

25 ORDER FOR PAPERS—RACING NSW – FURTHER ORDER

Mr Latham moved, according to notice, private members' business item no. 1641:

(1) That this House notes that:

- (a) on Wednesday 25 September 2024, Thursday 24 October 2024 and Thursday 14 November 2024 the House has rejected the view of Racing NSW that it was not subject to the powers of the House under standing order 52, asserted its power to order the production of documents directly from entities not subject to ministerial direction or control, and reiterated orders for the production of documents from Racing NSW,
- (b) on Thursday 24 October 2024, following receipt on Wednesday 16 October 2024 of a return from Racing NSW and correspondence stating that the documents were provided 'voluntarily', this House:
 - (i) noted that the only established mechanism by which entities may lodge documents with the Clerk directly is under standing order 52,
 - (ii) rejected the statement by Racing NSW that the documents were provided voluntarily, and the views expressed in the legal advice provided by Racing NSW,
 - (iii) noted receipt of the return from Racing NSW under standing order 52,
- (c) on Tuesday 5 November 2024 a return was received from Racing NSW to the orders of the House of Tuesday 15 October 2024 relating to correspondence regarding animal welfare and Wednesday 23 October 2024 relating to Racing NSW, stating that:
 - (i) "...whilst Racing NSW gave careful consideration to producing documents voluntarily out of respect for the House and in the interests of cooperation, the resolution of the House on 24 October 2024 effectively removes that as an option.",
 - (ii) "Racing NSW has been left with no option but to not answer the Orders for Papers dated 15 October 2024 and 23 October 2024",
- (d) on Thursday 14 November 2024 this House reiterated the order of Wednesday 23 October 2024 for the production of documents from Racing NSW relating to Racing NSW,
- (e) on Monday 18 November 2024, Racing NSW requested to vary the due date of the further order for papers relating to Racing NSW, however as no agreement was reached with the member who moved the motion, the original due date of Tuesday 19 November 2024 was not varied, and
- (f) on Tuesday 19 November 2024, a return was received from Racing NSW, that:
 - (i) stated that Racing NSW is not subject to orders for the production of documents made by the House under standing order 52, but "remains willing to assist the House in its inquiries, provided they are kept within their proper bounds", and that it is "subject to the time constraints" as no agreement was reached to vary the due date of the order,
 - (ii) discussed the scope of the order and provided information in response to each paragraph of the order,
 - (iii) stated that no documents that are covered by paragraphs (4)(c), (d), (e) or (f) of the resolution are held.

(2) That this House:

- (a) notes the failure of Racing NSW to produce documents in response to the order of the House of Thursday 14 November 2024,
- (b) notes that, in relation to paragraphs (4)(a) and (b) of the order:
 - (i) the Select Committee on the Proposal to Develop Rosehill Racecourse received the Racing NSW Policy on Monitoring the Use of IT Resources, dated August 2016,

