

# Department of Treasury and Finance

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Doc reference 20/202160

Hon Meg Webb MLC  
Independent Member for Nelson  
Legislative Council

By email: [meg.webb@parliament.tas.gov.au](mailto:meg.webb@parliament.tas.gov.au)

Dear Ms Webb MLC

## Right to Information application - PESRAC Conflicts of Interest

I refer to your request for information under the *Right to Information Act 2009* (RTI Act) dated 11 August 2020, transferred to Treasury from the Department of Premier and Cabinet on 18 August 2020 seeking:

- *A template of the current pecuniary and/or conflict of interest declaration documentation used by the members of the Premier's Economic and Social Recovery Advisory Council (PESRAC).*
- *Copies of all pecuniary and/or conflict of interest declarations submitted by the members of PESRAC.*
- *Any records, including minutes, where any member of PESRAC has recused themselves from the Council's deliberations.*

As a delegated Right to Information Officer for the Department of Treasury and Finance, under section 21 of the RTI Act, I accepted your application and your request for a fee waiver in accordance with section 16(2)(b) of the RTI Act on 27 August 2020.

Following preliminary consideration of your request, I determined that the requirement for me to consult with third parties as per sections 36 and 37 of the RTI Act would apply. In accordance with section 15(5) of the RTI Act, where a decision to consult a third party about the release of information is made, a further 20 working days in addition to the initial 20 working days is allowed for a decision on an application for an assessed disclosure.

In addition, under the provisions of section 37(5) of the Act, if, after receiving a view from a third party, I determine to release information to you, I must provide the relevant third party with notice of that decision before I am able to release any information to you.

On 12 October 2020 I contacted your office via phone and subsequently via email to request an extension of time to 28 October 2020. I further emailed on 23 October 2020 advising you that due to the time taken to complete my assessment including appropriate third party consultation, and the requirement under sections 36(5)(a) and 37(5)(b) of the RTI Act to allow a further 10 working days to elapse prior to the provision of any information determined for release, I would not be in a position to provide you with my determination and any information for release until 2 November 2020.

I received your acceptance of my initial request for extension of time on 14 October 2020. My further email of 23 October 2020 was acknowledged by your Electoral Officer during a phone conversation on 29 October 2020.

### **Factual Background**

PESRAC was established as a recovery taskforce under section 24(c) of the *Emergency Management Act 2006* on 30 April 2020 to provide advice to the Government on strategies and initiatives to support the short to medium and the longer term recovery from the COVID-19 pandemic.

The role of PESRAC is to provide advice and recommendations on how to best mitigate the economic and social impacts of the pandemic. PESRAC will also identify opportunities for economic and social renewal. PESRAC does not make any decisions in relation to recovery mechanisms or initiatives, its task is purely advisory.

PESRAC membership is made up of the below individuals from across the business and community sectors to leverage the experience, knowledge and resourcefulness of these community leaders to advise the Premier on the opportunities for economic and social initiatives to build a stronger and more resilient Tasmanian community and to strengthen and renew the Tasmanian economy:

Don Challen AM (Chair)  
Professor Rufus Black  
Dale Elphinstone AO  
Tim Gardner  
Kym Goodes  
Samantha Hogg  
Leanne McLean  
Paul Ranson  
Brett Torossi

Biographies of each member detailing current and past career highlights, credentials, accomplishments and professional associations are publicly available on the PESRAC website [www.pesrac.tas.gov.au](http://www.pesrac.tas.gov.au).

PESRAC members were invited by the Premier to participate in the council as a community service in their personal capacity. Members are not remunerated for their service.

The PESRAC Secretariat was established within the organisational structure of Treasury to provide support to PESRAC and is made up of state service employees from Treasury, State Growth and DPAC.

Procedures for managing conflicts of interest were agreed by PESRAC members at their first meeting on 5 May 2020 and implemented with effect from that date. These procedures have been publicly provided to you through the parliamentary process in the form of a response to a question on notice LC20/35 in the Legislative Council on 24 June 2020. The response is publicly available on the Parliament of Tasmania website.

## **RTI Process undertaken**

I held a number of discussions with relevant Treasury officers to gain an understanding of the role and function of PESRAC including the approach agreed by members for dealing with conflicts of interest.

In addition to these discussions, I conducted extensive searches of Treasury's records for relevant information between the dates of 30 April 2020 (Premier's announcement of the establishment of PESRAC) and 11 August 2020 (date of your application). All relevant documents were identified and preliminarily assessed to determine whether they fell within the scope of your application.

I subsequently performed extensive searches of publicly available information relevant to PESRAC and its individual members.

The schedule of records in Table I (Attachment A) contains my assessment of each document, including any relevant exemption categories, any public interest tests that I have applied, and the release status of each record. Attachment B contains the relevant sections of the RTI Act cited below for your reference.

