



PARLIAMENT OF TASMANIA

LEGISLATIVE COUNCIL

REPORT OF DEBATES

Tuesday 27 June 2023

REVISED EDITION

PARLIAMENT OF TASMANIA
Legislative Council
Tuesday, 27 June 2023

MOTION

Production of Papers - AFL Agreement

[11.25 a.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council)
(by leave) - Mr President, I move -

- (1) That pursuant to Standing Order 318 the Council orders to be laid before it prior to the adjournment on 27 June 2023 the following Papers:
 - (a) All minor redactions from the signed agreements and documents relating to the Australian Football League (AFL) agreement.
- (2) That the Papers are to be lodged with the Clerk of the Council by the Leader of Government Business [myself], Hon. Leonie Hiscutt MLC, and upon which will be deemed to have been laid before the Council.
- (3) That, unless otherwise ordered by the Council:
 - (a) The inspection of the Papers be restricted to Members of the Legislative Council only and that no copies or extracts thereof be permitted;
 - (b) no Member of the Legislative Council who has inspected the papers in accordance with this resolution shall refer to the contents of the Papers in the Council or disclose the contents of the Papers to any other person;
 - (c) the Clerk or Deputy Clerk of the Council have the authority to access, manage and provide access to the Papers to Members of the Legislative Council; and
 - (d) the Clerk will arrange to return the Papers to the Leader on 18 August 2023.

In speaking to that motion, this motion sets up the mechanism to satisfy part (3) of the motion agreed to in the other place on 24 May 2023 - specifically, that all minor redactions of the signed agreements and documents be made confidentially available to all MPs at the earliest opportunity.

I will briefly touch on the mechanics of this motion and its origins. The mechanism originates from the Standing Orders and practices of the New South Wales Legislative

Assembly. It provides for the Leader of the Government to lodge with the Clerk of the Council today the relevant documents, and for them to remain in the custody of the Clerk until such time as they are returned to the Leader of the Government. Any member of this place is able to visit the Clerk's office to view the documents, which are to remain in the confidence of those who choose to view them.

The original motion put to the Chamber in the other place was amended with the agreement of the Government to clarify the intent regarding those people who choose to view the documents, utilising the process we are setting up. No member who has inspected the papers in accordance with this resolution shall refer to the contents of the papers in the Council or disclose the contents of the papers to any other person; but anybody who, for whatever reason, comes in possession of the documents at a later time through some other mechanism may not be captured by that.

This motion is designed to offer members of the Legislative Council the exact same opportunities as offered to members in the other place. It is exactly the same as what all 40 MPs will be seeing. Our Clerks have had a look at it.

There were a couple of minor amendments made to the motion downstairs. The date of part (3)(d) was changed because that is the first week in which the Legislative Council comes back after the winter break. The standing order number at part (1) was changed to reflect our own standing order procedures.

This motion, if passed today, allows all members of the Legislative Council to view the documents that are afforded to be viewed to members in the other place. I commend the motion to the Council.

[11.29 a.m.]

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 viewers. 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.

Recognition of Visitors

Mr PRESIDENT - Honourable members, I welcome to our public gallery grade 7 students from Hobart City High School. In the Legislative Council at the moment, we are debating a motion that involves getting information from the Government for members of the Legislative Council. Much of the debate centres around the principles of the Westminster system of government, which is going to be a fairly interesting debate in this morning's session. I am sure members here will join me in welcoming you to the Legislative Council this morning.

Members - Hear, hear.

[11.46 a.m.]

Mr WILLIE (Elwick) - Mr President, I welcome the local students from my electorate. Welcome to the Legislative Council.

I note earlier today the member for Murchison tabling a motion to refer the Production of Documents report to the Standing Orders Committee. That is a welcome motion and I look forward to that debate.

It has been brought forward in this environment because the Government has ignored that report for a number of years now. Fundamental to this debate are the principles of the Westminster system, and also the principle of responsible government. I will go into further detail about that in a moment.

I note the references to the New South Wales system in this motion, which came through the development of a number of high-profile court cases, Egan v Willis and Egan v Chadwick, which tested the power of the parliament to order the production of documents. As the member

for Nelson mentioned, I was fortunate to serve on the committee for the Production of Documents, and we met Michael Egan, who was the former leader of government in the New South Wales upper House - a very colourful character. We heard evidence from him in New South Wales around this very issue.

What this motion fails to do, Mr President, is offer a dispute resolution, which is fundamental to the New South Wales system. Members in New South Wales are able to view documents in the Clerk's office. We saw how that operates. They have to sign in, and they have to detail the time and date they were there -

Mrs Hiscutt - Seeing as you have mentioned this, that answers the question for the member for Nelson. That will happen here, too.

Mr WILLIE - Yes, and I will continue.

They are able to view documents that the government claims are privileged. However, if members are of the mind that the documents should not have that claim of privilege attached to them, they are able to dispute it through an arbiter process. It is important to note that the arbiter process is not parliament conceding its power. In some of the evidence we heard, it was described it as a 'raconteur' -

Ms Forrest - That was Bret Walker QC.

Mr WILLIE - Yes, Bret Walker QC. I have just received this report about 10 minutes before we sat down because the parliament website has been updated, so I was trying to refresh my memory.

Members in that system are able to ignore the arbiter's decision or advice to parliament because the parliament remains supreme. That is what Bret Walker was trying to say through his evidence.

This motion fails to go down any sort of pathway like that. We find ourselves here because, as other members have reflected, the situation in the lower House - and I will not reflect on that place too much, but this principle of responsible government is important.

Going to the findings of this report from - I think we completed it in 2020, member for Murchison?

Ms Forrest - In 2021.

Mr WILLIE - We started in 2019. Obviously, something happened in between that took the parliament's attention.

I think it might have been the member for Windermere who said publicly that while the Government may ignore this report, it will get dusted off at some stage and become very relevant again when there is a stalemate between executive government and the parliament.

