

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Recommendations 1 to 3 — Motion

Resumed from 18 October on the following motion moved by Hon Dan Caddy —

That recommendations 1 to 3 contained in the sixty-eighth report of the Standing Committee on Procedure and Privileges, *Hon James Hayward MLC — Referral of a matter of privilege raised by Hon Sue Ellery*, be agreed to.

THE PRESIDENT (Hon Alanna Clohesy) [12.32 pm]: The report states —

RECOMMENDATION 1

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

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.

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 STEPHEN DAWSON (Mining and Pastoral — Deputy Leader of the House) [12.33 pm]: The government will support the recommendations put forward by the Standing Committee on Procedure and Privileges in its sixty-eighth report.

The report makes three measured and considered findings, assisted by submissions and evidence provided by members of the Select Committee into Cannabis and Hemp, other relevant documents and the evidence provided by Hon James Hayward. The government considers the three recommendations proposed by the committee to be reasonable and appropriate, given the committee found —

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

Part 8k of the report's executive summary said —

... 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.

I want to thank members of both the Standing Committee on Procedure and Privileges and the Select Committee into Cannabis and Hemp, who have been put in a difficult position due to the deliberate misrepresentation of the rules of the Legislative Council in a court. The government supports the recommendations.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [12.34 pm]: On behalf of the opposition, I note the sixty-eighth report of the Standing Committee on Procedure and Privileges, and I thank the members for their work. This is a unanimous report with unanimous findings, and I indicate that the opposition will support the motion before the house.

HON JAMES HAYWARD (South West) [12.34 pm]: Thank you very much, President. I stand to make some comments today about the sixty-eighth report that has been tabled by the Standing Committee on Procedure and Privileges.

What I say today will not change the outcome. No doubt, I will be suspended from Parliament from today, but my intention is to speak quite plainly about the content, details and findings of the report. I accept that the PPC, under the rules of Parliament, has the absolute right to make any findings it likes. The findings are not the subject of appeal or any formal review, so I accept that that is the case.

The comments I am making today are comments for the future. These matters of privilege are rare, and findings of contempt are even rarer. Reviews are done by other Parliaments, law associations and the like. They look at

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these to gauge a bit of a sense of their fairness and a bit of a sense of how the Parliaments are using their significant powers to punish their members or members of the community who have run foul of the rules.

I would like to say that I accept finding 1 of the report, and I also accept recommendation 3(b). Frankly, I feel disappointed with the other findings of the PPC. Just as it is the PPC's right to be able to bring any finding it chooses, it is also my right to be able to stand in this place and challenge those findings. In my view, I reject the other findings and recommendations. I do not believe that I have been treated fairly. I do not accept that the evidence collected can be substantiated or can substantiate the allegations the PPC makes. I also believe that in every instance my evidence was considered secondary to the evidence of others, despite the fact that the PPC only held a hearing with me. I do not believe the PPC detailed why that is the case. I feel that the tone of the report is angry and surely points to other influences, because I cannot reconcile what I have done with the tone of this report. However, I will completely accept the decision that the Legislative Council makes today and whatever punishment is ordered.

I thank the PPC for publicly releasing submissions and the transcript of the hearing. I think this is an important step towards transparency. Any member of Parliament, any member of the media and any member of the public is now free to read the source material and be informed about how this report was put together. I also ask the PPC to release other documents it may have that are also being held in relation to this matter.

I maintain that I acted in good faith. I sought advice, which was given to me by the President, the Clerks and my legal advisers. In reality, I did everything that I could reasonably be expected to do as a person in my position. It was never my intention to mislead a court in relation to my bail application. I did not at any time tell the court that I would be sacked or that I would be subject to any other disciplinary action. I did not mention anything about the practices and rules of the Legislative Council. I do accept that my affidavit, in hindsight, could have been clearer.

As I already said, I agree with finding 1. There are about 30 references to rules in the report, 20 of which refer to the fact that I knew the rules of the committee relating to how I could be removed from that committee. I agree with that. I totally agree that I knew very early on that the only way I could be removed from that committee was to, firstly, make the decision to resign or, secondly, that committee or any member of the committee could come to the chamber and ask the house to make a decision to remove me. They were the only two options available for me to be removed from that committee. I knew that all along. I was told by the President in February and I was told by the deputy chair in committee meetings.

