



## Queensland Parliamentary Service

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Your Ref:

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The Secretary  
Select Committee on Production of Documents  
Parliament of Tasmania  
Parliament House  
HOBART TAS 7000

Dear Committee

I would like to thank the Committee for inviting the Queensland Parliament to make a submission to the Legislative Council of Tasmania's Select Committee on the Production of Documents.

In the Queensland Legislative Assembly, Standing Order 27 provides that:

*(1) The House may order documents to be:*

*(a) tabled; or*

*(b) produced to the House.*

*(2) The Clerk shall advise the Minister responsible for any documents ordered to be produced to the House of the order of the House and the Minister shall either table the documents in the House or transmit the documents to the Clerk for tabling in the House.*

Documents ordered to be tabled under Standing Order 27 are most likely to be 'Executive documents'. The Queensland Legislative Assembly would regard this Standing Order in the same way as the House of Commons. Erskine May notes that the general rule is that 'papers should only be ordered on subjects which are of public or official character' whereas a committee with power to send for papers and records has 'no restriction on its power to order the production of papers by private bodies or individuals, provided that such papers are relevant to the committee's work as defined by its order of reference'<sup>1</sup>.

### **Examples of orders in the Queensland Legislative Assembly**

Prior to the mid-1990s there were frequent orders for the production of documents, predominantly executive documents. (See **Appendix A** for details of orders to produce documents between 1987 and 1993.)

From August 1993 until March 2008, motions to order the production of documents had largely fallen into disuse in the Queensland Parliament. This was probably because the sorts of documents ordered to be produced in the past are now regularly tabled pursuant to legislative or other administrative requirements. For example, payments made to consultants are now reported in departmental annual reports and details of polling at state elections are required to be tabled under the *Electoral Act 1992*, section 18(3). It may also be because there is a preference to use right to information first introduced by the *Freedom of Information Act 1992* (now the *Right to Information Act 2009*).

<sup>1</sup> Erskine May, *Parliamentary Practice* (Butterworths, 22<sup>nd</sup> ed, 1997) 225.

There have been nine motions moved for the production of documents since 2008. Most have been made pursuant to Standing Order 27 and most were amended by the Government. Two motions were not agreed to (29 October 2015 and 26 May 2016). Some motions were amended to 'call' for the production of documents. On 12 March 2008 the Leader of the Opposition (Mr Springborg) moved a motion to order the production of certain documents relating to the health and safety of public servants on Torres Strait and other islands. The motion was amended by the government to remove 'order' and replace with 'calls for'. The effect of the amendment was to make it non-enforceable as it changed it from a mandatory order to a request. Such motions do not have the effect of an 'order' when passed.

One motion was amended to note an 'undertaking' by the relevant Minister (6 September 2017). Some motions were amended to include a different (usually later) date for production (28 October 2015). The amendments to these motions did not affect the mandatory nature and they remained orders.

One motion sought the production of a report from Queensland Rail within 72 hours. The Deputy Premier, as the relevant Minister, moved an amendment to the motion to remove the time frame of 72 hours. The amendment was agreed to by the House and the amended motion passed the House as an order. Under Standing Order 29 every sitting Wednesday the Clerk reads all orders agreed to by the House which have not been tabled. Pursuant to Standing Order 29, the Clerk advised the House of the outstanding order on 22 March 2017, 10 May 2017 and 24 May 2017. The documents were tabled in the House by the Deputy Premier on 14 June 2017. (See **Appendix B** for motions).

An interesting motion concerning documents relating to a state contract with IBM and a failed Health payroll system was moved by the then Minister for Health on 12 July 2012 as follows —

*That this House calls on the Leader of the Opposition to make available to the Minister for Health all legal advice presented to the cabinet of the former government that relates to the IBM contract, together with all associated cabinet minutes and decisions pertaining to that advice.*

*Further, it calls on the Leader of the Opposition to deliver the material before the first day of the next sittings.*

The above motion, agreed to by the Assembly, was interesting because the Minister refrained from moving an order to produce, instead relying on the non-enforceable motion and the 'moral authority' of the House to call on the Opposition Leader to make available all the legal advice presented to the cabinet of the former government that related to the matter in contention.<sup>2</sup> The government had a majority of 78 members to 7 Opposition members and could have easily passed an order for production. However, the non-enforceable motion was presumably selected in order to not interfere with the convention of cabinet confidentiality relating to a previous government. In response to the motion on 31 October 2012 the Leader of the Opposition tabled various cabinet documents of the previous government relating to the IBM contract and the Health payroll.<sup>3</sup> The Leader of the Opposition stated:

