responsibilities as a member of the Committee and will have to resign as a Committee member.¹⁶
- 5.10 The PPC is of the view that the construction of paragraph 10 was deliberate and was not, as claimed by Hon James Hayward, an attempt to convey an undertaking to resign from the Select Committee if permission to travel was not granted by way of the bail variation. The PPC considers that on a plain reading of paragraph 10 the construction implied a consequence to his continued membership of the Select Committee if his bail was not varied for travel purposes.

Relevant rules that apply to Legislative Council committees

- 5.11 Parliamentary committees are creatures of the Council. They enjoy the privileges and freedoms of the Council and, as delegates thereof, are subject to the relevant rules and orders.
- 5.12 All Legislative Council Committee members receive training on the rules and orders relevant to committees. Hon James Hayward has been a Member of the Legislative Council since

¹⁵ Hon James Hayward, Member, Legislative Council, transcript of evidence, 1 August 2022, p 2.

¹⁶ Submission 5 from Hon James Hayward, 24 June 2022, Appendix 1 of letter from Hon James Hayward to the PPC, p 2.

May 2021. He was appointed to the Joint Standing Committee on Delegated Legislation on 27 May 2021 and was appointed to the Select Committee into Cannabis and Hemp on 13 October 2021.

- 5.13 As part of his 2021 new member induction, Hon James Hayward attended several information sessions where the clerks presented a series of seminars regarding the practice and rules of the Legislative Council and a general overview of the relevant Standing Orders applicable to the types of business members could expect to be involved with.
- 5.14 When members are appointed to committees they are expected to fully participate in committee proceedings, however, there is no rule or convention requiring the removal or resignation of a member if they are unable to attend a meeting, site visits, or travel for committee business.
- 5.15 If a member fails to attend three consecutive meetings of a committee, they are discharged from that committee (SO 159(2)(b)). This is only applicable in the case of committee meetings conducted within Western Australia, and where a member of the committee has not been granted leave by that committee or the Legislative Council for a period of absence.
- 5.16 Occasionally, committee members are unable to attend hearings or conferences relevant to the Committee's work. Reasons may include illness, family responsibilities or other pressing matters. In those circumstances Members have the capacity to be granted a leave of absence, or can rely upon notes, transcripts and the use of technology to participate.
- 5.17 The inability to attend a committee gathering outside of Western Australia has no effect on a member's compliance with SO 159(2)(b). Meetings outside of Western Australia are not formal proceedings of the Legislative Council, and the 'three strikes' provision in the Standing Orders does not apply.

Hon James Hayward's understanding of Standing Order 159

- 5.18 In a hearing before the PPC, Hon James Hayward demonstrated a clear understanding of the Standing Orders and the various ways a member of a standing or select committee could resign, be removed by order of the Council or lose their membership of a committee via Standing Order 159(2)(b).¹⁷
- 5.19 Prior to swearing his affidavit Hon James Hayward had the benefit of advice from the clerks and his lawyers, the benefit of his induction and training seminars, and the draft letter prepared by the Acting Clerk clarifying that all Select Committee meetings during the travel would not be 'proceedings in Parliament' to which any issues of absolute priority of attendance arise that need to be brought to the Court's attention.
- 5.20 The PPC is satisfied that, at the time of swearing the affidavit, Hon James Hayward was aware of and understood the practice, rules and orders of Legislative Council committees relating to his participation in committee proceedings and related travel.
- 5.21 Despite advice from multiple sources that his membership of the committee was not at risk, Hon James Hayward did not amend his affidavit to properly reflect the practice and rules as they relate to committees.

¹⁷ Hon James Hayward, Member, Legislative Council, transcript of evidence, 1 August 2022, p 8.

FINDING 1

Hon James Hayward was aware that there was no rule or procedure of the Legislative Council that would have compelled him to travel to Queensland, or terminated his membership of the Select Committee if he was unable to do so.

Was Hon James Hayward pressured or compelled to travel to the Symposium?

5.22 While the question of whether Hon James Hayward was pressured to resign if unable to travel is not central to establishing whether he committed a contempt, the PPC sought to understand whether his assertion was supported by evidence.

5.23 The submission of Hon James Hayward provided his recollection of a meeting where the issue was discussed:

... several members expressed their views as to what was expected of me as a member of the committee.

They specifically expressed the view that I should be able to travel.

