

Procedure Committee

Operation of standing order 52

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Operation of standing order 52

“November 2022”

Chair: Hon Matthew Mason-Cox MLC



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Terms of reference

- (1) That the Procedure Committee inquire into and report on the operation of standing order 52, including:
 - (a) issues arising from the Review of the Standing and Sessional Orders, dated March 2022,
 - (b) issues arising from the Report of the roundtable meeting to consider aspects of the operation of standing order 52, dated February 2021, and
 - (c) any related matters.
- (2) That the committee report by 10 November 2022.¹

¹ The original reporting date was 11 October 2022 (*Minutes*, Legislative Council, 7 June 2022, pp. 3412-3413). The reporting date was later extended to 10 November 2022 (*Minutes*, Legislative Council, 11 October 2022, p 3683).

Committee details

Committee members

Hon Matthew Mason-Cox MLC	Liberal Party	<i>(Chair)</i>
Hon Robert Borsak MLC	Shooters, Fishers and Farmers	
Hon Mark Buttigieg MLC	Australian Labor Party	
Ms Cate Faehrmann MLC	The Greens	
Hon Wes Fang MLC	The Nationals	
Hon Scott Farlow MLC	Liberal Party	
Hon John Graham MLC	Australian Labor Party	
Hon Emma Hurst MLC	Animal Justice Party	
Hon Natasha Maclaren-Jones MLC	Liberal Party	
Hon Sarah Mitchell MLC	The Nationals	
Revd the Hon Fred Nile MLC	Christian Democratic Party	
Hon Rod Roberts MLC	Pauline Hanson's One Nation	
Hon Penny Sharpe MLC	Australian Labor Party	
Hon Damien Tudehope MLC	Liberal Party	

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Chair's foreword

This brief report addresses a number of matters connected with orders for the production of State papers under Standing Order 52 that were left unresolved in the Committee's March 2022 report on the review of the Standing and Sessional Orders.

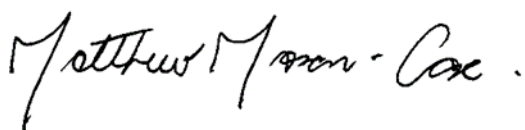
Significantly, the report recommends the incorporation into Standing Order 52 of a third category of documents which contain personal information. It is hoped that this new provision strikes a balance between the importance of genuinely personal information being respected while also providing a more efficient means of enabling members to access and subsequently use the information of interest to them in returns to order. The operation of the new provision will be closely monitored through the next term of Parliament.

The report also discusses an important collaborative project involving the Department of the Legislative Council, the Department of Parliamentary Services and the Department of Premier and Cabinet to develop an eReturns system. This would enable the production of documents under Standing Order 52, and their access by members and others, to take place electronically, with potential for enormous administrative efficiencies.

The Committee has carefully considered both the potential and complexities of eReturns and is keen to see work continue to develop the system to the point where a demonstration for the Committee in the next term of Parliament can facilitate a decision whether or not it should be deployed, and if so, when. I take this opportunity to commend all those who have been working so diligently on this complex project, including: Jenelle Moore, Christine Thai and Beverly Duffy from the Department of the Legislative Council, Krista Meulengracht and Patricia Pearce from the Department of Parliamentary Services, and the team at the Department of Premier and Cabinet. This project is an excellent example of the benefits of collaboration and the professionalism of the Parliament's staff and the State's public servants.

Included in this report are a number of appendices with a view to assisting to inform further discussion and consideration early in the new term of Parliament. This includes a draft Practice Note that could be given by the President under Standing Order 3 so as to provide guidance for all involved in the Standing Order 52 process.

I commend all members of the Committee for their goodwill and thoughtful contributions which have culminated in a consensus report in respect of this highly contentious area. I also thank the Secretariat, including David Blunt, the Clerk of the Parliaments, Susan Want and Alex Stedman for their valuable assistance in finalising this important report.



Hon Matthew Mason-Cox MLC

President

Recommendations

- Recommendation 1** **14**
That standing order 52 be amended, as set out in Appendix 1, to incorporate a provision for a third category of documents which contain personal information.
- Recommendation 2** **17**
That early in the next term of Parliament the Procedure Committee consider the terms of the draft Practice Note which appears at Appendix 2 and whether it should be issued to assist in providing guidance to all participants in the orders for papers process.
- Recommendation 3** **20**
That work continue on the eReturns project with a view to the Procedure Committee, early in the next term of Parliament, being given a demonstration of the eReturns systems when fully developed, so as to be able to make a recommendation as to whether or not it should be deployed, and if so, when.
- Recommendation 4** **20**
That the specifications for the final stage (stage three) of the eReturns project be based on the procedures set out in the draft resolution which appears at Appendix 3 to this report.

Conduct of inquiry

During 2020 and 2021 the Procedure Committee conducted an inquiry into the standing and sessional orders, tabling its report on 31 March 2022.² On the recommendation of the committee, the House agreed that the following matters relating to orders for papers be incorporated into the new suite of standing orders:

1. minor amendments to standing order 52 to:
 - incorporate the provision in sessional order authorising the Clerk to communicate an order for papers to independent agency
 - incorporate the practice of the arbiter in requesting submissions during evaluation of a disputed claim of privilege.
2. the sessional order for variation of scope with an amendment to increase the period within which agreement is made from seven days to 14 days
3. the sessional order for the role of the Privileges Committees with minor amendment consequent on the provision being adopted as a standing order.

