

PARLIAMENT OF VICTORIA

LEGISLATIVE COUNCIL

Privileges Committee



Inquiry into breach of committee deliberations and report contents

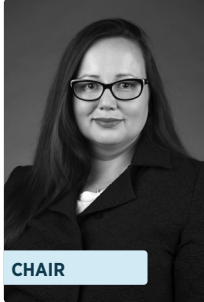
Parliament of Victoria
Legislative Council Privileges Committee

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Hon David Davis
Southern Metropolitan



Hon Shaun Leane
Eastern Metropolitan



Hon Gordon Rich-Phillips
South Eastern Metropolitan



Hon Jaclyn Symes
Northern Victoria



Hon Gayle Tierney
Western Victoria

About the Committee

Functions

The Legislative Council Privileges Committee is established under Legislative Council Standing Orders Chapter 23 – Council Committees, and Sessional Orders.

The Committee's functions are to consider any matter regarding the privileges of the House referred to it by the Council.

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This report is available on the Committee's website.

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Chair's foreword

The disclosure of committee deliberations and report contents prior to the tabling of a committee report is considered to be a significant breach of Standing Orders and a contempt of the Parliament.

This Privileges Committee investigation followed the publication of a story in *The Age* newspaper on 5 August 2021 prior to the tabling of the Legal and Social Issues Committee's report into the use of cannabis. The article referred to private Committee deliberations, contained extracts from the Chair's foreword, and included comments by a Committee member and unsourced comments from others. The Legislative Council consequently referred the matter to the Privileges Committee.

I wish to thank all members of the Legal and Social Issues Committee and the Committee Secretariat who fully cooperated with the Privileges Committee investigation. In particular, I note the honest responses received from Ms Patten and Mr Limbrick in relation to their part in the disclosure of report contents and deliberations. Unfortunately, this is not the first time a Committee report has been leaked to the media prior to tabling, however the admissions made by these two members have greatly assisted the Committee in making a finding of contempt.

The Committee calls on Ms Patten to apologise to the House for her role in these breaches. While Mr Limbrick was considered to have committed a lesser breach, it is hoped that this report and investigation can be used as an example of the serious consequences of prematurely divulging committee deliberations and report content, and the importance of maintaining and respecting the rules and conventions of the Parliament and its Committees.



Hon Harriet Shing MP
Chair

Inquiry into breach of committee deliberations and report contents

1.1 Resolution of the Council—referral to Privileges Committee

On 5 August 2021, the Legislative Council Legal and Social Issues Committee’s (LSIC) final report on the Inquiry into the use of cannabis in Victoria was tabled in the House.

Prior to the tabling of the report earlier the same day, *The Age* newspaper published a story in its print and online editions which prematurely disclosed contents of the Legal and Social Issues Committee’s report and private meeting deliberations.

The Legislative Council subsequently resolved as follows:

That this House —

- (1) notes that on 5 August 2021, *The Age* newspaper and online reported the private deliberations and certain report contents in relation to the Legal and Social Issues Committee’s Report on the Inquiry into the use of cannabis in Victoria before such report was tabled in the House;
- (2) further notes that the article purports to quote a Member of Parliament speaking anonymously to the reporter;
- (3) requires the Privileges Committee to inquire into and report to the House —
 - (a) on the breach of Committee deliberations and report contents;
 - (b) on any persons who have committed a contempt of Parliament; and
 - (c) on any sanctions recommended.

1.2 Privileges Committee’s lines of investigation

The Privileges Committee’s investigations focussed on contents of *The Age* article of 5 August 2021, the Legal and Social Issues Committee’s deliberation and adoption process during late July 2021, the administrative process in distributing the draft report chapters and minutes of proceedings to members, and the extent to which any member provided details of the draft report or minutes to anyone outside the Committee.

The Privileges Committee particularly focussed its lines of investigation towards the LSIC Members who participated in the report deliberations and adoption process. The Privileges Committee determined not to seek a response from the two journalists responsible for the article published in *The Age* on the basis that any such response was unlikely to have materially aided the Privileges Committee’s investigations.

The Privileges Committee also did not consider it necessary to question Parliamentary committee staff over the source of the leak other than to better understand the processes for disseminating the draft report and minutes of proceedings to LSIC Members.

The Privileges Committee examined details within *The Age* article published on 5 August 2021 to determine the extent of any breach of committee deliberations and report contents. An extract of the article is attached in Appendix A.

