

Review of the transfer of  
the 2003 Cabinet records  
from PM&C to the  
National Archives of  
Australia



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### Review of the transfer of the 2003 Cabinet records from PM&C to the National Archives of Australia

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# Letter to the Secretary and Director-General

Professor Glyn Davis AC  
Secretary, Department of the Prime Minister and Cabinet

Simon Froude  
Director-General, National Archives of Australia

Attached is the review conducted into the transfer of 2003 Cabinet records by the Department of the Prime Minister and Cabinet (PM&C) to the National Archives of Australia (NAA).

PM&C's failure to provide the NAA with a complete set of 2003 Cabinet records was a result of administrative error arising from both the impact of the COVID-19 pandemic in 2020 and from systemic shortcomings. Any suggestion of political interference or influence is without foundation.

As at 19 December 2023, 78 Cabinet records from 2003 had not been transferred from PM&C to the NAA. 77 of these records were provided to the NAA on 31 December 2023 and one record was provided on 5 January 2024, after PM&C discovered that the record had been left off the transfer list. During the course of my Review, I discovered a further four Cabinet records from 2003 which had not been transferred to the NAA. These four additional Cabinet records were transferred on 5 January 2024. I am satisfied that all 2003 Cabinet records are now with the NAA.

Further to those matters that go directly to the Terms of Reference, I have observed issues regarding appropriate record-keeping, handling of classified material and the department's compliance with transfer requirements as set out in the *Archives Act 1983*. It is possible that these matters may have wider relevancy across government.

During the course of the Review, officials in PM&C and the NAA engaged cooperatively, providing information and responses in a timely and professional manner.

I note the excellent work of the Secretariat, led by Tim Wardle and Alexandra Hancock from PM&C.

Throughout the report I refer to 'we' or 'our', recognising the team effort involved in the Review. However, I am responsible alone for the recommendations and views expressed herein.

A handwritten signature in black ink that reads "Dennis Richardson". The signature is written in a cursive, flowing style.

Dennis Richardson AC  
Independent Reviewer

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# Acronyms, abbreviations and definitions

Table 1. Acronyms, abbreviations and definitions

Term	Meaning
Archives Act	<i>Archives Act 1983</i>
Cabinet document	Any material that departments and agencies prepare that is: intended for submission to the Cabinet; or a document dealing with Cabinet meetings (agendas, Cabinet minutes and notes taken by Cabinet note takers)
Cabinet Handbook	Sets out the structure, practices and processes of the Government's Cabinet and its committees.
Cabinet notebook	Notebook or other record that contains notes of discussions and deliberations taking place in a meeting of the Cabinet or of a

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Term	Meaning
	<p>committee of the Cabinet, under the authority of the Secretary of PM&amp;C.</p>
Cabinet record	<p>An aggregation of related Cabinet documents that may be transferred to the National Archives of Australia.</p> <p>A Cabinet record can hold a single or multiple Cabinet minutes or other Cabinet documents.</p>
CabNet+	<p>Real-time, secure, whole of Australian government information and technology system used to support the Commonwealth's end to end Cabinet process.</p>
Commonwealth record	<p>A record that is the property of the Commonwealth or of a Commonwealth institution; or a record that is to be deemed to be a Commonwealth record by virtue of a</p>



Term	Meaning
	<p>regulation or by virtue of section 22 of the Archives Act.</p> <p>This definition does not include a record that is exempt material under the Archives Act.</p>
Commonwealth institution	<p>The official establishment of the Governor-General; the Executive Council; Senate; House of Representatives; a Department; a Federal court or court of a territory other than the Northern Territory or Norfolk Island; an authority of the Commonwealth; or the Administration of an external Territory.</p>
NAA	National Archives of Australia
NSC	National Security Committee of Cabinet
NV 1	Negative Vetting 1 security clearance

Term	Meaning
NV 2	Negative Vetting 2 security clearance
PM&C	Department of the Prime Minister and Cabinet
PMO	Prime Minister's Office
PSPF	Protective Security Policy Framework
Schedule	Records Disposal Schedule No. S.492
RMU	Records Management Unit
SCIF	Sensitive Compartmented Information Facility
TSPV	Top Secret Positive Vetting security clearance

# Executive summary

1. Following a media query on 18 December 2023, the Department of the Prime Minister and Cabinet (PM&C) identified that it had failed to transfer 78 Cabinet records from 2003 to the National Archives of Australia (NAA), in line with historical arrangements.
2. On 1 January 2024, Professor Glyn Davis AC, Secretary of PM&C commissioned an independent review of the transfer process for the 2003 records and to confirm all relevant records had been transferred to the NAA.<sup>1</sup>

## Background

3. The Cabinet is the focal point of Government decision-making.<sup>2</sup> At all relevant times, the Secretary of PM&C is the custodian of Cabinet records.<sup>3</sup>
4. The *Archives Act 1983* (Cth) (Archives Act) sets out the legislative requirement for Commonwealth institutions to transfer Commonwealth records that have been determined to be part of the archival resources of

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<sup>1</sup> Department of Prime Minister and Cabinet, 'Transfer of 2003 Cabinet records to the National Archives of Australia' (Media release, Department of Prime Minister and Cabinet, 1 January 2024) <<https://www.pmc.gov.au/news/transfer-2003-cabinet-records-national-archives-australia>>.

