

## Notice of Decision and Reasons for Decision

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Applicant:	'FH7'
Agency:	Department of Premier and Cabinet
Decision date:	2 August 2023
Exemptions considered:	Sections 28(1)(ba), 28(1)(c), 29(1)(a), 30(1), 32(1), 33(1)
Citation:	'FH7' and Department of Premier and Cabinet (Freedom of Information) [2023] VICmr 78 (2 August 2023)

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FREEDOM OF INFORMATION – COVID-19 pandemic – hotel quarantine – charges for hotel quarantine – legal advice – legal privilege – disclosure regarding legal advice at press conference – waiver of legal privilege

All references to legislation in this document are to the *Freedom of Information Act 1982 (Vic)* (**FOI Act**) unless otherwise stated.

### Notice of Decision

I have conducted a review under section 49F of the Agency's decision to refuse access to documents requested by the Applicant under the FOI Act.

My decision on the Applicant's request differs from the Agency's decision. While I am satisfied information in the documents is exempt from release under sections 32(1), 33(1), 28(1)(ba) and 28(1)(c), I am not satisfied certain information is exempt from release under sections 29(1)(a), 30(1) or 32(1). Accordingly, I have decided to release additional information in the documents where I am satisfied it is not exempt from release.

Where it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access to a document is granted in part. Where it is not practicable to do so, access is refused in full.

The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document. The Agency has also been provided with a marked-up copy of certain documents indicating exempt and irrelevant information in accordance with my decision.

My reasons for decision follow.

Joanne Kummrow  
**Public Access Deputy Commissioner**

2 August 2023

## Reasons for Decision

### Background to review

1. The Applicant made a request to the Agency seeking access to the following documents:

All legal advice, general advice, discussions, proposals, communications, and any other material relating to or brought into consideration for determining whether or not to charge individuals, families, or groups for quarantine/detention as a public health measure. This material could relate to Covid19 public health measures and may have also been considered to implement public health measures prior to Covid19. Some of this material could include, but is not limited to, comparisons to existing custodial arrangements for example. As I will reference in this request, the Victorian Premier went into considerable detail at a June 2020 media conference about charging for quarantine. This indicates to me that a wide range of advice both legal and general was sought and I expect this would have generated a significant amount of discussion and correspondence. As a result, I am seeking access to all this material produced up until the end of July 2020 going both ways between:

- Officers of the Department of Premier and Cabinet.
- Officers of the Department of Premier and Cabinet and officers of other departments.
- Officers of the Department of Premier and Cabinet and third parties.
- Officers of other departments where the Department of Premier and Cabinet was privileged.

The information I'm seeking access to could be in form of, but not limited to:

- legal documents
- memorandums (for example, a 'Memorandum of Advice')
- minutes
- emails
- notes of any form (including 'internal notes')
- recordings (including but not limited to recordings of meetings, recorded memo's)
- social media messages (including but not limited to WhatsApp, Telegram, Messenger)
- and any other form not mentioned above.

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2. The Agency identified 26 documents falling within the terms of the Applicant's request and refused access to three documents in part and 23 documents in full under sections 28(1)(ba), 29(1)(a), 30(1), 32(1) and 33(1). The Agency's decision letter sets out the reasons for its decision.

### Review application

3. The Applicant sought review by the Information Commissioner under section 49A(1) of the Agency's decision to refuse access.
4. The Applicant and the Agency were invited to make a written submission under section 49H(2) in relation to the review.
5. I have examined a copy of the documents subject to review and considered all communications and submissions received from the parties.

6. The Agency provided a submission to OVIC in confidence. However, I do not consider the entire contents of the submission is sensitive. Further, in order to adequately explain my reasons for decision, as required under section 49P(3), it is necessary to include references to the Agency's submission in my reasons for decision.
7. In undertaking my review, I have had regard to the object of the FOI Act, which is to create a general right of access to information in the possession of the Government or other public bodies, limited only by exceptions and exemptions necessary to protect essential public interests, privacy and business affairs.
8. I note Parliament's intention the FOI Act must be interpreted so as to further the object of the Act and any discretions conferred by the Act must be exercised, as far as possible, so as to facilitate and promote the disclosure of information in a timely manner and at the lowest reasonable cost.
9. In conducting a review under section 49F, section 49P requires that I make a new or 'fresh decision'. Therefore, my review does not involve determining whether the Agency's decision is correct, but rather requires my fresh decision to be the 'correct or preferable decision'.<sup>1</sup> This involves ensuring my decision is correctly made under the FOI Act and any other applicable law in force at the time of my decision.

## Review of exemptions

### ***Section 28(1)(ba) – Document prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet***

10. Section 28(1)(ba) provides a document is an exempt document if it was prepared for the purpose of briefing a Minister in relation to an issue to be considered by the Cabinet.
11. A document will be exempt from release under section 28(1)(ba) if the sole purpose, or one of the substantial purposes, for which it was prepared was to brief a Minister in relation to an issue to be considered by the Cabinet.<sup>2</sup> In the absence of direct evidence, the sole or substantial purpose of a document may be determined by examining the use of the document, including whether it was submitted to Cabinet.<sup>3</sup>
12. The purpose of the Cabinet briefing must be contemplated when the document is created. The exemption cannot apply merely because Cabinet ultimately considered the issue.<sup>4</sup>
13. The word 'briefing' means a 'short accurate summary of the details of a plan or operation. The 'purpose ... is to inform the person being briefed'.<sup>5</sup> Therefore, a document should have the character of briefing material.<sup>6</sup> A document will be of such character if it contains

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<sup>1</sup> *Drake v Minister for Immigration and Ethnic Affairs* (1979) 24 ALR 577 at [591].

<sup>2</sup> *Ryan v Department of Infrastructure* (2004) 22 VAR 226; [2004] VCAT 2346 at [34] citing *Mildenhall v Department of Premier and Cabinet (No 2)* (1995) 8 VAR 478, at 290; *Herald & Weekly Times v Victorian Curriculum & Assessment Authority* [2004] VCAT 924, at [72]. See also *Department of Treasury and Finance v Dalla-Riva* (2007) 26 VAR 96; [2007] VSCA 11 at [13].

<sup>3</sup> *Secretary to the Department of Treasury and Finance v Dalla Riva* [2007] VSCA 11 at [15].

<sup>4</sup> *Hennessy v Minister Responsible for the Establishment of an Anti-Corruption Commission & Anor* [2013] VCAT 822.

<sup>5</sup> *Ryan v Department of Infrastructure* (2004) 22 VAR 226; [2004] VCAT 2346 at [41].

<sup>6</sup> *Ibid.*

'information or advice...prepared for the purpose of being read by, or explained to, a minister'. It requires more than having placed a document before a Minister.<sup>7</sup>

14. The term 'issues to be considered by the Cabinet' within the meaning of section 28(1)(ba), requires that it must be more than just 'likely' the Cabinet will consider those issues. There must be an intention or expectation that the relevant issue will be considered by the Cabinet, even if it is not ultimately considered. Evidence that a matter was included on a Cabinet meeting agenda will meet this test.<sup>8</sup>
15. The Agency refused access to Documents 9, 19 and 22 under section 28(1)(ba) on the basis that they were prepared for the purpose of briefing a Minister on an issue to be considered by the Victorian Cabinet. The Agency provided OVIC with extrinsic evidence in support of its view.
16. Based on the Agency's submission, the extrinsic evidence provided and my review of the documents, I am satisfied Documents 19 and 22 were prepared for the purpose of briefing a Minister in relation to issues to be considered by the Victorian Cabinet, prior to a meeting of the 'National Cabinet'.
17. Document 9 contains an excerpt from Document 19. It is included in an email between Agency officers, rather than a direct briefing to a Minister, and was created after Document 19 and sent during or after the relevant Cabinet meeting. As such, I am not satisfied the document was prepared for the purpose of briefing a Minister in relation to an issue to be considered by the Cabinet (ie following the briefing). However, as the document contains an extract from a document that I am satisfied was prepared for the purpose of briefing a Minister, I have considered the application of section 28(1)(c) below.
18. My decision on section 28(1)(ba) is set out in the Schedule of Documents in **Annexure 1**.

