



REX PATRICK
Senator for South Australia

NC/CC FPA
17 September 2021

Senator Claire Chandler
Chair, Finance and Public Administration Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Claire

Dear Senator

This is a submission to the Senate Finance and Public Administration Legislation Committee's inquiry into the provisions of the *COAG Legislation Amendment Bill 2021*.

This submission specifically relates to the provisions of Schedule 3 of the Bill which seek to make the decisions and deliberations of the intergovernmental meeting designated by the Prime Minister as "National Cabinet" exempt from disclosure under the Freedom of Information Act 1982 or through the operation of other legislation.

In this regard I note that neither the Minister's second reading speech nor the explanatory memorandum make any reference to the legal proceedings which preceded and caused the Government to introduce the proposed Schedule 3; specifically the recent Administrative Appeals Tribunal of Australia (AAT) decision of His Honour, Justice Richard White in the matter of *Patrick and Secretary, Department of Prime Minister and Cabinet (Freedom of Information) [2021] AAT 2719 (5 August 2021)*.

Significantly the Bill was introduced into the House of Representatives on the same day that the Government indicated that they would not appeal Justice White's decision.

Having been defeated in the Administrative Appeals Tribunal and lacking grounds to pursue an appeal, Schedule 3 is the Government's attempt to overturn that decision.

Accordingly, to assist the Committee in its consideration of the Bill, I attach a number of documents relating to the AAT case so that the Committee is fully aware of the relevant background.

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- Attachment 1 - Statement of Agreed Facts;
- Attachment 2 – Senator Patrick’s Outline of Submissions and Affidavit;
- Attachment 3 – Government’s Outline of Submissions and Affidavit;
- Attachment 4 – Senator Patrick’s Submissions - In Reply and Affidavits;
- Attachment 5 - Decision of Justice White, 5 August 2021;
- Attachment 6 - National Cabinet documents released to Senator Patrick.

For the avoidance of doubt Justice White has granted public access to these documents and His Honour’s decision has of course been published.

I also attach recent media and academic commentary on the AAT case and the introduction of the Bill. This should further assist the Committee’s deliberations.

- Attachment 7 – Various Media Articles
 - Karen Middleton, “Cabinet Confidential”, *The Saturday Paper*, 17 October 2020;
 - Max Maddison, “Judge rejects PM’s call on National Cabinet privilege”, *The Australian*, 6 August 2021;
 - Anne Twomey, “Nowhere to hide: the significance of national cabinet not being a cabinet”, *The Conversation*, 6 August 2021;
 - Verona Burgess, “PM&C has a lot of embarrassing questions to come”, *The Mandarin*, 13 August 2021;
 - Karen Middleton, “Legal loss a blow for Morrison Secrecy”, *The Saturday Paper*, 14 August 2020;
 - Verona Burgess, “It’s revenge time, as Morrison strikes back over AAT’s national cabinet decision”, *The Mandarin*, 10 September 2021; and
 - Cheryl Saunders, “The government is determined to keep National Cabinet’s work a secret. This should worry us all”, *The Conversation*, 15 September 2021.

I trust that these materials will better inform the Committee's understanding of the purpose and content of Schedule 3 than the quite inadequate observations contained in the Minister's second reading speech and the explanatory memorandum.

It is my firm view that Schedule 3 of the *COAG Legislation Amendment Bill 2021* would implement an unwarranted block to the release of intergovernmental related information under the *Freedom of Information Act 1982* and unjustified constraint on the treatment and handling of such information under the other legislation.

The proposed changes would further subvert long-accepted principles of responsible Cabinet Government.

All Senators should be fully aware of both the unprecedented nature of what is proposed in Schedule 3 and its potential to have unpredictable consequences of a most undesirable nature.

Accordingly I have tabled a proposed amendment which would remove Schedule 3 from the Bill.

The text of the amendment is attached.

I commend this amendment to the Committee and to the Senate.

Yours sincerely

Rex Patrick
Senator for South Australia