Some members went on to say that if I could not travel then I wasn't pulling my weight and could not adequately fulfil my role as a committee member.

Those members expressed to me the view that I should resign from the committee for various reasons including the fact that my current bail conditions prevented me from traveling outside of Western Australia.

The pressure which I felt being placed on me to resign, came from an expectation from the members themselves, rather than any standing order or procedural requirement.¹⁸

5.24 The Deputy Chair of the Select Committee provided comment on those early discussions:

I expressed to Hon James Hayward, and the other members of the Select Committee, that the Select Committee had no power itself to remove Hon James Hayward from the Select Committee, notwithstanding the views of any member about his continuing involvement ...

At the Select Committee meeting on 14 March 2022 Hon James Hayward indicated ... that he would not be stepping away from the Select Committee. He provided a number of reasons for this including: that he believed he had something to contribute; that he thought he would be able to meet the needs and his obligations of the Select Committee; and that he felt, as he was presumed innocent of the charges he faced, it was important that he be able to continue to enjoy the privileges of being a member of the Legislative Council.

5.25 With respect to Hon James Hayward's impending bail hearing, the Deputy Chair of the Select Committee submitted:

I do recall him saying to the Select Committee that he was confident of getting his bail varied without the letter and if he was not able to get it varied, he would reconsider his position on the Select Committee. I did not take his statement that he would reconsider his position very seriously ...

¹⁸ Submission 5 from Hon James Hayward, 24 June 2022, Appendix 2 of letter from Hon James Hayward to the PPC, p 1.

It was not the Select Committee's role or responsibility to support or provide a justification for [Hon James Hayward's] desire to have his bail conditions changed, especially given his participation in the travel was not compulsory and his non-participation had no bearing on his continuing entitlement to participate in the Select Committee.¹⁹

5.26 The Deputy Chair of the Select Committee further observed:

While it has always been a matter for Hon James Hayward as to whether he continued to be a member of the Select Committee, his actions in and justifications for seeking to have his bail conditions varied can, at best, be described as wilfully sloppy and, at worst, deliberately misleading the Court to achieve his desired outcome. In both cases he has brought the Select Committee and the Legislative Council into disrepute by being associated with his actions.

Hon James Hayward has had the benefit of legal advice, advice from the Clerks, and advice from colleagues, such as me. Notwithstanding this, he chose to make a sworn statement, prepared by his lawyers on his instructions, to the Court that incorrectly reflected the obligations on him (i.e., that he was required to undertake travel), and that misstated the consequences that he would face (i.e., forced removal from the Select Committee) if he was unable to travel.²⁰

5.27 When asked whether he had explored alternative options to attending in person, Hon James Hayward's evidence to the PPC was that he had not, and that the course of action he had determined was to seek a bail variation instead of any other option:

Hon KYLE McGINN: So did you delve into any other way that you would be able to garner that information without attending Queensland?

Hon JAMES HAYWARD: As I have answered already, I did not, because the course of action was to make a bail application to allow me to travel in person.

Hon KYLE McGINN: So you had a view that there was a pressure on you being able to fulfil your role on the committee and attending the symposium, but you only looked at one avenue for that to be possible and did not delve into other avenues such as researching who the speakers were and getting hold of their presentations or participating online—which you actually did in the end anyway?

Hon JAMES HAYWARD: Again, the issue with COVID is completely irrelevant —

Hon KYLE McGINN: I did not mention COVID.

Hon JAMES HAYWARD: Well you said that I did not, sorry. I thought you said that I did not attend.

Hon KYLE McGINN: No, but you attended online, which is something that was an option ... The question was that why did you not look at other options to get the information relevant to be able to participate in the committee's deliberations on the symposium?

Hon JAMES HAYWARD: I have answered that already. Because the course of action was to apply for a change to my bail conditions to allow me to attend in person and fully be able to participate in the conference.²¹

¹⁹ Submission 4 from Hon Matthew Swinbourn, Deputy Chair, Select Committee into Cannabis and Hemp 17 July 2022, p 2.

²⁰ Ibid, p 3.

²¹ Hon James Hayward, Member, Legislative Council, transcript of evidence, 1 August 2022, p 13.