***Section 28(1)(c) – A copy, draft or extract from a Cabinet document***

19. Section 28(1)(c) provides a document is an exempt document if it is a copy or a draft of, or contains extracts from, a document referred to in sections 28(1)(a), 28(1)(b) or 28(1)(ba).
20. In relation to an extract from a Cabinet document, a document will usually contain a reproduction of part of the text or material from a Cabinet document such as a quote, paraphrase or summary.
21. As noted above, I am satisfied Document 9 contains an extract from Document 19.
22. I am satisfied information in Document 19 is exempt from release under section 28(1)(ba). Accordingly, I am satisfied section 28(1)(c) applies to certain information in Document 9.
23. My decision on section 28(1)(c) is set out in the Schedule of Documents in **Annexure 1**.

***Section 29(1)(a) – Documents containing matter communicated by another State***

24. Section 29(1)(a) provides a document is an exempt document if its disclosure under the FOI Act:

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<sup>7</sup> Ibid.

<sup>8</sup> *Mildenhall v Department of Treasury and Finance* (unreported, AAT of Vic, Macnamara DP, 18 March 1996). See also *Batchelor v Department of Premier and Cabinet* (unreported, AAT of Vic, Fagan P and Coghlan M, 29 January 1998); *Hulls v Department of Treasury and Finance (No 2)* (1994) 14 VAR 295 at [320]-[321]; reversed on other grounds by the Court of Appeal: *Department of Premier & Cabinet v Hulls* [1999] 3 VR 331; 15 VAR 360; [1999] VSCA 117.

- (a) would be contrary to the public interest; and
- (b) would prejudice relations between the State and the Commonwealth or any other State or Territory.

25. Section 29(2) provides:

In deciding whether a document is an exempt document under subsection (1), an agency or Minister, if practicable, must—

- (a) notify any of the following that are relevant that the agency or Minister has received a request for access to the document—
  - (i) another agency or Minister;
  - (ii) an agency of another country or the Commonwealth or another State or a Territory;
  - (iii) an authority of another country or the Commonwealth or another State or a Territory; and
- (b) seek the view of that agency, authority or Minister as to whether the document should be disclosed.

26. The documents to which the Agency refused access under section 29(1)(a) comprise the following categories of documents:

- (a) emails between Agency officers and other documents with respect to matters involving National Cabinet;
- (b) emails and documents relating a National Coordination Mechanism (**NCM**) meeting and discussion paper; and
- (c) a record relating to the Australian Health Protection Principal Committee (**AHPPC**).

27. National Cabinet was established on 13 March 2020 and comprises the Prime Minister, State Premiers and Territory Chief Ministers.<sup>9</sup> It was initially established for the purpose of addressing Australia’s response to the COVID-19 pandemic and continues to meet ‘to collaboratively address a wide range of issues of national significance’:<sup>10</sup>

**Australia’s Federal Relations Architecture**

The Australian federal relations architecture includes intergovernmental forums where Commonwealth, state and territory ministers can meet to progress a range of priority cross-jurisdictional issues. At the core of this architecture is National Cabinet. National Cabinet was established on 13 March 2020 and comprises the Prime Minister and state and territory First Ministers. The first priority of National Cabinet was to respond to the urgent health and economic impacts of the COVID-19 pandemic. While this continues to be a priority, First Ministers now utilise National Cabinet to collaboratively address a wide range of issues of national significance.

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<sup>9</sup> Federation, Department of Prime Minister and Cabinet (Cth), *National Cabinet Terms of Reference*, available at <https://federation.gov.au/national-cabinet/terms-of-reference>; Prime Minister, Minister for Health, Chief Medical Officer, ‘Advice on Coronavirus’ (Media Release, 13 March 2020) available at <https://pmtranscripts.pmc.gov.au/release/transcript-42727>.

<sup>10</sup> See ‘About’ on website, federation.gov.au at <https://federation.gov.au/about> and ‘National Cabinet’ at <https://federation.gov.au/national-cabinet>.

Prior to the establishment of National Cabinet, the Council of Australian Governments (COAG) was the primary intergovernmental forum where the Prime Minister, state and territory First Ministers and the President of the Australian Local Government Association (ALGA) worked together on policy reforms of national significance. On 29 May 2020, National Cabinet agreed to the cessation of COAG.<sup>11</sup>

28. The NCM was implemented by Emergency Management Australia through the Department of Home Affairs in response to the COVID-19 pandemic. It is a mechanism by which States and Territories and private sector stakeholders co-ordinate whole of government responses to issues outside the direct health management of COVID-19.<sup>12</sup>
29. The AHPPC is a decision making committee for health emergencies and comprises State and Territory Chief Health Officers. It is chaired by the Australian Chief Medical Officer.<sup>13</sup> AHPPC provides advice to the Health Chief Executives' Forum on health protection matters and national priorities.<sup>14</sup> It was also one of the primary bodies advising the National Cabinet on Australia's response to the COVID-19 pandemic.
30. For the purposes of this decision, it is not necessary to consider the constitutional, legal or other status of the National Cabinet, NCM or the AHPPC.

*Would disclosure of the documents under the FOI Act be contrary to the public interest?*

31. In deciding whether disclosure would be contrary to the public interest, I have considered the Victorian Civil and Administrative Tribunal (**VCAT**) decision of *Millar v Department of Premier*<sup>15</sup> in which the Tribunal accepted the agency had established the following grounds on which disclosure of the documents would be contrary to the public interest:
  - (a) protecting uninhibited exchanges between the governments of Australia; and
  - (b) encouraging cooperative Federalism within Australia; and
  - (c) protecting processes that contribute to high quality policy development by the governments of Australia; and
  - (d) ensuring the public have access to accurate and reliable information that gives a true indication of the basis for government policy; and
  - (e) protecting against unnecessary confusion and debate by avoiding the premature release of documents that represent a stage in the decision—making process; and
  - (f) ensuring that the Victorian government remains able to meet private undertakings' legitimate expectations of confidentiality; and
  - (g) ensuring that private undertakings remain willing to share information with the State; and
  - (h) protecting the State of Victoria's negotiating position in relation to present and future proposals concerning climate change.<sup>16</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> Department of Home Affairs (Cth), *Emergency Management*, available at <https://www.homeaffairs.gov.au/about-us/our-portfolios/emergency-management/about-emergency-management> and <https://www.homeaffairs.gov.au/about-us/our-portfolios/emergency-management/about-emergency-management/national-coordination-mechanism>.

<sup>13</sup> Department of Health and Aged Care (Cth), *Australian Health Protection Principal Committee (AHPPC)*, available at <https://www.health.gov.au/committees-and-groups/australian-health-protection-principal-committee-ahppc>.

<sup>14</sup> Ibid.

<sup>15</sup> (General) [2011] VCAT 1230.

<sup>16</sup> Ibid at [62].

32. However, a key consideration for VCAT was the ability of the Government to be able to ‘lobby and perform one-on-one negotiations relating to the detail of relevant federal policy’.<sup>17</sup> While such lobbying and one-on-one negotiations between a State and the Commonwealth undoubtedly takes place in relation to the matters considered by the National Cabinet, the documents in this matter neither deal with individual lobbying nor with one-on-one negotiations. Instead, they deal with multilateral discussions between the Commonwealth and all States and Territories.

