
Subject: RE: CONFIDENTIAL: Correspondence from the Procedure and Privileges Committee

From: Swinbourn, Matthew

Sent: Sunday, 17 July 2022 11:24 PM

To: President

Cc: DeputyClerkLC

Subject: RE: CONFIDENTIAL: Correspondence from the Procedure and Privileges Committee

IN CONFIDENCE

Dear President

1. I refer to your correspondence to me dated 5 July 2022 regarding a Matter of Privilege relating to the Hon James Hayward.
2. You have requested, on behalf of the Procedure and Privileges Committee (**PPC**), that I provide my comments on the key documentary evidence that the PPC has gathered thus far, as well as three specific matters that the PPC would like me to address in relation to the matter.
3. Hon James Hayward makes a number of assertions in his submission to the PPC. He refers to the contents of the Select Committee on Cannabis and Hemp (**Select Committee**) minutes. The minutes, by their nature, are abstract and do not contain all matters that could rightly be considered to be the deliberations of the Select Committee. Notwithstanding this, they do accurately reflect outcomes of Select Committee deliberations. I note that in his submission, Hon James Hayward incorrectly states the wrong dates for a number of Select Committee meetings, which at times has made it confusing to follow his claims.
4. Essentially, the Select Committee discussed Hon James Hayward's circumstances firstly at the first few meetings at the beginning of the year, and then in and around the time that he made his application to vary his bail conditions.

Early Year Discussions

5. At the beginning of the year the issue for the Select Committee was about his continuing to be on the Select Committee and being able to participate in the travel that the Select Committee was contemplating. I recall Select Committee members sharing their views about his continuing involvement on the Select Committee.
6. The views that I consistently expressed were:
 - (a) Hon James Hayward's continuing involvement with the Select Committee was fundamentally a matter for him to consider. In doing so he should consider whether he could give a full commitment to the needs of the Select Committee and whether his continuing involvement with the Select Committee would be a distraction from the fundamental work of the Select Committee and whether it would undermine the findings and recommendations that the Select Committee made.
 - (b) Importantly, I expressed to the 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. Further, I made the point that only Hon James Hayward could remove himself from the Select Committee or the Legislative Council itself, which had made the decision to make him a member of the Select Committee in the first place.
 - (c) It is my recollection that at one of the meetings, following each member of the Select Committee expressing their views to Hon James Hayward, he indicated that he would consider what had been said and inform the Select Committee what his decision would be.

7. At the Select Committee meeting on 14 March 2022 Hon James Hayward indicated to the Select Committee 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.
8. The issue of possible Select Committee travel was discussed further at this meeting, some members reiterated their concerns about his ability to fully participate, however nothing arose from this, and Hon James Hayward never changed his position on remaining on the Select Committee. Notwithstanding this, Hon James Hayward's circumstances up to that point in time had been a distraction to the Select Committee and time consuming, committee members continued to treat Hon James Hayward professionally and his circumstances was not a continuing topic of discussion or debate until his bail conditions became an issue for him travelling interstate.

Midyear discussions

9. In mid-April 2022, the Chair raised with me a draft letter to be signed by the Chair on behalf of the Select Committee that the Clerks had prepared for the benefit of Hon James Hayward's application to vary his bail in order to travel. The Chair and I discussed the proposed letter and agreed that a meeting of the Select Committee would need to be called to obtain the endorsement of the Select Committee.
10. A meeting was called for 2 May 2022. At that meeting Hon James Hayward only attended for a short period before excusing himself, as it was apparent he had a conflict of interest, to allow the Select Committee to determine the matter.
11. 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 given that he had previously indicated that he was going to resign from the Legislative Council after the Christmas and New Year period but had failed to do so.
12. It is my recollection of the deliberations that the Select Committee did not think it was either appropriate or necessary for the letter to be sent. It made a resolution that if the Select Committee was contacted by the Court or Hon James Hayward's lawyers, the committee staff could confirm the details of the travel to them and no more.
13. It was not the Select Committee's role or responsibility to support or provide a justification for his 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.
14. It is my understanding that Hon James Hayward's bail variation hearing was on the morning of 9 May 2022 and that a scheduled Select Committee meeting followed this at 2:30 pm on that same day.
15. I become aware of media reports of the hearing just prior to the meeting and was somewhat alarmed about the reporting of the reason given by Hon James Hayward for needing his bail application varied and the consequences that he would face if it was not.
16. My concern was that Hon James Hayward had misled the Court about having to attend the Conference in person as a requirement of his membership of the Select Committee and the consequences for him if he did not. These matters were raised at the meeting and the Select Committee considered the need to possibly put out its own media statement to make it clear that Hon James Hayward was not required to travel and that if he did not travel, he would not be compelled to resign from the Select Committee. Hon James Hayward was vehemently opposed to the Select Committee making any such statement. Ultimately it was decided to not issue a media statement but to monitor the reporting to see how the matter was further reported.
17. Given members concern about how Hon James Hayward had gone about seeking the variation of his bail conditions, members of the Select Committee asked him to provide a copy of the affidavit that had been tendered in support of his application. A redacted version of this was provided by Hon James Hayward to committee members via email on 13 May 2022. I note that the affidavit was not tabled formally in the Select Committee and was never accepted as a committee document.

