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Crises

Policy Brief No. 2



# A New Federalism?

## The Role and Future of the National Cabinet

1 July 2020 | Cheryl Saunders

Produced in collaboration with **COVID-DEM**

# Summary

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## Key Points

The Policy Brief makes the following central points:

- (a) The National Cabinet deserves considerable credit for the (so far) very effective response to the pandemic in Australia. The COVID-19 public health crisis could not have been effectively met without drawing on the powers, knowledge and capacities of both the Commonwealth and the States, achieving a balance between collective action and tailored responses.
- (b) On 29 May, the Prime Minister announced that the National Cabinet would be transformed into a permanent body, replacing the existing intergovernmental architecture under the Council of Australian Governments (COAG).
- (c) The published outline for the structure of the new arrangements, presenting the National Cabinet and the Council on Federal Financial Relations (CFFR) as the two principal components of a National Federation Reform Council, supported by two task forces, seven National Cabinet Reform Committees and a series of intergovernmental expert advisory groups, potentially presents a major shake-up of Australia's intergovernmental machinery.

## Recommendations

This Policy Brief makes five recommendations:

- (a) **Learning from Past Experience:** The new structure should avoid the top-down, heavily bureaucratized model of the Council of Australian Governments (COAG), driven by Commonwealth priorities, prioritizing uniformity and with weak post-meeting accountability.
- (b) **Creating a Sustainable Structure:** The continuation of effective intergovernmental relations between Australian governments in the exercise of shared or complementary powers requires the understanding, endorsement and support of parliaments, the media and the public at large.
- (c) **The Role of Parliaments and Cabinets:** For too long, intergovernmental arrangements have been treated as the business of executive government. Intergovernmental structures need to pay attention to the cabinet, parliamentary and democratic processes at each level of government.
- (d) **Public Deliberation:** Public interest in, and understanding of, the National Cabinet's functioning must be encouraged if the necessary federal culture is to be sustained.
- (e) **Terminology:** The terminology of 'National Cabinet' is a hindrance in encouraging media and public understanding. It also could detract from genuine cooperation over time, by superimposing expectations that the framework of rules for a traditional 'cabinet' can apply and by suggesting that the National Cabinet fits within the Commonwealth cabinet structure.

# A New Federalism?

## The Role and Future of the National Cabinet

### 1. Introduction

As the COVID-19 crisis began to escalate in Australia, a new institution, the National Cabinet, emerged. Bringing together the Prime Minister and the Premiers and Chief Ministers of the eight Australian States and Territories, the National Cabinet deserves considerable credit for the (so far) very effective response to the pandemic.

However, its functioning requires closer scrutiny, not least because it is now clear that it will be ongoing. This policy brief sets out the National Cabinet's establishment, structure, and achievements, before turning to key issues requiring attention, concerning the effectiveness, inclusiveness, transparency, and accountability of this new institutional arrangement.

### 2. Establishment & Structure

Established on 13 March, at a meeting of the Council of Australian Governments (COAG), the National Cabinet is an intergovernmental forum comprising the federal prime minister and all state and territory premiers and chief ministers.

Meeting multiple times per week since its establishment, this body has found a way to co-ordinate the action of all governments in response to the crisis. Each head of government remains

responsible to their own cabinet and parliament, however. Each government is responsible for implementing the decisions taken within their sphere of competence, for their own jurisdiction, often adapting them to local realities.

The National Cabinet has been essential to the pandemic response, especially in the early stages of the crisis, when swift action was needed to 'flatten the curve' before the spread of the virus became uncontrollable, overwhelming health systems in all jurisdictions.

The public health crisis could not be effectively met without drawing on the powers, knowledge and capacities of both levels of government. It had a number of advantages:

- It provided a forum for agreement between government leaders on collective action, ranging from procurement of medical supplies to co-ordinating consistent policy positions.
- It also accepted the need for diversity, as governments responded to local conditions or preferences, sometimes in innovative ways, taking public responsibility for their own positions.
- It brought together governments from different sides of the political divide, defusing tendencies to engage in politics for politics' sake. It met as often as was needed.

