



Australian Government

Department of the Prime Minister and Cabinet

**ONE NATIONAL CIRCUIT
BARTON**

Reference: 2011/0554

3 June 2011

Mr Tim Bryant
Secretary
Select Committee on the Reform of the Australian Federation
PO Box 6100 Parliament House
CANBERRA ACT 2600

Dear Mr Bryant

Thank you for your letter of 19 May 2011 concerning questions taken on notice by the Department of the Prime Minister and Cabinet at a hearing of the Select Committee on the Reform of the Australian Federation on 5 May 2011.

Responses to the questions are attached.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Turvey', written over a horizontal line.

David Turvey
Acting First Assistant Secretary
Economic Division

Senate Select Committee on Reform of the Australian Federation

ANSWERS TO QUESTIONS ON NOTICE

5 May 2011

Department of the Prime Minister and Cabinet

Question: 1

Page: 39-40

Topic: COAG protocols

Asked by: Senator Trood

CHAIR: Is there a COAG operating manual of some kind or a list of protocols? In whose corporate memory is COAG located?

Mr English: I am very pleased you asked, because we have recently re-issued the COAG protocols, which I am sure we can provide.... I think their provision is unlikely to warrant any particular concern. Given they have been prepared after consultation with the COAG senior officials group, which is the first ministers and secretaries of first ministers' departments, I would feel obliged to let them know that we were going to provide them to you. We will provide them to you as soon as we can after that.

Answer: The COAG protocols are attached.



Australian Government

Department of the Prime Minister and Cabinet

PROTOCOLS FOR COUNCIL OF AUSTRALIAN GOVERNMENTS AND SENIOR OFFICIALS MEETINGS

FEBRUARY 2011

Revision History

Version	Release Date	Consultation	Authorisation
1.0	February 2011	COAG Senior Officials	Rebecca Cross (Acting Deputy Secretary)

This document is intended to provide guidance on expectations that apply to Council of Australian Government (COAG) and Senior Officials meetings. These protocols are not intended to replace specific scheduling discussions relating to any particular COAG or Senior Officials meeting.

1. Date and Location of COAG Meetings and Senior Officials Meetings/Videoconferences

A proposed date and location of COAG meetings will be determined by the Prime Minister. The Commonwealth, in consultation with other COAG members, will finalise the date and location of the meeting.

By preference, Senior Officials will, meet on an as needed basis to support COAG members in their work. Where possible, these meetings will be conducted via videoconferencing to minimise the imposition on participants. There will be at least one videoconference and/or meeting prior to each COAG meeting.

If possible, the final Senior Officials meeting/videoconference prior to a COAG meeting will be held at least 10 to 12 days before a COAG meeting. This will best assist the briefing processes for COAG members.

2. Agendas for COAG Meetings and Senior Officials Meetings/Videoconferences

A draft agenda for COAG meetings will be prepared by the Commonwealth and circulated to other COAG members at the Officials-level as soon as possible. The Commonwealth will seek to consult with jurisdictions in the preparation of the COAG agenda early in its development.

The draft agenda may also be considered at the final Senior Officials meeting/videoconference prior to the COAG meeting.

A draft agenda for Senior Officials meetings/videoconferences will be prepared by the Commonwealth and circulated to other COAG members for comment prior to the meeting. A final agenda will then be provided by the Commonwealth to other COAG members.

The agenda for the final Senior Officials meeting/videoconference before a COAG meeting will usually be based on the proposed agenda for the COAG meeting.

States, Territories and the Australian Local Government Association (ALGA) will have an opportunity to propose items for both COAG and Senior Officials meetings.

The following criteria will be used to determine whether an issue should be included on the COAG agenda:

- a. where there is an intersection of jurisdictional responsibilities and is an issue of national significance;
- b. where the issue is considered of strategic importance to the three levels of government;
- c. where resolution of an issue requires a leaders-level process given the political, fiscal or policy complexity of the issue;

- d. where accountability is required for the work of Ministerial Councils and other COAG-appointed intergovernmental fora; and
- e. where there is strong need to drive a number of current COAG activities to successful conclusion so that, among other things, service delivery improvements flow to the Australian community.

To ensure that COAG agendas are focussed on issues of the most strategic importance, the following structure for agendas will apply.

I. Implementation, Performance and Accountability

This section of the agenda will address progress reports on implementation and delivery and response to COAG Council Reform reports, to ensure COAG follows through on the decisions and commitments it makes.

II. Themes of Strategic Importance

Items in this section of the agenda will be structured by the five themes to ensure COAG's ongoing and continued focus on issues of national significance. The five themes are:

- a long-term strategy for participation, addressing social and economic issues such as skills development and early childhood development;
- a national economy driven by our competitive advantages, addressing the microeconomic reform agenda, further regulatory and competition reforms, taxation and federal financial relations, infrastructure investment and use of new digital technologies to drive productivity;
- a sustainable and liveable Australia, addressing issues such as housing supply and affordability, sustainable population, climate change and energy efficiency measures, and water reform;
- better health services and a more sustainable health system for Australians; and
- Closing the Gap on Indigenous disadvantage.

