



Australian Government

Department of the Prime Minister and Cabinet

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Senate Finance and Public Administration Legislation Committee Inquiry into the COAG Legislation Amendment Bill 2023

Submission



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Overview of the COAG Legislation Amendment Bill 2023

The COAG Legislation Amendment Bill 2023 (the Bill) would make minor and technical amendments to various Commonwealth Acts to update references to “COAG” (Council of Australian Governments) and “Ministerial Councils” to reflect the cessation of COAG on 29 May 2020 and the establishment of a new Commonwealth-state architecture.

On 23 October 2020, National Cabinet accepted recommendations from *The Review of COAG Councils and Ministerial Forums* report (2020), conducted by Mr Peter Conran AM, including a recommendation that the Commonwealth should introduce legislation into Parliament to amend outdated references to these bodies (Recommendation 30). This Bill is a response to the Conran review recommendation.

The proposed amendments set out in this Bill will play a role in improving administrative consistency in the public sector, updating outdated references in legislation to align with revised federal relations architecture, and providing greater flexibility in nomenclature in the event of future changes to this architecture.

The definitions this Bill proposes are intended to provide flexibility for future changes to the title of relevant intergovernmental bodies obviating the need for further legislative changes to update titles. The Bill would necessitate minor amendments to various Commonwealth Acts which will assist in addressing potential confusion in the interpretation of references to these intergovernmental bodies.

The Department of Prime Minister and Cabinet worked closely with the Office of Parliamentary Counsel to identify legislation impacted by the proposed amendments. The scope of amendments aims to balance the need for legislation to provide consistent and accurate references to the new federal-state relations architecture in the Commonwealth without delaying other legislative processes that are underway with Australian Government departments, where this nomenclature may also need to be changed.

The COAG Legislation Amendment Bill 2021 (the 2021 Bill) was first introduced in Parliament in September 2021 and lapsed at the dissolution of Parliament in April 2022. The current Bill does not substantively differ from the 2021 Bill, as it continues to propose technical amendments to update outdated terminology, in line with Schedules 1 and 2 of the 2021 Bill. Schedule 3 of the 2021 Bill, relating to provisions to protect from disclosure the deliberations and decisions of National Cabinet, has been excluded. This reflects changed status of National Cabinet. As it is no longer considered a committee of the federal Cabinet, Cabinet confidentiality provisions do not apply.

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Amendments to Commonwealth Legislation

The Bill proposes amendments to ten Acts where they make reference to the “COAG Reform Fund”, with this Bill proposing to substitute these words with “Federation Reform Fund”. That term is in turn defined to mean the Federation Reform Fund established by section 5 of the Federation Reform Act 2008, as it would be renamed upon commencement of items 1 and 2 of Schedule 1 of this Bill. The title of the COAG Reform Fund requires amending to give effect to the cessation of COAG and the establishment of a new architecture for federal-state relations.

Amendments through this Bill would also be made to fifteen Acts where they make reference to “COAG”, with this Bill proposing to substitute this word with “First Ministers’ Council” where it occurs in legislation, defined flexibly to mean “a body (however described) that consists only of, or that includes, the Prime Minister, the Premiers of each State and the Chief Ministers of the Australian Capital Territory and Northern Territory” (Schedule 2).

Where these Acts include the term “Ministerial Council”, this Bill proposes to change the definition to mean a body (however described) that consists of the Minister of the Commonwealth, and the Minister of each State and Territory, who is responsible, or principally responsible, for matters relating to a particular portfolio issue.

Where the above Acts include references to specific names of Councils (for example, the “Standing Council on Health” in the National Health Reform Act 2011), this Bill proposes to substitute them with “Ministerial Council” term so that any future title changes to ministerial bodies can be implemented without amending legislation.

The Bill also does not propose amendments to relevant Commonwealth legislation that are attached to intergovernmental agreements, such as the *Gene Technology Act 2000* or the *National Blood Authority Act 2003*, as these changes may affect intergovernmental agreements.

Confidentiality of National Cabinet

National Cabinet no longer operates as a committee of the federal Cabinet. As a result, the provisions outlined in Schedule 3 of the 2021 Bill concerning disclosure protections for the deliberations and decisions of the Cabinet and its committees to also apply to National Cabinet are no longer relevant to this Bill. As such, Schedule 3 has been excluded in its entirety from the Bill.

Details of discussions at National Cabinet meetings are released publicly through a statement agreed by all jurisdictions. The release of this statement, in addition to the press conference held after National Cabinet meetings, is the official disclosure of the outcomes of the meeting and serves the public interest.

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Consultation and Stakeholders

Consistent with the usual legislation approval process, all relevant Australian Government departments whose portfolio legislation was impacted by the minor amendments proposed by the Bill have been consulted.

In 2021, the Department of the Prime Minister and Cabinet consulted all states and territories on the amendments contained in Schedules 1 and 2 of the 2021 Bill. The current Bill continues to be in line with Schedules 1 and 2 of the 2021 Bill. Jurisdictions were consulted on the terms and definitions of the 2021 Bill and provided with a draft copy in March 2021. Consultations occurred both through officials and First Deputies Group and First Secretaries Group.

On 28 April 2023, National Cabinet were advised that the Commonwealth was preparing legislative amendments to update references to the former COAG structure that exist in Commonwealth legislation. At this meeting states and territories were invited to consider undertaking a similar legislative update. The ACT Government had introduced a bill which also seeks to amend outdated references to COAG, former COAG ministerial Forums and councils and any associated bodies.

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