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The National Cabinet was a response to an urgent public health crisis that could not be effectively met without drawing on the powers, knowledge and capacities of both the Commonwealth and the States and territories.

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### 3. Achievements & Limits

The National Cabinet deserves considerable credit for the (so far) very effective response to the pandemic in Australia, in which the rate of infections was flattened over a relatively short period of time, while governments rapidly developed testing and tracing, as well as hospital and medical services to cope with increasing demand.

As a result of this coordinated response, governments brought the early infection rate of 350 cases per day by the end of March to under 20 per day by the end of April. On 27 June the number of cases had reached 7,641 and the death toll stood at 104. By comparison, the UK (with 66m population compared to Australia's 25m) there have been 310,250 cases and 43,514 deaths.

Inevitably, the National Cabinet did not work perfectly. There were disagreements between the Commonwealth and States over, for example,

### 4. A Permanent Body

On 29 May, the Prime Minister announced that the National Cabinet would be an ongoing body, replacing the existing intergovernmental architecture under the Council of Australian Governments (COAG).

An outline for the structure of the new arrangements has been released (see p.7), presenting the National Cabinet and the Council on Federal Financial Relations (CFFR) as the two principal components of a National Federation Reform Council, supported by 2 task forces, 7 National Cabinet Reform Committees and a series of intergovernmental expert advisory groups.

The chart identifies a further 28 ministerial forums or regulatory councils that need to be 'consolidated and reset', including everything from the Attorney-Generals' Ministerial Forum to the Joint Council on Closing the Gap.

At the National Cabinet meeting on 26 June, terms

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**Although it did not work perfectly, the National Cabinet deserves considerable credit for the (so far) very effective response to the pandemic in Australia.**

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face-to-face schooling and between some states over the reopening of internal borders. There was also buck-passing between the Commonwealth and New South Wales over responsibility for handling the landing of passengers from the Ruby Princess.

What was impressive, however, is that such problems were overcome and that the process moved on. In the end, such disagreements did not detract from the National Cabinet as an effective, genuinely intergovernmental process, responding to an urgent public need in ways the public could trust.

This achievement lies in stark contrast to the lack of coordination in some other systems of multi-level government, including the US and the UK.

of reference were agreed as to how this review would occur, foreshadowing consultation, although only with government ministers and officials. The review will be conducted by two senior officials, from WA and the Commonwealth. It is due to report by September 2020.

These developments have the potential to be a major shake-up of Australia's intergovernmental relations system. However, their success depends on how the initiative works in practice, once the immediate health crisis passes.

Lessons for the future can be drawn from considering why the National Cabinet seems to have worked better than other intergovernmental processes. It is worth thinking also about how pressures to return to the past can be resisted, if this new approach is to succeed. Reflection on the functioning and working processes followed by COAG in particular is necessary.

## 5. Learning from the Past

COAG was established in 1992 and is associated with the success of the microeconomic reforms that centred around competition policy. The body has had peaks and troughs under successive federal governments but has rarely managed to realise the benefits that effective federal democracy offers.

By 2020, the COAG system had become a rather lumbering network of ministerial councils and forums with COAG itself at the top. It was heavily bureaucratised, with ministerial discussions prepared by (sometimes layers of) inter-governmental meetings of officials.

The frequency and timing of meetings, and the structure of COAG councils, varied with the preferences of the incumbent Commonwealth government.

Most significantly, COAG was a top-down process, driven by Commonwealth priorities and Commonwealth perceptions of issues and desired outcomes. Formal State and Territory compliance ultimately could be procured through the Commonwealth's financial dominance, used either as a carrot or a stick.

The secretariats for most councils were located in the Commonwealth public service, answerable to Commonwealth Ministers.

Post-meeting accountability took the form of a bland communiqué. Not surprisingly, in these circumstances, State and Territory governments had little ownership of outcomes.

Intergovernmental activity managed to be both pervasive and underwhelming. At the same time, it had all the hallmarks of unmediated executive federalism, insufficiently connected with the democratic process and barely understood by the public.