I think the findings are particularly important to the motion at hand as well.

The first one was that the Tasmanian parliament operates under the Westminster system of responsible and representative government; and thus, the government is subordinate and

responsible to the parliament. We had some evidence from some prominent Tasmanians about that very issue that is worth reading into *Hansard*. The first one was from former Tasmanian solicitor-general, Mr Leigh Sealy SC. His evidence to the committee was that:

The so-called Westminster model of parliamentary government is usually described as being a system of responsible government. In this context the term responsible does not mean sensible or prudent. Rather, it describes what is perhaps the defining feature of the Westminster model of government: that those in charge of the day to day management of the affairs of government are answerable (that is to say, are responsible) to the elected Parliament (and thereby to the electors) for their own actions and for the actions of those whom they administer.

Accountability is ensured by the constitutional requirement that those who are in charge of the administration of the government - the sworn Ministers of the Crown - must also be members of one or other of the Houses of the Parliament and, by longstanding custom or convention, it is the member of the House of Assembly who can satisfy the chief executive officer - the Governor - that he or she commands the support of the majority of the members of that House who receives from the Governor a commission to form government and to advise the Governor as to whom among the other members of the Parliament the Governor should appoint to Ministers of the Crown.

That is an important point because Tasmania has had a culture where executive government has, from time to time, thought itself superior to the parliament - which is in direct contradiction to our system.

We also heard from Professor Herr OAM, who similarly described responsible government. Here is a short excerpt from his evidence -

Responsible government means that the government is subordinate. It is responsible to parliament. You can't have a subordinate who has authority over the superior.

Those are important descriptions of responsible government and referring to this culture of executive government feeling, at times, that it has been superior. In part, because this House has never expressed its power, it has never challenged executive government of either stripe - Labor or Liberal - on what is inherent in this House. We might not have Standing Orders that describe the power, but there is absolute power in this House to order the production of documents.

Another finding from the report is:

- (2) It is essential State Service employees, government and all members of parliament understand the role of the Tasmanian Parliament under the Westminster system of responsible and representative government.

That is an important point because there is still education to be undertaken. I know from my own experience of sitting on inquiries that, from time to time, we will have a public servant saying, 'We are not releasing that document because the Right to Information Act said that it is

privileged'. That shows a complete lack of understanding of the power of parliament. The Right to Information Act does not apply to the parliament, nor does it apply to parliamentarians who are requesting information. In a robust system, members of parliament should not have to rely on right to information at all. They should be able to request documents that are not privileged and view those, and we should have systems in place for that to occur.

There is still some education to be done on that for newer members of parliament, and even experienced members of parliament, when understanding these different functions.

- (3) The Tasmanian Houses of Parliament and committees established by them have an inherent and unequivocal power to call for witnesses and the production of documents.

Other jurisdictions have gone through court cases. I believe that members of both Houses in Tasmania in the current parliament accept that they are required to attend committees. We were recently reflecting in the public hearings at the end of the Public Accounts Committee that there were members of former governments who refused to attend committees. Yet, again, this House did not exert its power of making them attend.

- (4) The Tasmanian Legislative Council's key scrutiny and oversight functions related to the actions, decisions and workings of government are diminished by the failure to produce documents.

I know there are current members serving in the Legislative Council whose reports to parliament have been impacted by a failure to produce documents. The health inquiry was one that the member for Hobart sat on, and I recall it was noted in the report -

Mr Valentine - It was.

Mr WILLIE - We are diminished in our function and, I believe, Tasmanians are diminished in the level of governance and oversight that is required for good decision-making.

- (5) There may be appropriate and reasonable claims of immunity relating to the production of documents.

Other members have mentioned Cabinet-in-confidence as a claim of immunity, with the current motion before us. I understand there are also claims of commercial-in-confidence, which in some circumstances is also a reasonable claim for government to have, dealing with the private sector and the arrangements they may enter into. There are a variety of claims of privilege that government can make and, as elected members, we have a responsibility not to breach those. I note, in the New South Wales example, in terms of some of the immunity claims, it has been in operation for over 20 years and there has been no breach by any member who has accessed the documents. They all accept the responsibility that comes with accessing those documents and that, I assume, if there is a breach, it is all over because executive government would become less trusting and they would shut the system down -

Ms Webb - And they have dispute mechanisms -

Mr WILLIE - They have dispute mechanisms, which is also important. We do have a responsibility under the Westminster system to not breach Cabinet-in-confidence or commercial arrangements, if the immunity is valid. That is not something I would ever want

to do, because I completely respect the Westminster system and that is an important part of collective decision-making. Whilst the government, under responsible government, is subordinate to the parliament, we also have a responsibility not to make public Cabinet-in-confidence documents or other documents that have some sort of immunity. That would be to the great detriment of our system.

We might be Opposition members, Independent members, or members from the other place from other parties, demanding scrutiny; but we are not demanding to see privileged documents, particularly Cabinet-in-confidence documents, because we know there is that responsibility that comes with our power.

That said, I know there are other jurisdictions, across the Tasman Sea for example, where they routinely release Cabinet-in-confidence documents after a certain period of time -

Ms Forrest - Most of them, not all of them -

Mr WILLIE - Most of them.

Ms Webb - But they have to document it.

Mr WILLIE - Sometimes the privilege is warranted. Pointing to that example across the Tasman shows a different culture, which is something I am interested in. I am interested in good governance. Clearly, we have longstanding cultural issues in Tasmania from the parliament, the public service and the Tasmanian public. That needs to be addressed because we are some way behind other jurisdictions. I am sure if we ever get into government, people would be looking up this contribution.

Ms Rattray - That was crossing my mind from the time, too. Your turn will come.

