

**PARLIAMENT OF VICTORIA**

**LEGISLATIVE ASSEMBLY**

**Privileges Committee**



# **Dealing with alleged contraventions of the requirements of the Code of Conduct and the Register of Interests**

Parliament of Victoria  
Legislative Assembly Privileges Committee

---

Ordered to be published

---

VICTORIAN GOVERNMENT PRINTER  
October 2019

PP No 72, Session 2018-19  
ISBN 978 1 925703 84 9 (print version), 978 1 925703 85 6 (PDF version)

# Committee membership



**Hon. Lisa Neville**  
Bellarine



**David Morris**  
Mornington



**Hon. Jacinta Allan**  
Bendigo East



**Hon. Matthew Guy**  
Bulleen



**Hon. Jill Hennessy**  
Altona



**Frank McGuire**  
Broadmeadows



**Hon. Martin Pakula**  
Keyborough



**Steph Ryan**  
Euroa



**Hon. Kim Wells**  
Rowville

# About the committee

## Functions

The role of the Privileges Committee is to examine and report to the Legislative Assembly on breaches of Parliamentary privilege. Matters are referred to the Committee by resolution of the House and involve investigation of possible breaches of privilege.

As well, the Committee is authorised by the Standing Orders of the House to examine and report on complaints made by citizens who believe they have been adversely commented on by a Member or Members in the House during Parliamentary debate. Such complaints are termed ‘a right of reply’.

## Secretariat

Paul Groenewegen, Assistant Clerk Committees, Legislative Assembly  
Kate Murray, Manager, Procedure Office, Legislative Assembly

## Contact details

**Address** Department of the Legislative Assembly, Privileges Committee  
Parliament of Victoria  
Spring Street  
EAST MELBOURNE VIC 3002

**Phone** 61 3 9651 8555

**Email** [paul.groenewegen@parliament.vic.gov.au](mailto:paul.groenewegen@parliament.vic.gov.au)

**Web** <https://www.parliament.vic.gov.au/la-privileges>

This report is available on the Committee’s website.



# Contents

## Preliminaries

Committee membership	ii
About the committee	iii

## Report **1**

Background	1
------------	---

Guidelines	1
------------	---

1	The Committee's role	2
2	Identity of the complainant	2
3	How to deal with conflicts of interest	2
4	Initial consideration	2
5	Evidence	3
6	Deciding if a contravention is wilful	3
7	Standard of proof	4
8	Reporting	4



## Background

The Committee has a new role in considering allegations regarding Parts 3 or 4 of the *Members of Parliament (Standards) Act 1978* (the Act), following changes made to the Act earlier this year.<sup>1</sup> 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.<sup>2</sup> The Speaker must then determine whether to refer the alleged contravention to the Privileges Committee.

The Act offers no guidance to the Committee on how it should deal with such a referral. Therefore, the Committee decided to develop guidelines to assist this Committee, and future Privileges Committees, deal with referrals under s 30 of the Act

In developing these guidelines, the Committee sought the advice of the Clerk and looked at previous Privileges Committee reports.

The Committee encourages all members to be aware of these guidelines if they refer an alleged contravention to the Speaker or if they find themselves subject to an allegation. The Committee may choose not to investigate a referral should it not comply with the guidelines.

## Guidelines

Any member who considers that an Assembly member has contravened a requirement under Part 3 or 4 of the *Members of Parliament (Standards) Act 1978* (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.

Only members of Parliament can make a complaint. If the matter involves conduct that may constitute a criminal offence, the Speaker must refer the alleged contravention to the appropriate law enforcement agency.<sup>3</sup>

When the Privileges Committee receives a referral from the Speaker of an alleged contravention, it will be guided by the following principles.

---

1 Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Bill 2019.

2 *Members of Parliament (Standards) Act 1978*, s 30.

3 Ibid.

## 1 The Committee's role

The Committee's role is to determine:

- if the member complied with the relevant sections of Parts 3 and 4 of the Act; and
- if the member has not complied, whether the contravention was wilful.

## 2 Identity of the complainant

When the House refers a complaint of a breach of privilege to the Committee, the complainant sets out the details of the complaint in the debate. The Committee can then use those details as the starting point for its investigation. Therefore, when a complaint is referred to the Committee under s 30 of the Act, the Committee needs to know the details of the complaint.

