

Premier and Cabinet Circular

PC 047 – DISCLOSURE OF CABINET DOCUMENTS TO INVESTIGATIVE AGENCIES



Effective from February 2019

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Summary

The confidentiality of Cabinet deliberations is a fundamental principle of our system of government. Except where there is a legal power to compel the production of information on Cabinet's deliberations, the only body that may determine whether to disclose such information is Cabinet itself. This circular sets out the policy Cabinet has adopted with respect to the disclosure of information regarding Cabinet deliberations to investigative agencies.

Interpretation

In this circular:

Cabinet document includes:

- A Cabinet submission, and
- Any other document prepared for use in Cabinet (including a Cabinet note or a briefing prepared specifically for a minister to use in discussing or taking a position on a matter in Cabinet, such as agency comments and the policy briefings prepared by Cabinet Office).

Cabinet submission means the final version of a Cabinet submission signed by the minister and lodged for Cabinet

DPC means the Department of the Premier and Cabinet

Investigative agency, except where specified otherwise, includes:

- The Auditor-General
- The Independent Commissioner Against Corruption
- The Ombudsman
- A Royal Commission
- The Commissioner for Public Sector Employment, to the extent that the Commissioner is acting pursuant to section 14(g) of the *Public Sector Act 2009*, and
- Other public sector agencies with investigative powers deemed to be an investigative agency by the Premier.

Access to Cabinet documents by investigative agencies

Except as provided for in this circular or where required by law, a Cabinet document must not be provided to an investigative agency.

Public sector agencies must keep all Cabinet documents confidential.

Access to Cabinet documents of the current government by the Auditor-General

Where the Auditor-General certifies that access to a Cabinet submission (including the attachments to a Cabinet submission) of the current government is required for the

proper exercise of the Auditor-General's statutory functions, the Auditor-General may request the submission in writing from the Chief Executive of DPC.

Upon receiving a request, the Chief Executive of DPC will provide access to the Cabinet submission, subject to the approval of the Premier.

Notwithstanding the provisions of this circular, the Auditor-General is not permitted access to the Cabinet Office or costing comments attached to a Cabinet submission.

Access to a Cabinet submission (including any attachments) is provided to the Auditor-General subject to the following conditions:

- The Auditor-General must ensure that the document is stored securely and is distributed only to members of the Auditor-General's staff who require access to the document in order to assist the Auditor-General in the exercise of the Auditor-General's statutory functions
- In publishing a public report, the Auditor-General may only make reference in the report to a decision of Cabinet where such a reference is necessary for the proper exercise of the Auditor-General's statutory functions, and
- A reference to a Cabinet decision in a public report must be made in such a way as to not disclose any other information regarding the deliberations of Cabinet, including quoting from the document.

This section also applies to Cabinet documents of a former government of the same political persuasion as the current government.

Access to Cabinet documents of the current government by other investigative agencies

Where an investigative agency other than the Auditor-General considers that it requires access to a Cabinet document of the current government, it may request access by written application to the Premier.

The Premier, on receiving a request, will determine whether or not to provide the investigative agency with access to a Cabinet document.

The Premier may impose conditions on the disclosure of a Cabinet document to an investigative agency, including a condition that the investigative agency not publicly disclose the document except insofar as necessary for the exercise of the investigative agency's statutory functions.

In making a determination above, the Premier:

- Must have regard to the principle of Cabinet confidentiality and only disclose a Cabinet document where there are exceptional circumstances such that the public interest in disclosing the document outweighs the public interest in maintain its confidentiality, and
- May consult within government as the Premier sees fit, including with Cabinet, the minister responsible for the Cabinet document, the Crown Solicitor, and the

Chief Executive of DPC, provided that such consultation does not breach any other provision of this circular.

This section also applies to Cabinet documents of a former government of the same political persuasion as the current government.

Access to Cabinet documents of a former government

Where an investigative agency considers that it requires access to a Cabinet document of a former government of a different political persuasion, it may request access by written application to the Chief Executive of DPC.

The Chief Executive of DPC, on receiving a request, will determine whether or not to provide the investigative agency with access to a Cabinet document.

The Chief Executive of DPC may impose conditions on the disclosure of a Cabinet document to an investigative agency, including a condition that the investigative agency not publicly disclose the document except insofar as necessary for the exercise of the investigative agency's statutory functions.

In making a determination above, the Chief Executive of DPC:

- Must have regard to the principle of Cabinet confidentiality and only disclose a Cabinet document where there are exceptional circumstances such that the public interest in disclosing the document outweighs the public interest in maintain its confidentiality
- Must consult with the Leader of the Opposition and take the Leader's views into account, and

May consult further within government as the Chief Executive of DPC sees fit, including with the Crown Solicitor, provided that such consultation does not breach any other provision of this circular and the Cabinet document is not disclosed to a minister or to a member of a minister's staff.

Privilege maintained

In providing an investigative agency with access to a Cabinet document, the government does not waive Cabinet confidentiality, legal professional privilege, or public interest immunity over any information contained in the document.

Administration of this circular

Where a question concerning the disclosure of a Cabinet document to an investigative agency is not covered within the terms of this circular, the most appropriate approach will be determined by:

- If the question relates to a Cabinet document of the current government or a government of the same political persuasion, the Premier

- If the question relates to a Cabinet document of a former government of a different political persuasion, the Chief Executive of DPC.

Document Control

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For more information

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