



1997

WESTERN AUSTRALIA  
LEGISLATIVE ASSEMBLY

**STANDING COMMITTEE ON  
UNIFORM LEGISLATION AND  
INTERGOVERNMENTAL AGREEMENTS**

**MINISTERIAL COUNCILS**

**Nineteenth Report**

Presented by:

**Hon. K. J. Minson, MLA**

Laid on the Table of the Legislative Assembly  
on the 12 June 1997

**ORDERED TO BE PRINTED**

*Further copies available from -*

State Law Publisher  
10 William Street  
PERTH WA 6000

Telephone: (08) 9321 7688  
Fascimile: (08) 9321 7536

Published by the Legislative Assembly, Perth, Western Australia 6000





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## TERMS OF REFERENCE

On Wednesday 4 August 1993 the Legislative Assembly established the Standing Committee on Uniform Legislation and Intergovernmental Agreements.

On Tuesday, 18 March 1997 the Legislative Assembly reestablished the Standing Committee on Uniform Legislation and Intergovernmental Agreements with the following terms of reference:

- (1) That a Standing Committee be established for the duration of the 35th Parliament to inquire into, consider and report on matters relating to proposed or current intergovernmental agreements and uniform legislative schemes involving the Commonwealth, States and Territories, or any combination of States and Territories without the participation of the Commonwealth.
- (2) When considering draft agreements and legislation, the Committee shall use its best endeavours to meet any time limits notified to the Committee by the responsible Minister.
- (3) The Committee shall consider and, if the Committee considers a report is required, report on any matter within three months; but if it is unable to report in three months, it shall report its reasons to the Assembly.
- (4) Each member, while otherwise qualified, shall continue in office until discharged, notwithstanding any prorogation of the Parliament.
- (5) No member may be appointed or continue as a member of the Committee if that member is a Presiding Officer or a Minister of the Crown.
- (6) When a vacancy occurs on the Committee during a recess or a period of adjournment in excess of 2 weeks the Speaker may appoint a member to fill the vacancy until an appointment can be made by the Assembly.
- (7) The Committee has power to send for persons and papers, to sit on days over which the House stands adjourned, to move from place to place, to report from time to time, and to confer with any committee of the Legislative Council which is considering similar matters.
- (8) If the Assembly is not sitting, a report may be presented to the Clerk of the Legislative Assembly who shall thereupon take such steps as are necessary and appropriate to publish the report.
- (9) In respect of any matter not provided for in this resolution, the Standing Orders and practices of the Legislative Assembly relating to Select Committees shall apply.





## **CHAIRMAN'S FOREWORD**

This Report does not purport to be a definitive document on Ministerial Councils but does provide Members with an overview of the system of Ministerial Councils and the growth of intergovernmental relations. This document provides Members with background on the development of Ministerial Councils as a means of facilitating intergovernmental relations throughout Australia through the cooperation of Commonwealth and State Ministers responsible for particular portfolios.

The Report informs Members of the roles and powers of Ministerial Councils and the part Ministerial Councils play in the development of national cooperative agreements and uniform legislative schemes.

The Report provides a historical background to Ministerial Councils and considers recent developments. The Report also highlights potential problems posed by the development of Ministerial Councils in relation to their accountability to Parliament. The effect of the lack of information about Ministerial Councils on parliamentary and public scrutiny of lawmaking is also addressed.

The Standing Committee noted in its previous reports that there do not appear to be any established procedures of Ministerial Councils with respect to intergovernmental agreements and uniform legislative schemes.

The Standing Committee was established as a result of recommendations from the Select Committee on Parliamentary Procedures for Uniform Legislation Agreements in 1992. The Select Committee had concerns about the scrutiny of uniform legislation and the implications for Parliament. The charter of the Standing Committee is to inquire into, consider and report on matters relating to proposed or current intergovernmental agreements and uniform legislative schemes. The role of Ministerial Councils and their part in the development of intergovernmental agreements and uniform legislative schemes is a fundamental element in work of the Standing Committee and essential to the scrutiny process of Parliament.

This report, while effectively an information document, is the basis of the work of the Standing Committee. Intergovernmental agreements and proposed uniform legislative schemes evolve from the cooperation of Ministerial Councils. The Standing Committee has highlighted the need to ensure that Ministers can refer proposed uniform legislative schemes to the Standing Committee for comment and report to Parliament.

The extent to which the power of the executive has displaced the role of parliaments has been referred to by many commentators. However, uniform agreements and lawmaking have a place in a federation.

This is where the Standing Committee can assist in the process by informing the Parliament about proposed uniform legislation and inquiring into and reporting on matters relating to uniform legislation.

