



LEGISLATIVE COUNCIL

PUBLIC ACCOUNTABILITY COMMITTEE

23 July 2021

D21/38630

Mr Tim Reardon
Secretary
Department of Premier and Cabinet
52 Martin Place
SYDNEY NSW 2000

Attention: Ms Kate Boyd, General Counsel

Dear Mr Reardon

Order for Papers – Recent outbreak of COVID-19 and related papers

I am writing to inform you that on Wednesday 21 July 2021, the Public Accountability Committee agreed to the following resolution as part of its inquiry into the NSW Government's management of the COVID-19 pandemic:

1. That, under standing order 208, the following documents in the possession, custody or control of the Premier, Department of Premier and Cabinet, Minister for Health and Medical Research or Ministry for Health be produced to the Clerk of the Parliaments by 3.00 pm Tuesday 3 August 2021, or such later date as may be agreed by the Chair that is not more than 48 hours before the proposed further hearing of the committee to take evidence from the Minister for Health and Medical Research, for the purposes of the Inquiry into NSW Government's management of the COVID-19 pandemic:
 - (a) all documents, including briefs and correspondence, containing health advice provided between Monday, 1 June 2021 and Wednesday, 14 July 2021 from the NSW Chief Health Officer, Dr Kerry Chant or the Ministry of Health, advising on potential or additional restrictions and lockdowns and the timing of potential or additional restrictions and lockdowns for Greater Sydney, the Blue Mountains, Central Coast, Wollongong and Shellharbour, and
 - (b) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.
2. That the correspondence note that:
 - (a) the committee has the power to compel the production of the documents under standing order 208 and as reasonably necessary to carry out its function of scrutinising the executive,

- (b) the documents sought fall within the inquiry terms of reference,
- (c) the documents produced will be held in the custody of the Clerk and a claim or claims of privilege may be made over them, and
- (d) for any documents produced as a result of this order, the procedure under the sessional order relating to committee orders for documents adopted on 8 May 2019 will apply, including the process for dealing with documents over which a claim of privilege is made, and the appointment of an independent legal arbiter to evaluate and report on the validity of a privilege claim if this claim is disputed.

This resolution has been made using the committee's powers to order documents under standing order 208, as amended by sessional order. A copy of the sessional order is attached.

The resolution request the documents be produced by **3.00 pm, Tuesday 3 August 2021** or **at least 48 hours prior to the committee's next hearing for the inquiry.**

Yours sincerely

David Blunt
Clerk of the Parliaments

cc: The Hon Brad Hazzard MP
The Hon Don Harwin MLC

Encl: Sessional order – Orders for the production of documents by committees

Sessional order – Orders for the production of documents by committees

- (1) That this House notes that in 2018, the unredacted copy of the Government's Final Business Case for the Windsor Bridge replacement project was produced to Portfolio Committee No. 5 – Industry and Transport as part of its inquiry into the Windsor Bridge replacement project following assertion by the committee of the power of Legislative Council committees to order the production of State papers.
- (2) That this House notes that Portfolio Committee No. 4 – Legal Affairs in its report on the Budget Estimates 2018-2019, published the following legal advices in relation to the power of Legislative Council committees to order the production of State papers:
 - (a) Crown Solicitor, "Section 38 Public Finance and Audit Act and powers of parliamentary committees", 10 August 2018,
 - (b) Crown Solicitor, "Section 38 Public Finance and Audit Act and powers of parliamentary committees – Advice 2", 12 September 2018,
 - (c) Acting Crown Solicitor, "Draft report of Inspector of Custodial Services", 24 October 2018,
 - (d) Mr Bret Walker SC, "Initial advice documented in email from Clerk of the Parliaments to Clerk Assistant – Committees and Director – Committees", 25 October 2018,
 - (e) Acting Crown Solicitor, "Request by Committee for draft report of Inspector of Custodial Services", 29 October 2018,
 - (f) Solicitor General, "Question of powers of Legislative Council Committees to call for production of documents from witnesses", Advice SG 2018/23 (redacted), and
 - (g) Ms Anna Mitchelmore SC, "Powers of Legislative Council Portfolio Committee No 4 in the context of its Inquiry into Budget Estimates 2018-2019", 19 November 2018.
- (3) That this committee notes that the Solicitor-General in her advice SG 2018/23 stated:

