

## ANZSOG CASE PROGRAM

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### The National Cabinet and COVID-19: a new future for federal relations?

An ANZSOG Teaching Case by Marinella Padula

**Keywords:** COVID-19, Australia, National Cabinet, COAG, leading in a crisis, intergovernmental relations, public health, federalism, executive federalism, Australian constitution, pandemic, coronavirus, emergency management

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#### Abstract

In December 2019, a recent outbreak of respiratory illness in Wuhan, China was identified as the novel coronavirus known as COVID-19. By March 2020, it had become a global pandemic. With smoke still clearing from a catastrophic bushfire season, Australia had little time to avoid large numbers of casualties and health system collapse. State and territory governments moved relatively swiftly to enact containment measures but then had to manage significant economic and social fallout. The crisis prompted Prime Minister Scott Morrison to establish a National Cabinet of state, territory and federal leaders in March 2020 to coordinate Australia's response. It would eventually replace the Council of Australian Governments (COAG) as the nation's peak intergovernmental forum but not without facing some serious disputes. In general, the states and territories prioritised public health, while the federal government focused more on economic stability. How did they deal with the inevitable conflict? And what lies ahead long-term for the National Cabinet as Australia's new peak intergovernmental forum?

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## Key Findings/ Learning outcomes

The National Cabinet made a significant contribution to the Australia's early success in managing COVID-19, although it is debatable whether COAG would have produced vastly different results. However, it did provide a degree of reassurance to an anxious public keen to see governments cooperate. Despite divergent opinions and approaches, the National Cabinet managed to hold together by not requiring consensus and allowing states and territories flexibility in how they applied decisions. Although how this will work into the future, and with other issues, is not clear. As a committee of the Federal Cabinet, the National Cabinet is bound by Cabinet rules of collective responsibility. However, members are drawn from different parliaments meaning these rules cannot be enforced. Meanwhile, National Cabinet deliberations (like other Cabinet deliberations) are exempt from Freedom of Information legislation, raising questions about transparency. The legitimacy of these arrangements have also been challenged. COVID-19 altered the usual power dynamics between the jurisdictions and provided a powerful incentive to work together. Yet as the crisis dragged on into 2021, members appeared increasingly divided. Without major changes to the National Cabinet, state-federal relations will likely revert to pre-pandemic settings where the federal government dominates proceedings.

## Introduction

Sharyn O'Neill<sup>1</sup> watched Western Australian Premier Mark McGowan walk over to the window overlooking Perth. Moments earlier, they had emerged from a National Cabinet meeting about COVID-19 – recently declared a pandemic. She sensed the gravity of the moment as he put his hands to the glass and reflected upon the huge impact their decisions would have on the entire community. O'Neill, acting as McGowan's advisor, had also witnessed the genuine concern of interstate leaders and their resolve to put differences aside for the common good: 'People were at the heart of those decisions, regardless of what others might say. It was certainly a great privilege to see that in motion,' she said (De Brouwer, 2020b).

During the weeks following that March 2020 meeting, businesses and borders closed while streets, skies and supermarket shelves emptied. As the lines of unemployed grew, so did the pressure on Australia's newly formed National Cabinet of Premiers, Chief Ministers and the Prime Minister.<sup>2</sup> Despite a desire for unity and consistency, fractures soon appeared as members disagreed on COVID countermeasures.

## Back-to-back crises

In December 2019, a recent outbreak of respiratory illness in Wuhan, China was attributed to a novel coronavirus: COVID-19. By 11 March 2020, it had achieved official pandemic status and was spreading rapidly across Asia and Europe. COVID-19 arrived in Australia in late January 2020, on the tail of an existing crisis. Fires had been razing huge tracts of bushland since September 2019, killing an estimated billion animals, destroying thousands of homes and blanketing cities in smoke (Center for Disaster Philanthropy, 2019). It took until March 2020 to bring them under control. Although bushfire management is a state responsibility, the federal government faced the widespread perception that its response had been inadequate (Biddle et al., 2020). Prime Minister Scott Morrison had become the focal point for much of the criticism (McDonald, 2020; Biddle et al., 2020) – especially when reports emerged that he was holidaying in Hawaii as the disaster unfolded (Davies, 2020). This time, the health of the whole nation and economy was at stake, and the latter was already flagging.

Initially Morrison seemed out of step again. Even as the federal government<sup>3</sup> activated emergency plans, banned entry from high-risk countries and scrambled to procure more medical supplies, the Prime Minister encouraged people to take 'commonsense' precautions but otherwise 'go about their lives in their normal way', (Morrison, 2020a). Later that day (March 3), he reassured the public that it was fine to 'go out to the footy, go out to a Chinese restaurant, let the kids play with other kids' (Morrison, 2020b). However, images of crowded wards, patients on ventilators and police checkpoints overseas were more persuasive, prompting many Australians to stockpile essentials and protective gear. Exhortations to stop panic buying had little effect.

State and territory leaders meanwhile were also starting to move on their own pandemic plans: issuing health and travel directives, sourcing equipment, and arranging economic relief (Parliament of Australia, 2020). Amid burgeoning anxiety, a lack of coordination and coherent messaging between, and within, governments threatened

<sup>1</sup> Western Australian Public Sector Commissioner and State Recovery Controller.

<sup>2</sup> Referred to collectively as 'first ministers'.

<sup>3</sup> 'Federal government' = 'Commonwealth government' = 'the Commonwealth'

to undermine public health efforts (Kenny, 2020; Baker & Nguyen, 2020). The Australian Medical Association was particularly concerned about the strain on doctors and the proliferation of misinformation (Baker & Nguyen, 2020).

Each passing day made it increasingly clear that COVID-19 was a serious threat. Doctors worked frantically to develop treatment protocols while vaccine development got underway. So far, preventing transmission was the only way to avoid mass mortality and morbidity. While international border control and biosecurity (including quarantine) are federal responsibilities, states and territories have their own biosecurity and public health roles (Exhibit A). According to Health Minister Greg Hunt, the Prime Minister was mindful of the 1918-19 influenza pandemic and its enormous toll (Exon, 2020). The episode strained Australia's fledgling federation; states squabbled with each other and the Commonwealth, made unilateral decisions and broke agreements (National Archives of Australia, 2021). As a 1918 newspaper editorial sagely observed:

*'The duty of guarding the country from the introduction of disease from overseas countries is imposed on the Federal Government, but the duty of combating disease within the Commonwealth is imposed on the various States ... The least want of cooperation might be followed by disastrous results' (Newcastle Morning Herald & Miners' Advocate, 1918).*

The Prime Minister was keen to avoid the same outcome a century later. A scheduled Council of Australian Governments (COAG meeting) was imminent and he had an idea.