- 5.28 Parliamentary committees are, by their very nature, political and at times adversarial. The Standing Orders and rules for committees are not intended to restrain deliberations, rather they are designed to allow a contest of ideas and views where members are free to engage in robust, forthright discussion without fear of interference or disclosure. These characteristics embody the system that underpins parliamentary democracies, and without which committees would be ineffective.
- 5.29 The PPC accepts that there was some discussion within the Select Committee around Hon James Hayward's undertaking to consider resigning if he was unable to undertake the travel, although this was not considered a serious proposition by at least one member of the Select Committee.
- 5.30 However, the PPC considers that a balanced view of the evidence supports the proposition that Hon James Hayward alone formed the view that he would have to resign if he was unable to travel and that he was not compelled to resign by other committee members. The PPC is of the view that Hon James Hayward's stated belief that he would have to resign if his bail was not varied was not a reasonable belief in the circumstances, particularly where there were other opportunities available for him to participate in the conference virtually.

Obligations on members of parliament

- 5.31 Members of parliament occupy privileged positions and are held to the highest standards of integrity and accountability. Members should act accordingly in their public and private activities, particularly where these activities intersect.
- 5.32 These principles are in line with longstanding public expectations of how members of parliament should conduct themselves. In *Armstrong v Budd and Stevenson* [1969] 1 N.S.W.R 649, 655, the court referred to a motion in the NSW Legislative Council in which the mover stated:
- In our democracy, in the parliamentary institution in the free world, it is essential that the standing of Members of Parliament in the eyes of the community should be maintained at a high level. It is necessary to maintain certain standards for the very preservation of the Legislative Council of NSW in this case. We are members of a sovereign law-making body and for this reason the House itself is given a measure of responsibility in the control of the behaviour of its Members.
- 5.33 In the foreword to Dr Gerard Carney's *Members of Parliament – Law and ethics*, former Chief Justice of the High Court, Gerard Brennan, stated:
- The efficiency and integrity of political institutions are functions of the qualifications and character of those in whom political power is reposed and of the manner in which that power is exercised. The public expects that certain standards will be maintained and, provided those standards are maintained, accepts and peacefully submits to the exercise of political power. The maintenance of proper standards underpins the peace, order and good government of society.²²
- 5.34 These standards include not using a public position to gain a benefit.

Did Hon James Hayward obtain a benefit?

- 5.35 The PPC considered whether the capacity to travel outside of Western Australia for parliamentary purposes was a benefit to Hon James Hayward. Ordinarily, work related travel is an important way for committee members to educate themselves and by extension, the

²² Dr Gerard Carney, *Members of Parliament: law and ethics*, Prospect, St Leonards, 2000, p ii.

House, as to the policy issues under investigation. Whilst it is important, Members' attendance it is not compulsory.

- 5.36 The PPC recognises that variations to bail conditions are not uncommon, and that any person subject to bail conditions has a right to apply for those conditions to be varied for a range of personal or work related reasons. The granting of a variation to a person's bail conditions is not a reward or a benefit, and courts regularly exercise their discretion to grant a variation.
- 5.37 Whilst it was open to Hon James Hayward to make an application based on his personal desire to attend the conference, the PPC is of the view that it was an error of judgement to frame that application, particularly paragraph 10, in such a way as to misrepresent the rules and practice of the Legislative Council.
- 5.38 The PPC has formed the view that Hon James Hayward relied on his position as a member of the Select Committee in making his application to vary his bail conditions, as explicitly stated in paragraph 4 of his affidavit.
- 5.39 Whilst the PPC acknowledges that the variation application related to his work, Hon James Hayward relied on the unique circumstances of his employment, and an inference that if he was unable to travel, he would lose his position on the Select Committee. This was untrue, and is the key misrepresentation of the rules of the Legislative Council.
- 5.40 The PPC notes that there was an elevated responsibility on Hon James Hayward to provide accurate information to the court. As Hon James Hayward has identified, the Committee's deliberations are private to the Committee. If the Committee had wanted to dispute the claims made by Hon James Hayward in court, the Committee itself would have to authorise the disclosure of further committee deliberations.
- 5.41 Bail is an enforceable restriction. The benefit Hon James Hayward received was the alleviation of that restriction. The PPC believes it was an alleviation that may not have been granted if the application had not included the paragraphs that inferred the travel was crucial to his position on the committee.
- 5.42 Whilst Hon James Hayward was within his rights in making the application to vary his bail, it was the way in which he obtained the variation that is at issue. It was the use of his position as a member of parliament, combined with the incorrect claim that he would have to resign, that has resulted in this inquiry, and is the conduct with which the PPC takes issue.
- 5.43 The PPC has formed the view that the conduct of Hon James Hayward, in using his position as a member of the Select Committee to obtain a variation to his bail conditions, does not meet the high standards applying to members of parliament, namely the use of his position to obtain a benefit.
- 5.44 That the application was made on the basis of his position as a member of the Select Committee means it was a benefit not available to other members of society.