33. Also relevant to my decision is the Commonwealth Administrative Appeals Tribunal decision of *Patrick and Secretary, Department of Prime Minister and Cabinet (Patrick decision)*.<sup>18</sup> While the Patrick decision relates to the *Freedom of Information Act 1982* (Cth), it concerns minutes of the National Cabinet, which are similar to documents the subject of this matter. In the Patrick decision, Justice White observed:

In my view, when regard is had to the nature of the minutes of the National Cabinet meeting (including the matters which they do not contain), the Prime Minister’s public statements concerning the decisions made at the meeting on 29 May 2020, and the apparent expectation of the National Cabinet participants that the Prime Minister would announce publicly the decisions made at the meeting, a finding that disclosure of the formal record of the decisions would cause damage to relations between the Commonwealth and a State would be inappropriate.

I emphasise that, in forming that view, I have taken into account that the minutes do not reveal the contribution of any individual participant, any debate which may have occurred regarding each item or the considerations taken into account in relation to each item. In that circumstance, there is no reason to suppose that any participant in the National Cabinet, acting rationally, would feel some inhibition in his or her contributions to the debate at the National Cabinet by reason of the formal disclosure of the minutes of 29 May 2020.<sup>19</sup>

34. With respect to documents relating to the National Cabinet, the Agency advises it consulted with the Department of Prime Minister and Cabinet (**DPMC**) and sought its views on the disclosure of Documents 13, 20 and 23.

35. In summary, both the Agency and DPMC submit there is an expectation of confidentiality with respect to National Cabinet documents and meetings. It is submitted that confidentiality is integral to the success of the National Cabinet, such that disclosure of the documents in this instance will inhibit the ability of participating jurisdictions to engage in a frank and candid manner with respect to discussions regarding national COVID-19 pandemic preparedness and effective response measures. It is submitted that disclosure of Documents 13, 20 and 23 will reduce the information that can be shared between National Cabinet members and adversely impact the decision making process and undermine the effective operation of the National Cabinet.

36. With respect to documents relating to the NCM, the Agency consulted with the Department of Home Affairs, which also objected to the disclosure of certain information. With respect to documents relating to the NCM, the Agency submits that disclosure of documents that contain deliberative and sensitive material ‘may prejudice future Commonwealth or jurisdictional participation and reduce the effectiveness of the NCM, particularly regarding sensitive preparedness and response activities’.

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<sup>17</sup> Ibid at [63].

<sup>18</sup> (Freedom of Information) [2021] AATA 2719.

<sup>19</sup> Ibid at [267].

37. With respect to documents relating to AHPPC, the Agency submits disclosure may raise concerns amongst AHPPC members and would, or could reasonably be expected to, damage the relationships between the Commonwealth, State and Territory jurisdictions.
38. Having reviewed the documents and the Agency's submission, I am not satisfied disclosure of certain information in the documents would be contrary to the public interest for the following reasons:
- (a) The National Cabinet, AHPPC and NCM are important and influential bodies with respect to Australia's response to the COVID-19 pandemic.
  - (b) Regarding National Cabinet specifically, its deliberations have a significant impact on members of the Victorian community, in particular, during times of a national emergency or crisis. In a liberal democracy, there is an overwhelming public interest in the operations of a central government decision making body being transparent and accountable for its decisions.
  - (c) Noting the information relevant to the Applicant's request specifically concerns payment for hotel quarantine, I have taken into account that the position on this issue is now settled. On 27 March 2020, National Cabinet agreed that States and Territories would determine any cost contribution required from travellers entering mandatory quarantine.<sup>20</sup> On 4 December 2020, the Victorian Government announced it would introduce legislation to permit charges for mandatory quarantine.<sup>21</sup> Victoria commenced charging individuals for hotel quarantine from 7 December 2020.<sup>22</sup>
  - (d) Documents 16 and 17 contain a meeting record of the NCM dated [date], which details the individual meeting contributions of NCM members. While there is a public interest in members being able to provide frank advice and opinion with respect to matters of national importance, I have placed weight on the time that has passed since the relevant NCM meeting. The issues discussed and recorded in the record are relevant to the situation in May 2020, and at the time of making this decision, the issue of charging for hotel quarantine is no longer current.
  - (e) While I accept the importance of NCM members participating fully in those meetings without concern their contribution will be disclosed under FOI, I am not satisfied disclosure of these particular documents, which relate to a meeting in May 2020 and a program no longer in place, will have a material impact on future deliberations and decision making at NCM meetings.
39. Accordingly, I am not satisfied the documents are exempt from release under section 29(1)(a).
40. My decision on section 29(1)(a) is set out in the Schedule of Documents in **Annexure 1**.

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<sup>20</sup> Prime Minister, 'Update on coronavirus measures' (Media Release, 27 March 2020) available at <https://pmtranscripts.pmc.gov.au/release/transcript-42761>; Premier of Victoria, 'Quarantine contribution fee to be introduced' (Media Release, 4 December 2020) available at <https://www.premier.vic.gov.au/quarantine-contribution-fee-be-introduced>.

<sup>21</sup> Premier of Victoria, 'Quarantine contribution fee to be introduced' (Media Release, 4 December 2020) available at <https://www.premier.vic.gov.au/quarantine-contribution-fee-be-introduced>.

<sup>22</sup> State Government of Victoria, 'Contribution fees for hotel quarantine', available at <https://www.coronavirus.vic.gov.au/sites/default/files/2021-06/Hotel%20Quarantine%20contribution%20fees.pdf>.



### **Section 30(1) – Internal working documents**

41. Section 30(1) has three requirements:

- (a) the document must disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister;
- (b) such matter must be made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
- (c) disclosure of the matter would be contrary to the public interest.

42. The exemption does not apply to purely factual material in a document.<sup>23</sup>

*Do the documents disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers or an officer and a Minister?*

43. For the requirements of section 30(1) to be met, a document must contain matter in the nature of opinion, advice or recommendation prepared by an agency officer, or consultation or deliberation between agency officers.

44. It is not necessary for a document to be in the nature of opinion, advice or recommendation. Rather, the issue is whether release of the document would disclose matter of that nature.<sup>24</sup>

45. The Agency refused access under section 30(1) to comments made by an Agency officer in National Cabinet briefing templates<sup>25</sup> and an internal email exchanged between Agency officers with respect to an NCM meeting held on [date].<sup>26</sup>

46. The information exempted from release in the briefing templates<sup>27</sup> comprises annotations made by an Agency officer, which I am satisfied is in the nature of opinion and advice.

47. I am satisfied the internal email<sup>28</sup> contains matter in the nature of advice, reporting on the outcome of an NCM meeting.

*Were the documents made in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government?*

48. The term ‘deliberative process’ is interpreted broadly and includes any of the processes of deliberation or consideration involved in the functions of an agency, Minister or government.<sup>29</sup>

49. In *Re Waterford and Department of Treasury (No.2)*,<sup>30</sup> the former Victorian Administrative Appeals Tribunal held:

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<sup>23</sup> Section 30(3).

<sup>24</sup> *Mildenhall v Department of Education* (1998) 14 VAR 87.

<sup>25</sup> Attachments to Documents 6 and 8.

<sup>26</sup> Document 15.

<sup>27</sup> Attachments to Documents 6 and 8.

<sup>28</sup> Document 15.

<sup>29</sup> *Brog v Department of Premier and Cabinet* (1989) 3 VAR 201 at [208].

