

**From:** [Gartmann, Petra](#)  
**To:** s22  
**Subject:** FW: Patrick v PM&C [SEC=OFFICIAL]  
**Date:** Wednesday, 1 December 2021 10:15:05 AM  
**Attachments:** [image001.png](#)

## OFFICIAL

**From:** Gartmann, Petra  
**Sent:** Friday, 6 August 2021 10:52 AM  
**To:** BOUWHUIS, Stephen s22; s 22  
 >  
**Cc:** s22  
 Reid, John  
 <John.Reid@pmc.gov.au>  
**Subject:** RE: Patrick v PM&C [SEC=OFFICIAL]

## OFFICIAL

Hi Stephen – we'll develop something more fulsome but as a holding position:

- The Government notes the decision of the Administrative Appeals Tribunal in *Patrick v Secretary Department of Prime Minister and Cabinet*, today Thursday 5 August.
- The National Cabinet has helped Australia meet the unprecedented global health and economic challenges of COVID-19 by providing leaders a forum to discuss the implications of the pandemic for our country, to consider advice from experts and officials and make decisions in the national interest.
- The Government maintains the view that deliberations of National Cabinet should remain confidential.
- The Government will carefully review the decision handed down this afternoon and consider its options.

**From:** BOUWHUIS, Stephen s22 >  
**Sent:** Friday, 6 August 2021 9:34 AM  
**To:** Gartmann, Petra <Petra.Gartmann@pmc.gov.au>; s 22 >  
**Cc:** s22  
**Subject:** Patrick v PM&C [SEC=OFFICIAL]

Hi there

Just looking to get hold of any TPs / briefing that you might do on Patrick v PM&C so we can run a consistent line.

Happy to discuss s22

Very best

## Stephen Bouwhuis

General Counsel

Legal Advice and Legislation | Corporate Group  
Australian Government Department of Health

T s22

Location: Sirius Building 5.S.110  
GPO Box 9848, Canberra ACT 2601, Australia

*The Department of Health acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to all Elders past and present.*

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s22

**From:** FOI  
**Sent:** Monday, 16 August 2021 6:18 PM  
**To:** ASEA\_FOI@asbestosafety.gov.au; foi@apvma.gov.au; FOI@ato.gov.au; foi@agriculture.gov.au; foi@ag.gov.au; foi@homeaffairs.gov.au; FOI@communications.gov.au; foi@comcare.gov.au; foi@defence.gov.au; foi@dfat.gov.au; foi@environment.gov.au; FOI@fwo.gov.au; freedomofinformation@servicesaustralia.gov.au; foi.legal.team@servicesaustralia.gov.au; FOI@infrastructure.gov.au; FOI; FOI@swa.gov.au; foi@dss.gov.au; FOI@wgea.gov.au; FOI@apsc.gov.au; admin@coallsl.com.au; FOI@abcc.gov.au; foi@fwc.gov.au; regorgs@roc.gov.au; foi@health.gov.au; foi@afp.gov.au; foi@acic.gov.au; foi@ndis.gov.au; FOI NIAA; foi@ipaustalia.gov.au; foi@dta.gov.au; FOI@ndiscommission.gov.au; foi@crimecommission.gov.au; foi@aifs.gov.au; FOI; Freedom of Information; foi@dese.gov.au; foi@finance.gov.au  
**Cc:** FOI  
**Subject:** National Cabinet documents and section 34 of the Freedom of Information Act 1982 [SEC=OFFICIAL]

## OFFICIAL

Dear FOI Colleagues,

On 5 August 2021 the Administrative Appeals Tribunal (AAT) determined that certain National Cabinet documents were not exempt from disclosure under section 34 of the *Freedom of Information Act 1982* (FOI Act) (*Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information) [2021]* AATA 2719). Specifically, the AAT held that National Cabinet was not a 'Committee' of Cabinet and therefore the section 34 Cabinet exemption did not apply. Further, the AAT decided that the disclosure of the National Cabinet Minutes in question would not damage the relationship between the Commonwealth and the States and Territories and could not be considered on a class claim basis (s 47B).

