

PARLIAMENT OF VICTORIA

LEGISLATIVE ASSEMBLY

Privileges Committee



**Report on certain complaints
under Part 3 of the *Members of
Parliament (Standards) Act 1978***

Parliament of Victoria
Legislative Assembly Privileges Committee

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Committee membership



Hon Martin Pakula
Keysborough



Mr David Morris
Mornington



Hon Jacinta Allan
Bendigo East



Hon Ben Carroll
Niddrie



Hon Jill Hennessy
Altona



Mr Frank McGuire
Broadmeadows



Ms Steph Ryan
Euroa



Ms Louise Staley
Ripon



Hon Kim Wells
Rowville

About the Committee

Functions

Extract from the Votes and Proceedings of the Legislative Assembly,
Thursday 21 March 2019:

19 COMMITTEE MEMBERSHIP — Motion made, by leave, and question — That —....
A select committee be appointed to inquire into and report upon complaints of breach of privilege referred to it by the House, right of reply applications referred under SO 227 and any other matter referred to it by the House; and Ms Allan, Mr Guy, Ms Hennessy, Mr McGuire, Mr Morris, Ms Neville, Mr Pakula, Ms Ryan and Mr Wells be members of the Privileges Committee — put and agreed to.

On 18 March 2021 Ms Neville was discharged from the Committee and Mr Carroll appointed in her place.

On 6 October 2021 Mr Guy resigned from the Committee and on 7 October 2021 Ms Staley was appointed in his place.

Secretariat

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This report is available on the Committee's website.

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Guidance for members

The Committee informs Members of the Legislative Assembly that in regard to matters referred to it under ss 6(d), 13(1) and 13(3) of the *Members of Parliament (Standards) Act 1978*:

- (1) where the alleged contravention occurs during debates in the Legislative Assembly, the Committee will not consider the complaint unless the matter is referred to it directly by the House;
- (2) where the alleged contravention does not occur during debates in the Legislative Assembly, the Committee will only consider matters where the alleged conduct or language could be considered ‘highly offensive’ to a reasonable person under the circumstances; and
- (3) complaints under s 13(1) of the Act must demonstrate that the alleged contravention comprises a “substantial interference” with the work or functions of parliamentary committees, of the Legislative Assembly, or of Members of the Legislative Assembly.

Report on certain complaints under Part 3 of the *Members of Parliament (Standards) Act 1978*

1. In 2019 changes were made to Parts 3 and 4 of the *Members of Parliament (Standards) Act 1978* (the Act). Part 3 of the Act relates to Code of Conduct and Part 4 relates to Register of Interests. Any member of Parliament, who considers that an Assembly member has contravened a requirement under Part 3 or 4 of the Act, may refer the alleged contravention to the Speaker. The Speaker must then determine whether to refer the alleged contravention to the Privileges Committee.
2. The Committee has previously provided guidelines for members on how the Committee will deal with referrals made to it under Parts 3 and 4 the Act.¹ In the guidelines, the Committee informed members that it will only consider a complaint if the Speaker has advised the Committee of the identity of the complainant, and given the Committee a copy of the complaint and the evidence of the contravention originally by the complainant.²
3. Among other things, the Committee also noted that it may decide not to consider a complaint further if:
 - it considers that the subject of the complaint is not sufficiently serious;
 - it considers that the complaint is frivolous or vexatious; or
 - the complaint was received more than twelve months after the alleged contravention and the issue is not still current.³

Certain complaints received in the 59th Parliament

4. The Committee has received and considered a number of complaints under Part 3 of the Act in the 59th Parliament. The complaints have principally contended that certain members have breached ss 6(d), 13(1) and 13(3) of the Act.
5. Section 6(d) of the Act requires that a member must “treat all persons with respect and have due regard for their opinions, beliefs, rights and responsibilities.”
6. Section 13(1) of the Act states that a “Member must ensure that their conduct as a Member does not bring discredit upon the Parliament.”

1 [Legislative Assembly, Privileges Committee, *Dealing with alleged contraventions of the requirements of the Code of Conduct and the Register of Interests*, PP 72, 2018-19.](#)

2 [Legislative Assembly, Privileges Committee, *Dealing with alleged contraventions of the requirements of the Code of Conduct and the Register of Interests*, PP 72, 2018-19, p. 4.](#)

3 [Legislative Assembly, Privileges Committee, *Dealing with alleged contraventions of the requirements of the Code of Conduct and the Register of Interests*, PP 72, 2018-19, p. 5.](#)

7. Section 13(3) of the Act states that a “Member must be fair, objective and courteous – (a) in their dealings with the community; and (b) without detracting from the importance of robust debate in a democracy, in their dealings with other Members.”
8. Two complaints were in relation to debates that occurred while the House was sitting. One complaint was in relation to comments by a member on social media.

