

Most NSW ministers did not see cabinet in confidence documents

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Cabinet in confidence documents detailing the business cases for the state government's controversial stadiums policy were never shown to the full cabinet.



The leader of the government in the upper house, Don Harwin. Photo: Janie Barrett

Government sources have confirmed that the full business cases prepared by KPMG - which the government has repeatedly refused to release - were never presented to a cabinet meeting, forcing ministers to publicly defend a policy when they hadn't seen the detail.

While the documents were taken to at least one cabinet sub-committee, most ministers have not seen them and will only see them for the first time when they are released to the upper house.

One minister said: "I think it is fair to say that some of us were uncomfortable being asked to defend this policy when we were never given the full details."

Another said: "I am not even sure those who sat on the ERC (cabinet's expenditure review committee) saw the full details of the business cases."

In an extraordinary backflip, the government last week surrendered to the upper house and agreed to release the business cases for Allianz and ANZ stadiums and the Powerhouse Museum relocation as well as a highly critical report into the state's child protection system.

The move came after the government's leader in the upper house, Don Harwin, faced suspension from the chamber after being censured for his refusal to produce the documents.

Rogue Liberal MP Matthew Mason-Cox took the extraordinary step of voting with Labor and the Shooters, Fishers and Farmers to censure Mr Harwin. The motion passed by one vote.

It is the first censure against a NSW Liberal government leader.

The government was initially forced to support the Opposition's motion for the release of all documents relating to the stadiums after Mr Mason-Cox threatened to cross the floor of parliament.

Mr Mason-Cox has been a vocal opponent of the stadium policy, and is the only government MP to publicly criticise the plan. He has since crossed the floor three times.

Mr Harwin told the house he would release all the documents by 5pm Friday, but a letter from the secretary of Premier and Cabinet, Tim Reardon, said some would still be protected by privilege.

"I note that all of the documents referred to in the resolution are cabinet documents, and that the Legislative Council has no power to require such documents to be produced," the letter said.

"On this occasion, however, the Government has decided to provide the documents sought to the Legislative Council on a voluntary basis, even though the Council has no power to require such production."

The letter noted that while the report into child protection, known as the Tune report, would be released, the business cases for the stadiums would be redacted and the Powerhouse documents were all privileged at this stage.

Redacted copies of the KPMG business case for Allianz and the KPMG strategic business case would be available to the public, the letter said.

"Redacted copies of certain [Powerhouse] documents are expected to be received on Tuesday 12 June 2018," the letter said.

But the leader of the Opposition in the upper house, Adam Searle, said the government may have scored a "legal own goal" by claiming privilege.

"The only way a privilege claim can be recognised is if the government has been compelled to produce the documents by Parliament," Mr Searle said.

"If the government has voluntarily handed them over, legally it has surrendered any privilege claim it may have.

"With no valid claim of privilege before it, the house is free to publish the whole documents to the public and, given their nature, may even be required to do so."

Questions about the privilege claim were sent to Mr Harwin's office, who referred them to the Premier's office. They did not respond.

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