FINDING 2

That Hon James Hayward used his position as a member of the Select Committee to gain a benefit not available to others.

6 Do the statements in paragraph 10 of the affidavit constitute a contempt of the Legislative Council?

- 6.1 The Council is empowered under Standing Order 94 to determine that any particular act constitutes a contempt. In making this assessment, the Council must take into account:
- That the Council's power to adjudge and deal with contempts should only be used to provide reasonable protection against improper acts tending to substantially obstruct the Council and its Committees.
 - The existence of any other remedy for any act that is held to be a contempt
 - Whether a person who committed any act did so knowingly or had a reasonable excuse for doing so.

Substantial obstruction tending to obstruct the Council and Committees

- 6.2 The question before the PPC was whether the actions of Hon James Hayward, which fall outside of the known established contempts, constitutes a substantial obstruction of the Legislative Council.
- 6.3 Contempts causing obstruction to the work of the Legislative Council are sometimes difficult to measure in terms of the level of obvious obstruction of the Council's work.
- 6.4 The evidence of the Select Committee members suggests there has been an obstruction to the work of the Select Committee, although they were unable to reach a common view on the level of that obstruction. There was, however, sufficient evidence that Hon James Hayward's actions had proven to be a significant distraction to the work of the Select Committee.
- 6.5 The actions that raised the question of contempt in this matter are not those to which the Schedule 4 'threshold test' is easily applicable. Nevertheless, other acts amount to contempt under s1 of the *Parliamentary Privileges Act 1891* which, though they do not tend in a direct or obvious way to obstruct or impede the Council in the performance of its functions, have a tendency to produce such a result indirectly by bringing the House into odium, contempt or ridicule or by lowering its authority.
- 6.6 The PPC is of the view that the actions of Hon James Hayward fall into this category.
- 6.7 The distractions and interruptions to the work of the Select Committee have impacted on its ability to conduct its inquiry free from external pressures. Committees expect media coverage into their inquiries to be focussed on the issues outlined in the terms of reference, rather than extraneous matters related to an individual member's personal circumstances.
- 6.8 The Chair noted a concern that the work of the Select Committee could be diminished by the character of one member being tarnished in such a public manner, and the negative publicity surrounding this episode would further damage the reputation and affect the perception of any report the Select Committee produces.²³
- 6.9 The Deputy Chair of the Select Committee was clear in his view that the actions of Hon James Hayward in relation to his bail application variation has undermined the standing of the work of the Select Committee. He suggested the Select Committee, and its work, have been impacted through association with Hon James Hayward, and the ignominy associated with his seeking to vary his bail conditions to attend an interstate conference, noting that:

²³ Submission 1 from Hon Dr Brian Walker, Chair, Select Committee into Cannabis and Hemp, 6 July 2022, p1.

The names of all Select Committee members were included in some of the media reports about the bail variation application, and the matter has been raised with the Deputy Chair by members of the community, usually in a disparaging or incredulous manner.²⁴

- 6.10 Another member expressed a belief that the work of the Select Committee has been obstructed in the following ways:

The charges against Hon James Hayward are overshadowing and diminishing the work the Committee is doing. James applied for bail to attend a Symposium that he did not need to attend...The accompanying headlines will forever now be associated with the Committee and have potential to undermine what the Committee is trying to achieve.²⁵

- 6.11 The Deputy Chair also noted the following adverse consequences of Hon James Hayward's actions:

My overriding concern about this matter is that the actions of Hon James Hayward will undermine public confidence in the work of the Select Committee, and that the findings and recommendations will not be given the weight they deserve because of the disrepute he has brought on the Select Committee.

...