The Committee will only consider a complaint if the Speaker has:

- advised the Committee of the identity of the complainant thereby allowing it to test the veracity of the allegation and provide procedural fairness. and
- given the Committee a copy of the complaint and the evidence of the contravention originally provided to the Speaker by the complainant.

The Committee will not disclose this information prior to its report to the House. The Committee may also decide not to report to the House (see "8 Reporting" below).

## 3 How to deal with conflicts of interest

Where a member of the Committee is either the complainant or has had an allegation made about them, that member will excuse themselves from the Committee's consideration on that matter.

## 4 Initial consideration

The Committee may decide not to consider a complaint further if:

1. it considers that the subject of the complaint is not sufficiently serious;
2. it considers that the complaint is frivolous or vexatious; or
3. the complaint was received more than twelve months after the alleged contravention and the issue is not still current.

The Committee notes that a contravention of the Act is still a potential contempt even if a member is no longer breaching the Act.

## 5 Evidence

Once the Committee has decided to consider a complaint further, the Committee will approach each alleged contravention on a case by case basis, applying, as far as possible, the principles of procedural fairness. These include a right to a hearing, evidence to support the facts and an absence of bias.

### Witnesses

In most instances, the Committee expects that it will collect evidence from the member who the complaint is about. The Committee may also collect evidence from the complainant, the Speaker, the Clerk, the Clerk of the Parliaments<sup>4</sup> and others.

The Committee may decide to collect evidence in writing, in person or both.

The Committee will act with caution when asking for evidence from the Speaker or clerks. The Committee acknowledges that it is important for the Speaker and clerks to be able to have confidential conversations with all members about a range of issues. The Committee does not wish to compromise those roles.

### Hearings

The Committee expects that it will hold private hearings but, in some instances, it may hold confidential or public hearings.

Under standing order 214(4) evidence taken in private can later be used as public evidence, providing the Committee informs the person giving the evidence that it is received by the Committee on the basis that it will be made public.

## 6 Deciding if a contravention is wilful<sup>5</sup>

The Committee will be guided by the advice provided to the Privileges Committee in 2013<sup>6</sup> when deciding if a contravention is wilful.

Any course of conduct embarked upon intentionally, deliberately, voluntarily or consciously will constitute wilful conduct. Indifference or reckless carelessness may also be sufficient to constitute wilfulness.

<sup>4</sup> The Clerk of the Parliaments maintains the Register of Interests under s 26 of the *Members of Parliament (Standards) Act 1978*. When the Clerk of the Legislative Council is the Clerk of the Parliaments, the Committee acknowledges that it does not have the power to compel them to give evidence.

<sup>5</sup> Under s 31 of the *Members of Parliament (Standards) Act 1978*, any **wilful** contravention of a requirement under Part 3 or 4 of the Act is a contempt of Parliament and may be dealt with accordingly.

<sup>6</sup> Parliament of Victoria, Legislative Assembly Privileges Committee, *Inquiry in relation to recommendation 2 of the Ombudsman's report Whistleblowers Protection Act 2001: Investigation into allegations against Mr Geoff Shaw MP*, May 2014, Appendices 6 and 8.

## 7 Standard of proof

In most instances, the Committee expects to apply a high civil standard of proof—determined on the balance of probabilities but given the seriousness of the allegations, requiring proof of a very high order.<sup>7</sup>

## 8 Reporting

Where the Committee has determined that a wilful contravention of a requirement under Part 3 or 4 has occurred, the Committee will report that contravention back to the House. The House may then decide what, if any, action to take.<sup>8</sup>

Where the Committee decides not to consider a matter further or does not find that a wilful contravention has occurred, it will be open to the Committee whether or not to report to the House. In these instances, it is likely that a report would be the first time the House has learnt of the complaint and so the Committee will be cautious about making the complaint public. The Committee may instead decide to report its finding back to the Speaker only. The Speaker could then inform the complainant and the subject of the complaint of the Committee's finding.

**Adopted 30 October 2019**

---

7 The Privileges Committee has applied this standard of proof previously. Parliament of Victoria, Legislative Assembly Privileges Committee, *Inquiry in relation to recommendation 2 of the Ombudsman's report Whistleblowers Protection Act 2001: Investigation into allegations against Mr Geoff Shaw MP*, May 2014, p. 17; and Parliament of Victoria, Legislative Assembly Privileges Committee, *Report on the Complaint by the Member for Northcote*, December 2011, p. 6.

8 *Members of Parliament (Standards) Act 1978*, s 31(2).



