

The Cabinet process in Victoria

There exists in Victoria a formal and structured process which governs the preparation, lodgment, distribution and consideration of all material considered by Cabinet. The formal requirements of the Cabinet process are contained in the Cabinet Handbook which is available from the Cabinet Office. The Cabinet Office provides the various administrative and executive support service for Cabinet and ensures that departments and agencies comply with the formal requirements.

Essentially, these requirements are designed to enable Ministers to be apprised of all relevant information such as the financial or other implications of particular proposals in the context of overall budgetary or political priorities. Submissions are required to be presented in a familiar format so that Ministers can focus quickly on issues, options and recommendations. The ultimate objective of the system is to ensure the efficient consideration of submissions and effective decision making by government on major issues.

BRIEF BACKGROUND ON CABINET

The Westminster system followed by Commonwealth and State governments is characterised by separation of powers between the executive, the legislature and the judiciary.

By convention, Ministers are responsible to Parliament for the conduct of their departments and the agencies within their portfolios. This is accepted as a Minister's primary responsibility in terms of accountability for his/her actions. However, the forum in which the government of the day can establish and implement its overall priorities and strategies and weld together the efforts of Ministers and departments in pursuing those priorities is the Cabinet.

The Victorian Cabinet is made up of all Ministers and the parliamentary Secretary of the Cabinet. In general, Cabinet has no legal powers or status. Cabinet is an informal meeting of Ministers. Decisions have no force until they are put into effect by individual Ministers by administrative direction, by being endorsed by the Governor-in-Council or embodied in Acts of Parliament.

By virtue of the authority accorded to Cabinet, however, it is the vehicle through which the actions of the Executive are determined.

CABINET CONVENTIONS

There are a number of conventions affecting the operation of Cabinet government. These are as follows;

Collective responsibility

The convention of the *collective responsibility* of Ministers for government decisions is central to the Cabinet system of government. Decisions of Cabinet are reached collectively and are binding on Cabinet Ministers as decisions of government.

Administrative procedures have been developed by the Cain Government to support the convention of collective responsibility. All Ministers receive copies of all Cabinet documents, including submissions, agendas and decisions.

Confidentiality

Collective responsibility is supported by the *strict confidentiality* attaching to Cabinet documents and to discussions in the Cabinet room. Cabinet provides a forum in which Ministers, in working towards a collective decision, are able to discuss proposals and a variety of

options and views with complete freedom. The openness and frankness of discussions in the Cabinet are protected by the strict observance of their confidentiality. The *FoI Act* was intended to be consistent with this principle.

The confidential nature of Cabinet discussions is reinforced in Victoria, where the Parliamentary Secretary of the Cabinet acts as minute taker. Officials are not present at Cabinet meetings. This contrasts with the practice adopted in other jurisdictions, e.g. the Commonwealth, where officials act as note takers. In Victoria, the Parliamentary Secretary prepares a draft record of Cabinet decisions which is approved and signed by the Premier. However, the Cabinet Office does service Cabinet Committees and acts as the recorder of decisions taken by those Committees.

Ministerial responsibility

The final Cabinet convention concerns *Ministerial responsibility for proposals*. Cabinet considers policy and legislative proposals that are brought before it by a sponsoring Minister or Ministers. Ministers are responsible for the proposals they bring forward, even where detailed development or drafting may have been done on their behalf by officers.

FUNCTIONS OF THE CABINET OFFICE

The Cabinet Office acts as the central co-ordinating unit for the lodgment and distribution of Cabinet submissions. Its functions may be summarised as follows:

- to provide administrative support and research for Cabinet, Cabinet Committees, the Premier and the Parliamentary Secretary of Cabinet;
- receive, process and distribute Cabinet submissions;
- maintain, record and distribute Cabinet decisions;
- monitor and assist with co-ordination of the Government's legislation program;
- maintain a register of Cabinet decisions approved by the Premier for release under the *FoI* legislation;
- assist with Cabinet programming and agenda setting including the forward planning of major initiatives to ensure effective use of Cabinet time.

The office maintains contact with and provides advice to departments and agencies on the preparation of submissions for Cabinet. The Cabinet Office liaises on a day to day basis with the Parliamentary Secretary of the Cabinet. This process is particularly important in relation to the lodgment of Cabinet papers, the setting of the Cabinet agenda and the distribution of the Cabinet record. The Cabinet Office also liaises with the Parliamentary Secretary in relation to the legislation program.

The work of the Cabinet Office can be divided into three broadly overlapping functions:

- the agenda for each Cabinet meeting and related matters, including servicing Cabinet Committees;
 - the Government's legislative program and related matters;
 - special projects, e.g. maintaining the *FoI* register.
- Cabinet meets each week. The agenda for each meeting is drawn up during the previous week, and the tasks associated with the compilation of the agenda constitute a major function of the Cabinet Office.