I also want to point out that any references I make in my speech today are referenced from the source material that is now publicly available. I knew that there was no way I could be removed from the committee, yet it was still put into my affidavit that I believed I would have to resign. Surely that must be a problem for members of the PPC to get their head around. I have never denied it. I could not have been more firm in my evidence about the fact that I knew that I could not be removed. As I said, I knew that was the case and that the PPC report went over this repeatedly, saying that I knew that. I wonder what members of the PPC think about the fact that in the minutes of the meetings, there are recorded conversations about my ongoing tenure on the committee. If it is the case that the only way a person can be removed from a committee is to resign or for a motion to be brought to this house, why would there be discussion in a committee meeting about a member's tenure? It was originally discussed at a meeting on 21 February this year. Members of that committee expressed their view to me that they wanted me to resign. In his submission, Dr Walker said —

Discussions were indeed held on a number of occasions regarding the issues arising as a result of serious charges having been laid. It was the opinion of members of the Committee that such charges were serious enough to consider resigning from the Committee as a matter of honour and principle.

Hon Lorna Harper said —

... I was quite specific in saying that if James could not travel then he should think about whether he should remain on the Committee.

Hon Matthew Swinbourn said —

... 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.

It is absolutely clear that my tenure on that committee was being discussed in a committee meeting and everybody knew—everybody here, the PPC; we all knew—that I could not be voted off. The only way I could be ousted from the committee is by me resigning or coming back to this house. Why was it being discussed?

The outcome of that meeting was that the Clerks were going to get some advice and I was to report back to the following meeting and let the committee know what I had decided. What was I deciding? I was deciding whether

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I would resign. That was the pressure placed upon me. There can be absolutely no doubt—it is in the minutes of the meeting—that the committee was pressuring me to resign. The minutes of the meeting state —

The Hon James Hayward MLC advised the Committee that he wished to remain on the Committee and had spoken with the President and the Clerks of the Legislative Council in regard to this.

The Member has sought legal advice in regards to Committee travel whilst under bail conditions, and advised that an interstate travel exemption was likely to be granted, although international travel may not be possible.

At that point, some members of the select committee seemed to indicate in their evidence that that was the end of the matter, it would never be spoken about again and the pressure that was placed upon me at the first meeting had somehow finished. Hon Matthew Swinbourn said in his submission —

... 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.

It is in that context that the pressure that I was under continued past that first meeting. I was on notice that there was always an option for members to go back to the Council and ask for me to be removed. It was in that meeting that I made a commitment to members of the committee that I would resign from the committee if I was not able to pull my weight, and that included the need to travel. In my mind, continued service on that committee was conditional on me pulling my weight. It is clear that it was not conditional on the rules of the Council. We are not talking about that kind of pressure. I have been quite clear about that. This pressure was placed upon me by members of the committee. Hon Matthew Swinbourn said in relation to that meeting —

The issue of possible Select Committee travel was discussed further at this meeting, some members reiterated their concerns about his ability to fully participate ...

A meeting was later called for 2 May to discuss the proposed letter that had been written by the Deputy Clerk of the Legislative Council in support of my bail application. I approached the President, the Clerk and, ultimately, the Deputy Clerk for assistance in obtaining a letter that confirmed the details and nature of the trip.

President, I was out doing what I could do, the best I could, as I understood my responsibilities, to make sure that I was doing this the right way.

I was made aware by the chair that there was some tension amongst committee members in relation to the wording of the proposed letter. Ultimately, the committee chose not to make the letter available. The minutes of 2 May include the following —

Hon James Hayward, MLC, provided some background in regards to the request for a letter by the Chief Justice that changed bail conditions for travel to the United in Compassion Symposium. Hon James Hayward, MLC, advised he would reconsider his position on the Committee if his application to amend his bail conditions were not approved.

