



Australian Government

Department of the Prime Minister and Cabinet

# Review of COAG Councils and Ministerial Forums

Report to National Cabinet

Peter Conran AM

October 2020

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# Cover Letter

In approaching the task that I had been set by National Cabinet I reflected upon advice given to me by Professor Brendan Murphy and Ms Caroline Edwards from the Commonwealth Department of Health. Their comments were in relation to the former COAG Health Council (CHC) and the Australian Health Ministers' Advisory Council (AHMAC) but they could apply equally to most, if not all, former COAG councils and ministerial forums.

*"The former CHC and AHMAC that supported it were inefficient and often ineffective:*

- *Complex convoluted arrangements*
- *Slow processes with over-engineering of issues*
- *Excessive focus on secretariat functions*
- *Significant funding expended on low priority projects with indeterminate timeframes and on excessive secretariat costs including meeting arrangements and catering*

*During COVID, these processes were basically abandoned as ministers and CEOs instead met regularly by informal teleconference without administrative processes to cut through issues and achieve cooperation and coordination on key issues. These truncated, accelerated processes achieved faster, better outcomes. There has been little or no impact of the numerous projects left un-progressed in the meantime and state, territory and Commonwealth Health Department CEOs agree that much of the activity and structures of the former arrangements can cease."*

These comments explain what has gone wrong: too much process and formality, too many meetings for the sake of meetings and a tendency to admire problems rather than a disciplined focus on delivering outcomes. They explain the frustrations of First Ministers with former COAG processes and why they considered it necessary to completely reset how they should operate.

As the Prime Minister said in a press conference after National Cabinet on 29 May 2020: *"It is important that ministers at state and federal level talk to each other but they don't have to do it in such a bureaucratic form with a whole bunch of paperwork attached to it... They come together to solve problems, deal with issues and move on."*

The issues facing our community and economy are complex and constantly evolving. They require our ministers to come to the table in the spirit of cooperative and responsible federalism – engaging in discussion informed by a diversity of jurisdictional perspectives but ultimately in pursuit of our collective national interest. Our system of intergovernmental meetings must encourage ministers to be focussed and efficient in their decision-making and responsive to emerging national priorities. My recommendations seek not just to rationalise the number of ministers' meetings, but more importantly, to overhaul the way they function. This cannot be set in stone. Our system must be able to adapt and evolve and it must empower ministers to set clear objectives and get on with the job of delivering them.

The cooperation and assistance, provided by ministers across all jurisdictions, departmental heads, officials and others during the course of this review, has been exceptional. It is clear they all seek change for the better. Guidance from the First Secretaries Group led by Phil Gaetjens and their Deputies Group was invaluable. Finally, I was supported by a small and immensely capable team, drawn from jurisdictions across the country and led by Yael Cass and Sacha Edema. It was a privilege to work with them.



Peter Conran AM

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# Executive Summary

The establishment of National Cabinet, and subsequent ceasing of COAG, has provided a unique opportunity to reconsider and reset Australia's intergovernmental architecture. COAG was a slow, bottom-up framework for intergovernmental cooperation that too often resulted in lowest common denominator outcomes. National Cabinet, in contrast, deals with issues quickly, based on advice from experts, with leaders dictating the priorities and parameters for their governments to implement. This efficient way of working needs to be replicated across our ministerial councils and forums.

On 29 May 2020, the Prime Minister announced that National Cabinet agreed to a review of the former COAG Councils and ministerial forums with a view to rationalise and reset their structure and work programs. In much the same vein as First Ministers' agile response to the COVID-19 pandemic, ministers need to engage differently to respond to intergovernmental issues affecting all Australians, and ensure they adapt their approach to current and future circumstances.

Australia's federal structure, built upon reciprocal financial, legislative and policy responsibilities, requires intelligent cooperation on issues of strategic national significance. The recommendations of this review aim to ensure that Australians are served by a sustainable, effective, efficient and collaborative system of federal relations. As Professor Murphy commented, we need "dramatically streamlined arrangement[s]" where formal councils and forums are "replaced with informal meetings on a regular basis with minimal administrative support. While the group might discuss issues of mutual interest, decisions should be limited to issues of genuine federal interdependency."

It is important to recognise the diversity between and within jurisdictions and the disparate nature of the challenges faced across the federation – where appropriate, decisions should be principles-based and allow individual jurisdictions to determine the best way to achieve agreed outcomes.

Many previous reviews have attempted to address concerns around the ineffective and inefficient nature of the intergovernmental architecture of the day and its failure to achieve significant outcomes. Past reviews have aimed to reduce the number of councils to help address this. Despite repeated attempts to rationalise bodies, they have continued to grow. Attempts to change work practices to improve productivity have been similarly unsuccessful.

This review aims to learn from these past experiences by recognising that the number and names of groups are not so important – successful, enduring reform will come by resetting how groups operate. To that end, there are a number of recommendations focussed on streamlining not just the bodies themselves, but their future operations. This includes a shift in focus from procedure to a collaborative work program and agenda setting mechanisms that assist in achieving outcomes and allow for more focussed decision-making.

The review developed three key objectives to assess the need for a forum: to enable national cooperation and consistency on enduring strategic issues; to address issues requiring cross-border collaboration; and, to perform regulatory policy and standards setting functions. These objectives were considered along with comprehensive consultation that included:

- 67 interviews with ministers, former ministers and departmental secretaries
- Two rounds of written surveys with council and forum ministers and their secretariats
- Attendance at ministerial meetings.

A set of common themes emerged from the consultation, including a need to sharpen the focus on priority issues, avoid lengthy agendas of standing items, and provide a balance between long-term and short-term priorities. The consultation process also highlighted the benefits to be gained from ministers sharing information and building relationships to promote collaboration and best practice across jurisdictions.

The review seeks to learn from National Cabinet's approach to more responsive and efficient decision-making. It proposes reducing administration through rationalising groups of officials that support forums, abolishing secretariats and handling routine matters out-of-session or delegating them to officials. National Cabinet has also shown the benefit of increased ministerial control of agendas and not requiring officials to reach consensus on papers prior to ministerial consideration. Central to improved efficiency is also limiting each forum's attention to two or three nationally significant priorities and setting timeframes for progressing those priorities.

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These principles need to be equally applied to meetings of officials and I have recommended that ministers and department heads should be responsible for this.

The review also recommends reducing the number of forums to those necessary for intergovernmental policy collaboration and ongoing regulatory functions. Noting that rationalising forums through eight past reviews has not addressed ongoing issues affecting ministerial bodies, it must be emphasised that modifying their operational procedures is in many respects more important than changes to the number of ministerial forums.

There is a need to maintain relationships between other governments. New Zealand should continue their involvement in various meetings, where they add value to all parties. The Australian Local Government Association also has an important role in meetings where local governments have significant responsibilities, such as planning, infrastructure and community service provision.

This review has deliberately taken a strong approach to rationalising the structure and operations of Australia's intergovernmental architecture, with the objective of ensuring all meetings are more targeted and progress issues to finality in a short period of time. In this regard, arguments could be made to have more regular, ongoing meetings. While there may be alternatives to the recommended approach, a line must be drawn somewhere. If we want to see real change in the way things operate then there will need to be a consistent and disciplined approach to justifying the existence of ongoing formal structures – especially when work can and should be progressed in a timely manner and through more efficient, informal means.

