Accountability Round Table submission to the Inquiry into the COAG Legislation Amendment Bill 2021

Submission to the Inquiry into the COAG Legislation Amendment Bill 2021

The Accountability Round Table has significant concerns with respect to the COAG Legislation Amendment Bill 2021, the subject of this inquiry and the impact of these proposed amendments upon accountability and transparency.

Three particular issues will be addressed in this submission.

- There are serious constitutional and legal doubts as to the validity of equating National Cabinet with Federal Cabinet. Constitutionally and legally, National Cabinet cannot constitutionally and legally, properly be considered as committee of Federal Cabinet.

- In this context, considerable discussion has ensued as to whether and to what extent information as to the operation of National Cabinet should remain confidential. The Accountability Round Table does not believe that a cloak of secrecy should be thrown over National Cabinet's deliberations and decisions. Instead, matters with respect to the transparency and confidentiality of National Cabinet documents should be determined within the framework of a reformed Commonwealth *Freedom of Information Act*.

- Proposals as to the reform of freedom of information in particular and open government in general, should be considered within the context of Australia's commitments to the Open Government Partnership (**OGP**), an international arrangement to which the Australian government is a party and has made corresponding commitments.

Following the argument put in this submission, we recommend that the Bill be withdrawn If a change in name is considered important, we suggest that any new Bill provide for:

1. an intergovernmental entity *(title not specified in this submission)* comprised of the Prime Minister (Chair) and the First Ministers (i.e., Premier of each State and the Chief Minister of the Northern Territory and Australian Capital Territory), which would
   a. be established under existing Commonwealth powers (e.g., Principal Australian Government Body - Non-Corporate Commonwealth Entity, defined in section 11(b) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act) as "a Commonwealth entity that is not a body corporate")
   b. omit any provision purporting to create the intergovernmental entity as a committee of the Cabinet of the Commonwealth Government

c. have no reference to the Cabinet
d. except as provided for in a, b, and c above, have the functions and powers hitherto provided for in the COAG Reform Fund Act 2008 (to be amended by the Bill to the Federation Reform Fund Act); and

2. Right to Know provisions for pro-active disclosure of information including records and other documents held by or on behalf of the intergovernmental entity, with exemptions to information that could disclose views expressed within the intergovernmental entity or a related committee or where there is an overriding public interest against disclosure.

Constitutionality

The National Cabinet, so called, has been operating more or less successfully for 18 months. Its purpose has been to achieve coordination between the federal and state governments in tackling the COVID-19 pandemic. Since its inception, independent Senator Rex Patrick has tried to obtain records of the National Cabinet in order to obtain some understanding of how the highly significant entity works. He hit a brick wall.

Patrick lodged a freedom of information (FOI) request with the Department of Prime Minister and Cabinet for access to records concerning the terms of reference, functions and rules pursuant to which the National Cabinet operates. The department refused access to any such documents on the ground that they were federal Cabinet documents and, therefore, exempt under the FOI Act.

To justify this refusal, the department claimed that the National Cabinet was a committee of the federal Cabinet and that the documents of the National Cabinet, just like those of the federal Cabinet, were confidential. If upheld, this claim would have a thrown a cloak of secrecy over all of the National Cabinet's deliberations and decisions where National Cabinet is plainly not a Cabinet body.

After the first National Cabinet meeting, Prime Minister Scott Morrison said that the National Cabinet "has now been established formally under the Commonwealth government's cabinet guidelines. And it has the status of a meeting of Cabinet that would exist at a federal level…".

Morrison's attachment to secrecy in government is well known. One need think only of the government's categorical refusal to release documents with respect to the manner in which decisions were made in the "sport rorts" affair and the "car park" affair and of the failure of the government to disclose the report of the inquiry conducted by departmental secretary Phil Gaetjens in relation to Brittany Higgins' allegations of sexual misconduct in Parliament. No government has been identified that has done more than this one (2019-) to frustrate and undermine the operation of the FOI Act itself. It has shown no enthusiasm for honouring Australia's commitment to the OGP.

None of these examples, however, comes near Morrison's audacity in seeking to shield the National Cabinet completely from public scrutiny. For a host of constitutional and legal reasons, however, this attempt was destined to fail.

