

**2021**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**COAG LEGISLATION AMENDMENT BILL 2021**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004, s 37*)**

**Presented by  
Andrew Barr MLA  
Chief Minister**

## COAG LEGISLATION AMENDMENT BILL 2021

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the *COAG Legislation Amendment Bill 2021* (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

### OVERVIEW OF THE BILL

The purpose of the *COAG Legislation Amendment Bill 2021* is to amend outdated references to Council of Australian Governments (COAG), former COAG ministerial forums and councils and any associated bodies referred to in various Acts and Regulations. Specifically, the Bill seeks to amend the following Acts and Regulations:

- *Dangerous Goods (Road Transport) Act 2009*
- *Dangerous Goods (Road Transport) Regulation 2010*
- *Health (National Health Funding Pool and Administration) Act 2013*
- *Planning and Development Regulation 2008*
- *Utilities Act 2000*
- *Work Health and Safety Regulation 2011*

In May 2020 the National Cabinet agreed that the Council of Australian Governments (COAG) would cease. National Cabinet also agreed to form the National Federation Reform Council (NFRC), a joint forum for the First Ministers and Treasurers of all Australian jurisdictions and the President of the Australian Local Government Association (ALGA).

In June 2020, National Cabinet formed six National Cabinet Reform Committees. It also commissioned a Review of COAG intergovernmental Ministerial Forums and Councils (the Review). The Review had a view to rationalising and resetting the structure of former Ministerial Forums and Councils and their work programs.

In October 2020, National Cabinet accepted the Review's recommendations, including recommendations to maintain some former COAG councils and ministerial forums, make some time-limited and when needed, and to disband several

ministerial forums. It also accepted Recommendation 30 of the Review which stated that the Commonwealth should introduce legislation to amend outdated references to COAG councils and ministerial forums and that a parallel process may take place in each of the states and territories.

The cessation of COAG and continuation of National Cabinet, the formation of the National Federation Reform Council and National Cabinet Reform Committees and the ongoing and time-limited Ministers' Meetings, which reflect changes to former COAG Ministerial Forums and Councils, make up the current Australian Federal Relations Architecture.

This bill seeks to amend outdated references to COAG, COAG Councils and Ministerial forums and any associated bodies in ACT Acts and Regulations. Once amended, these Acts and Regulations will no longer reference intergovernmental bodies which have been disbanded, renamed or reformed.

## **CONSULTATION ON THE PROPOSED APPROACH**

Government directorates and agencies have been consulted in the development of the Bill.

## **CONSISTENCY WITH HUMAN RIGHTS**

The Bill does not engage human rights under the *Human Rights Act 2004*.

## COAG Legislation Amendment Bill 2021

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **COAG Legislation Amendment Bill 2021**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### Part 1 Preliminary

#### Clause 1 Name of Act

This clause provides for the Bill's name.

#### Clause 2 Commencement

This clause provides for the commencement of the Act. The Act is to commence on a day fixed by the Minister by written notice. If the Act has not commenced within 18 months of notification it will automatically commence.

#### Clause 3 Legislation amended

This clause provides that the Act amends the following legislation:

- *Dangerous Goods (Road Transport) Act 2009*
- *Dangerous Goods (Road Transport) Regulation 2009*
- *Health (National Health Funding Pool and Administration) Act 2013*
- *Planning and Development Regulation 2008*
- *Utilities Act 2000*
- *Work Health and Safety Regulation 2011.*

### Part 2 Dangerous Goods (Road Transport) Act 2009

#### Clause 4 Use of codes of practice etc in proceedings

##### Section 168 (4), definition of *relevant document*

This clause omits the term *Transport and Infrastructure Council* and substitutes it for *Ministerial Council*. The term Ministerial Council is a more general term which both reflects the current Australian Federal Relations Architecture and allows future name changes of Ministers meetings to not require changes to legislation.

#### Clause 5 Dictionary, new definition of Ministerial Council

This clause inserts a new definition of *Ministerial Council*. The new definition is needed to ensure clarity of the new term substituted in clause 4.

## **Part 3 Dangerous Goods (Road Transport) Regulation 2010**

### **Clause 6 Offences—emergency plans**

#### **Section 157 (4), definition of *emergency plan***

This clause omits the term *Australian Transport Council Transport* and substitutes it for *Ministerial Council*.

### **Clause 7 Dictionary, note 3, new dot point**

This clause inserts the term *Ministerial Council* in the dictionary.

### **Clause 8 Dictionary, definition of *ADG code***

This clause omits the term *Australian Transport Council Transport* and substitutes it for *Ministerial Council*.

### **Clause 9 Dictionary, definition of *Australian Transport Council***

This clause removes the definition of the *Australian Transport Council*. Reference to the *Australian Transport Council* is to be removed under clause 8 of this Bill.

