



Select Committee on the
2026 Commonwealth Games Bid

The 2026 Commonwealth Games bid

Failure to provide documents
under Legislative Council
Standing Orders

Inquiry | Second interim report
September 2024

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Committee membership



CHAIR
David Limbrick
South-Eastern Metropolitan



DEPUTY CHAIR
Joe McCracken
Western Victoria



Melina Bath
Eastern Victoria



Hon David Davis
Southern Metropolitan



Jacinta Ermacora
Western Victoria



Michael Galea
South-Eastern Metropolitan



Tom McIntosh
Eastern Victoria



Dr Sarah Mansfield
Western Victoria



Rikkie-Lee Tyrrell
Northern Victoria

About the Committee

Functions

The Select Committee will inquire into and report on the 2026 Commonwealth Games and the progress of the regional infrastructure build including the potential failures in governance, the impacts of the contract termination on Victoria, the Victorian Government advice received, the potential of undue influence by the executive, the timeline, progress and budget of the Victorian Government's regional infrastructure and housing build and the impact on community, social, amateur, and professional sport in Victoria.

Secretariat

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Terms of reference

Inquiry into 2026 Commonwealth Games bid

That a Select Committee of nine members be appointed to inquire into, consider and report on the 2026 Commonwealth Games and the progress of the regional infrastructure build, including but not limited to —

- (a) the potential failures in governance, probity and procurement processes in the Victorian Government's bid, contract, and termination of the 2026 Commonwealth Games;
- (b) the impacts of the contract termination of the Commonwealth Games on Victoria's reputation, business community, tourism, and major events;
- (c) the Victorian Government advice received from government departments, councils, agencies, consultants, and contractors;
- (d) the potential of undue influence by the executive on the independence of the public service;
- (e) the timeline, progress and budget of the Victorian Government's regional infrastructure and housing build;
- (f) the impact on community, social, amateur, and professional sport in Victoria;
- (g) any other relevant matter.

Interim Report due by 30 April 2024.

Final Report due by April 2025.

Report on failure to provide documents under Legislative Council Standing Orders

FINDING 1: The Government has not complied with the process for claiming executive privilege under Legislative Council Standing Orders 10.03 to 10.05 for documents that were ordered for production by the Legislative Council on 1 May 2024. These documents are relevant to the Committee's Inquiry and the Government's failure to engage with the process for claiming executive privilege, including the process for disputing the validity of a claim of executive privilege, may impede the Committee's ability to properly carry out its functions as set out in its Terms of Reference.

On 28 August 2024, the Committee agreed to the following motion:

That the Select Committee on the 2026 Commonwealth Games bid —

1. notes:
 - a. the Legislative Council passed a motion on 1 May 2024 requiring the production of documents that were summonsed or requested by the Select Committee outlined in Appendix D of the Committee's interim report
 - b. the Government's response to the House outlined that it had identified 353 documents that fell within the scope of the order and made a claim of executive privilege on 350 of those documents in full and 3 in part
 - c. the Government did not make the documents available to the mover of the motion as outlined in Legislative Council Standing Order 10.03(1)(b)(i), preventing the mover from disputing the validity of the claims of executive privilege and requesting the appointment of an independent legal arbiter to make an evaluation of the claim, as outlined in Legislative Council Standing Order 10.03(2)
2. reports this matter to the House by tabling an interim report on the issue
3. calls on the Government to comply with the processes for claiming executive privilege on production of document returns as outlined in Legislative Council Standing Orders 10.03 to 10.05 within two weeks of the tabling of the Committee's interim report.

The Committee resolved to table this Report to highlight the Government's failure to comply with the process of resolving disputes regarding claims of Executive privilege against documents ordered by the Legislative Council.

The claims were made in response to an order for the production of documents made by the House on 1 May 2024. The documents ordered were outlined in the Committee's previous interim report and are relevant to the Committee's ongoing inquiry.

The process for resolving disputes over claims of Executive privilege is prescribed in the Legislative Council Standing Orders. The Standing Orders also prescribe the process to appoint an independent legal arbiter to assess the validity of any disputed claims. The process is detailed further in the sections below.

When there is a claim of Executive privilege over documents that were ordered by the Legislative Council, the documents must be provided to the Clerk for inspection by the mover of the motion only. The mover of the motion may dispute any claims of Executive privilege, which will then be resolved through the appointment of an independent legal arbiter to evaluate and report on the validity of the claims.

However, the Government has not provided any of the documents required under the Legislative Council's order of 1 May 2024 and as a result the independent review process cannot be initiated. This is in direct contravention of the Legislative Council Standing Orders.