<sup>2</sup> Parliament of Australia, 'Cabinet' *Parliament of Australia* (Web Page) <[Cabinet – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/Cabinet)>.

<sup>3</sup> Department of the Prime Minister and Cabinet, *Cabinet Handbook*, (13<sup>th</sup> ed, 2019) [142].

the Commonwealth to the custody of the NAA within a specified timeframe, usually 15 years after they come into existence.<sup>4</sup> The Review was advised that no determination has been made under section 3C of the Archives Act specifying that Cabinet records are part of the archival resources of the Commonwealth. They are instead subject to historical arrangements (which pre-date the introduction of section 3C in 2008), under which they are transferred to the NAA before they enter the 'open access period'.

5. The Archives Act requires that the NAA provide public access to all eligible Cabinet records once they enter the 'open access period'.<sup>5</sup> For records created after 1 January 2000, the open access period for a record commences on 1 January in the year that is 21 years after the record came into existence.
6. Given the public interest in Cabinet deliberations, and to promote its work, the NAA conducts a proactive public release on 1 January each year of selected Cabinet records that are entering the open access period. To support the proactive release, the NAA provides access to some journalists in advance of the release, under embargo, and invites a historian to prepare an overview of the documents. The proactive public release of selected Cabinet records is not a legislative requirement. The

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<sup>4</sup> *Archives Act 1983* (Cth) s 27.

<sup>5</sup> *Archives Act 1983* (Cth).

proactive release that occurred on 1 January 2024 concerned selected Cabinet records from 2003.

7. Once records enter the open access period, any Commonwealth record that has not been proactively released can still be accessed on application to the NAA,<sup>6</sup> subject to any exemption under section 33 of the Archives Act.<sup>7</sup>

## Focus

8. While the terms of reference were narrow, we identified a number of wider considerations that impact PM&C, the NAA and quite possibly, other departments and agencies' abilities to effectively discharge obligations under the Archives Act.
9. The Review focused on:
  - a. the circumstances surrounding the transfer in 2020 of the 2003 Cabinet records;
  - b. a search of relevant areas of PM&C to ensure that all 2003 Cabinet records had been transferred to the NAA; and
  - c. PM&C and NAA processes that support the transfer of Cabinet material, and the subsequent treatment of Cabinet material for proactive public release.

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<sup>6</sup> *Archives Act 1983* (Cth) s 40.

<sup>7</sup> For a list of exemptions, see: *Archives Act 1983* (Cth) s 33.

## Key Findings

### Transfer of 2003 Cabinet records

10. PM&C's failure to provide the NAA with a complete set of 2003 Cabinet records was a result of administrative error, in part due to the circumstances particular to 2020 and in part due to systemic issues. Any suggestion of political influence or interference is without foundation.
11. As at 30 December 2023, PM&C was aware of 78 Cabinet records from 2003 that had not been transferred to the NAA. 77 of these records were provided to the NAA on 31 December 2023.
12. During the course of the Review, one of the 78 records and a further four Cabinet records from 2003 were located which had not been transferred. These five Cabinet records were provided to the NAA on 5 January 2024.
13. I am satisfied that all 2003 Cabinet records have now been transferred from PM&C to the NAA.

### Iraq war

14. National Security Committee of Cabinet (NSC) records at the Protected level and relating to the Iraq war were transferred to the NAA in 2020, but NSC records at the Secret and above level were not transferred.
15. Of the 77 Cabinet records transferred on 31 December 2023 to the NAA, 13 records (containing 38 NSC minutes) related to the Iraq war, either in part or in full. The remaining 64 records were unrelated to the Iraq War.

Of the five additional records transferred on 5 January 2023, one related, in part, to the Iraq war.

## PM&C and NAA Processes and Practices

16. During the course of the Review, we identified a number of systemic issues which contributed to the breakdown in process:
  - incomplete standard operating procedures regarding transfer processes;
  - an absence of records management expertise within Cabinet Division;
  - no consistent knowledge of Archives Act transfer obligations within the Cabinet Division; and
  - no effective central control of Cabinet records.
17. Complexities also arose from key personnel not having appropriate security clearances. For instance, the officer called in during the end of the 2023 shutdown period—to gather the Cabinet records for transfer to the NAA—and the head of the Cabinet Division do not have a Top Secret Positive Vetting clearance (TSPV), making proper oversight of the transfer process more complex and difficult than it should be.
18. This limitation is not restricted to PM&C. For instance, the Director-General of the NAA does not hold a TSPV. In our view, this would make it difficult for the Director-General to properly and credibly discharge his

legislative responsibilities in certain circumstances, especially in relation to section 29 matters.<sup>8</sup>

19. During the course of the Review, PM&C officials advised that Cabinet records created in 2004, 2005, 2006 and 2007 had also not yet been transferred to the NAA. These records are planned to be transferred by April 2024.
20. Finally, we observed that current NAA practices for proactive release of Cabinet records do not always include records of the NSC, which has been a decision making body since its creation in 1996. While this is a matter for the NAA, we believe it would be logical and beneficial to include NSC records as part of the annual release scheme.