### **The final COAG**

On March 13, the Prime Minister, State Premiers, Territory Chief Ministers and President of the Australian Local Government Association gathered in Sydney, joined by the Chief Medical Officer, the Reserve Bank Governor and the head of Treasury. At approximately 200 cases and rising, COVID-19 dominated an agenda which included bushfire recovery, drought and family violence. Leaders discussed strategies to 'slow the spread of the virus' and minimize economic impacts (COAG, 2020). They agreed to collaborate using evidence-based protocols developed by the Australian Health Protection Principal Committee (AHPPC)<sup>4</sup> to manage outbreaks and high-risk settings (COAG, 2020). At the same time, Morrison noted that:

*Each and every state and territory that is represented here is completely sovereign and autonomous in the decisions that they make. But what we've agreed to is to work together and be unified and to be as consistent and coordinated as possible in our national response. (Morrison, 2020b).*

There were two major outcomes from the meeting. First, the federal government agreed to fund half the additional health costs incurred by the states and territories as a result of the pandemic (COAG, 2020). Second, COAG accepted the Prime Minister's proposal to form of a National Cabinet consisting of the nation's first ministers with himself as Chair.<sup>5</sup> (Morrison had, however, lined up the support of the Victorian and New South Wales premiers, Daniel Andrews and Gladys Berejiklian, in advance (Curtis & Snow, 2020).) The idea was to create a more responsive, nimble body to deal with the crisis, one without the bureaucratic baggage of COAG. In Morrison's experience, the most productive conversations between leaders happened at the social events surrounding official forums, rather than the forums themselves (Conran, 2020, p.15). With COAG's assent, the Prime Minister announced the National Cabinet's formation following the meeting (Morrison, 2020b). COAG meanwhile was suspended.

Though the news was widely welcomed, Bill Bowtell, a key architect of Australia's AIDS response, was not enthused. He saw the National Cabinet as 'a response created for political reasons by politicians' – politicians who had already mismanaged key aspects of the pandemic and should have handed over to public health experts (Bowtell, 2020).

### **COAG and its discontents**

<sup>4</sup> The AHPPC is the peak advisory body for public health emergencies and disease control. Chaired by the Chief Medical Officer of the Australian Government, it comprises chief health officers from each jurisdiction.

<sup>5</sup> National Cabinet Members, March 2020: Scott Morrison (Prime Minister, LNP); Daniel Andrews (Victorian Premier, ALP); Gladys Berejiklian (NSW Premier, LNP); Mark McGowan (WA Premier, ALP); Steven Marshall (SA Premier, LP); Anastacia Palaszczuk (QLD Premier, ALP); Peter Gutwein (Tasmanian Premier, LP); Michael Gunner (NT Chief Minister, ALP); Andrew Barr (ACT Chief Minister, ALP).

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*COAG is something of an atypical body or institution, neither constitutional nor statutory in origin or nature. It is more amorphous, an administrative creation of executive will, resistant to neat description or characterisation. It is something of a moveable feast, constantly changing and adapting to political and other circumstances (Blayden, 2013).*

The nature of Australia's Constitution means that state and federal governments have concurrent legislative authority and responsibility in many areas including, transport, education and health. For example, the Commonwealth largely funds medical services, while states and territories largely fund (and run) public hospitals. Although the Constitution anticipated that the jurisdictions would confer on matters of joint concern, it offered little guidance as to how. In response, successive federal governments have devised their own forums, from occasional leaders' summits to more formal assemblies. Though not ones formalised in law.

In 1992, Prime Minister Paul Keating established the Council of Australian Governments (COAG). Although the jurisdictions regularly liaised, there was a growing need for high-level inter-governmental cooperation to address legislative inconsistencies and complex policy challenges. Beginning with a focus on economic reform (Saunders, 2020), its remit expanded to any issue of national significance. COAG typically met in-person, twice a year, as determined by the Commonwealth government (though frequency varied depending on circumstances and prime ministerial disposition). COAG decisions were reached by consensus or majority vote and ratified (if necessary) with intergovernmental agreements. Communiqués summarising the outcome of discussions followed each COAG meeting.

COAG deliberations were supported by a sprawling, layered network of meetings between public servants, ministers and other relevant participants from across the jurisdictions (Exhibit B). Senior officials assembled between COAG gatherings to develop agenda items, discuss the finer points of agreements and prepare briefings for leaders. Ministerial councils and forums met to pursue national reforms across numerous areas, in line with COAG priorities. In 2019, there were more than 40 ministerial councils and forums (Exhibit C), each with its own ecosystem of officials' meetings, committees and sub-groups – sometimes numbering in double-digits (Conran, 2020). Meanwhile, a series of secretariats performed administrative functions. Regular reviews had attempted to consolidate the number of minister's meetings and streamline operations only to see numbers rise again as needs and priorities changed (Conran, 2020).

COAG started promisingly with competition policy reform in the 1990s (Saunders, 2020) and helped Australia navigate the Global Financial Crisis in 2008 (Anderson & Fenna, 2010). Prime Minister Kevin Rudd had big ambitions for COAG in the late-2000s, broadening its reform agenda, simplifying federal-state financial relations, and positioning COAG at the center of intergovernmental policy development and implementation (Blayden, 2013). COAG had also played an important part in disability reform, eventually paving the way for a National Disability Insurance Scheme (NDIS) in 2013 (Conran, 2020, p.10).

COAG's recent achievements, however, had been more sparse: 'For five years before 2020, COAG for me was a forum where nothing got done. Lots of important discussions, very little action,' said Victorian Premier Daniel Andrews (Curtis & Snow, 2020). These kinds of critiques were not new. Former NSW Premier Barry O'Farrell once described COAG as a 'parking lot for tough decisions' (Miller, 2011). This reflected the difficulty in moving forward when there was substantive disagreement and the tendency for lower-level meetings to deal with problems by continually deferring decisions or referring them upwards to leaders' meetings (Conran, 2020).

COAG participants bemoaned convoluted processes, too much bureaucratic influence over agendas, overemphasis on consensus, insufficient flexibility, and too many items for consideration. Procedural matters and low-priority issues were one cause of clogged schedules – particularly at the ministerial level. 'At the moment everything happens from the bottom-up,' said one anonymous minister, 'officials meet and try to agree and then feed it up to ministers. We end up with the lowest common denominator that can be agreed' (Conran, 2020, p.16).

For many state leaders and government officials, COAG had become more a venue for grandstanding, than a vehicle for reform. O'Farrell decried the abuse of COAG meetings as a 'stage for short-term political gimmicks,' (Miller, 2011). Contemporary COAG participants complained that there was 'too much theatre in big meetings' which discouraged open discussion and compromise' (Conran, 2020). Much of the wrangling was between the most powerful jurisdictions (NSW, Victoria and the Commonwealth) while those with the smallest populations and coffers, like Tasmania and the Northern Territory, looked on. Posturing also spilled into the public sphere. Noted policy scholar Jennifer Menzies: 'The only media story you ever get out of COAG is a conflict in the lead-up as the different state and territory leaders put their position. We all know that kind of endless politicking puts people off,' (Centre for Economic Development Australia [CEDA], 2020).

Yet for all the sound and fury, the federal government essentially ran the show. Although states and territories could make proposals, ultimately, wrote constitutional expert Professor Cheryl Saunders, ‘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<sup>6</sup>, used either as a carrot or a stick,’ (Saunders, 2020, p.5). Former Victorian Premier John Brumby recalled instances when, ‘Prime Ministers put things on the agenda literally the night before,’ leaving other COAG members with scant time to prepare. The net result, claimed Brumby, was that, ‘[The states] didn’t have a big enough say in the forward agenda of COAG, so there was no shared Commonwealth-State ownership,’ (CEDA, 2020).