18. The contents of the affidavit did not allay my concerns that Hon James Hayward had misled the Court. The matter was further discussed at the meeting on 16 May 2022, and some members expressed their view that it gave rise to a matter of privilege. I indicated to Select Committee members that any member of the Select Committee could raise a matter of privilege on the floor of the Legislative Council, however it was not a usual practice I was aware of for a committee itself to formally raise a matter of privilege.
19. Ultimately, the Select Committee took no further action itself on the matter. Hon James Hayward proceeded on the travel with the rest of the Select Committee, where he was treated professionally, including sharing drinks and a meal with Select Committee members and staff on the first night of the travel. On the following morning he advised us that he had tested positive to COVID19 and spent the rest of his time in his hotel room participating in the conference online (something that had always been available to him).
20. It is worth noting that when the issue of travel was raised, Hon James Hayward often made it clear that he would not be participating in international travel. I suspect that this is because he knew that it would not be possible for someone charged with the kind of offences he has been charged with to have their bail conditions varied to allow for international travel. I find it difficult to reconcile his stated view that if he could not participate in an interstate trip to attend a conference (which he could participate in online) that he would feel the need to resign at the same time he was consistently indicating that he would not participate in international travel.

PPC Specific Matters

Matter 1

21. I have no recollection of Hon James Hayward undertaking to resign from the Select Committee if he was unsuccessful in varying his bail conditions. This is a non-sensical claim in any event given he has indicated to the Select Committee that he does not intend to engage in international travel (where he would need to vary his bail conditions again) and has not consequentially resigned from the Select Committee. At best, as reflected in the minutes of 2 May 2022, he indicated that he would reconsider his position on the Select Committee in the event that he was unable to vary his bail conditions. This did not amount to an undertaking of the kind he described and given his previous conduct, I never accepted it as a serious intention on his part.

Matter 2

22. I cannot say that the work of the Select Committee has been substantially obstructed. The Select Committee has continued with its work **notwithstanding** the actions of Hon James Hayward. Hon James Hayward's actions have been distracting, annoying and have taken up more of my and the Select Committee's time than I would wish. What I would say about the actions of Hon James Hayward in relation to his bail application variation is that it has undermined the standing of the work of the Select Committee. I say this on the basis that the Select Committee, and its work, have been associated with his actions and the ignominy associated with him seeking to vary his bail conditions to attend an interstate conference. The names of all Select Committee members were included in some of the media reports about his application to change his bail conditions, and this matter has been raised with me by members of the community, usually in a disparaging or incredulous manner.

Matter 3

23. 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.
24. 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.

Concluding remarks

25. 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.

26. I reject any suggestion by Hon James Hayward that any members of the Select Committee sought to exert pressure on him to resign from the Select Committee or create an impression in him that he ought to resign if he could not travel. At times, members openly and respectfully expressed their views to him, which he did not agree with, and then matters proceeded on a professional and cordial footing from then on.
27. Hon James Hayward seems to blame everyone else but himself for the misleading statements he made to the Court that were contained in his affidavit. He is responsible for the contents of his affidavit, which he swore was the truth. He has shown no contrition.
28. 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.
29. It is of course a matter for the PPC to determine whether he failed to act in a manner that is consistent with his duties and obligations as a member of the Legislative Council, as well as to determine the gravity and consequences of any such failure.

Yours faithfully

Hon Matthew Swinbourn MLC
Member for the East Metropolitan Region
Parliamentary Secretary to the Attorney General & Minister for Electoral Affairs
Parliamentary Secretary to the Minister for Mining & Petroleum; Energy; Corrective Services; Industrial Relations



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The East Metropolitan Region comprises 14 Legislative Assembly districts: Armadale, Bassendean, Belmont, Darling Range, Forrestfield, Kalamunda, Maylands, Midland, Mirrabooka, Morley, Mount Lawley, Swan Hills, Thornlie and West Swan

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From: DeputyClerkLC <deputyclerklc@parliament.wa.gov.au>
Sent: Tuesday, 5 July 2022 5:20 PM
To: Swinbourn, Matthew <Matthew.Swinbourn@mp.wa.gov.au>
Subject: CONFIDENTIAL: Correspondence from the Procedure and Privileges Select Committee

Dear Hon Matthew Swinbourn,

Please find attached confidential correspondence from the Procedure and Privileges Select Committee.

If you have any queries, please contact me on 9222 7294.

Regards,

Paul



Paul Grant | Deputy Clerk of the Legislative Council

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