Mr WILLIE - There may rise appropriate and reasonable claims of immunity relating to the production of documents. Australian parliaments have respected the notion of documents revealing the deliberations of Cabinet as being immune from disclosure. I have covered that point. Tasmania's Legislative Council has the authority to treat refusal to produce documents as contempt of the House. We have never gone down that path. The closest we may have been was in recent times when there was a referral from the Public Accounts Committee for the Leader to produce documents relating to the small business recovery grants that the Government was claiming immunity from. An election was called before we had that debate. The Leader of the Government was not put in the hot seat for that debate. If the Government failed to produce the document through the Leader then, potentially, a contempt motion may have followed. The heat was taken out of that debate somewhat because the Government produced those documents in camera for the committee, which is a matter of public record.

Recognition of Visitors

Mr PRESIDENT - I would like to welcome the second group to the Chamber today from the Grade 7 of Hobart City High School. Currently, members in the Legislative Council are debating a motion about providing information to members of this Chamber in regard to certain Government activity. It is a fairly detailed debate on an important subject and even

though at times there is a bit of laughter and merriment, at the heart of it, it is a serious debate. I am sure all members will join me in making you welcome in the Legislative Council today.

Members - Hear, hear.

Mr WILLIE - I would like to welcome another local school from my electorate, not far from my office in New Town.

Under finding 7:

- (7) The Tasmanian Legislative Council has a range of processes that can be applied under Standing Orders to exert political pressure, remedies to respond to a refusal to produce documents.

We do have existing powers under the Standing Orders as they currently stand. The member for Murchison's referral to the standing committees of this report is welcome because clarification would be good of the powers of the House. Whilst we have never tested them, it may be advantageous to adjust the Standing Orders so that when a dispute does arise between executive government and parliament the steps are laid out before the parliament and people understand the process involved, rather than trying to work it out on the fly in that dispute, which can get quite political. I would be interested in the Standing Orders Committee's work on that, but we do have an inherent power.

The Tasmanian Legislative Council has not fully exercised all the political remedies and processes available under the Standing Orders to address a refusal to produce documents. We have seen other jurisdictions where that has occurred, such as a leader of the government in the Victorian Parliament who was suspended for three months.

Ms Forrest - Was that Michael Egan?

Mr WILLIE - No, that was New South Wales. There was one in Victoria suspended from the parliament for a period of time.

Ms Forrest - His first name is Don. I cannot think of his surname.

Mr WILLIE - We have also seen Michael Egan have sanctions in New South Wales. He was ejected from the building, from memory, and put on the footpath.

Ms Forrest - He was put onto the footpath and that is where the problem ensued.

Mr WILLIE - Yes, that is where the problem ensued. Also, for him to get the matter to the courts to test parliament's power, he waited for a sergeant-at-arms to physically touch him. The original court case involved an assault charge so he could then hear the matters of parliament's power. He got it to the court jurisdiction that way. It is very interesting.

The Government's grounds for refusal to provide documents ordered by the Tasmanian Legislative Council and its committees based on claims of public interest immunity have not been fully tested.

- (10) Political remedies, both punitive and coercive that have been considered and, in some cases, utilised in parliament include but are not limited to -

I will read some of these so that members are aware of what can happen in other jurisdictions.

Punitive remedies: motions to postpone consideration of government business, including particular bills or other notices until after the requested information has been produced.

In other jurisdictions, parliaments have targeted particular ministers and their bills for failure to produce documents so adjourning debates, and particularly in upper Houses where the government does not always have the majority, it has been an option available.

Censure motions.

Motions restricting the ability of the relevant member to progress government business.

Motions depriving the relevant member of procedures that might be available under the Standing Orders such as a suspension of Standing Orders to consider urgent business.

Use of Standing Orders to move a motion related to a matter of public importance, taking time out of a sitting day otherwise utilised to progress government business.

I have not seen a lot of matters of public importance in this House. I vaguely remember one from the member for Windermere on the floods in the north.

Ms Rattray - And the member for McIntyre.

Mr WILLIE - Yes, on youth detention. I have been here seven years and there has not been a lot.

Motions to extend question time.

Motions to suspend the relevant member.

I talked about a few examples where that has occurred in other jurisdictions.

Coercive remedies include writing to the Premier -

Going above the minister and saying - 'this is the current situation, and will the Premier intervene?'

Writing to the relevant minister requesting rationale to support claims of immunity for the production of documents.

We have gone down that path from time to time.

Tabling of special reports related to the noncompliance with subsequent motion to note report without notice.

It talked about the Public Accounts Committee to do that.

Orders for the information or documents to be produced to a specified committee, including instructions to the committee on how the information is to be handled (received in camera, not published for a specific period etc.). Orders requiring particular committees to hold hearings and particular witnesses to attend for the purpose of answering questions about the information or documents.

Further orders refining the scope of the order for the production of documents.

Motions requiring the relevant member to explain the reasons for non-compliance with a previous order; and

Motions requesting the Auditor-General for another independent third party, to examine the contentious material and report on the validity of the grounds claimed by the relevant member for non-production.

There are some of those that have been utilised in varying degrees by this House and many that have not.

(11) The Tasmanian Right to Information Act 2009 has no application to the Parliament or its committees.

I was saying earlier, it is not just on one occasion that senior public servants have told committees I have been serving on, 'that document was not released under Right to Information so we do not need to give it to you.' It has no application to the parliament. There is an educative process there for the public service.

(12) Dispute resolution processes utilising an independent arbitration mechanism are in place in other Australian jurisdictions with varying levels of utilisation with one jurisdiction's mechanism not being tested to date.

Victoria has not tested theirs, member for Murchison? They have one in place but I do not think it has been utilised. That is a clear omission of the motion before the House.

In New South Wales, an independent arbitration process has been in place for over 20 years, whereby all members of the New South Wales Legislative Council can access with restrictions audited documents, including those over which immunity has been claimed, and the sky has not fallen in New South Wales to have this power. We are in a moment in time where the parliament collectively - both Houses - are able to maybe consider getting closer to that sort of model. It does not mean that model is not without its flaws.