*Madam Speaker, as you would well be aware, as would all members of this House, it is a longstanding convention in Queensland that current ministers may not have access to cabinet documents produced by a past government of a different political party. The reasons for this are self-evident. Protection of the conventions of this parliament is a duty of all members of this House and conventions which have been in place for centuries, adopted from the Imperial Parliament on the creation of this great state and this great state legislature, should not be lightly forsaken. After a great deal of soul-*

<sup>2</sup> [https://www.parliament.qld.gov.au/documents/hansard/2012/2012\\_07\\_12\\_WEEKLY.pdf](https://www.parliament.qld.gov.au/documents/hansard/2012/2012_07_12_WEEKLY.pdf)

<sup>3</sup> [https://www.parliament.qld.gov.au/documents/Hansard/2012/2012\\_10\\_31\\_WEEKLY.pdf](https://www.parliament.qld.gov.au/documents/Hansard/2012/2012_10_31_WEEKLY.pdf)

searching and deliberation on my part, on 30 July 2012 I wrote to the Minister for Health and advised him that I would make available the documents in accordance with the motion. However, in order to guarantee some protection for the conventions of this parliament I placed certain restrictions on the access that was to be provided to the minister. One of my concerns has been that the documents referred to in the motion contained commercial-in-confidence information, the disclosure of which may have had significant ramifications. As I pointed out at the Health estimates hearing, the Auditor-General is undertaking a 2011-12 financial audit of Queensland Health, examining the payroll system and associated cost issues and will report to parliament later this year. So in response to repeated calls from the House and the minister, today I am taking the unprecedented step of tabling those documents in the House for the benefit of all Queenslanders and all honourable members who have a genuine interest in their contents.<sup>4</sup>

### **Orders (and summonses) in the House and Committee pursuant to legislation**

In addition to the Assembly's power to order the production of documents under Standing Orders, the Assembly and its committees have the power to order the attendance of witnesses and the production of documents. Section 25 of the *Parliament of Queensland Act 2001* (PoQ Act) provides that:

- (1) The Assembly may order a person to attend before the Assembly or an authorised committee and also to produce to the Assembly or an authorised committee any document or other thing in the person's possession.*
- (2) An authorised committee may order a person, other than a member, to attend before the committee and also to produce to the committee any document or other thing in the person's possession.*
- (3) Any committee of the Assembly may receive testimonial, documentary and other evidence voluntarily given.*

Section 26 of the PoQ provides that non-members must be summoned to attend or attend and produce documents. Section 28 provides that Members (who can only be ordered to attend by the Assembly, not a committee) can be ordered to attend without a summons.

Section 32(1) of the PoQ Act provides that:

- (1) If a person attending before the Assembly does not—*
  - (a) answer a question asked by the Assembly; or*
  - (b) produce a document or other thing the Assembly ordered the person to produce to it;**the Speaker may require the person to answer the question or produce the document or other thing.*

### **Objections to summonses under legislation**

A person must comply with a summons unless they make an objection in writing stating the grounds of the objection.<sup>5</sup> The Assembly may order the person to produce the document to the Assembly if they have not provided an objection or if the Assembly decides they should produce the document despite the objection.<sup>6</sup>

Grounds for objecting to answering a question or producing documents under the PoQ Act are that:

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<sup>4</sup> [https://www.parliament.qld.gov.au/documents/Hansard/2012/2012\\_10\\_31\\_WEEKLY.pdf](https://www.parliament.qld.gov.au/documents/Hansard/2012/2012_10_31_WEEKLY.pdf)

<sup>5</sup> *Parliament of Queensland Act 2001*, s 32(2)-(4).

<sup>6</sup> *Parliament of Queensland Act 2001*, s 32(5).

- (a) the answer, document or thing is of a private nature and does not affect the subject of inquiry; or*
- (b) giving the answer or producing the document or thing might tend to incriminate the person and the person would have a claim of privilege against self-incrimination in a Supreme Court action if the person were asked in the action to give the answer or produce the document or thing.<sup>7</sup>*

In deciding whether to enforce the order or accept the objection, the Assembly must have regard to the public interest in having the questions answered or documents or things produced; and the public interest in providing appropriate protection to individuals against invasion of privacy or against self-incrimination.<sup>8</sup>

Sections 101 and 102 of the PoQ also provide a process for determining commercially sensitive issues in public works matters:

**101 Dealing with commercially sensitive information in private session**

*(1) This section applies if, while considering works, it appears to the Public Works Committee that confidential information may be given to the committee in a public hearing and publication of the information at the hearing could—*

- (a) have a serious effect on the commercial interests of a GOC or commercial entity; or*
- (b) reveal trade secrets of a GOC or commercial entity.*

*(2) The committee must deal with the information in private session.*

*(3) This section does not limit any other power of a committee to deal with an issue in private session.*

**102 Reporting commercially sensitive information to Assembly**

*(1) This section applies if the Public Works Committee considers that information obtained by the committee while considering works could, if reported to the Assembly—*

- (a) have a serious effect on the commercial interests of a GOC or commercial entity; or*
- (b) reveal trade secrets of a GOC or commercial entity.*

*(2) The committee may report the information to the Assembly only if it considers it is in the public interest to report the information.*

**Instructions to committees under Standing Orders**

There is no agreed process to resolve disputes that arise regarding the production of papers, documents and records between the Government and the Legislative Assembly and its Committees, but the matters contained in Schedules 3 and 10 of Standing Orders may be instructive.

Schedule 3 of the Standing Orders of the Assembly contains instructions to committees regarding witnesses. A committee shall invite witnesses to attend a committee meeting to give evidence and to produce documents relevant to the committee's inquiry. A committee shall only order that documents be produced where the committee has made a decision that the circumstances warrant such an order. Before giving evidence a witness shall be offered the opportunity to have their evidence heard in a private hearing. Where a witness objects to answering any question put to the witness on any ground, including that the question is not relevant or that the answer may incriminate the witness, the committee may determine immediately that the question should not be pressed or consider in a private meeting whether it will insist upon an answer to the question having regard to relevance to the committee's inquiry, the importance to the inquiry of the information sought and any statute regulating such questioning. A witness may be accompanied by a legal advisor.

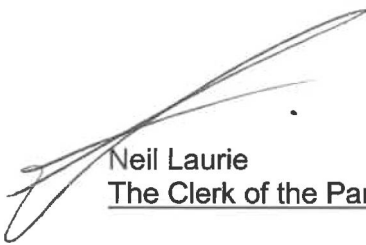
<sup>7</sup> *Parliament of Queensland Act 2001*, s 34.

<sup>8</sup> *Parliament of Queensland Act 2001*, s 35.

Schedule 10 of the Standing Orders of the Legislative Assembly outlines the protocols for committees regarding the documents and records of a Member. The committee shall first determine whether the documents of the Member are relevant to the inquiry and likely to assist the committee in its inquiry. If this is determined in the affirmative, the committee should invite the Member to provide the documents to the committee within a reasonable time. If the documents are owned by the Member but are in the possession of a third party (custodian), the committee should invite the Member to obtain the documents from the custodian and provide them to the committee. The committee should only summon the production of the documents of a Member in the possession of a custodian if the steps outlined above have been undertaken by the committee and the Member or custodian declines to provide the material voluntarily within a reasonable time or if the committee suspects based on reasonable grounds there is a risk of evidence being lost or destroyed or if the committee suspects there has not been a complete disclosure of information.

I trust the above, and attached, is of assistance to the committee.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Neil Laurie', is written over the printed name and title.

Neil Laurie  
The Clerk of the Parliament

# APPENDIX A

Document ordered	Order date	Return date
Details of Polling at the State General Election held on 1 November 1986 and By-Elections	24/2/1987	17/3/1987
Use of Ministerial Air Unit Aircraft in 1986-87	6/8/1987	10/11/1987
Overtime paid in Government Departments in 1985-86	24/2/1987	9/4/1987
Overtime paid in Government Departments in 1986-87	6/8/1987	13/10/1987
Payments to Barristers and Solicitors in 1985-86	24/2/1987	24/2/1987
Payments to Barristers and Solicitors in 1986-87	6/8/1987	10/3/1988
Payments to Public Relations and Advertising Agencies or Consultants in 1985-86	24/2/1987	19/3/1987
Payments to Public Relations and Advertising Agencies or Consultants in 1986-87	6/8/1987	20/11/1987
Overtime paid in Government Departments in 1987-88	25/8/1988	6/4/1989
Payments to Public Relations and Advertising Agencies or Consultants in 1987-88	25/8/1988	9/3/1989
Operation of the Ministerial Air Unit Aircraft in 1988-89	10/8/1989	1/9/1989
Overtime paid in Government Departments in 1988-89	10/8/1989	*
Payments to Barristers and Solicitors in 1988-89	10/8/1989	*
Payments to Public Relations and Advertising Agencies or Consultants in 1988-89	10/8/1989	*
Details of Polling at the General Election of 1989 and By-Elections	6/3/1990	7/6/1990
Overtime paid in Government Departments in 1988-89	6/3/1990	20/3/1990
Payments to Barristers and Solicitors in 1988-89	6/3/1990	20/3/1990
Payments to Public Relations and Advertising Agencies or Consultants in 1988-89	6/3/1990	13/3/1991
Payments to Barristers and Solicitors in 1992-93	27/8/1993	14/10/1993