HON. K. J. MINSON, MLA  
CHAIRMAN

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## **ABBREVIATIONS**

Throughout this report:

"Standing Committee"	means the Standing Committee on Uniform Legislation and Intergovernmental Agreements established by the Legislative Assembly of the Western Australian Parliament on 4 August 1993 and re-established on 18 March 1997.
"COAG"	means the Council of Australian Governments.
"ACIR"	means the Advisory Council for Intergovernment Relations.
"WASCPPULA"	means the Western Australian Select Committee on Parliamentary Procedures for Uniform Legislation Agreements.
"WASCULIA"	means the Western Australian Standing Committee on Uniform Legislation and Intergovernmental Agreements.
"CSRS"	means the Commonwealth-State Relations Secretariat.

## **Table of Contents**

	<i>Page No.</i>
<b>TERMS OF REFERENCE</b>	vii
<b>CHAIRMAN'S FOREWORD</b>	ix
<b>ABBREVIATIONS</b>	x
<b>1. INTRODUCTION</b>	1
<b>2. GROWTH OF INTERGOVERNMENTAL RELATIONS</b>	1
<b>3. DEFINITION OF MINISTERIAL COUNCILS</b>	2
<b>4. ROLES AND POWERS</b>	4
<b>5. MINISTERIAL COUNCILS AND UNIFORM LEGISLATION</b>	5
<b>6. RECENT DEVELOPMENTS</b>	6
<b>7. POTENTIAL PROBLEMS</b>	7
<b>8. CONCLUSION</b>	10
 <b>APPENDIX ONE</b>	
List of Ministerial Councils as at 6 May 1997	11
 <b>APPENDIX TWO</b>	
Broad Protocols for the Operation of Ministerial Councils	15
 <b>REFERENCES</b>	17

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## 1. INTRODUCTION

The purpose of this Report is to provide a general overview of the role and operation of Ministerial Councils<sup>1</sup> within the Australian Federal System. The Report will begin with a brief discussion of the growth of intergovernmental relations and how Ministerial Councils fit into the intergovernmental framework. This will be followed by an outline of their definition, role and operation and some recent significant developments. The Paper will conclude with a number of problems posed by Ministerial Councils.

## 2. GROWTH OF INTERGOVERNMENTAL RELATIONS

It has been claimed that of all the changes to have occurred to the Australian Federal System since 1951, the most dramatic has been the proliferation of transactions between the various levels of Government and of the agencies to supervise them.<sup>2</sup> Sharman suggested four reasons for this growth in interal activity in the post-war period -

- as Government involvement in social and economic life has increased, so has the need for Government agencies to exchange information and establish appropriate channels of communication;
- as Government regulation has increased, so too has been the likelihood of jurisdictional overlap, necessitating greater consultation and harmonisation of policies;
- the central Government has involved itself to a greater extent in financing State programs, leading to an expansion of intergovernmental relations; and
- the desire of the central Government to become involved in a large range of activities outside its jurisdiction.<sup>3</sup>

The result for both State and National Governments has been -

... such a degree of interpenetration that it is hard to find either an area of Commonwealth activity that does not impinge on State policies, or State administration that does not entail some Commonwealth involvement.<sup>4</sup>

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1 They have also been described as Interjurisdictional Ministerial Councils (Chapman, 1989:105)

2 Sharman, Campbell (1989) "A Political Perspective" in Galligan, Brian (ed.) *Australian Federalism*, Longman Cheshire, Melbourne. p 107

3 *Ibid*, p. 108

4 Sharman, Campbell (1991) "Executive Federalism" in *Intergovernmental Relations and Public Policy* (eds) Galligan, Brian, Hughes, Owen and Cliff Walsh, Allen & Unwin, Sydney. p. 23

Ministerial Councils, which act as -

... peak bodies for policy consultations between Commonwealth and State Ministers,<sup>5</sup>

have been seen to be a manifestation of this growth in intergovernmental relations. Indeed, they are claimed to have contributed to the survival of the Federal System in Australia<sup>6</sup>. However, Ministerial Councils are only one of a number of different ways in which various Governments can interact. As Galligan, Hughes and Walsh explained -

Intergovernmental relations in Australia involve a wide range of institutions, processes and interactions, ranging from high profile meetings of peak organisations like the Premiers' Conference and Loan Council to informal contact between Commonwealth and State officials.<sup>7</sup>

### 3. DEFINITION OF MINISTERIAL COUNCILS

Ministerial Councils represent one of the principal means of facilitating intergovernmental cooperation in Australia. The term Ministerial Council is used to describe meetings held between Commonwealth and State Ministers responsible for particular portfolios or areas, such as agriculture, education or the environment, to discuss matters of mutual interest.<sup>8</sup> More particularly, they -