Despite hopeful beginnings, the story of COAG for Menzies was now less one of ‘cooperative federalism’ and more one of ‘cooperative centralism’ with its pull towards greater federal influence and national uniformity (CEDA, 2020). Meanwhile, according to Saunders (2020, p.5) ‘[COAG] had all the hallmarks of unmediated executive federalism, insufficiently connected with the democratic process and barely understood by the public.’ She also noted: ‘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’ (Saunders, 2020, p.5).

COAG, as an executive creation, was not subject to direct parliamentary oversight, existing in a kind of ‘governance vacuum’ (Blayden, 2013, p.55). Although individual leaders answered to their own parliaments, COAG’s collective accountability was not clear. The COAG Reform Council (established in 2007) provided independent monitoring of progress towards outcomes until it was disbanded in 2014. Since then, performance assessment and reporting had been more piecemeal. Regarding public scrutiny, COAG documents (beyond general statements and published agreements) were available under Freedom of Information (FoI) legislation, unless release was likely ‘contrary to public interest’ (Blayden, 2013, p.57). In practical terms, however, access to COAG’s inner workings was difficult without federal-state consent.

### **The National Cabinet’s first test**

Australia’s inaugural National Cabinet meeting followed two days after COAG, on Sunday 15 March, via teleconference. After advice from the AHPPC, the leaders resolved to restrict mass gatherings and compel all international arrivals to self-isolate for 2 weeks (Office of the Prime Minister [PMO], 2020a). The National Cabinet was also constituted as a Cabinet Office Policy Committee<sup>7</sup> (Under Federal Cabinet rules, the Prime Minister has the sole authority to appoint cabinet committees and determine their operations). This made the National Cabinet subject to Cabinet<sup>8</sup> conventions, including the principles of solidarity and confidentiality (Exhibit D). It also meant that National Cabinet deliberations, like other Cabinet deliberations were exempt from Freedom of Information laws. Yet, within a week, this new body would face a significant test.

On 20 March, Australia closed its international borders to all non-citizens/residents; COVID numbers, meanwhile, were doubling every 3-4 days (Ting & Palmer, 2020). Premiers Daniel Andrews (Vic) and Gladys Berejiklian (NSW) were concerned that they were not moving fast enough to curb community infections and that the Commonwealth was prioritising the economy over public health (Curtis & Snow, 2020). As state premiers, they also knew they would be first to feel the political fallout from a hospital system collapse. The premiers agreed that stricter rules were required for social interactions and, likely, large-scale shutdowns (Curtis & Snow, 2020). Recent crowds at Bondi Beach suggested that social distancing messages weren’t cutting through. On March 22nd, Andrews announced plans to shut down all non-essential activities in Victoria within 48 hours, in accordance with advice from the state’s Chief Health Officer (ABC News, 2020b). He would also bring forward school holidays. Berejiklian was mooting a similar move. Other states, meanwhile, had decided to close their borders to all but necessary traffic (Parliament of Australia, 2020).

Prime Minister Scott Morrison had just announced a further \$66 billion economic assistance package when he learned of Victoria and NSW’s intention to forge ahead with shutdowns (PMO, 2020c). That evening he brought

<sup>6</sup> This financial dominance is a function of the vertical fiscal imbalance between states and territories, and the Commonwealth. That is, the Commonwealth has a greater capacity to raise revenue than the states yet delivers fewer frontline services. Commonwealth funding and grants address some of the imbalance but the appropriate redistribution of resources is a recurring point of contention between the jurisdictions.

<sup>7</sup> The Cabinet Office Policy Committee was established in 2019 by Prime Minister Scott Morrison who serves as its only permanent member.

<sup>8</sup> Australia’s Federal Cabinet is a council of senior ministers, led by the Prime Minister, which may make binding decisions on behalf of the government. It is a product of convention and practice with no Constitutional or legislative basis.

forward the next National Cabinet meeting where the mood was reportedly tense. Morrison was apparently wary of imposing too many hardships, too quickly on Australians (Harris, 2020). The AHPPC, for one, had not yet recommended school closures, even if some individual members had. He expressed concern about the impact of cancelling school on children and working parents, as well as job losses from shuttering businesses (Harris, 2020). For the breakaway premiers, there was only a brief window to avoid a worst-case scenario, 'You've got a moment, and you've got a real sense that if you don't do something now, you won't get this moment back,' Andrews later remarked (Harris, 2020).

### Smoothing over the cracks

Fronting the media following the March 22 meeting, Morrison announced further social restrictions and the closure of 'non-essential' businesses such as hospitality and recreational venues. The National Cabinet, acting on AHPPC advice, determined that schools would stay open, except in Victoria which was bringing holidays forward (PMO, 2020d). NSW schools would continue operating, albeit with parents encouraged to keep children home. Considerable public confusion ensued, especially over definitions of 'non-essential' and who or what qualified for exemptions.

'Ultimately, the National Cabinet is not a compulsory mechanism. That's not how our Federation is built,' Morrison explained, 'the preference of the National Cabinet [is] that wherever possible, [states and territories] move together... But there is also an important discussion about whether [some] states are under more extreme circumstances.' He added, '[I]f any state or territory felt they needed to take more urgent actions [then] I know... they would not seek to do it unilaterally, but they'd seek to do it in cooperation with other states and territories,' (PMO, 2020e).

For journalist Katharine Murphy, the episode was inevitable: 'The strain is about different parts of the federation wanting and needing different things. To put the problem another way: it is impossible for governments to speak with a single voice when fundamental responsibilities differ and nearly everything is contested' (Murphy, 2020). In this case, the federal government had little choice but defer to the states: 'while the Commonwealth possesses the deepest pockets, the military, and the power to close external borders, the states have their hands on many of the levers of daily life, and the civilian manpower. Without the armies of state-employed police, nurses, doctors and public health workers, no testing, contact tracing nor quarantine regime was ever going to work' (Curtis & Snow, 2020).

### Working together

As March 2020 drew to a close, the National Cabinet was now meeting every few days via teleconference to get updates from a variety of experts and officials. Despite a fractious start, participants described a general spirit of goodwill and cooperation. O'Neill recalled a remarkable 'galvanization' in the early days of the National Cabinet with a high level of sharing and openness (De Brouwer, 2020b). Chief Medical Officer Brendan Murphy noticed 'the abandonment of some of the party political differences, the clear unity of purpose to get things done' (Institute of Public Administration [IPAA], 2020a). He also witnessed many bureaucratic barriers dissolve as different departments and organisations stepped up to assist.

Jodie Ryan<sup>9</sup>, advisor to NT Chief Minister Michael Gunner, found National Cabinet meetings immensely useful, especially the expert briefings: 'We're not making decisions based on personal biases or, or things that would benefit one jurisdiction or another,' she said, 'We're actually basing it on common information that we all have. Same with the economic data, we all had Australian economic data from the Commonwealth Treasury. And that helped us form our own policies and responses' (De Brouwer, 2020d).