Matters considered by Cabinet are normally brought forward by way of Cabinet submissions. The Cabinet Handbook sets out guidelines for the kinds of matters

which should come before Cabinet. These are:

- all major and/or politically sensitive or significant policy issues, including new policy items and variations to existing policies;
- matters which have a significant impact on the employment situation — both public and private sector;
- proposals which cross the boundaries of ministerial responsibilities but cannot be handled outside of Cabinet — there may be a need for joint submissions;
- proposals requiring legislation — both new Bills and amendments to existing Acts;
- action regarding reports of Parliamentary Committees, or Cabinet Committees, including Cabinet Task Forces;
- matters likely to have a considerable impact on relations with Commonwealth, local and other State governments, the labour movement, employer groups, significant lobby groups, etc. and on community relations;
- expenditure and revenue proposals (normally considered in the Budget context); and
- senior appointments.

CONCLUSION

The question of access to Cabinet documents under FoI has engendered a great deal of debate and has been the subject of significant litigation.

Earlier this year a reference was given to the Legal and Constitutional Committee (LCC) to review certain

aspects of the operation of the *Freedom of Information Act* including the provisions of s.28 dealing with Cabinet documents. The LCC produced a discussion paper for the purpose of promoting debate.

Issues which are vital to the consideration of the Cabinet documents exemption include:

- the extent to which Cabinet documents and Cabinet-related documents ought to be subject to the mandatory disclosure provisions of the Act; and
- the question of who should determine the disclosure of these documents.

That there should be a degree of privacy for the highest level of decision making in government is recognised both in case law and practice. Corporate privacy in the private sector is readily acknowledged. The concept of corporate privacy for Cabinet applies with similar if not greater force because of the implications for the effectiveness of Government decision-making if that privacy is not assured.

A strong, disciplined Cabinet process is essential for effective government decision-making and administration and the debate about FoI should, I consider, focus on the extent to which access to Cabinet documents would inhibit the effectiveness of that process.

MICHAEL CONSOLO

Michael Consolo is Assistant Director (Legislation) Cabinet Office.

VICTORIAN FOI DECISIONS

Administrative Appeals Tribunal

THOMAS and ROYAL WOMEN'S HOSPITAL AND DIRECTOR GENERAL OF COMMUNITY SERVICES (No. 1)

No. 880345

D cid d:10 August 1988 by Deputy President Galvin.

Preliminary ruling — whether applicant entitled to her birth records created in 1956 — operation of s.67 of FoI Act — whether records related to applicant's personal affairs.

The applicant, who was adopted, sought from the respondent access to her birth records which included the name and address of her natural mother as well as her mother's age, religion and other personal details. The hospital refused to accede to the request and on appeal sought a preliminary ruling from the Tribunal as to whether s.67(2) operated to preclude the applicant obtaining the records. Section 67 provides:

- (1) An applicant for access to records about himself, within the meaning of section 33, shall be entitled to receive access subject to this Act to any such records notwithstanding that the record came into existence at any time prior to the date of commencement of this section.
- (2) An applicant for access to a

document other than those referred to in sub-section (1) shall be entitled to receive access, subject to this Act, to any such document provided that it came into existence not more than five years prior to the date of commencement of this section.

In considering this section the Tribunal relied on the wording of s.33 in reaching the view that the phrase 'records about' the applicant in s.67 was intended to refer to information relating to the personal affairs of the applicant. The crucial issue was therefore whether the details contained in the birth records related to the personal affairs of the applicant.

The Tribunal has no difficulty in ruling that a person's name and address are matters of personal affairs: *Simons and Victorian Egg Marketing Board* (1985) 1 VAR 54 and *Solachi and Ombudsman* (1987) 1 VAR 466.

The Tribunal next examined the meaning of the phrase 'personal affairs'. In the absence of any authority as to the meaning of the words the Tribunal turned to the Oxford Dictionary definition. The word 'affair' was defined to include 'ordinary pursuits of life, business dealings, public matters' and in the context of

the FoI legislation the Tribunal considered the words meant general concerns, business matters and pursuits of life. When coupled with the word 'personal' the only narrowing that in its view was achieved was to identify the affairs in respect of or related to a particular person. It rejected an argument put forward by the respondent that the name and address of a person were his or her personal affairs to the exclusion of every other person. 'Personal' according to the Tribunal did not connote exclusiveness.

The Tribunal went on to conclude:

Whilst the name and address of a person are undeniably personal affairs of that person, in his or her capacity as a parent of another and in the context of that other's birth certificate, in my view, the parent's name is a personal affair of the child.

It is a personal affair of a person that his or her date of birth was a particular day and it is no less a personal affair of such person that his or her parents are identified as A and B. Indeed I find it difficult to imagine much that is more personal to anyone than the identity of his or her parents.

The name is but part of that identity. The address, age, date of birth and