... provide a forum in which the component units of the federal system can come together to arrive at a common understanding of the issues.<sup>9</sup>

Hede provided a basic definition of Ministerial Councils which incorporated the following characteristics -

- an ongoing body that meets at least annually;
- with full membership restricted to Government Ministers or their representatives;
- which comprises the Commonwealth and several other Governments;
- and which has intergovernmental consultation as a primary objective.<sup>10</sup>

Ministerial Councils have had a long history in Commonwealth, State and Territory Government relations, even though the Australian Constitution makes no provision for intergovernmental meetings. Three were established before 1946 while a fourth, the Housing Ministers' Conference,

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5 Sharman, (1989) *Op Cit*, p. 107

6 ACIR quoted in Hede, 1993 "Reforming the Police Role of Intergovernmental Ministerial Councils" in *Policy Making in Volatile Times* (ed) Hede, Andrew and Prosser, Scott, Hale & Iremonger, Sydney, p. 193

7 Sharman, (1989) *Op Cit*, p. 3

8 WASCPULA, Western Australian Select Committee on Parliamentary Procedures for Uniform Legislation Agreements (1992) Report, State Print, p. 30

9 Chapman, Ralph (1988) "Intergovernmental Forums and the Policy Process" in *Comparative State Policies* (ed.) Galligan, Brian Longman, Cheshire, Melbourne p. 10

10 Hede, (1993) *Op Cit*, p. 194

has met informally since that date.<sup>11</sup> Eleven others were created between 1946 and 1970, with the majority having been formed since 1970. By 1992, there were 45 Ministerial Councils in existence, which raised concerns about the -

... overlap and duplication in their coverage and blurred lines of accountability to Governments.<sup>12</sup>

A review of their scope, distribution and number reduced the existing Ministerial Councils to 21. Despite the reduction in number, additional Ministerial Councils can be formed from time to time (see Appendix One for a list of Ministerial Councils as at 6 May 1997). The most common method of establishment is by mutual arrangement between individual Ministers from the Commonwealth, States and Territories.

Ministerial Councils have developed their own structures, roles and procedures over time, resulting in a lack of uniform arrangements.<sup>13</sup> However, despite their diversity of origins, establishment and authority, Ministerial Councils share a number of characteristics, including their membership and meeting arrangements.<sup>14</sup> For example, Ministerial Councils are typically composed of the relevant Government Ministers from each State and Territory and the Commonwealth. Councils may invite representation from the Australian Local Council Association, New Zealand, or other regional Governments. In terms of chairmanship, some Councils are chaired by the Commonwealth Minister, while in others the Chair rotates.

Ministerial Councils are assisted in their work by standing committees of senior bureaucrats selected on a similarly representative basis.<sup>15</sup> Most Standing Committees comprise the heads of the departments relating to the subject matter of the Ministerial Council.<sup>16</sup> Each Ministerial Council and standing committee receives support from a secretariat, of which there are four kinds -

- (1) That which is part of a Commonwealth department.
- (2) That which is provided on a rotational basis by the host State.
- (3) That which is provided permanently by one State at its expense.
- (4) That which is funded on a cost-shared basis by the participants and is thus largely independent of departmental control.<sup>17</sup>

From time to time, subcommittees and working groups are also established to further explore issues.

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11 Chapman, (1988) *Op Cit*, p. 105

12 COAG, Council of Australian Governments (1992) *Communique* 7 December 1992, p. 3

13 ACIR, (1986) *Op Cit*, p. 29

14 Chapman, (1988) *Op Cit*, p. 106

15 WASCULIA, Western Australian Standing Committee on Uniform Legislation and Intergovernmental Agreements (1996) *Review of the National Environment Protection Council (Western Australia) Bill 1996*, Fifteenth Report, Perth, p. 3

16 Chapman, (1988) *Op Cit*, p. 111

17 ACIR, (1986) *Op Cit*, p. 25

Ministerial Council meetings are held on a regular basis, at least annually or biannually, with some Councils having provision to call extra meetings if necessary. They are usually preceded by a meeting of the relevant standing committee. While Premiers' Conferences and Loan Council meetings are normally held in Canberra, other meetings rotate between the State capitals.