A number of issues discussed during the inquiry were not resolved. These issues were also discussed at the Roundtable meeting convened by the then President, the Hon. John Ajaka MLC, in November 2020.³ The Roundtable followed several reports of the independent legal arbiter, the Hon. Keith Mason AC, KC, in which he raised concerns about the substance of claims of privilege and other matters. Participants at the roundtable included members of the House from the opposition, cross bench and the government, the independent legal arbiter, representatives from the Department of Premier and Cabinet and the Clerk of the Legislative Council. The committee recommended in its report that a further inquiry be conducted into standing order 52 in order for the following outstanding matters to be considered:

- the publication by the Privileges Committee of reports of the Independent Legal Arbiter and documents considered by the arbiter to be not privileged;
- claims that documents returned to orders contain personal information that should not be made public;
- the definition of "personal information" under standing order 52;
- the impact of the scope and volume of orders; and
- matters relating to the development of an eReturns system.

On 7 June 2022 the House adopted the following resolution:

- (1) That the Procedure Committee inquire into and report on the operation of standing order 52, including:
 - (a) issues arising from the Review of the Standing and Sessional Orders, dated March 2022,
 - (b) issues arising from the Report of the Roundtable meeting to consider aspects of the operation of standing order 52, dated February 2021, and

² Report no. 14 of the Procedure Committee entitled Review of the Standing and Sessional Orders, dated March 2022, tabled 31 March 2022.

³ Report of roundtable meeting to consider aspects of the operation of standing order 52, dated February 2021, tabled by the President on Tuesday 16 February 2021.

- (c) any related matters.
- (2) That the committee report by 11 October 2022.

On 11 October 2022, the House agreed to extend the report date to 10 November 2022.⁴

In June 2022, the committee sought submissions to the inquiry. A submission from the Department of Premier and Cabinet (DPC) was the only submission received.

On 4 August 2022, the Clerk of the Parliaments wrote to the President providing an update on two of the issues before the committee – the development of a system for electronic returns to orders and the potential for a practice note issued by the President to assist in managing outstanding issues relating to orders for papers. The Clerk also forwarded to the President an exchange of correspondence earlier this year between the Clerk and DPC in which DPC raised concerns about eReturns, in particular the automatic online publication of non-privileged documents and the security and integrity of documents, and the Clerk's response identifying proposed ways to address these concerns. This correspondence was made available to the committee in order that it be fully informed of the current status of eReturns and potential avenues for resolving ongoing issues.

⁴ *Minutes*, Legislative Council, 7 June 2022, pp 3412-3413.

Chapter 1 **Role of the privileges committee in disputed claims of privilege**

- 1.1 Under resolutions adopted since 2014, the Privileges Committee, when the House is not sitting, has undertaken the role usually performed by the House in deciding whether the report of the Independent Legal Arbiter and any documents the subject of the dispute are to be published.
- 1.2 The standing order adopted in May 2022 provides that the Privileges Committee undertake this role when a report of an Independent Legal Arbiter is received by the Clerk more than three weeks before the next sitting of the House. On the next sitting day, the committee is to report to the House what action, if any, it has taken under this resolution. There is nothing in the standing order that regulates how the committee should undertake this role.
- 1.3 It has been an important principle when the House considers whether to publish an arbiter's report and the associated privileged documents, that it is a staged process over a number of days to allow time for members and stakeholders to consider the arbiter's evaluation.
- 1.4 The committee considered whether a provision should be adopted to require that the tabling of an arbiter's report and the tabling of documents considered by the arbiter to be not privileged be considered at separate meetings held on separate days, in line with the procedures taken by the House.
- 1.5 Ultimately, the committee did not reach a consensus on this issue.

Chapter 2 Personal information

- 2.1** One of the major discussions at the roundtable concerning orders for papers was the publication of documents containing personal information. These concerns are exacerbated by the development of a system for the electronic submission of returns to orders, which is discussed below.
- 2.2** According to the Government, one of the reasons agencies make overly expansive privilege claims is because they are concerned that personal or sensitive information may be revealed when documents returned are automatically published by the House. In its submission, the Department of Premier and Cabinet state:
- 2.3** Since his first report, the independent legal arbiter, The Hon Keith Mason AC KC, has maintained that personal or 'private' information is not a recognised head of privilege at law. However, it does not follow that personal information should immediately be published – instead, Mr Mason draws a distinction between the claim of privilege at law, and separately, any determination by the House as to whether the personal information should be in the public domain.⁵
- 2.4** Roundtable participants indicated a willingness to find procedural or administrative ways to deal with this issue, given members will invariably agree to the redaction of personal information from documents returned if it is not relevant to the House's review function.
- 2.5** Two options for managing documents containing personal information were considered by Procedure Committee during its review of the standing and sessional orders:
- Option 1 would require the return of two sets of documents by the due date – the first in their original form which would be available to members of the Legislative Council only, and the second with redactions of personal information for publication.
 - Option 2 would establish a third category of documents (in addition to public and privileged documents) which contain personal information that should not be made public. The documents would be returned in their original form and made available to members of the Legislative Council only. Members could then request that redacted versions of certain documents be returned within seven days for publication.
- 2.6** No decision was made by the committee.
- 2.7** In its submission to the current inquiry the DPC expressed its concern that there have been occasions on which the publication of non-privileged documents has resulted in the public disclosure of sensitive personal information, contrary to privacy principles and the public interest.⁶ DPC also states that departments make claims of privilege over large numbers of documents not because they definitely contain personal information but because they do not have the time to review each document to ascertain whether they do or not.