The National Cabinet was also a forum for sharing ideas. During one late-March meeting, Premier Andrews suggested a compulsory hotel quarantine program for repatriated Australians. Since some returnees were failing to self-isolate properly, hotel quarantine would better prevent community spread whilst bolstering a decimated accommodation sector (The Commonwealth government only had limited quarantine capacity and little interest in expanding it). National Cabinet adopted the idea with states to run their own programs. It also approved a 6-month moratorium on evictions to support struggling tenants, as well as the Commonwealth's \$130 billion JobKeeper wage support scheme (Senate Select Committee on COVID-19, 2020).

<sup>9</sup> Chief Executive of the Department of the Chief Minister, Northern Territory.

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## Riding the First Wave

April 2020 opened with more than 4200 cases and 18 deaths; every day saw several hundred new infections added to the total (PMO, 2020f). After a slow start due to a shortage of testing kits, almost 240,000 Australians had been screened since the beginning of the outbreak (PMO, 2020f). The rising case numbers prompted the National Cabinet to impose further limits on social gatherings (PMO, 2020g). People were also instructed to remain at home unless undertaking necessary activities such as caregiving and grocery shopping. Each jurisdiction determined how strictly to enforce restrictions. New Zealand had already entered an even more severe lockdown a week earlier with the goal of totally eliminating the virus from the community.

As Australians adjusted to their new reality, public debate was still divided between those opposed to restrictions, those in favour of 'flattening the curve' (i.e. virus suppression) with some loss of freedom, and advocates of community elimination, even if it meant stricter measures.

Australia's approach hovered between the latter two, leaning more towards elimination as time went on (Grattan, 2020). Although the message from the National Cabinet wasn't always clear (Duckett & Stobart, 2020b) and jurisdictions differed somewhat in their approaches, the majority of Australians believed the COVID-19 response was 'about right' or well handled (Farr, 2020; Kassam, 2020). Their compliance was rewarded with a steady decline in infections from a peak of 464 new daily cases in late March to just 10 a month later (Department of Health, 2020a). The achievement was even more stark when compared to the situation in much of Europe and the United States.

## Making the National Cabinet permanent

In late May, National Cabinet meetings dropped back to 2-week intervals, with a view to becoming monthly. Morrison also announced that the National Cabinet would hereafter supersede COAG – a place, according to the PM, where 'good ideas go to die' (PMO, 2020h). It would be part of a broad restructure of state-federal relations with the goal of streamlining operations and pursuing a decision-focused agenda. In addition to overseeing the COVID-19 response, he decided that the National Cabinet would concentrate on job creation.

'One of the reasons why the National Cabinet has worked is it has actually operated as a Cabinet,' said Morrison, 'And that means it operates...under the Federal Cabinet's rules,' (PMO, 2020h). He believed the cabinet-style setting had allowed leaders to bypass the 'formalities' and 'staging' that beset COAG, speak more candidly, 'solve problems, deal with issues and move on' (PMO, 2020h). Morrison claimed the National Cabinet had met more in 2 months than COAG had in the 10 years prior, accomplishing a great deal. He wanted to maintain the momentum (PMO, 2020h). Shortly after his announcement, Morrison commissioned a review of COAG ministerial councils and forums

Under the new federal relations architecture (Exhibit E), the National Cabinet would be underpinned by three main bodies: the (existing) Council on Federal Financial Relations (CFFR), National Cabinet Reform Committees (NCRCS) and Experts/Expert Advisory Groups. Only the CFFR, NCRCS and select Expert Advisory Groups would report directly to National Cabinet. Meetings would continue via telepresence as a matter of course, under cabinet principles (Conran, 2020). This meant deliberations would be automatically exempt from FoI laws. In a significant departure from COAG, officials meetings would be discontinued and secretariats closed. Relevant federal departments would assume the latter's administrative functions (Conran, 2020).

The CFFR (comprising the nation's treasurers) was given an expanded remit, including authority to manage commonwealth-state funding agreements. It was also tasked with developing taxation, deregulation and housing policy reforms (Conran, 2020; Department of Prime Minister and Cabinet [DPMC], 2020a). The NCRCS, consisting of relevant state and federal ministers, would be assigned short-term projects by the National Cabinet in (initially) six reform areas to support the jobs agenda (Conran, 2020; DPMC, 2020a). Experts and expert groups would continue providing advice to the National Cabinet and consult with the CFFR and NCRCS. However, any advice to these bodies was also covered by a blanket FoI exemption.

Another new feature was the National Federation Reform Council (NFRC) consisting of the National Cabinet, CFFR and the Australian Local Government Association (ALGA). Meeting annually, it would concentrate on national priorities outside the main National Cabinet agenda (Conran, 2020). The NFRC would be supported by three taskforces on women's safety, Indigenous affairs and veterans' wellbeing (Conran, 2020).

In COVID-preoccupied Australia, COAG's passing attracted little attention and few mourners. However, ALGA President David O'Loughlin was disappointed by local government's exclusion from the National Cabinet and its relegation to an annual meeting (Exhibit E). As ALGA represented 537 councils across the country, O'Loughlin called it a 'lost opportunity' to align Australia's three tiers of government and harness local government's expertise (ALGA, 2020).

Former policy advisor Scott Prasser was concerned that arrangements 'were rushed through during a crisis situation when attention was elsewhere. There was little prior discussion and consultation. They were presented as a *fait accompli*. Parliamentary approval was neither sought nor needed. Details about many of the new arrangements were missing' (Prasser, 2020). He also questioned whether, after numerous reviews, COAG's structure was really to blame for its perceived shortcomings. 'If, as the Prime Minister insinuates, COAG was where 'good ideas went to die' Prasser (2020) wrote, 'then the only ones to blame were the elected officials like him who attended.'

There was also some scepticism about the new framework in the health sector. Said one anonymous official: 'Speed and efficiency are two elements of good decision-making, but so are 'getting it right', effectiveness and minimising unintended consequences'. They were not entirely convinced that the National Cabinet would yield better results, long-term: 'This new arrangement puts a lot of emphasis on a relatively short (few hours) meeting of leaders...which is simply too short a time to discuss all the important issues in all the different portfolios. It will allow the Commonwealth Government in particular to set the agenda' (McInerney, 2020).

Constitutional scholar Professor Anne Twomey, meanwhile, wasn't convinced that the National Cabinet was on solid ground: 'Technically, [the National Cabinet] is a committee of the Commonwealth Cabinet, and under the complete control of the Prime Minister and the Commonwealth Cabinet. While this may have been a convenient mechanism to use in an emergency...it is not an appropriate basis for an inter-governmental body comprised of equals' (Twomey, 2020). The 14th Edition of the Cabinet Handbook laid out the guiding principles for the National Cabinet (Exhibit F) but exactly how they related to general cabinet committee rules (Exhibit G) was not explicit.