Sections of the article that may be considered a breach of committee deliberations and report contents include:

- voting details from a committee deliberative meeting
- unsourced comments from a Member of Parliament on LSIC regarding the voting on the draft report
- direct quotes from the Chair's foreword
- quotes from LSIC participating member Mr David Limbrick
- reference to the number of recommendations in the report.

1.3 Legal and Social Issues Committee members participation in the Inquiry

The Legal and Social Issues Committee comprises seven members and is chaired by Ms Fiona Patten, MLC. An additional 14 members were appointed as participating members of the Committee. Under Legislative Council Standing Orders, a participating member may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of committees, but may not vote on any questions before the committee. Page ii of LSIC's final report noted that in addition to the substantive members of the Legal and Social Issues Committee, only five of the 14 participating members actually participated in the public hearings and meetings throughout the course of the Cannabis Inquiry.

Legislative Council Standing Orders also enable substantive members of a committee to be substituted by another member for particular matters. Dr Bach was substituted for Ms Lovell for the entire Cannabis Inquiry. Ms Crozier substituted for Dr Bach on occasions when Dr Bach was unavailable. Ms Garrett was substituted by Ms Watt for all LSIC meetings from 23 June 2021 onwards.

1.4 Legal and Social Issues Committee draft report deliberation process

A total of 21 Members of the Council (seven substantive and 14 participating) were granted access to all Legal and Social Issues Committee documents for the Inquiry into the use of cannabis in Victoria. As noted below, eight members participated in the

report deliberations. Members are able to access relevant documents in PDF format (draft report and minutes) via a link to a Microsoft Teams folder in calendar meeting invitations. The Chair received initial draft chapters and a draft Chair's foreword by email in MS Word format. A first Chair's draft report was sent to Committee members on 16 July 2021.

LSIC held three meetings to deliberate on its report. All meetings took place on Microsoft Teams. The first deliberative meeting was held on 20 July 2021. Members present were Ms Patten, Dr Kieu, Ms Maxwell (until 11.30 am), Ms Vaghela, Ms Watt (substitute), Ms Crozier (participating), Mr Limbrick (participating), and Dr Cumming (participating).

A second deliberative meeting was held on 23 July 2021. Members present were Ms Patten, Dr Kieu, Ms Maxwell, Ms Vaghela, Ms Crozier (substitute), Ms Watt (substitute), and Mr Limbrick (participating). A final meeting was held on 26 July 2021 to adopt the report. Members in attendance were the same as the meeting on 23 July. The report was tabled in the Legislative Council on Thursday, 5 August 2021.

Minutes from each meeting were circulated and adopted by the Committee at subsequent meetings prior to continuing deliberations on the report.

In accordance with Legislative Council Standing Order 23.27(5), any division on a question relating to the adoption of the draft report must be included in the Committee's report to the Council.

Extracts of proceedings published on pages 285 to 290 of the final report tabled on 5 August 2021 show that there were five divisions on questions at the 20 July meeting and a further five divisions on the 23 July meeting. The Privileges Committee notes that *The Age* article referred to voting at a deliberative meeting. The Committee believes this meeting was the first meeting on 20 July where only four members voted (Ms Patten, Dr Kieu, Ms Vaghela and Ms Watt). Three participating members (Ms Crozier, Dr Cumming, Mr Limbrick) were in attendance but not able to vote in accordance with Standing Orders.

1.5 Privileges Committee questions to relevant Legal and Social Issues Committee members

The Privileges Committee wrote to all Members of the Legal and Social Issues Committee who participated in the report deliberation process asking certain questions on how they accessed draft reports and committee minutes; whether they provided details of the draft report or minutes to anyone outside the Committee, including any journalists; and the extent of any discussions they had with any journalists prior to the tabling of the report on 5 August. Ms Patten was asked additional questions concerning the Chair's foreword. Mr Limbrick was asked additional questions regarding the comments attributed to him in *The Age*.

Following responses received from Ms Crozier, Dr Cumming, Dr Kieu, Ms Maxwell, Ms Vaghela, and Ms Watt, the Committee has concluded on balance that these members and their staff, had no involvement in the dissemination of report contents and committee deliberations prior to the tabling of the report. The Committee noted these members either had no contact with any journalists or provided no response to queries from journalists with respect to LSIC's report. The Privileges Committee also investigated document access by all other LSIC Members and participating members and is satisfied that access to documents was limited to those members attending deliberation meetings.