\* Returns for these orders were not received. This may have been due to the calling of a general election, in which case outstanding orders would terminate at the dissolution of Parliament. These same documents were ordered the following year and returned.



## Examples of motions

12 March 2008

### Order for Production of Documents

**Mr SPRINGBORG** (Southern Downs—NPA) (Leader of the Opposition) (5.30 pm): I move—

(1) That under the provisions of Standing Order 27, this House orders both the Minister for Health and the Minister for Education to lay upon the table of the House copies of any and all briefings, reports, audits and other documents under the control or in the possession of the Ministers or the departments for which they are responsible, that have been created in the last five years and which relate to:

(a) crimes committed against educators, health professionals and other public servants engaged by their departments on the Torres Strait Islands of Saibai, Dauan, Mabuiag and Badu and other Queensland communities;

(b) the safety of educators, health professionals and other public servants engaged by their departments on the Torres Strait Islands of Saibai, Dauan, Mabuiag and Badu and other Queensland communities;

(c) the transfer of educators, health professionals and other public servants engaged by their departments due to crime or safety fears on the Torres Strait Islands of Saibai, Dauan, Mabuiag and Badu and other Queensland communities.

(2) That the Ministers be permitted to remove from the copies of the briefings, reports, audits and other documents any names or identifying features of individuals before laying the documents on the table of the House.

The above motion was amended by the Minister for Health (Mr Robertson). The motion as agreed was—

That this Parliament notes the information tabled by the Minister for Health and the Minister for Education and Training regarding staff in the Torres Strait.

29 October 2008

### Cairns Hospital, Order for the Production of Documents

**Mr SPRINGBORG** (Southern Downs—LNP) (Leader of the Opposition) (6.30 pm): I move—

That this House, in accordance with Section 25 of the Parliament of Queensland Act 2001, orders the Premier to produce to the Assembly within 28 days, all documents upon which the State Cabinet based its decision not to build a new Cairns Hospital for at least another 10 to 15 years.

The above motion was amended by the Premier (Ms Bligh). The motion as agreed was—

That this House notes that the government has already publicly released the Cairns Base Hospital and associated services clinical services plan on 14 April 2008 and that cabinet based its decision about the new Cairns Base Hospital on this document. Further that this House calls on the Leader of the Opposition to produce to the Assembly within 28 days all documents that his shadow minister considered in producing the press release about the Cairns Base Hospital issued by the member for Caloundra.

**16 April 2008**

**Mount Isa, Documents Relating to Lead Levels**

**Mr SPRINGBORG** (Southern Downs—NPA) (Leader of the Opposition) (5.29 pm): I move—

Following public concern about lead poisoning, the government table all advice and reports prepared for or by Ministers, Ministers' Offices and Government Departments, in the last five years, containing information relating to air quality levels, residue levels and soil contamination levels in Mount Isa and the surrounding region.

The above motion was amended by the Minister for Public Works, Housing and Information and Communication Technology (Hon Schwarten). The motion, as agreed, was—

Following public concern about lead poisoning, that this House note:

1. the scope of a request for all advice and reports in this regard would require extensive search and retrieval through a vast range of documents across a number of Government departments;
2. that this information could contain information about the private affairs of individuals; and
3. that the Freedom of Information process ensures that any private information of individuals is appropriately protected.

Further, that this House calls on the Leader of the Opposition to make a Freedom of Information request for this information to ensure that it can be released with appropriate protections for the privacy of individuals.

Further, that this Parliament notes the Premier's commitment to release any document considered by Labor Cabinets in relation to this matter which would otherwise be FOI exempted and calls on the Leader of the Opposition to make an equal commitment in relation to documents considered by previous National/Liberal Cabinets.