Later that year, the National Cabinet accepted the proposed restructure of COAG ministerial councils and forums. Meetings were set to continue in select areas (Exhibit E). However, ministers would be explicitly responsible for determining agendas based on a few key issues and meetings were required to resolve issues, outside the National Cabinet, within 12 months (Conran, 2020). Only ministers (plus one official and advisor) would be permitted to attend. Under the new plan, ministers' meetings were not bound by Cabinet principles but (as per the National Cabinet) would aim for consensus without the need to achieve it (Conran, 2020).

### **A cabinet in name only?**

With the first wave of infections subsiding, attention turned to reviving the economy. In May, the National Cabinet committed to a gradual easing of restrictions. However, the Commonwealth was keen to hasten the process, estimating that restrictions were costing the national economy some \$4 billion per week (SBS News, 2020). The Federal Government had already attempted to pressure several states into reopening classrooms in April, the Education Minister warning independent schools that staying shut jeopardised their federal funding (Karp, 2020). After substantial backlash, the National Cabinet affirmed that although the AHPPC considered schools to be 'relatively low risk' settings, it was up to states and territories to make judgements about reopening (PMO, 2020i).

Border control was another contentious issue. During outbreaks, unaffected states and territories were usually quick to halt interstate traffic. Eager to support domestic tourism, the federal government pushed leaders to lift travel restrictions - particularly in Labor-led Queensland and Western Australia (Doherty, 2020). In June, the Commonwealth joined a High Court action, claiming Western Australia's 'hard border' policy was unconstitutional, though later withdrew (Carmody, 2020). Similar policies in Liberal-run South Australia and Tasmania, however, attracted much less opposition. State leaders also engaged in bilateral disputes over border closures. It all suggested a National Cabinet that was far from unified. In September 2020, the Prime Minister declared that the National Cabinet had essentially 'agreed to disagree' on certain matters:

*One of the reasons COAG and its predecessors never worked was there was the unrealistic...expectation that it could only ever operate on complete, 100 percent consensus. The challenges are too disparate to think that, on every single issue, every state and territory is going to come to exactly the same point (Morrison, 2020c).*

Public hostilities also erupted over accountability. Deficiencies in Victoria's quarantine program led to a second, more serious wave of infections and deaths over winter, plunging the state into a 112-day lockdown. The Commonwealth claimed it had offered defence force personnel to supervise quarantine in early April but that the Victorian government declined (Clure, 2020). In turn, the Commonwealth was criticised for inadequate funding and pandemic planning in the aged care sector where most deaths occurred (Senate Select Committee on COVID-19, 2020). It was somewhat reminiscent of the March 2020 clash between the Commonwealth and NSW governments over who was responsible for letting COVID positive cruise ship passengers disembark in Sydney (Mao, 2020).

Although Victoria managed to bring cases down to zero – a rare achievement globally – and helped protect the rest of the country, the state's stringent and lengthy restrictions drew sustained criticism from the Commonwealth and, at times, from NSW (Wahlquist, 2020). There were also ongoing debates between the jurisdictions over hotel quarantine numbers. The federal government wanted states to increase capacity; states and territories wanted more resources and purpose-built facilities (Withers, 2020).

### Reflections from 'inside'

Despite episodes of public antagonism, officials involved with the National Cabinet were positive about the experience, 'As a small jurisdiction felt that we had an equal seat at the table', said NT's Jodie Ryan, 'In COAG, it [was] really those biggest states that had more capacity for developing up policy positions and making a case that got more hearing. Whereas in the National Cabinet, everyone's equal. So the Territory can have just as much of a say as Victoria and New South Wales'. She also found that, 'It's been it's been really good in moving issues forward rapidly, as opposed to the previous COAG arrangement where issues could stay on the table for years at a time' (De Brouwer, 2020d).

WA's Sharyn O'Neill acknowledged that it was 'a very fine balance between the interests of your own state, and the interests of the nation' but believed that the National Cabinet navigated those differences well (De Brouwer, 2020b). Chris Eccles<sup>10</sup> (NC advisor to the Victorian premier) took a similar view: 'Some of the lessons for me...[are] the real importance of decisions accommodating differences between jurisdictions...and that is now deeply embedded in the working of the National Cabinet (De Brouwer, 2020a). Queensland's National Cabinet advisor Dave Stewart<sup>11</sup> recalled that 'there was this view that we had to have a single song sheet' (De Brouwer, 2020c) but found that stance had since softened. Although he expected tests for the National Cabinet post-COVID, he also said that:

*There is no question that everyone wants to do things differently. And I think this is our time to fundamentally shift from pandemic wartime to a National Cabinet in peacetime that really achieves great outcomes and regulatory reform (De Brouwer, 2020c).*

Chris Eccles thought that the National Cabinet process had also improved transparency, 'bringing the community along with a with a real-time insight into the decision-making process and outcomes. We're never going to go back to a to a more formal structured way of communicating' (De Brouwer, 2020a). Brendan Murphy agreed, 'One of the most rewarding things about this whole response is that every government, state and federal, has said, 'Tell us the health advice and we'll take it' (Institute of Public Administration, 2020a).

### National Cabinet report-card

By mid-December 2020 Australia had tallied approximately 28,000 COVID-19 cases and 908 deaths (Department of Health, 2020b) - many of those likely preventable (McCauley, 2020). At the same time, the result was only surpassed by a small number of comparable nations. Life was, in many ways, was back to normal and the country had so far avoided economic meltdown. Health systems withstood the first and second waves of infections. New outbreaks were also being more efficiently traced and contained.

'In my view, multi-level government was a positive factor,' said Professor Anne Twomey, 'The circumstances across Australia were very different, meaning that different responses were justified, including responses that prevented the spread of the disease to particular areas. A 'one-size-fits-all' approach by a central government would have been disastrous. While the Commonwealth was more concerned for the economy, the States were more concerned about the health of their residents. These opposing pressures resulted in a more moderate and appropriate outcome' (Twomey, 2020). The fact that the nation's leaders were almost evenly balanced between Labor and Liberal also created a de facto bipartisan assembly.

<sup>10</sup> Secretary, Department of Premier and Cabinet (to October, 2020).

<sup>11</sup> Director-General, Department of Premier and Cabinet (to March, 2021).

With regard to the National Cabinet in particular, the media's overall response was positive (Duckett & Stobart, 2020a), even as individual governments were heavily criticised (Werleman, 2020). The public also seemed supportive, one poll finding 89% approval for the National Cabinet's continuation (D'Hotman, 2020). Public trust in government shot up markedly during 2020, reversing a long-term decline (Markus, 2021; Evans et al., 2020; Edelman Australia, 2021). The Prime Minister particularly benefitted, gaining an approval boost (Evans et al., 2020).

'Often the outcome of a National Cabinet meeting was a 'decision' in name only,' observed the Grattan Institute, 'Often, behind the fig-leaf of unity, each state and territory went its own way...Nevertheless, people loved the veneer of cooperative action.' It went on to say, '[The National Cabinet] helped build a unified federated voice at a time when clear and consistent messaging was key (although this didn't always work). It (partially) corralled the cats, a task made easier because their interests were aligned' (Duckett & Stobart, 2020a).

