



LEGISLATIVE COUNCIL

PUBLIC ACCOUNTABILITY COMMITTEE

Special report on the unauthorised disclosure of *in camera* evidence given on 29 June 2022



Report 14

August 2022

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Public Accountability Committee

**Special report on the
unauthorised disclosure of
in camera evidence given on
29 June 2022**

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**New South Wales Parliament. Legislative Council. Public Accountability Committee.
Report no. 14.**

Special report on the unauthorised disclosure of *in camera* evidence given on 29 June 2022.

"August 2022".

Chair: Ms Cate Faehrmann MLC.



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Terms of reference

1. That the Public Accountability Committee inquire into and report on the appointment of the former Deputy Premier Mr John Barilaro as the Senior Trade and Investment Commissioner to the Americas, including:
 - (a) the circumstances leading up to the appointment,
 - (b) the process undertaken to make the appointment,
 - (c) the probity and integrity measures that were undertaken as part of the appointment, and
 - (d) any other related matter.

The terms of reference for the inquiry were self-referred by the committee on 23 June 2022.¹

¹ *Minutes*, NSW Legislative Council, 23 June 2021, pp 3518-3519.

Committee details

Committee members

Ms Cate Faehrmann MLC	The Greens	<i>Chair</i>
Hon Robert Borsak MLC	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
Hon Wes Fang MLC	The Nationals	
Hon Scott Farlow MLC	Liberal Party	
Hon John Graham MLC	Australian Labor Party	
Hon Courtney Houssos MLC	Australian Labor Party	
Hon Peter Poulos MLC	Liberal Party	

* The Hon Wes Fang MLC substituted for the Hon Scott Barrett MLC from 23 June 2022 for the duration of the inquiry.

Contact details

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Recommendations

Recommendation 1

3

That the House refer the unauthorised disclosure of the *in camera* transcript of 29 June 2022 to the Privileges Committee for inquiry and report by the last sitting day of 2022.

Special Report

The Public Accountability Committee makes the following Special Report to the House.

- 1.1 On 23 June 2022 the committee met and resolved to adopt terms of reference for an Inquiry into the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner to the Americas.
- 1.2 At this meeting, the committee resolved to invite Ms Amy Brown, Secretary of the Department of Enterprise, Investment and Trade and CEO, Investment NSW, as a witness to the first hearing. The hearing was subsequently held on 29 June 2022.
- 1.3 At the hearing of 29 June 2022, Ms Brown gave evidence in public from 10.00 am to 12.08 pm. Towards the end of the hearing, and in response to a line of questioning about the suitability of Ms Jennifer West, Former Deputy Secretary, Trade and International, Investment NSW, as the preferred candidate for the Senior Trade and Investment Commissioner to the Americas role, Ms Brown stated that she would prefer to give evidence in private. The committee agreed, and the public hearing concluded.
- 1.4 Ms Brown then proceeded to give evidence *in camera* from 12.08 to 12.20 pm. The people present were the seven substantive members of the committee, together with Ms Sharpe and Mr Mookhey (participating), Ms Brown, the secretariat and Hansard reporters.
- 1.5 At the conclusion of the hearing, the committee deliberated and resolved to invite Ms West to a future hearing, which was subsequently held on 11 July 2022.
- 1.6 At 6.16 pm on 29 June 2022, the password-protected *in camera* transcript was emailed to the members of the Public Accountability Committee, their staff and whips. The password to access the transcript was emailed in a separate email immediately after. The public and *in camera* transcripts were also emailed to Ms Brown on 4 and 5 July 2022 respectively.
- 1.7 On 1 July 2022 the committee received an email from Ms Jenny West accepting the invitation to give evidence and requesting a copy of the *in camera* transcript from the 29 June hearing.
- 1.8 On 6 July 2022 the committee met to consider the request of Ms West to receive the *in camera* transcript of 29 June. The committee subsequently resolved to:
 - provide a copy of the *in camera* transcript to Ms Jenny West
 - ask for her response on whether she wished to respond to it in an *in camera* or public hearing
 - notify Ms Amy Brown that a copy of the *in camera* transcript has been provided to Ms West.
- 1.9 The minutes of this meeting are attached at Appendix 1.
- 1.10 The *in camera* transcript was subsequently emailed to Ms West, and Ms Brown advised of this.

