

Department of Treasury and Finance

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Doc reference 21/216739

Hon Meg Webb MLC
Independent Member for Nelson
Legislative Council

By email: meg.webb@parliament.tas.gov.au

Dear Ms Webb MLC

Right to Information application - drafting instructions for the Gaming Control Amendment (Future Gaming Market) Bill 2021

I refer to your request for information under the *Right to Information Act 2009* (RTI Act) dated 19 August 2021, received by the Department of Treasury and Finance (Treasury) on 20 August 2021 seeking:

- *A copy of the formal drafting instructions to the Office of Parliamentary Counsel authorising the commencement of the drafting of the Gaming Control Amendment (Future Gaming Market) Bill 2021, and any other related correspondence and documentation.*

On 25 August 2021, I wrote to you to advise that your application had been accepted and noted that a similar request for information dated 19 August 2021 was received from you by the Department of Premier and Cabinet (DPAC) on 20 August 2021. The application was subsequently transferred to Treasury from DPAC under section 14(1)(a) of the RTI Act, as the subject matter of the information requested was more closely connected with the functions of Treasury.

On 31 August 2021, a list of potential relevant documents identified within DPAC's records management system was received as required under section 14(1)(b) of the RTI Act.

RTI process undertaken

I am a delegated RTI Officer for Treasury. I have undertaken an extensive search of Treasury's records and I have identified nine records that contain information relevant to your request.

These are listed in the enclosed schedule of records (Attachment A).

Through comparing the documents identified as in scope held by Treasury, and viewing in person the documents identified as potential relevant documents held within DPAC's records management system, I determined that the in scope relevant documents held by both agencies were identical and are described in Attachment A as documents 5, 6 and 9.

The schedule contains my assessment of each record, including any relevant exemption categories that I have applied, and the release status of each record.

Reasons for Decision

Documents 1-9

These documents consist of drafting instructions, emails and formal correspondence brought into existence for the purpose of instructing the Office of Parliamentary Counsel to commence drafting the Draft Gaming Control Amendment (Future Gaming Market) Bill 2021.

The Office of the Parliamentary Counsel treats draft legislation as prima facie privileged and confidential.

Legal professional privilege protects the confidentiality of certain documents and communications between a lawyer and client made with the dominant purpose of obtaining legal advice.

The relationship between the State and Parliamentary Counsel is a relationship of client and lawyer. In the *State of New South Wales v Betfair Pty Ltd [2009] FCAFC 160*, the court noted that the purpose of a government agency providing instructions to parliamentary counsel is to obtain effective and valid draft legislation that is in accordance with the instructions.

Accordingly, I consider that instructions to and advice from Parliamentary Counsel are confidential communications created for the dominant purpose of drafting legislation and are protected by the principles of legal professional privilege.

The RTI Act provides:

“31. Legal professional privilege

Information is exempt information if it is of such a nature that the information would be privileged from the production in legal proceedings on the ground of legal professional privilege”

I have determined that these documents are exempt as they are documents and communications created for the dominant purpose of providing instructions to Parliamentary Counsel to commence drafting and are therefore exempt on the grounds of legal professional privilege under section 31 of the RTI Act.

Public Interest Test

Exemptions made under Section 31 of the RTI Act are not subject to the public interest test.

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.

Yours sincerely



Kate Patmore
Delegated RTI Officer

17 September 2021

Attachment A

Doc#	Date	Title	Release status	Relevant sections
1	Undated	FGM Part 1 drafting instructions for OPC	Exempt	s. 31
2	Undated	FGM Part 2 drafting instructions for OPC	Exempt	s. 31
3	Undated	FGM Part 3 drafting Instructions for OPC	Exempt	s. 31
4	Undated	FGM Part 4 drafting instructions for OPC	Exempt	s. 31
5	11 Sep 2019	Email and attachment to OPC - Future Gaming Market - preliminary drafting instructions Attachment to email is Document 1	Exempt	s. 31
6	20 Sep 2019	Email and attachments to OPC - parts 2 and 3 of Future Gaming Market drafting instructions Attachments to email are Documents 2 and 3	Exempt	s. 31
7	12 Dec 2019	Letter to OPC to commence drafting - Gaming Control Amendment (Future Gaming market) Bill 2020 (unsigned)	Exempt	s. 31
8	12 Dec 2019	Future Gaming Market Combined Drafting Instructions for OPC Consolidation of Documents 1-4	Exempt	s. 31
9	13 Dec 2019	Email and attachments to OPC - Official Drafting Instructions - Future Gaming Market Attachments to email are Documents 7 (final, signed) and 8	Exempt	s. 31