Cabinet is the crucible of government. Not formally recognised in the Constitution, it exists according to constitutional convention and sets the direction for the affairs of state. By convention, the deliberations of Cabinet have been secret. The rationale for secrecy derives from the constitutional convention that members of Cabinet must accept responsibility collectively for its decisions and actions.

The convention of collective ministerial responsibility is comprised of three rules. First, there is the confidence rule. This rule provides that a government that loses the confidence of parliament must resign. Secondly, there is the unanimity rule. This rule provides that if a Minister cannot agree publicly with the decisions or actions of Cabinet, he or she must resign. Thirdly, there is the confidentiality rule. This provides that the deliberations and decisions of the Cabinet must remain secret. Without such a rule, Cabinet unanimity would be impossible to uphold.

All three rules are a recognition of the principle that ministers share equal responsibility for Cabinet decisions. The convention secures the responsibility of Cabinet to the Parliament and, through the Parliament, to the electorate. It follows that if a governmental body is to be considered as a Cabinet all three rules as to its operation must be observed.

The first criterion for determining whether a governmental entity may properly be considered as a Cabinet, therefore, is whether it is governed according to the constitutional convention of collective ministerial responsibility. The National Cabinet is not.

National Cabinet's operations do not reflect the convention's rules. National Cabinet is an intergovernmental forum made up of the representatives of the jurisdictions, each with their own sovereign powers and, except for the Prime Minister, not responsible to the Commonwealth Parliament. Its ministers or members are not required to resign should they lose the confidence of the Commonwealth Parliament. They are not subject to the unanimity rule. Premiers and territory chief ministers develop their positions according to the politics and preferences of their own electorates and vote accordingly. National Cabinet has amply demonstrated that its members will often publicly disagree, without adverse repercussions.

In the absence of a requirement for unanimity, the strict requirement for Cabinet confidentiality is of lesser significance. National Cabinet may agree that some or all of its proceedings should be conducted in confidence, but such an agreement has no constitutional standing. It is a political and organisational choice.

A second criterion is whether a governmental body purporting to be a Cabinet is comprised of a membership that is recognised as proper for a Cabinet. The National Cabinet is comprised of the prime minister, the state premiers and the chief ministers of the two territories. Each of these members are ministers of state, as is appropriate. Only one, however, the prime minister, is a member of parliament and Cabinet in right of the Commonwealth of Australia. No state or territory constitution recognises the Prime Minister.

In the Australian system of government, to be regarded as a national cabinet, ministers, as members, must be drawn from the Commonwealth Parliament. Pursuant to the constitutional doctrine of responsible government, members of Cabinet are accountable to the Parliament. The National Cabinet is not comprised of ministers drawn from the Commonwealth Parliament. Its members are in no way responsible to the Commonwealth Parliament. They are responsible to their own parliaments and electorates. To regard the National Cabinet as equivalent to the federal Cabinet, therefore, is to misunderstand the constitutional position.

Thirdly, the prime minister has stated that the National Cabinet should be regarded as a cabinet office policy committee. Cabinet committees, however, operate under the same conventions and rules as apply to the Cabinet itself. Just because the Prime Minister declares that the National Cabinet is a Cabinet committee does not make it so.

Unlike Cabinet committees, National Cabinet's powers are not derived from federal Cabinet. They have been determined by the prime minister with the concurrent approval of the state and territory leaders. The decisions of National Cabinet are not required to be provided to federal Cabinet for endorsement. The federal Cabinet cannot amend or reject the decisions of the National Cabinet. These may be interpreted and given effect notwithstanding any view the federal Cabinet may take of them.

The decisions of the National Cabinet are implemented by the states and territories separately and apart from any supervision or oversight by federal Cabinet. Importantly, the National Cabinet may deal and has dealt with matters over which federal Cabinet has no legislative authority. For all these reasons, the National Cabinet must be considered as qualitatively different from, and much more than, a committee of federal Cabinet.

Patrick appealed against the decision of the Department of Prime Minister and Cabinet (PM&C) to refuse him FOI access to documents concerning the National Cabinet. The PM&C's ground for the denial of access was that National Cabinet was a Cabinet committee and, therefore, its documentation must be kept secret. The case was heard and determined recently before Justice Richard White sitting as member of the Administrative Appeals Tribunal. In a blistering judgment, Justice White eviscerated PM&C's and the prime minister's arguments.