The Department of the Prime Minister and Cabinet (PM&C) is currently reviewing the AAT decision carefully and considering its options. Therefore, the position remains unchanged and we would be grateful if you continue to consult PM&C on any FOI requests for National Cabinet material.

Included below are some standard lines in the event you have to prepare them for your department.

### Standard Lines

- The Government notes the decision of the Administrative Appeals Tribunal in *Patrick v Secretary Department of Prime Minister and Cabinet* handed down Thursday 5 August.
- It is a longstanding practice that deliberations of the Cabinet and its committees should be able to be conducted confidentially so as to preserve the freedom of deliberations of this body.
  - o This is reflected in the *Freedom of Information Act 1982* which provides a cabinet exemption designed to protect the confidentiality of the Cabinet process.
- The Government maintains the view that deliberations of National Cabinet should remain confidential.
- The Government will carefully review the AAT decision and consider its options. It is not appropriate to comment further while the orders of the AAT are currently stayed, pending the expiry of the appeal period.
- All requests for information under the *Freedom of Information Act 1982* will continue to be considered on a case by case basis.
- Further questions should be directed to the FOI Coordinator at the Department of the Prime Minister and Cabinet at [foi@pmc.gov.au](mailto:foi@pmc.gov.au) or s22 .

Regards



**From:** [Gartmann, Petra](#)  
**To:** s22  
**Cc:** s22  
**Subject:** FW: Patrick lines [SEC=OFFICIAL:Sensitive]  
**Date:** Wednesday, 1 December 2021 10:14:16 AM

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OFFICIAL: Sensitive

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**From:** Gartmann, Petra  
**Sent:** Wednesday, 1 September 2021 12:21 PM  
**To:** BOUWHUIS, Stephen <s22>  
**Cc:** Reid, John <John.Reid@pmc.gov.au>; FOI <FOI@pmc.gov.au>  
**Subject:** Patrick lines [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi Stephen

The lines are still:

- The Government notes the decision of the Administrative Appeals Tribunal in *Patrick v Secretary Department of Prime Minister and Cabinet* handed down Thursday 5 August.
- It is a longstanding practice that deliberations of the Cabinet and its committees should be able to be conducted confidentially so as to preserve the freedom of deliberations of this body.
  - o This is reflected in the *Freedom of Information Act 1982* which provides a cabinet exemption designed to protect the confidentiality of the Cabinet process.
- The Government maintains the view that deliberations of National Cabinet should remain confidential.
- The Government will carefully review the AAT decision and consider its options. It is not appropriate to comment further while the orders of the AAT are currently stayed, pending the expiry of the appeal period.
- All requests for information under the *Freedom of Information Act 1982* will continue to be considered on a case by case basis.
- Further questions should be directed to the FOI Coordinator at the Department of the Prime Minister and Cabinet at [foi@pmc.gov.au](mailto:foi@pmc.gov.au) or s22.

There will be updated lines once the appeal period has expired (tomorrow)

**Petra Gartmann** | Assistant Secretary  
 Legal Policy Branch  
 Government Division | Department of the Prime Minister and Cabinet  
 p. s22

| w. [www.pmc.gov.au](http://www.pmc.gov.au)  
 One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