**28 October 2015**

**Electricity Prices, Order for Production of Documents**

**Mr POWELL** (Glass House—LNP) (6.00 pm): I move—

That, in accordance with standing order 27, this House orders the Treasurer and the minister responsible for energy to produce to the House by 11 November 2015 all analysis and modelling, including draft modelling, prepared by or for the government or in the possession of the government on the impact on electricity prices of the state government policy to aggregate electricity corporations in Queensland.

The above motion was amended by the Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships (Hon Pitt). The motion, as agreed, was—

That, in accordance with standing order 27, this House orders the Treasurer and the minister responsible for energy to produce to the House in December 2015 at the Mid Year Fiscal and Economic Review an analysis of any anticipated impacts of the state government's policy to aggregate electricity corporations in Queensland.



**29 October 2015**

**Member for Cook, Order for Production of Documents**

**Mr BLEIJIE** (Kawana—LNP) (6.01 pm): I move—

That, in accordance with standing order 27, this House orders the Premier to produce to this House by 12 November 2015 all inward and outward email correspondence between the Premier's staff or ministers or ministerial staff and the member for Cook or his office, since 30 March, that provides assistance with speeches, media, event attendance or advance notice of government announcements.

A division was taken on the motion and the result was that the motion was not agreed to.

**26 May 2016**

**State Actuary, Report; Order for Production of Documents**

**Mr EMERSON** (Indooroopilly—LNP) (5.34 pm): I move—

That, pursuant to standing order 27, this House orders the Treasurer to table, in accordance with standing order 31, the State Actuary's latest triennial report and all subsequent interim valuation reports and any correspondence from the State Actuary into the public sector superannuation scheme, also known as the defined benefit fund, in his possession or control by 5 pm, 27 May 2016.

A division was taken on the motion and the result was that the motion was not agreed to.

**1 March 2017**

**Queensland Rail, Timetable; Order for Production of Documents**

**Mr POWELL** (Glass House—LNP) (6.00 pm): I move—

That, in accordance with standing order 27, this House orders the Deputy Premier and Minister for Transport to produce to the House within 72 hours a report from Queensland Rail on the outcome of the chair's 'stress test' of the Citytrain timetable.

The above motion was amended by the Deputy Premier, Minister for Transport and Minister for Infrastructure and Planning (Hon Trad). The motion, as agreed, was—

That, in accordance with standing order 27, this House orders the Deputy Premier and Minister for Transport to produce to the House a report from Queensland Rail on the outcome of the chair's 'stress test' of the Citytrain timetable.

**6 September 2017**

**Youth Offenders, Order for Production of Documents**

**Mr WALKER** (Mansfield—LNP) (6.04 pm): I move—

That, in accordance with standing order 27, this House orders the Attorney-General to produce to the House a list of proposed locations for the Palaszczuk government's supervised bail accommodation options for youth offenders by noon Thursday, 21 September 2017.

The above motion was amended by the Attorney-General and Minister for Justice and Minister for Training and Skills (Hon D'Ath). The motion, as agreed, was—

That this House notes the Attorney-General's undertaking to table in the House a list of proposed locations for 'Supervised Bail Accommodation options' for youth offenders by noon Thursday, 21 September 2017.

**22 August 2018**

**Independent Public Schools, Order for Production of Documents**

**Mr BLEIJIE** (Kawana—LNP) (5.00 pm): I move—

This House:

1. notes:
  - (a) the benefits of Independent Public Schools in Queensland, including:
    - (i) giving state schools greater autonomy in decision-making, cutting red tape and removing layers of management to improve outcomes for students;
    - (ii) forging strong community and industry partnerships and using staffing flexibility to meet student needs and improve student outcomes; and
    - (iii) providing parents greater choice when it comes to the education of their children;
  - (b) the minister met with the Queensland Teachers' Union on 24 January 2018;
  - (c) the Queensland Teachers' Union wrote to the Minister for Education on 29 January 2018 calling for the termination of Independent Public Schools;
  - (d) a secret review into Independent Public Schools commenced shortly after the minister received the letter from the Queensland Teachers' Union;
  - (e) the minister publicly committed on 8 August 2018 to release the secret report after she was briefed that day;
  - (f) the minister has failed to release the report after she was briefed some two weeks ago; and
2. pursuant to standing order 27, orders the minister to immediately produce and table the secret review into Independent Public Schools.

The above motion was amended by the Minister for Education and Minister for Industrial Relations (Hon Grace Grace). The motion, as agreed, was—

This House notes:

1. the benefits of Independent Public Schools in Queensland;
2. the Independent Public Schools policy framework always required an evaluation of Independent Public Schools at the end of 2017; and
3. the government will table the report post consideration by cabinet.'