Justice White concluded that "the primary purpose of the National Cabinet is the promotion of a coordinated approach amongst the states and territories and the addressing of matters over which the Commonwealth does not have direct responsibility. In my view, the references to the National Cabinet being constituted as a cabinet office policy committee do not point persuasively to it being a committee of the Cabinet."

The National Cabinet is a highly significant and consequential governmental body. It coordinates the activities of the federal, state and territory governments in responding to the Covid pandemic. The public interest in understanding, scrutinising and evaluating its decisions and actions is substantial. It should never have been thought that its decisions and supporting documents should be secret. The Prime Minister was entirely wrong to have attempted to make it so.

Nevertheless, the Government has recently sought, with this Bill, to override Justice White's decision that the National Cabinet cannot and should not be regarded legally and constitutionally as a committee of the Federal Cabinet.

Accountability Round Table submission to the Inquiry into the COAG Legislation Amendment Bill 2021

The amendments in Schedule 3 of the COAG legislation deal with confidential information of the National Cabinet and its committees. The purpose of the amendments is to provide that where Commonwealth legislation has existing provisions to protect the deliberations or decisions of the Cabinet and its committees from disclosure, these provisions also apply to the deliberations or decisions of the National Cabinet and its committees (*Explanatory Memorandum, Second Reading Speech Minister Tudge*).

The National Cabinet comprises the Prime Minister (Chair) and the First Ministers (i.e., Premier of each State and the Chief Minister of the Northern Territory and Australian Capital Territory). National Cabinet was established by the Prime Minister with the agreement of First Ministers.

The effect of the amendments proposed would be to render all ministerial submissions to, and deliberations and decisions of the National Cabinet and its committees, as confidential.

To recapitulate, a body is not a constituent element of the Federal Cabinet unless is meets three criteria. It must operate according to the constitutional convention of collective ministerial responsibility, it must consist of ministers of the Federal Parliament, and it must ultimately be responsible to the Commonwealth Parliament. The same criteria apply to Cabinet Committees with the additional requirement that a Cabinet Committee is responsible to and subject to the oversight and final decisions of the Federal Cabinet. The National Cabinet does not meet a single one of these criteria.

The question then becomes, can the Parliament by legislation simply declare a governmental entity, in this case the National Cabinet, to be a committee of the Federal Cabinet when, plainly, according to any sensible, legal understanding or analysis, it is not a committee of the Federal Cabinet. It would be counter-intuitive to think that the Parliament could act in such a way.

In legal terms, it is reasonably clear that the Commonwealth Parliament could legislate to declare something as a matter of fact, when that matter has no factual foundation. However, the situation here is quite different. This is because the purported legal change here, takes place in a constitutional context.

As noted previously, the Cabinet, or a Cabinet, must operate in accordance with the constitutional convention of collective ministerial responsibility. This convention is central to the operation of the constitutional doctrine of responsible government, a doctrine that is recognised within and foundational to the operation of Australia's constitution.

To declare some other governmental entity as a Cabinet, in circumstances where it is clearly not so, would be in effect to alter the nature and operation of the doctrine of responsible government. It would be to constitute a governmental entity as a constituent element of Australia's constitutional system of responsible government in circumstances in which that entity would, in no way, be responsible either to the Parliament or the people.

Further, the entity, unlike any and every other element of Australia's constitutional system, would be entirely unaccountable to any other one of the three branches of government, the executive (through the Federal Cabinet), the parliament or the judiciary. It is highly unlikely that the High Court of Australia would accept the constitutional validity of any such arrangement.

The implications of such a reform for the proper conduct of government should also be considered. The direction that National Cabinet should be considered as a committee of Federal Cabinet does not apply only in relation to the confidentiality of documents pursuant to the Freedom of Information Act. The legislation introducing this purported arrangement also alters the definition of the Cabinet in some twenty other pieces of legislation covering a very wide and diverse array of governmental activity. Many have already been referred to in this submission.

This would mean that a cloak of secrecy would be thrown not only over National Cabinet's operations in relation to the public's right of access to the governmental information under the FOI Act but also to National Cabinet's deliberations and decisions in every other one of the legislative arenas and subject matters in which the novel definition of 'the Cabinet' is now proposed to be utilised. Vast troves of governmental information, therefore, may be classified as secret to the detriment of governmental transparency and accountability.