<sup>30</sup> [1984] AATA 67; (1984) 5 ALD 588; 1 AAR 1 at [58].

... “deliberative processes” [is] wide enough to include any of the processes of deliberation or consideration involved in the functions of an agency... In short, ...its thinking processes — the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.

50. I accept the documents were made in the course of, and for the purpose of, the deliberative processes of the Agency with respect to managing Victoria’s response to the COVID-19 pandemic.

*Would disclosure of the documents be contrary to the public interest?*

51. In deciding if release is contrary to the public interest, I must consider all relevant facts and circumstances remaining mindful the object of the FOI Act is to facilitate and promote the disclosure of information. In doing so, I have given weight to the following relevant factors:<sup>31</sup>
- (a) the right of every person to gain access to documents under the FOI Act;
  - (b) the degree of sensitivity of the issues discussed in the documents and the broader context giving rise to the creation of the documents;
  - (c) the stage of a decision or status of policy development or a process being undertaken at the time the communications were made;
  - (d) whether disclosure of the documents would be likely to inhibit communications between Agency officers, essential for the agency to make an informed and well-considered decision or participate fully and properly in a process in accordance with the Agency’s functions and other statutory obligations;
  - (e) whether disclosure of the documents would give merely a part explanation, rather than a complete explanation for the taking of a particular decision or the outcome of a process, which the Agency would not otherwise be able to explain upon disclosure of the documents;
  - (f) the impact of disclosing documents in draft form, including disclosure not clearly or accurately representing a final position or decision reached by the Agency at the conclusion of a decision or process; and
  - (g) the public interest in the community being better informed about the way in which the Agency carries out its functions, including its deliberative, consultative and decision making processes and whether the underlying issues require greater public scrutiny.
52. Document 15 is an internal email exchanged between Agency officers about the outcome of an NCM on [date]. I have already determined disclosure of this document would not be contrary to the public interest in the context of section 29(1)(a) regarding other documents relating to the NCM meeting. As noted above, I have placed weight on the time that has passed since the NCM meeting. The issues discussed in Document 15 are relevant to the situation in 2020, and are no longer current.
53. Given the documents relate to the COVID-19 pandemic, which concerns significant public health matters, I consider the public interest weighs in favour of disclosure. Importantly, disclosure serves the public interest where it can assist members of the public in their understanding and scrutiny of public health responses to the COVID-19 pandemic.

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<sup>31</sup> *Hulls v Victorian Casino and Gambling Authority* (1998) 12 VAR 483.

54. I do not accept disclosure in these circumstances will lead to confusion or ill-informed debate. Further, I consider such arguments minimise the importance of public engagement and participation in government policy making and decision making. In any event, I consider that the question of whether public debate is necessary is a matter to be determined by the public rather than government agencies.
55. With respect to the attachments to Documents 6 and 8, I am not satisfied disclosure of the comments made by an Agency officer with respect to the draft briefing template would be contrary to the public interest for the following reasons:
- (a) it is clear the comments were made to a draft document, and the nature of the document will not be misunderstood;
  - (b) the comments are not sensitive in nature; and
  - (c) I do not accept disclosure of the document would inhibit Agency officers in making comments on draft briefing templates in future.
56. Accordingly, I am not satisfied disclosure of the documents would be contrary to the public interest, and they are not exempt from release under section 30(1).
57. My decision on section 30(1) is set out in the Schedule of Documents in **Annexure 1**.

***Section 32(1) – Documents subject to legal privilege***

58. Section 32(1) provides a document is an exempt document ‘if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege or client legal privilege’.
59. For convenience, I refer to ‘legal professional privilege’ and ‘client legal privilege’ as ‘legal privilege’ in this decision.
60. The Agency submits that certain documents sought by the Applicant are subject to legal professional privilege. Broadly speaking, those documents fall within the following categories:
- (a) legal advice from external lawyers to the Agency;
  - (b) legal advice from internal government lawyers to the Agency; and
  - (c) communications which disclose the legal advice or the substance of the advice.
61. I have also considered the application of section 32(1) to other documents to which the Agency did not apply this exemption.
62. The Applicant submits that the legal privilege has been waived by virtue of the Premier disclosing the conclusion of the legal advice.

***Legal professional privilege***

63. A document will be subject to legal privilege, and therefore exempt under section 32(1) where it contains a confidential communication between the client (or the client’s agent) and the

client's professional legal advisers, that was made for the dominant purpose of obtaining or providing legal advice.<sup>32</sup>

64. The High Court of Australia has held the purpose of legal privilege ensures a client can openly and candidly discuss legal matters with their legal representative and seek legal advice:

The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline. This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice, and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor.<sup>33</sup>

65. The purpose a document is brought into existence is a question of fact.<sup>34</sup> While it is necessary to consider the intentions of the person involved in deciding to create and use the document, the intention of the author or person who authorised the document is not conclusive.<sup>35</sup>
66. Legal professional privilege extends to communications between government agencies and their inhouse legal officers, provided the legal officer giving advice in their capacity as a professional legal adviser, and they are sufficiently independent from their employer.<sup>36</sup>
67. In this matter, the Applicant requested '[a]ll legal advice, general advice, discussions, proposals, communications, and any other material relating to or brought into consideration for determining whether or not to charge individuals, families, or groups for quarantine/detention as a public health measure'.
68. The legal advice requested is clearly subject to legal privilege. In relation to the other types of documents requested, it is important to note that communications that disclose the content or nature of a privileged communication can also be subject to legal privilege, provided the communication does not amount to a waiver of privilege. This can include, for example, internal briefings or emails in which the legal advice or substance of the legal advice is disclosed or shared, or files notes recording the legal advice given.
69. I am satisfied the documents contain confidential communications between the Agency and its inhouse and external legal advisors for the dominant purpose of obtaining and providing legal advice or are communications disclosing the legal advice to which legal privilege attaches.

*Has legal professional privilege been waived?*

70. Legal privilege exists to protect the confidentiality of communications between a lawyer and a client. Legal privilege belongs to the client. In the context of a government department, the legal privilege is held by 'the Crown' in right of Victoria.
71. Privilege will be lost where the client acts in a way that is inconsistent with the maintenance of that confidentiality – for instance where the substance of the information has been disclosed with the client's express or implied consent.<sup>37</sup>

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<sup>32</sup> *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49; *Graze v Commissioner of State Revenue* [2013] VCAT 869 at [29]; *Elder v Worksafe Victoria* [2011] VCAT 1029 at [22]. See also section 119 of the *Evidence Act 2008* (Vic).

<sup>33</sup> *Grant v Downs* (1976) 135 CLR 674 at [19].

<sup>34</sup> *Mitsubishi Electric Australia Pty Ltd v Victorian WorkCover Authority* [2002] VSCA 59 at [14].

<sup>35</sup> *Ibid.*

<sup>36</sup> *Attorney-General (NT) v Kearney* (1985) 158 CLR 500; 59 ALJR 749; [1985] HCA 60 at 510, 521-522 and 530-531; *Waterford v Commonwealth* (1987) 163 CLR 54; 61 ALJR 350; [1987] HCA 25 at 62 and 81-82.