Responding to the Privileges Committee's questions, Mr Limbrick confirmed he received a telephone call from Mr Michael Fowler from *The Age* on 4 August 2021 asking various questions regarding the Cannabis Inquiry Report. Mr Limbrick advised the Committee that he told *The Age* journalist that he could not discuss any details in the report until it was tabled and could not talk about LSIC deliberations. Mr Limbrick did, however, express his disappointment with the final report outcome and advised the journalist he had submitted a minority report and gave his overall impression on the public evidence presented to the Inquiry and his Party's policy on cannabis. Mr Limbrick also advised the journalist 'that the only insight into deliberations he could get from the report would be via reading the extracts of proceedings which is normally contained in committee reports and he would be able to access it once the report became public'.

The LSIC Chair, Ms Patten, confirmed to the Privileges Committee that she spoke to a journalist at *The Age* prior to the report tabling on 5 August 2021. Ms Patten advised the journalist that the final report could not be released until tabling but confirmed to the Committee that she did provide the journalist with some quotes from her Chair's foreword. Ms Patten advised the Privileges Committee she did not provide a copy of her Chair's foreword to other LSIC Members prior to tabling.

Ms Patten further advised that her staff were not involved in accessing the draft reports and committee minutes and did not provide details of the report or meeting deliberations to any other persons. However, Ms Patten confirmed she had some discussions with her staff about the contents of her Chair's foreword and that she and one staff member provided quotes from the foreword to a journalist from *The Age*.

1.6 Findings on breach of committee deliberations and report contents

Based on responses received from LSIC Members, the Privileges Committee concludes that Ms Patten, and to a lesser extent Mr Limbrick, had a role in the breach of committee deliberations and report content. The Committee was unable to conclude that any other member or staff had a role in the breach.

Council Standing Order 23.23 provides that a committee's evidence not taken in public, and any documents and papers, may not be disclosed or published without authorisation unless they have been reported to the Council. Further, Standing Order 23.20 expressly provides that committee deliberative meetings are conducted in private. The Privileges

Committee notes that voting deliberations at the LSIC meeting on 20 July 2021 were made public in *The Age* article. This is in breach of Legislative Council Standing Orders. The Committee is unable to conclude how the voting deliberations were prematurely released.

The Privileges Committee's investigations reveal that prior to the LSIC report being tabled on 5 August 2021, Ms Patten spoke to a journalist from *The Age* and provided quotes from her Chair's foreword to the journalist.

The Privileges Committee notes that the Chair's foreword is not sent to other committee members and does not form part of the committee adoption process. However, a Chair's foreword forms part of a final report that is tabled in Parliament and the tabling process does not separate the document out from the rest of the report. As such, any premature release of a Chair's foreword is considered to be in breach of Standing Orders.

1.7 Contempt of Parliament

The Privileges Committee is required to consider whether any persons had committed a contempt of Parliament. It is widely accepted throughout parliamentary practice and procedure that one example of possible contempt is the premature publication or disclosure of committee proceedings, evidence (other than evidence taken at public hearings and including submissions not formally received and adopted by committees) and reports.

As noted above, it is clear that Legislative Council Standing Orders have been breached in this instance.

Finding in relation to Mr Limbrick

On the basis of the evidence received from Mr Limbrick and *The Age* article of 5 August 2021, the Committee concludes on balance that in publicly expressing his disappointment with the final report outcome prior to its tabling, there was a breach of Standing Orders which technically amounts to contempt, albeit not wilful or malicious.

Findings in relation to Ms Patten

The Committee agreed that the Chair's foreword constituted a part of a committee report, and therefore, the release of the Chair's foreword, in part or in whole, prior to the report being tabled, is a breach of committee confidence and a technical contempt of Parliament.

The Committee noted that Ms Patten, as Chair of LSIC and a second term member, would have known, or ought to have known, that the Chair's foreword formed part of a committee report.

The Committee concluded that on the basis of responses provided by Ms Patten and the article in *The Age* itself, Ms Patten had, including by way of delegated authority, breached the obligation not to disclose material within the Report, which included information from the Chair's foreword, prior to its tabling and that such breach was wilful.

The Committee also finds such breach by Ms Patten amounts to a contempt of Parliament.

1.8 Possible sanctions

The Privileges Committee's terms of reference included consideration of any sanctions to be recommended if it found that any Member had committed a contempt of Parliament.

The Committee has not recommended any sanctions for the House to consider however, it notes that the House itself may consider sanctions by way of a motion moved by any Member. Nevertheless, the Privileges Committee strongly believes it would be appropriate for Ms Patten to make an apology to the House for the wilful breach of committee confidence and contempt of Parliament.

Further, the Privileges Committee notes that the Legal and Social Issues Committee may wish to consider the position of its Chair in light of the findings in this report.