The model had also proved robust enough to weather some serious dissent. Noted Saunders (2020): 'In the end [problems] 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'. It had also brought experts to the fore at a time when facts were frequently contested and scientific issues politicised: 'During the pandemic, the visibility of public health experts has added credibility to and reinforced the decisions and messages of political leaders' (Ball, 2020).

However, not everyone believed that the National Cabinet, per se, had made the difference. As academic Narelle Miragliotta and colleagues (2020) wrote: 'The pernicious nature of the virus has created strong pressure for different levels of government to work together...it is not obvious the policy response to the pandemic would have been significantly different had intergovernmental co-ordination occurred through COAG'. For instance, there were no barriers to holding frequent COAG meetings, teleconferencing, or inviting experts to participate. 'None of this is to take away from the successes of the National Cabinet,' they continued, 'Rather, the key point is that the effectiveness of the forum is a function of the exceptional context we're in rather than its novel institutional design' (Miragliotta, et al., 2020). Without an acute crisis to focus minds and foster cooperation, many observers predicted politics would again take precedence over problem solving – especially as elections came due (Ball, 2020; Saunders, 2020; Duckett & Stobart, 2020a).

In terms of Morrison's personal fortunes, creating the National Cabinet was seen as a savvy manoeuvre in that it, 'enabled the prime minister to (selectively) assert his political relevance at a time when many of the most important decisions and actions that affect citizens during the pandemic fall constitutionally to the states and territories' (Miragliotta, et al., 2020). Professor of governance Mark Evans considered that Morrison, 'very skillfully used the national cabinet to build his power base and promote his role as the key voice in terms of the management of the crisis' (Pembroke, 2020). The downside, however, was the danger of appearing ineffectual when states asserted their sovereignty and disregarded Commonwealth wishes (Prasser, 2020).

### Looking ahead

The future of the National Cabinet was secure – in that the federation's leaders would always need some kind of decision-making forum – yet its form and footing was not. Some anticipated that stripped bureaucratic layers would be quietly backfilled as the reality of sidelining officials took effect. It also seemed probable that the National Cabinet agenda would expand. The nation's biggest issues – like climate change and inequality – were complex, interlinked and difficult to ignore. Even a 'singular' focus such as jobs had many different dimensions that couldn't be addressed with a few handshakes (McInerney, 2020).

Transparency was another concern. Federal parliament had been suspended for lengthy periods in 2020 and new legislation rushed through with little scrutiny. A senate committee however did convene to examine the Commonwealth's COVID response, including the National Cabinet. It found the government had, 'improperly applied cabinet conventions to avoid transparency in relation to decisions made by the National Cabinet' (Senate Select Committee on COVID-19, 2020). The Federal Government had, for example, refused to provide National Cabinet deliberations to Victoria's hotel quarantine inquiry. Independent Senator Rex Patrick launched a legal challenge to secrecy provisions, contending the National Cabinet was not a legitimate cabinet committee – one reason being that members answered to different parliaments and could not be bound to solidarity (Karp, 2020).

Former WA Premier Colin Barnett, who described the National Cabinet, as 'a cabinet without a parliament', was not optimistic that the federation had entered a new chapter: 'Neither the COAG nor the National Cabinet hold any constitutional or legislative powers. They are simply a meeting of a prime minister and the state premiers'. He also

said: 'My experience of the COAG was that the way it worked very much depended on the attitude of the prime minister of the day. I expect the National Cabinet will be the same' (Barnett, 2020). Personalities and personal relationships had always influenced state-federal relations and intergovernmental forums were sensitive to leadership churn via party coups, reshuffles and elections (Ball, 2020).

Others were more equivocal, Mark Evans remarking that, 'There seems to be a recognition now that of the importance of taking what's called a systems approach to public policy, and that it's not good enough [just] to be in control of your own part of the system' (Pembroke, 2020). Academic and veteran political commentator Michelle Grattan, meanwhile, expected that, 'the relationship between the Commonwealth, and the states will be changed. But it's not quite clear the shape that change will take' (Pembroke, 2020). One of the few certainties, however, was that the pandemic and the pathway out would dominate National Cabinet proceedings for some time yet.

## Postscript

The National Cabinet's early bonhomie in 2020 seemed to dissipate through 2021 – publicly at least. The federal government's failure to secure adequate vaccine doses and ongoing reluctance to take carriage of quarantine frustrated the states and territories. So did the cessation of federal income support payments despite ongoing COVID outbreaks. Mixed messaging about the AstraZeneca vaccine and disputes about vaccine allocations led to further conflict. In June 2021, NSW's reliance on contract tracing and aversion to restrictions, sent mainland states back into lockdown and when the Delta variant proved too virulent. Calls to divert vaccine supplies to Sydney were not answered with much sympathy. As the National Cabinet discussed hospital capacity and sparred over reopening plans, in August 2021 the Administrative Appeals Tribunal ruled that there were no valid grounds to extend cabinet confidentiality to National Cabinet meetings (Murphy & Karp, 2020). The federal government responded by tabling legislation to extend cabinet secrecy provisions to National Cabinet deliberations.

Questions	
1	Did COAG need to be replaced? What alternatives were there to a National Cabinet?
2	How can the National Cabinet maintain momentum and avoid COAG era issues?
3	What changes would you make to the National Cabinet and Federal Relations Architecture? Why?
4	Should the National Cabinet remain as a Federal Cabinet committee? Why/why not?
5	How do you balance the need for consensus and consistency with autonomy and flexibility?

Timeline of key events	
<b>2019</b>	31 December: China confirms discovery of novel coronavirus COVID-19.
<b>2020</b>	<p>25 January: First COVID-19 case confirmed in Australia.</p> <p>11 March: World Health Organisation declares COVID-19 a pandemic.</p> <p>13 March: COAG meeting in Sydney. National Cabinet announced.</p> <p>15 March: First National Cabinet meeting. Social restrictions announced. COAG suspended.</p> <p>20 March: international borders closed to all countries except Australian citizens/residents. Tasmania first state to close domestic borders.</p> <p>22 March: Victoria and NSW announce plans to move ahead with school closures/restrictions.</p> <p>25 March: Non-essential activities suspended and businesses closed.</p> <p>28 March: First wave peaks with 464 new COVID cases (cumulative total 3,626)</p> <p>29 March: Hotel quarantine program launched.</p> <p>22 April: Australia records 4 COVID-19 cases.</p>

	<p>29 May: National Cabinet made permanent; COAG ceases.</p> <p>June: 2<sup>nd</sup> wave begins in Victoria.</p> <p>July: Victoria enters 16-week lockdown</p> <p>August: Independent Senator Rex Patrick challenges National Cabinet secrecy provisions.</p> <p>October: Review of COAG ministerial councils and forums completed.</p>
<b>2021</b>	<p>June: Delta variant outbreak in Sydney. Multi-state lockdowns ensue.</p> <p>5 August: Administrative Appeals Tribunal rules National Cabinet not covered by Cabinet confidentiality.</p> <p>2 September: Federal government tables legislation to extend confidentiality to National Cabinet proceedings.</p>