III. Items for Special Consideration

This section of the agenda will include items with the need for focussed discussion and thorough consideration by COAG to ensure current COAG priorities and activities are driven to successful conclusions.

It is intended that activities over the next 12-18 months under each of these themes will be prioritised for COAG.

3. Papers for COAG Meetings and Senior Officials Meetings/Videoconferences

Agencies preparing agenda papers and other documents for COAG meetings will, where possible, be required to provide documents to the COAG Unit in the Department of the Prime Minister and Cabinet (PM&C) at least three weeks prior to the date of a COAG

meeting. Also, where possible, the Commonwealth will provide other COAG members with the papers at least two weeks prior to the date of a COAG meeting.

Where possible, COAG members will have two days to provide comments on the papers before they are considered final.

Where relevant, agenda papers for a COAG meeting will be the same as those provided for a Senior Officials meeting/videoconference. All papers for COAG and Senior Officials' meetings will be prepared in the format at Attachment A.

4. Status of COAG and Senior Officials Documents

Documents prepared for COAG and Senior Officials are COAG-in-confidence, unless otherwise agreed by COAG or Senior Officials. Documents should be tightly held and only distributed on a strict need to know basis.

Where there is an expectation that a document prepared for COAG or Senior Officials will be made public, all COAG members should be advised early in the preparation of the document. If a COAG member receives a request for a document to be made public (either through a Freedom of Information request, a request from a Royal Commission or some other avenue), all members of COAG will be consulted regarding release of the document.

5. COAG Meeting Communiqués

The preparation of the communiqué, to be released at the conclusion of a COAG meeting, is a joint activity between all COAG members. COAG meeting communiqués will be as short as practicable, compelling and written in action-oriented plain English that will resonate with the Australian community. Matters of detail may be better addressed through the record of meeting.

A draft communiqué will be prepared by PM&C and provided to the States, Territories and ALGA as soon as possible in the lead-up to the COAG meeting. A communiqué drafting session to which representatives of all COAG members are invited may be organised by PM&C in the week leading up to the COAG meeting.

The day before a COAG meeting a COAG communiqué drafting session will be held to prepare the draft communiqué for COAG's consideration at the time of the meeting. Representatives of all COAG members will be invited to participate in this session which will be organised by PM&C.

At the conclusion of a COAG meeting, representatives of all COAG members are to clear the communiqué before it is released publicly. This may involve an Officials drafting session to finalise the communiqué.

PM&C will be responsible for placing the communiqué on the COAG website and making available copies to COAG members.

6. Records for COAG Meetings and Senior Officials Meetings/Videoconferences

A draft record of a COAG meeting, based on the agenda paper recommendations, will be prepared by PM&C prior to the meeting. The draft will be provided to State and Territory notetakers for the meeting.

After the COAG meeting a draft record will be prepared by the Commonwealth notetakers and then settled with the State and Territory notetakers. Once finalised the record will be provided to all COAG members.

A draft record of a Senior Officials meeting/videoconference will be prepared by the PM&C notetakers after the meeting. It will then be provided to the other participants for comment. Once comments have been received and the record finalised the record will be provided to the States, Territories and ALGA. The record for a Senior Officials meeting/videoconference will usually be adopted at the next Senior Officials meeting/videoconference.

Records for both COAG meetings and Senior Officials meetings/videoconferences should be finalised and provided to participants desirably within three weeks of the end of the meeting.

7. Handling National Partnership and Intergovernmental Agreements

National Partnership Agreements or Intergovernmental Agreements are brought before COAG for signature either at meetings or out-of-session. If agreements are to be signed at COAG meetings they must have the agreement of all the Parties (that is, all the COAG members required to sign the agreement) prior to the meeting. Obtaining such agreement will be coordinated by PM&C.

PM&C will bring a copy of all the agreements to be signed to the COAG meeting, and will coordinate the signature process. After the meeting, once all the signatures have been obtained, PM&C will retain the original signature page, and will provide copies of the agreement and the signature page to all jurisdictions. PM&C will also provide, where applicable, a copy of the signed agreement to the Commonwealth Department of the Treasury for publication on the federal financial relations website (www.federalfinancialrelations.gov.au).

ATTACHMENT A

PROPOSED AGENDA PAPER TEMPLATE

COAG (Month Year) X(x)

Council of Australian Governments Meeting, dd Month Year

AGENDA PAPER: TITLE

The cover sheet is not to exceed one page.

Purpose	FOR AGREEMENT/FOR INFORMATION To seek consideration of [outline the proposal/problem to be resolved]. This section should not exceed two or three lines.
Key Outcomes	<ol style="list-style-type: none">1. This section must provide a brief description of the outcomes to be achieved through the proposals contained in the agenda paper.2. Each paragraph should not exceed two or three lines.
Author	Name of Ministerial Council, Senior Officials Group or government

RECOMMENDATIONS

That Council of Australian Governments (COAG) agree:

1. **[for example]** to the new arrangements on X; and
2. **[for example]** that the report on Y be released publically following the COAG meeting.