One also needs to ask why it is that the Government seeks so intensely and extensively to shield information about the National Cabinet's deliberations and decisions from public view. National Cabinet's decisions with respect to the co-ordination of a national response to the COVID-19 pandemic affect the lives of each and every Australian. No more pressing issue currently bears down on every individual's life. As matter of principle and political practice, it would seem imperative that the Australian population should be as well informed as possible about Commonwealth and States' governments actions and decisions in relation to combatting the pandemic.

FREEDOM OF INFORMATION

Accountability Round Table submission to the Inquiry into the COAG Legislation Amendment Bill 2021

The Explanatory Memorandum to the Bill asserts:

> Consistent with the Cabinet and its committees, all proceedings and documentation of the National Cabinet and its committees are confidential. The maintenance of confidentiality is essential to enable full and frank discussions.
>
> The confidentiality of information and decision-making is critical to the effective operations of the National Cabinet, enabling issues to be dealt with quickly, based on advice from experts. The sharing of sensitive data, projections and judgements – which relies on these principles of confidentiality – has been the foundation of effective decision making in the interests of the Australian people.

Despite the bare assertion of the need for secrecy to support full and frank discussion, information sharing and the efficient workings of the National Cabinet, there appears to be no evidence offered whatsoever that present arrangements have inhibited full and frank discussion, the ability to act quickly and to share sensitive information or that existing public interest protections are insufficient.

For example, there is no justification for keeping information about the decisions that National Cabinet has made, about the justifications for such decisions, and the programs established to make those decision operational from Federal Parliament and the wider Australian public. But if the amended definition of Cabinet were to be adopted, all such information would be secret.

ART is concerned at the proffered justification for secrecy. Such secrecy has previously been unnecessary to the effective workings of COAG and National Cabinet to date. Further, such secrecy would be to the substantial detriment of Australia's liberal democracy. Such information should remain in the public domain.

Applying Australia's OGP commitments to National Cabinet, Australia has clearly undertaken to extend and maximise the information available to Australians about the proceedings, decisions and actions of this intergovernmental entity.

Provisions that disclosure of information or documents would be contrary to the public interest because it would involve the disclosure of deliberations or decisions of the National Cabinet are far too sweeping.

Rather, the government should recognise the OGP principle that the disclosure of information would contribute to the effectiveness of the National Cabinet and other entities it affects.

Here, it is necessary to distinguish between the types of information created, received or otherwise held by National Cabinet. The FOI Act relevantly provides:

> S 34 (1) A document is an exempt document if:
>
> (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 a 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.

In summary, these exempt documents may include: submissions to National Cabinet; briefing advice to a member of National Cabinet on submissions and any other matters to be considered at meetings; factual materials related to matters to be considered at any meeting; minutes (records of deliberations); decisions.

We note the observation of White J. that the minutes of the National Cabinet:

> [256] (e) "… do not record any of the discussion which preceded the agreement or the endorsement on each item, let alone views conveyed at the National Cabinet meeting by the Prime Minister, a State Premier or a Territory Chief Minister
>
> "(f) do not record any of the considerations, pro and con, bearing on each outcome or of the matters weighing on alternatives; and
>
> "(g) Do not contain any reference to a proposal having been raised and discussed but not pursued with or without a resolution that no action be taken with respect to the proposal.

White J's decision goes on "... much of the evidence of the respondent and Ms McGregor as to the harm they apprehend would result from a disclosure of the minutes cannot be accepted." [259].[1] Accordingly, White J's reasoning dismisses argument that the disclosure of matters of fact, implicitly including decisions, would or even could place the efficient and effective functioning of National Cabinet at risk.

There are rarely, if ever, legitimate grounds for non-disclosure of Cabinet decisions unless there is an overriding public interest against disclosure. More generally, disclosure of decisions is delayed or

withheld for tactical, administrative or political advantage, according to this submission's co-author Coghill.[2]

Nonetheless, we regard it as important to examine the hypothetical circumstances in which it is argued that such disclosure could have adverse effects, in particular whether there can be legitimate grounds for withholding certain information on public policy grounds and in order to protect effective decision making. This was clarified by the High Court of Australia in *The Commonwealth of Australia V. Northern Land Council and Another* [3]:

> [I]t has never been doubted that it is in the public interest that the deliberations of Cabinet should remain confidential in order that the members of Cabinet may exchange differing views and at the same time maintain the principle of collective responsibility for any decision which may be made. Although Cabinet deliberations are sometimes disclosed in political memoirs and in unofficial reports on Cabinet meetings, the view has generally been taken that collective responsibility could not survive in practical terms if Cabinet deliberations were not kept confidential ((6) See U.K., Parliament, Report of the Committee of Privy Counsellors on Ministerial Memoirs ("the Radcliffe Committee"),) Despite the pressures which modern society places upon the principle of collective responsibility, it remains an important element in our system of government. Moreover, the disclosure of the deliberations of the body responsible for the creation of state policy at the highest level, whether under the Westminster system or otherwise, is liable to subject the members of that body to criticism of a premature, ill-informed or misdirected nature and to divert the process from its proper course ((7) See Conway v. Rimmer (1968) AC, per Lord Reid at p 952; Sankey v. Whitlam (1978) 142 CLR, per Mason J. at pp 97-98; U.K., Parliament, Departmental Committee on Section 2 of the Official Secrets Act 1911 ("the Franks Committee"), (1972), Cmnd.5104, vol.1, p.33). The mere threat of disclosure is likely to be sufficient to impede those deliberations by muting a free and vigorous exchange of views or by encouraging lengthy discourse engaged in with an eye to subsequent public scrutiny. Whilst there is increasing public insistence upon the concept of open government, we do not think that it has yet been suggested that members of Cabinet would not be severely hampered in the performance of the function expected of them if they had constantly to look over their shoulders at those who would seek to criticize and publicize their participation in discussions in the Cabinet room. It is not so much a matter of encouraging candour or frankness as of ensuring that decision-making and policy development by Cabinet is uninhibited. The latter may involve the exploration of more than one controversial path even though only one may, despite differing views, prove to be sufficiently acceptable in the end to lead to a decision which all members must then accept and support.[4]

Fifteen years later, Solomon et al endorsed this approach, stating

> …material of any kind that indicates a Minister made a submission to Cabinet at odds with the view finally determined by Cabinet or that he or she dissented from a Cabinet decision either during debate or when a decision was taken, must not be publicly revealed (p.106).[5]

Note that both High Court and Solomon et al confined their argument to documents that could disclose views expressed within Cabinet.

Neither contemplated that factual material put before Cabinet or decisions of Cabinet should be exempt from disclosure.

However, the Bill has the effect of further reducing the access by Australians to information created under their democratic authority rather than "promoting increased access to information and disclosure about governmental activities" as required pursuant to our OGP commitment.

Australia should demonstrate its commitment to OGP and reverse its disappointing performance to date as a partner member.

Instead of passing this Bill, the government has the opportunity to honour Australia's OGP commitment to review the FOI legislation consistent with that commitment. There is already extensive experience with information access reform and practice within Australia, most notably Queensland[6, 7] and New South Wales.[8] A comprehensive report of the operations of the NSW GIPA legislation was recently published.[9]

Both the Queensland and NSW legislation use a "push" model whereby government proactively publishes information rather than relying on applicants to "pull" it i.e., request and extract. The NSW Commissioner describes it as operating according to "… the principles of: 1. 'proactive disclosure, (and) 2. a presumption in favour of public interest disclosure".

This is consistent with OGP commitments signed by Australia but not yet executed at Commonwealth level.

The Bill, however, contains many provisions that run contrary to Australia meeting its international obligations pursuant to the OGP.

We refer, for example, to Item 14 ss 4(1) (definition of Cabinet). The purpose of the proposed amendment makes a nonsense of constitutional provisions and practice affecting the Cabinet and its committees by the artifice of describing an informal entity to be the National Cabinet, and a corresponding definition of Cabinet.

Item 15 Subparagraph 34(1)(a)(i): The purpose of this Cabinet exemption is claimed to be to protect the confidentiality of Cabinet processes. The proposed provision fails to take the opportunity to distinguish the different types of Cabinet document and to extend disclosure to those types that do not require confidentiality.

And Item 16 Paragraph 34(1)(c) The proposed provision fails to take the opportunity to distinguish Cabinet submissions and briefing papers for Ministers and to extend disclosure to those types that do not require confidentiality.