- 1.11 On 7 July 2022 *The Australian* newspaper published an article entitled 'NY post dirt dug after job pulled', which quoted extensive text from the *in camera* transcript, and the reporters, Yoni Bashan and Christine Lacy, stated they had obtained a copy of the transcript.
- 1.12 At 3.00 pm on 7 July 2022, upon the request of the Chair, the committee met to discuss the unauthorised disclosure of the *in camera* transcript. The committee subsequently resolved that:
- the Chair write to all persons who had access to the original *in camera* transcript and ask them to advise whether they were responsible for the disclosure or were able to provide any information that may be of assistance in determining the source of the disclosure, and
 - on receipt of the responses, the committee would decide whether the unauthorised disclosure was of sufficient seriousness as to constitute a substantial interference with the work of the committee, or the Legislative Council committee system, with a view to the committee making a special report to the House recommending that the unauthorised disclosure be referred to the Privileges Committee for inquiry and report.
- 1.13 On behalf of the Chair, on 14 July 2022 the Director of the committee wrote to all members and staff who had access to the *in camera* transcript asking if they were responsible for the unauthorised disclosure.
- 1.14 Responses were received by the secretariat from all members and staff, with no person declaring that they were responsible for the unauthorised disclosure or had knowledge of any person who did.
- 1.15 On 22 July 2022 the committee met to discuss the responses. On the motion of Mr Graham, the committee resolved that the unauthorised disclosure of the *in camera* transcript of 29 June 2022 was of sufficient seriousness as to constitute a substantial interference with the work of the committee and the Legislative Council committee system, and therefore the committee:
- produce a Special Report to the House for consideration by the Privileges Committee
 - provide a copy of the Special Report to Ms Amy Brown and Ms Jenny West.
- 1.16 The minutes of this meeting are attached at Appendix 1.

Committee comment

- 1.17 The disclosure of the *in camera* evidence of 29 June 2022 is an extremely serious matter. It was undoubtedly a contempt of parliament. The unauthorised disclosure of the *in camera* transcript has resulted in damage to individual participants to the inquiry, and has caused them significant stress and impacted their professional and personal relationships. The unauthorised disclosure has also undermined the integrity of the committee system and the public interest. Such an event deters future witnesses from giving confidential evidence to committees, undermines the relationship of trust between members of the committee, which is necessary for committees to function effectively, and lowers public confidence in the committee, the committee system and the Parliament generally. The committee is extremely disappointed that this unauthorised disclosure has happened and apologises to those directly impacted.
- 1.18 The committee considers that the unauthorised disclosure of the *in camera* transcript of 29 June 2022 is of sufficient seriousness as to constitute a substantial interference with the work of the

committee and the Legislative Council committee system, and therefore recommends that the House refer the matter to the Privileges Committee for inquiry and report by the last sitting day of 2022.

Recommendation 1

That the House refer the unauthorised disclosure of the *in camera* transcript of 29 June 2022 to the Privileges Committee for inquiry and report by the last sitting day of 2022.

Appendix 1 Minutes

Minutes no. 82

Wednesday 6 July 2022

Public Accountability Committee

via Webex at 10.01 am

1. Members present

Ms Faehrmann, *Chair*

Mr Borsak, *Deputy Chair*

Mr Fang

Mr Farlow

Mr Graham

Mrs Houssos

Mr Poulos (until 10.37 am)

2. Correspondence

The committee noted the following correspondence:

Received:

- 1 July 2022 – Email from Ms Jenny West, Former Deputy Secretary, Investment NSW to secretariat, accepting invitation to give evidence and requesting a copy of the *in camera* transcript from 29 June hearing.

3. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

3.1 Request for *in camera* transcript

Mr Fang moved: That the committee publish the *in camera* transcript from 29 June and provide it to Ms Jenny West to publicly respond to it in the 11 July hearing.

Question put.

The committee divided.

Ayes: Mr Fang, Mr Farlow, Mr Poulos.

Noes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos.

Question resolved in the negative.

Mr Graham moved: That the committee:

- provide a copy of the *in camera* transcript to Ms Jenny West
- ask for her response on whether she wishes to respond to it in an *in camera* or public hearing
- notify Ms Amy Brown that a copy of the transcript has been provided to Ms West.

Question put.

The committee divided.

Ayes: Mr Borsak, Ms Faehrmann, Mr Graham, Mrs Houssos.

Noes: Mr Fang, Mr Farlow, Mr Poulos.

Question resolved in the affirmative.

3.2 Allocation of questioning

Resolved, on the motion of Mr Fang: That the sequence of questions to be asked during the hearing on 11 July to alternate between opposition, crossbench and government members, with 20 minutes allocated to each round.