#### **4. ROLES AND POWERS**

It has been highlighted that -

[t]he role of Ministerial Councils is not simple or uniform.<sup>18</sup>

For example, one description of their role was provided by the Commonwealth-State Ministerial Councils - A Compendium -

... to facilitate consultation and cooperation between Governments, to develop policy jointly, and to take joint action in the resolution of issues which arise between Governments in the Australian Federation.<sup>19</sup>

In a similar vein, Hede stated that the overriding function of Ministerial Councils was to provide a forum for networking between Ministers and senior officials.<sup>20</sup>

The ACIR identified a variety of roles for Ministerial Councils, including -

regulatory, advisory, consultative, policy, reviewing, coordinating, and informing functions.<sup>21</sup>

Most Councils act in an advisory or coordinating role,<sup>22</sup> though many are also involved in the coordination of policy across Governments.<sup>23</sup> With the exception of Councils established by statute or an agreement appended to a statute, most lack any real power, as the decisions of Councils are not binding on member Governments. However, Ministers may seek prior Cabinet approval for, or subsequent endorsement of, Ministerial Council agreements. Procedures have been introduced in several States, including Western Australia, to ensure that Ministers do not enter into agreements in Ministerial Councils without first submitting proposals to Cabinet. It has been claimed that these procedures were introduced because Cabinets sometimes found their

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18 Hede, (1993) *Op Cit*, p. 204

19 CSRS (1994) Commonwealth-State Relations Secretariat, The Department of the Prime Minister and Cabinet, *Commonwealth-State Ministerial Councils - A Compendium*, p. 4

20 Hede (1993) *Op Cit*, p. 204

21 ACIR (1986) *Op Cit*, p. 31

22 Chapman, (1988) *Op Cit*, p. 106

23 Hede, (1993) *Op Cit*, p. 204



ability to make decisions was constrained by prior Ministerial Council agreements.<sup>24</sup> By the same token, Ministers have occasionally been fettered by instructions from their Cabinet or Premier.<sup>25</sup>

The power of Ministerial Councils to make policy ranges from deliberative at one end of a scale to consultative at the other.<sup>26</sup> Examples of the former include the Premiers' Conference and the Loan Council, while the majority of Councils are largely consultative.<sup>27</sup> Also, in relation to their policy role, Hede classified Ministerial Councils into four categories according to their policy-specificity -

- central councils, such as the Australian Loan Council and the Council of Australian Governments (COAG)<sup>28</sup>;
- broad policy councils, such as the Australian and New Zealand Environment and Conservation Council;
- specific policy councils, such as the Corrective Services Ministers' Conference; and
- specific issue councils, such as the National Food Standards Council.<sup>29</sup>

## 5. MINISTERIAL COUNCILS AND UNIFORM LEGISLATION

Ministerial Councils can also play a major role in the development and oversight of national cooperative agreements and uniform legislative schemes. Although most operate on an informal basis, others acquire a more formal status through national legislative schemes, as their functions are set out in the agreements and referred to in the legislation. Some of these functions can include the approval of legislation, including regulations and any future amendments, and approval of appointments to administrative bodies established under legislation.<sup>30</sup>

Agreement by the executive branches of Governments at COAG and/or Ministerial Councils, to a scheme involving the passage of uniform legislation in different jurisdictions, is usually contained in a formal intergovernmental agreement.<sup>31</sup> The agreement usually describes the substantive principles upon which the legislation will be based.<sup>32</sup> Saunders noted that intergovernmental

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24 WASCPPULA, (1992) *Op Cit*, p. 31

25 Chapman, (1988) *Op Cit*, p. 107

26 Davis, G, Wanna, J, Warhurst, J and Weller, P, (1993) *Public Policy in Australia*, Second Edition, Allen & Unwin, St Leonards, p. 57

27 *Ibid*, p. 57

28 COAG is comprised of the Prime Minister, Premiers, Chief Ministers and the President of the Australian Local Government Association. Hede claimed it was fast becoming the major policy co-ordination body in Australia (1993: 195).

29 Hede, (1993) *Op Cit*, p. 195

30 WASCPPULA (1992) *Op Cit*, p. 31

31 WASCULIA, (1996) *Op Cit*, p. 4

32 WASCULIA, Western Australian Standing Committee on Uniform Legislation and Intergovernmental Agreements (1995) *Scrutiny of National Scheme Legislation and the Desirability of Uniform Scrutiny Principles*, Tenth Report, Perth, p. 7

agreements may or may not be ratified by legislation, scheduled to legislation, authorised by legislation or tabled in the respective parliaments.<sup>33</sup>

Once COAG or the relevant Ministerial Council has approved a proposal in principle for a scheme, the matter is usually referred to a working party for detailed development of the structure of the scheme and drafting of the legislation. After consultation the working party makes recommendations to COAG or the Ministerial Council.<sup>34</sup> Ministerial Councils do not regularly report to Parliament after meetings on intergovernmental matters or proposed national legislation. After attending meetings, Ministers then present the uniform legislation to their respective Parliaments.

