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Freedom of Information changes go too far

On the International Day for Universal Access to Information, the Law Council of Australia has expressed concern the COAG Legislation Amendment Bill 2021 extends Freedom of Information (FOI) exemptions too broadly and without adequate justification.

In its [submission](#) to the Senate Finance and Public Administration Legislation Committee inquiry, the Law Council notes that a key administrative change contained in the Bill is the cessation of the Council of Australian Governments and the establishment of a new intergovernmental body known as the National Cabinet.

Under proposed amendments in Schedule 3 of the Bill, the definition of Cabinet would be amended in the FOI Act so that the National Cabinet is covered on the basis of being deemed to be a Committee of the Commonwealth Cabinet.

“This would mean documents of the National Cabinet would be unconditionally exempt from disclosure. It is not just official records that would be off limits, but proposals by individual Ministers to place matters on the agenda, briefings of Ministers on submissions, and drafts of all these documents,” Law Council of Australia President, Dr Jacoba Brasch said.

“The Law Council does not support the proposed amendments to Section 34 of the FOI Act for two main reasons.

“There is an absence of meaningful justification for applying an absolute exemption based on the status rather than the substance of information. In its current form, the Bill provides a blanket exemption and removes any requirement for the decision-maker to apply a public interest test if documents are requested.

“Existing FOI exemptions are already adequate. Under these exemptions, National Cabinet documents would not be released if the harm it would cause to specified national interests outweighs public interest.”

The Law Council has called for Schedule 3 to be omitted from the Bill. However, should a form of tailored exemption from disclosure under the FOI Act be considered necessary for National Cabinet documents, the Law Council has recommended guiding principles to ensure exemptions are not wider than needed.