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<sup>8</sup> See: *Archives Act 1983* (Cth) s 29 which allows a responsible Minister, or a Commonwealth institution with the agreement of the Director General of the NAA, to determine that a Commonwealth record, or class of Commonwealth records, is not required to be transferred to the NAA, or can only be accessed by the NAA on specified conditions.



# Recommendations

## Recommendation 1

PM&C should thoroughly review its record management processes, especially that of the Cabinet Division, and transfer of Cabinet records to the NAA, with a view to:

- there being a central register of the locations within PM&C which store Cabinet records, especially those containing the Cabinet records of previous governments;
- all Cabinet Division officers, and any other officers in the Department working with Cabinet records, possessing at least a basic understanding of their responsibilities under the Archives Act;
- the Cabinet Division, and any other relevant area, having a properly trained and experienced records management officer(s) with the necessary security clearance (a TSPV in the case of Cabinet Division) to do their job professionally and with confidence;
- staff responsible at the working level for transfer of Cabinet records to the NAA have a TSPV clearance to enable access to all Cabinet record, regardless of classification; and

- PM&C's internal audit undertaking periodic reviews of the Department's management of Cabinet records and of transfer arrangements with the NAA.

## Recommendation 2

The head of Cabinet Division within PM&C, and the Director-General of the NAA should hold a TSPV security clearance.

### Implementation considerations

In obtaining a TSPV security clearance, the head of the Cabinet Division and the Director-General of the NAA should be briefed into whatever compartment is necessary to enable them to meet their professional and legislative responsibilities.

## Recommendation 3

On an annual basis, the Secretary of PM&C should sign a formal letter to the Director-General of the NAA confirming that all Cabinet records required to be transferred to the NAA that year, have been so transferred.

### Implementation considerations

In some circumstances it may be appropriate for a department to retain possession of records. Where this is the case, the Secretary should satisfy

him/herself that the requirements of section 29 of the Archives Act have been met.

#### Recommendation 4

The NAA, with the support of PM&C, should review its records authorities, relevant to Cabinet records. In particular, the NAA and PM&C should, as a matter of urgency, develop a new records authority including a section 3C determination that confirms Cabinet records are part of the archival resources of the Commonwealth to ensure Cabinet records are subject to transfer obligations under section 27 the Archives Act.

#### Implementation considerations

The 1988 Records Disposal Schedule No. S.492 is expressed to remain operative for 10 years or until amended, cancelled or superseded. This and other NAA guidelines which inform transfer have not been updated. While there is no question that Cabinet records are part of the archival resources of the Commonwealth, the legislative requirements of the Archives Act should be followed.

Once the determination is made, the NAA and PM&C should agree on operational matters that underpin the transfer obligations, in particular those relating to the transfer of Cabinet records 15 years after creation.

Consideration should also be given to PM&C providing a list of Cabinet records created to the NAA, so that it can check the list of records transferred against the list of records created.

### Recommendation 5

As the NSC is a decision-making body, the NAA should consider the desirability of including NSC records in the annual public release process in the same way as records of the full Cabinet.

# 1. Scope of the Review

## Terms of reference

21. The terms of reference for the Review are to:
  - a. examine the circumstances surrounding the 2020 transfer of Cabinet records; and
  - b. confirm all 2003 Cabinet records have been transferred to the National Archives of Australia.

## Consultation

22. The Review interviewed heads of PM&C and NAA, relevant officials across both organisations, former employees of PM&C and former Prime Ministers, Secretaries of PM&C and Directors-General of the NAA.
23. The Review did not seek public submissions.
24. We provided a draft of the Review for fact checking to PM&C's Cabinet Division and Records Management Unit, the NAA and the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (responsible for the administration of the Archives Act) for fact checking.

## External advice

25. The Review obtained legal advice from the Australian Government Solicitor on key matters considered by the Review.

## Governance

26. The Reviewer was appointed by the Secretary of PM&C. The independent Reviewer was supported by an acting Senior Executive Staff officer and an Adviser from PM&C.

## 2. Allegations in the media

27. On 1 January 2024, *The West Australian* reported that “the keeper of the nation’s memory [the NAA] does not hold relevant submissions” relating to the decisions to send Australian troops into war in Iraq and could not release them alongside other Cabinet papers. *The West Australian* reported that it “established the NSC records were physically located within the Department of the Prime Minister and Cabinet, where they had been made available for viewing—but not copying—by the team working on the official histories of the Afghanistan and Iraq conflicts”.<sup>9</sup>
28. Further, on 1 and 2 January 2024, *The Australian* ran a series of articles related to the transfer issue alleging that PM&C’s failure to transfer the Cabinet records, and subsequent non-release of documents to the public, was due to “supreme incompetence by the lead government department or a deliberate cover-up”<sup>10</sup> and “shows that the Albanese government was not paying attention”.<sup>11</sup>

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<sup>9</sup> Katina Curtis, ‘Cabinet papers 2003: Iraq war discussions remain secret amid John Howard-era document release’, *The West Australian*, 1 January 2024.

