



**The Rev. The Hon. Fred Nile MLC** ED.,  
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## **MEDIA RELEASE**

### **NEED FOR REFORM IN THE WAY**

### **STANDING ORDER 52 IS USED IN PARLIAMENT**

#### **For immediate circulation**

Rev Nile has been advocating for reform to the use of the parliamentary powers under Standing Order 52, which allows for the Government to be compelled to produce certain documents which may not be in the public domain.

Two recent occasions when Rev Nile raised the issue of the abuse of the power took place on 26 August this year in relation to a demand for the production of documents relating to the “Insurance and Care NSW” controversy, and yesterday 10 November, in relation to procedural matters relating to the production of documents by the government in this late stage in the year.

Below is an extract of Rev Nile’s two contributions extracted from the Parliamentary *Hansard*.

#### **Motion under SO52 for the Production of Documents**

**26 August 2020**

**Reverend the Hon. FRED NILE (17:14:48):** I contribute to debate on the motion moved by the Hon. Daniel Mookhey that includes a two-page list of documents that he is seeking under Standing Order 52. The question is about the extent to which Standing Order 52 can be used. As members know, I have served in this Parliament for nearly 40 years. I have

never seen Standing Order 52 used as often as it used now. I recall that, initially, motions calling for documents under Standing Order 52 were very rare. It was even rarer that those motions were agreed to by this House. However, in recent years it has become almost a regular feature of proceedings. It is not going too far to say that Standing Order 52 has become a device used by the Opposition and some crossbench members to go on fishing expeditions to locate information with which to embarrass the Government. Any reasonable person would consider that to be an abuse of the processes of this House.

As currently drafted, Standing Order 52 can enable truckloads of documents to be sought. I doubt that the drafters of the original standing order had that in mind when it was introduced. In fairness, and to be accurate, I acknowledge that Chapter 17 of the New South Wales Legislative Council Practice refers to the Interpretation Act 1987, which is currently in force. Therefore the definition of the word "document" in the Act is incorporated into that explanatory document in its singular form. However, the standing order uses the plural "documents" and section 8 of the Act stipulates that the use of the singular denotes the plural. Be that as it may, the core question before us is about where to draw the line between a legitimate and illegitimate use of the standing order. This House was established in 1823. I do not believe that a fishing expedition for boxes of unspecified documents falls within the traditions of the House. Indeed, I am heartened by the commentary in the *Annotated Standing Orders of the NSW Legislative Council*, which states very clearly on page 161:

*While SO 52 is not the source of the power, which is conferred on the House as a reasonably necessary power ... the standing order outlines the administrative process [of those orders] ...*

That is a vital point: The power to produce papers does not come from the standing order. The standing order is merely an administrative instrument that asserts the power — [*Time expired.*]

## Motion under SO52 for the Production of Documents

11 November 2020

**Reverend the Hon. FRED NILE:** That is my understanding, and other speakers have made the same reference. I agree with this motion in principle. I will wait and see how it works in practice and whether it helps make Standing Order 52 work more efficiently in this House. The last time I spoke about Standing Order 52 was on 26 August. I made reference to page 161 of the *Annotated Standing Orders of the New South Wales Legislative Council* concerning where the power of the order comes from. A footnote on that page clarifies this with reference to authority. Key parts read as follows:

*The power of the Legislative Council to order the production of state papers is derived from the common law principle of reasonable necessity. This principle finds expression in a series of 19th-century cases decided by the Judicial Committee of the Privy Council between 1842 and 1886, in which it was held that while colonial legislatures did not possess all the privileges of the Houses of the British Parliament, they were entitled by law to such privileges as were 'reasonably necessary' for the proper exercise of their functions.*

The authorities cited for that proposition included *Kielly v Carson* [1842] 12 ER 25, *Fenton v Hampton* [1858] 14 ER 727 and *Barton v Taylor* [1839] 112 ER 1112. Members will note that the general date range of these authorities corresponds with the period in which this House was founded. That is where the powers of the standing order originated. The three authorities should therefore provide guidance in respect to the exercise of the power, which is grounded in the common law and which states that the power can only be legitimately exercised if it is "reasonably necessary". The manner in which Standing Order 52 has been used in recent times has been very far from satisfying the test of "reasonable necessity". I am pleased to support this motion. I trust that it will help with a more efficient method of dealing with applications made under Standing Order 52. If not, we may have to revisit the issue again as to how and when the order is used in this House.

**Media inquiries:**

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