On that day, I reconfirmed the commitment I had already made to the committee members that if I was not able to pull my weight, which included the need to travel, I would step away from the committee. Hon Jackie Jarvis said in relation to that meeting —

He also stated he would feel compelled to resign if he could not participate in person at the United in Compassion Symposium.

Other members acknowledged the sentiment, albeit their recollections were limited to the language recorded in the minutes, which said that I would reconsider my position. All members concede it was a reference to me resigning from the committee if my bail application was unsuccessful. The reason I said I would have to resign is because I believed I needed to pull my weight because of the commitment I made to do so. I can best describe this as being on a basketball team that has seven players. If you are on a basketball team and you cannot play the away games, there may be no rule in basketball that says you cannot play basketball, but you will certainly hear from your teammates who do not think you are pulling your weight. That is the basis of my decision-making. The PPC's report barely acknowledges these pressures and gives no weight to it at all. They simply do not care. They do not accept that my responsibilities, as I understood them, are more than just the rules and procedures of the Legislative Council. They say that the sentence in my affidavit could only mean that there was some breach of the rules or that there was some rule that was going to have me sacked.

I want to talk quickly about a section in the report and some observations made by the committee about information that was shared with my lawyer. The report states —

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... Hon James Hayward's claims that he was always trying not to disclose committee deliberations in making a vague statement to the court —

That is what the PPC wrote. They described the statement at that point as being vague. Plainly, I did not say that I would be sacked or be subject to any penalty. The reality is I know what my motivation is for saying it and for including it. At best, the PPC can only assert a theory or a suspicion. They cannot know what my thoughts were or my motivations.

I will pop through the executive summary and pick it up at paragraph 8b, which reads —

Hon James Hayward obtained through the incorrect statement in the affidavit a benefit that may not have been available to other people.

It says "may not". I do not know how high the bar is here in relation to this, but I cannot imagine going to the Magistrates Court and having a policeman say, "Look, he may have been doing 112, Your Honour, in a 90 zone"— "may have". I reject that I got any personal benefit in terms of any help or that anything was going on other than a regular application for a bail variation. The report continues —

... 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.

The report continues —

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.

The report further states —

5.4 However, the Committee notes ... 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.

This is a very, very disingenuous statement that the PPC makes. It reflects the entire tone of this report. In his evidence, Hon Dr Brian Walker said that the committee held a meeting at which the application for variation of bail was discussed. It was resolved the draft letter was unnecessary as the facts of travel were of public record.

The minutes only capture —

The Committee discussed whether it is necessary for a letter to be provided by the Committee. Advisory Officer, Stephen Brockway, advised the Committee that if required, the Court could seek to confirm the travel details from Committee staff.

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

Most of the information in my affidavit was largely on the public record. The committee knew that I would be required to provide my itinerary. The committee clerks had provided me with that itinerary for that express purpose. I was not aware of the need for a specific motion. On that basis I apologise. If I had been pinged for this and this is what I had done wrong, I would have a completely different view, because I accept that I did not follow the procedure as best it could have been done in this space. I accept that. But I have not been pinged for that. Again, in relation to that, it was not because I was trying to be misleading or trying to do anything dodgy; I simply did not know. In fact, I only became aware of it when I spoke to the Clerk about getting the letter, but at the time I spoke to him the information had already been provided to me and I had provided it to my lawyer. Although, having said that, I am very thankful to the chair that he did move a motion and that it ultimately was covered, and that it was covered before the magistrate read it.

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I will talk about the fact that the PPC said there was no alternative or other remedy available. I absolutely reject that. All of this work of the PPC is completely discretionary. There could be myriad different possibilities that could be proposed as an alternative outcome to what has been proposed here.

The references in paragraphs 6.14 and 6.15 that talk about the police and Magistrates Court taking no action is almost, when you read it, as though the PPC's view is, "Well, they haven't got him, so we better." I do not understand that thinking.

In the vast majority of cases in this state where people have been brought up on a matter of privilege, the sitting MP has almost always been given the benefit of the doubt. That has certainly not happened in this case.

Paragraph 8g. reads —

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 ...

Frankly, the evidence just does not support this. The evidence points to a strained relationship since February as a result of me being an accused person. That cannot be denied by the plain reading of the submissions and evidence.