<sup>10</sup> Troy Bramston, ‘Cabinet papers debacle either ‘cover-up or pure farce’, *The Australian*, Sydney, 2 January 2024, 9.

<sup>11</sup> Editorial, ‘Secret Papers must be made public’, *The Australian*, Sydney, 2 January 2024, 8.

## 3. Legislative framework and Cabinet operations

29. It is important to note that issues raised as part of the Review involve two distinct matters. The first relates to transfer of documents by PM&C to the NAA under section 27 of the Archives Act. The second relates to the public release of Cabinet records by the NAA as set out in section 31 of the Archives Act.

### Legislative framework

#### Transfer of Commonwealth records to the National Archives of Australia

30. Section 27 of the Archives Act requires that the person responsible for the custody of a Commonwealth record must transfer the record to the care of the NAA in accordance with arrangements approved by the NAA.
31. Successive versions of the Cabinet Handbook have provided that Cabinet records are held on behalf of the relevant Government of the day in the care and control of the Secretary of PM&C.



32. Section 27 of the Archives Act applies to Commonwealth records that are in the custody of a Commonwealth institution other than the NAA, and have been determined under section 3C of the Archives Act, to be part of archival resources of the Commonwealth. The records must be transferred:
  - a. if the record ceases to be a current Commonwealth record—as soon as practicable after this event; and
  - b. in any other event, within 15 years of the record coming into existence.
33. Section 3C of the Archives Act provides that the Director-General may, in writing, determine that a specified Commonwealth record or other material is part of the archival resources of the Commonwealth. A determination under this section may be set out in the same document as that which gives permission or approval to dispose of or destroy Commonwealth records as set out by section 24 of the Archives Act.

#### Records Disposal Schedule No. S.492

34. On 2 February 1988, the Acting Director-General of the NAA issued Records Disposal Schedule No. S.492 (the Schedule). The Schedule, issued with agreement of PM&C, authorises the disposal of records controlled by the Cabinet Office (now Cabinet Division). The Review was advised that in practice the Schedule required PM&C to treat records in the following way:

- a. cabinet records, original agenda, background papers, decisions, memoranda, minutes and submissions and reference copy for public access—retain permanently and transfer no later than when required for the NAA’s annual Cabinet release project; and
  - b. draft Cabinet document records (containing draft submission and memoranda for coordination comment)—destroy six months after Cabinet decision is taken, provided that all papers contained in these records which show any important aspects in the development of a submission have been removed to Cabinet records containing the final submission.
35. The Schedule is expressed to remain operative for 10 years or until amended, cancelled or superseded. The Review was advised that the NAA has sought to update records authorities with PM&C on a number of occasions – 1998/1999, 2001/2002, 2009/2010, 2011/2012 and 2016/2017. However, the Schedule has not been replaced and the NAA and PM&C proceed on the basis that it remains operative. On this basis, the NAA has been managing the periodic transfer of Cabinet records as part of the archival resources of the Commonwealth as an exception, nominated within the National Transfer Policy.

#### Application of the transfer obligations of Cabinet records

36. The Review notes that while PM&C and the NAA have acted in accordance with the Schedule, Cabinet records have not technically been

determined to be part of the archival resources of the Commonwealth under section 3C of the Archives Act. Amendments to the Archives Act, under the *Archives Amendment Act 2008*, introduced a mechanism for the Director-General to make a determination for the purposes of section 3C that Commonwealth records of national significance or public interest form part of the archival resources of the Commonwealth and so (subject to any exceptions) are required to be transferred to the NAA.

37. No section 3C determination has been made, or has been deemed to have been made, by the Director-General with respect to Cabinet records. As a result, Cabinet records are not presently technically subject to the transfer requirements under section 27 of the Archives Act.
38. To support future transfer processes, the Review was advised that, since 2020 the NAA and PM&C have been developing a new records authority that will establish a section 3C determination, clarifying that Cabinet records are subject to transfer requirements under the Archives Act as part of the archival resources of the Commonwealth.
39. The Review considers that the new records authority should be completed as a matter of urgency, as it was, and is, self-evident that Cabinet records, which are at the heart of the nation's historical record, are 'part of the archival resources of the Commonwealth'.<sup>12</sup>

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<sup>12</sup> *Archives Act 1983* (Cth) ss 3(2).