In the Committee's view, the Government's own self-assessment of Executive privilege without independent review is not only a contravention of the Standing Orders but a direct impediment on the Committee's ability to conduct a thorough and transparent inquiry.

The Committee noted in its previous interim report that it does not accept the Government's wide definition of what is covered by the scope of executive privilege.¹ Although the Committee acknowledges that the Government has a different view, there is a prescribed process to resolve such disputes and the Government has not complied with this.

Legislative Council production of documents order and Government's response

On 1 May 2024, David Limbrick moved a production of documents motion in the Legislative Council. The motion sought documents which had been the subject of claims of executive privilege when the Committee sought them during the course of its Inquiry. The Committee reported these matters to the House in its interim report. Mr Limbrick's motion required that documents to be provided within 30 days of being agreed to.

The motion was agreed to on the same day without division. The motion in full is provided in Appendix A.

¹ Select Committee on the 2026 Commonwealth Games Bid, *Inquiry into the 2026 Commonwealth Games bid: Interim Report*, Parliament of Victoria, pp. 13-17.

On 31 May 2024, the Clerk tabled a response he received from the Attorney-General relating to the 1 May 2024 resolution. In the response, the Attorney-General stated:

- the Government identified 353 documents the fall within the scope of the Order (which were provided in an attached schedule)
- the Government makes a claim of executive privilege over 350 of the documents, and a part claim over 3 further documents.

The Attorney-General also referred to letters of former Attorneys-General and Premier that:

- note the Government's view on the limits on the Legislative Council's power to call for documents, which centre on protection of the public interest
- state the factors the Government would consider when assessing whether release of documents would be prejudicial to the public interest.

The response is provided in Appendix B.

Since the Attorney-General's response was tabled, the Government has not provided the documents with a claim of Executive privilege to the Clerk for inspection by Mr Limbrick as required under the Standing Orders.

The non-provision of these documents has impeded Mr Limbrick as mover of the motion from progressing the process to resolve claims of Executive privilege through an independent legal arbiter.

Process for resolving disputes relating to claims of Executive privilege over documents

The Legislative Council has a prescribed process for resolving disputes relating to Executive privilege claims. This was established in the current form in 2014 at the end of the 57th Parliament.

Standing Order 10.03 details the process where the Government makes a claim of Executive privilege over documents. This includes:

- preparing a return that shows:
 - the date of creation of the document
 - a description of the document
 - the author of the document
 - the reason for each of the claims of executive privilege
- delivering the documents to the Clerk by the time required under the resolution and:
 - made available to the mover of the motion only
 - not published or copied without an order of the Council.

The mover of the motion may then notify the Clerk to dispute the validity of executive privilege claims on the documents. In such an event, Standing Orders 10.04 and 10.05 further detail a process to establish an independent legal arbiter to evaluate the claims and provide a report to the Council.

The Committee notes that to date, successive Governments have never provided documents with claims of Executive privilege to the Clerk as required under Standing Order 10.03. This non-compliance has meant that the independent legal arbiter process under Standing Orders 10.04 to 10.05 has never been used.

The Committee also notes that failure to properly comply with orders of Parliament or its committees to provide documents may be considered a contempt.

**Adopted by the Select Committee on the 2026 Commonwealth Games Bid
Parliament of Victoria, East Melbourne
2 September 2024**

Appendix A

Production of documents motion, 1 May 2024

Extract from the Legislative Council Minutes of Proceedings:

8 PRODUCTION OF DOCUMENTS — 2026 COMMONWEALTH GAMES BID —

David Limbrick moved, That this House —

1. notes that the Government has claimed executive privilege regarding certain documents outlined in Appendix D of the Interim Report into the 2026 Commonwealth Games bid;
2. affirms the privileges, immunities and powers conferred on the Council pursuant to section 19 of the Constitution Act 1975, and the power to make Standing Orders under section 43 of that Act;
3. affirms the right of the Council to require the production of documents;
4. requires the Leader of the Government to table in the Council, in accordance with Standing Order 10.01, within 30 days of the House agreeing to this resolution, copies of documents over which executive privilege was claimed, as per Appendix D of the Interim Report into the 2026 Commonwealth Games bid, in response to —
 - a. questions on notice 1.2, 6, 7, 9, 15, 16, and additional questions 6 and 8, asked on Wednesday, 9 October 2023 to the Department of Jobs, Skills, Industry and Regions (DJSIR);
 - b. question on notice 7 asked on Monday, 9 October 2023 to the Office of the Commonwealth Games;
 - c. question on notice 1 asked on Monday, 9 October 2023 to the Department of Premier and Cabinet (DPC);
 - d. question on notice 7 asked on Friday, 13 October 2023 to the Department of Treasury and Finance (DTF);
 - e. question on notice 4 asked on Tuesday, 5 December 2023 to DJSIR;
 - f. documents summoned on Thursday, 8 November 2023 from DPC, including three briefing notes and the table containing information about claims of executive privilege; and
 - g. documents summoned on Thursday, 8 November 2023 from DTF, including six briefing notes and three extra pieces of correspondence.