## 6. Looking to the Future

As the immediate pandemic crisis dies down, there will be pressures to revert to old-style intergovernmental relations, dominated by the command and control techniques that the National Cabinet process has discredited by example.

The proof will be in the longer-term pudding. In the short term, however, the review to determine which meetings should be salvaged from COAG and incorporated into the new structure is underway.

In these still early days, as the design of the National Cabinet proceeds, attention could usefully be paid to five key issues:

**Creating a Sustainable Structure:** Current government leaders, who have experienced the workings of the National Cabinet, can be expected to maintain its ethos for a while. Fleshing out the embryo structure that was released on 29 May will be a critical next step.

In the end, however, the continuation of effective intergovernmental relations between Australian governments in the exercise of shared or complementary powers requires the understanding, endorsement and support of Parliaments, the media and the public at large. To achieve this, there is a way to go.

**The Role of Parliaments and Cabinets:** For too long, intergovernmental arrangements have been treated as the business of executive government, rather than as a critical cog in the wheel of Australian federal democracy. Not enough attention has been paid to accommodating intergovernmental arrangements to the cabinet and parliamentary processes at each level of government.

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**Public Deliberation:** The first phase of the operations of the National Cabinet has helped to arouse public interest and understanding. Polls show that 89% of Australians support the continuation of the National Cabinet. However, public engagement and understanding must be encouraged if it is to be sustained.

**Terminology:** The terminology of ‘National Cabinet’ is a hindrance in this regard. In Australian parlance, ‘national’ has come to signify a genuinely collaborative process, owned by all participating jurisdictions, rather than the preserve of one jurisdiction alone.

On no view, however, is this body a ‘cabinet’ as the term is used elsewhere in parliamentary government. A Cabinet typically is a group of Ministers drawn from and collectively accountable to the same Parliament.

What presently is called the ‘National Cabinet’ is a group of government leaders, heading different cabinets, through which they are individually and collectively accountable to different Parliaments and different configurations of the people for the exercise of different powers. That, indeed, is the whole point.

Use of the terminology of cabinet is misleading. If it were to cause the superimposition of ideas about decision-making drawn from the more familiar kind of cabinet, the chance to make this important initiative work would be lost.

The problem is compounded by the suggestion that, somehow the National Cabinet fits within the Commonwealth cabinet structure. This is a logical impossibility, apparently driven by a desire to keep proceedings confidential.

**Need for a Tailored Approach:** It may readily be accepted that an intergovernmental ‘National Cabinet’ requires forms of solidarity and some respect for confidentiality. However, the framework to address these dimensions of its operation should be crafted to fit this distinctive need, not imported from a conceptually different source that leads to confusion regarding the true nature and powers of the National Cabinet.

## 7. Conclusion

The National Cabinet has been an effective innovation to address the crisis engendered by the COVID-19 pandemic and holds out the promise for more effective intergovernmental relations, characterised by mutual respect between the levels of government and playing a significant role in Australian federal democracy. As progress is made with plans for the continuing structure and functioning of this body, a range of questions about exactly where it fits in the Australian system of government need attention. Intergovernmental relations are inevitably the province of executive government but like every other aspect of the system of government they require ownership by and accountability to the public at large.