Other provisions of the bill

Schedule 1 Part 1 - Amendment of the COAG Reform Fund Act 2008

COAG Reform Fund Act

These provisions have the effect of dismantling arrangements for the Council of Australian Governments (COAG) and substituting arrangements for National Cabinet. The changes are more cosmetic than substantial. Beyond a change in nomenclature which misrepresents the powers and role of the National Cabinet, they do little more than refresh and re-start the clock on intergovernmental arrangements.

Schedule 2 Part 1 - Main amendments

As with the provisions affecting the COAG Reform Fund Act, these provisions have the effect of dismantling arrangements for the Council of Australian Governments (COAG) and substituting similar arrangements for National Cabinet. The changes are more cosmetic than substantial. They are likely to do little more than refresh and re-start the clock on intergovernmental arrangements.

Biological Control Act

The opportunity should be taken to review the design and effectiveness of the extraordinary powers executed to make the Human Biosecurity Emergency Declaration to address the COVID 19 pandemic.

Item 15 Subparagraph 34(1)(a)(i)

These provisions replicate the unnecessarily restrictive provisions that they seek to amend. ART argues that the FOI Act should provide for pro-active disclosure of all Cabinet and National Cabinet records except in instances where to do so would disclose the opinions or advocacy of a minister or there is an overriding public interest against disclosure.

Item 16 Paragraph 34(1)(c)

These provisions replicate the unnecessarily restrictive provisions that they seek to amend. ART argues that the FOI Act should provide for pro-active disclosure of all Cabinet and National Cabinet records except in instances where to do so would disclose the opinions or advocacy of a minister or there is an overriding public interest against disclosure.

Conclusion and Recommendations

National Cabinet has been operating more or less successfully for 18 months. Its purpose has been to achieve coordination between the federal and state governments in tackling the COVID-19 pandemic. Its innovative, flexible structure and operation have facilitated coordinated policy responses.

However, the Bill is severely flawed and furthermore, does not honour Australia's Open Government Partnership commitments. Rather than extend access to government information, it restricts access and in so doing, denies the benefits if open government. Government should learn from the success of open government and amend the Bill correspondingly, so as to preserve the best features.

The Bill should be withdrawn and new legislation presented to the parliament to provide for:

1. an intergovernmental entity *(title not specified in this submission)* comprised of the Prime Minister (Chair) and the First Ministers (i.e., Premier of each State and the Chief Minister of the Northern Territory and Australian Capital Territory), which would
    a. be established under existing Commonwealth powers (e.g., as a Principal Australian Government Body - Non-Corporate Commonwealth Entity, defined in

section 11(b) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act) as "a Commonwealth entity that is not a body corporate")

b. omit any provision purporting to be a committee of the Cabinet of the Commonwealth Government
c. have no reference to the Cabinet
d. except as provided for in a, b, and c above, have the functions and powers hitherto provided for in the COAG Reform Fund Act 2008 (to be amended by the Bill to the Federation Reform Fund Act); and

2. Right to Know provisions for pro-active disclosure of information including records and other documents held by or on behalf of the intergovernmental entity, with exemptions to information that could disclose views expressed within the intergovernmental entity or a related committee or there is an overriding public interest against disclosure.

Adjunct Professor Ken Coghill Professor Spencer Zifcak Fiona McLeod AO SC

Accountability Round Table submission to the Inquiry into the COAG Legislation Amendment Bill 2021

EndNotes

[1] White J (2021) Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information) [2021] AATA 2719 (5 August 2021)

[2] Coghill was Parliamentary Secretary of the Cabinet (Victoria) 1982-88.

[3] The Commonwealth of Australia V. Northern Land Council and Anor. (1993) 176 CLR 604.

[4] Ibid.

[5] Solomon, D. Simon Webbe & D. McGann (FOI Independent Review Panel) (2008) *The Right to Information. Reviewing Queensland's Freedom of Information Act.* The Report by the FOI Independent Review Panel.

[6] Solomon, D. Simon Webbe & D. McGann (FOI Independent Review Panel) (2008) *The Right to Information. Reviewing Queensland's Freedom of Information Act.* The Report by the FOI Independent Review Panel.

[7] Right to Information Act 2009 (Qld)

[8] Government Information (Public Access) Act 2009 (NSW) commonly known as GIPA

[9] 2019-2020 Report on the Operation of the Government Information (Public Access) Act 2009