### **Clause 10 Dictionary, definition of *competent authorities panel* (or *CAP*)**

This clause omits the term *Transport and Infrastructure Council* and substitutes it for *Ministerial Council*.

### **Clause 11 Dictionary, new definition of *National Transport Commission***

This clause inserts a new definition for *National Transport Commission* into the dictionary. The new definition references a Commonwealth Act and in doing so, provides clarity for the term, as used in the *Dangerous Goods (Road Transport) Regulation 2010*.

## **Part 4 Health (National Health Funding Pool and Administration) Act 2013**

### **Clause 12 Section 4 heading**

This clause substitutes a *Constitution of Ministerial Council* for *Standing council on health*. The term *Ministerial Council* is a more general term which both reflects the current Australian Federal

Relations Architecture and allows future name changes of Ministers meetings to not require changes to legislation.

## **Clause 13 Functions of administrator**

### **Section 13 (3)**

This clause omits the term *COAG* and inserts the term *the First Ministers' Council*. The new term reflects the changes resulting from the cessation of COAG and the more general term First Ministers Council intends to allow for future changes to name of First Ministers' meetings to not require new legislation.

## **Clause 14 Section 13 (4)**

This clause substitutes the term *First Ministers' Council* in place of *COAG*.

## **Clause 15 New part 10**

This clause provides for transitional arrangements.

Sections 60 to 64 provides definitions and outlines that name changes brought into effect by the Act do not affect work commenced by the Ministers' meeting or First Ministers' Council under other names, prior to the commencement of the Act.

Section 65 enables the Executive to make regulations dealing with transitional matters.

The section contains two different regulation making powers.

Section 65 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 65 (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify part 10 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

## **Clause 16 Dictionary, definition of COAG**

This clause removes the dictionary definition of COAG.

## **Clause 17 Dictionary, new definitions**

This clause inserts the terms and definitions for *First Ministers' Council* and *Ministerial Council* into the dictionary. This is done to provide clarity for new terms to be used in the Act.

## **Clause 18 Dictionary, definition of *national health reform agreement***

This clause adds the full name Council of Australian Governments to the definition of the *National Health Reform Agreement*. The definition previously included the abbreviation 'COAG'.

## **Clause 19 Dictionary, definition of *standing council on health***

This clause removes the dictionary definition of *standing council on health*.

## **Clause 20 Further amendments, mentions of *standing council on health***

This clause omits *standing council on health* and substitutes it with the term *Ministerial Council*. The term Ministerial Council is a more general term which both reflects the current Australian Federal Relations Architecture and allows future name changes of Ministers meetings not to require changes to legislation.

## **Part 5 Planning and Development Regulation 2008**

### **Clause 21 Contents of strategic environmental assessments—Act, s 101 (b)**

#### **Section 17 (1) (d) (ii), example 2**

This clause substitutes *National Climate Change Adaptation Framework* in place of *COAG Climate Change Adaptation Framework*. The substitution references the title used in the original agreement, namely, the National Climate Change Adaptation Framework.



## **Part 6 Utilities Act 2000**

### **Clause 22 National regulatory obligations and costs**

#### **Section 54E (1) (b) and (4) (a) (ii)**

This clause substitutes the term *Ministerial Council's* in place of *COAG EC's*. The term Ministerial Council is a more general term which both reflects the current Australian Federal Relations Architecture and allows future name changes of Ministers meetings to not require changes to legislation.

### **Clause 23 Section 54E (4) (a) (iii) to (v)**

This clause substitutes the term *Ministerial Council* in place of *COAG EC's*.

### **Clause 24 Section 54E (7), definition of COAG EC**

This clause removes the definition of COAG EC.

### **Clause 25 Section 54E (7), new definition of Ministerial Council**

This clause inserts a definition of *Ministerial Council*.

### **Clause 26 New part 21**

Section 413 outlines that name changes brought into effect by the Act do not affect work commenced by the Ministers' meeting, when operating using other names, prior to the commencement of the Act.

Section 414 enables the Executive to make regulations dealing with transitional matters.

The section contains two different regulation making powers.

Section 414 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 414 (2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify part 10 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 414 (3) gives a regulation under section 414 (2) full effect according to its terms. A provision of part 10 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of part 10 of the Act has no ongoing effect after the expiry of that part.

Part 415 provides for the expiry of this part, two years after the commencement day.

## **Part 7      Work Health and Safety Regulation 2011**

### **Clause 27    Dictionary, definition of *ADG Code***

This clause omits *Transport and Infrastructure Council* and substitutes it with the term *Ministerial Council*.

### **Clause 28    Dictionary, definition of *Ministerial Council***

This clause inserts a new definition of *Ministerial Council*.