

To: Department of the Prime Minister and Cabinet, PO Box 6500 Canberra ACT 2600

Re: Commonwealth Government COVID-19 Response Inquiry Terms of Reference

Dear Officer,

SUBMISSION

The Department of the Prime Minister and the Cabinet (the Department) have invited submissions for the Commonwealth Government COVID-19 Response Inquiry (the Inquiry).

This is a submission by myself, an Australian citizen and resident.

Inquiry questions

1. As the only national based member of the National Cabinet” did the then Prime Minister Scott Morrison take sole credit for the idea in the first place? Does he still do so?
2. Was there any other person(s) or entity that required of the then Prime Minister Scott Morrison that he create the “National Cabinet”.
3. Who took the credit for the idea to cancel the Council of Australian Governments (COAG)?
4. Who was the driving force within the “National Cabinet” meetings.
5. How did the “National Cabinet” meetings function in practice inside its meetings? Did the then Prime Minister act like a president or head of state and dictate terms and decisions to the State Premiers and Territory Chief Ministers, if so what coercion did he employ?
6. If not was there a Premier or Chief Minister or combination of same calling the shots thus acting outside of their individual state/territory jurisdiction and Scott Morrison just capitulating to the decisions of this person or grouped?
7. Did the “National Cabinet” follow closely an agenda/instructions dictated by
 - a. an domestic entity outside of Government?
 - b. Domestic or international lobbyists?
 - c. An international organisation such as the World Health Organisation (WHO), the United Nations (UN), or the World Economic Forum (WEF) or some other organisation?
 - d. A foreign government such as the United States of America (USA) or China?

The answer to these questions are unknown because the deliberations and decisions of the “National Cabinet” were secret from the Australian people, Parliament and possibly the Government Ministerial Cabinet to a large extent.

The “National Cabinet” deliberations and decisions lacked the checks and balances of Cabinet or Parliament and were at risk of failure and of unexpected negative consequences which may not have been in the best interest of the Australian People.

These are important questions and go to the heart of why the Australian Government made some of the decisions it made and who benefited from those decisions, and how the Australian Government managed the country during the Covid19 pandemic and on whose behalf it did so.

Discussion:

In March 2020 the then Prime Minister Scott Morrison announces the formation of the “National Cabinet”.

The “National Cabinet” consists of State Premiers, Territory Chief Ministers and Scott Morrison. (1)

The decision to form a “National Cabinet” appears to have been a “captain’s call” by Scott Morrison, well at least he was the public face of the media announcement. There appears no evidence to the

contrary via released meeting minutes with State Premiers, Territory Chief Ministers. It also cannot be determined if any of the State Premiers, Territory Chief Ministers or other parties were instrumental in urging the then Prime Minister to form such a "National Cabinet".

Up until this time the COAG, established in 1992, was the body that facilitated co-operation amongst all levels of government, achieving this through its various and supporting advisory mechanisms.

And the reason given the Scott Morrison to replace the COAG with the "National Cabinet"?

- COAG and its related bodies were slow to advance reform, so the replacement was to be fast. Does speed necessarily lead to correct decisions or does it allow ill-considered and unexpected consequences to arise? (2)
- To remove the consensus based decision making model of COAG. (3)

To "remove the consensus" sound a lot like a Presidential or Head of State type method of Government rather than Australia's normal Westminster form of parliamentary government.

In so far as the Covid19 pandemic went, did the Australian voters agree to be governed by a committee comprised of mostly persons unelected to the federal level of government?

Some Members of the Federal Parliament didn't think so and objected to the concept. (4)

Senator Rennick: "The party room or the people [didn't get a say] ... I didn't vote for Dan Andrews to have a say in running Australia, likewise Victorians didn't vote for Anastacia Palaszczuk to have a say in running Australia either,"

Senator Rennick: "You've got eight to 10 people in this national cabinet on top of the federal cabinet, and the backbenchers have been pushed aside even though they're the ones who've been democratically elected to run Australia."

Other Parliamentarians are on record as sharing Senator Rennicks sentiments.

I for one certainly did not vote for Dan Andrews or Anastacia Palaszczuk to govern Australia.

The only federal minister on the committee was Scott Morrison himself, the State Premiers and Territory Chief Ministers had not been voted in at national level to govern, had no mandate and arguable no jurisdiction outside of managing their respective states and territories or for performing as a de-facto national government.

Like GOAG with its transparency of decisions and release of minutes there was an expectation that the new "National Cabinet" would also be transparent in its decision making processes. (5)

But this was soon shown to not be the case with the Morrison Government moving to keep national cabinet deliberations secret with denial of FOI requests. (6)

In August 2021 Senator Rex Patrick challenged the secrecy of the "National Cabinet" and won a FOI case in the Administrative Appeals Tribunal (AAT). (7)

As a consequence of Justice Whites finding the Morrison Government introduced a Bill to give the decisions and deliberations of the "National Cabinet" the cover of secrecy. (8)

This Bill lapsed at dissolution on 11/04/22.

Yours faithfully

John Hughes

References:

(1) PRESS CONFERENCE WITH PREMIERS AND CHIEF MINISTERS PARRAMATTA, NSW FRIDAY 13 MARCH 2020

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F7243290%22>

PRIME MINISTER: Welcome everybody. Earlier today the Council of Australian Governments met amongst first ministers. But the events of the day, I think, has produced a series of considerations by premiers, chief ministers and myself, which is leading to a number of announcements we'd like to make to you this afternoon.

..... what we have resolved to do is to form a national cabinet to deal with the national response to the coronavirus.

