Government of **Western Australia**
Department of **the Premier and Cabinet**
Office of the Director General

**TO: ALL DIRECTORS GENERAL AND CHIEF EXECUTIVE OFFICERS**

**PROVISION OF DOCUMENTS TO THE SPECIAL INQUIRY INTO GOVERNMENT PROGRAMS AND PROJECTS**

Dear Colleagues

Cabinet recently agreed to adopt an approach to the issue of public interest immunity on documents requested by the Special Inquiry into Government Projects and Programs.

Based on advice from the Solicitor General, Cabinet has indicated that the Government is willing to support the work of the Special Inquiry by making available documents provided they do not reveal the deliberations of Cabinet on particular matters. Particular detail on the application of Cabinet’s decision is contained in the attached letter from the State Solicitor’s Office.

If you have previously advised the Special Inquiry staff that you believe you are unable to provide material because of claims of public interest immunity you should now revisit that decision. If you are uncertain as to the status of documents a process has been established between the Special Inquiry and the State Solicitors’ Office and the Department of the Premier and Cabinet to assist in determining the status of those documents.

A copy of the protocol covering the process for providing documents where there is uncertainty over their status is also attached to this message. Contact details for the appropriate officers are contained in these documents.

It is noted that this arrangement applies only in relation to requests by the Special Inquiry into Government Programs and Projects. Other requests for documents that may possibly attract claims of public interest immunity including Cabinet confidentiality should be dealt with as per normal processes including those outlined in the Cabinet Handbook and involve, where appropriate, consultation with the Cabinet Services Branch of the Department of the Premier and Cabinet and the State Solicitor’s Office. In particular this decision does not affect the convention concerning consulting the previous government on documents which were the subject of previous government Cabinet deliberations. These processes remain in place and the Department of the Premier and Cabinet will coordinate those communications with the Office of the Leader of the Opposition.
Your assistance in supporting the Government's commitment to the important work of the Special Inquiry is greatly appreciated.

Yours sincerely,

Darron Foster
DIRECTOR GENERAL

2 AUG 2017
PROVISION OF DOCUMENTS TO THE SPECIAL INQUIRY INTO GOVERNMENT PROGRAMS AND PROJECTS – COMMUNICATION PROTOCOL

1. This Protocol governs the approach to be taken by agencies to documents which may be the subject of a claim for public interest immunity on the basis that the documents disclose deliberations of Cabinet.

2. Where an agency receives a request from the Special Inquiry for access to documents, the agency shall compile the relevant documents and determine, in the first instance, whether any document should be withheld from production on the basis of a claim for public interest immunity. Agencies shall apply the approach articulated by Cabinet to the determination of such a claim.

3. Where an agency considers, applying this approach, that no claim for public interest immunity arises, the agency shall provide the relevant documents to the Special Inquiry.

4. Where an agency considers that there is a question or some uncertainty as to whether the documents may be the subject of a claim for public interest immunity, the agency may refer the documents to the SSO for advice, and shall advise the Special Inquiry that the documents will not be disclosed pending receipt of legal advice from SSO.

5. On receipt of a request for such advice, the SSO shall:
   
   (a) provide advice to the agency in clear cases, and the agency shall inform the Special Inquiry and either disclose the document or advise of non-disclosure by reason of public interest immunity; or

   (b) where the matter appears likely to be contentious, or subject to a dispute or conflict of interest, refer the matter to the Solicitor General for advice.

6. In all cases, the SSO shall notify the Special Inquiry when it has provided advice to the relevant agency.

7. Where a contentious matter is referred to the Solicitor General, the SSO shall specify the context in which the documents were created, the details of the relevant holding agency and Minister, and provide a recommendation as to release or otherwise.

8. The Solicitor General shall provide advice to the SSO, the Director General and the relevant agency. Where the Solicitor General’s advice is that public interest immunity should be relied upon, the agency shall inform the Special Inquiry.

9. In all cases where it is determined that access will not be provided under any circumstances, the agency shall notify the Special Inquiry, specifying the basis upon which production is resisted.

10. In all cases where access is to be provided to a redacted copy of the document, the agency shall notify the Special Inquiry, specifying the basis upon which the document has been redacted.
11. In all cases where it is recommended by the Solicitor General that some level of access is to be provided, the Director General or the agency, shall indicate to the Special Inquiry whether:

(a) access is to be unimpeded;

(b) copying is to be restricted;

(c) notes can be taken by the Inquirer and/or his staff; and/or

(d) there are any sensitivities which should limit publication of the contents of the documents in the Inquiry's report,

in accordance with the Solicitor General's recommendation.

12. Where necessary, the Director General or the agency, as appropriate, shall provide the Special Inquiry with contact details for an officer to arrange to have access to the documents.