Drafting instructions:

- Recommendations should be written in a form that requires minimal rewriting for inclusion in a communiqué.
- Recommendations for noting are not generally expected.
- Where work is being referred to a Ministerial Council or other body, the recommendation should provide clarity about whether the other forum can finalise the work or whether a report-back to COAG is required.

SUPPORTING ANALYSIS

Key Issues for COAG

1. This section should be written in a clear, summary form that enables First Ministers to understand the proposal [or the outcomes from a report or other information]. The first paragraph must clearly describe what is being proposed or provided and the problem that is being addressed.
2. In the case of a proposal, agenda papers should refer to significant impacts, including regulatory impacts, particularly where these have strong bearing on the merits of a proposal.

Sub-heading to Structure Case

3. Optional sub-headings and sub-paragraphs are encouraged to be used to assist in structuring the case for the proposal and better informing First Ministers.
 - a. ...
 - i. ...

Key Implementation Issues

4. This section should outline the necessary steps to achieve the intended outcomes and include when benefits will flow to citizens or stakeholders. Information should be included on how the proposal will be implemented and any risks associated with its implementation.
5. Specific sensitivities should be outlined in this section including stakeholder reactions, risks and relevant mitigation strategies. Where there are significant risks or sensitivities, this section provides an opportunity to consolidate advice to COAG on these issues.

Financial Implications

6. In the case of a proposal, the financial implications arising from the proposal must be discussed in this section.

Consultation with External Stakeholders

7. Any proposed announcement strategy, including communication strategies or the release of proposed media releases, should be clearly set out in this section.
8. Describe any consultation that has occurred with stakeholders, including industry and the public.

Style Requirements

1. If you need to change an agenda paper already provided to the COAG Unit, make sure you obtain the latest version from the COAG Unit.
2. In the recommendations, avoid capitalising the first word after agree and note.
3. Names of States and Territories should always appear in full (for example, New South Wales).
4. Refer to States and Territories in descending order of population (that is, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania, the ACT and the Northern Territory), and then the Australian Local Government Association.
5. The words 'States' and 'Territories' should both have a capital letter.
6. Use 'Commonwealth' or 'Commonwealth Government' instead of 'Australian Government'.
7. Attachments should be referred to as Attachment A, Attachment B and so on, without bold or underlined text.
8. Pay special attention to the format of dot points. Ensure that dot points follow sentence structure (with lower-case first letters and semi-colons or commas as appropriate), for example:
 - sub-point, including:-
 - x, and
 - y,
 - sub-point; and
 - sub-point.

Senate Select Committee on Reform of the Australian Federation

ANSWERS TO QUESTIONS ON NOTICE

5 May 2011

Department of the Prime Minister and Cabinet

Question: 2

Page: 42

Topic: Commonwealth grants to local government

Asked by: Senator Trood

CHAIR: What view have you taken about the implications of Pape for your capacity to continue to do that?

Mr English: To date the approach we have taken is that current arrangements will continue unless subsequent decisions by the court suggest that a particular activity should not. So at this stage we do not expect that Pape has taken away the ability to make those payments.

CHAIR: Have you sought the Attorney's advice on the subject?

Mr English: That is consistent with the Attorney's advice—that we should continue with current arrangements unless a demonstrated need arises to change them.

CHAIR: Is that advice available publicly?

Mr English: That is probably something we would have to put to government because it was legal advice to the government.

CHAIR: Perhaps you could do that, because we are getting somewhat inconsistent evidence about this matter. ...

Answer:

The Government's legal advice about the Pape decision is not publicly available. It would not be appropriate to release the legal advice as doing so may prejudice the Commonwealth's legal interests.

Senate Select Committee on Reform of the Australian Federation

ANSWERS TO QUESTIONS ON NOTICE

5 May 2011

Department of the Prime Minister and Cabinet

Question: 3

Page: 43

Topic: Management costs in Building the Education Revolution

Asked by: Senator Trood

CHAIR: ...In relation to that, for example, could states negotiate different kinds of management costs with the Commonwealth under the BER?

Mr English: I would have to go back and check my facts on that. Whether the rate was the same across jurisdictions, I cannot recall.

CHAIR: There is a constitutional provision of course against differential grants to states. I am wondering whether it applies to these kinds of management fees et cetera.

Mr English: I should take that on notice.

CHAIR: Would you do that, Mr English? I suppose the question is: have states negotiated different management fees in relation to BER and on what basis have they actually done that?

Answer:

As per clause D10.(f) of the National Partnership Agreement on the Nation Building and Jobs Plan: Building Prosperity for the Future and Supporting Jobs Now, the Commonwealth provided funding to states and territories and Block Grant Authorities of 1.5 per cent of the total funding to cover administrative costs associated with running the application process, all associated administration and reporting to the Commonwealth. Jurisdictions were not able to negotiate different rates.