## **Third party consultation**

Subject to the Public Interest test, under section 36 of the RTI Act, information is exempt if the release would disclose personal information acquired by a public authority or Minister from a person other than the person making an application; and the disclosure of the information may be reasonably expected to be of concern to the third party.

Subject to the Public Interest test, under section 37 of the RTI Act, information is exempt if the release would disclose information related to business affairs acquired by a public authority or Minister from a person or organisation other than the person making an application; and the disclosure of the information would be likely to expose the third party to competitive disadvantage or may be reasonably expected to be of concern to the third party.

Third party responses received requested that certain information identified not be released for various reasons under sections 36, 37 and 39 of the RTI Act.

All third party responses have been duly considered during the assessment process and described where applicable within the reasons for decision detailed below.

## **Reasons for decision**

### Document I

This document is a blank template titled "Standing Notice of Interests, Premier's Economic and Social Recovery Council 2020" which was sent to each individual PESRAC member for completion and inclusion in a collated register of declarations of interest. It outlines the categories of information sought from members.

I have determined to release this document.

## Documents 2-5

These documents are the collated declarations from each PESRAC member using the template described in Document 1 above.

I have determined that some of this information is exempt pursuant to section 36(1) of the RTI Act as the release would involve the disclosure of personal information of a person other than the person making the application, and the disclosure of the information is reasonably expected to be of concern to the third party.

I have additionally determined that some of this information is exempt pursuant to section 37(1)(b) of the RTI Act as release would involve the disclosure of information related to business affairs of a person other than the person making the application, and the disclosure of the information is likely to expose the third party to competitive disadvantage.

Further, I have determined that some of this information is also exempt pursuant to section 39(1)(b) of the RTI Act as the information was communicated in confidence by a person to a public authority and the disclosure of the information would reasonably be likely to impair the ability of a public authority or Minister to obtain similar information in the future.

Third party consultation expressed views that the information in question was communicated in confidence with the expectation that the information would be held in confidence. Third party consultation also expressed that the release of some information would jeopardise an individual's ability to maintain confidentiality to current and potential clients, resulting in a competitive disadvantage from the potential loss of current and future clients.

In making my determination, I have considered the public interest test as required by section 33(1) of the RTI Act. All provisions of Schedule 1 of the RTI Act have been taken into consideration, in particular:

- *I(n) whether the disclosure would prejudice the ability to obtain similar information in the future;*

The agreed procedures put in place by PESRAC to manage conflicts clearly sets out the process in place for the identification and appropriate management of a potential, perceived or actual conflict of interest and meets contemporary management expectations. The removal of confidentiality from the voluntary provision of this information by members may cause members to be reluctant to provide such information in the future thereby undermining the governance arrangements put in place.

- *I(m) whether the disclosure would promote or harm the interests of an individual or group of individuals;*
- *I(s) whether the disclosure would harm the business or financial interest of a public authority or any other person or organisation;*
- *I(w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person; and*

As noted above, third party consultation has identified the concerns of the release of information relating to an individual's private business where an expectation of mutual confidentiality exists.

On balance, I consider it is contrary to the public interest to release some of the information as outlined above as the public interest is satisfied by the mechanisms in place to deal with potential, perceived or actual conflicts.

I have determined to partially release these documents with relevant exempt information redacted.

Documents 6-13

These documents are draft and/or finalised minutes of the meetings of PESRAC held within the timeframe specified above. They contain the standing agenda item 3 titled "Management of Conflicts". As this agenda item is the only part of the document which falls within the scope of your application I have extracted the relevant information as provided for in section 18(3)(b) of the RTI Act.

I have determined to release this information as extracted.

**Review**

Should you wish to lodge an application for an internal review of my decision, you may do so under section 43 of the RTI Act. An application for review must be made in writing within 20 working days of receipt of this letter. You will be taken to have received this letter via email on the date of this letter.

Should you have any queries or require any further information regarding this matter, please contact me on (03) 6166 4071 or email [rti@treasury.tas.gov.au](mailto:rti@treasury.tas.gov.au).

Yours sincerely



Kate Patmore  
Delegated RTI Officer

2 November 2020

**Attachment A****Table I - Schedule of Records**

<b>Doc #</b>	<b>Title</b>	<b>Release status</b>	<b>Relevant sections</b>
1.	Interests Template	Release	N/A
2.	Interests Register 19 May 2020	Partial Release	s.33(1), s.36(1), s.37(1)(b), s.39(1)(b). Schedule I(m), (n), (s), (w).
3.	Interests Register 8 June 2020	Partial Release	s.33(1), s.36(1), s.37(1)(b), s.39(1)(b). Schedule I(m), (n), (s), (w).
4.	Interests Register 19 July 2020	Partial Release	s.33(1), s.36(1), s.37(1)(b), s.39(1)(b). Schedule I(m), (n), (s), (w).
5.	Interests Register 4 August 2020	Partial Release	s.33(1), s.36(1), s.37(1)(b), s.39(1)(b). Schedule I(m), (n), (s), (w).
6.	Meeting 2 Minutes	Item 3 only in scope. Extract to be released	s.18(3)(b)
7.	Draft Minutes Meeting 3	Item 3 only in scope. Extract to be released	s.18(3)(b)
8.	Minutes Meeting 4	Item 3 only in scope. Extract to be released	s.18(3)(b)
9.	Minutes Meeting 5	Item 3 only in scope. Extract to be released	s.18(3)(b)
10.	Minutes Meeting 6	Item 3 only in scope. Extract to be released	s.18(3)(b)
11.	Draft Minutes Meeting 7	Item 3 only in scope. Extract to be released	s.18(3)(b)
12.	Minutes Meeting 8	Item 3 only in scope. Extract to be released	s.18(3)(b)
13.	Draft Minutes Meeting 9	Part of Item 3 only in scope. Extract to be released	s.18(3)(b)