s22

**From:** FOI  
**Sent:** Thursday, 2 September 2021 2:55 PM  
**To:** FOI@ato.gov.au; foi@agriculture.gov.au; foi@ag.gov.au; foi@homeaffairs.gov.au; FOI@communications.gov.au; foi@comcare.gov.au; foi@defence.gov.au; foi@dfat.gov.au; foi@environment.gov.au; FOI@fwo.gov.au; freedomofinformation@servicesaustralia.gov.au; foi.legal.team@servicesaustralia.gov.au; FOI; FOI; 'FOI@swa.gov.au; 'foi@dss.gov.au; FOI@wgea.gov.au; FOI@wgea.gov.au; FOI@apsc.gov.au; admin@coallsl.com.au; FOI@abcc.gov.au; FOI@abcc.gov.au; foi@fwc.gov.au; regorgs@roc.gov.au; foi@health.gov.au; foi@afp.gov.au; foi@acic.gov.au; foi@ndis.gov.au; FOI NIAA; foi@ipaustalia.gov.au; foi@ipaustalia.gov.au; foi@dta.gov.au; FOI@ndiscommission.gov.au; FOI@ndiscommission.gov.au; foi@crimecommission.gov.au; foi@aifs.gov.au; 'FOI'; foi@dese.gov.au; foi@finance.gov.au  
**Cc:** FOI; Gartmann, Petra  
**Subject:** National Cabinet documents and section 34 of the Freedom of Information Act 1982 [SEC=OFFICIAL]

## OFFICIAL

Dear FOI Colleagues,

On 5 August 2021 the Administrative Appeals Tribunal (AAT) determined that certain National Cabinet documents were not exempt from disclosure under section 34 of the *Freedom of Information Act 1982* (FOI Act) (*Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information) [2021]* AATA 2719). Specifically, the AAT held that National Cabinet was not a 'Committee' of Cabinet and therefore the section 34 Cabinet exemption did not apply. Further, the AAT decided that the disclosure of the National Cabinet Minutes in question would not damage the relationship between the Commonwealth and the States and Territories and could not be considered on a class claim basis (s 47B).

The Department of the Prime Minister and Cabinet (PM&C) has decided not to seek an appeal. PM&C respects the decision of the AAT and will release to Senator Patrick the documents which were the subject of the AAT review.

s47C, s 47E(d)

Any media enquiries on this matter should be referred to PM&C in the first instance. If your Minister's Office requires talking points, see below:

### Talking points if required

- The Government notes the decision of the Administrative Appeals Tribunal in *Patrick v Secretary Department of Prime Minister and Cabinet* handed down on Thursday 5 August.
- The Government respects the decision as it applies to the documents which were the subject of the review.
- It is a longstanding practice that deliberations of the Cabinet and its committees should be able to be conducted confidentially so as to preserve the freedom of deliberations of this body.
- The Government maintains the view that deliberations of National Cabinet should remain confidential.
- All requests for information under the *Freedom of Information Act 1982* will continue to be considered on a case by case basis.
- Further questions should be directed to the FOI Coordinator at the Department of the Prime Minister and Cabinet at [foi@pmc.gov.au](mailto:foi@pmc.gov.au) or s22.

Regards  
FOI PM&C

**From:** s22  
**To:** FOI - Cabinet Division  
**Subject:** FW: Productivity Commission question on notice [SEC=OFFICIAL:Sensitive]  
**Date:** Wednesday, 15 September 2021 4:52:15 PM  
**Attachments:** [662. AQoN\\_PC\\_30082021.pdf](#)  
[418. AQoN\\_PC\\_24092020.pdf](#)  
[Senator Gallagher to PC 06092021.docx](#)  
[image001.jpg](#)  
[image002.png](#)  
[image003.jpg](#)

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For our records

s22

Making Flexibility Work - If you receive an email from me outside of normal business hours, I'm sending it at a time that suits me. Unless it's marked urgent, I'm not expecting you to read or reply until normal business hours.



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

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**From:** s22  
**Sent:** Wednesday, 15 September 2021 3:52 PM  
**To:** s22  
**Subject:** RE: Productivity Commission question on notice [SEC=OFFICIAL:Sensitive]  
 Hi s22

Please see our suggested input to your QoN below, cleared with the FAS Cabinet Division, PM&C. Question

With reference to the Productivity Commission's response to Question on Notice 662: The Commonwealth has now indicated it will not be appealing the Tribunal's decision.