Appendix B

Attorney-General's letter to Clerk of the Legislative Council



Jaclyn Symes MP

Attorney-General
Minister for Emergency Services

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Our ref: BORG-240500673

Mr Robert McDonald
Clerk of the Legislative Council
Parliament House
Spring Street
EAST MELBOURNE VIC 3002

Dear Clerk

Production of documents – Select Committee inquiry into the 2026 Commonwealth Games Bid

I refer to the Legislative Council's resolution of 1 May 2024 requiring there to be tabled in the Legislative Council within 30 days copies of documents over which executive privilege was claimed, as per Appendix D of the Interim Report into the 2026 Commonwealth Games Bid, in response to:

- (a) questions on notice 1.2, 6, 7, 9, 15, 16 and additional questions 6 and 8, asked on Wednesday, 9 October 2023 to DJSIR;
- (b) question on notice 7 asked on Monday, 9 October 2023 to OCG;
- (c) question on notice 1 asked on Monday, 9 October 2023 to DPC;
- (d) question on notice 7 asked on Friday, 13 October 2023 to DTF;
- (e) question on notice 4 asked on Tuesday, 5 December 2023 to DJSIR;
- (f) documents summoned on Thursday, 8 November 2023 from DPC, including three briefing notes and the table containing information about claims of executive privilege; and
- (g) documents summoned on Thursday, 8 November 2023 from DTF, including six briefing notes and three extra pieces of correspondence (the Order).

I refer to the letters to the Clerk of the Legislative Council from former Attorneys-General, the Hon. Martin Pakula MP and the Hon. Jill Hennessy MP of 14 April 2015 and 20 February 2019 respectively, and from the Premier to the Select Committee on the 2026 Commonwealth Games Bid of 7 October 2023, noting the limits on the Legislative Council's power to call for documents. Those limits centre on the protection of the public interest.

These letters set out the factors the government would consider in assessing whether the release of documents would be prejudicial to the public interest.

The Department of Premier and Cabinet, the Department of Treasury and Finance and the Department of Jobs, Skills, Industry and Regions (DJSIR) (collectively, the Departments) conducted thorough and diligent searches for documents when responding to the specified questions on notice and summons. The government prepared its response to the Order on the basis that the Order required copies of documents requested by the specified questions on notice (QoN) and summons over which the government previously claimed executive privilege before the Select Committee on the 2026 Commonwealth Games Bid (Select Committee).

The Departments identified 353 documents in their possessions that fall within the scope of the Order. The relevant documents are identified in the enclosed schedule.

The government, on behalf of the Crown, makes a claim of executive privilege in relation to 350 of the documents in full and 3 of the documents in part on the basis that their disclosure would be contrary to the public interest. The enclosed schedule refers to the documents in respect of which a claim of executive privilege is made.

The government notes the Order refers to certain QoNs from Select Committee which the relevant department provided a response without claiming executive privilege. The relevant departments gave responses to the following questions and made no claim of executive privilege in respect of: QoN 9 asked on 9 October 2023 to DJSIR, additional question 6 asked on 9 October 2023 to DJSIR, and QoN 7 asked on 13 October 2023 to DTF.

The government notes the Order requires 'copies of documents'. In relation to the Order's reference to the Select Committee's QoN 1.2 from 9 October 2023 and QoN 4 from 5 December 2023 directed at DJSIR, these are requests for information as opposed to copies of documents, and accordingly no documents have been provided as they are not within the terms of the Order.

Yours sincerely



Jaclyn Symes MP
Attorney-General
Minister for Emergency Services

30/05/2024

Extract of proceedings

Legislative Council Standing Order 23.20(5) requires the Committee to include in its report all divisions on a question relating to the adoption of the draft report.

All Members have a deliberative vote. In the event of an equality of votes, the Chair also has a casting vote.

The Committee divided on the following question during consideration of this report. Questions agreed to without division are not recorded in these extracts.

Committee meeting—2 September 2024

David Davis moved, That the draft report as amended, together with Appendices A and B, be adopted as the Report of the Committee, and that it be Tabled on 10 September 2024.

The Committee divided.

Ayes (6)	Noes (2)
Melina Bath	Michael Galea
David Davis	Tom McIntosh
David Limbrick	
Joe McCracken	
Sarah Mansfield	
Rikkie-Lee Tyrrell	

Question agreed to.