72. Implied waiver of privilege occurs when a positive act of a party is inconsistent with the maintenance of confidentiality in the communication, irrespective of the subjective intention of that party.<sup>38</sup>
73. Whether a limited disclosure of the existence, and the effect, of legal advice, is inconsistent with maintaining confidentiality in the communications will depend upon the circumstances of the case.<sup>39</sup> Determining whether privilege has been waived is a matter of fact and degree.<sup>40</sup> It is immaterial as to whether or not the client intended to waive privilege.
74. A document may also be privileged in part. As such, the fact a document contains non-privileged material does not mean the document, in its entirety, ceases to be privileged.<sup>41</sup> In this respect, the High Court of Australia has held:

If a communication satisfies the description of a document brought into existence for the sole purpose<sup>42</sup> of enabling a confidential professional communication between a client and his legal adviser in connexion with pending or anticipated legal proceedings then in our opinion it follows that it is an exempt document within the meaning of s. 42 of the Act. In such a case it is not to the point that the document may contain advice which relates to matters of policy as well as of law. It is the connexion between the document and legal proceedings that establishes its character and thus attracts the privilege.<sup>43</sup>

75. Having decided the legal advice to which the Applicant seeks access and other communications disclosing the content and nature of that advice is subject to legal privilege, I have considered whether privilege was waived due to comments made by the Premier at a press conference on 28 June 2020:

... I looked at the notion of charging people for the hotel quarantine. The legal advice to us is we can't do that, to make somebody pay for their own detention would be a truly unique arrangement. That is not something we use in any of our custodial facilities and not something that would withstand challenge. So again, you'll get suggestions from different quarters from time to time. That's part of a democratic system. But we've had a look at that one, and for the purposes of budget more than anything else and sadly we are not able to do that ...<sup>44</sup>

76. In its submission, the Agency relies on *Nine Films and Television Pty Ltd v Ninox Television Ltd*,<sup>45</sup> specifically:

On a fair and reasonable reading, the statement to the effect that senior counsel had been engaged and that he had reviewed matters in detail and that steps were being taken based on his recommendations is not sufficient to amount to a waiver of the legal advice. The substance or content of the advice is not disclosed with specificity or clarity. Questions of waiver are matters of fact and degree and, in this instance, I am not persuaded that the conduct, assertions or admissible evidence are sufficient to warrant the necessary implication that legal professional privilege has been waived.

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<sup>37</sup> Sections 122(2) and 122(3) of the *Evidence Act 2008* (Vic) (for client legal privilege) or *Mann v Carnell* (1999) 201 CLR 1 at [28]-[29] (for legal professional privilege).

<sup>38</sup> *Mann v Carnell* (1999) 201 CLR 1 at [29].

<sup>39</sup> *Osland v Secretary to the Department of Justice* [2008] HCA 37 at [49].

<sup>40</sup> *Ibid.*

<sup>41</sup> *Waterford v Commonwealth* (1987) 163 CLR 54 at [66]-[67].

<sup>42</sup> The 'sole purpose' test is no longer the relevant test. It is now the 'dominant purpose' test, as set out in *Esso Australia Resources Ltd v Commissioner of Taxation* (1999) 201 CLR 49.

<sup>43</sup> *Ibid* at [67].

<sup>44</sup> SBS News, 'Victoria introduces mandatory testing for quarantined travellers | SBS News' (YouTube, 28 June 2020) <https://www.youtube.com/watch?v=m2xNaKF-Ssl>.

<sup>45</sup> [2005] FCA 356 at [26].

77. The Agency submits the Premier's comments do not constitute such clear conduct or language evidencing an intention to waive legal privilege. It considers the substance or content of the legal advice is not disclosed with any specificity and that the purpose of the Premier confirming to the public that legal advice had been sought on the matter and disclosing the conclusion of the legal advice in this case was to reinforce that the decision was carefully considered. In the Agency's view, there is no clear conduct inconsistent with the maintenance of the confidentiality.
78. Based on the information before me, I have reached the view that by disclosing the conclusion of the legal advice at the press conference on 28 June 2020, the Premier acted inconsistently with the maintenance of legal privilege and, in doing so, waived privilege in the legal advice. Accordingly, I consider the communications relating to legal advice regarding the State's ability to charge for hotel quarantine is not exempt from release under section 32(1).
79. However, there are confidential communications that fall within the Applicant's request and that contain or disclose the content of legal advice on broader matters over which I do not consider legal privilege was waived by the Premier. As there is no other information before me to indicate legal privilege has been waived over those communications, I consider they are exempt from release under section 32(1).
80. I also note Document 3 contains legal advice from an external legal advisor, that was communicated to the Agency from another Victorian public sector agency. As privilege belongs to the Crown in right of the State of Victoria, legal privilege has not been waived by the sharing of this legal advice between different government departments. There is no other information before me that indicates legal privilege in those communications was waived.
81. In addition to the above determination, having carefully reviewed each of the documents and considered their content and context, I have determined that additional information in the documents is exempt from release under section 32(1), rather than under a different exemption relied upon by the Agency.
82. My decision on section 32(1) is set out in the Schedule of Documents in **Annexure 1**.

***Section 33(1) – Documents affecting personal privacy of third parties***

83. A document is exempt under section 33(1) if two conditions are satisfied:
- (a) disclosure of the document under the FOI Act would 'involve' the disclosure of information relating to the 'personal affairs' of a person other than the Applicant (a **third party**);<sup>46</sup> and
  - (b) such disclosure would be 'unreasonable'.

*Do the documents contain third party personal affairs information?*

84. Information relating to a person's 'personal affairs' includes information that identifies any person or discloses their address or location. It also includes any information from which such information may be reasonably determined.<sup>47</sup>

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<sup>46</sup> Sections 33(1) and 33(2).

<sup>47</sup> Section 33(9).

85. A document will disclose a third party's personal affairs information if it is capable, either directly or indirectly, of identifying that person.<sup>48</sup>
86. The documents subject to review include the names, position titles, business addresses and contact details of Agency officers and external third parties which I accept constitutes 'personal affairs information' for the purposes of section 33.
87. In some instances the Agency did not refuse access to certain personal affairs information under section 33(1), for example, names and position titles of certain Agency officers. In any case, I consider whether this information is exempt from release under section 33(1).

*Would disclosure of personal affairs information be unreasonable?*

88. The concept of 'unreasonable disclosure' involves balancing the public interest in the disclosure of official information with the interest in protecting an individual's personal privacy in the particular circumstances.
89. In *Victoria Police v Marke*,<sup>49</sup> the Victorian Court of Appeal held there is 'no absolute bar to providing access to documents which relate to the personal affairs of others'. Further, the exemption under section 33(1) 'arises only in cases of unreasonable disclosure' and '[w]hat amounts to an unreasonable disclosure of someone's personal affairs will necessarily vary from case to case'.<sup>50</sup> The Court further held, '[t]he protection of privacy, which lies at the heart of [section] 33(1), is an important right that the FOI Act properly protects. However, an individual's privacy can be invaded by a lesser or greater degree'.<sup>51</sup>
90. For the following reasons, I have determined disclosure of the names and position titles of Agency officers would not be unreasonable for the following reasons:
  - (a) Whether an agency officer's personal affairs information is exempt from release under section 33(1) must be considered in the context of each matter. Subject to an agency demonstrating special circumstances apply, I consider there is nothing particularly sensitive about matters occurring or arising out of the course of an agency officer's professional duties or work responsibilities as a public servant.
  - (b) Generally, I consider it would not be unreasonable to disclose the name of an agency officer, regardless of their seniority, where a document sought is an official document of the agency and records agency staff carrying out their usual employment duties and responsibilities within a professional context. In this case, I consider personal information pertaining to Agency officers was recorded in the context of them performing their professional duties.
  - (c) The personal affairs information is not sensitive in the context of this matter.
  - (d) There is no specific information before me as to whether the Applicant intends to further disseminate the documents.

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<sup>48</sup> *O'Sullivan v Department of Health and Community Services (No 2)* [1995] 9 VAR 1 at [14]; *Beauchamp v Department of Education* [2006] VCAT 1653 at [42].