3.3 ***

3.4 ***

4. Adjournment

The committee adjourned at 10:42 am until Monday 11 July 2022 (public hearing).

Helen Hong

Committee Clerk

Minutes no. 83

Thursday 7 July 2022

Public Accountability Committee

via Webex at 3.02 pm

5. Members present

Ms Faehrmann, *Chair*

Mr Borsak, *Deputy Chair*

Mr Fang

Mr Farlow

Mr Graham

Mrs Houssos

Mr Poulos

Ms Sharpe (participating)

6. ***

7. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

7.1 Unauthorised disclosure of *in camera* transcript from 29 June

The committee discussed the unauthorised disclosure of the *in camera* transcript from the hearing on 29 June 2022.

Resolved on the motion of Mr Graham: That:

1. the Chair write to all persons who had access to the original *in camera* transcript and ask them to advise whether the person was responsible for the disclosure or is able to provide any information that may be of assistance in determining the source of the disclosure, and
2. on receipt of the responses, the committee to decide whether the unauthorised disclosure is of sufficient seriousness as to constitute a substantial interference with the work of the committee, or the Legislative Council committee system, with a view to the committee making a special report to the House recommending that the unauthorised disclosure be referred to the Privileges Committee for inquiry and report.

7.2 ***

7.3 ***

8. Adjournment

The committee adjourned at 3.25 pm until Monday 11 July 2022 (public hearing).

Helen Hong
Committee Clerk

Minutes no. 85

Tuesday 19 July 2022

Public Accountability Committee

Jubilee Room, Parliament House, Sydney at 9.49 am

9. Members present

Mr Borsak, *A/Chair*

Mr Fang

Ms Higginson (substituting for Ms Faehrmann)

Mrs Houssos

Mr Poulos

Mr Martin (substituting for Mr Farlow)

Mr Mookhey (participating)

Ms Sharpe (substituting for Mr Graham)

10. Apologies

Ms Faehrmann

Mr Graham

11. ***

12. Correspondence

The committee noted the following correspondence:

Received:

- 13 July 2022 – Email from Mr Joseph Brayford, Former Senior Policy Advisor to Mr John Barilaro to the secretariat, requesting to give evidence *in camera* on 19 July
- 13 July 2022 – Letter from Ms Eileen Seah, Clinical Psychologist to the Chair, supporting Mr Joseph Brayford's request to give evidence *in camera* on 19 July
- 14 July 2022 – Letter from Dr John Kevin, General Practitioner to the Chair, supporting Mr Joseph Brayford's request to give evidence *in camera* on 19 July
- 15 July 2022 – Letter from the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption (ICAC) to the Chair, advising that ICAC is considering the information from 11 July hearing
- 15 July 2022 – Email from Ms Amy Brown, Secretary, Department of Enterprise, Trade and Investment and Chief Executive Officer, Investment NSW to the secretariat, providing her views on the potential publication of the *in camera* transcript from 29 June
- 17 July 2022 – Email from Mr Mark Connell, Former Chief of Staff to Mr John Barilaro to secretariat, declining to give evidence at the hearing on 19 July

- 18 July 2022 – Letter from Mr Mark Connell, Former Chief of Staff to Mr John Barilaro to secretariat, providing confidential information to the inquiry
- 18 July 2022 – Email from Mr Joseph Brayford, Former Senior Policy Advisor to Mr John Barilaro to the secretariat, requesting for support person to attend *in camera* hearing on 19 July.

Sent:

- 12 July 2022 – Email from the secretariat to the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, providing a copy of the transcript from the hearing on 11 July
- 12 July 2022 – Letter from the Chair to the Hon Dominic Perrottet MP, Premier, advising of the committee's intention to invite him to give evidence to the Barilaro inquiry
- 12 July 2022 – Letter from the Chair to the Hon Stuart Ayres, Minister for Enterprise, Investment and Trade, Minister for Tourism and Sport, and Minister for Western Sydney, advising of the committee's intention to invite him to give evidence to the Barilaro inquiry
- 13 July 2022 – Email from secretariat to Ms Jenny West, Former Deputy Secretary, Investment NSW, providing transcript of hearing and requesting her views on potential publication of *in camera* transcript from 29 June
- 13 July 2022 – Email from secretariat to Ms Amy Brown, Secretary, Department of Enterprise, Trade and Investment and Chief Executive Officer, Investment NSW, requesting her views on potential publication of *in camera* transcript from 29 June
- 14 July 2022 – Letter from Mr Stewart Smith, Director – Committees, to members, staff and Hansard, requesting response on unauthorised disclosure of *in camera* transcript from 29 June
 - Ms Cate Faehrmann MLC
 - Hon Robert Borsak MLC
 - Hon Wes Fang MLC
 - Hon Scott Farlow MLC
 - Hon John Graham MLC
 - Hon Courtney Houssos MLC
 - Hon Peter Poulos MLC
 - Hon Penny Sharpe MLC
 - Hon Daniel Mookhey MLC
 - Mr Stewart Smith, Director – Committees
 - Ms Helen Hong, Principal Council Officer – Committees
 - Ms Ros O'Brien – Administration Officer – Committees
 - Mr Ben Cronly
 - Mr Jacob Miller
 - Mr Robert Despotoski
 - Mr Stephen Larsson
 - Ms Senada Bjelic
 - Ms Bo Ok
 - Mr William Olive
 - Ms Lizzie Butterworth
 - Ms Amanda Rose
 - Ms Siobhan Armson-Graham
 - Ms Laura Akkari
 - Mr Nicholas Smerdely
 - Mr Haris Strangas
 - Mr William Coates
 - Ms Georgia Smyth
 - Hon Mark Buttigieg MLC
 - Ms Ciahn Pertzelt
 - Ms Cara Punch
 - Ms Kath Cummins

- Ms Peta Waller-Bryant
- Ms Phoebe Fuller
- Mr Jaymie Pope – Hansard
- Ms Natalie Tipping – Hansard
- Ms Sallyanne Brown – Hansard
- Ms Katie Keeling – Hansard
- Mr Harshad Pandharipande – Hansard
- Ms Eliza Amery – Hansard
- Mr Robert Brown – Hansard.

13. ***

14. **Adjournment**

The committee adjourned at 2.48 pm, *sine die*.

Helen Hong
Committee Clerk

Minutes no. 86

Friday 22 July 2022

Public Accountability Committee
via Webex at 4.45 pm

1. **Members present**

Ms Faehrmann, *Chair*

Mr Borsak, *Deputy Chair*

Mr Fang

Mr Farlow

Mr Graham

Mrs Houssos

Mr Poulos

Mr Mookhey (participating)

2. **Apologies**

Ms Sharpe (participating)

3. **Previous minutes**

Resolved, on the motion of Mrs Houssos: That draft minutes no. 85 be confirmed.

4. **Correspondence**

The committee noted the following correspondence:

Received:

- 18 July 2022 – Email from Ms Annabel de Mestre, Parliamentary Liaison Adviser, Office of the Hon Stuart Ayres MP, Minister for Enterprise, Investment and Trade, to the secretariat, advising of a delay in the Minister's response to the Chair's correspondence dated 12 July 2022

- 20 July 2022 – Letter from Dr Peter Phelps, Executive Director – Parliament, Office of the Premier, to the Chair, advising that the Premier declines the invitation to give evidence to the inquiry
- Correspondence received from members, staff and Hansard, responding to unauthorised disclosure of committee proceedings:
 - Ms Cate Faehrmann MLC
 - Hon Robert Borsak MLC
 - Hon Wes Fang MLC
 - Hon Scott Farlow MLC
 - Hon John Graham MLC
 - Hon Courtney Houssos MLC
 - Hon Peter Poulos MLC
 - Hon Penny Sharpe MLC
 - Hon Daniel Mookhey MLC
 - Mr Stewart Smith
 - Ms Helen Hong
 - Ms Ros O'Brien
 - Mr Ben Cronly
 - Mr Jacob Miller
 - Mr Robert Despotoski
 - Mr Stephen Larsson
 - Ms Senada Bjelic
 - Ms Bo Ok
 - Mr William Olive
 - Ms Lizzie Butterworth
 - Ms Amanda Rose
 - Ms Siobhan Armson-Graham
 - Ms Laura Akkari
 - Mr Nicholas Smerdely
 - Mr Haris Strangas
 - Mr William Coates
 - Ms Georgia Smyth
 - Hon Mark Buttigieg MLC
 - Ms Ciahn Pertz
 - Ms Cara Punch
 - Ms Kath Cummins
 - Ms Peta Waller-Bryant
 - Ms Phoebe Fuller
 - Ms Jaymie Pope
 - Ms Natalie Tipping
 - Ms Sallyanne Brown
 - Mr Harshad Pandharipande
 - Mr Robert Brown.