It was interesting on our excursion to New South Wales, particularly in the Clerk's office, to note when the government does produce documents, it often does not just produce the document that has been requested; it produces boxes of documents for the members' consideration. We heard stories from the Clerk it was not uncommon for a member to sign in and be in the Clerk's office all night combing through boxes of documents looking for what they requested. Otherwise known as snowing, that seems like a common practice in New South Wales.

Ms Forrest - That has occurred once here in a Public Accounts Committee inquiry before your time.

Mr WILLIE - I have heard about those stories. I have heard about USB sticks containing a whole lot of documents not particularly relevant or may not have been appropriately formatted.

The Clerk of the New South Wales Legislative Council is required to maintain a register of members viewing ordered documents. It is pleasing to hear the Leader of Government in this House say a similar process will be implemented here. No privileged information has been leaked during this period. It is important that reminder is provided to members who are accessing documents that we are privileged in our position accessing documents. I know the member for Nelson has some reservations on this but if there is a breach then that will set us back in terms of scrutiny of government and oversight.

- (14) In parliamentary jurisdictions other than the New South Wales Legislative Council disputes over the production of documents called for by committees must be ultimately dealt with by their respective Houses.

It is the Houses that contains the power and committees report back to the House and we have seen a number of committees run into that sort of trouble.

The New South Wales Legislative Council introduced Sessional Order 40 in 2018 which provides for its committees to deal with disputes over the production of documents.

Perhaps, the Standing Orders Committee might look at this too. Not just the Standing Orders within this House, but how the committees operate and how they can enforce the Houses' power to produce documents.

- (15) A number of Australian parliamentary jurisdictions have implemented procedural orders to assist when claims of public interest immunity arise in a response to a call or order for [the production of] documents.

A similar process has occurred where the other place has ordered the production of documents and now we are having this debate. It has essentially come through that order and now this report has been dusted off after a couple of years because it has become relevant.

- (16) A number of governments have developed guidelines to inform witnesses appearing on behalf of the government before committees of

their rights and responsibilities related to giving evidence and the production of documents.

That might be something the Standing Orders Committee may look at too in terms of the member for Murchison's motion and I am sure we will have that debate.

- (17) Conflicting evidence was received regarding the impact on the provision of frank and fearless advice provided by state service employees to government and whether this would be affected if public officers knew that the production of certain documents may become public.

I asked questions when we were interstate, because I was interested in a cultural change too. Potentially, if there are changes in Standing Orders in this House and the other House it may take a while for public servants to adjust to that. As the member for Nelson said, if you are going to change culture it starts with the Cabinet itself, parliamentary practices and the public service will potentially follow that lead.

Whenever there is a change and it is hard to adjust we may see examples happening where things are not put in writing and there is verbal advice. We had a very public issue last week where the Premier provided verbal advice to the Cabinet and not the actual documents.

Ms Forrest - There was no evidence that the other documents were prepared.

Mr WILLIE - There was no evidence - yes, he did not clarify that but he did not answer the questions. He said he had the authority, which I think was a giveaway that he had not taken it to Cabinet.

In terms of frank and fearless advice I do not think we would want to curtail that particularly in a small jurisdiction like Tasmania. We do not want people being fearful of doing the best in their position to give the best advice. I am interested in that particular question, but education is the key in terms of any change and other jurisdictions have gone down this path, it does not seem particularly problematic for them and it may help with cultural issues in Tasmania, which I have spoken about.

Those findings are particularly relevant to this current debate, not all of them concerning committees because it is a matter before this House, but it does not mean these issues do not arise before committees.

I will not go into the recommendations as members can read those for themselves. There are things in there like an arbitration process. I encourage members to dust off this report and read it, particularly before the member for Murchison brings another motion before the House.

I am supportive of this process. We have a lot of work to do to catch up to other jurisdictions. The principle of responsible government and of the government being subordinate to parliament is an important one. The responsibility that comes with being a member of parliament and not using powers to make public Cabinet deliberations and commercial arrangements is also an important responsibility. I would never want to breach that or be the member responsible for breaching that. This process we are going down may

develop more trust between the parliament and the executive if it can be implemented in a way where there are not breaches like, for example, New South Wales.

I support the motion. I thought I would read those findings because they are particularly relevant to this current debate. Also, noting the omissions of the current motion before the House, but it does not mean we might not get there eventually. I look forward to potentially going to the Clerk's office and viewing these documents.

[12.17 p.m.]

Ms FORREST (Murchison) - Mr President, I was not going to refer too much to the Production of Documents committee report, but as other members have taken me there, I will bring up some of those matters in relation to this motion before us.

First, I want to go through the process that actually sees us here with this motion before us today anyway, as much for an historical record perhaps and understanding of how we got here. Sadly, some of us turn on and watch the parliament when we are not actually sitting. Many people watch this broadcast. It is amazing how many people do. I did that last week.

Mr Willie - There was a lot of pressure on the broadcast for the Public Accounts hearings.

Ms FORREST - There was, and the Public Accounts Committee has also had a lot of interest of late.

I was tuning in to the lower House to see what was going on. I noted a number of motions were being debated and a number of suggestions and proposals and further amendments being put to motions relating to the public release or, at least, release to members of parliament of these documents.

Each House is the master of its own destiny and I absolutely acknowledge and accept that. However, there was no comment, consideration or even awareness of the fact there are actually two Houses of parliament and 40 members will make a determination about whether or not this process goes through the Project of State Significance assessment process.

I got on the text messages and sent a few messages and, suddenly, members were aware and mentioning that perhaps we somehow need to include the Legislative Council in this. I know they cannot dictate to us what to do, and neither should they; the same as we do not dictate to them how to manage their business. But that was the process and I was assured we would have exactly the same opportunity in this House.