Paragraph 8j. reads —

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.

Bail is an enforceable restriction, which is the reason why a person would submit to the court a variation for a bail application, which I did.

Sitting suspended from 1.00 to 2.00 pm

Hon JAMES HAYWARD: Before the break, we were talking about bail. I will pick it up from section 8j. of the executive summary —

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.

Bail is an enforceable restriction, which is why a person would make a bail variation application to be free of that restriction, and at the point that the magistrate makes a decision to remove it for a period of time, it is not enforceable. Bail is not a reward, it is not a sentence and it is not a punishment.

The report goes on at section 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.

President, I submit that the PPC cannot know. It did not ask the magistrate for an opinion. There is no evidence at all for making that statement; it is simply a theory or suspicion. I do not understand how the PPC can make that assertion and a finding of guilt. I note that the report has the wrong magistrate; it says Magistrate Heath in the report, and that is something that should probably be fixed by the committee. Magistrate Watson said —

In considering this application, I have considered the relevant sections of the Bail Act and whether these variations will be suitable to continue to protect the complainant and children in general. I am satisfied that the conditions, as they stand, will be satisfactory in relation to addressing any risk of ... further offending, or a risk to the safety of any person, and I am minded to vary the bail, as requested.

It was completely at the discretion of the magistrate. The magistrate pointed out that her decision was made based on the Bail Act. There is no evidence that this turned on the paragraph that the PPC suggests.

Paragraph 5.44 of the report goes on to state —

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.

It was not made as a member of the committee; it was as a private individual who is subject to bail conditions. I do not even know how you would go to the Magistrates Court and make an application as a committee member. I do not even think it is possible, but here it is in the PPC's report. The assertion is plainly wrong.

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I want to talk about the contempt, if I may. Paragraph 6.5 says —

The actions that raised the question of contempt in this matter are not those to which the Schedule 4 ‘threshold test’ is easily applicable.

It goes on —

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.

President, I submit that it would be unusual for members of the procedure and privileges committee to make the finding that a bail application is considered an offence, and applying to change bail conditions in those circumstances is an offence to the house.

Interestingly, Hon Dr Brian Walker made these comments in relation to this —

In my opinion, with respect to this specific question, the work of the committee has not been **substantially** obstructed by the actions of Hon James Hayward in relation to his bail variation application.

Hon Matthew Swinbourn said —

I cannot say that the work of the Select Committee has been substantially obstructed.

That is two members. I also told the PPC that I did not believe that the work of the committee had been obstructed. That is three out of five members who say that it did not occur, but the PPC still found that it did.

The other members talked about the challenges that they had around media coverage over a sustained time. Really, those media events that they are talking about are simply the administration of justice in this state. I have some sympathy for those members; it was an uncomfortable ride. I understand that, but to claim that the administration of justice in Western Australia—a person going to face charges and turning up to court, and the reporting on them—has substantially impacted a committee is difficult for me to get my head around. The rule of law is important. An accused person is innocent until proven guilty of an offence. To allow a disciplinary hearing or for the PPC to consider the passage of the administration of justice to be considered evidence of wrongdoing in my submission is totally inappropriate.

I want to make a brief comment on the sub judice nature of the report; I will simply describe it as reckless.

I move on to the proposed penalties. I have done some research and had a look around in terms of the recommended penalties. I do not want to mislead the house, but on the face of it from the research I have done, they appear to be the most severe penalties proposed, with the exception of those relating to the former member for Darling Range, whose punishment was never delivered to him because he resigned before the house had the opportunity to do that. As I understand it, there have been eight in the last 20 years or so. In this circumstance, the committee has proposed the most serious punishment of any member of Parliament or person in 20 years. In fact, it probably goes back to the jailing of Brian Easton before it gets more severe than what is being proposed here today. Some of those allegations over the years, President, were pretty serious. John Bowler was found in a Corruption and Crime Commission report to be a person who committed serious misconduct or he was criticised as being identified as a person who had committed serious misconduct. In that report, the PPC still took no view. It said that the allegations that the Corruption and Crime Commission had investigated related to his ministerial duties and not to his work in Parliament or in his committees. On that basis, they made absolutely no finding at all.