## 6. RECENT DEVELOPMENTS

Since the establishment of COAG, which was a formalisation of the Special Premiers' Conference originally convened in 1990, there have been two significant changes to the structure and function of Ministerial Councils. At its first meeting in December 1992, COAG agreed to broad protocols for the operation of Ministerial Councils to -

... ensure the efficient management of this form of intergovernmental consultation.<sup>35</sup>

They were to provide -

... sensible and practical ground rules for Ministerial Councils while retaining appropriate practical flexibility in their operation.<sup>36</sup>

However, Hede claimed these protocols also signalled COAG's intention to -

... take a much more directive role in policy coordination across all Ministerial Councils.<sup>37</sup>

The protocols covered such issues as the representation of constituent Governments, liaison between Councils, involvement of other countries, efficiency of Council operations and information about Councils (see Appendix Two).

The second major development was the review of the scope, distribution and number of Ministerial Councils, which was commissioned by COAG in December 1992. At its second

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33 Saunders, Cheryl (1991) "Constitutional and Legal Aspects" in *Intergovernmental Relations and Public Policy* (eds) Galligan, Brian, Hughes, Owen and Cliff Walsh, Allen & Unwin, Sydney, p. 46

34 WASCULIA, (1995) *Op Cit*, p. 7

35 CSRS, (1994) *Op Cit*, p. 1

36 *Ibid*, p. i

37 Hede, (1993) *Op Cit*, p. 201

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meeting in June 1993, COAG decided to reduce their number from 45 to 21. The reduction was to be achieved by combining a number of existing Councils, and took into account -

... portfolio arrangements across jurisdictions, common membership, existing back-to-back meeting arrangements and overlap of responsibilities.<sup>38</sup>

Hede noted that the overall effect of the establishment of COAG and the central review of Ministerial Councils -

... should be to enhance the policy coordination function of Ministerial Councils and to ensure that they are more accountable to executive Government.<sup>39</sup>

In addition, COAG endorsed recommendations to improve the efficiency and effectiveness of Ministerial Councils. In particular, these covered the powers, scope, organisation, formation, chairing, meeting arrangements, agenda prioritising and confidentiality of Ministerial Councils.<sup>40</sup>

## 7. POTENTIAL PROBLEMS

An important issue in relation to the operation of Ministerial Councils is their accountability to parliament. As Wiltshire explained, Ministerial Councils make agreements and policies -

... away from the national and State Parliaments and other procedures of democratic scrutiny and accountability.<sup>41</sup>

Chapman noted that the lines of accountability of individual ministers, their departments and the collective ministry to parliament were blurred.<sup>42</sup> However, rather than this being particular to Ministerial Councils, it appears that problems of accountability are a general weakness with intergovernmental relations in Australia.<sup>43</sup>

Saunders highlighted two interrelated areas of concern in relation to Ministerial Councils. The first was the absence of information about all aspects of intergovernmental relations, such as their existence and operation and the substance of intergovernmental agreements.<sup>44</sup> One of the problems was that it was difficult and labour-intensive to collect systematic and reliable

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38 CSRS, (1994) *Op Cit*, p. i

39 Hede, (1993) *Op Cit*, p. 205

40 CSRS, (1994), *Op Cit*, pp. ii, 4-5

41 Wiltshire, Kenneth (1992) "Australia's New Federalism, Recipes for Marble Cakes" *Publius* Vol 22, No. 3, p. 167

42 Chapman, (1988) *Op Cit*, p. 117

43 Davis, (1993) *Op Cit*, p. 60

44 Saunders, (1991) *Op Cit*, p.48

information about intergovernmental arrangements.<sup>45</sup> In addition, she noted that State Parliaments were less likely than the Commonwealth to have systematic access to intergovernmental agreements or to the proceedings of Ministerial Council meetings.<sup>46</sup>

The ACIR also pointed to the lack of adequate information about Ministerial Councils and the effect on parliamentary and public scrutiny.<sup>47</sup> For example, the minutes and agendas of most Ministerial Councils are considered confidential, although some information is provided by way of annual reports, press releases or departmental annual reports.<sup>48</sup> Part of the problem lies in the informal nature of discussions, which are often off-the-record. While some argue this informality adds to the consultative process, others have referred to it pejoratively as the -

... secretive nature of interactions.<sup>49</sup>

Efforts have been made to increase the store of information about Ministerial Councils. For example, in May 1992, a compendium of Commonwealth-State Ministerial Councils was published, which identified 48 Ministerial Councils and outlined their objectives, composition, arrangements with regard to the chairing of meetings, frequency of meetings and secretariat arrangements.<sup>50</sup>

The Western Australian Select Committee on Parliamentary Procedures for Uniform Legislation Agreements also noted there did not appear to be any established policies relating to the procedures of Ministerial Councils with respect to intergovernmental agreements and uniform legislative schemes, such as provisions regarding voting on policy issues and reporting to Parliament on those agreements and schemes. It therefore recommended the development of guidelines on all relevant matters relating to the role of Ministerial Councils with regard to these issues. The Select Committee also recommended that agreements be annexed to the relevant legislation, so that the terms of the agreement would be open to scrutiny.<sup>51</sup> This was reiterated by the Standing Committee in its first Report (1994).