Thankfully, I was also here for the quorum call last Friday. At that point, the three documents the members were provided with that were tabled were all well and good. However, there was no motion to set up this process. It was clearly an oversight. I reached out to the Leader and said that I was given some assurances that we would actually have a motion, otherwise I would do it myself. I was actually asking a Clerk to start drafting something but then I got a message back saying the Government was keen to work with us, so I reached out to the Leader and hence we have this motion before us. That is how we got to this point.

I have a couple of questions about the motion before I talk more broadly about the matter that led us here. The motion before us is pretty simple in many respects:

- (1) That pursuant to Standing Order 318, the Council orders to be laid before it prior to adjournment on 27 June 2023 the following papers -
 - (a) all minor redactions from the signed agreements and documents relating to the Australian Football League (AFL) agreement.

Points two and three are really about the process, which I agree is lacking detail about the recording of members who view the documents and that sort of thing. That obviously is a process that should be implemented regardless, otherwise it is not a reasonable process. It is certainly not what happens in New South Wales. There is a register kept of all members, the time they are there and those sorts of matters. That was referred to in the Leader's speech on the motion, but also referred to in the other place. Parts two and three are basically a cut-and-paste from the motion downstairs.

Prior to this motion being passed - the minister, Mr Street, was in charge of that motion, which was responding to an earlier motion, motion 123. I will just read from this motion from the other place. This was an order for the Premier to table:

- (1) All signed agreements and documents relating to the AFL agreement by Thursday 1 June 2023.
- (2) All departmental and departmental-commissioned assessments and reports relating to the Macquarie Point stadium by Thursday 1 June 2023.
- (3) All minor redactions from the signed agreements and documents to be made confidentially available to all MPs at the earliest opportunity.

Because we do not have those three parts stepped out in our motion here, I want some clarity from the Leader as to whether this does refer to point two in the motion that was passed downstairs.

Let us just call it 'the documents relating to the AFL agreement', so I do not have to say it in full every time, but I note that this is almost a direct copy-and-paste from point number three in that motion, which says:

all minor redactions from the signed agreements and documents to remain confidentially available ...

That relates to points one and two in that motion, but it is not reflected here in our motion. The first one relates to the signed agreements and documents to the AFL agreement. Then we go on to the Macquarie Point stadium - which, as I read, is not included in this motion. In my understanding, not watching the whole debate in the other place, this relates to assessments, advice and reports relating to the stadium, to the site - not just the agreement. You can take this literally. It could be the documents relating to the agreement, not the site. Certainly, there is no comment, acknowledgement or recognition of the previous selected site being Regatta Point.

There are other processes through which these documents can be sought. As the member from Elwick pointed out, even without a dispute resolution process, we can make orders for that. That is something that we will sit back here just for the minute, because I am going to see what we actually get when these documents - or this document, or whatever it is - are provided to the Clerk's office to be viewed.

I, for one, will be looking at the documents. I understand confidentiality. Yes, I am a privileged member of Tasmania because I sit in this place, and that is indeed a very privileged position to hold. I was elected by my constituency to do that. They trusted me last election quite strongly, Mr President, to be here to represent them, and to do that work on their behalf. They do not expect me to reveal confidential information to them, because they know that I will not.

In many committees I have sat on over the years, we have received confidential submissions and confidential hearings and we do not refer to them. We do not publish them. They are stored securely and never form part of our reports. The process around that is that we can be informed by that information. Our decision-making about the findings we make in the committee report, or our recommendations, or contributions on the debate of a particular report, are informed by the information we have received. It does not mean you say, well, I am informed, because this person said this on a certain day.

We have been elected to this place to do a job, and we should fully understand that responsibility, so I do go back to this report. If anyone has not read it in full - and when I say in full, if you do not get to all the appendices, which are the minutes, you probably do not have to read those in full, and you probably do not also need to read all the attachments that relate to the various mechanisms in other jurisdictions, but it is instructive if you do. There is a wealth of information in here about how this should and does work.

One leak and it would be all over. New South Wales has had the mechanism in place for about 25 years now. To briefly explain their mechanism, any member of the Legislative Council can go to the Clerk's office and view boxes and boxes of information and they can discuss it with the other members of the New South Wales Legislative Council. If I go and see the documents, I can discuss it with my colleagues, but I cannot discuss it with anybody else. All members have the opportunity to view them, read them and look at them. You cannot take copies, you cannot remove them from the Clerk's office, and you cannot refer directly to the content - the usual confidentiality provisions. In the whole time this has been in place, 25 years now, there has never been a leak. That is with 25 years of all members of the Legislative Council - all parties, you have Independents, you have some minor parties there - there has never been a leak, because everyone knows the first time there is a leak that is it. Game over.

Mr Willie - And the government will end up being opposition, and vice versa.

Ms FORREST - That is correct. That is why the Premier smiles when you are asking questions across the table. It is important to remind ourselves of that. I am not reflecting on members who may choose not to look at them, but those who do look at them should do so with full confidence that they have been elected to this place to do such work. I urge anyone to take that very seriously. I am sure everyone does.

As the member for Elwick also mentioned, we have had a couple of contested positions in the Public Accounts Committee. That is because we take on some big tasks and topics in that committee and there is a lot of public interest because it is about the expenditure of public money.

Mr Willie - One I did not mention, because I was not there, was the Tamar Valley Power Station.

Ms FORREST - Yes. We did not use all the powers we had at that point, and a motion was perhaps not brought on that could have been. Anyway, that was a matter for the chair at the time, before I was chair.

There were also the small business grants around the COVID-19 inquiry that the member for Elwick alluded to. While there was not a pushback initially, the Government did realise and appreciate the power of the committee - and the right to ask for these documents and to receive them - and did provide them to the committee in confidence. Has anyone leaked any of that? Has anyone seen any of those things? No, because it has been kept confidential and it will continue to be.