Ultimately, achieving successful reform will rest not in the approving of recommendations, or changing the number or structure of forums. It will come down to everyone within those structures maintaining a strong focus on delivering priority outcomes that improve the lives of Australians and the prosperity of our nation.

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# Recommendations

## A Streamlined Intergovernmental Structure

### [Part II: Options for a Streamlined Approach – Options for a Streamlined Structure of a New System]

1. National Cabinet should rationalise the former COAG Councils and ministerial forums by:
  - Maintaining and resetting the following regular, ongoing ministers' meetings:
    - Data and Digital Ministers' Meeting
    - Disability Reform Ministers' Meeting
    - Education Ministers' Meeting
    - Energy Ministers' Meeting
    - Environment Ministers' Meeting
    - Health Ministers' Meeting
    - Infrastructure and Transport Ministers' Meeting
    - Murray-Darling Basin Ministers' Meeting
    - Skills Ministers' Meeting
  - Making the following meetings time-limited and when needed – to convene only for specific tasks with specified, sun-setting timeframes of no longer than 12 months:
    - Agriculture Ministers' Meeting
    - Attorneys-General Meeting (see Recommendation 2 on alternative options)
    - Australia and New Zealand Food Regulation Ministers' Meeting
    - Building Ministers' Meeting
    - Community Services Ministers' Meeting (see Recommendation 2)
    - Gene Technology Ministers' Meeting
    - Northern Development Ministers' Meeting
    - Planning Ministers' Meeting
    - Redress Scheme Governance Board
  - Disbanding the remaining formal ministerial forums, noting they can meet to consider one-off issues:
    - Consumer Affairs Forum (see Recommendation 3 on regulatory functions)
    - Corrective Services Ministers' Conference
    - Fisheries Ministers' Meeting (issues can be managed by Agriculture ministers)
    - Forestry Ministers' Meeting (issues can be managed by Agriculture ministers)
    - Great Barrier Reef Ministerial Forum (see Recommendation 3) (issues can be managed by environment ministers)
    - Housing and Homelessness Ministers' Meeting
    - Industry Ministers' Forum
    - Lake Eyre Basin Ministerial Forum (see Recommendation 3) (issues can be managed by environment ministers)
    - Meeting of Commonwealth, State and Territory Ministers for Industrial Relations and Work, Health and Safety (see Recommendation 3)
    - Meeting of Cultural Ministers
    - Meeting of Sports and Recreation Ministers
    - Ministerial Council on Police and Emergency Management (see Recommendation 8)
    - Ministerial Drug and Alcohol Forum
    - Ministerial Forum on Multicultural Affairs (social cohesion coordination can be progressed by Australia and New Zealand Counter Terrorism Committee)
    - National Digital Economy and Technology Ministers
    - National Environment Protection Council (see Recommendation 3) (issues can be managed by environment ministers)

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- Regional Ministerial Forum
  - Resources Ministerial Roundtable
  - Tourism Ministers' Meeting
  - Trade and Investment Ministers' Meeting
  - Treasurers' Forum on Population
  - Veterans' Ministerial Council
  - Wet Tropics Ministerial Council (see Recommendation 3) (issues can be managed by environment ministers)
2. As an alternative to the above, Attorneys-General and Community Services could be kept as regular ongoing meetings but with rigorous review to ensure these meetings have a strategic focus and tight timeframes to deal with issues.
  3. Regulatory functions of previous ministerial forums will continue to be the responsibility of relevant ministers or the successor meeting. These functions should be conducted out-of-session wherever possible.
  4. The Australian Local Government Association and New Zealand should continue their involvement in relevant meetings.
  5. Where forums are disbanded ministers should be encouraged to hold occasional gatherings to share best practice and build relationships across the federation, or deal with one-off issues, without the structure and trappings of official meetings.

## Other National Bodies

### [Part I: Context for the Review – Interaction of Ministerial Forums with the New Federal Relations Architecture]

6. The following groups of officials that previously reported to COAG should continue to meet to coordinate between the Commonwealth, states and territories, but without a direct reporting line to National Cabinet. Noting that a National Security First Secretaries Group will also be established National Cabinet may choose to call on them as expert advisory groups in the future:
  - Australia and New Zealand Counter Terrorism Committee (ANZCTC)
  - National Cyber Security Committee (NCSC)
7. Acknowledging the recent commitment of the Commonwealth, states and territories, Australian Local Government Association, and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations to a new 10 year National Agreement on Closing the Gap, the Joint Council on Closing the Gap will continue as a national body.
8. To manage emerging priorities requiring strategic intergovernmental collaboration, and noting that the Royal Commission into National Natural Disaster Arrangements has been asked to deliver its final report and recommendations in October 2020, National Cabinet should consider how best to deal with emergency management from a coordinated national perspective. In the absence of a dedicated body, a meeting of Police and Emergency Management Ministers should continue with alignment to an appropriate group to deal with recovery issues.

## Interactions with the National Cabinet Infrastructure

### [Part I: Context for the Review – Interaction of Ministerial Forums with the New Architecture]

9. All continuing meetings should resolve issues in their portfolio and should not have a reporting line to National Cabinet or the National Federation Reform Council, unless directly tasked by one of those bodies.
10. Ministers' meetings will engage with the Council on Federal Financial Relations (CFFR) with respect to National Partnerships and other funding agreements, with CFFR to determine their level of involvement in development and negotiation.
11. A ministers' meeting may be required even where a National Cabinet Reform Committee (NCRC) exists, to enable ministers to progress non-NCRC priorities outside of the Cabinet system. Division of responsibilities between an NCRC and its companion ministers' meeting must be clear to ensure there is no duplication.

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## Mirroring and Building on the National Cabinet Model

### [Part I: Context of the Review – Issues Arising from Consultations]

12. Ministers must set, control and review agendas and not delegate these responsibilities to officials.
13. Regular meetings should be held via telepresence to allow for shorter, and sometimes more frequent meetings so that ministers can maintain visibility and control progress of items.
14. Where appropriate, decisions should be principles-based and allow individual jurisdictions to determine the best way to achieve agreed outcomes.
15. Except where otherwise specified in legislation, decision making should be on the basis of consensus. Where a consensus is not achievable the Commonwealth and smaller groups of states and territories can reach agreement and move forward.
16. Regular meetings should have a strategic focus on two or three decision-making priorities of national importance. Initial indicative priorities have been identified for these meetings.
17. A Commonwealth minister will chair meetings, unless otherwise decided by consensus between meeting members. The Chair will not deny reasonable requests for items to be included on agendas.
18. Ministers should be supported by a maximum of one official, and where appropriate, one adviser, at meetings.
19. Key decisions and outcomes should be communicated by a press release from the Chair or a short communique drafted in the room.

