



29 September 2021

Senator Chandler
Chair,
Senate Standing Committee on Finance and Public Administration
PO Box 6100
Parliament House
Canberra, ACT 2600

Dear Senator,

COAG Legislation Amendment Bill 2021 – Question on Notice

During the Committee's hearing on 27 September 2021, Grata Fund was asked by Senator Waters to take a question on notice. Senator Waters asked whether the inability to access documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**) when there is a change in minister could be applied to National Cabinet documents to prevent access if there were a change of prime minister, premier, or any other participating minister. Senator Waters also asked whether this could be a real barrier, even if the COAG Legislation Amendment Bill weren't legislated.

The Office of the Australian Information Commissioner (**OAIC**) has determined that official documents of a minister are not subject to freedom of information (**FOI**) requests following a change in minister. This is based on a restrictive reading of the definition of an 'official document of a Minister or official document of the Minister' in section 4(1) of the FOI Act alongside the OAIC's own Guidelines. This interpretation has not been reviewed by the Administrative Appeals Tribunal or Federal Court of Australia.

These provisions of the *Freedom of Information Act* only apply to documents in the possession of ministers of the Federal Government. Documents in the possession of state premiers or chief ministers are subject to access requests under state and territory based FOI legislation. The only member of the National Cabinet affected is the Prime Minister.

If the COAG Legislation Amendment Bill is passed in its current form, all documents related to the National Cabinet will be exempt from FOI requests whether or not they are in the possession of a Federal Government minister. This means National Cabinet documents would not be affected by this approach to the FOI Act.

If the COAG Legislation Amendment Bill is not passed, National Cabinet documents could be accessed by FOI requests made directly to the National Cabinet or its committees regardless of any change in the prime minister, premiers, or chief ministers.

While Grata Fund is concerned about the gap in accountability created by the approach taken by the OAI to documents following a change in minister, we do not believe this has a significant impact on the transparency of the National Cabinet.

Yours sincerely,

Isabelle Reinecke
Executive Director

Oliver Ray
Strategic Litigation Solicitor