**Adopted by the Legislative Council Privileges Committee
Parliament, East Melbourne
26 August 2022**

Appendix A

Extract from The Age online article published on 5 August 2021¹

Source: Michael Fowler and Paul Sakkal, 'Andrews government quashes push to legalise cannabis in Victoria', *The Age*, 5 August 2021, <<https://www.theage.com.au/politics/victoria/andrews-government-quashes-push-to-legalise-cannabis-in-victoria-20210804-p58fq1.htm>> accessed 10 March 2022.

Andrews government quashes push to legalise cannabis in Victoria

By Michael Fowler and Paul Sakkal

August 5, 2021 — 5.30am

A two-year State Parliament inquiry that was set to recommend legalising cannabis in Victoria has been watered down after Andrews government MPs intervened at the last minute.

The inquiry's report, to be released on Thursday morning, now suggests the government "investigate the impacts of legalising cannabis for adult personal use in Victoria" – a marginal step that dents proponents' hopes of a shift in the state's drug policy in the foreseeable future.

The inquiry considered evidence on both the decriminalisation and legalisation of the drug before the axed recommendations of the inquiry were drafted. Decriminalisation removes criminal penalties for the possession or use of the drug, while legalisation removes further barriers and can open it up to regulation.

The majority of evidence from Australian and international health and legal experts to the inquiry favoured decriminalising cannabis for personal use, including making it legal to grow a small number of plants at home.

However, some experts along with Victoria Police opposed decriminalisation, arguing cannabis use can exacerbate mental health problems, antisocial behaviour and road trauma.

A framework for allowing cannabis for personal use, initially recommended by the committee chaired by Reason Party MP Fiona Patten, would replicate the Australian

¹ Only extracts relevant to Privileges Committee investigation provided.

Capital Territory where people can possess and grow small amounts. They did not go as far as some parts of the US, where it is sold over the counter and taxed.

When the Victorian report was in its final stages, the three Labor MPs on the committee leading the inquiry used their majority power to water down the recommendations, in what a fellow MP on the committee called a “galling” last-minute move.

“I found it galling that you could sit in an inquiry for a year, Fiona could do all that hard work, then the government could simply come over the top and change the recommendations before they’re made public,” said the MP, who spoke anonymously because Members of Parliament are prohibited from discussing reports before they are tabled.

All members of the committee, including Labor MPs Dr Thien Kieu, Sheena Watt and Kaushaliya Vaghela, were involved in the drafting of the initial recommendations before the ALP members voted to water them down for the final report. Among the axed recommendations was that all people with a minor cannabis conviction should have it removed from their criminal record. Liberal MP Georgie Crozier was on the committee but an opponent of legalisation.

In a move indicative of a resistance to significant change on cannabis policy, the government chose to alter the report before it was released. The decision means the Andrews government will avoid coming under pressure to pass legislation enacting the recommendation, which may have prompted opposition from sections of the community before next November’s election.

Several of the Andrews government’s social reforms, including legalising voluntary assisted dying and establishing a spent convictions scheme, were enacted after parliamentary committees investigated the policies and recommended changes. A Victorian government spokeswoman told *The Age* that “our focus is on fighting the pandemic and creating jobs – we have no plans to legalise cannabis”.

“We’ll continue to invest in reducing drug related harms and supporting Victorians affected by drug use and will consider the recommendations in that context,” she said.

Ms Patten, in her comments accompanying the final report, said “the overwhelming majority of stakeholders supported the need for cannabis law reform”.

“Time and time again the committee heard that the current criminalisation approach to cannabis in Victoria is not addressing problematic use of cannabis and is in fact contributing to the harms experienced by vulnerable groups.”

Ms Patten said the inquiry was established in 2019 to investigate how to prevent the harms of cannabis and keep it out of the hands of young people and criminals. It heard about 29 per cent of young Victorians use cannabis, more than those who smoke tobacco.

...

The 17 recommendations of the final Victorian report suggested the caution system for those under 18 who commit low-level cannabis offences, currently a discretionary policy for police, instead become legally mandatory. It also recommended a review of school-based drug education.

Victorian crossbench MP David Limbrick from the Liberal Democrats said he attended almost every meeting and hearing of the cannabis inquiry and was “very disappointed with the outcome”.

“I was not happy with the report and have submitted my own minority report that will be released on Thursday,” he said.

“I support full legalisation of cannabis. I think the evidence presented to the inquiry was crystal clear that legalisation presents a golden opportunity to undermine organised crime in this state”

Dr Kieu declined to comment.