## Encouraging Delivery and Good Process

### [Part II: Options for a Streamlined Approach – Operational Procedures for a New System]

20. All items should have defined timeframes for when they should be resolved, no longer than 12 months.
21. Issues not substantially resolved within their designated timeframe should be removed from the work program.
22. Routine, non-controversial or technical matters should be progressed out-of-session or be delegated to officials.
23. Meeting papers should be drafted by the jurisdiction leading on the item and circulated in a timely manner. Consensus by officials is not required before papers proceed to ministers, but the Commonwealth departmental secretary should review before distribution.
24. Regulatory Impact Analysis should continue to be done for all major intergovernmental decisions affecting business, individuals and/or community organisations, with the Office of Best Practice Regulation to administer these settings and streamline and refine the relevant framework and guidance material accordingly.
25. The *Guidance on Intergovernmental Meetings* publication, which documents all recommended operational procedures arising from the review, be adopted to replace the existing *Handbook for COAG Council Secretariats: A best practice guide*.

## Reducing Bureaucracy

### [Part II: Options for a Streamlined Approach – Operational Procedures for a New System]

26. Formal dedicated secretariats should be abolished, with meeting support functions (scheduling meetings, distributing papers and recording and tracking outcomes) provided by the relevant Commonwealth Department under the direction of their secretary.
27. The current numbers of sub-committees of officials and reports are unacceptably high, in particular for Education, Health, Transport & Infrastructure and Energy meetings. Ministers and departmental heads should rationalise these committees as soon as possible after the new intergovernmental structure is established and the strategic focuses of



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forums are set and report back to the First Secretaries Group (FSG) by 1 February 2021 with their new streamlined sub-structure.

28. Any meetings that are held must take account of the demands placed on smaller and more distant jurisdictions in servicing meetings of ministers and officials.
29. As a general rule, ministers' forums and meetings should not have their regulatory and standard-setting roles enshrined in legislation.
30. The Commonwealth should introduce legislation into the Parliament to amend outdated references to COAG Councils and ministerial forums. A parallel process may take place in each of the states and territories with relevant departments to contribute to the process as required.

## Maintaining a Streamlined and Fit-for-Purpose Structure

### [Part II: Options for a Streamlined Approach – Options for a Streamlined Structure of a New System]

31. To ensure meetings remain essential, all regular ongoing ministers' meetings and their work programs should be reviewed every two years by the First Secretaries Group which will provide recommendations to National Cabinet.
32. Before convening a time-limited meeting, a minister should write to their First Minister for approval copying the Secretary of the Department of the Prime Minister and Cabinet in their capacity as Chair of the First Secretaries Group. Their letter should set out the purpose, outcomes and short duration of the group, demonstrating that it does not overlap with the work of existing ministers' meetings and that there is broad support for the meeting.
33. Sunset provisions should be included for all new meetings as they are established, where suitable.

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# Part I: Context for the Review

## Key Aims and Scope

### Context for a Revised Federal Relations Architecture

On 29 May 2020, National Cabinet agreed a revised architecture for federal relations. The principal feature of this framework is National Cabinet's ongoing role in coordinating Australia's response to COVID-19, with a focus on pursuing economic recovery and creating jobs. National Cabinet will also have a role in setting reform priorities and, with advice from relevant Expert Advisory Groups, will commission specific reform projects to be undertaken by National Cabinet Reform Committees and the Council on Federal Financial Relations (CFFR). As part of the revised federal relations architecture, National Cabinet has also agreed to cease the Council of Australian Governments (COAG) and to form the National Federation Reform Council (NFRC). The NFRC will provide a joint forum for National Cabinet, CFFR (with an expanded remit) and the Australian Local Government Association (ALGA) to consider broader transformation of federal relations and to improve the lives of all Australians.

The revised federal relations architecture has prompted a review of former COAG Councils and ministerial forums to investigate whether the current mechanisms for intergovernmental decision-making are fit for purpose in the context of the new National Cabinet architecture.

### Crisis and Governance Change

It is not surprising that the COVID-19 pandemic has warranted changes to the process for intergovernmental decision making. Australian heads of government have been faced with an international health crisis unseen for a century and an economic crisis unseen since the 1930s. These crises required an immediate nationally coordinated response that could not be hindered by bureaucracy. The pandemic created a common goal and a pressing timeframe within in which to achieve it.

It is imperative that our systems can adapt and evolve in order to best deliver outcomes for Australian citizens. COAG was a slow, bottoms-up framework for intergovernmental cooperation that too often resulted in lowest common denominator outcomes. National Cabinet, in contrast, deals with issues quickly, based on advice from experts, with leaders dictating the priorities and parameters for their governments to implement. This agile and responsive way of working needs to be replicated across our ministerial councils and forums.

### The Review Task

The task I have been set by National Cabinet is to **rationalise** and **reset** the structure and work programs of the former COAG Councils and ministerial forums to better align ongoing ministers' meetings with the revised federal relations architecture. National Cabinet has proven to be an effective body for joint-decision making in the national interest, following a model based around streamlining processes and avoiding endless meetings that don't result in action. It makes sense that ministers' meetings should follow the same model and focus on items of national strategic significance. Under the revised architecture, remaining ministers' meetings will be reshaped to be leaner and more autonomous bodies, with direct responsibility for decision-making. They will not report directly to National Cabinet unless specifically tasked.

The key **objective** of this work, as defined in the Terms of Reference<sup>1</sup>, is to ensure that Australians are served by a new federal relations architecture which is responsive to issues confronting our community and economy, makes decisions efficiently with minimal bureaucracy and is able to focus on critical regulatory and policy work programs. This objective will be achieved through the three-point **scope** of the review, making recommendations on:

1. A streamlined structure, scope and reporting arrangements for ministers' meetings.
2. Focused regulatory forums and policy work programs.

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<sup>1</sup>Available at page 34 of the report and at <https://www.pmc.gov.au/domestic-policy/effective-commonwealth-state-relations>

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### 3. Guidance on operational procedures, including working arrangements.

Prime Minister Scott Morrison said that it is “important that ministers at state and federal level talk to each other but they don't have to do it in such a bureaucratic form with a whole bunch of paperwork attached to it. They need to talk to each other, share ideas, but the congestion busting process we're engaged on here is simplifying that. They come together to solve problems, deal with issues and move on.”<sup>2</sup>

The **reset** function is a core aspect of this review. Starting from a blank slate, this review addresses the following questions:

- How do we design an intergovernmental architecture that is more productive and responsive to issues confronting our community and economy?
- Which, if any, ministers' meetings need to exist under this architecture, and how can we enable these bodies to facilitate efficient and effective decision-making?
- Where a case cannot be mounted for a standing meeting, how might ministers meet on an ad hoc basis to resolve defined and urgent matters requiring national coordination and collaboration?
- What is the role of secretariats and underpinning groups of officials under this new approach?

Resetting the way ministers meet is the key to achieving the objective of this review. Enabling ministers to replicate the ad hoc, informal, agile meetings of National Cabinet will allow them to better deliver outcomes for the Australian people.

## History – Then and Now

### Australian Intergovernmental Architecture

Intergovernmental relations are at the centre of the Australian Federation. The Australian Constitution does not strictly divide responsibilities between the Commonwealth and the states, necessitating close and ongoing cooperation between governments. The benefits of a federal system include flexibility, diverse responses to problems across and within jurisdictions, multiple points of access to government and competitive policy environments between constituent governments. As one individual noted: “One of the great benefits of federalism is its flexibility. On the one hand it permits competition amongst jurisdictions, the tailoring of policies and services to meet local needs, and innovation on a sub-national scale. On the other hand, it permits jurisdictions to come together to seek consistency where there is value in this. The key to a well-managed federation is being able to identify when consistency is needed and when there is benefit in diversity, competition and innovation. This is primarily done through these Councils and Forums.”