⁵ For example, see Mr Mason's comments articulating this principle in WestConnex Business Case, 8 August 2014, pp 5, 8; Register of Buildings Containing Potentially Combustible Cladding, 13 December 2019, pp 3 – 5.

⁶ DPC submission to the Procedure Committee for the purposes of the Roundtable, dated 28 October 2020, p 2, attached as Appendix 1 to the DPC submission.

- 2.8** In its submission DPC supports a variation to Option 2 which would require an original version of a document containing personal information to be provided and made available only to members and for any member to indicate in writing to the Clerk that a document containing personal information is required within seven days *for publication in the public interest*.
- 2.9** The Committee considered the options proposed and agreed to recommend to the House that standing order 52 be amended to include a third category of documents which contain personal information and which should not be made public. As the implications of the requirement under the DPC preferred model for an indication that publication is in the public interest are unclear, those words have not been included in the recommended amendment to SO 52. The proposal provides for a member to request a redacted version of a document containing personal information for publication within seven days. The proposal also provides for the arbiter to evaluate a dispute over the extent of redactions.
- 2.10** This provision, if agreed to by the House, would allow the technical aspects of the eReturns project to resume. However, there are additional issues raised by DPC in relation to eReturns which are addressed below.

Recommendation 1

That standing order 52 be amended, as set out in Appendix 1, to incorporate a provision for a third category of documents which contain personal information.

Chapter 3 Definition of privilege

- 3.1** The current arbiter, the Hon Keith Mason AC KC, in an evaluation report prior to the 2020 roundtable, raised the question as to whether a definition of “privilege” for the purposes of Standing Order 52 may assist Government agencies to make more appropriate claims of privilege. Mr Mason put forward a possible definition as a starting point. One or two Members have subsequently prepared varying definitions.
- 3.2** A definition of “privilege” for the purposes of SO52, beyond the definition of “privilege” at common law, is not supported by the Government. The former Clerk of the Parliaments has also raised concerns about potential unintended consequences that might flow from the inclusion of any such definition in the Standing Orders and has cautioned against this path.
- 3.3** In any case, the problem of guidance for Government agencies has, to some extent, been addressed in other ways. The report on the 2020 Roundtable which was tabled in the House and has been widely circulated within Government, contained a very useful appendix summarising the “jurisprudence” of the current arbiter the Hon Keith Mason AC KC, a most useful guidance material for Government agencies. Further, the recommendation for a new provision to claim that documents should not be made public as they contain personal information, if implemented, has the potential to further reduce the recourse by Government agencies to inappropriate claims of privilege merely to deal with personal information.
- 3.4** The committee agreed that the House should not adopt a definition of "privilege" for the purposes of standing order 52.

Chapter 4 The impact of orders for papers under standing order 52

- 4.1 In its submission to the inquiry raises a number of issues related to the increase in the number of orders made and the scope of orders for papers in recent years. By way of comparison, in the current Parliament, as at June 2022 this year, 403 orders for papers have been made, compared to 18 orders for the whole of the last Parliament. In response to those 403 orders, there have been well over 4000 boxes returned containing tens of thousands of documents.
- 4.2 The high volume and large number of documents returned have imposed a heavy administrative burden on government departments, including the department of the Legislative Council. DPC sets out the extensive number of hours spent on coordinating, collating and analysing documents to meet the timeframes set by the Legislative Council and estimates that the combined time that government agencies spent on all orders for papers in the 2021/22 financial year is 65,512 hours and the estimated external cost to government agencies is \$10,045,528.⁷⁸
- 4.3 One mechanism for addressing this issue is for the President to issue a Practice Note under standing order 3 to give guidance to the House, the Department of the Legislative Council, the Department of Premier and Cabinet and agencies and departments to which orders for papers are directed, as to the practices to be observed.

Committee comment

- 4.4 The Committee notes the substantial impact of orders for papers on the Department of Premier and Cabinet, agencies and departments, and the Department of the Legislative Council.
- 4.5 Set out at Appendix 2 is a draft Practice Note which could be issued by the President under Standing Order 3 to give guidance to the House and its Members, the Department of the Legislative Council, the Department of Premier and Cabinet, and agencies and departments to which orders for papers are directed, as to the practices to be observed.

Recommendation 2

That early in the next term of Parliament the Procedure Committee consider the terms of the draft Practice Note which appears at Appendix 2 and whether it should be issued to assist in providing guidance to all participants in the orders for papers process.

⁷ Submission 1, Department of Premier and Cabinet, p 6.

⁸ Although it is not immediately clear why so much of this work is outsourced to external law firms at such high cost.