## Attachment B

### Relevant Sections of the RTI Act

#### 18. Provision of information

- (3) If –
  - (a) information requested under this Act is included with other information; and
  - (b) the information requested can be extracted from that other information by the use of a computer or other equipment usually available to the public authority or Minister – the information is to be extracted accordingly.

#### 33. Public interest test

- (1) In this Division, information is exempt information if the principal officer of the public authority or Minister considers, after taking into account all relevant matters, that it is contrary to the public interest to disclose the information.

#### 36. Personal information of person

- (1) Information is exempt information if its disclosure under this Act would involve the disclosure of the personal information of a person other than the person making an application under [section 13](#) .

#### 37. Information relating to business affairs of third party

- (1) Information is exempt information if its disclosure under this Act would disclose information related to business affairs acquired by a public authority or Minister from a person or organisation other than the person making an application under [section 13](#) (the "third party") and –
  - (a) the information relates to trade secrets; or
  - (b) the disclosure of the information under this Act would be likely to expose the third party to competitive disadvantage.

#### 39. Information obtained in confidence

- (1) Information is exempt information if its disclosure under this Act would divulge information communicated in confidence by or on behalf of a person or government to a public authority or Minister, and –
  - (a) the information would be exempt information if it were generated by a public authority or Minister; or
  - (b) the disclosure of the information would be reasonably likely to impair the ability of a public authority or Minister to obtain similar information in the future.
- (2) [Subsection \(1\)](#) does not include information that –
  - (a) was acquired by a public authority or a Minister from a business, commercial or financial undertaking; and
  - (b) relates to trade secrets or other matters of a business, commercial or financial nature; and
  - (c) was provided to a public authority or Minister pursuant to a requirement of any law.

**SCHEDULE I - Matters Relevant to Assessment of Public Interest**

- I. The following matters are the matters to be considered when assessing if disclosure of particular information would be contrary to the public interest:
- (a) the general public need for government information to be accessible;
  - (b) whether the disclosure would contribute to or hinder debate on a matter of public interest;
  - (c) whether the disclosure would inform a person about the reasons for a decision;
  - (d) whether the disclosure would provide the contextual information to aid in the understanding of government decisions;
  - (e) whether the disclosure would inform the public about the rules and practices of government in dealing with the public;
  - (f) whether the disclosure would enhance scrutiny of government decision-making processes and thereby improve accountability and participation;
  - (g) whether the disclosure would enhance scrutiny of government administrative processes;
  - (h) whether the disclosure would promote or hinder equity and fair treatment of persons or corporations in their dealings with government;
  - (i) whether the disclosure would promote or harm public health or safety or both public health and safety;
  - (j) whether the disclosure would promote or harm the administration of justice, including affording procedural fairness and the enforcement of the law;
  - (k) whether the disclosure would promote or harm the economic development of the State;
  - (l) whether the disclosure would promote or harm the environment and or ecology of the State;
  - (m) whether the disclosure would promote or harm the interests of an individual or group of individuals;
  - (n) whether the disclosure would prejudice the ability to obtain similar information in the future;
  - (o) whether the disclosure would prejudice the objects of, or effectiveness of a method or procedure of, tests, examinations, assessments or audits conducted by or for a public authority;
  - (p) whether the disclosure would have a substantial adverse effect on the management or performance assessment by a public authority of the public authority's staff;
  - (q) whether the disclosure would have a substantial adverse effect on the industrial relations of a public authority;
  - (r) whether the disclosure would be contrary to the security or good order of a prison or detention facility;
  - (s) whether the disclosure would harm the business or financial interests of a public authority or any other person or organisation;
  - (t) whether the applicant is resident in Australia;
  - (u) whether the information is wrong or inaccurate;
  - (v) whether the information is extraneous or additional information provided by an external party that was not required to be provided;
  - (w) whether the information is information related to the business affairs of a person which if released would cause harm to the competitive position of that person;
  - (x) whether the information is information related to the business affairs of a person which is generally available to the competitors of that person;
  - (y) whether the information is information related to the business affairs of a person, other than a public authority, which if it were information of a public authority would be exempt information.