Sent:

- 19 July 2022 – Email from secretariat to the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, attaching a copy of Mr Mark Connell's statement (received 18 July 2022) for its information

- 20 July 2022 – Email from secretariat to Mr John Barilaro, Former Deputy Premier, advising of publication of Mr Mark Connell's statement and inviting a response.

Resolved, on the motion of Mr Graham: That the following pieces of correspondence be published on the inquiry webpage:

- 18 July 2022 – Email from Ms Annabel de Mestre, Parliamentary Liaison Adviser, Office of the Hon Stuart Ayres MP, Minister for Enterprise, Investment and Trade, to the secretariat, advising of a delay in the Minister's response to the Chair's correspondence dated 12 July 2022
- 19 July 2022 – Email from secretariat to the Hon Peter Hall QC, Chief Commissioner, Independent Commission Against Corruption, attaching a copy of Mr Mark Connell's statement (received 18 July 2022) for its information
- 20 July 2022 – Letter from Dr Peter Phelps, Executive Director – Parliament, Office of the Premier, to the Chair, advising that the Premier declines the invitation to give evidence to the inquiry
- 20 July 2022 – Email from secretariat to Mr John Barilaro, Former Deputy Premier, advising of publication of Mr Mark Connell's statement and inviting a response.

5. Inquiry into the appointment of Mr Barilaro as Senior Trade and Investment Commissioner to the Americas

5.1 Consideration of unauthorised responses

Resolved, on the motion of Mr Graham: That the correspondence received from members, staff and Hansard regarding the unauthorised disclosure of the *in camera* transcript be kept confidential.

Resolved, on the motion of Mr Graham: That the unauthorised disclosure of the *in camera* transcript of 29 June 2022 is of sufficient seriousness as to constitute a substantial interference with the work of the committee and the Legislative Council committee system, and therefore the committee:

- produce a special report to the House for consideration by the Privileges Committee
- provide a copy of the Special Report to Ms Amy Brown and Ms Jenny West.

5.2 ***

6. Adjournment

The committee adjourned at 5.16 pm, *sine die*.

Helen Hong
Committee Clerk

Minutes no. 88

Wednesday, 3 August 2022

Public Accountability committee

Jubilee Room, Parliament House, Sydney at 9.48 am

7. Members present

Ms Faehrmann, *Chair*

Mr Fang

Mr Farlow

Mr Graham (*until 3 pm*)

Mrs Houssos

Mr Poulos

Ms Sharpe (*participating until 3pm, substituting for Mr Graham from 3 pm*)

Mr Mookhey (*participating*)

8. Apologies

Mr Borsak

9. ***

10. ***

11. Inquiry into the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

11.1 ***

11.2 ***

11.3 ***

11.4 ***

11.5 ***

11.6 Report no. 14 – Special report to the house

Resolved on the motion of Ms Houssos: That the special report on the unauthorised disclosure of *in camera* evidence be circulated to the committee for review, be discussed at the committees' next meeting on Friday 5 August 2022, and remain confidential until such time.

12. Adjournment

The committee adjourned at 4.51 pm, until 9.45 am Friday 5th August 2022 in Room 814/815.

Frances Arguelles

Committee Clerk

Minutes no. 89

Friday, 5 August 2022

Public Accountability Committee

Room 814-815, Parliament House, Sydney, Sydney at 9.50 am

1. Members present

Ms Faehrmann, Chair

Mr Fang

Mr Farlow

Mrs Houssos (*participating via WebEx until 2.45pm*)

Mr Poulos

Mr Mookhey (*substituting for Mrs Houssos*)

Ms Sharpe (*substituting for Mr Graham*)

2. Apologies

Mr Borsak, Mr Graham

3. ***

4. Correspondence

The committee noted the following items of correspondence:

Received

- Correspondence received from members, staff and Hansard, responding to unauthorised disclosure of committee proceedings (*attached*):
 - Kate Keeling, Acting Subeditor, Hansard
 - Eliza Amery, Reporter, Hansard
- ***

5. Inquiry into the appointment of Mr John Barilaro as Senior Trade and Investment Commissioner

5.1 Consideration of Special Report

Resolved on the motion of Mr Fang that:

The draft report be the report of the committee and that the committee present the report to the House;

The correspondence relating to the inquiry be tabled in the House with the report;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

The Chair to table the report on Tuesday 9 August 2022.

5.2 ***

5.3 ***

6. Adjournment

The committee adjourned at 5.11 pm, until 9.45 am Monday 8 August 2022 in the Jubilee Room, Parliament House.

Frances Arguelles
Committee Clerk