- (ii) the return received on Tuesday 19 November 2024 indicated that it has documents concerning staff notification of monitoring and surveillance, office signage, and "technical documents and the like relating to how IT systems operate",
 - (c) notes that, in relation to paragraphs (4)(c) and (d) of the order:
 - (i) Racing NSW has said that it has recording devices in its boardroom,
 - (ii) the CEO, Racing NSW, has said he has delegation from the Board for the conduct of all stewards inquiries,
 - (iii) Racing NSW has said that recording devices are used for stewards inquiries, clearly for the purposes of transcripts,
 - (iv) the CEO conducts a large number of meetings in the boardroom rather than in his personal office, the boardroom is also used as a waiting room for those appearing at Steward's inquiries, accompanied by their legal representatives, and recording or listening devices have been installed,
 - (d) notes that, in relation to paragraphs (4)(f) of the order some trainers in New South Wales apply for financial relief from swab fines, and on other occasions Racing NSW officials grant financial relief from their own initiative, and
 - (e) is of the opinion that the call for papers is important and justified, that documents exist that fall within the scope of the order for papers and that the return provided on Tuesday 19 November 2024 is not in compliance with the order of the House.
- (3) That this House reiterates the views expressed in the resolutions of the House of Wednesday 25 September 2024, Thursday 24 October 2024 and Thursday 14 November 2024, that:
- (a) rejects the views expressed in the legal position provided by Racing NSW, noting in particular:
 - (i) in 1996, in *Egan v Willis & Cahill*, Priestly JA gave guidance, which was cited with approval by the majority in 1998 in *Egan v Willis*, which stated that "...it is well within the boundaries of reasonable necessity that the Legislative Council have power to inform itself of any matter relevant to a subject on which the legislature has power to make laws.",
 - (ii) the majority in 1998 in *Egan v Willis*, also cited with approval the 1997 judgment in *Lange v Australian Broadcasting Corporation*, found that "... the conduct of the executive branch is not confined to Ministers and the public service. It includes the affairs of statutory authorities and public utilities which are obliged to report to the legislature or to a Minister ...",
 - (iii) the advice of Mr Bret Walker KC, tabled on 18 November 2015, which stated that "... It would be perverse to suppose that Parliament has enacted the existence and nature of such [independent] authorities in order to remove the public affairs for which they are responsible from Parliament's own scrutiny.",
 - (iv) the advice of the Crown Solicitor, dated 27 September 2024, received from the Independent Planning Commission on 11 October 2024, which stated "I proceed on the basis that the House has power to compel an entity such as the Commission, not relevantly subject to ministerial direction or control, to produce documents under Standing Order 52 ...", and
 - (b) notes that notwithstanding variations in governing legislation, in accordance with the common law power of the House to order the production of documents under standing order 52, this House continues to receive returns of documents directly from entities which are not subject to ministerial direction or control.
- (4) That this House, accordingly:
- (a) reasserts its common law power to order the production of documents in the possession, custody or control of Racing NSW, which is obliged to comply with orders made by the House under standing order 52, and

- (b) rejects the view of Racing NSW that it is not subject to orders for the production of documents made by the House under standing order 52.
- (5) That, under standing order 52, there be laid upon the table of the House within 21 days of the date of passing of this resolution the following documents in the possession, custody or control of Racing NSW relating to Racing NSW:
- (a) all documents relating to the monitoring and auditing of web traffic and emails of Racing NSW employees, including documents relating to the use of information and data captured,
 - (b) all documents relating to the use of closed circuit television footage from the Racing NSW Druiitt Street, Sydney office,
 - (c) all documents relating to the installation and maintenance of listening or recording devices in the Racing NSW Boardroom, Druiitt Street, Sydney office,
 - (d) all transcripts or recordings, partial or full, from listening or recording devices in the Racing NSW Boardroom, Druiitt Street, Sydney office,
 - (e) all communication between the Chief Executive, Peter V'Landys, and Racing NSW chief stewards over the past five years concerning stewards' inquiry findings and recommendations, where Mr V'Landys has been involved in, or commented on, decision making, either:
 - (i) before a stewards' inquiry,
 - (ii) during a stewards' inquiry,
 - (iii) after a stewards' inquiry,
 - (f) all documents relating to the payment and non-payment of positive swab fines for all New South Wales tracks and trainers over the past ten years, including all documents relating to waiving fines, and
 - (g) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.
- (6) That this House expects adequate searches are undertaken to ensure full compliance with orders made under standing order 52, and should Racing NSW fail to table the documents in compliance with this resolution a further time, it will be a matter for the House to take necessary actions and further steps to address the issue of non-compliance, including calling representatives of Racing NSW to attend at the Bar of the House.

Debate ensued.

Question put.

The House divided.

Ayes 23
 Noes 16
 Majority 7

AYES

Barrett
 Boyd
 Carter
 Cohn
 Faehrmann
 Fang
 Farlow
 Higginson

Hurst
 Latham (teller)
 MacDonald
 Maclaren-Jones
 Martin
 Merton
 Mihailuk
 Mitchell

Munro
 Overall
 Rath (teller)
 Roberts
 Ruddick
 Tudehope
 Ward

NOES

Buckingham
Buttigieg
D'Adam
Donnelly
Graham
Houssos

Jackson
Kaine
Lawrence
Mookhey
Moriarty

Murphy (teller)
Nanva (teller)
Primrose
Sharpe
Suvaal

Question resolved in the affirmative.