Disability reform demonstrates the value of cooperative and responsible federalism. The experiences of people with disabilities vary between geographically distinct states, warranting different models of service delivery between jurisdictions. Commonwealth involvement in this policy area allowed for the creation of the National Disability Insurance Scheme in 2013, which helped boost funding to the sector and ensured equity on a national level, while leveraging the knowledge and experience of the states on delivery of disability services. This showed how the two levels of government could work together using their different strengths and responsibilities to improve outcomes for Australians.

Our federal structure allows Commonwealth and state ministers to learn from each other. A good example of this is health services funding. The Casemix funding model resulted in improved performance and efficiency in Victorian hospitals, and its success motivated the introduction of Activity Based Funding nationwide in the 2011 National Health Reform Agreement.

However, the flexibility and benefits of shared responsibilities can also morph into confusion, overlap and buck-passing. Effective intergovernmental relations is the key to avoiding such issues and enhancing the benefits of our federated system of government. And since diverse responses across specific policy areas are a central aspect of federalism, effective intergovernmental relations depends on effective collaboration between line ministers. The changing approaches to this collaboration are key to understanding the context for this review.

The 1891 Australasian Federation Conference and subsequent Constitutional Conventions hosted the premiers of Australian colonies and featured discussions covering a broad scope of subjects. Sporadic Premiers' Conferences followed Federation,

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<sup>2</sup> Prime Minister Scott Morrison, Press Conference, Australian Parliament House ACT, 29 May 2020.

however these meetings were not suitable for handling detailed policy discussions. Premiers' Conferences were largely replaced by meetings between Commonwealth and state ministers after 1929, allowing more specialised and in-depth treatment of issues. These specialist meetings evolved into ministerial councils and forums, which grew in number over the subsequent decades. This growth resulted in overlapping bodies and inconsistent operation, but without an ongoing overarching intergovernmental relations architecture, there was no clear avenue to address these issues.

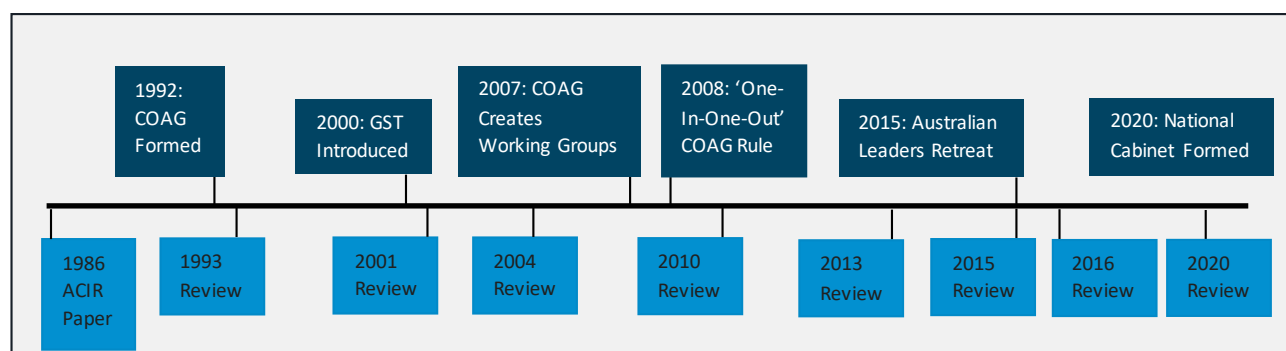
Since 1915, both Commonwealth and state governments had competed for income tax revenue, but their financial relationship permanently changed during World War II. In 1942, the federal government passed legislation increasing income tax rates and offered reimbursement grants to the states in return for them ceasing their own income taxes. In doing so, the Commonwealth government levied a larger proportion of taxation, fundamentally changing the nature of federal-state relations. States became increasingly dependent on Commonwealth grants and financial supplementation. Much of this financial assistance has been provided through tied funding grants. This has allowed the Commonwealth to exert more policy influence in areas normally in the domain of states by including terms and conditions on grants. This has increased the level of interaction between the Commonwealth and the states and introduced the perception of shared responsibilities in many portfolios, leading to more ministerial forums and meetings and many stoushes over funding agreements.

The introduction of the Goods and Services Tax (GST) by the Howard Government served to potentially reinvigorate state finances, providing untied revenue and thereby boosting their financial autonomy. While the introduction of the GST did change the federal-state financial relationships significantly, states are still highly reliant on tied funding from the Commonwealth government.

The handling of interstate problems changed in 1970s with the advent of "New Federalism" – the varying initiatives of three Prime Ministers to change Commonwealth-state relations. Gough Whitlam undertook a strong centralist stance, which was partially reversed by his successor, Malcolm Fraser. Following Fraser, Bob Hawke instigated a number of Special Premiers Conferences from 1990 as part of his government's microeconomic reforms.<sup>3</sup> The communique following the first meeting emphasised "that past inefficiencies can no longer be tolerated and that changes are needed to make the Australian economy more competitive and flexible". These conferences resulted in formation of the Council of Australian Governments (COAG) in 1992. COAG's creation allowed the ministerial council system to be reviewed and rationalised.

At the second COAG meeting in December 1992, the first COAG review of ministerial councils and forums was commissioned. There have been seven reviews since then. All have been based on concerns that ministerial forums were ineffective, failing to achieve significant outcomes, and a waste of ministers' time. This has led most of the reviews to aim to reduce the number of existing ministerial councils and forums. Despite repeated rationalisation, the number of bodies has continued to grow between reviews. Reviews have also focussed on changing work practices to improve productivity, but with similarly little progress to be shown for their efforts.

#### Timeline of reviews



<sup>3</sup> At the first, Hawke emphasised "the need for us all to move our thinking beyond old fixed ideas of centralism or State rights - of the Commonwealth versus the States."

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## Advisory Council for Inter-government Relations (ACIR) Paper

A 1986 ACIR paper aimed to analyse the working arrangements of ministerial councils through grouping councils with similar structures. However, the paper found that the “lack of uniform arrangements is their most striking feature”, making the intended analysis unfeasible. With no regular heads of government forum through which to deliver recommendations, the paper was limited to descriptions of the councils. These descriptions did reveal common issues, such as officers contributing to excessive agendas, and recommended against enforcing uniform working arrangements on councils.

### 1993 Review

The case for the rationalising the number of ministerial councils in the 1993 review was justified on the grounds of overlap, inefficiency and ineffectiveness. Between 1972 and 1993 the number of councils had grown from 20 to 62, with 45 falling under the review’s scope. Following the review, COAG endorsed a moderate option to reduce the number of councils in scope by approximately half, from 45 to 21 through amalgamation and combination.

Recommendations addressing inefficiency and ineffectiveness included reaffirming councils’ independent decision-making and co-operative roles, reviewing working arrangements (including using technology to reduce travel obligations), implementing the *Protocols for the Operation of Ministerial Councils* and requiring the endorsement of constituent governments for form new councils.

Two recommendations were controversial. One regarded annual reporting requirements to COAG, which was often irrelevant (if councils met infrequently or on ad hoc basis) or overly burdensome. The other was limiting meetings to Australian capital cities and Alice Springs, as some councils had rotating chair arrangements with New Zealand. Throughout the 1993 review, state and territory ministers favoured rotating chairs to prevent the Commonwealth from dominating councils.