Chapter 5 eReturns

Background

- 5.1 As noted above, the number and scope of orders for papers has had a significant impact on DPC and government agencies.
- 5.2 Many members and their staff have also expressed frustration toward the current process of physically inspecting, scanning and copying documents.
- 5.3 To address these issues, DPC, the Department of the Legislative Council, the Parliament's Digital Transformation team and an external contractor have been working together to develop a system for online submission into a secure portal of returns to orders in electronic form. The system is intended to provide comprehensive end-to-end functionality, including the submission of both privileged and non-privileged documents, the identification of privileged documents subject to dispute and the means by which members and non-members view the documents. The system is complex in its detail and development.
- 5.4 The project was broken down into three stages. The development of stages one and two are now complete with the portal, which can receive returns to order from DPC and from independent agencies, now complete.
- 5.5 The third stage, which is focused on the particular security and accessibility build-ins for the portal, was put on hold after DPC raised a number of issues with the project through the Roundtable held on 3 November 2020, in correspondence with the Clerk and in its submission to this Inquiry, which can be summarised below.

Automatic publication of non-privileged material containing personal information

- 5.6 This issue was one of the main concerns addressed at the November 2020 roundtable and its recommendation for an inquiry to be held into the operation of SO52.
- 5.7 As noted above, extensive claims of "privilege" are made that documents returned to order contain personal information which should not be made public. Usually there is no indication as to the type of personal information or extent of it. DPC maintains that these broad claims are caused by the short time-frames and broadly worded orders for papers, and are necessary to mitigate against the risks caused by the practice of automatic publication of the non-privileged returns.
- 5.8 The proposal for a third category of documents containing personal information would address this issue by separating those documents with claims of privilege under common law from those containing personal information which should not be made public.

Automatic publication of non-privileged documents and security

- 5.9 Since 1999, non-privileged documents returned to order have been made available to the public on tabling by the Clerk. Like all other tabled papers, once tabled by the Clerk the documents can be viewed, photocopied and their content reproduced. More recently, members have used a high-speed scanner to copy vast swathes of documents for review on their own computers at

their own timing without any restriction as to the use they make of the information or to whom it is distributed.

- 5.10** In correspondence with the Clerk earlier this year, DPC raised a further concern with respect to automatic publication of documents returned to order - that automatic publication might result in or facilitate the public disclosure of details about government policy, infrastructure plans and other potentially sensitive material contained in non-privileged documents. DPC has expressed a concern that once published online, it will be easier for foreign governments and others not acting in Australia's security interests to access, collate and analyse this information with a level of precision and speed that is not possible under the current paper-based viewing process.⁹

The security of privileged material on an online portal

- 5.11** DPC also raised concerns regarding the ability of members to access privileged material on their own devices via a secure members-only part of the eReturns portal. DPC argues that allowing members to access privileged material in their office, or at any other location outside the Parliamentary precinct creates a greater risk of this material being viewed by individuals other than members.

DPC access to documents uploaded to the portal

- 5.12** DPC has also asked for the ability to access and view documentation throughout the returns process, so as to be able to keep track of returns delivered, and, where there is a dispute, to be in a better position to view the disputed documents.

Committee comment

- 5.13** The Committee has considered a proposed draft resolution which if agreed to by the House would provide the procedural basis for the operation of eReturns. The draft resolution appears at Appendix 3 to this report.

Recommendation 3

That work continue on the eReturns project with a view to the Procedure Committee, early in the next term of Parliament, being given a demonstration of the eReturns systems when fully developed, so as to be able to make a recommendation as to whether or not it should be deployed, and if so, when.

Recommendation 4

That the specifications for the final stage (stage three) of the eReturns project be based on the procedures set out in the draft resolution which appears at Appendix 3 to this report.

⁹ Submission 1, Department of Premier and Cabinet, p 28.

Appendix 1 Proposed amendment to standing order 52 relating to personal information

52. Order for the production of documents

- (1) The House may order documents to be tabled in the House.
- (2) When an order for documents is made by the House:
 - (a) the Clerk is to communicate to the Secretary of the Department of Premier and Cabinet, all orders for documents held by departments and agencies subject to ministerial direction or control, and
 - (b) the Clerk is to communicate to the Secretary of the Department of Premier and Cabinet and the named entity, all orders for documents held by an entity which is not subject to ministerial direction or control.
- (3) A return under this order is to include an indexed list of all documents tabled, showing the date of creation of the document, a description of the document and the author of the document.
- (4) When returned, the documents will be laid on the table by the Clerk.
- (5) If at the time the documents are required to be tabled the House is not sitting, the documents may be lodged with the Clerk, and unless privilege is claimed, are deemed to have been presented to the House and published by authority of the House.
- (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 by the date and time required in the resolution of the House and:
 - (i) made available only to members of the Legislative Council,
 - (ii) not published or copied without an order of the House.
- (7) Where a document is subject to a claim that it contains personal information that should not be made public but is not otherwise subject to a claim of privilege:
 - (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 why the personal information should not be made public,
 - (b) the documents are to be made available only to members of the Legislative Council and not published or copied without an order of the House,
 - (c) any member may, by communication in writing to the Clerk, request that versions of the documents with personal information redacted be produced,
 - (d) redacted documents requested under paragraph (c) are to be delivered to the Clerk within seven days of the request being communicated to the Department of Premier and Cabinet, and when returned, the documents will be laid on the table by the Clerk or published in accordance with paragraph (5).