The national cabinets will be made up of the premiers, chief Ministers and myself.

(2) COAG Legislation Amendment Bill 2021

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2122a/22bd021

National Cabinet and the new federal relations structures

..... COAG and its related bodies were burdened by red tape and bureaucracy which made them inefficient in taking decisions and slow to advance reform.

(3) COAG Legislation Amendment Bill 2021. Second Reading

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F71296f1b-f2df-4894-803f-ba51397ab75a%2F0013%22>

COAG operated on a consensus based decision-making model—an unrealistic and impractical feature, given the diverse and disparate needs of each state and territory.

(4) Government's bill to keep national cabinet discussion secret may fail as Liberal senator says he will vote against it

<https://www.theguardian.com/australia-news/2021/sep/29/bill-to-exempt-national-cabinet-from-foi-in-doubt-after-liberal-senator-says-he-will-cross-floor>

The Coalition introduced the national cabinet secrecy bill earlier in September to blunt the impact of a recent tribunal decision in Patrick's favour that would have allowed access to key documents.

[Senator] Rennick on Wednesday also took aim at Scott Morrison for "pushing aside" his backbench to elevate state and territory leaders to a body that was not a "real cabinet" without first consulting the Coalition party room.

[Senator] Rennick told Guardian Australia he had "a problem with what I don't think is a real cabinet to begin with", noting the Coalition party room "never signed up to having this style of cabinet anyway".

"The party room or the people [didn't get a say] ... I didn't vote for Dan Andrews to have a say in running Australia, likewise Victorians didn't vote for Annastacia Palaszczuk to have a say in running Australia either," he said.

“You’ve got eight to 10 people in this national cabinet on top of the federal cabinet, and the backbenchers have been pushed aside even though they’re the ones who’ve been democratically elected to run Australia.”

(5) Explainer: what is the national cabinet and is it democratic?

<https://www.theguardian.com/world/2020/mar/31/explainer-what-is-the-national-cabinet-and-is-it-democratic>

The national cabinet comprises the prime minister and state and territory premiers and chief ministers. Basically it is Coag by another name.

Although called a cabinet, it is technically an intergovernmental forum. The conventions and rules of cabinet, such as cabinet solidarity and the secrecy provisions, do not apply.

(6) ‘A sore loser’: Scott Morrison attacked over move to keep national cabinet deliberations secret

<https://www.theguardian.com/australia-news/2021/sep/02/a-sore-loser-scott-morrison-attacked-over-move-to-keep-national-cabinet-deliberations-secret>

The first-of-its-kind case in the AAT was brought by the Senate crossbencher Rex Patrick, who argued the prime minister had no valid grounds to extend cabinet confidentiality to his regular national cabinet meetings with premiers and chief ministers.

Independent senator Rex Patrick.

Rex Patrick wins FoI case to release national cabinet records

Patrick’s argument was ultimately upheld in the tribunal ruling. Justice Richard White said none of the documents sought by Patrick under the freedom of information system were an “official record of a committee of cabinet” and were, therefore, not covered by the cabinet exemption.

The bill introduced on Thursday was intended to make clear that where commonwealth legislation makes provisions to protect the secrecy of federal cabinet deliberations, those same protections extend to the “committee of cabinet known as the national cabinet”.

(7) COAG Legislation Amendment Bill 2021

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2122a/22bd021

Administrative Appeals Tribunal: Patrick and Secretary, Department of the Prime Minister and Cabinet

Justice Richard White (a Judge of the Federal Court of Australia, sitting as a Deputy Presidential member of the AAT) held that, on the basis of the evidence before the Tribunal, the entity known as the National Cabinet did not, in fact, constitute a committee of the Commonwealth Cabinet for the purpose of the ‘Cabinet documents exemption’ in section 34 of the FOI Act. His Honour said:

The mere use of the name ‘National Cabinet’ does not, of itself, have the effect of making a group of persons using the name a ‘committee of the Cabinet’. Nor does the mere labelling of a committee as a ‘Cabinet committee’ have that effect. That term has the meaning with which it is used in the FOI Act and, in order for s 34(1)(b) of that Act to be applicable in the present case, the National Cabinet must come within that statutory meaning.

His Honour considered that a ‘committee of the Cabinet’ means a subgroup of the Cabinet and the Cabinet must, amongst other things, be comprised of Ministers who, according to the Constitution, must be Members of Parliament within three months of their appointment.[27] An example of such a committee may be those groups that relate to particular subject areas, such as national security or

expenditure.[28] Importantly, the committee must not only consist mostly of persons from the Cabinet, but also should be performing functions for or on behalf of the Cabinet – essentially a connection is required where the group can be said to belong to the Cabinet.

Justice White also rejected PM&C's argument that the National Cabinet was a Cabinet committee because the Prime Minister had established it as such. He said:

This seemed tantamount to a submission that any committee may be a 'committee of the Cabinet' for the purposes of the FOI Act merely because the Prime Minister of the day has purported to establish it as such. This premise is unsound.

(8) COAG Legislation Amendment Bill 2021

https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2122a/22bd021

Purpose of the Bill

The purpose of the COAG Legislation Amendment Bill 2021 (the Bill) is two-fold:

- to amend a range of legislation to update terminology, to reflect the cessation of the Council of Australian Governments (COAG) and the introduction of new federal structures and
- to expand the meaning of Cabinet in several Acts with the purpose of making clear that where Commonwealth legislation has existing provisions to protect from disclosure the deliberations and decisions of the Cabinet and its committees, the same protections apply to the deliberations and decisions of the National Cabinet and its committees.