### 2001 Review

The 2001 review of ministerial councils was undertaken by a working group of senior officials and served to develop a proposal for a more fundamental reform of councils. Reforms proposed included rationalising existing councils and implementing new guidelines for the creation of councils.

By 2001, the number of ministerial councils had grown to 31, which the review rationalised to 25. An additional 11 ministerial forums were recognised but did not fall under the review’s scope. This growth in councils justified more stringent guidelines for the creation of councils, including testing if the work could be done by existing councils. The review also amended the operational guidance documents *Broad Protocols* and *General Principles for the Operation of Ministerial Councils*.

The review also considered (but did not endorse) rationalising secretariat support into one central secretariat, as per the Canadian Intergovernmental Conference Secretariat.

### 2004 to 2008

The 2004 review did not aim to rationalise ministerial councils, but instead revised the *Broad Protocols* and *General Principles* documents. This imposed significant annual reporting obligations on ministerial councils and their secretariats to improve accountability, and established strict deadlines for circulating agendas.

In 2007, COAG established working groups for each of its work agenda areas. These working groups were overseen by a Commonwealth Minister, with states and territories represented by nominated officials.

In 2008, COAG adopted a “one in one out” rule regarding the creation of new ministerial councils.

### 2010 Review

Despite the “one in one out” rule, the number of ministerial councils had grown to 40 by 2010. In 2009, COAG commissioned another review of ministerial councils, led by Allan Hawke. The review was the most significant so far, making recommendations on council responsiveness and accountability, improving efficiency and effectiveness, and rationalisation.

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After the review, COAG reduced the number of ministerial councils to 22, applying sunset clauses to seven of these. Hawke noted that supporters of this option would “counsel central agencies to stop being so obsessed and precious about line ministers and agencies getting on with their agendas”, emphasising that negotiation was “inherently messy” and that councils needed to be flexible.

The review also considered why council numbers continued to expand after multiple rounds of rationalisation. It was hypothesised that rationalisations since 1992 merely changed the distribution of councils, rather than narrowing their scope. This pattern was projected to continue as long as ministerial councils were expected to reflect the full range of government functions.

The review suggested that the cut councils could be renamed to “forums” and permitted to meet ad hoc outside COAG, as “the preference for ministers to meet outside formal council structures to resolve issues and build relationships and trust is widespread and cannot be overstated.”

The review also made recommendations to improve the efficiency and effectiveness of councils and forums, notably to amalgamate the separate *Broad Protocols* and *General Principles* documents into a single *COAG Handbook on Ministerial Councils*, which would present the best practice operations for these bodies in a single source.

## 2013 Review

The 2013 review rationalised both ministerial councils and interjurisdictional funding agreements. Councils under COAG were rationalised from 22 to 7 and 31 of the 120 National Partnerships and Project Agreements were consolidated into 4. Some council organisational principles were formalised, including meeting times, membership, terms of references and annual reviews. For the annual reviews, each of the councils were to be reviewed by COAG against their priorities, including whether there was an ongoing need for the council.

## 2015 to 2016

The 2015 review recommended no changes to the ministerial council arrangements. However, a follow-up review in 2016 recommended minor changes, resulting in 12 councils under COAG before its dissolution in 2020. The 2016 review tallied 25 ministerial forums outside of COAG.

The 2016 review also made recommendations regarding standardising operational arrangements. Council self-reviews were to be expected every 18 months, and operating manuals and forward meeting agendas were to be adopted more broadly. The review also promoted a stronger coordination role for the central COAG secretariat.

2015 also featured the Australian Leaders’ Retreat, which saw Australian Heads of Government and the President of the Australian Local Government Association meeting outside of COAG to discuss the Reform of the Federation White Paper. While the White Paper was abandoned in 2016, the Retreat foreshadowed the efficiency of National Cabinet – a meeting without officials that directly called upon an expert advisory panel.

## Present Context and the Current Review

The formation of National Cabinet was announced on 13 March 2020, and it was designated to replace COAG on 29 May 2020. National Cabinet agreed on 26 June 2020 to commission this review into rationalising and resetting the work of former COAG Councils and ministerial forums. This will constitute the ninth review into the ministerial council system.

Despite eight reviews between 1986 and 2016, the ministerial council system is still not fit for purpose. Its inefficiency and ineffectiveness limits the Australian people benefiting from the advantages of federalism. A number of common issues and themes have presented themselves throughout past reviews:

- Despite repeated attempts to rationalise and reduce the number of ministerial councils and forums, numbers continue to expand. As of this review there are approximately 50 ministerial councils and forums, an increase of over 15 since the 2016 review.

- Repeated attempts have been made to enforce uniform working and reporting arrangements across councils and forums despite little evidence of their effectiveness, varying subject matter between bodies, and strong opposition to these arrangements since 1986.
- In relation to the above, strict uniform reporting arrangements have been enforced on councils and forums, despite many councils meeting intermittently or on an ad hoc basis, and covering varying complex subject matter, resulting in additional work and layered bureaucracy.
- There has often been a failure by ministers to control what comes before them by regularly setting strategic and critical problem-solving agendas.
- *In the absence of ministers setting clear and tight agendas*, secretariats and officials can often contribute to expansive agendas of standing items, including aforementioned reporting requirements, limiting effectiveness and efficiency.
- The significant variance of working arrangements and structures of ministerial council and forums has been an obstacle to holistic overviews of the ministerial council system, even resulting in inconsistent definitions of councils and forums between reviews.
- Rotating chairs and secretariats, locations of meetings and Local Government and New Zealand membership are issues that are commonly revisited.

The repetitiveness of these issues demonstrates there is an ongoing struggle to maintain a streamlined intergovernmental system. There is a tendency for new bodies to be created whenever new priorities emerge and a subsequent need for periodic reviews to clean up and rationalise the system.

However, the replacement of COAG by a new intergovernmental relations framework – National Cabinet – creates an opportunity for this review. The authorising environment for these ministerial councils was COAG, which is now gone. Resetting the ministerial council system from a zero base provides a chance to reinvigorate Australia’s federal relations by enabling effective and efficient collaboration and coordination between governments. This, combined with recommendations that help curb the tendency for new bodies to be established, should help ensure it is some time before the next review of the system is required.

## Methodology

A range of methods were used to get input from a wide range of stakeholders to inform the review.

An extensive consultation process informed the Review of ministerial forums. Amongst those interviewed were: First Ministers, 16 Commonwealth and 13 state and territory ministers (to ensure input from all existing ministerial forums); the President and the CEO of the Australian Local Government Association, the New Zealand High Commissioner to Australia, the Chief Executive of New Zealand’s Department of Prime Minister and Cabinet, all heads of First Ministers departments, all Chairs of existing ministerial forums and a number of Commonwealth and state former ministers and officials.

A suite of surveys were completed by chairs and secretariats of existing ministerial forums and a small number of academic submissions were considered.

Initially the review sought background information on the list of COAG Councils and ministerial forums in the terms of reference, plus additional forums proposed by members of the First Deputies Group. This survey showed that not all forums were active. Some had never met or not met for several years. Other groups proposed were not formal forums but informal meetings between ministers that had been called to discuss matters related to COVID-19.