## Exemptions to transfer

40. Section 29 of the Archives Act allows the responsible Minister,<sup>13</sup> or a Commonwealth institution with the agreement of the Director-General of the NAA, to determine that a Commonwealth record, or class of Commonwealth records, is not required to be transferred to the NAA, or can only be accessed by the NAA on specified conditions. The determination has effect for a specified period and may be revoked by the Commonwealth institution or responsible Minister at any time.
41. During the course of the Review, the NAA identified correspondence, dated 11 December 1984, from Sir Geoffrey Yeend AC CBE, Secretary of PM&C (1978 – 1986) to Brian Cox, Director-General of the NAA (1984 – 1989) which sought agreement to determine, under section 29(1)(a) of the Archives Act, “that Cabinet records are not required to be transferred to the custody of Archives before they are due for public release”. The then Secretary provided assurance that the Cabinet Office would “ensure that records are transferred to the Archives in advance of their release date”. This arrangement was agreed to by Mr Cox on 19 December 1984. These letters form the basis of the existing arrangement in place where PM&C transfers Cabinet records three years prior to the commencement of the public release period as opposed to five years prior as set out in section 27 of the Archives Act.

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<sup>13</sup> In relation to a Commonwealth record, the responsible Minister is the Minister whose ministerial responsibilities relate most closely to the record.

## Records in open access period to be publicly available

42. Section 31 of the Archives Act requires the NAA, subject to access examination, to make Commonwealth records that are in the open access period, and in the care of the NAA, a Commonwealth institution or another person, available for public access. For the purposes of a record that came into existence after 2000, the open access period is 1 January in the year that is 21 years after the creation year.<sup>14</sup> For Cabinet notebooks,<sup>15</sup> the open access period is 1 January in the year that is 31 years after the creation year.
- The annual proactive public release process conducted by the NAA is an administrative process and is not required under legislation. It is a NAA initiative that commenced in the 1980s.
43. If a record has not been transferred to the NAA (for instance, as a result of a section 29 determination) and the record is in the open access period, the Archives Act requires departments and agencies to make arrangements that enable the NAA to make the record publicly available.<sup>16</sup>
44. Under section 31, the NAA may withhold a Commonwealth record or class of records from public access for a reasonable time pending examination

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<sup>14</sup> *Archives Act 1983* (Cth) s 3.

<sup>15</sup> A Cabinet notebook is a document that contains notes of discussions or deliberations taking place in a meeting of the Cabinet or of a committee of the Cabinet.

<sup>16</sup> *Archives Act 1983* (Cth) s 31(2).

to identify exempt records. Under section 33, the Archives Act exempts certain information from public release, including but not limited to, information that could reasonably be expected to cause damage to security, defence or international relations.<sup>17</sup>

## Cabinet

45. Cabinet is the primary decision-making body of government whose shape, structure and operation is determined by the Prime Minister of the day.<sup>18</sup> The Secretary of PM&C is the custodian of Cabinet records.<sup>19</sup>
46. A Cabinet is an administrative arrangement for government decision-making. A broad range of Commonwealth legislation refers to the federal Cabinet and Cabinet Committees, mainly for the purposes of prescribing status of documents or information regarding particular actions or decisions, for instance the *Freedom of Information Act 1982 (Cth)*. However, there is no exhaustive statutory definition of 'Cabinet' or the role or membership of the Cabinet or its committees.
47. The principles and rules of Cabinet, and Cabinet Committees, are set out in the relevant Cabinet Handbook, as approved by the Prime Minister of the day.

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<sup>17</sup> For a complete list of exemptions, see: *Archives Act 1983 (Cth)* section 33.

<sup>18</sup> See eg; Department of the Prime Minister and Cabinet, *Cabinet Handbook* (13<sup>th</sup> ed, 2019) [2]; Department of the Prime Minister and Cabinet, *Cabinet Handbook* (15<sup>th</sup> ed, 2022) [3].

<sup>19</sup> Department of the Prime Minister and Cabinet, *Cabinet Handbook* (15<sup>th</sup> ed, 2022) [110].

48. During the Review, we spoke to former Prime Minister, the Hon John Howard OM AC SSI (1996-2007) who established the NSC in 1996. Mr Howard confirmed the NSC was always intended to be a decision-making body, with the possibility of a matter being referred to a meeting of the full Cabinet if considered appropriate.
49. Cabinet Handbooks note that the NSC is a decision-making body as distinct to the majority of Cabinet Committees which are committees of recommendation.<sup>20</sup>

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<sup>20</sup> The 5<sup>th</sup> Edition of the Cabinet Handbook was in force from 2000. The 13<sup>th</sup> Edition of the Cabinet Handbook was in force from 2020. Both noted the decision-making role of the NSC.

## 4. The transfer of Cabinet records from PM&C to the NAA

### Background

50. PM&C's Cabinet Division has, for many years, successfully managed the transfer of Cabinet records to the NAA. Perhaps, because of this, the process became a matter of routine without periodic review. It is clear that, over time, systemic problems developed and were not identified. The particular pandemic driven work environment of 2020 became the catalyst for a major breakdown which, given the compounding systemic issues, was probably inevitable at some point.
51. There was no indication or evidence during the course of the Review that the systemic issues, which exist in record management within the Cabinet Division, has had any impact on its day to day responsibilities of effectively servicing the Cabinet of the government of the day, now or in previous years.