- (e) for the purposes of standing order 52, personal information, which should not be made public unless it is in the public interest to do so includes:
 - (i) mobile telephone numbers,
 - (ii) private email addresses,
 - (iii) home addresses,
 - (iv) bank account details,
 - (v) signatures,
 - (vi) tax file numbers.
- (8) Any member may, by communication in writing to the Clerk:
 - (a) dispute the validity of the claim of privilege in relation to a particular document or documents, or,
 - (b) dispute the validity of the claim that the personal information remaining in redacted documents requested under paragraph 7(c) should not be made public.
- (9) On receipt of communication under paragraph (8), the Clerk 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.
- (10) 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.
- (11) The independent legal arbiter may request additional submissions through the Department of Premier and Cabinet or directly from an independent agency and the member disputing the claim of privilege. Such submissions are:
 - (a) to be lodged with the Clerk and made available to the independent legal arbiter, and
 - (b) may be provided to the parties to the dispute but may not otherwise be published or copied without an order of the House.
- (12) A report from the independent legal arbiter, along with any submissions received by the arbiter, are to be lodged with the Clerk and:
 - (a) made available only to members of the House, and
 - (b) not published or copied without an order of the House.
- (13) Where a document is subject to a disputed claim of privilege under paragraph (6) is also subject to a claim that it contains personal information that should not be made public as set out in paragraph 7(e), prior to the document being published by the House, the Department of Premier and Cabinet is to provide a redacted version of the documents.
- (14) The Clerk is to maintain a register showing the name of any person examining documents tabled under this order.

Appendix 2 Draft Practice Note to be issued by the President under standing order 3



LEGISLATIVE COUNCIL

PRACTICE NOTE ISSUED BY THE PRESIDENT ORDERS FOR PAPERS UNDER STANDING ORDER 52

DATE: xxx 2022

EXPLANATORY NOTE: This Practice Note addresses a range of matters concerning the operation of orders for papers under standing order 52 in order to give some guidance to the House, the Department of the Legislative Council, the Department of Premier and Cabinet and agencies and departments to which orders for papers are directed, as to the practices to be observed. This Practice Note is not binding but the practices proposed are considered best practice to be observed wherever practicable.

1. Before drafting a notice of motion for an order for papers under standing order 52, members should, as far as practicable, ensure that the order is drafted carefully in order that only those documents that are necessary to be produced are ordered.
2. The terms of motions for orders for papers should, as far as possible:
 - specify a date from which the documents ordered have been created, or a defined period from which documents are sought, which period should be as limited as possible
 - relate to one well defined subject matter
 - specify the type of documents required, such as correspondence or reports
 - include a realistic deadline within which documents are to be returned, with 21 days being the default
 - generally not seek documents concerning ongoing investigative functions of government agencies and independent investigative bodies until such investigations are complete.
3. Notices of motions for orders for papers should ordinarily be lodged with the Procedure Office the day before notice is to be given, and in urgent cases no later than one hour before the sitting of the House in order that any advice and assistance can be provided.
4. Except in urgent cases, at least one clear business day should elapse between a notice for an order for papers being given and the notice being moved to facilitate any necessary briefings, negotiations and amendments to be discussed between ministers, members and agencies.
5. Amendments to an order for papers should not, ordinarily, substantially broaden the terms of the order, for example, by turning a motion dealing with one subject area into an omnibus motion dealing with a number of subject areas.

6. The Clerk is to provide timely advice to the Department of Premier and Cabinet regarding disputed claims of privilege and the publication of reports of the Independent Legal Arbiter and documents considered by the arbiter to be not privileged.

Hon Matthew Mason-Cox MLC
President

Appendix 3 Draft Resolution - eReturns

That for the purposes of e>Returns, this House agrees that the following security and access measures be included in the Council's system for the electronic return of documents subject to orders for papers under standing order 52:

- (1) Select staff from the Department of Premier and Cabinet (DPC) be given read only access to documents uploaded by DPC to the e-Return portal for the purpose only of confirming the content of returns, and viewing privileged documents in the event of a dispute.
- (2) Members of the Legislative Council and their staff be given access to inspect and search public documents remotely using a secure access system.
- (3) Members of the public be given access to inspect and search public documents via the Parliament's portal through a system of user registration.

OR

That members of the public be given access to inspect and search public documents via the Parliament's portal from a computer terminal or terminals in the Legislative Council Procedure Office.”

- (4) Members of the Legislative Council be given access to documents subject to a claim of privilege through a highly secure system requiring multi-factor authentication, and that privileged documents be stamped with non-removable watermarks (until such time as their status changes by way of a dispute) and that printing screen shots be disabled.
- (5) Members of the Legislative Council be given access to documents subject to a claim that they contain personal information which should not be made public through a highly secure system requiring multi-factor authentication, and that these documents be stamped with non-removable watermarks (until such time as their status changes by way of a dispute) and that printing screen shots be disabled.
- (6) Access logs for all access to documents in the eReturns portal will be kept securely by the Clerk of the Parliaments and only accessed by authority of the House in response to a specific incident.

Appendix 5 Submission

No.	Author
1	Department of Premier and Cabinet

Appendix 6 Minutes

Minutes No. 8

Thursday 9 June 2022

Jubilee Room, 1.40 pm

1. Members

Mr Mason-Cox (Chair)

Mr Borsak

Mr Buttigieg

Mr Fang

Ms Boyd (substitute member for Auslan inquiry) (Ms Faehrmann left 1.43 pm)

Mr Farlow

Mr Graham

Ms Hurst

Mrs Mitchell

Revd Mr Nile

Mr Roberts

Mr Tudehope

2. Apologies

Ms Sharpe, Mrs Maclaren-Jones

3. Draft minutes

Resolved, on the motion of Mr Fang: That draft minutes no. 7 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 3 March 2022 – Email from Jacob Miller, Policy and Media Advisor, Office of Cate Faehrmann advising that Ms Boyd will substitute for Ms Faehrmann on the inquiry into Auslan interpretation for broadcasting.