A second more in-depth **survey** was sent to all chairs of active forums to get standardised responses to questions relating to their work plans and governance arrangements. This included asking them to prioritise their work plans and divide their activities into categories for whether they were regulatory functions, tasks assigned to them or their own reforms. Chairs were asked to consult with their members and their secretariats to ensure responses represented the views of the entire forum.

**Interviews** were used to get detailed feedback from a number of current and former ministers and officials with experience of the forum system. Interviewed ministers were chosen to get a balance of representation between the Commonwealth and the states and territories, diversity of representation from across the states and territories and diversity of representation from the forums.



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First Ministers were asked to consult with their ministerial colleagues so they could represent views from across their jurisdiction in the consultation. First Ministers were given the option of an interview or to delegate their interview to the secretary of their department.

Select academics were invited to make **submissions** to the review.

Where there were convenient forum meetings scheduled, they were used for broader **discussions** with entire forums. Discussions were also held with the First Secretaries Group (comprising secretaries and directors-general from First Ministers' departments) and the First Deputies Group (deputy secretaries and deputy directors-general from First Ministers' departments).

## Issues Arising from Consultations

[Recommendations: 4, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 26]

During the consultation process there was significant support for building on the National Cabinet model and modifying the way in which ministers interacted under the previous COAG system. Ministers were very focussed on getting good outcomes through collaboration and driving reform and saw this being achieved through the National Cabinet model. Several ministerial groups had been meeting on a more regular ad hoc basis during the COVID-19 pandemic and these were seen as effective, particularly for information sharing and rapid decision making. Much of this success was linked to increased ministerial control of agendas and COVID-induced adoption of video- and tele-conferencing technologies. There was also strong support for occasional face-to-face meetings to help build relationships between ministers.

Survey feedback from some existing ministerial forums illustrated that some forums have not met (in person or virtually) in the past 18 months. Some forums have reported they can conduct their business via correspondence, and others have no defined work plan.

Officials from New Zealand noted that with the cessation of COAG and a focus on National Cabinet priorities, it is important that New Zealand still has an opportunity to engage on trans-Tasman issues through the ongoing forums. New Zealand very much valued its involvement in the COAG system and wishes to continue in any newly formed arrangements. Intergovernmental meetings which bring together representatives from across all of Australia's jurisdictions present a unique opportunity for New Zealand to share information and develop relationships, noting that many decisions that impact on businesses and trade are made at the state and territory level.

### Nature of Ministers' Meetings

The consultation process highlighted that a key benefit of the existing suite of ministerial forums lies in the opportunity it provides for cross-jurisdictional **information sharing** and **relationship building**. Ministers clearly saw meetings with their counterparts as a useful way to **build relationships**, share information and promote best practice across jurisdictions. As one put it, "ministers getting together regularly to share practical experiences improves the whole system." This benefit can be achieved through ministerial engagement in either formal or informal settings. Some ministers noted they already effectively function on an 'as required' basis without a regular meeting schedule and that this is sufficient to facilitate information sharing and policy collaboration. Indeed, more than one minister commented that in the absence of a formal forum they would continue meeting to share information anyway.

Ministers found the most effective discussions were **informal** gatherings, more closely resembling the operation of their own Cabinet systems. Prime Minister Scott Morrison has said "on the night before every treasurers and leaders meeting I have been to, there is a get-together and that is the best conversation you ever have because you're genuinely talking about the issues you need to..."<sup>4</sup> It is this informality that has informed the operation of the new National Cabinet.

A key development during the pandemic has been widespread use of **videoconferencing**, allowing more frequent and shorter meetings and removing the travel costs associated with face-to-face meetings. One minister noted that "ministers have been very enthusiastic about meeting via Zoom and WhatsApp. We have had almost 100% attendance at all meetings, even when

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<sup>4</sup> Prime Minister Scott Morrison, Press Conference, Australian Parliament House ACT, 29 May 2020.



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we are meeting as often as every 2 weeks.” Nonetheless there was also support for **occasional in-person meetings** to build relationships, go on site visits and facilitate side-meetings with industry.

**Increased meeting frequency** has been seen as positive, making meetings more effective and reducing the bureaucratic processes that build up in between less frequent meetings. It has helped ensure ministers control and stay across the agenda. In some cases it has been seen as useful in taking politics out of the meetings. One format that has worked well for the Skills Council has been to get “soft” agreement in the meeting and then confirm it within 24 hours, allowing time for consultation before final agreement. In general the spirit of the feedback was “I’m a big supporter of regular meetings, but not in a formal COAG format.”

One concern expressed was the **accountability of ministers** for decisions and how this may be affected by ad hoc meetings. Without a formal record of the meeting and announcement of decisions, at least one minister was concerned that it was more difficult to have a shared understanding of what had been decided and it created opportunities for ministers to back away from a commitment after they had left the meeting. Contrasting this view, another minister noted that increased frequency of meetings could help ministers hold each other accountable.

A key challenge for ministers’ meetings is **balancing the short-term and the long-term**. There may be some commissioning from National Cabinet that focusses on strategic work required but ministers will also need to manage this themselves.

Several consultations mentioned there are a range of circumstances that influence the effective functioning of ministerial forums that are beyond the scope of any review to influence. These included:

- the **external operating environment**, such as the current **COVID-19 pandemic**, greatly affects cooperation and contributes to the currently productive and well-functioning National Cabinet, CFFR and other ministers’ meetings by providing a common threat to rally around;
- the **personalities** of ministers (especially the Chair) which can greatly influence the outcomes of forums, they need to trust each other and work collaboratively in order for a forum to be effective; and
- the **turnover of ministers** which forums can suffer from often results in a desire to re-visit issues previously discussed.

## Forums to Continue

While ministers in general were positive about their forums and wanted to continue meeting with their counterparts, it was less clear they needed a formal forum to do this or whether an informal meeting would suffice. Indeed some are already operating on a more ad hoc and informal basis, largely where the main aim of the ministers’ meeting is to share information and build relationships.

Some ministers perceived a need to continue formal meetings where they address large ongoing strategic policy agendas requiring extensive collaboration. This was seen particularly in areas of policy that cross different levels of government and that have historically required Commonwealth leadership to ensure coordination of responsibilities. Where forums had large ongoing workplans due to the inter-related nature of the levels of government in the sector or regulatory or standard-setting functions requiring regular decisions, there were calls to continue operating as forums. Nonetheless there was universal acknowledgement these forums could be made more efficient by making them more task-oriented with agendas comprising a small number of time-limited items and managing regulatory functions out-of-session where possible. Examples given of such forums requiring continuation in some form were health, education, disability and energy, noting that health and energy are also slated for National Cabinet Reform Committees. There was also significant support for continuing the Australian Data and Digital Council which was seen by the First Deputies’ Group as making significant progress in the national interest over the last 12 months.

## Operational Arrangements

Part of the benefit of increased meeting frequency and informality was related to the increase in **control of agendas** by ministers. Ministers want to set the agendas, not have them set by officials, and to have negotiations sit with ministers rather than officials. “At the moment everything happens from the bottom up – 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 and brought to us. It should be fed down.”