One could argue there is not much there that could not be made public. I could make that argument. I could do that by coming to this place and moving a motion to order the production of that document. But we make the call: is it going to inform the public debate? Is it going to make it clearer for people? Probably not, but we the committee, on behalf of the parliament, have the opportunity to look at it and assess it. That is how it works - and that is how it should work. I will speak at more length when I bring on the motion to refer this Production of Documents Committee to the Standing Orders Committee.

By way of a bit of history for the members who were not here at the time, when this report was tabled and we debated it, the Government's response at that point was basically, 'We are not going to do anything; we do not believe it is necessary; we will not support anything'. I thought to myself, 'Well, let's just sit on this. This is a good, informative piece of work that every new member to this place should read'. Every member who has been here a long time and has not read it, should read it; and it will have its moment in the sun. In most recent times - partly because of the changes in the House of Assembly - we have seen that power starting to be exerted around certain documents.

This could happen in the committees as well - the Public Accounts Committee and other committees that are looking into contentious matters. When that decision was made not to even contemplate or support a dispute resolution process in any way, I thought I would wait for such an opportunity. We have seen now, through this motion, the House of Assembly having a motion put forward that, essentially, sets up a one-off process. As the member for Elwick and the member for Nelson have mentioned, it does not have the dispute resolution process off the side; but then that is obviously the next step.

It helps if we were on the front foot to put in place a dispute resolution process so it does not become a highly contested, very public, frustrating and annoying, and perhaps a rather untidy debate in either House about the production of documents. I do not imagine that anyone here wants to censure the Leader for not producing the document; or maybe they do - I do not know. But the reality in this place is that we try to work together. We try to get things done. We are here for the best interests of the state. So, if we have a process in the future that can

make some sort of process of arbitration, of making recommendations, or providing advice, as to whether this claim of immunity is really valid, then that will make it clearer for everybody.

I am pleased to see the Government has finally seen the sense in having a formalised dispute resolution process that may help avoid some of the challenges we have seen. I will read from a couple of parts in the report. There is a whole chapter in the report, talking about cabinet documents, and what is a cabinet document, and it is worth reading. Page 41 of the report says:

Odgers' Australian Senate Practice provides a distinction between cabinet deliberations versus cabinet documents as follows.

Noting that usually, the most well-regarded and recognised description of a cabinet document that should attract Cabinet-in-confidence immunity is one that reveals the deliberations of Cabinet. Many documents that informed decisions of Cabinet are released - in a great flurry at times - to support the Government's policy position of the day.

Odgers' says:

It is accepted that deliberations of the Executive Council and of the Cabinet should be able to be conducted in secrecy so as to preserve the freedom of deliberation of those bodies. This ground, however, relates only to disclosure of deliberations. There has been a tendency for governments to claim that anything with a connection to Cabinet is confidential. A claim that a document is a cabinet document should not be accepted; as has been made clear in relation to such claims in court proceedings it has to be established that disclosure of the document would reveal Cabinet deliberations. The claim cannot be made simply because the document has the word 'cabinet' in it or on it.

Simply because the word 'cabinet' appears on the document or in the document does not make it a cabinet document, in that sense.

Odgers' Australian Senate Practice mentions the court decisions and just below that section in the report, it refers to the High Court decision in *Commonwealth v Northern Land Council* and it goes on to say that it does not provide a definite definition of documents that a claim of public interest immunity should reasonably be applied.

That case ruled that documents which recorded the actual deliberations of Cabinet or a committee of Cabinet were subject to public interest immunity.

The High Court acknowledged that documents prepared outside of Cabinet, such as reports or submissions for the assistance Cabinet ... are often referred to as 'Cabinet documents' but it expressed no view as to whether such documents should be brought within the ratio of the case.

I gave Mr Bret Walker the wrong title - he is 'SC'. I do not know if he has changed since, but at the time of the report he was Bret Walker SC. He has been quite interested and involved in this space. He works in New South Wales so he has seen how the New South Wales process works. We talked to him as well.

We also talked to the then current independent arbiter for the New South Wales Parliament, the honourable Keith Mason AC QC. I am not sure if he is still in that role because it nearly three or four years ago. The honourable Keith Mason AC QC stated, when talking about the New South Wales approach:

It has led to an incredible amount of additional accountability of the executive arm.

From my perspective, it is not so much relevant to legislation, although that obviously comes into it, but the bulk of the disputes and the papers relate to what we call the accountability arm of government, and Mr Walker SC stated:

The independent arbiter system that operates under order 52 of the Council's Standing Orders in Sydney, has to be understood as not, as it were, becoming a new and binding regime. It is really only a helpful procedure for the House and it can go no further than the offering of advice. It has been, I think, no doubt because of the identity of the arbiters over the years, very successful in Sydney in lowering the temperature and assisting in the production of and access to documents.

The so-called arbiter does not make the decision. They provide advice as to whether this claim of immunity should prevail. We need to remember, as we all understand here, that parliament is supreme. The parliament makes that decision, not the executive, as we have seen. We have seen claims of right to information processes applying to parliament and to parliamentary committees. That is an absolute nonsense, but we keep getting it all the time.

I will go back to the member for Nelson's comment, about education being needed in this area for our public servants. The member for Elwick also mentioned this approach may help to sharpen their focus and understand that.

Another point that Mr Bret Walker made in this case:

If it is thought appropriate to have a lack of procedure so that the politics of the moment will govern production -

This is our current situation, he is referring to:

... then I suppose one would leave things as they are. Coming from New South Wales and having been closely involved for a quarter of a century now in these matters here in Sydney, I emphatically regard a pre-existing procedure made in general terms and not devised for particular political controversies, to be a much superior way for Chambers to proceed. Otherwise there is obviously the risk of inconsistent approach in a series of different cases, suggesting that the Chamber is not applying a principled approach, which would detract from the authority and dignity of the Chamber.