5. Inquiry into Auslan interpretation for broadcasting

The Chair noted that the terms of reference for this inquiry were tabled at the committee's last meeting on 28 March 2022. The committee considered the timeframe and conduct of this inquiry.

Ms Boyd tabled a list of suggested inquiry stakeholders.

Resolved, on the motion of Ms Boyd that the committee write to the Library Research Service to request an issues paper on the use of Auslan interpretation for broadcasting by other parliaments.

Resolved, on the motion of Mr Farlow: That the secretariat email members with a list of stakeholders to be invited to make written submissions (including those identified by Ms Boyd), and that members have two days from the email being circulated to nominate additional stakeholders.

Resolved, on motion of Mr Fang: That the closing date for submissions be 5 August 2022.

Resolved, on the motion of Mrs Mitchell: That the committee report by November 2022.

6. Inquiry into the operation of standing order 52

The Chair tabled the terms of reference for the inquiry received from the House on 7 June 2022. The committee considered the conduct of an inquiry.

The President indicated that a potential outcome of the inquiry could be that he issue a practice note with respect to the operation of certain procedures and processes under standing order 52.

The Clerk updated the committee on the e-returns project noting that the Department of the Legislative Council and the Department of Premier and Cabinet were working through various issues, including how members would access privileged returns electronically. Discussion ensued with Ms Boyd and Mr Buttigieg noting that there are programs that allow for the confidential viewing of electronic documents that cannot be reproduced.

Resolved, on the motion of Mr Graham: That:

1. The secretariat contact the following stakeholders to invite them make submissions:
 - The Independent Legal Arbitrator, the Honourable Keith Mason AC QC.
 - Mr John Evans PSM, former Clerk of the Parliaments and Clerk of the Legislative Council, and current Parliamentary Ethics Adviser.
 - Ms Kate Boyd, Deputy Secretary, General Counsel, NSW Department Premier and Cabinet
 - All members of the Legislative Council.
2. That members have two days from this meeting to nominate additional stakeholders.

Resolved, on the motion of Mr Graham: That: the closing date for submissions be 5 August 2022.

7. Live captioning of House and committee proceedings

The Chair noted that a live captioning service for committee and chamber proceedings is due to be launched very shortly with the House most likely go live on 21 June 2022.

The Chair circulated a draft amendment to the resolution of continuing effect authorising the broadcast of proceedings to allow live captioning of the chamber broadcast.

The Clerk updated the committee on communications with the Legislative Assembly regarding the implementation of live captioning.

Resolved, on the motion of Mr Roberts: That the committee support the draft amendment to the resolution of continuing effect authorising the broadcast of proceedings to authorise live captioning of the chamber broadcast being taken to the House.

8. Inquiry into the Broadcast of proceedings resolution

The Clerk updated that committee on the status of inquiry draft report. The Clerk noted that a draft report had been ready for circulation back in 2020 but was not proceeded with because of COVID and the various changes adopted by the House and committees to continue operating during the pandemic, for example hybrid House sittings and virtual committee hearings.

The Clerk advised that the report was being updated to reflect the developments over the past two years and would likely be ready for the committee's consideration in August.

9. Other business

The Chair updated the committee on the status of the Inquiry into the impact of the sessional order variations to the scheduling of business and sitting days. The Chair noted that the inquiry has largely been taken over by the Review of the Standing and Sessional Orders. However, as a report is still required it will be bundled together with the report on the further review of how the proposed standing orders have operated. The Chair noted that there is precedent of two references to the Procedure Committee being dealt with in the one report.

10. Next meeting

Sine die.

David Blunt
Clerk of the Parliaments

Minutes No. 9

Thursday 21 September 2022

Jubilee Room, 1.34 pm

1. Members

Mr Mason-Cox (Chair)
 Mr Buttigieg
 Mr Fang
 Ms Boyd (substitute member for Auslan inquiry)
 Mr Farlow
 Mr Graham (left at 2.05 pm)
 Ms Hurst
 Mrs Mitchell
 Revd Mr Nile
 Mr Roberts
 Mr Tudehope (left at 2.05 pm)

2. Apologies

Ms Faehrmann, Mr Borsak

3. Draft minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 8 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 14 October 2021 – Correspondence from Mr Dave Layzell, Chair of the Legislation Review Committee, to the President and Chair of the Legislative Council Procedure Committee in relation to the Report No. 1/56 of the Legislation Review Committee - Inquiry into the operation of the Legislation Review Act 1987 and its recommendation that the Houses give consideration to amending their respective standing orders to require a member with carriage of a bill to address any matters identified by the Legislation Review Committee during debate on a bill.
- 15 June 2022 – Correspondence from Mr George Roins, General Counsel and Company Secretary, Transport Asset Holding Entity of New South Wales in relation to concerns regarding production of documents subject to privilege without consultation.
- 4 August 2022 – Correspondence from Mr David Blunt, Clerk of the Parliaments, concerning the committee's inquiry into standing order 52 and in relation to electronic returns to orders.

Resolved, on the motion of Revd Nile:

- (a) That the Committee note correspondence item no. 1.
- (b) That the Committee consider correspondence item nos 2 and 3 in the context of the Inquiry into standing order 52.