### PM&C's standard transfer process

52. The overall responsibility for transferring Cabinet records from PM&C to the NAA resides with Cabinet Division. PM&C's Records Management Unit (RMU) also provides some support.
53. The transfer process is a functional activity not normally involving high level policy input or interest.



54. The standard transfer process in Cabinet Division involves:
- a. developing a system generated list of all Cabinet records for the relevant year and physically confirming that year's records are contained in the PM&C basement to create a spreadsheet of each records relevant data;
  - b. undertaking a review of documentation contained within each record and removing information not considered to be a Cabinet record;<sup>21</sup>
  - c. contacting intelligence agencies to visit PM&C to review sensitive records to ensure that non-Cabinet intelligence papers are not inadvertently caught up amongst Cabinet records for transfer to the NAA;
  - d. obtaining the approval of the relevant Assistant Secretary in Cabinet Division for transfer by providing an itemised spreadsheet along with the required transfer approval papers;
  - e. notifying the NAA that a transfer of records is ready and providing two portable storage devices of the transfer spreadsheet by safehand. A completed NAA Transfer Proposal and Approval (TPA) form is also emailed to the NAA;
  - f. enabling the NAA to attend PM&C to conduct a check of records against the spreadsheet and TPA form; and

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<sup>21</sup> Consistent with advice set out in *Records Disposal Schedule No. S.492 1988*.

g. scheduling a time for the courier to transfer records to the NAA.

55. The NAA then receives the records and is responsible for cross-checking items in each box against the list provided by PM&C before sending their record of all items marked as received, and a signed acknowledgement form, to PM&C.

## The 2020 transfer

56. We have examined the circumstances of the transfer of Cabinet records through both interviews with PM&C officials involved in the process in 2020, and through a physical examination of areas that hold Cabinet records within PM&C. Enquiries also included interviews with former Prime Ministers, Secretaries of PM&C and Directors-General of the NAA.

## COVID-19

57. The COVID-19 pandemic had a dramatic impact on normal processes and resourcing within Cabinet Division, as it did across the public and private sectors.

58. The first confirmed case of COVID-19 in Australia was identified on 25 January 2020.<sup>22</sup> On 18 March 2020, the Governor-General, on advice from the Australian government, declared a human biosecurity

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<sup>22</sup> Department of Health and Aged Care, 'First Confirmed Case of Novel Coronavirus in Australia' (Media release, 25 January 2020) <<https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/first-confirmed-case-of-novel-coronavirus-in-australia>>.

emergency.<sup>23</sup> The National Cabinet was established in March 2020<sup>24</sup> to coordinate Australia's response to the pandemic, and was primarily supported by PM&C's Cabinet Division.

59. Officials in both PM&C and the NAA advised that they were impacted by lockdowns and restrictions on office attendance, and as a result, normal processes were disrupted. For instance, requirements to physically undertake review of sensitive records by intelligence agencies to ensure that no non-Cabinet intelligence material was accidentally caught up amongst the Cabinet records, as did happen on one occasion in the past, were impacted by lockdowns and restrictions. As a result of the office restrictions, a box of Cabinet records was left in a secure storage area pending intelligence agency review and subsequently forgotten. Additionally, the Review was advised that during 2020 the NAA paused physical transfer of Commonwealth records as a result of COVID-19 restrictions.
60. PM&C officials said that Cabinet Division resources were significantly impacted by changes to the Cabinet Committee architecture to support

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<sup>23</sup> *Biosecurity Act 2015* (Cth) s 475; Karen Elphick, 'Australian COVID-19 Response Management Arrangements: A Quick Guide', *Parliament of Australia* (Web Page, 28 April 2020)

<[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1920/Quick\\_Guides/AustralianCovid-19ResponseManagement](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/AustralianCovid-19ResponseManagement)>.

<sup>24</sup> Kelsey Campbell and Emma Vines, 'COVID-19: a chronology of Australian Government Announcements (up until 30 June 2020)', *Parliament of Australia* (Web Page, 23 June 2021) <[www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp2021/Chronologies/COVID-19AustralianGovernmentAnnouncements](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Chronologies/COVID-19AustralianGovernmentAnnouncements)>.

the government's response to the pandemic. In particular, Cabinet Division advised its work program in relation to National Cabinet, in addition to other Cabinet and Cabinet Committee support functions, effectively doubled. Between its inception, on 13 March 2020, and 24 August 2020, National Cabinet met 50 times.<sup>25</sup>

## Systemic issues

61. PM&C's Cabinet Division acknowledged it has:
- incomplete standard operating procedures in place regarding the transfer of Cabinet records;
  - no consistent understanding across the Division of the transfer obligations under the Archives Act; and
  - no staff with records management expertise.
62. Cabinet records are held in different parts of the department, depending on security classification. While often necessary, this adds to the challenge of meeting transfer obligations by limiting officials' abilities to manage, locate and transfer Cabinet records. There is also no central register of the location of Cabinet records within PM&C.