Another attempt to make Ministerial Council activities more transparent was made by COAG in 1993, when it recommended that a list of Ministerial Councils be published and regularly updated every two years, including detailed information about each Council.<sup>52</sup> Paradoxically, one of these recommendations reiterated the confidentiality of Council documents -

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45 *Ibid*, p. 49

46 *Ibid*, p. 50

47 ACIR, (1986) *Op Cit*, p. 63

48 *Ibid*, p. 52

49 Chapman, (1988) *Op Cit*, p. 118

50 WASCPPULA, (1992) *Op Cit*, p. 30

51 *Ibid*, pp. 47-8

52 CSRS, (1994) *Op Cit*, p. ii

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Subject to the applicability of the relevant Commonwealth, State or Territory Freedom of Information legislation, unless all members of Council agree, any discussion by, or document of the Council, or any committee, subcommittee, working party officer or agent of the Council shall be confidential.<sup>53</sup>

Despite these attempts to increase the accessibility of information, Hede concluded that -

[g]enerally Ministerial Councils in Australia lack the democratic accountability which comes from openness to public and parliamentary scrutiny.<sup>54</sup>

Moreover, one could argue that the ad hoc arrangements of Ministerial Councils would not readily lend themselves to effective scrutiny.

The second problem area which Saunders highlighted was that intergovernmental arrangements impede the ability of parliaments to perform any sort of scrutiny or review function. This has serious implications for the Standing Committee, which is charged with the scrutiny of matters relating to proposed or current intergovernmental agreements and uniform legislation. Specifically, Saunders argued that -

... where Governments have agreed that legislation will be enacted in a particular form, the parliaments have no opportunity to make alterations to it.<sup>55</sup>

This is of particular concern to State Parliaments, as -

[t]he Commonwealth Parliament at least plays a role in the passage of amending legislation: State Parliaments may never be exposed to the legislation again, once the adopting Act is passed, although theirs is the authority on which the regime rests.<sup>56</sup>

Concerns about the scrutiny of uniform legislation and the implications for parliament led to the creation of the Western Australian Select Committee on Parliamentary Procedures for Uniform Legislation Agreements in 1992. In particular, these focussed on the effect of delegating Parliament's legislative function to the Queensland Parliament and the Ministerial Council for Financial Institutions under the co-operative scheme established by the Financial Institutions (Queensland) Act and associated legislation<sup>57</sup> and included -

- the role of the Ministerial Council in approving amendments to the legislation;
- the fact that amendments enacted in Queensland would not come before the Western Australian Parliament; and

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53 *Ibid*, p. 5

54 Hede, (1993) *Op Cit*, p. 200

55 Saunders, (1991) *Op Cit*, p. 49

56 *Ibid*, p. 50

57 see WACPPULA, (1992) *Op Cit*

- the fact that regulations made in Queensland would not be subject to disallowance in the Western Australian Parliament.<sup>58</sup>

The Select Committee concluded that a mechanism was required to allow parliamentary scrutiny of intergovernmental agreements and uniform legislative schemes at the earliest possible stage of their inception and development. It noted that the uniform provisions of the financial institutions legislation, which were enacted by the Queensland Parliament, were not able to be given adequate scrutiny by the Parliament before the Western Australian adopting legislation was passed. It was also concerned that a considerable number of uniform legislative schemes were proposed or being negotiated but there was no provision for information about these schemes to be provided to the Parliament prior to the introduction of legislation. To this end, the Select Committee recommended the establishment of a Standing Committee -

... to scrutinise, monitor and review intergovernmental agreements and uniform legislative schemes, and the decisions of Ministerial Councils relating to such schemes<sup>59</sup>

The Standing Committee on Uniform Legislation and Intergovernmental Agreements was subsequently established in August 1993.