<sup>49</sup> [2008] VSCA 218 at [76].

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid* at [79].

- (e) There is no information before me to suggest third parties would object to disclosure of their name or position title.
  - (f) There is no information before me to suggest disclosure would or would be reasonably likely to endanger the life or physical safety of any person.
  - (g) I consider disclosure would promote the public interest by providing transparency around who was involved in the government’s response to COVID-19 related matters.
91. I consider disclosure of the personal affairs information of third parties, who are not Victorian Public Sector employees, would not be unreasonable for the following reasons:
- (a) their personal affairs information will further the Applicant’s understanding of the content of the correspondence; and
  - (b) their personal affairs information was obtained for the purpose of providing legal advice to the Victorian Government and they would not expect their personal affairs information to be released to members of the public.
92. In relation to the direct contact details of all third parties, I accept such information is not routinely provided to members of the public and will not assist the Applicant in his understanding of this documents.
93. My decision on section 33(1) is set out in the Schedule of Documents at **Annexure 1**.

***Section 25 – Deletion of exempt or irrelevant information***

94. Section 25 requires an agency to grant access to an edited copy of a document where it is practicable to delete exempt or irrelevant information and the applicant agrees to receiving such a copy.
95. Determining what is ‘practicable’ requires consideration of the effort and editing involved in making the deletions ‘from a resources point of view’<sup>52</sup> and the effectiveness of the deletions. Where deletions would render a document meaningless, they are not ‘practicable’ and release of the document is not required under section 25.<sup>53</sup>
96. Many of the documents contain information that does not fall within the terms of the Applicant’s request. Such information is irrelevant for the purposes of my review and is to remain deleted in accordance with section 25.
97. The Applicant does not seek access to telephone numbers. In most instances, I am satisfied that telephone numbers are to remain exempt from release under section 33(1). However, where a telephone number does not relate to a specific individual, and is not personal affairs information, I consider it is irrelevant information and is to remain deleted in accordance with section 25.
98. I have considered the effect of deleting irrelevant and exempt information from the documents. For most of the documents, I consider it is practicable to do so as it would not require substantial time and effort, and the edited documents would retain meaning.

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<sup>52</sup> *Mickelborough v Victoria Police (General)* [2009] VCAT 2786 at [31]; *The Herald and Weekly Times Pty Limited v The Office of the Premier (General)* [2012] VCAT 967 at [82].

<sup>53</sup> *Honeywood v Department of Human Services* [2006] VCAT 2048 at [26]; *RFJ v Victoria Police FOI Division (Review and Regulation)* [2013] VCAT 1267 at [140] and [155].



99. Where I am satisfied a document is exempt from release in full and editing the document will render it meaningless, access is refused in full.

100. My decision on section 25 is set out in the Schedule of Documents in **Annexure 1**.

### **Conclusion**

101. On the information before me, I am satisfied information in the documents is exempt from release under sections 32(1), 33(1), 28(1)(ba) and 28(1)(c). However, I am not satisfied certain information is exempt from release under sections 29(1)(a), 30(1) or 32(1). Accordingly, I have decided to release further information where I am satisfied it is not exempt from release.

102. Where it is practicable to provide the Applicant with an edited copy of the documents with irrelevant and exempt information deleted in accordance with section 25, access to a document is granted in part. Where it is not practicable to do so, access is refused in full.

103. The Schedule of Documents in **Annexure 1** sets out my decision in relation to each document. The Agency has also been provided with a marked-up copy of certain documents indicating exempt and irrelevant information in accordance with my decision.

### **Review rights**

104. If either party to this review is not satisfied with my decision, they are entitled to apply to VCAT for it to be reviewed.<sup>54</sup>

105. The Applicant may apply to VCAT for a review up to 60 days from the date they are given this Notice of Decision.<sup>55</sup>

106. The Agency may apply to VCAT for a review up to 14 days from the date it is given this Notice of Decision.<sup>56</sup>

107. Information about how to apply to VCAT is available online at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Alternatively, VCAT may be contacted by email at [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au) or by telephone on 1300 018 228.

108. The Agency is required to notify the Information Commissioner in writing as soon as practicable if either party applies to VCAT for a review of my decision.<sup>57</sup>

### **Third party review rights**

109. As I have determined to release documents that contain information to which the Agency refused access under section 33(1), if practicable, I am required to notify those individuals of their right to seek review by VCAT of my decision within 60 days from the date they are given notice.<sup>58</sup>

110. In this case, I am satisfied it is practicable to notify the relevant third parties of their review rights and confirm they will be notified of my decision.

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<sup>54</sup> The Applicant in section 50(1)(b) and the Agency in section 50(3D).

<sup>55</sup> Section 52(5).

<sup>56</sup> Section 52(9).

<sup>57</sup> Sections 50(3F) and 50(3FA).

<sup>58</sup> Sections 49P(5), 50(3) and 52(3).

***When this decision takes effect***

111. My decision does not take effect until the third parties' 60 day review period expires.

112. If a review application is made to VCAT, my decision will be subject to any VCAT determination.

## Annexure 1 – Schedule of Documents

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
1.		Attachment to email 2 – Legal advice	7	Released in part Section 32(1)	Release in part Sections 32(1), 25  The document is to be released in accordance with the marked-up version provided to the Agency with this decision.	<p><b>Section 32(1):</b> This document is attached to Document 2. I am satisfied Document 2 is exempt from release under section 32(1) and legal privilege extends to this attachment. However, I am satisfied certain information is not exempt from release on grounds legal privilege was waived.</p> <p><b>Section 25:</b> I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt information deleted in accordance with section 25.</p>
2.	[date]	Email thread	1	Refused in full Sections 32(1), 33(1)	Refuse in full Section 32(1)	<p><b>Section 32(1):</b> I am satisfied the document contains confidential communications to and from the Agency's inhouse lawyers for the dominant purpose of providing legal advice. Accordingly, I am satisfied this document is exempt from release under section 32(1).</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<b>Section 25:</b> I am satisfied it is not practicable to provide the Applicant with an edited copy of the document with exempt information deleted in accordance with section 25.
3.	[date]	Email thread	3	<b>Refused in full</b> Sections 32(1), 33(1)	<b>Release in part</b> Sections 32(1), 33(1), 25 This document is to be released in accordance with the marked-up version provided to the Agency with this decision.	<b>Section 32(1):</b> I am satisfied legal privilege was waived in relation to certain information in this document. However, I am satisfied the document also contains legal advice over which privilege has not been waived and is exempt from release under section 32(1). <b>Section 33(1):</b> I am satisfied disclosure of the direct contact details of third parties would be unreasonable for the reasons provided in the Notice of Decision above. I am also satisfied it would be unreasonable to disclose the personal affairs information of third parties who are not a Victorian Public Sector employees. <b>Section 25:</b> See comments for

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						Document 1.
4.	[date]	AHPPC document	1	Refused in full Section 29(1)(a)	Release in full	<p><b>Section 29(1)(a):</b> I am not satisfied this document is exempt from release under section 29(1)(a) for the reasons provided in the Notice of Decision.</p> <p><b>Section 32(1):</b> For completeness, I have considered the application of section 32(1). During the review, OVIC made enquiries with the Agency to determine the origins of this document, particularly whether it had been prepared by the Office of the General Counsel (OGC). The Agency advised it was unlikely to have been prepared by the OGC. The Agency also consulted with two external agencies and was unable to confirm the author of the document. It submits the document appears to have been extracted from an AHPPC outcomes document. Accordingly, I am not satisfied</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						the document is legally privileged.
5.	[date]	Email thread	2	<b>Refused in full</b> Sections 29(1)(a), 30(1), 32(1), 33(1)	<b>Refuse in full</b> Section 32(1)	<b>Section 32(1):</b> I am satisfied the document contains legal advice over which privilege was not waived. Accordingly, it is exempt from release in full under section 32(1).  <b>Sections 29(1)(a), 30(1) and 33(1):</b> Given my decision in relation to section 32(1), it is not necessary to consider the application of sections 29(1)(a), 30(1) or 33(1).  <b>Section 25:</b> See comments for Document 2.
5.1	[date]	Attachment to Document 5 – Draft [document description]	6	<b>Refused in full</b> Section 29(1)(a)	<b>Refuse in full</b> Section 32(1)	<b>Section 29(1)(a):</b> See comments for Document 4.  <b>Section 32(1):</b> This document is attached to Document 5. I am satisfied Document 5 is exempt from release under section 32(1). Accordingly, I am satisfied this document is exempt from release under section 32(1).