Can the Commission please provide a copy of the presentation to National Cabinet that was requested at the 10 September 2020 hearing of the Senate Select Committee on COVID-19. PM&C input to response

The Government maintains the view that deliberations of National Cabinet should remain confidential. This includes information received by the National Cabinet, and is consistent with longstanding practice that deliberations of the Cabinet should be able to be conducted in secrecy so as to preserve the freedom of deliberations.

Many Thanks

s22

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**From:** s22 >  
**Sent:** Monday, 6 September 2021 2:43 PM  
**To:** s22 >  
**Subject:** Productivity Commission question on notice [SEC=OFFICIAL]

**OFFICIAL**



Hi s22

As discussed, here is the QON that the Productivity Commission received from the Senate Select Committee on Covid-19.

Thanks,

s22

Executive Officer to the Chair

**Productivity Commission**

Level 8, 2 Melbourne Quarter, 697 Collins St Docklands 3008 | Locked Bag 2 Collins Street East,  
Melbourne VIC 8003

p. 03 9653 2218 | f. 03 9653 2199 | [www.pc.gov.au](http://www.pc.gov.au)

*The Productivity Commission acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to their Cultures, Country and Elders past and present.*

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**From:** s 22

**Sent:** Monday, 27 September 2021 4:49 PM

**To:** s 22

**Cc:** DAVIS, Jackie <Jackie.Davis@health.gov.au>; MOORE, Miriam <Miriam.Moore@health.gov.au>; s 22

**Subject:** RE: Talking Points on National Cabinet confidentiality [SEC=OFFICIAL:Sensitive, ACCESS=Legal-Privilege]

OFFICIAL: Sensitive  
Legal privilege

Hi s 22

Thank you for your email and our discussion this afternoon.

As mentioned, and subject to any views that s 22 may have, I would recommend that any such questions be taken on notice in order to consult the Minister. Health should consult PM&C as part of this process.

Please note that PM&C does not have responsibility for policy matters associated with PII claims

– PM&C provides advice to departments in relation to Ministers making a PII claim and the grounds that the Senate may accept.

Happy to discuss with you further.

s 22

s 22

Parliamentary & Government Branch  
Department of the Prime Minister and Cabinet

s 22

Nggunawal Country, One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

s 22 | w. [www.pmc.gov.au](http://www.pmc.gov.au)



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

s 22

**From:** s 22  
**To:** [NOJA, Marcelle](#)  
**Cc:** [Pullen, David](#); s 22  
s 22 [WOOD, Emma](#); s 22 [STREET, Celia](#); [MOORE, Miriam](#);  
[BOUWHUIS, Stephen](#); s 22 [DAVIS, Jackie](#); [NORRIS, Sarah](#)  
**Subject:** RE: For Action | COVID-19 Committee - Hearings in September 2021 (40068) [SEC=OFFICIAL,  
ACCESS=Legal-Privilege]  
**Date:** Thursday, 7 October 2021 1:31:37 PM

s 22

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## OFFICIAL Legal privilege

Good afternoon Marcelle et al,

A/g FAS COVID Taskforce David Pullen has cleared the following PM&C comment, prepared in consultation with our National Cabinet, Legal Policy and COVID-19 Health Priorities teams. It has also been provided to relevant members of our Executive Board, including Secretary Gaetjens, for their visibility.

*PM&C would not support the release of any materials provided to or prepared for the National Cabinet without the agreement of the National Cabinet. The Government maintains the view that deliberations of National Cabinet should remain confidential. This is consistent with longstanding practice on Cabinet confidentiality. Disclosure of National Cabinet documents without the National Cabinet's agreement would, or might reasonably be expected to, damage relations between the Commonwealth and the States and Territories.*

Please feel free to reach out if you have any questions or would like to discuss further.

Many thanks,

s 22

[COVID-19 Economic Recovery Team](#)

COVID-19 Risk Analysis and Response Taskforce  
Department of the Prime Minister & Cabinet

s 22

s 22