I read that, because what we have here, from the other place, is a process to deal with a problem at hand, rather than a process to deal with a problem or situation that could occur at any time.

We will come to this debate more fully in the future because most members appreciate the importance of this. It has been highlighted that you cannot have one-off processes to deal with these matters. They need to be there as a mechanism that is available, not to make a decision, but for members to be able to get advice on a contested document - only the documents that are contested - in such a way that then the parliament and members of each House can make the determination about that.

Then, there is robust debate about whether or not the advice may be equivocal or it may be unequivocal, but in any event, we will have that information -

Mr Willie - It might not exist.

Ms FORREST - The advice from the independent arbiter, so called. They provide advice. They cannot say that this should be or should not be. You read through the report and you see that is clear. Their job is not to make the decision of parliament, it is to provide advice to enable members of parliament to make that decision about whether you push it.

The actual advice that you may be seeking may not exist. You cannot produce what does not exist, I guess.

We do know that there are many documents that do exist. We have seen many of them partly redacted. That can bring you back to the motion before us, that is the matter here.

To go back to my question for the Leader around this. I am somewhat concerned without her assurance that the motion before us which does not pick up part (2) of the motion that was agreed to in the other House, the amended version of Motion 125, and that being:

That all departmental and departmental commission assessments, advice and reports relating to the Macquarie Point stadium are included in this information.

The way it reads, it could just look at those matters related to the agreement between the Australian Football League and the Tasmanian Government, signed by the Premier. If it does not provide that, then there are other mechanisms that can be at play, of course, but it is a matter for another day.

All members would have seen in the documents that were tabled by the Leader last Friday, the list of what was provided at what particular Cabinet meetings. There are some significant gaps if you go through those dates. We did in the Public Accounts Committee and, in a public hearing, questioned the Premier about some of these gaps and what was going on in various points of time.

You will note members, when you read that letter, signed by Mr Limkin, it says that he is writing to other State Service departments who he reasonably believes hold records relating to point (2) of Motion 125 - that is the motion I have just referred to, part (2) with the documents and the other information. There is a link to that point there, but there is not copying of that point in the motion. I think you will see where the potential problem lies here - and, who is intending to provide, not the cabinet documents, but a list like this list that was tabled last Friday of the various documents that we have provided to Cabinet.

Going back to that point, just because a document has gone to Cabinet, does not make it a Cabinet-in-confidence document. If you go back to Joh Bjelke-Petersen's day, he used to allegedly put many documents into a trolley, possibly a shopping trolley, and push them through the Cabinet room. They went in as not cabinet documents, and they came out the other side as cabinet documents.

Mr Willie - Get stamped.

Ms FORREST - Yes, get a stamp on the way through. I am not suggesting that our Government is doing that in any way, shape or form, but that is how stupid it can become if you do not have proper processes.

Mr President, I will support the motion, subject to the Leader's response on that as to whether it might need a further amendment. I look forward to future debates on this matter, in terms of the production of documents at a later time.

[12.45 p.m.]

Mr PRESIDENT - The honourable Leader was up slightly before the member for Hobart.

Mrs Hiscutt - Mr President, I did look around and no-one was standing, so I stood.

Mr PRESIDENT - On indulgence, thank you honourable Leader, the honourable member for Hobart.

[12.45 p.m.]

Mr VALENTINE (Hobart) - Thank you, Mr President. I have a number of questions in relation to this and I thank the Leader for retaining her seat. In relation to this, will members accessing the papers have their names and the dates of access recorded?

Mrs Hiscutt - The answer is yes.

Mr VALENTINE - If so, who is to keep such records, presumably the Clerk?

Mrs Hiscutt - Yes.

Mr VALENTINE - Who is entitled to view such recorded names? Are members permitted to discuss viewed documents with other members of the Legislative Council? This was alluded to, I think.

Ms Forrest - That is what happens in New South Wales.

Mr VALENTINE - What is the circumstance there and whether it can be discussed between members, even though some members may not access the documents?

Mr Gaffney - There are two questions here, aren't there? There are two scenarios there, those who have seen the document and -

Mr VALENTINE - Those who have seen the document and those who have not. For those who have seen the documents, are they allowed to discuss the contents of the document with members who have not seen the documents?

Mrs Hiscutt - No.

Mr VALENTINE - Are members who have seen the documents able to discuss the contents with those who have seen the documents?

Mrs Hiscutt - I can read the motion back in again, Mr President, if that is helpful.

Mr VALENTINE - No, just clarifying it. I am clarifying it.

Mrs Hiscutt - No.

Mr VALENTINE - What period of time will the papers be made available?

Mrs Hiscutt - In the motion it says to 18 August 2023.

Mr VALENTINE - That is the drop-dead date. Thank you. What sanctions to be applied if a member does reveal the content of said documents?

Ms Webb - Can we just have the answers at the end in a summary, because it is scrappy like this, Mr President.

Mr VALENTINE - What are the sanctions that can be applied to a member of this Chamber that contravenes the confidentiality requested by the Leader? What other agreements are involved? Because the motion actually says 'agreements', plural.

Mrs Hiscutt - No, it does not.

Mr VALENTINE - As for myself accessing the documents, I will wait and see what the Government's responses are to my list of questions put on the Notice Paper today. There are aspects of this that tend to make me think we are entrenching a lack of transparency. I think that on the one hand, and then on the other, I do know there are matters that can be commercial-in-confidence and need to be protected, but sometimes it is also a convenient wall to hide behind. That is something that is -

Ms Forrest - The members would get to see those visits -

Mr Willie - Just by interjection, the motion as I understand does not stop a member then bringing an order to the House to produce the documents -

Ms Forrest - That is what I was talking about -

Mr Willie - There is still power of the House to go down that pathway.

Ms Forrest - That is the only mechanism we have at the moment.