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<sup>25</sup> The Department of Prime Minister & Cabinet, 'National Cabinet Statement', (Media release, Transcript ID 44093, 6 August 2021) <<https://pmtranscripts.pmc.gov.au/release/transcript-44093>>.

## Inadequate security clearances

63. Staff responsible for transfer of Cabinet documents to the NAA do not have appropriate security clearances, meaning they are entirely reliant on cleared staff who do not have any training or experience in record management, and, sometimes, very little interest in proper record keeping. It is a system which maximises the risk of error.
64. Also, the Head of the Cabinet Division does not hold a TSPV which means she or he cannot access the full suite of Cabinet records in PM&C's possession.

## No senior executive or political interference

65. Interviews with former Prime Ministers, Secretaries of PM&C and staff confirmed that the transfer of documents from PM&C to the NAA has always been considered a mechanical exercise, not normally requiring policy consideration. This is consistent with legislative requirements set out in the Archives Act. However, much like many other functional activities across government, they become routinised and are not adequately reviewed from time to time. This is apparent from reviewing outdated and incomplete Cabinet record standard operating procedures held by PM&C.
66. The Secretary of PM&C in 2020, Mr Philip Gaetjens, advised that he had never been involved in matters relating to the transfer of Cabinet records, nor had he ever received direction or enquiry from the then Prime

Minister or his Office about such matters. This advice is consistent with that provided to the Review by other Secretaries of PM&C including Mr Peter Shergold AC (2003 – 2008), Mr Terry Moran AC (2008 – 2011), Mr Michael Thawley AO (2014 – 2016), Dr Martin Parkinson AC, PSM (2016 – 2019) and Professor Glyn Davis AC (2022 – current).

67. Former Secretary of PM&C, Dr Ian Watt AC (2011 – 2014), said he had a recollection of one discussion within PM&C about some intelligence papers but could not recall the detail. The transfer of documents to the NAA was not, however, a matter that normally involved the Secretary and he could not recall any discussion with the Prime Minister or PMO about such matters.
68. Directors-General of the NAA, Simon Froude (2022 – present), David Fricker (2012 – 2021) and Ross Gibbs PSM (2003 – 2011) advised that they had never been contacted by a Prime Minister, PMO staff or Secretary of PM&C about matters relating to the transfer of Cabinet records from PM&C to the NAA.
69. The Prime Minister at the time of the 2020 transfer, the Hon Scott Morrison MP (2018 – 2022), advised that he could not recall ever being involved in any matter relating to the transfer of Cabinet records from PM&C to the NAA. This is consistent with advice from other former Prime Ministers, including the Hon John Howard OM AC SSI (1996 – 2007), His Excellency the Hon Dr Kevin Rudd AC (2007 – 2010, 2013), the Hon

Julia Gillard AC (2010 – 2013), the Hon Tony Abbott AC (2013 – 2015) and the Hon Malcolm Turnbull AC (2015 – 2018).

70. The Review notes that PM&C does, as a matter of routine, provide briefing to the Prime Minister annually on the upcoming public release of Cabinet records by the NAA. This, however is unrelated to the transfer of documents from PM&C to the NAA.

## 5. Confirming transfer of 2003 Cabinet records

71. The Review met with all relevant, available current and former PM&C officials to confirm all 2003 Cabinet records had now been transferred from PM&C to the NAA. The Reviewer also physically inspected the relevant areas within PM&C that hold Cabinet records.

### December 2023

72. Following a media query on 18 December 2023, a review of Cabinet records was conducted at PM&C. The responding Assistant Secretary within Cabinet Division did not hold a security clearance to access the records independently so was escorted to the physical location to check whether any 2003 Cabinet records remained at PM&C.

73. During Cabinet Division's check, a number of 2003 archive boxes containing Cabinet records were identified.

74. On 21 December 2023, intelligence agencies attended PM&C to review the archive boxes to ensure there were no non-Cabinet intelligence materials amongst the Cabinet records. No documents were removed.

75. On 30 December 2023, 77 records were prepared and listed for transfer to the NAA:

- a. each record was opened and reviewed by an appropriately cleared staff member; and
- b. only documents that aligned to the 1988 Schedule were retained.



76. On 31 December 2023, the records were securely transferred by safehand to the NAA.

### **Additional Cabinet records**

77. The Review's physical inspection on 4 January 2023 uncovered four additional 2003 Cabinet records that had not been transferred to the NAA in 2020. On 5 January 2024, Cabinet Division confirmed that one of the 78 Cabinet records, that was meant be included as part of the 31 December 2023 transfer, had not been placed on the relevant transfer list. These five records were delivered to the NAA on 5 January 2024. We are satisfied that all 2003 Cabinet records have now been transferred to the NAA as required under the Archives Act.
78. The Review's discovery of the additional Cabinet records highlighted the complexities arising from relevant PM&C officials not holding the requisite security clearances to enable staff to perform their duties with confidence and assurance, and of the difficulties arising from the fact that Cabinet Division does not have a proper system for recording the location of all Cabinet documents.
79. The four additional Cabinet records were located in a sealed envelope, inside a class C container, within a special security room inside a restricted area of PM&C. The Review was reliant on appropriately security cleared staff to access the physical location, none of which were immediately present. Following access, the room itself contained several cabinets

which no one person within Cabinet Division had access. The material within the room holding Cabinet records was poorly itemised, tailor-made for a mistake in a future transfer process from PM&C to the NAA.