As a member of the Legislative Council, he ought to act in a manner that is consistent with the privilege and honour of holding that position. It is my view that he has not acted accordingly.²⁶

- 6.12 This evidence suggests there has been a clear obstruction to the work of the Select Committee, a subordinate body established and empowered by the Council to perform a specified inquiry on its behalf. Hon James Hayward's actions had the additional potential to present further difficulties in his participation in the deliberations with mutual respect and candour with the remaining Select Committee members.
- 6.13 Determining whether this obstruction to the Select Committee amounted to a substantial obstruction is difficult to ascertain and quantify.

The existence of any other remedy

- 6.14 At the time of writing, the PPC understands that no action has been taken by either the Magistrate or the Western Australia Police Force in relation to what was submitted on James Hayward's behalf at his bail condition variation hearing on 9 May 2022.
- 6.15 The PPC has considered the context in which Hon James Hayward's actions occurred, namely, an application to the Magistrates Court to vary his bail conditions, and has formed the view that the accuracy and/or truthfulness of the statements contained in the affidavit and any action arising from the affidavit are solely within the jurisdiction of that court to adjudge.
- 6.16 The PPC, therefore, is of the view that there is no alternative or appropriate remedy available to the Legislative Council in these circumstances.

²⁴ Submission 4 from Submission 4 from Hon Matthew Swinbourn, Deputy Chair, Select Committee into Cannabis and Hemp 17 July 2022, p 3.

²⁵ Submission 2 from Hon Lorna Harper, Member, Select Committee into Cannabis and Hemp, 11 July 2022, p 2.

²⁶ Submission 4 from Submission 4 from Hon Matthew Swinbourn, Deputy Chair, Select Committee into Cannabis and Hemp 17 July 2022, paras 23-28.

The PPC's view as to whether a contempt has been committed

- 6.17 Hon James Hayward provided an affidavit to the court that knowingly misrepresented the practice and rules of the Legislative Council. Having established that he had a sound understanding that the rules and practice would not require his resignation, the PPC considered whether the act constitutes a contempt.
- 6.18 Contempt cases in Western Australia, and indeed across Australian jurisdictions, have typically focussed on actions including:
- unauthorised disclosure of committee proceedings or material;
 - refusal to produce documents or appear before a committee;
 - alteration of the register of members' financial interests; and
 - deliberately misleading the House.
- 6.19 Although 'misrepresenting the rules and orders of the Legislative Council' does not fit neatly with these types of cases, the PPC is of the view that it sits outside of behavioural standards and expectations for a member of the Legislative Council.
- 6.20 In any event, the act of providing an affidavit requires careful attention to detail and honesty. It is a sworn statement of truth.
- 6.21 In the PPC's view it was not necessary for paragraph 10 to be included in Hon James Hayward's affidavit to the court. He had already set out the reasons for the Select Committee's travel in paragraphs 7 to 9 of the affidavit, and the importance of the work was inherent in those words.
- 6.22 The PPC debated at length the statements in Hon James Hayward's affidavit and whether those statements should be found to constitute a contempt and is satisfied that Hon James Hayward understood that:
- his membership of the Select Committee would not be terminated by his non-attendance at the Queensland symposium;
 - he was under no obligation to resign from the Select Committee if his bail variation application was not successful; and
 - there were alternative options for remote participation that did not involve travelling interstate, which Hon James Hayward chose not to pursue.
- 6.23 Despite this knowledge, Hon James Hayward swore the affidavit that implied the existence of some professional sanction if he did not attend the symposium.
- 6.24 This, in turn, had the effect of bringing the work of the Select Committee and the Legislative Council itself into odium, contempt and ridicule.
- 6.25 The PPC has concluded that Hon James Hayward:
- swore a statement in his affidavit to the Magistrates Court that implied the existence of some professional sanction if he did not attend the symposium;
 - obtained through the misrepresented statement a benefit that may not have been available to persons with a different employment situation; and
 - knew the sworn affidavit to the Magistrates Court was incorrect and misleading.
- 6.26 The PPC is satisfied that Hon James Hayward had all of the necessary information to make an informed decision, and was aware that it was neither mandatory nor expected that all members of a committee should travel to gather information, either interstate or overseas.

- 6.27 All Members of Parliament are expected to ensure that they do not, by deliberate act or otherwise, use their position as a Member in matters that are of a private nature unrelated to this role or to derive any benefit or gain.
- 6.28 The PPC is satisfied that Hon James Hayward, in making the statement, sought to gain a benefit by way of a variation to his bail conditions.
- 6.29 The PPC is of the view that the actions of Hon James Hayward, in knowingly misrepresenting the practice and rules of the Legislative Council for a benefit, have had the effect of bringing the work of the Select Committee, and the Legislative Council itself, into odium, contempt and ridicule and constitutes a contempt of the Legislative Council.