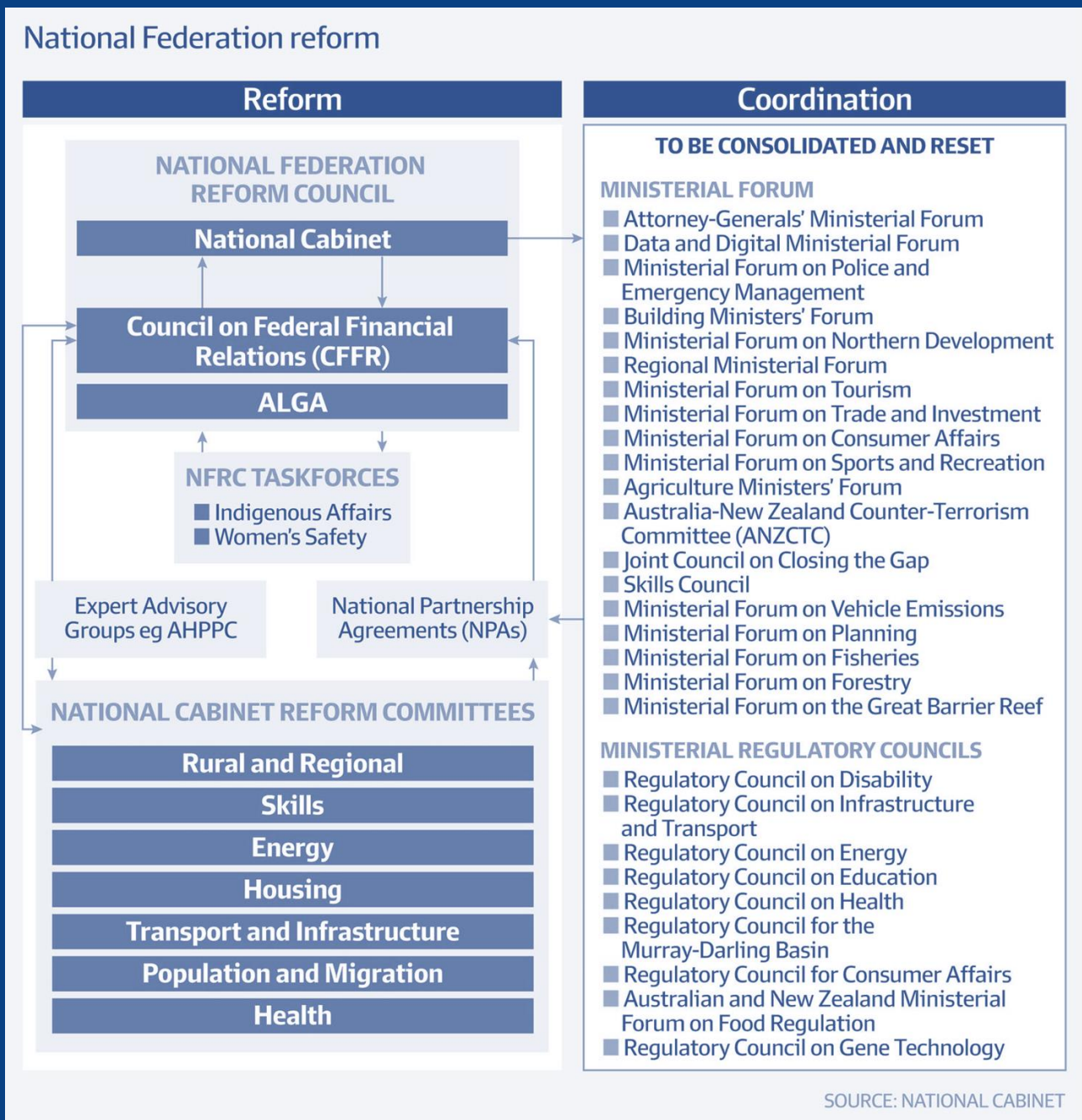
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# Fig 1 The Proposed Outline Structure of the Permanent National Cabinet

The sweeping changes to the Commonwealth's intergovernmental cooperation structures present the most expansive and fundamental shake-up of Australia's federal system for decades. However, the success of this initiative depends on how this structure works in practice, once the immediate health crisis passes.



# References

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Note: A variety of references in this text are provided as hyperlinks within the text. This references section lists selected texts. A small number of these texts are not linked in the text but provide useful background reading.

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Governing During Crises is a research theme established by the School of Government at the University of Melbourne. The series seeks to develop our understanding of governing in the face of different types of crisis, at a time when Australia has recently faced the bushfire crisis, is currently addressing the COVID-19 pandemic, and faces even larger and longer-term challenges including climate change.

This Policy Brief series aims to distil academic research into policy analysis and clear recommendations, drawing on the cutting-edge research taking place at the School of Government and the University of Melbourne more broadly, as well as the School of Government's extensive global networks. Selected briefs will be produced in collaboration with the COVID-DEM project ([www.democratic-decay.org](http://www.democratic-decay.org)), which examines how the pandemic is affecting democracy in Australia and worldwide.



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