## 8. CONCLUSION

In its 10th Report, the Standing Committee stressed the need for parliamentary accountability and scrutiny -

Accountability by the Executive to the Parliament is central to the system of responsible Government. Procedures which allow access to information are essential if Parliament is to perform its role. It is important to remember that Parliament is supreme and the Government of the day serves at the pleasure of Parliament.<sup>60</sup>

The doctrine of ministerial responsibility holds that a Minister is responsible to parliament for his or her portfolios and departments which, by extension, should also cover their participation in Ministerial Councils. However, Chapman observed that Ministers attending Councils had no apparent obligation to account to anyone for what they did nor was Parliament informed of their activities.<sup>61</sup>

The need for proper accountability cannot be overstated. Parliament needs to be able to exercise constant and effective scrutiny over Government, and this can only be done by improving its access to information about executive activities. At the same time, the reality of a Federal System requires Governments to liaise and develop common policies and laws. Intergovernmental

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58 *Ibid*, p. 3

59 *Ibid*, p. 45

60 WASCULIA, (1995) *Op Cit*, p. 14

61 Chapman, (1988) *Op Cit*, p.118

relations depend on consultation, negotiation, bargaining and conflict resolution in such forums as Ministerial Councils. Often this will be done behind closed doors, where the participants can speak freely and openly. The challenge lies in balancing the requirements of accountability with the efficient functioning of intergovernmental relations.

## APPENDIX ONE

## LIST OF MINISTERIAL COUNCILS AS AT 6 MAY 1997

COUNCIL	ABBREVIATION	FREQUENCY
Australian Loan Council	ALC	Annual
Council of Australian Governments, incl. - <ul style="list-style-type: none"> <li>• Treaties Council</li> <li>• Standing Committee on Treaties</li> <li>• Senior Officials - COAG</li> </ul>	COAG  TC SCOT  SOCOAG	Bi-annual  -  Bi-annual
Leaders' Forum <ul style="list-style-type: none"> <li>• Senior Officials - Leaders' Forum</li> </ul>	Leaders' SOLF	Annual (other as necessary) Bi-annual
Premiers' Conference (Financial)	Prem Conf	Annual
Agriculture & Resources Management Council of Australia and New Zealand	ARMCANZ	Bi-annual
Australian & New Zealand Environment & Conservation Council	ANZECC	Bi-annual
Australian & New Zealand Minerals & Energy Council	ANZMEC	Annual
Australian Transport Council, incl. - <ul style="list-style-type: none"> <li>• Australian Transport Advisory Council</li> <li>• Ministerial Council on Road Transport</li> </ul>	ATC	Bi-annual
Commonwealth-State Ministers' on the Status of Women Conference	CSMSWC	Annual



COUNCIL	ABBREVIATION	FREQUENCY
Cultural Ministers' Council, incl. - <ul style="list-style-type: none"> <li>• Cultural Ministers' Council Standing Committee</li> </ul>	CMC  CMCS	Annual  Bi-annual
Disability Services Subcommittee	DSSC	every three months (extraordinary meetings may be called)
Health & Community Services Ministerial Council, incl. - <ul style="list-style-type: none"> <li>• Australian Health Ministers' Conference</li> <li>• Community Services Ministers' Conference</li> </ul>	HCSMC  AHMC  CSMC	Annual (extraordinary meetings may be called)  Annual (extraordinary meetings may be called)  Annual
Industry, Technology & Regional Development Council, incl. - Australian Industry & Technology Council <ul style="list-style-type: none"> <li>• Meeting of Commonwealth, State, Territory &amp; New Zealand Ministers responsible for Small Business</li> </ul>	ITRDC	Annual (more if necessary)
Australian Small Business Ministers' Meeting	ASBM	Annual
Labour Ministers' Council	LMC	Annual (other as necessary)
Ministerial Council of Aboriginal & Torres Strait Islander Affairs	MCATSIA	Annual (other as required)
Ministerial Council of the Administration of Justice, incl. - <ul style="list-style-type: none"> <li>• Australasian Police Ministers' Council</li> <li>• Intergovernmental Committee on the National Crime Authority</li> <li>• Corrective Services Ministers' Conference</li> </ul>	MCAJ  APMC  IGCNCA  CSMC	Bi-annual  Bi-annual  Bi-annual  Annual (on first meeting of year)

<b>COUNCIL</b>	<b>ABBREVIATION</b>	<b>FREQUENCY</b>
Ministerial Council on the Australian National Training Authority	ANTA	Three to Four per year
Ministerial Council on Consumer Affairs, incl. - • Ministerial Council on Trade Measurement	MCCA	Annual (more if required)
Ministerial Council of Attorneys-General, incl. - • Standing Committee of Attorneys-General • Standing Committee of Attorneys-General - Censorship	MCAG SCAG SCAGC	Three per year
Ministerial Council for Financial Institutions	MINFIN	Annual
Ministerial Council for Corporations	MINCO	Three per year
National Environment Protection Council	NEPC	Bi-annual
National Food Standards Council	NFSC	Annual
Online Government Council	OGC	-
Sport & Recreation Ministers' Council, incl. - • Racing & Gaming Ministers' Conference • Racing Ministers' Conference • Gaming Ministers' Conference	SRMC RMC GMC	Annual Annual Annual