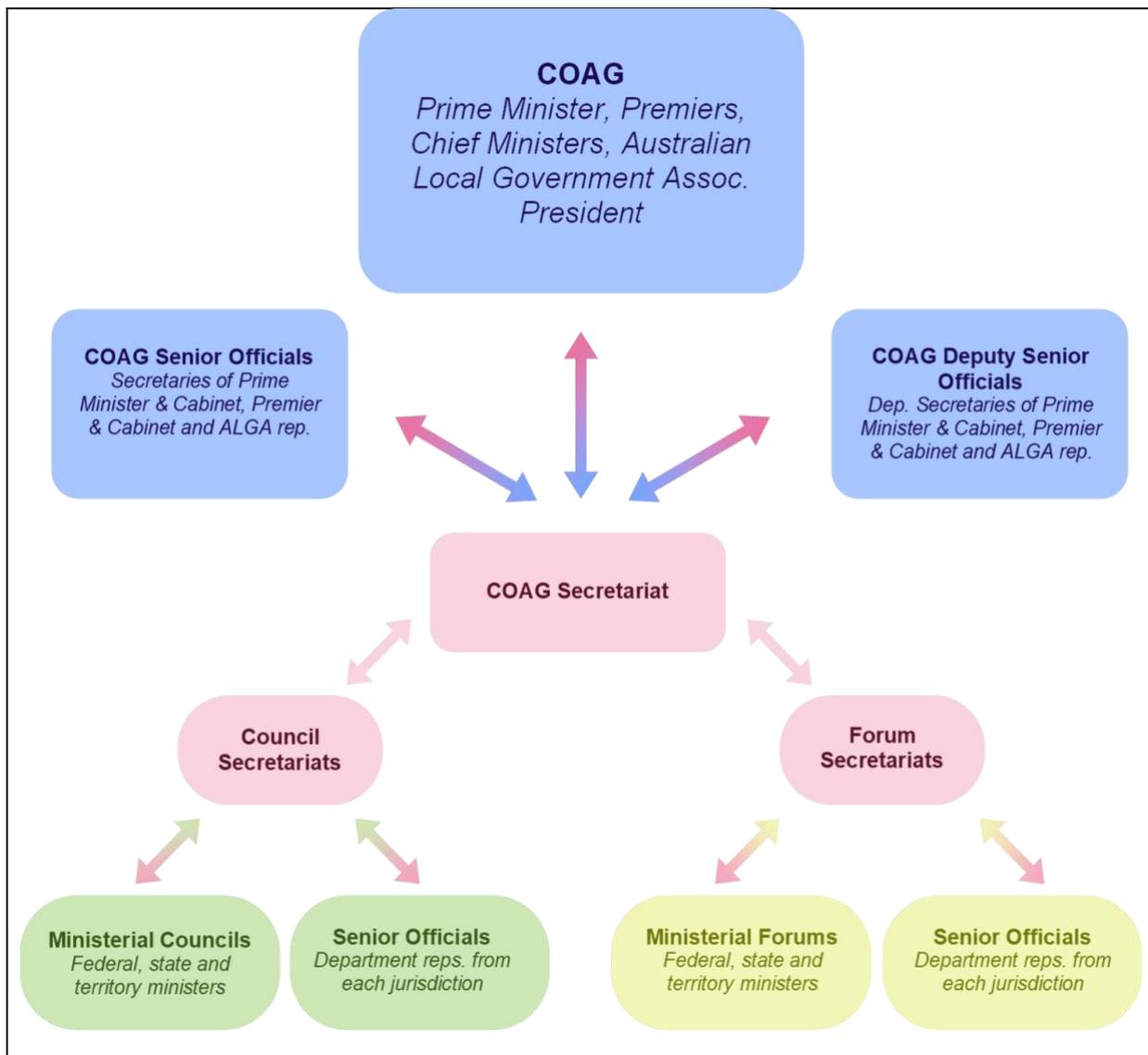
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**Exhibit A – State and federal biosecurity powers**

The Commonwealth government controls national borders, including the screening of people and goods entering Australia to prevent exotic pests and disease. Section 51 of the Constitution, in particular, gives Federal Parliament the authority to pass quarantine legislation such as the Biosecurity Act 2015 (Nekvapil et al., 2020). However, this power is exercised concurrently with the states. Federal biosecurity legislation is administered by the Department of Agriculture, Water and the Environment and the Department of Health. The latter focuses on biosecurity issues affecting humans and can delegate responsibilities to appropriate state and territory officers, as well as the Australian Defence Force.

States and territories manage biosecurity matters within their borders, including the movement of plants, goods and animals between jurisdictions (COAG, 2019). Their health departments, meanwhile, monitor disease outbreaks and provide facilities such as hospitals. Both federal and state legislation grant a broad range of emergency powers relating to public health and safety; though in the event of conflict, Commonwealth (federal) law prevails (McLean & Huf, 2020; Heath, 2020).

**Exhibit B: COAG structure**



**Notes**

1. The COAG Secretariat is located within the Department of Prime Minister & Cabinet.
2. Secretariats coordinate work, meetings and communications between members, as well as other councils/forums/groups.
3. Ministerial forums may be regular, occasional or ad-hoc.
4. Ministerial councils/forums may include outside members where relevant.
5. Council/forum work is supported by a variety of subgroups.

**Exhibit C: COAG Councils and ministerial forums****COAG Councils**

Council on Federal Financial Relations	Australian Data and Digital Council
Council of Attorneys-General	Disability Reform Council
Education Council	Energy Council
Health Council	Skills Council
Transport and Infrastructure Council	

**Ministerial Forums**

- Australia and New Zealand Ministerial Forum on Food Regulation
- Agriculture Ministers' Forum
- Building Ministers' Forum
- Community Services Ministers 'Meeting
- Consumer Affairs Forum
- Corrective Services Ministers' Conference
- Fisheries Ministers 'Meeting
- Forestry Ministers 'Meeting
- Great Barrier Reef Ministerial Forum
- Housing and Homelessness Ministers' Meeting
- Industry Ministers' Forum
- Lake Eyre Basin Ministerial Forum
- Legislative and Governance Forum on Gene Technology
- Meeting of Commonwealth, State and Territory Ministers for Industrial Relations and Work, Health and Safety
- Meeting of Cultural Ministers
- Meeting of Environment Ministers
- Meeting of Sports and Recreation Ministers
- Ministerial Council on Police and Emergency Management
- Ministerial Drug and Alcohol Forum
- Ministerial Forum on Multicultural Affairs
- Ministerial Forum on Northern Development
- Ministerial Resources Roundtable
- Ministers' Redress Scheme Governance Board
- Murray-Darling Basin Ministerial Council
- National Digital Economy and Technology Ministers
- National Environment Protection Council
- Planning Ministers' Forum
- Regional Ministerial Forum
- Trade and Investment Ministers 'Meeting
- Tourism Ministers 'Meeting
- Treasurers' Forum on Population
- Veterans' Ministerial Council
- Wet Tropics Ministerial Council

**Other**

- Australia-New Zealand Counter-Terrorism Committee (ANZCTC)
- National Cyber Security Committee (NCSC)

Source: Conran, 2020.