Mr VALENTINE - That is a fair comment. I certainly appreciate if there are documents that are not produced when requested it can materially affect an inquiry or the proper review

of government process to proceed on whatever matter. With the Production of Documents committee, I submitted to that because of a concern or a request we had with the Acute Health Services Inquiry. The member for Murchison will remember that. It was something we wished to be apprised of, certain information, and it was refused, which helped to bring on the Production of Documents papers - the fact that one existed and then there were a couple of others. It was an important inquiry.

Ms Forrest - That was the KPMG report they would not give us.

Mr VALENTINE - Yes, it is an important document. It does need to be brought on and I wait for that and that would be a good document to have a closer look at in relation to all sorts of aspects of it. I come back to that by acceding to this, are we entrenching lack of transparency? We are Houses of equal power and for government documents to exist and for this House not to have full access to the documents and full access to all of the information in the documents, is fettering the review this House can undertake. What we will see in the documents is perhaps - there will still be redactions.

Ms Forrest - No, that is the whole point.

Mr VALENTINE - No, you read it.

Ms Forrest - They are saying there are minor redactions left in it. I would say some of them are not so minor and it is a matter of interpretation.

Mr VALENTINE - All minor redactions from the signed agreements and documents relating to the Australian Football League.

Ms Forrest - That is what they are saying. There are minor redactions left in the agreement.

Mr VALENTINE - No, it is a bit ambiguous because, to my mind, that is the minor redactions. There may be other redactions that still remain.

Ms Webb - Can I ask a clarifying question?

Mr PRESIDENT - Order, order, I will not have a debate across the Chamber. If we can let the member for Hobart finish his contribution.

Mr VALENTINE - Thank you. It is a fair observation though. My question to the Leader is, does that mean all redactions will be removed from the documents to be viewed or can be viewed by members if they wish to do so? I am inclined to support it because I want members to have the opportunity to make a decision as to whether they view them or whether they do not. It will be up to me to decide whether I do or whether I do not. I do not think it is fair for me to stand in the way of those that may want to view the documents, whatever state they are in. I will support the motion. I make the points I make because we are here to review governance and we do need to be able to do that in the fullest possible way.

Mr PRESIDENT - Before I call on the Leader, I will remind members of standing order 109. If you do wish to speak, it is important that you stand before the Leader. Once the Leader stands, the debate is technically closed and in that case it was generous of the Leader.

Mr VALENTINE - Thank you, Mr President. I will observe that in the future.

[12.54 p.m.]

Mrs HISCUTT (Montgomery - Leader of the Government in the Legislative Council) - Mr President, I will go through the points without mentioning the members. The Clerks will keep a record of any people that come to view, date, time they were there and the Clerks will keep the documents in their safe keeping under lock and key until it goes back to the Government.

The motion here before us today was never intended to address the issues as discussed by the member for Murchison. It was to talk about the agreement. As is here, the member for Hobart, part (1)(a) says 'agreement', not 'agreements', it is that agreement. Sanctions could probably be the Privileges Committee and maybe any future things happening like this could be under question. I think the confidentiality aspect was described excellently by the member for Elwick with the Cabinet-in-confidence, and no fear or favour when giving advice. I thought he covered that very well.

To be clear, the document that will be in the Clerk's possession, under lock and key, available for viewing - there will be no redactions in that document at all.

Ms Forrest - It would just be the agreement - that is all?

Mrs HISCUTT - It would be the agreement, yes.

Ms Forrest - Well, there are a number of agreements in the agreement.

Mrs HISCUTT - Well, whatever we got the other day - the document that was this thick - that is what it will be.

Ms Forrest - There are a number of agreements in that.

Mr PRESIDENT - Order.

Mr Valentine - Through you, Mr President, while the member is on her feet, (1)(a) says 'all minor redactions from the signed agreements' - agreements plural. That is what I am referring to.

Mrs HISCUTT - The signed agreements and documents relating to the Australian Football League agreement. So, within that agreement that you are going to have a look at, if you so desire, there are agreements in that document, and documents in that document.

Ms Webb - Through you, Mr President, while the Leader is on her feet. Can I clarify, I may have misheard, but there was confirmation that members who had viewed the documents would not then be able to discuss the documents together even though they had viewed the documents?

Mrs HISCUTT - Part (3)(b) of this motion says:

No member of the Legislative Council who has inspected the papers in accordance with this resolution shall refer to the contents of the Papers in the Council or disclose the contents of the Papers to any other person.

Ms Webb - That includes persons who have already had it disclosed to them by virtue of that fact that they viewed them themselves. That is not disclosing, is it? Because you have already viewed them; it is not being disclosed to you.

Mrs HISCUTT - The motion says 'to any other person'.

Ms Webb - Disclose the content - so they would not be disclosing contents to someone who had already viewed them.

Mrs HISCUTT - The advice is that you would not talk about it to anybody. That is all I can say, Ms Webb.

Ms Webb - That seems quite extraordinary.

Mr PRESIDENT - The question is that the procedure for ordering that certain papers be laid before the Council be agreed to -

I think the Ayes have it.

Mrs HISCUTT - Divison.

Mr PRESIDENT - A division is required, ring the bells. No, sorry, you cannot divide.

Mrs HISCUTT - Through you, Mr President, we need to note that there is one dissentient voice and that is the member for Mersey.

Ms Webb - Why is that, Mr President? Why does that need to be noted?

Mrs HISCUTT - So the Clerk knows who agreed to the resolution.

Members interjecting.

Mr PRESIDENT - No, the Clerk cannot do that. There is no reason the Clerk should note that. That is the right of the honourable member. You cannot call a division, so that -

Ms Webb - Through you, Mr President, will that now be removed from *Hansard*, so that record is not kept?

Mr PRESIDENT - That is a question for the member. The member can obtain that from *Hansard* and request that it be deleted and the discussion around it.

Motion agreed to.