

PARLIAMENT OF TASMANIA

Legislative Council

Tuesday, 27 June 2023

MOTION

Production of Papers – AFL Agreement

Meg Webb MLC – Speech in Response

Ms WEBB (Nelson) - Mr President, I welcome the opportunity to speak to the Government's motion. The intent of this motion is to secure government compliance with a vote passed by parliament. We often hear the phrase 'The House is the master of its own destiny' used, but more often than not, either as a somewhat hollow or rhetorical expression or a defiant, wishful exhortation.

Recently, it has rung with clarity and people have taken it a little more seriously than rhetorically, now that it has been shown to have some teeth. Specifically, this has occurred within the context of the other place. While I am conscious of not reflecting on that Chamber, I do note and applaud it finding its teeth, a bit like a slumbering giant slowly awakening to its own superpower. It is fair to acknowledge this, Mr President, without tipping over into inappropriate reflection as the only reason we are here now having this particular debate is that the other place had exercised its right to be masters of its own destiny, by voting for certain documents to be tabled. If that had eventuated at the time, then that tabling would have made those tabled documents public to all MPs and indeed all members of the public interested in the documents' contents.

That, for me, is a sticking point and the flaw of this motion. Despite its origins and intent to deliver on an earlier parliamentary vote, it now deals with a shift from making public via tabling in parliament to making them available to a privileged few.

I do not use the word 'privileged' in this context as pejorative, but rather as a reflection on the fact that we are some of those potential few who are included due to our current parliamentary privilege-holding status. I am aware this privileged access concerns other members across both Chambers and there is a sense of potentially being compromised as public debate on the AFL stadium continues.

The Greens MPs have declared they will not participate in this process as established by this motion, although they did not begrudge their fellow members from having the choice.

While acknowledging the view but 'do not divulge' mechanism provided for by this motion is proffered as a compromise way forward, it is important to stress it should not prevent any member who views the documents from subsequently publicly arguing they do not believe those documents should remain secret from the Tasmanian community. We must still reserve the right to keep calling for full transparency for the Tasmanian community, which can be done without divulging the content of those documents. That is a key requirement for me: that it is

clear those who view the documents still have the right to criticise the withholding of those documents from the Tasmanian community if that remains their position.

Secondly, I have a query surrounding the time frames by which viewing members are required to remain silent on that which they have viewed, which I hope the Leader can clarify for me. Should members take this opportunity and view these documents to inform themselves when there are strings attached? Are those members required to keep mum on the documents' contents for a specific period of time or until votes on the proposed Project of State Significance amendment and AFL stadium proposal have been taken? Or until there is a firm decision on the fate of the proposal? Or until the first game, perhaps, of an eventuating Tasmanian AFL team, should that come to pass? Or perhaps until 20 years have lapsed, whether they are still a member of parliament or not? Also, who decides, and by what mechanism, when the cone of silence is lifted in relation to this motion?

Mrs Hiscutt - The limit is forever. There is commercial-in-confidence information in that. I know we always say things like that, but it can never be released. Whatever information you read or understand, you cannot talk about.

Ms WEBB - Thank you. Last, Mr President, will records be kept of which MPs have viewed the documents and for how long will those records be kept? While the motion details the Clerks would have the authority to access, manage and provide access to the papers to members, it does not specify any record taking or keeping of those viewees. This may also be pertinent in a potential scenario, should a member who did not view those documents via this mechanism but received access to the content contained in those documents via other means, for example through a leak or some other such means - I am interested to have those matters clarified by the Government. We certainly want to clarify that somebody had not seen the documents through this mechanism but may have then had access through this other means and spoken of them as a result of that. Or this House, as master of its own destiny, may decide to take it upon itself to provide clarity if needed.