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<b>Section 25:</b> See comments for Document 2.
6.	[date]	Email thread	1	<b>Refused in full</b> Sections 29(1)(a), 33(1)	<b>Refuse in full</b> Section 32(1)	<p><b>Section 29(1)(a):</b> See comments for Document 4.</p> <p><b>Section 32(1):</b> While the Agency did not refuse access to this document under section 32(1), I am satisfied it contains confidential communications to and from the Agency's inhouse lawyers for the dominant purpose of reviewing the attached document. I am satisfied the document is subject to legal privilege, and is exempt from release under section 32(1).</p> <p><b>Section 33(1):</b> Given my decision in relation to section 32(1), it is not necessary to consider the application of section 33(1).</p> <p><b>Section 25:</b> See comments for Document 2.</p>
6.1	[date]	Attachment to Document 6 – National Cabinet	6	<b>Refused in full</b> Section 29(1)(a),	<b>Release in part</b> Section 32(1), 25	<b>Sections 29(1)(a):</b> See comments for Document 4.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
		Briefing Template		30(1), 32(1)	This document is to be released in accordance with the marked-up version provided to the Agency with this decision.	<p><b>Section 30(1):</b> I am not satisfied information in the document is exempt from release under section 30(1) for the reasons provided in the Notice of Decision above.</p> <p><b>Section 32(1):</b> The Agency did not refuse access in full to this document under section 32(1). However, having made enquiries with the Agency during the review, I am satisfied the OGC conducted a legal review of this document, and, as such, it is legally privileged and is exempt from release under section 32(1).</p> <p>However, I am satisfied certain information is not exempt from release on grounds privilege was waived.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
7.	[date]	Email thread	1	Refused in full Section 29(1)(a), 33(1)	Refuse in full Section 32(1)	<p><b>Section 29(1)(a):</b> See comments for Document 4.</p> <p><b>Section 32(1):</b> See comments for Document 6.</p>



Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p><b>Section 33(1):</b> See comments for Document 6.</p> <p><b>Section 25:</b> See comments for Document 2.</p>
7.1	[date]	Attachment to Document 7 – National Cabinet Briefing Template	3	<p><b>Refused in full</b></p> <p>Sections 29(1)(a), 32(1)</p>	<p><b>Release in part</b></p> <p>Section 32(1), 25</p> <p>This document is to be released in accordance with the marked-up version provided to the Agency with this decision.</p>	<p><b>Sections 29(1)(a):</b> See comments for Document 4.</p> <p><b>Section 32(1):</b> See comments for Document 6.1.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
8.	[date]	Email thread	1	<p><b>Refused in full</b></p> <p>Sections 29(1)(a), 33(1)</p>	<p><b>Refuse in full</b></p> <p>Section 32(1)</p>	<p><b>Section 29(1)(a):</b> See comments for Document 4.</p> <p><b>Section 32(1):</b> See comments for Document 6.</p> <p><b>Section 33(1):</b> See comments for Document 6.</p> <p><b>Section 25:</b> See comments for Document 2.</p>
8.1	[date]	Attachment to Document 8 - National Cabinet Briefing Template	6	<p><b>Refused in full</b></p> <p>Section 29(1)(a), 30(1), 32(1)</p>	<p><b>Release in part</b></p> <p>Section 32(1), 25</p> <p>This document is to be</p>	<p><b>Sections 29(1)(a):</b> See comments for Document 4.</p> <p><b>Section 30(1):</b> See comments</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					released in accordance with the marked-up version provided to the Agency with this decision.	for Document 6.1. <b>Section 32(1):</b> See comments for Document 6.1. <b>Section 25:</b> See comments for Document 1.
9.	[date]	Email thread	4	<b>Refused in full</b> Section 28(1)(ba), 29(1)(a), 33(1)	<b>Release in part</b> Sections 28(1)(c), 33(1), 25  The document is to be released in accordance with the marked-up version provided to the Agency with this decision.	<b>Section 28(1)(ba):</b> I am not satisfied the document is exempt from release under section 28(1)(ba) for the reasons provided in the Notice of Decision. <b>Section 28(1)(c):</b> I am satisfied the document contains information that is exempt from release under section 28(1)(c) for the reasons provided in the Notice of Decision. <b>Section 29(1)(a):</b> See comments for Document 4. <b>Section 32(1):</b> For completeness, I have considered the application of section 32(1) to this document, as it contains correspondence to and from inhouse lawyers. In this

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						<p>instance, I am satisfied the communications to and from inhouse lawyers was not for the dominant purpose of obtaining or providing legal advice. Rather, it was to inform only. As such, this document is not exempt from release under section 32(1).</p> <p><b>Section 33(1):</b> I am satisfied certain personal affairs information in this document is exempt from release for the reasons provided in the Notice of Decision above.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
10.	[date]	Email thread	2	<b>Refused in full</b> Sections 29(1)(a), 32(1), 33(1)	<b>Release in part</b> Section 32(1), 33(1), 25 The document is to be released in accordance with the marked-up version provided to the Agency with this decision.	<p><b>Section 29(1)(a):</b> See comments for Document 4.</p> <p><b>Section 32(1):</b> See comments for Document 3.</p> <p><b>Section 33(1):</b> See comments for Document 9.</p> <p><b>Section 25:</b> See comments for Document 1.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
11.	[date]	Memorandum of legal advice	14	Refused in full Section 32(1)	Refuse in full Section 32(1)	<p><b>Section 32(1):</b> I am satisfied the document contains legal advice that covers many different issues that were not discussed at the press conference held on 28 June 2020 and privilege in the document has not been waived. Accordingly, I am satisfied the document is exempt from release under section 32(1).</p> <p><b>Section 25:</b> See comments for Document 2.</p>
12.	[date]	Internal note	6	Refused in full Section 32(1)	Refuse in full Section 32(1)	<p><b>Section 32(1):</b> See comments for Document 11.</p> <p><b>Section 25:</b> See comments for Document 2.</p>
13.	[date]	Cabinet Minute – National Cabinet	6	Refused in full Sections 29(1)(a), 25	<p>Release in part Section 25</p> <p>This document is to be released in accordance with the marked-up version provided to the Agency with this</p>	<p><b>Section 29(1)(a):</b> During the review, the Agency withdrew its position with respect to the application of section 29(1)(a) to paragraph 14, and no longer objects to its release. In any case, I am not satisfied the information is exempt from release under section 29(1)(a)</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					decision.	for the reasons provided in the Notice of Decision above.  <b>Section 25:</b> I am satisfied the title information and point 14 are relevant to the terms of the Applicant's request only. Accordingly, the remainder of the document is to remain deleted in accordance with section 25. I am satisfied it is practicable to provide the Applicant with an edited copy of the document, as the remaining information (paragraph 14) will retain meaning.
14.	[date]	Teleconference papers	1	<b>Refused in full</b> Section 29(1)(a), 33(1)	<b>Release in part</b>  Section 25  This document is to be released in accordance with the marked-up version provided to the Agency with this decision.	<b>Section 29(1)(a):</b> See comments for Document 4.  <b>Sections 33(1) and 25:</b> I am not satisfied the telephone number is personal affairs information.  However, I note the Applicant does not seek access to telephone numbers. Accordingly, the telephone number for the 'CCC' is to