I should add, however, that it is more likely than not, in my view, that, if this question of the powers of a parliamentary Committee were to be the subject of a decision of a court, a finding would be made that a Committee of the NSW parliament has the power to call for a witness to attend and give evidence, including by the production of a document, subject to claims of privilege, such as public interest immunity and legal professional privilege, that might be made by the witness. There may be some argument as to whether such a power resides in the Parliamentary Evidence Act, Standing Order 208(c) of the Legislative Council or a power based on reasonable necessity but, if the power does exist, it would be likely to emerge in any court proceedings on the basis that such proceedings would be difficult to confine to the limited question of the construction of the Parliamentary Evidence Act.
- (4) That this House welcomes and endorses the opinion of the Solicitor-General as an acknowledgement of the power of Legislative Council committees to order the production of documents.
- (5) That this House further affirms that whilst in the first instance Legislative Council committees will seek to obtain access to necessary documents by request, they do possess the power to order the production of documents which may be exercised in the event a request is declined.

- (6) That this House calls upon the Premier to reissue Premiers memorandum C2011-27 "Guidelines for Appearing before Parliamentary Committees" and M2017-02 "Guidelines for Government Sector Employees dealing with the Legislative Council's Portfolio Committees" in accordance with the Solicitor-General's opinion, and the procedures set out in this resolution.
- (7) That, notwithstanding anything to the contrary in the standing orders, for the duration of the current session:
 - (1) Whenever a committee resolves to order the production of documents under standing order 208(c):
 - (a) a copy of the order is to be communicated to the Department of Premier and Cabinet by the Clerk, and
 - (b) a summary of the terms of the order are to be reported to the House by the President on the next sitting day.
 - (2) The terms of the order agreed to by a committee must specify the inquiry to which the order relates, and the date by which the documents are to be returned.
 - (3) When returned, the documents will be lodged with the Clerk of the Parliaments and made available to members of the House.
 - (4) The committee may authorise the publication of documents received, subject to paragraphs (6) – (8).
 - (5) A return under the order is to include an indexed list of all documents returned, showing the date of creation of the document, a description of the document and the author of the document.
 - (6) Where a document is considered to be privileged:
 - (a) a return is to be prepared showing the date of creation of the document, a description of the document, the author of the document and reasons for the claim of privilege, and
 - (b) the documents are to be delivered to the Clerk of the Parliaments by the date and time required in the resolution of the committee and not published or copied without an order of the committee.
 - (7) A member of the committee may, by communication in writing to the Clerk of the Parliaments, dispute the validity of the claim of privilege in relation to a particular document or documents. On receipt of such communication, the Clerk of the Parliaments is authorised to release the disputed document or documents to an independent legal arbiter, for evaluation and report as to the validity of the claim.
 - (8) The independent legal arbiter is to be appointed by the President and must be a Queen's Counsel, a Senior Counsel or a retired Supreme Court Judge.
 - (9) A report from the independent legal arbiter is to be lodged with the Clerk of the Parliaments and:
 - (a) made available only to members of the committee, and
 - (b) not published or copied without an order of the committee.

- (10) Documents returned to an order of a committee under standing order 208(c), which are in the custody of the Clerk of the Parliaments, are documents presented to the committee and form part of the evidence of the inquiry to which they relate.¹

¹ Resolved—LC Minutes 8 May 2019 p. 81-83.

Mr David Blunt
Clerk of the Parliaments
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Cc: public.accountability@parliament.nsw.gov.au

Dear Mr Blunt

Inquiry into the NSW Government's management of the COVID-19 pandemic

I refer to the resolution of the Public Accountability Committee made on 21 July 2021 in its inquiry into the NSW Government's management of the COVID-19 pandemic, and to your letter dated 23 July 2021, concerning health advice from the Chief Health Officer or the Ministry of Health.

I would be grateful if you would bring the following matters to the attention of the Committee.

The Committee's role in scrutinising the NSW Government's management of the COVID-19 pandemic is acknowledged.

As the Committee will appreciate, the Greater Sydney region is currently facing its most serious outbreak of COVID-19 to date, with the number of infectious cases of the highly transmissible Delta variant remaining high.