5. Inquiry into the broadcast resolution

Chair's draft report was circulated with the meeting papers.

6. Consideration of Chair's draft report on the Inquiry into the broadcast resolution

The Chair submitted his draft report which, having been circulated, was taken as being read.

The committee considered the report as a whole.

Resolved, on the motion of Mr Graham: That the third dot point of amendment no. 1 be amended to read:

- allow accredited press gallery photographers to photograph all proceedings in the Legislative Council while in session, subject to notifying the President beforehand who will in turn advise the House.

Resolved, on the motion of Mr Graham: That the third dot point of recommendation 3 be omitted:

- individuals other than accredited media may not make video or audio recording of proceedings, except by express permission of the committee

Resolved, on the motion of Mr Graham: That paragraph 3.31 be omitted: "These relaxed rules should be trialled for the remainder of the 57th Parliament and in 2023 with a review on the operation of the rules undertaken at the start of 2024" and the following new paragraph and recommendation be inserted instead:

The committee notes the increasingly common practice of Legislative Council committees to authorise the filming, broadcasting and still photography of its public proceedings by accredited members of the parliamentary press gallery and by persons or organisations not accredited as members of the parliamentary press gallery (subject to the terms and conditions of the Broadcast of Proceedings Resolution, and other terms and conditions determined by the committee). It is therefore recommended that the Broadcast of Proceedings Resolution be amended, as set out in Appendix 1, to make it this the default for committees, unless resolved otherwise.

'Recommendation X: That the Broadcast of Proceedings Resolution be amended, as set out in paragraph 4 of Appendix 1, for committees to automatically authorise the filming, broadcasting and still photography of its public proceedings by accredited members of the parliamentary press gallery and by persons or organisations not accredited as members of the parliamentary press gallery, unless resolved otherwise.

Resolved, on the motion of Revd. Nile: That the:

- (a) draft report, as amended, be the report of the committee and that the committee present the report to the House.
- (b) committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,
- (c) committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee, and
- (d) submissions, minutes of proceedings, discussion paper and correspondence relating to the inquiry be tabled in the House with the report.

7. Inquiry into Auslan interpretation for broadcasting

The committee noted the submissions received:

- 1 - Mr Benjamin Cronshaw
- 2 - Legislative Assembly for the Australian Capital Territory
- 3 - Australian Deaf Elders Group
- 4 - Deaf Connect
- 5 - Deaf Australia
- 6 - Ms Darlene Thornton
- 7 - Ms Shirley Liu
- 9 - Clerk of the House of Representatives, New Zealand
- 10 - Dr Jessica Kirkness
- 11 - Centre for Culture and Technology, Curtin University

Resolved on the motion of Ms Boyd: That the committee keep submission no. 8, confidential, as per the request of the author.

The committee noted the research paper prepared by the NSW Parliamentary Research Service as requested by the committee.

Resolved on the motion of Ms Boyd: That

- (1) That:
 - (a) a sub-committee be appointed for the inquiry into AUSLAN,
 - (b) the sub-committee be authorised to schedule hearings, contact witnesses and take evidence including in AUSLAN where necessary,
 - (c) the President be appointed as the Chair of the sub-committee,
 - (d) the sub-committee consist of one Government member, one Opposition member and one crossbench member, and
 - (e) a half-day hearing be held on Friday 14 October.
- (2) That the Procedure Committee table its report on its inquiry into AUSLAN by 10 November.

The Chairs advising that the following members had nominated for the sub-committee: Mr Mason-Cox, Ms Boyd, Mr Buttigieg and Mr Fang.

8. Inquiry into the operation of standing order 52

The committee noted the submission received:

- *1 - Department of Premier and Cabinet*

The Committee noted correspondence from the Clerk concerning the committee's inquiry into standing order 52.

Resolved, on the motion of Revd Nile: That the Leader of the Government give a notice of motion to extend the reporting date of the inquiry to 10 November 2022.

9. Inquiry into the trial of the new standing orders

Resolved on the motion of Revd Nile:

- (1) That the committee consult with members concerning the operation of the proposed new standing orders and report to the House, in according with the timeline proposed and circulated by the President, any corrections or changes required.
- (2) That the reference from the House for the Committee to inquire into and report on the impact of the variations to the scheduling of business and sitting days be incorporated into the review of the standing and sessional orders.
- (3) That, as part of the review of changes to the standing orders, the committee review the operation of ePetitions, as recommended by Procedure Committee in its report on ePetitions, and recommend whether the provision should be adopted as standing orders.

10. Timeline for completion of current inquiries.

Resolved on the motion of Ms Sharpe: That the timeline circulated by the Chair and attached to the agenda for the completion of outstanding inquiries be adopted.

11. Next meeting

Sine die.

David Blunt
Clerk of the Parliaments

Minutes No. 10

7 November 2022

President's Dining Room, 10 am

1. Members

Mr Mason-Cox (Chair)

Mr Borsak

Ms Boyd (for the purposes of the Auslan report, until 10.12 am)

Mr Fang

Mr Farlow

Mr Graham

Ms Hurst

Mrs Maclaren-Jones

Revd Mr Nile (*via Webex*, from 10.07am)

Mr Roberts

Mr Searle (substituting for Mr Buttigieg)

Ms Sharpe (from 10.05 am)

Mr Tudehope

2. Apologies

None.

