



# Victoria Government Gazette

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## Freedom of Information Act 1982 Section 65AB

### STATEMENT OF REASONS FOR SEEKING LEAVE TO APPEAL

This statement sets out a brief statement of reasons for seeking leave to appeal and is provided in accordance with section 65AB(2) of the **Freedom of Information Act 1982** (Vic.) (the 'FOI Act').

On 10 July 2012, the Victorian Civil and Administrative Tribunal (the 'Tribunal') handed down reasons and made Orders in the matter of *The Herald and Weekly Times v The Office of the Premier* [2012] VCAT 967.

The Tribunal set aside the decision of the Office of the Premier (the Premier as responsible Minister) to refuse to grant access under section 13(b) of the FOI Act to the diary of Mr Michael Kapel, the former Chief of Staff to the Premier, for the period 1–28 February 2011.

Access to the diary had been refused under section 13(b) of the FOI Act on the basis that the diary was not an 'official document of a Minister' as defined in section 5(1) of the FOI Act.

Section 148(1)(a) of the **Victorian Civil and Administrative Tribunal Act 1998** (Vic.) (the 'VCAT Act') requires that an appeal on a question of law from the Tribunal's Orders in this matter be made to the Court of Appeal with the leave of that Court.

On 7 August 2012, I caused to be lodged with the Court of Appeal a summons seeking leave to appeal on two questions of law from the Orders of the Tribunal in this matter.

Leave to appeal the Orders of the Tribunal has been sought to clarify the proper construction and application of the term 'an official document of a Minister' defined in section 5(1) of the FOI Act and the proper scope of the right of access to documents provided for in the FOI Act.

The application for leave to appeal seeks the following questions of law to be determined:

1. Whether the term 'Official document of a Minister or Official document of the Minister' in sub-section 5(1) of the Act, which is relevantly defined to mean 'a document in the possession of a Minister, or in the possession of the Minister, as the case requires, that relates to the affairs of an agency', on its proper construction has, as a condition, the requirement that the document must be in the possession of the minister in his or her capacity as a minister and the character that it must relate to the affairs of an agency?
2. Whether, on its proper construction, an 'Official document of a Minister or Official document of the Minister' within sub-section 5(1) of the Act includes the private diary of the Premier's Chief of Staff, who does not work within or for an agency?

The public interest is therefore served by ensuring that the right of access to documents provided for in the FOI Act is accorded the scope intended by Parliament.

Dated 15 August 2012

TED BAILLIEU MLA  
Premier

**SPECIAL**

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