



# IMPORTANT UPDATE

Diary of the Premier's Chief of Staff is 'official document of a Minister'

**On 12 April 2013 the Court of Appeal handed down a decision which held that the electronic private diary of the Premier's Chief of Staff is an 'official document of a Minister' under the Victorian FOI Act.<sup>1</sup>**

The Court confirmed the right conferred by the FOI Act is about providing access to 'documents' and not merely 'information' held by agencies and Ministers. The diary of the Premier's Chief of Staff was to be treated as a single document.

In order for the diary to be considered an 'official document of a Minister', the Court determined there were two requirements that needed to be satisfied:

- (a) at the time the request was made, the Minister must have had actual or constructive possession of the diary in his or her capacity as a Minister; and
- (b) the diary must 'relate to the affairs of an agency'.

The fact the Premier could gain access to the diary at any time was sufficient to satisfy the first requirement.

The Court held the second requirement is satisfied where the document bears a direct or indirect relationship to:

- (a) the business and activities of an agency; or
- (b) the agency's area of governmental responsibility; or
- (c) arrangements between government departments or other agencies and external entities, including arrangements between agencies and Ministerial advisers from the Office of the Premier.

If you require any assistance or advice in relation to this decision please do not hesitate to contact us.

**Dated: 16 April 2013**

A handwritten signature in black ink that reads "Mick Batskos".

**Mick Batskos**

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<sup>1</sup> *Herald & Weekly Times Pty Ltd v The Office of the Premier* [2013] VSCA 79 (Tate, Whelan JJA and Kaye AJA).