80. The fifth additional record was found by Cabinet Division in a secure safe where it seems to have been held for a review by a historian for the Official Histories project. The record was bundled with records from other years.
81. During the course of the Review, Cabinet Division also located 30 Cabinet notebooks that had not been transferred to the NAA. The notebooks were classified from Personal-in-Confidence to Top Secret. One notebook was from 1978. The others were from a mix of years up to 1992, again highlighting the need for PM&C to have a clear central register of the location of all Cabinet records in its possession. The Review was advised that the Cabinet Division will transfer the notebooks to the NAA in the week commencing 29 January 2024.

## **Iraq war records**

82. NSC records at the Protected level and relating to the Iraq war were transferred to the NAA in 2020, but NSC records at the Secret and above level were not transferred.
83. On 9 January 2024, the Reviewer personally inspected all 77 Cabinet records at the NAA that were transferred from PM&C on 31 December 2023.

84. Of these 77 records, 13 records (containing 38 NSC minutes) related to the Iraq war, either in part or in full. The remaining 64 records were unrelated to the Iraq war.<sup>26</sup>
85. The Reviewer also personally inspected the five additional Cabinet records found on 4 and 5 January 2024. One record related, in part, to the Iraq war.

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<sup>26</sup> Cabinet records can hold a single, or multiple Cabinet minutes.

## 6. Transfer of 2004-2007 Cabinet records

86. During the course of the Review, PM&C officials confirmed that the Cabinet records created for 2004, 2005, 2006 and 2007 had not yet been transferred to the NAA. With respect to the 2004 records, the Review was advised on 25 January 2024 that all such records have now been transferred to the NAA. The Review was advised that all Cabinet records for 2005, 2006 and 2007 would be transferred to the NAA by April 2024.

# 7. National Archives of Australia and National Security Committee of Cabinet

## Legislative requirements under the Archives Act

87. Under the Archives Act, the NAA is responsible for identifying, preserving and making publicly available the archival resources of the Commonwealth.

## Inadequate security clearances

88. Section 29 of the Archives Act, allows for a Commonwealth institution, with the agreement of the Director-General of the NAA, to determine that a record is exempt from transfer requirements under section 27 of the Archives Act.<sup>27</sup> The NAA is not aware of any section 29 determination that has been made in relation to NSC records. However, in a scenario where a department or agency and the NAA had conflicting views on a section 29 determination it is difficult to see how the Director-General could avoid involvement.
89. At present, were such circumstances to arise, the Director-General would be unable to sight the material himself and would need to rely entirely on the advice of his officers who had the appropriate security clearances. We question whether such an arrangement would be considered credible in

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<sup>27</sup> See also other exemptions: *Archives Act 1983* (Cth) ss 29(1)(b).

the event of the matter becoming public, leading to intense media and political scrutiny.

## **The proactive public release scheme**

90. On 1 January each year, as part of the annual Cabinet release, the NAA proactively releases approximately 250 Cabinet records from 20 years prior. This is not a legislated requirement, but an initiative by the NAA to promote public and media awareness of the role of the NAA and interest in the historical record of the nation's most significant government decision-making body.
91. A selection of journalists and the Cabinet historian select the records for release in advance, allowing time for description, examination and digitisation to be completed. Only records submitted to full Cabinet are part of the proactive release process.
92. An embargoed media event takes place 4 weeks before the open access period, providing journalists early access to the records.
93. The NAA advised the proactive release initiative commenced in the mid-1980s. It was not intended to cover all Cabinet records or the records of Cabinet committees.

## **National Security Committee of Cabinet**

94. Since the commencement of the public release scheme, no adjustments have been made to the principles that underpin the NAA's release

scheme. This includes no adjustments to reflect the fact that the NSC, established in 1996 by the Howard Government, is a decision-making body which does not normally have its decisions endorsed by the full Cabinet.

95. It is, of course, a matter for the NAA to determine how it conducts its annual release program, which has been highly successful. However, given that the NSC is a full decision making committee of the Cabinet, we think there is a certain logic in including NSC records as part of the annual release initiative, noting that more of its records than those of the full Cabinet may remain closed for security reasons.

### **Records remain available for public access**

96. The NAA advised that while most NSC records are not currently included in the annual Cabinet release project, this does not prevent public access. Any records not proactively released can still be accessed on application, including any NSC records that reach the open access period. In addition, records not yet in the NAA's custody can still be accessed through application to the NAA.<sup>28</sup> The Review notes that this is subject to the NAA holding the necessary metadata for the public to discern what material exists. Access is also dependent on the NSC records not being subject to a section 33 exemption.

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<sup>28</sup> *Archives Act 1983* (Cth) s 40.

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