



Inquiry into Annual and Financial Reports 2023–24 – Questions on Notice responses

Statement pursuant to Standing Order 246A

Mr Speaker, pursuant to Standing Order 246A, I wish to make a statement on behalf of the Standing Committee on Social Policy relating to responses to questions on notice from its Inquiry into Annual and Financial Reports 2023–24.

During the inquiry, four questions on notice were submitted to the Minister for Mental Health, Minister for Disability, Carers, and Community Services, and the Minister for Education and Early Childhood.

These questions sought copies of all handover briefing documents prepared during the 2024 caretaker period by the ACT Health Directorate, Canberra Health Services, Community Services Directorate, and the Education Directorate for the incoming Ministers.

On 27 and 28 February 2025, the Committee received identical responses to these questions from the Minister for Mental Health and Minister for Disability, Carers and Community Services respectively. These responses advised that:

‘Disclosure of parts of the requested information may be contrary to the public interest. The appropriate mechanism to request access to this information is through a request under the Freedom of Information Act 2016.’

The same response was later received from the Minister for Education and Early Childhood on 25 March 2025.

Continuing Resolution 8B sets out the process for Ministers and officials where they believe it would not be in the public interest to disclose information to a committee. This includes providing a statement of the grounds for that conclusion and the nature of the harm to the public interest that would result from providing the documents to the committee, either publicly or on a confidential basis.

On 14 March 2025, the Committee wrote to the Minister for Mental Health and Minister for Disability, Carers and Community Services requesting this information.

Responses were received on 21 and 22 March 2025 respectively. These did not include specific details of the harm that may result from disclosing the handover documents and reiterated the view that the FOI process was the most appropriate mechanism for these documents to be requested and assessed for release.

I seek leave to table a copy of this correspondence and the responses to the four Questions on Notice.

The Committee considers that requiring it to submit FOI requests for executive documents requested during its inquiry is contrary to established precedent and Continuing Resolution 8B.

Continuing Resolution 8B was established following a recommendation of the 2010 Select Committee on Privileges. In its report, the Committee noted it was a matter for committees and the Assembly to assess claims of public interest immunity and stated:

Witnesses must not decide for themselves that a piece of information falls into a category which might attract immunity and on that basis withhold it from a committee of the legislature.¹

The Committee notes that the FOI Act does not contain any express provisions that diminish the Committee's inquiry power or ability to request information. FOI processes take longer than the Committee Questions on Notice process and include several exemptions which may not be applicable in the parliamentary context. There is also no provision allowing documents to be provided to the Committee on a confidential basis.

As such, the Committee considers that not disclosing the requested documents on the basis that they could be requested and assessed for release under FOI is not sufficient justification

¹ Select Committee on Privileges 2010, *Report*, pp 21–22.

for withholding the documents from the Committee. This is consistent with the approach taken in the Senate and outlined in the Companion to the Standing Orders.²

Continuing Resolution 8B requires witnesses to specify the nature of the harm that could result from disclosing a document. The Committee is of the view that the Ministers' responses have not done this and as such they have not engaged with the process set out in Continuing Resolution 8B.

Therefore, the Committee reports the withholding of these documents to the Assembly in accordance with paragraph (4) of Continuing Resolution 8B.

I will also be moving a motion as agreed by the Committee requesting an order for the production of these documents in accordance with Standing Order 213A.

Mr Thomas Emerson MLA

Chair of the Standing Committee on Social Policy

7 APRIL 2025

² Companion to the Standing Orders, p 65.