I see Hon Darren West gets a mention, and that was unproven; he was given the benefit of the doubt. Stephen Home and Rachel Turnseck were civilians, not members of Parliament, as members would know. They had provided a false and misleading answer to a parliamentary question, so they effectively lied to the Parliament. Their punishment was to write an apology to the house.

If I go back to the Brian Easton situation, he presented a petition originally that had accused some members of Parliament of corruption. It turned out to be false. His initial punishment was to apologise to the house, which he refused to do, and we know the story that later he was jailed for seven days. I am battling to understand why it is that for this particular offence the PPC has taken this view of what I have supposedly done by applying for my bail to be amended so I could attend with other members of Parliament to fulfil what I understood as my personal responsibilities to attend the conference. I am just gobsmacked to understand how that is the most offensive thing that has happened in the Parliament of Western Australia in the last 20 years.

The recommendations are in front of members. The findings by themselves are damning. I will be kicked off the committees for the rest of the parliamentary season. Again, I do not understand what the risk is to me serving on

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those. I can only imagine that that particular punishment is aimed at being punitive because obviously members of Parliament earn some money as being members of a committee. I can only assume that the idea is to deprive me of that. That is my understanding there. I cannot see what any issue would be with being on a committee. There is also a suspension for the rest of the year. In reality, we know that that is a short suspension. I do not think that is unreasonable. Effectively, at this point, it is 12 parliamentary days, as I understand it.

The reality is what has happened here, President, is I have acted in good faith. I have sought the advice. I have made the effort to do everything that I thought that I was responsible to do, and this has happened. It still seems to me that I cannot work out how this is related to what I have done. I can only assume that the tone of this report is due to something else.

Finally, President, I will be away now. I would genuinely like to wish everybody a very Merry Christmas and safe and happy New Year. I hope you get to spend some time with your families and I certainly hope that you come to the south west to enjoy our beautiful beaches, spend some money in our restaurants and spend some time with your families. With that, President, I conclude my remarks. I will point out that I have a personal interest in this matter, and it is my intention to withdraw from the chamber at this point to allow members to freely debate the motion. Thank you.

[Hon James Hayward left the chamber.]

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [2.13 pm]: I rise to make a few short comments about this very grave matter. The member has indicated he will leave the chamber, which is his right, but I hope that he listens to what I have to say when he gets to wherever he is going or takes the time to check *Hansard* at another time because he has taken the opportunity today, and we have given him the respect of listening to him in silence, to speak about his circumstances as he tried to make a case why the recommendations of the Standing Committee on Procedure and Privileges should not be endorsed by the house. As members probably know, I am a member of the Select Committee into Cannabis and Hemp. I am the deputy chair of the committee and I was involved in all the meetings that have been referred to. The member's allegation, for want of a better word, that he was put under some sort of continual pressure by members of that committee to resign because of his inability to travel is false. That is not correct. Members rightly and correctly expressed a view to him at the very first meeting that we had this year. It has been reported in the PPC report and is contained in the submissions that have been provided by members, and I can reflect on that because it is now a matter of public record. It was done in a polite and courteous manner. Nobody raised voices. Nobody accused him of anything but members, who are entitled to express their opinions in committees, did so and we did it respectfully. We had many meetings following that in which Hon James Hayward was involved at which we continued to be professional, courteous and collegial. There was no continuing pressure on him.

Following the change of his bail conditions, he travelled to Queensland to participate in the conference. He was on the plane with us. We shared a meal with him the night before the conference—all of us. In fact, I do not know whether I did—no, I did share the meal; I just did not have drinks—but other members drank with him appropriately and included him in their discussions. There was no pressure on that member in any realistic way to resign from the committee. That is a falsehood. I want the record to stand clearly that, from my perspective, he was never under any such pressure. To suggest otherwise is to cast a slur on all those members of the committee who have worked very hard on the subject matter of that committee and have been completely—no, not completely—distracted by his goings-on in terms of these matters. They have had to give up their own time to make submissions to the PPC, as is appropriate, and to delve into this matter today because—I will get to the heart of it—Hon James Hayward will not take responsibility for his own actions.