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The consultation process also highlighted the amount of core regulatory and standard setting roles currently performed by a range of ministerial forums. These functions are essential to continued national regulatory arrangements but could be performed out-of-session or on an 'as required' basis, rather than through a formal standing or ongoing forum.

There was strong agreement to progress procedural matters out-of-session and have agendas limited to a small number of **items for decision**. There was similar agreement for delegating matters to officials where possible, to keep them off meeting agendas. As one official put it, "prioritise the things that are really important, focus more narrowly on what is important to our country and then we become less output and more outcomes focussed."

It was noted that some issues stay on agendas for very long periods with limited or no progress "it is crazy that something like a minor change to a training package can take 18 months to two years to progress through a Council." To manage this, it was suggested that **items be given a time-limit** of 12 months or two meetings. If the item is not progressed in that time it should be escalated or stopped. A minister said "You would be amazed how quickly things would get done if we were just directed to do something and given a timeframe." A good example of the quick progress that has been able to be achieved through ad hoc meetings during the COVID-19 pandemic has been the agreement to a Freight Movement Code by transport and infrastructure ministers to keep freight moving across Australia in a COVIDSafe way.

There were concerns that the formal nature of forums leads to **too many layers of officials groups** which create work and long and time-consuming clearance chains. It was also noted that the large numbers of officials committees and sub-committees (such as the 30 bodies supporting the health council) were very costly, taking up much time preparing for and travelling to various meetings.

It was proposed that, similar to the way National Cabinet is operating, you should **not try to gain consensus across officials** before ministers' meetings. This would both expedite the process and not allow any entrenched positions of officials to block progress.

There was also feedback that there should be as **few people in the room** for ministers' meetings as possible. It was noted that this changes the dynamic and creates a different conversation and has worked well in National Cabinet and CFFR.

There was some support expressed for **consensus decision making**. One minister noted they had experienced different models on different councils and liked that a consensus approach forces ministers to discuss issues and make concessions in order to get everyone across the line. The Review recommends that decision making should be on the basis of consensus where possible, but that this shouldn't prevent a matter being progressed on a bilateral or multilateral basis. This emulates National Cabinet which operates under a cabinet model where decisions are reached collectively in the room and a united front is presented following the meeting and, if a consensus is not achievable, the Commonwealth and smaller groups of states and territories can reach an agreement and move forward within the National Cabinet framework. It should be noted that some forums have legislative requirements that dictate other decision-making models.

The National Cabinet model of decision-making that allows for quick but effective consideration and agreement on high-level policy issues, **allowing flexibility in implementation**, was seen as ideal. As one senior state official commented, once the desired outcome is agreed we should "hold jurisdictions accountable and let them get on and deliver." This was contrasted with the "one size fits all" approach that previously dominated, which did not take into consideration the different circumstances of the states and territories and was too prescriptive in terms of implementation.

There are benefits to the current system of **regulatory impact analysis**, as it provides a solid evidence-base for a policy decision or legislative change and helps ensure a broader view is taken to consider the impact of the decision.

The consultation showed differences of opinions on **chairing meetings**. Some state and territory ministers, but not all, preferred rotating chairs, particularly where states and territories are the key service providers in the sector, while some Commonwealth ministers expressed a preference for a Commonwealth chair. Some suggested that co-chairs could be a viable option.

There were also different opinions on **secretariats** with some valuing the experience of the independent health and education council secretariats but others concerned they are disconnected from the issues of the day by not being embedded in a department. One former official questioned the benefit of secretariats at all, concerned they can create work for themselves and make it harder for ministers to control the agenda.

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## Interaction of Ministerial Forums with the New Architecture

[Recommendations: 6, 7, 8, 17, 18, 19]

Prior to 2020 COAG was meeting biannually and was renowned for its expansive agenda. This arrangement was deemed unsuitable for responding to the 2019-20 bushfire crisis and COVID-19 pandemic. Following the 13 March COAG meeting, the Prime Minister, the Hon Scott Morrison MP announced the formation of National Cabinet, which would initially meet weekly via videoconference to address Australia's response to COVID-19. Within weeks the advantages of the National Cabinet model were being extolled. Jay Weatherill, former Labor Premier of South Australia and Mike Baird, former Liberal Premier of New South Wales said in a joint statement "[National Cabinet] stands in stark contrast to the painful inertia of so many COAG meetings where good intentions and grand ideas went to die."<sup>5</sup>

In May 2020 National Cabinet agreed to significant reforms to Australia's federal relations architecture including the cessation of the COAG model, continuation of National Cabinet and inception of the National Cabinet Reform Committees, an enhanced role for the Council on Federal Financial Relations, and establishment of the National Federation Reform Council and its Taskforces.

This Review has been tasked with ensuring that the structure and work programs of ministerial forums going forward are aligned with the revised federal relations architecture.

### National Cabinet

National Cabinet consists of the Prime Minister and Premiers and Chief Ministers from all states and territories. National Cabinet's ongoing role is to oversee the suppression strategy for COVID-19 and pursue economic recovery in the transition to a COVID-safe community, with a specific focus on job creation.

National Cabinet operates under the Federal Cabinet guiding principles and currently meets regularly via telepresence in the COVID-19 response and recovery context.

Consistent with the direction set by National Cabinet, ministerial forums will not report to National Cabinet and the onus will be placed on ministers' meetings to resolve issues directly. This ensures that National Cabinet's agenda remains targeted and focussed on the health and economic impacts of COVID-19. It will also streamline intergovernmental processes with items only having to be considered by one group of ministers instead of two. It is important to note that First Ministers will still have oversight of the work of ministers and ministers' meetings, as authorisation for ministers agreeing to items in a forum will be managed through their own jurisdictional Cabinet processes. This approach entrusts ministers with the responsibility to manage and finalise portfolio issues and escalate where necessary. Any desire to escalate ministers' meeting matters should be raised with the relevant First Minister of a jurisdiction through their Cabinet, where it then becomes the First Minister's prerogative to request National Cabinet consideration, should it be deemed necessary. Only when National Cabinet requires will there be a pathway from ministers' meetings to National Cabinet. In general National Cabinet will not set the agendas for ministers' meetings but may, when needed, set specific tasks for groups of ministers or particular meetings. Any matters referred to ministers by National Cabinet or any other component of the federal relations architecture must be treated as the highest priority. Ministers are empowered to meet and take decisions on priority matters to support National Cabinet's job creation agenda.

The work programs of ministers' meetings should, wherever possible, be published, noting in some instances this may not be appropriate (e.g. national security matters). Key decisions of ministers' meetings should be published in a communique or relayed by the Chair in a media release following the meeting to ensure accountability to the public.

For items that COAG had asked forums for a report back on, senior officials from First Ministers' departments are reviewing these and considering how best these could be acquitted in the post-COAG model for intergovernmental relations. For items

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<sup>5</sup> Baird, M. and Weatherill J. (2020) 'As former Premiers we have seen the benefits of states cooperating. Let's extend National Cabinet', *The Guardian*, 27 May. Available at <https://www.theguardian.com/commentisfree/2020/may/27/as-former-premiers-we-have-seen-the-benefits-of-states-cooperating-lets-extend-national-cabinet>

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tasked by COAG without a report back, that commissioning persists and ministers are expected to complete the work. This should be done out-of-session where possible.