In response, the Minister for Health and Medical Research has imposed restrictions on gathering and movement in the Greater Sydney region with all persons in the Greater Sydney region being urged to limit their movements as much as possible to prevent the further spread of COVID-19 in the community.

The Government is focusing significant effort on responding to the current outbreak of COVID-19 in Greater Sydney, the vaccination rollout in NSW and the delivery of essential services. On 28 July 2021, the restrictions on gathering and movement were extended until 28 August 2021.

An order for papers that falls due during the course of this extremely serious outbreak will undoubtedly divert the Office of the Minister for Health and Medical Research and public servants within the Ministry of Health and the Department of Premier and Cabinet from their critical work in responding to the outbreak. It may also place public servants who are required to compile and deliver records to Parliament but who would otherwise be working from home at risk of acquiring or transmitting COVID-19.

It has not been possible to make a detailed assessment of the volume of documents that may be responsive to the resolution. I note that the Committee's Chair, Mr David Shoebridge MLC, said in a media release announcing the recommencement of the inquiry that the Committee is "exceedingly mindful of not diverting government efforts and resources from containing and suppressing the outbreak". The Committee's resolution would have precisely that effect.

I note that the Minister for Health and Medical Research wrote to the Committee on 2 August 2021 confirming that he and the Chief Health Officer, Dr Kerry Chant PSM, will appear before the Committee on 10 August 2021 in person to answer any questions the Committee may have about the NSW Government's management of the COVID-19 pandemic.

Should you require any clarification or further assistance, please contact Ms Kate Boyd, Deputy Secretary, General Counsel

Yours sincerely

Tim Reardon
Secretary

4 August 2021



LEGISLATIVE COUNCIL

PUBLIC ACCOUNTABILITY COMMITTEE

6 August 2021

D21/40834

Mr Tim Reardon
Secretary
Department of Premier and Cabinet
52 Martin Place
SYDNEY NSW 2000

Attention: Ms Kate Boyd, General Counsel

Dear Mr Reardon

Order for Papers – Recent outbreak of COVID-19 and related papers

Thank you for your letter to the Clerk of the Parliaments, dated 4 August 2021, concerning an order for papers made by the committee.

The Public Accountability Committee notes the Government's acknowledgement of the committee's important oversight role during the COVID-19 pandemic whilst the Parliament is adjourned. In this vein, the committee reiterates that it is essential that the Government cooperate with the committee in order to allow the committee to do its work, which includes scrutinising the actions of the Government.

Accordingly I write to you on behalf of the committee, seeking again the production of the following documents concerning the recent outbreak of COVID-19 and related papers:

- (a) all documents, including briefs and correspondence, containing health advice provided between Monday, 1 June 2021 and Wednesday, 14 July 2021 from the NSW Chief Health Officer, Dr Kerry Chant or the Ministry of Health, advising on potential or additional restrictions and lockdowns and the timing of potential or additional restrictions and lockdowns for Greater Sydney, the Blue Mountains, Central Coast, Wollongong and Shellharbour, and
- (b) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

Considering that it is likely a modest set of documents, the committee requests its return by **10.00 am, Monday 9 August 2021.**

The committee reiterates that it is open to engaging directly with the Government as to the most expeditious and efficacious way to obtain the critical information.

If you have any questions or require further information, please contact Principal Council
Officer – Committees or email Public.Accountability@parliament.nsw.gov.au.

Yours sincerely

Mr David Shoebridge MLC
Chair

cc: The Hon Brad Hazzard MP
The Hon Don Harwin MLC

Mr David Shoebridge MLC
Chair
Public Accountability Committee
Parliament House
Macquarie St
SYDNEY NSW 2000

Dear Chair

Thank you for your letter dated 6 August 2021 concerning the Public Accountability Committee's request for the production of certain documents in its inquiry into the NSW Government's management of the COVID-19 pandemic.

I have provided a copy of your letter to the Minister for Health and Medical Research and the Secretary, NSW Health to consider what documents may be able to be provided voluntarily in response to the Committee's request within the requested timeframe.

Yours sincerely

Tim Reardon
Secretary

6 August 2021