Guidance for complaints under ss 6(d), 13(1) and 13(3) of the Act

9. The Speaker has noted that there is little guidance in the Act to assist Presiding Officers to determine whether complaints received under Part 3 of the Act should be referred to the Privileges Committee. Section 30(2) of the Act states that the Presiding Officer who receives a referral “must determine whether to refer the alleged contravention to the relevant Privileges Committee.” The Speaker currently refers a matter to the Committee if there appears to be a prima facie case for the allegation.
10. The Committee does not expect the Speaker to change his practice for referring matters to the Committee. However, the Committee anticipates that by providing guidance to members about what matters it will consider, members will be able to make a judgement about whether a matter should be referred to the Speaker under ss 6(d), 13(1) and 13(3) of the Act.

Matters that occur during debates in the House

11. The House has standing orders, sessional orders and established practice and procedure around the conduct of members while the House is sitting. Disorderly conduct, offensive language, imputations and other such matters that occur during a sitting day should be dealt with by the House at the time they occur, or at a time that the House decides to deal with a matter.
12. The Committee does not regard itself as an arbiter for what should, or should not, have been done in or by the House when it is sitting. The Committee is appointed by and is subsidiary to the House, and is not appointed to investigate things that occur in the House, unless the House explicitly orders it to examine particular matters.
13. For this reason, the Committee will not consider matters that occur during debates or are directly related to sittings of the House that are referred to it under ss 6(d), 13(1) and 13(3) of the Act.
14. The Committee will, of course, consider any matter referred to it by the House regarding the conduct of any member or members.

Matters that occur outside debates in the House

15. The Committee has considered what guidance it can provide to members to ensure that matters raised under ss 6(d), 13(1) and 13(3) of the Act are sufficiently serious for the Committee to consider.
16. In doing so, the Committee notes that there is little comparative guidance available from other jurisdictions, particularly in relation to the conduct of members of Parliament and legislatures.

17. The Committee also notes that the expressions of political ideas and philosophies by members may be considered offensive from time to time by people who do not agree with those ideas and philosophies. The Committee does not believe, however, that the Act is intended to stifle freedom of political expression by Members.
18. The Committee notes that, while it does not want to set the benchmark so low that it is required to consider trivial matters, it also does not want to set a benchmark so high that no matters could possibly be considered. The Committee notes the Parliament agreed to changes to the Act with the intention that it would provide a mechanism for ensuring “the responsibilities and obligations of Members reflect community expectations and community standards.”⁴
19. It is very difficult to calibrate what “community expectations and community standards” are in regard to Members of Parliament. The Committee has considered some of the phrasing used in other jurisdictions to do with community standards in broadcasting, for example, and in breaches of privacy, as a means to calibrate matters that it will consider.
20. Consequently, the Committee believes that an appropriate standard for determining whether to consider matters under ss 6(d), 13(1) and 13(3) of the Act is whether the matter would be considered “highly offensive to a reasonable person under the circumstances.” The Committee informs Members that it will apply this benchmark when considering matters referred to it under ss 6(d), 13(1) and 13(3) of the Act.
21. In determining whether to consider matters under the Act, the Committee will assume that a ‘reasonable person’ is a person without partisan political views or philosophies, who is aware that the person who is conducting the alleged ‘highly offensive’ behaviour is a politician who may be expressing political opinions or views.

Conduct that brings discredit upon the Parliament

22. Finally, in further considering s 13(1) of the Act, the Committee notes the difficulty in determining what actions by a politician may “bring discredit upon the Parliament.”
23. The Committee believes that it is appropriate to draw upon parliamentary practice in relation to alleged breaches of privilege to determine what behaviours or actions by a member may be sufficiently serious to bring discredit upon the Parliament.
24. In determining whether a breach of privilege has occurred, parliamentary practice requires that a particular act has caused a “substantial interference” with the work or functions of parliamentary committees, of the Legislative Assembly, or of Members of the Legislative Assembly.⁵ This means, for example, that a leak from a committee might undermine its ability to obtain evidence in future, or that the actions of one member undermine the ability of some or all members to conduct their ordinary business.

⁴ *Members of Parliament (Standards) Act 1978*, s 3.

⁵ [Legislative Assembly, Privileges Committee, *Investigation into the Improper Disclosure of a Committee Document*, PP 301 \(2010–14\); *Erskine May* \(25th ed. 2019\), paras 15.32 & 38.56.](#)

25. Consequently, the Committee informs Members that when determining whether a matter substantiates a complaint under s 13(1) of the Act, the Committee must be satisfied that the matter comprises a substantial interference with the work or functions of parliamentary committees, of the Legislative Assembly, or of Members of the Legislative Assembly.

Guidance for members

The Committee informs Members of the Legislative Assembly that in regard to matters referred to it under ss 6(d), 13(1) and 13(3) of the *Members of Parliament (Standards) Act 1978*:

- (1) where the alleged contravention occurs during debates in the Legislative Assembly, the Committee will not consider the complaint unless the matter is referred to it directly by the House; and
- (2) where the alleged contravention does not occur during debates in the Legislative Assembly, the Committee will only consider matters where the alleged conduct or language could be considered 'highly offensive' to a reasonable person under the circumstances;
- (3) complaints under s 13(1) of the Act must demonstrate that the alleged contravention comprises a "substantial interference" with the work or functions of parliamentary committees, of the Legislative Assembly, or of Members of the Legislative Assembly.