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**Exhibit D: Cabinet Handbook – 14<sup>th</sup> Edition: Cabinet Conventions and Principles (excerpts)**

‘...whatever the range of private views put forward by ministers in the Cabinet, once decisions are arrived at and announced they are supported by all ministers.’

‘a decision of the Cabinet is binding on all members’

‘Members of the Cabinet must publicly support all Government decisions made in the Cabinet, even if they do not agree with them.’

‘Cabinet ministers cannot dissociate themselves from, or repudiate the decisions of their Cabinet colleagues unless they resign from the Cabinet.’

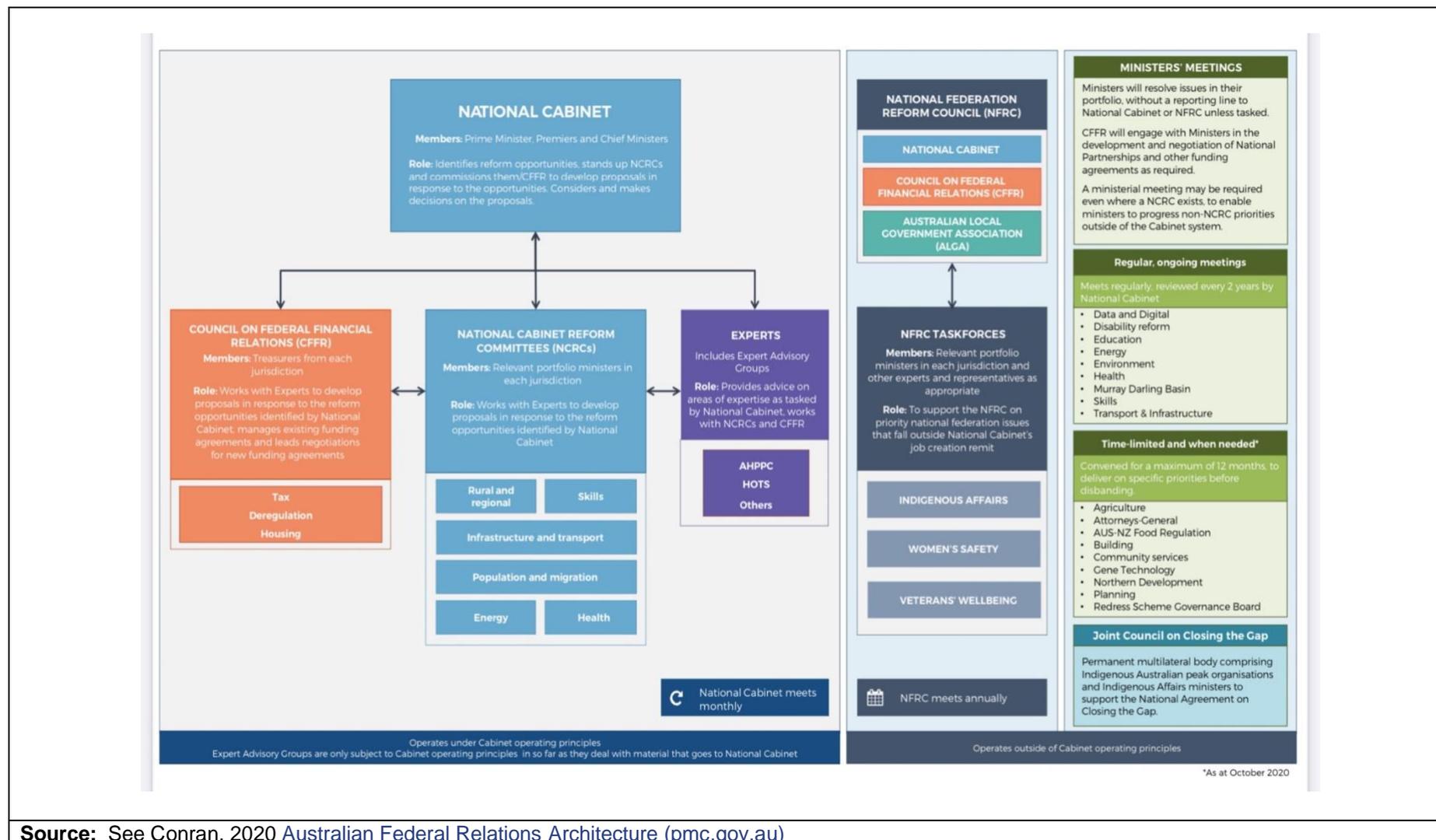
‘It is the Prime Minister’s role as Chair of the Cabinet, where necessary, to enforce Cabinet solidarity.’

‘The principle of collective responsibility requires the strict confidentiality of all Cabinet proceedings and documentation.’

‘Ministers, their staff and officials must not disclose proposals likely to be considered at forthcoming meetings outside Cabinet-approved consultation procedures.’

(Department of Prime Minister and Cabinet [DPMC], 2020b, pp.9-10)

## Exhibit E: Federal Relations Architecture



Source: See Conran, 2020 Australian Federal Relations Architecture ([pmc.gov.au](http://pmc.gov.au))

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**Exhibit F: Cabinet Handbook - National Cabinet Guiding Principles**

148. The National Cabinet comprises the Prime Minister (Chair), the State Premiers and the Territory Chief Ministers.

149. The National Cabinet operates according to the longstanding Westminster principles of collective responsibility and solidarity.

150. The precise structure, shape and operation of the National Cabinet are matters for its members.

151. The National Cabinet does not derogate from the sovereign authority and powers of the Commonwealth or any State or Territory. The Commonwealth and the States and Territories, as appropriate, remain responsible for implementing outcomes agreed by the National Cabinet.

152. Expert advisers may be co-opted to inform National Cabinet deliberations as appropriate.

153. The National Cabinet meeting schedule is determined by agreement between members.

154. Members, when absent, should be represented in the National Cabinet meetings only by other Ministers acting in their position and only where agreed by the Cabinet Secretary.

155. All proceedings and documentation of the National Cabinet remain strictly confidential.

(DPMC, 2020b, p.30)

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**Exhibit G: Cabinet Handbook - Cabinet committee guidelines**

4. Cabinet committees are usually established either around a subject area, such as national security, or around a general function of Government, such as expenditure. Temporary or ad-hoc Cabinet committees may also be established by the Prime Minister to carry out particular tasks.

5. Cabinet committees derive their powers from the Cabinet. Generally, Cabinet committee decisions are brought forward to the Cabinet for endorsement, so the Cabinet retains the ultimate power of decision. While some Cabinet committees may make final decisions for security or practical reasons, most Cabinet committee decisions are not acted on until they have been endorsed by the Cabinet, or the Cabinet Secretary agrees that decisions can be implemented without the Cabinet's endorsement because they are urgent. In such cases, the Cabinet should be briefed on the Cabinet committee decision as soon as practicable. The Cabinet may alter a Cabinet committee decision or ask a Cabinet committee to consider a matter further.

6. The Prime Minister is responsible for the membership of the Cabinet and Cabinet committees, determines and regulates all Cabinet arrangements for the Government and is the final arbiter of Cabinet procedures.

(DPMC, 2020b, p.6)

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