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						remain deleted as it is irrelevant information.  I am satisfied it is practicable to provide the Applicant with an edited copy of this document with irrelevant information deleted in accordance with section 25.
	[date]	Attachment to Document 14 – Discussion paper	4	Refused in full Section 29(1)(a)	Release in full	Section 29(1)(a): See comments for Document 4.
	[date]	Attachment to Document 14 – National Coordination Mechanism for COVID-19 Agenda	1	Released in part Section 33(1)	Release in part Section 25 No further information is to be released.	Section 25: The Agency refused access to a dial-in number and participant code for the purpose of dialing into a teleconference under section 33(1). However, I consider this information is not personal affairs, is irrelevant information and is to remain deleted in accordance with section 25.
15.	[date]	Email thread	2	Refused in full Sections 29(1)(a), 30(1)	Release in part Sections 33(1), 25 The document is to be released in accordance	Section 29(1)(a): See comments for Document 4.  Section 30(1): I am not satisfied disclosure of certain

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
					with the marked-up version provided to the Agency with this decision.	<p>information in the document would be contrary to the public interest for the reasons provided in the Notice of Decision above.</p> <p><b>Section 32(1):</b> See comments for Document 9.</p> <p><b>Section 33(1):</b> See comments for Document 9.</p> <p><b>Section 25:</b> See comments for Document 1.</p>
16.	[date]	Email	2	<b>Refused in full</b> Sections 29(1)(a), 25	<p><b>Release in part</b> Section 25</p> <p>The document is to be released in accordance with the marked-up version provided to the Agency with this decision.</p>	<p><b>Section 29(1)(a):</b> See comments for Document 4.</p> <p><b>Section 25:</b> The Applicant does not seek access to telephone numbers. Accordingly, this is irrelevant information and is to remain deleted in accordance with section 25.</p> <p>The first heading and three dot points are also irrelevant information as they do not concern the terms of the Applicant's request, and are to remain deleted in accordance with section 25.</p>

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
						I am satisfied it is practicable to provide the Applicant with an edited copy of this document with irrelevant information deleted.
17.	[date]	National Coordination Mechanism for COVID-19 – Meeting record	4	Refused in full Sections 29(1)(a), 25	Release in part Section 25 This document is to be released in accordance with the marked-up version provided to the Agency with this decision.	Section 29(1)(a): See comments for Document 4. Section 25: I am satisfied item 2.1 concerns matters falling outside the terms of the Applicant's request and is therefore irrelevant information. I am satisfied it is practicable to provide the Applicant with an edited copy of this document with irrelevant information deleted.
18.	[date]	National Coordination Mechanism for COVID-19 – Key outcomes	1	Refused in full Sections 29(1)(a), 25	Release in part Section 25 This document is to be released in accordance with the marked-up version provided to the Agency with this decision.	Section 29(1)(a): See comments for Document 4. Section 25: I am satisfied item 2 falls outside of the terms of the Applicant's request and is therefore irrelevant information, and is to remain deleted in accordance with



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						section 25.
19.	[date]	[Document title]	12	<b>Refused in full</b> Sections 28(1)(ba), 29(1)(a), 25	<b>Refuse in full</b> Section 28(1)(ba), 25	<p><b>Section 28(1)(ba):</b> I am satisfied the document is exempt from release under section 28(1)(ba) for the reasons provided in the Notice of Decision above.</p> <p><b>Section 29(1)(a):</b> Given my decision on section 28(1)(ba), it is not necessary to consider the application of section 29(1)(a) to the same information.</p> <p><b>Section 25:</b> I am satisfied a significant amount of information in this document falls outside of the terms of the Applicant's request and it is not practicable to provide the Applicant with an edited copy of the document with exempt and irrelevant information deleted.</p>
20.	[date]	National Cabinet submission	7	<b>Refused in full</b> Section 29(1)(a)	<b>Release in full</b>	<b>Section 29(1)(a):</b> See comments for Document 4.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
21.	[date]	National Cabinet – Annotated Agenda ([Agency])	4	Refused in full Sections 29(1)(a), 25	Release in part Sections 32(1), 25  The document is to be released in accordance with the marked-up version provided to the Agency with this decision.	<p><b>Section 29(1)(a):</b> See comments for Document 4.</p> <p><b>Section 32(1):</b> During the review, the Agency sought to rely on section 32(1) in relation certain information. I am satisfied the document contains an excerpt of legal advice. However, legal privilege was waived over certain information and is not exempt from release under section 32(1).</p> <p><b>Section 25:</b> Only item 2d contains information that is relevant to the terms of the Applicant’s request. I am satisfied it is practicable to provide the Applicant with an edited copy of this document with exempt and irrelevant information deleted in accordance with section 25.</p>
22.	[date]	[Document title]	11	Refused in full Sections 28(1)(ba), 29(1)(a), 25	Refuse in full Section 28(1)(ba), 25	Sections 28(1)(a), 29(1)(a) and 25: See comments for Document 19.

Document No.	Date of Document	Document Description	No. of pages	Agency Decision	OVIC Decision	OVIC Comments
23.	[date]	National Cabinet Paper	9	Refused in full Sections 29(1)(a), 25	Release in part Section 25  The document is to be released in accordance with the marked-up version provided to the Agency with my decision.	<p><b>Section 29(1)(a):</b> The Agency withdrew its position with respect to the application of section 29(1)(a) to the following paragraphs of Document 23 and no longer objected to release:</p> <ul style="list-style-type: none"> <li>• 1.10;</li> <li>• 1.16(b);</li> <li>• 1.25; and</li> <li>• 1.26.</li> </ul> <p>In any case, I am not satisfied the document is exempt from release under section 29(1)(a) for the reasons provided in the Notice of Decision, above.</p> <p><b>Section 25:</b> I am satisfied a significant amount of information falls outside of the terms of the Applicant's request. I am satisfied it is practicable to provide the Applicant with an edited copy of the document with irrelevant information deleted in accordance with section 25.</p>

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24.	[date]	Cabinet Minute – National Cabinet	5	Refused in full Sections 29(1)(a), 25	Release in part Section 25 The document is to be released in accordance with the marked-up version provided to the Agency with this decision.	Section 29(1)(a): The Agency advised it no longer claims paragraph 6(f) of this document as exempt from release, following consultation with the Commonwealth government, and it considers the remainder of the document is irrelevant to the terms of the Applicant’s request.  In any case, I am not satisfied the document is exempt from release under section 29(1)(a) for the reasons provided in the Notice of Decision, above.  Section 25: See comments for Document 23.
25.	[date]	Cabinet Minute – National Cabinet	3	Released in part Section 25	Release in part Section 25 No further information is to be released.	Section 25: I am satisfied the Agency released all information that is relevant to the terms of the Applicant’s request and the remaining information falls outside of the scope of the request. Accordingly, no further information is to be released.

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26.	[date]	National Coordination Mechanism - Meeting record	3	Refused in full Sections 29(1)(a), 25	Release in part Section 25 The document is to be released in accordance with the marked-up version provided to the Agency with this decision.	Section 29(1)(a): See comments for Document 4. Section 25: See comments for Document 23.