

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the COAG Legislation Amendment Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Topic: Consultation for submission

Senator: Ayres

Question reference number: 0003

Type of question: Hansard, F&PA page 48, 27 September 2021

Date set by the committee for the return of answer: 01 October 2021

Number of pages: 1

Question:

Senator AYRES: Was the Prime Minister's office consulted? Mr Gaetjens would probably know the answer to that question. Do you know the answer to that question?

Mr Reid: I think the Office of the Prime Minister—

Senator AYRES: You 'think'? What do you know about whether or not the Prime Minister's Office was consulted?

Mr Reid: I'd have to take that on notice.

Senator AYRES: Mr Gaetjens would know, though, wouldn't he? If the Prime Minister's office was consulted, Mr Gaetjens would be the one most likely doing the consulting, wouldn't he?

CHAIR: Senator Ayres, the witnesses have taken the question on notice.

Senator AYRES: It's a slightly different question, isn't it, about who would be likely to know? Did the Prime Minister's office draft or redraft any part of the submission?

Mr Reid: Again, I'd need to take that on notice to have a look at the records.

Senator AYRES: Yes. I make the same point—Mr Gaetjens would know. On notice, I'd like the dates on which any draft to the submission was submitted to the Prime Minister's office and the dates on which any comments—including proposed changes—were received by the department.

Mr Reid: Certainly, Senator.

Answer:

A copy of the Department of the Prime Minister and Cabinet's submission was provided to the Prime Minister's Office on 19 September 2021. Comments were received on 20 and 21 September 2021. Mr Gaetjens did not undertake the consultation.

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the COAG Legislation Amendment Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Topic: FOI requests

Senator: Ayres

Question reference number: 0005

Type of question: Hansard, F&PA page 51, 27 September 2021

Date set by the committee for the return of answer: 01 October 2021

Number of pages: 1

Question:

Senator AYRES: ... how many freedom of information requests seeking national cabinet papers has the department rejected on the basis of the cabinet exemption? How many freedom of information requests seeking national cabinet papers has the department received since the decision in the Patrick case?

Answer:

In relation to freedom of information requests made to the Department of the Prime Minister and Cabinet seeking National Cabinet material, three such requests have been granted in part and six such requests have been refused in full, on the basis of section 34 of the FOI Act.

Since the decision in *Patrick and Secretary, Department of Prime Minister and Cabinet* (Freedom of Information) [2021] AATA 2719 (5 August 2021) to 27 September 2021, 50 freedom of information requests were received expressly seeking access to National Cabinet material.

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the COAG Legislation Amendment Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Topic: Committees and subcommittees of Cabinet

Senator: Ayres

Question reference number: 0006

Type of question: Hansard, F&PA page 51, 27 September 2021

Date set by the committee for the return of answer: 1 October 2021

Number of pages: 1

Question:

Senator AYRES: ... on notice, I'd like a full list of all bodies considered by the department to be committees or subcommittees of cabinet, including, for completeness, all Cabinet Office policy committees, whether or not they are still in existence

Answer:

Information on the Cabinet and its Committees can be found on the [Australian Government Online Directory](#).

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the COAG Legislation Amendment Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Topic: National Cabinet – FOI applications

Senator: Waters

Question reference number: 0007

Type of question: Written

Date set by the committee for the return of answer: 01 October 2021

Number of pages: 1

Question:

- How many FOI applications have been made to your Department for National Cabinet documents since the National Cabinet was established? Have they all been refused under s.34?
- How many FOI applications have been made to your Department for National Cabinet documents since Justice White's decision?
- How many current FOI applications to your Department for National Cabinet documents are yet to be determined? Are they being assessed consistently with Justice White's decision?

Answer:

For the period 13 March 2020 to 27 September 2021, 62 requests for National Cabinet material have been received. They have not all been refused under the Cabinet exemption in section 34 of the *Freedom of Information Act 1982*.

Since the decision in *Patrick and Secretary, Department of Prime Minister and Cabinet* (Freedom of Information) [2021] AATA 2719 (5 August 2021) to 27 September 2021, 50 requests were received expressly seeking access to National Cabinet material.

As at 27 September 2021, 36 requests for National Cabinet material are not finalised. Each is being assessed on a case-by-case basis.

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the COAG Legislation Amendment Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Topic: National Cabinet – maintaining confidentiality

Senator: Waters

Question reference number: 0008

Type of question: Written

Date set by the committee for the return of answer: 01 October 2021

Number of pages: 1

Question:

- Your submission says that “Maintaining confidentiality over National Cabinet information and discussions is critical to its effective operation.” How do you respond to the criticism from AHRC and the Law Council that qualified exemptions based on public interest are more appropriate than blanket exemptions to protect National Cabinet documents?

Answer:

The *Freedom of Information 1982* makes provision for exemptions and public interest conditional exemptions. It is open to a decision maker to apply one or more of these exemptions depending on the documents under consideration.

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the COAG Legislation Amendment Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Topic: Open Government Partnership – third national action plan

Senator: Waters

Question reference number: 0009

Type of question: Written

Date set by the committee for the return of answer: 01 October 2021

Number of pages: 1

Question:

- What is the current status of Australia's third National Action Plan under the Open Government Partnership? Has the Department assessed whether this Bill is consistent with Australia's commitments under that partnership?

Answer:

Australia's draft Open Government Partnership (OGP) Third National Action Plan is under consideration by the Government. The Bill has not been assessed against any existing OGP commitment.

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the COAG Legislation Amendment Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Topic: Timeliness in government legislation

Senator: Waters

Question reference number: 0010

Type of question: Written

Date set by the committee for the return of answer: 01 October 2021

Number of pages: 1

Question:

- The submission from the Governance Institute notes the disparity between how quickly the Government was able to respond to the AAT decision that the National Cabinet is not exempt from FOI and how slow the government has been to introduce laws for an ICAC. How do you explain the different sense of urgency?

Answer:

The timing of introduction for any legislation is a matter for Government.

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ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the COAG Legislation Amendment Bill 2021

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet

Topic: State and Territory FOI law inconsistencies

Senator: Waters

Question reference number: 0011

Type of question: Written

Date set by the committee for the return of answer: 01 October 2021

Number of pages: 1

Question:

- Other submitters have pointed out that the Bill will create inconsistencies with State FOI laws. Your submission says “The States and Territories will progress any amendments to their legislation adopting amendments consistent with [the same approach] those proposed in the COAG Legislation Amendment Bill 2021”.

Have all States and Territories agreed to enact changes consistent with Schedule 3?

Answer:

It is a matter for individual jurisdictions to determine the need for complementary amendments.