



**SENATE FINANCE AND PUBLIC ADMINISTRATION COMMITTEE INQUIRY INTO THE COAG
LEGISLATION AMENDMENT BILL 2021**

24 SEPTEMBER 2021

Australia's Right to Know coalition of media organisations (ARTK) thanks the Senate Finance and Public Administration Committee for accepting this short submission to the inquiry into the *COAG Legislation Amendment Bill 2021* (the Bill).

Schedule 2 of the Bill amends references to COAG in Commonwealth legislation with the new-intergovernmental body with the term 'First Ministers Council'. This would currently include the National Cabinet but does not limit the entities that could or would fulfil the definition of First Ministers Council now or in the future. Schedule 2 also amends the definition of 'Ministerial Council' regarding an intergovernmental ministerial group. In and of themselves these amendments do not appear to be controversial and we make no comment on these amendments.

The National Cabinet, when established in 2020, was established as a committee of the Federal Cabinet. As such the National Cabinet can establish committees as required. Ministerial Councils are one type of those committees. The Explanatory Memorandum states that '*Consistent with the [Federal] Cabinet and its committees, all proceedings and documentation of the National Cabinet and its committees are confidential*'.

We have significant concerns with Schedule 3 of the Bill which establishes confidentiality of all proceedings and documentation of all committees and committees of committees of the Federal Cabinet. Stretching the shroud of secrecy in this way, with little justification, is detrimental to the healthy functioning of our Federation and Australia's democracy. ARTK does not support the amendments, particularly but not only to the *Freedom of Information Act 1982* (FOI Act) and the *Public Disclosure Act 2013* (PID Act), and recommends they be removed from the Bill.

Specifically, the Bill amends the *Freedom of Information Act 1982* to extend the application of the existing exemption for Federal Cabinet documents (at section 34 of the FOI Act) to all committees of Federal Cabinet including National Cabinet and committees of National Cabinet. This would include Ministerial Councils such as the Ministerial Council of Attorneys-General (to name but one).

Further, the amendment to the FOI Act applies beyond the deliberations of the meetings themselves, including of Federal Cabinet. The amendment to section 34 would see the exemption from the FOI Act apply to the following in relation to documents:

(a) *both of the following are satisfied:*

- (i) *it has been submitted to the Cabinet for its consideration, or is or was proposed by a Minister to be so submitted;*
- (ii) *it was brought into existence for the dominant purpose of submission for consideration by the Cabinet; or*

(b) *it is an official record of the Cabinet; or*

(c) *it was brought into existence for the dominant purpose of briefing the Minister on a document to which paragraph (a) applies; or*

(d) *it is a draft of a document to which paragraph (a), (b) or (c) applies.*

An exemption from the FOI Act for such a broad range of documents across is contrary to the Act itself and the important tenants of transparency and accountability in a democracy.

The Bill further exacerbates these issues by amending the *Public Interest Disclosure Act 2013* to limit the ability of public officials to make public interest disclosures of information which is 'national cabinet information' by extending that information to include [Federal] Cabinet, or a committee of the Cabinet such as National Cabinet, or a committee of a committee of Cabinet.

The combination of amendments to the FOI Act in conjunction with amendments to the PID Act effectively shut down the public's right to know about a significantly expanded range of matters that affect all Australians.

Other amendments in the Bill will impact statutory reporting of some matters to Parliament and therefore the people of our Federation, including, for example, amendments to the *Independent National Security Legislation Monitor Act 2010*.

As ARTK has expressed on previous occasions to other Committees of the Parliament, the state of a number of Commonwealth laws are in dire need of reform to improve transparency and reduce secrecy and better serve Australians. These include the FOI Act and the PID Act.

The amendments included in Schedule 3 the Bill, particularly amendments to the FOI and PID Acts, unjustifiably makes secret more decisions made by elected officials that affect the day-to-day lives of all Australians.