I take the opportunity to touch on how and why we find ourselves debating this motion today. It has been interesting to note the commentary over the last few weeks of the apparent fragility of minority government being on show. While that may be one way of thinking of the current parliamentary make-up, the other approach would be to consider it as the robustness of parliamentary oversight of the Executive that has been on show. The public record shows this halfway house of semi-released documents was not volunteered by the Government, but it was rather a compromise, forged under duress.

It is a compromise. It does not seek to honour the intent of the earlier parliamentary vote, which was publicly released, though it does provide members with an important choice. I acknowledge that and it is a step forward.

However, it must be said it is a matter of record this Government has been warned repeatedly about compulsive secrecy, which then degenerates into desperate dissembling when its equivocating attempts are rejected and pressure is applied - a tendency which has been particularly on display surrounding public debate on the proposed AFL stadium since it suddenly became the deciding factor on whether we achieved a Tasmanian AFL team.

It is no exaggeration to recognise that the default position of secrecy at all costs is a cancer in any system of governance. One compromised motion, such as this, does not a remission make.

Queensland's 2022 Coaldrake Review final report states a cultural shift in government which encourages openness from the top starts with Cabinet processes. For those unfamiliar with it, the Coaldrake Review was commissioned by the Queensland Premier, Annastacia Palaszczuk, and was undertaken by Emeritus Professor Peter Coaldrake AO, former Vice Chancellor of Queensland University of Technology. The review was established due to recognised, and I quote:

... widespread disaffection with the performance of governments and rising expectation that our politicians and their officials be more accountable and transparent in their dealings and behave with integrity.

...

This review was prompted by a number of issues, some publicly ventilated, which together paint the picture of an integrity system under stress, trying to keep check on a culture that from the top down is not meeting public expectations.

The title of this review is fittingly, 'Let the Sunshine In'.

I have mentioned the Coaldrake Review in this place before and it's 'Let the Sunshine In' report, when other accountability and integrity matters were debated. There were many points made in the report from which Tasmania could learn.

However, in relation to the matter before us now, the pertinent point is what this report had to say about changing the culture from Cabinet downwards. As the report says, and I quote:

The community certainly tires very quickly when politicians of any colour and in any jurisdiction hide behind Cabinet or 'commercial-in-confidence' to fend off legitimate questioning on even routine matters.

The Coaldrake final report's second recommendation reads this, and I quote:

Cabinet submissions (and their attachments), agendas and decisions papers be proactively released and published online within 30 business days of such decisions.

Yes, people did hear that correctly, Mr President. Not 30 years, but 30 days, as a matter of routine. Not requiring parliament to take up its work time with the distraction of rushed and cobbled-together ad hoc motions such as this, on a controversial case by controversial case basis.

Significantly, to a limited degree, the Queensland Government adopted this recommendation with a general rule, only the final decisions of Cabinet are released on the government website, and on the cabinet.qld.gov.au website people can search the cabinet document database by topic or date. It is a useful and accessible mechanism.

Another contemporary example is that set by our cousins across the Tasman in New Zealand. This jurisdiction has consistently broken new ground in implementing open

government principles. For example, the New Zealand cabinet papers and minutes must be proactively released within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material or to delay the release. This policy applies to all papers lodged from 1 January 2019.

The New Zealand Government publishes a proactive release of cabinet material policy which details how it is to be applied to cabinet and cabinet committee papers and associated minutes and any attachments and appendices to the papers lodged from 1 January 2019.

Interestingly, it also requires all cabinet and cabinet committee papers must include a proactive release section which states whether or not the minister proposes to release the material within 30 days of decisions being made by Cabinet. If a cabinet paper is not intended to be proactively released, then the reason for this must be explained on the record. This is an important principle to note and it is consistent with how our Right to Information Act should also operate. Existence of relevant documents should be acknowledged, accompanied by a description and justification as to why they will be wholly or partially exempt from release.

Tellingly, the New Zealand Government's proactive release policy states, and I quote:

Democracies thrive when citizens trust and participate in their government. Proactive release of information promotes good government and transparency and fosters public trust and confidence in agencies.