3. Draft minutes

Resolved, on the motion of Mr Fang: That draft minutes no. 9 be confirmed.

Resolved, on the motion of Mr Fang: That draft minutes no.1 of the subcommittee be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 19 October 2021 – Correspondence from Ms Darlene Thornton, witness at the Auslan hearing, commenting on the conduct of the Auslan hearing and enclosing some information for the Committee on suggested Macquarie Room hearing layout and 'English-into-Auslan Video Production guidelines' produced by Deaf Connect, Macquarie University, Melbourne Polytechnic and Accan.
- 26 October 2022 – Correspondence from Percy Allan, Evidence Based Policy Research Project.

5. Consideration of Chair's draft report on the Inquiry into Auslan interpretation for broadcasting

The Chair submitted his draft report which, having been circulated, was taken as being read.

The committee considered the report as a whole.

Resolved, on the motion of Ms Boyd: That the secretariat insert after paragraph 2.29:

- "This was echoed by other inquiry participants, who noted that a lack of accessibility and inclusion creates barriers for Deaf people to engage with politics."

Resolved, on the motion of Ms Boyd: That the secretariat insert after paragraph 2.55:

- "The Committee offers in-principle support for Government action to address these workforce shortage shortages and increase availability of Auslan interpreters."

Resolved, on the motion of Ms Boyd: That the:

- draft report, with amendments, be the report of the committee and that the committee present the report to the House.
- committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,
- committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee, and
- submissions, minutes of proceedings, discussion paper and correspondence relating to the inquiry be tabled in the House with the report.

6. Inquiry into the operation of standing order 52

The Chair submitted the briefing paper, having been circulated, was taken as being read.

The Committee discussed the briefing paper.

7. Inquiry into the trial of the new standing orders

The Chair submitted the draft report, having been circulated, was taken as being read.

The Committee discussed the draft report.

8. Next meeting

President's Dining Room, 2:15pm, Thursday, 10 November 2022.

David Blunt

Clerk of the Parliaments

Draft minutes No. 11

10 November 2022

President's Dining Room, 2.19 pm-2.39 pm

1. Members

Mr Mason-Cox (Chair)
 Mr Borsak
 Mr Buttigieg
 Mr Fang
 Mr Farlow
 Mr Graham
 Ms Hurst
 Mrs Maclaren-Jones
 Mr Roberts
 Ms Sharpe
 Mr Tudehope

2. Apologies

Mr Borsak
 Ms Faehrmann
 Mrs Mitchell
 Revd Mr Nile

3. Draft minutes

Resolved, on the motion of Mr Farlow: That draft minutes no. 10 be confirmed.

4. Consideration of Chair's draft report into the Operation of standing order 52

The Chair submitted his draft report which, having been circulated, was taken as being read.

The committee considered the report as a whole.

Resolved, on the motion of Ms Sharpe: That paragraph 2.9 be amended by omitting 'It would presumably be a matter for members to indicate that publication is in the public interest'.

Resolved, on the motion of Mr Tudehope: That the:

- (a) draft report, as amended, be the report of the committee and that the committee present the report to the House.
- (b) committee secretariat correct any typographical, grammatical and formatting errors prior to tabling,
- (c) committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee, and
- (d) submissions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report.

5. Consideration of the Chair's draft report into the Second review of the Standing and Sessional orders

The Chair submitted his draft report which, having been circulated, was taken as being read.

The committee considered the report as a whole.

Resolved, on the motion of Ms Sharpe: That in recommendation 6 proposed changes to standing order 17(A) omit 'until the end of the Parliament or until a successor is elected' and insert instead 'and until a successor is elected'.

Resolved, on the motion of Mr Farlow: That the following subparagraph be inserted in proposed standing order 136A paragraph (10):

- '(c) A member may not speak for more than 5 minutes on the motion, and, if the motion is not sooner disposed of, after 30 minutes the President is to interrupt proceedings to allow the mover of the motion to speak in reply for not more than 5 minutes and put every question necessary to dispose of the motion and any amendments.'

Resolved, on the motion of Mr Fang: That the Proposed new provision – Time limits on debate on procedural motions be amended by omitting:

- A motion for an instruction under standing order 181'.

Resolved, on the motion of Mr Fang: That the following new recommendation be inserted after recommendation 16:

'Recommendation X

That standing order 181 be amended by inserting the following after paragraph (c):

- (d) a member may not speak for more than 5 minutes on the motion, and, if the motion is not sooner disposed of, after 30 minutes the President is to interrupt proceedings to allow the mover of the motion to speak in reply for not more than 5 minutes and put every question necessary to dispose of the motion and any amendments'.

Resolved, on the motion of Mr Buttigieg: That the:

- (a) draft report, as amended, be the report of the committee and that the committee present the report to the House.

- (b) committee secretariat correct any typographical, grammatical and formatting errors prior to tabling, and
- (c) committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee.

Mr Tudehope noted the committee's thanks to the Secretariat

The President also thanked members and the Secretariat, in particular Ms Susan Want, for their work on the inquiry.

6. Adoption of standing orders

Resolved, on the motion of Mr Tudehope: That the proposed new standing rules and orders, with the amendments agreed to by the Committee in the report into the trial of the new standing orders, be formally adopted for the orderly conduct of the business of the House and laid before the Governor for approval.

7. Next meeting

Sine die.

David Blunt

Clerk of the Parliaments