At the end of the day, nobody made him put those words in that affidavit but him. He had the advice of his lawyers. He had the advice of the Clerk. I believe he had the advice of the President. I gave him advice about matters, for what it is worth. He sat down with his lawyers and put those words in that affidavit and then had that affidavit tendered as evidence before the magistrate. That is a matter for the magistrate to deal with in terms of whether that is a contempt of court, but what we are interested in here is what is a contempt of our Parliament and our chamber. He fundamentally misunderstands that.

I am wholeheartedly supporting the recommendations of the PPC because Hon James Hayward will remain a member of this chamber until the end of this parliamentary term, and he needs to understand what the rights and privileges of being a member of this chamber are about. In my view, he fundamentally fails to understand that. I hope that recommendation 3(b), which “orders that Hon James Hayward undergo further training on parliamentary privilege and ethics” has some impact on him. This is not about the Select Committee into Cannabis and Hemp. This is not about the procedure and privileges committee. This is about Hon James Hayward and his conduct and behaviour. We cannot expect members of our community to have regard for us if we do not hold each and every one of ourselves to an appropriate standard. He complained about being the most harshly dealt with in last 20 years. Take responsibility

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for your behaviour, Hon James Hayward; take responsibility for it like the rest of us would if we were in the same situation. Members, that is what I have to say about this matter. I hope that the house supports the recommendations because I certainly endorse the position put by Hon Stephen Dawson on behalf of the government.

HON KYLE MCGINN (Mining and Pastoral — Parliamentary Secretary) [2.19 pm]: I will be very brief. I wholeheartedly support the comments that Hon Matthew Swinbourn has just made. I think it is important that I reiterate a couple of sections within the report that will probably give members a good opportunity to digest what has been said throughout this debate and take seriously the report the Standing Committee on Procedure and Privileges has put down. Firstly, I point members towards paragraph 2.4, which stipulates very clearly —

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.

I also want to point out that upon tabling of this report, the evidence and submissions were published online. That happened immediately once the report was tabled. I want to make it very clear that the evidence and submissions were accessible when the report was laid down.

There is another area I want to point to just briefly. I think it is a really integral chapter and it summarises how the Standing Committee on Procedure and Privileges arrived at some of the recommendations. Page 4 contains the select committee's consideration of a draft letter of support to vary bail conditions. This takes us across to page 5, which states —

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.

This is a committee member who is stating, very clearly, that there was not an obligation for Hon James Hayward to be at the symposium as part of his duties in the committee. I also point out section 5.27, which goes into an exchange during a hearing between myself and Hon James Hayward, and states —

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.

I think the evidence here, and the way that it is stated in the report, summarises pretty clearly his intentions. I hope that members in this chamber have taken the time to go through the report. I would like to put on record a big thank you to the staff, because this was, as mentioned in the executive summary, a very tough task with a lot of work and a lot of things to take into consideration. I thank the house.

HON DR BRIAN WALKER (East Metropolitan) [2.22 pm]: I had not intended to rise to speak on this occasion, but I feel obligated to turn the attention away from Hon James Hayward and towards the members of the committee. I have immense respect and thanks for their professional behaviour and courteous attitude. I have learned to respect and admire each and every one of them for being wonderful members of that committee, and indeed, members of this Parliament. I thank them from my heart.

President; Hon Stephen Dawson; Hon Dr Steve Thomas; Hon James Hayward; Hon Matthew Swinbourn; Hon
Kyle McGinn; Hon Dr Brian Walker

THE PRESIDENT (Hon Alanna Clohesy) [2.23 pm]: I am going to put the motion as a whole, even though it contains three separate recommendations, unless I have an indication otherwise? The motion is —

That recommendations 1 to 3 contained in the sixty-eighth report of the Standing Committee on Procedure and Privileges, *Hon James Hayward MLC — Referral of a matter of privilege raised by Hon Sue Ellery*, be agreed to.

The report states —

RECOMMENDATION 1

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

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.

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.

Question put and passed.