It is a point made by the Coaldrake Review, as well as by those closer to home.

Members will be aware of the 2021 Legislative Council Select Committee Report on Production of Documents. I was a member of the committee inquiry, together with the members for Murchison, Elwick and Prosser, and the former member for Windermere, Mr Ivan Dean. While not focusing solely on the issue of release of cabinet documents, it did provide a considerable amount of relevant material and lessons to be learnt.

The somewhat torturous path that has led us to this particular point, on this particular motion that we are debating today, sadly indicates a defiant refusal so far to learn those lessons - particularly those lessons that focused on political culture and the release of cabinet and other sensitive documents within the Westminster system. It would also appear that the fundamental lesson that the government and the executive are subordinate to parliament may only be recently sinking in.

That committee had the benefit of the testimony of many local and interstate expert witnesses. While time considerations mean I will refrain from spending time detailing the report's findings now, I urge members who have not yet had a chance to do so to read and consider the committee's report and its accompanying expert witness transcripts, particularly around the issue of publication of cabinet documents.

Suffice it to say, if the lessons contained in that report had been heeded, the Government and this parliament may have avoided finding themselves in this current situation.

I note also that just today we have seen a motion that will be debated in the future in this place, from the member for Murchison, which is going to hopefully proactively have our Standing Orders Committee review that Production of Documents report.

Ms Forrest - They needed to wait for a time when there was a much more favourable environment for such an approach.

Ms WEBB - I think the environment may be quite fertile for such a debate now, member for Murchison. I welcome that motion tabled here today and look forward to the debate on it - and hopefully to it also being actioned.

To conclude, I made reference earlier to the Queensland 2022 Coaldrake Review into public accountability and its report, Let the Sunshine In - which was meant to be the result of this motion that we have today and was the core goal of those behind the debate which resulted in this motion within the context of the publicly controversial AFL stadium proposal and its associated decision-making processes.

However, in this case, that sunshine is not for all. Those who briefly get to experience those rays then need to put on their sunglasses and, away from the community's perspective, pretend they did not see what they saw.

In a context of a lively, current and increasingly polemical public debate on the issue at the heart of this matter, this has the sense of a Greek tragedy where the Fates give with one hand, while dealing a lethally sharp double-edged sword with the other, if you look as part of your job as an elected representative - but then you must not share it with those who put you in that job on their behalf.

As some others have reflected, this motion establishes a process that risks making those who choose to view the documents feel somehow complicit - or at least compromised - while still attempting to be involved in the public debate on the stadium issue. Given we know all members in this place will be called on to vote on a bill amending the Project of State Significance process, and then the project's actual order, at least once, these concerns of being - or the perception of being - compromised in the eyes of our constituents is a real one. Ultimately, this resolution does move us forward a little as it provides members with choice, which is something I support.

Further, the processes which deliver that choice, as detailed in the mechanics of the motion, are transparent. While the content of any documents viewed by the process may not be transparent, at least it is transparent as to how and why that is the case. Crucially, maybe in the long term, we also see a chink of light fracturing the almost archaic and medieval mystique surrounding the Cabinet-in-confidence conventions that Tasmania appears to cling to. These human-made conventions can be, and must be, adapted and allowed to evolve in the public interest to meet modern expectations of good governance and a robust democracy. The Westminster ceiling will not fall in.

Although I will be voting in support of this motion, as mentioned, should I take the choice to view the documents as provided for by the mechanism outlined in the motion, I reserve the right to publicly advocate for their full public release, should I consider that to be appropriate in this case.

Further, as I mentioned earlier, I also have some queries surrounding the length of time, which the Leader has provided some comments on, and may have more comments to provide. I also had a question about record keeping on the viewing of the documents, so that it could be

clear, if there was to be disclosure later, who had been a viewer and who had not been a viewer of those documents.

I look forward to listening to further contributions of fellow members, and to further answers to those questions.