FINDING 3

That the actions of Hon James Hayward, in knowingly misrepresenting the practices and rules of the Legislative Council for a benefit, constitutes a contempt of the Legislative Council.

- 6.30 Accordingly, the PPC makes the following recommendation:

RECOMMENDATION 1

That Hon James Hayward is found to be in contempt of the Legislative Council.

7 Penalty

- 7.1 Term of Reference (1)(b) requires the PPC to advise the Council what penalty it might impose if a contempt is found.
- 7.2 Committee deliberations depend in large part on good faith, honesty and trust between members, regardless of personal views and issues. There has been a breakdown in the relationships Hon James Hayward has had with the remaining members of the Select Committee, and potentially the remaining members of the Legislative Council.
- 7.3 This matter has proven to be an ongoing distraction that has shifted the focus of the work of the Legislative Council away from its core business and refocused attention to individual members and their personal circumstances. It has also resulted in the referral of this inquiry to which the PPC has been required to devote considerable time and resources.
- 7.4 The actions of Hon James Hayward have, by association, had an impact on the reputation of the Legislative Council and its committees. It has the potential to negatively affect all Members and the Legislative Council's standing in the eyes of the public.
- 7.5 In the PPC's view this warrants a penalty that will reinforce to all members of the Legislative Council the importance of maintaining high standards of behaviour, particularly where this behaviour intersects with public and private activities.
- 7.6 In light of the seriousness of the issues the PPC has been careful to recommend penalties commensurate with the reputational and other damage caused.
- 7.7 Whilst Hon James Hayward resigned from the Select Committee on Cannabis and Hemp on 24 July 2022, he continues to be a member of the Standing Committee on Delegated Legislation.
- 7.8 The PPC is concerned that given its findings, Hon James Hayward's continued membership of parliamentary committees presents a risk to the Council and those committees.

- 7.9 After extensive consideration, the PPC is of the view that Hon James Hayward should be removed from the service of any standing, joint or select committee of the Legislative Council.
- 7.10 Therefore, the PPC recommends:

RECOMMENDATION 2

That the Legislative Council discharge Hon James Hayward from the membership of any standing or select committee of the Legislative Council, and any joint standing or select committee of the Parliament of Western Australia for the remainder of the 41st parliament.

- 7.11 Despite Hon James Hayward being a relatively new Member of the Council and having received an induction to the Council only 16 months ago, the PPC is keen to ensure that similar events do not occur again. All Members, regardless of length of service have an obligation to maintain a knowledge of the rules and practice of the Legislative Council, and of their obligations in relation to public and personal interests.
- 7.12 Whilst Hon James Hayward had the benefit of induction training on his appointment as a member of the Legislative Council, the actions outlined in this report clearly indicate he would benefit from further training on the rules and practice of the Legislative Council.
- 7.13 The PPC also deliberated on whether it should recommend that the House suspend Hon James Hayward from the service of the Legislative Council noting, however, that such penalties are rarely used, and typically only for the most serious contempt offences.
- 7.14 The PPC is of the view that this matter contains a level of culpability for contempt that justifies the imposition of a temporary suspension.
- 7.15 Whilst the PPC could not agree to a permanent suspension there was agreement that a short term suspension would send a clear message to the House, its Members, and the Western Australian community that actions such as those outlined in this report will not be tolerated.
- 7.16 The PPC therefore recommends the following:

RECOMMENDATION 3

That the Legislative Council:

- (a) suspends Hon James Hayward from the service of the Legislative Council for the remainder of 2022; and
- (b) orders that Hon James Hayward undergo further training on parliamentary privilege and ethics, overseen by the Clerk of the Legislative Council, by no later than 31 December 2022, and that the Clerk report to the House on the completion of such training.



Hon Alanna Clohesy MLC
Chair

Standing Committee on Procedure and Privileges


Date first appointed:

24 May 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'1. Procedure and Privileges Committee

- 1.1 *A Procedure and Privileges Committee is established.*
 - 1.2 The Committee consists of 5 Members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
 - 1.3 With any necessary modifications, Standing Order 163 applies to a co-opted Member.
 - 1.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the Council or its Committees.'
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