COUNCIL	ABBREVIATION	FREQUENCY
Planning, Housing & Local Government Ministerial Council, incl. - <ul style="list-style-type: none"> <li>• Planning Ministers' Conference</li> <li>• Housing Ministers' Conference</li> <li>• Local Government Ministers' Conference</li> <li>• Construction Industry Ministerial Council</li> <li>• Heritage Ministers' Meeting</li> </ul>	PHLGMC  PMC  HMC  LGMC  CIMC	Annual    Annual  Annual  Annual
Ministerial Council on Drug Strategy	MCDS	Annual (alternate years to HCSMC or MCA)
Ministerial Council for Education, Employment, Training & Youth Affairs	MCEETYA	Annual (or not more than twice a year)
Ministerial Council of Forestry, Fisheries & Aquaculture	MCFFA	Annual
Ministerial Council on Immigration & Multicultural Affairs	MCIMA	Annual (Officials meet biannually)
Tourism Ministers' Council	TMC	Annual

**APPENDIX TWO****BROAD PROTOCOLS FOR THE OPERATION  
OF MINISTERIAL COUNCILS**

At its meeting on 7 December 1992, the Council of Australian Governments agreed to the following protocols for the operation of Ministerial Councils (CSRS, 1994: 1-3):

**□ Representation of Constituent Governments**

It is the responsibility of Ministers to ensure they are in a position to appropriately represent their Governments at Council meetings. This is of particular importance where Council resolutions require commitment, especially financial commitment, from respective Governments.

Issues with cross portfolio or whole of Government implications or of a highly controversial nature, in particular, may require careful prior consideration by Governments at Cabinet level.

Where new issues or alternative proposals arise at meetings on which a Minister believes further consideration by Cabinet is required, it is the responsibility of that Minister to make this position clear to the Council.

Ministerial Councils exercising formal decision-making responsibilities should submit a report on decisions taken on an annual basis to the Council of Australian Governments.

**□ Development of Agenda**

Council arrangements should include processes for ensuring that all parties have input to the development of agendas and that agendas are agreed at the earliest possible date prior to meetings, with provision for discussion of additional items at meetings only by agreement of its members.

**□ Provision of Agenda Papers**

Council arrangements should include processes for ensuring that agenda papers are circulated sufficiently in advance to allow appropriate prior consideration by the constituent Governments, particularly where there are budgetary implications. As a general guide, this would normally require formal papers to be circulated in final form ten days prior to the Ministerial Council meeting and, where earlier drafts are available for discussion, these normally would be circulated three weeks before the meeting.

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**Arrangement of Officers Meetings**

Officials meetings held to develop issues for the consideration of Ministers should be held sufficiently prior to the meeting of Ministers to allow proper consideration of the issues involved.

**Announcement of Resolutions**

Arrangements for making announcements of resolutions reached by Ministerial Councils should be agreed by all members of a Council. When matters require further consideration, any Ministerial Council announcements should not preempt this further consideration.

**Liaison between Councils**

When considering intergovernmental matters which have implications beyond the areas of responsibility of Ministers on a Council, Ministerial Councils should ensure that other relevant Councils are kept informed, through liaison between the Chairs in the first instance, to ensure that relevant factors are taken into account. Ministerial Councils should also refer such issues to Heads of Government where they have major cross-portfolio or whole-of-government implications.

**Involvement of the Australian Local Government Association**

Except for matters where membership is explicitly set out by statute or agreement, it is up to individual Ministerial Councils to decide whether the Australian Local Government Association, should be a member or attend proceedings.

**Involvement of Other Countries**

Except for matters where membership is explicitly set out by statute or agreement, it is up to individual Ministerial Councils to decide whether other countries or any other parties should be members or attend proceedings.

**Efficiency of Council Operations**

Ministerial Councils should ensure the efficiency of their administrative arrangements and exercise due economy. They should regularly review their meeting arrangements and the number of meetings held having regard to the costs involved and the benefits to be gained.

In this respect, arrangements for the operation of individual councils should also take account of involvement of its members in other Ministerial Councils including the possibility of joint or back-to-back meetings where appropriate.

**Consultation with Interest Groups**

In any consultations with relevant interest groups, Ministerial Councils should ensure that consideration of major policy initiatives by their constituent Governments is not preempted or precluded. The status of any documents released to those groups or the general public should also be made clear.

Where a matter under consideration has major implications for more than one Council, relevant Councils should establish mechanisms for joint consultation.

**Information about Councils**

Each Ministerial Council should make available in a convenient form information on its:

- Title and membership;
- Role and responsibilities, including any pursuant to statute or agreement;
- Administrative arrangements; and
- Contact officer and address.

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