Ministers' meetings which include First Ministers, such as the Northern Australian Strategic Partnership (NASP), do not fall within the scope of this Review and as such, it is the prerogative of First Ministers as to whether these groups continue meeting and progress work.

## Council on Federal Financial Relations

The Council on Federal Financial Relations (CFFR) consists of the Commonwealth and state and territory Treasurers. CFFR is responsible for overseeing the financial relationship between the Commonwealth and the states and territories, including the Intergovernmental Agreement on Federal Financial Relations (IGA FFR). It is also responsible for broad economic and fiscal issues, such as deregulation, and legislative oversight of GST operations.

Following the establishment of the new National Cabinet system, CFFR is now meeting fortnightly as a committee of National Cabinet and as such operates under the Federal Cabinet guiding principles. CFFR's expanded role includes responsibility for all Commonwealth-State funding agreements. CFFR will also look at items at the request of National Cabinet.

CFFR had been tasked by National Cabinet to review all funding agreements with a view to rationalising and consolidating the number of agreements. CFFR will act as the gatekeeper for new agreements and determine the level of involvement in development and negotiation that CFFR will have.

Ministers and ministers' meetings (where applicable) will support CFFR in the development and negotiation of new funding agreements. Ministers' meetings (former or future) with obligations under existing funding agreements will still be required to discharge these functions for the term of the agreement. Agreements due to expire will also be considered by CFFR, who will seek input or advice from ministers' meetings as required.

## National Cabinet Reform Committees

National Cabinet Reform Committees (NCRCs) will be set up progressively by National Cabinet to support its objectives of job creation and COVID-19 recovery. Membership of each NCRC will be nominated and agreed by National Cabinet but will likely include relevant ministers from the Commonwealth and states and territories, and other representatives as appropriate.

NCRCs identified by National Cabinet to date are:

- Energy
- Health
- Infrastructure and Transport
- Population and Migration
- Rural and Regional Australia
- Skills

National Cabinet will stand up and task these NCRCs with high priority strategic reform projects as required. NCRCs will operate as committees of National Cabinet under the Federal Cabinet guiding principles and they will be task-oriented and time-limited, only working on specific, short-term and strategic reforms assigned by National Cabinet. NCRCs will disband when determined by National Cabinet.

Each of these NCRCs operate in a sector previously covered by a COAG Council or ministerial forum. A decision will need to be made whether an NCRC is all that is needed in a policy space, or due to the limited scope of the NCRC, an additional ministers' meeting is required to manage ongoing regulatory or other responsibilities.

As the Regional Ministers Forum had not met since it was established in August 2019, it is proposed that an NCRC is all that is required in that area. There is not a large amount of ongoing work being handled by the Treasurers' Forum on Population and it has no regulatory functions, so it is proposed only a Population NCRC is required. The other areas of skills, energy, health and transport and infrastructure had COAG Councils with large agendas and significant regulatory responsibilities. Therefore, it is suggested that these areas are covered by two bodies each (an NCRC and a ministers' meeting) to enable

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ministers to progress non-NCRC priorities outside of the Cabinet system. If a ministers' meeting is required where an NCRC exists, division of responsibilities must be clear to ensure there is no duplication.

Interactive relationships must be well defined. It is proposed that any tasking of an NCRC would take precedence and any work related to this tasking previously or currently being progressed through a ministers' meeting would then become the responsibility of the NCRC.

Where an NCRC entirely overlaps with the work of a ministers' meeting with the same membership, or where high priority NCRC matters require focused attention, ministers may choose to hibernate the corresponding ministers' meeting until NCRC is disbanded.

## Expert Advisory Groups

The new federal relations architecture gives a more prominent role to expert advisory groups. These groups may already exist or could be established by National Cabinet to ensure that decision-making is informed by accurate, timely and expert advice. These bodies are able to brief National Cabinet directly if called upon and they will also have a role in supporting other components of the new system such as NCRCs and CFFR where required.

For example, during the COVID-19 pandemic, the Australian Health Protection Principal Committee (AHPPC, formerly an advisory body under the COAG Health Council) was tasked with providing direct briefing to National Cabinet to ensure decision-making on the national health response was comprehensively considered. The AHPPC expert advisory group acts as a sub-committee of the National Cabinet when considering matters for the National Cabinet.

The Australia-New Zealand Counter-Terrorism Committee (ANZCTC) and the National Cyber Security Committee (NCSC) are intergovernmental officials groups that had a previous reporting line to COAG and as such, are within scope of this Review. The ANZCTC and NCSC could become expert advisory groups under the new architecture. As officials-level expert bodies on counter-terrorism and cyber security, they have an important role in sharing information, training and cross-jurisdictional visibility. There is a need for ongoing intergovernmental collaboration on these matters so the ANZCTC and NCSC should continue to operate. Unless called upon by National Cabinet, the previous reporting line from the ANZCTC and NCSC to First Ministers should cease. Should First Ministers require direct briefing, they would be able to seek that advice from them. If ANZCTC or NCSC are tasked by First Ministers, the group could be elevated to temporarily operate as an expert advisory group of National Cabinet and provide advice to National Cabinet and/or NCRCs, similar to how AHPPC has operated during the COVID-19 pandemic. Once the specific tasking is delivered, the group would return to operating as an officials group without a reporting line to First Ministers.

The current *Royal Commission into National Natural Disaster Arrangements* is likely to provide recommendations on strategic intergovernmental cooperation across jurisdictions when responding to bushfires and other national disasters. Disaster preparedness has also emerged as a significant issue in the COVID-19 context. National Cabinet should consider how best to deal with emergency management from a coordinated national perspective. In the absence of a dedicated body, a meeting of Police and Emergency Management Ministers should continue with alignment to an appropriate group to deal with recovery issues.

## National Federation Reform Council

The National Federation Reform Council (NFRC) comprises National Cabinet (First Ministers), CFFR (all Treasurers), and the Australian Local Government Association (ALGA). Membership of the NFRC reflects the important role that all three levels of government play in the Australian federation. In particular, ALGA provides leaders with a mechanism to engage with the third tier of government on issues of national reform, and provides local governments with an opportunity to highlight the potential impact of issues of national significance on local governments and communities. The NFRC will meet once a year to focus on priority national federation issues and operates outside of the Federal Cabinet guiding principles. The NFRC is not an escalation point for ministers' meetings, particularly considering it will only meet once per annum.

The NFRC will oversee NFRC Taskforces that progress matters critical to the national agenda. The role of the Taskforces is to support the NFRC on priority national issues, such as women's safety and Indigenous affairs. Noting the focus of these Taskforces and the continuation of the Joint Council on Closing the Gap as an ongoing national body in the context of the

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new 10 year National Agreement on Closing the Gap, the Indigenous Affairs Council, Joint Council on Closing the Gap, and Women's Safety Council are not identified as within the scope of this Review as per the Terms of Reference. NFRC Taskforces will not operate under Federal Cabinet guiding principles.

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# Part II: Options for a Streamlined Approach

## Options for Streamlined Structure of a New System

[Recommendations: 1, 2, 3, 4, 5, 13, 17, 20, 22, 29, 31, 32, 33]

The key objective of the Review is to ensure that ongoing ministers' meetings are agile and responsive to issues facing the Australian community and economy, allowing ministers to focus on critical regulatory and policy work programs and make decisions efficiently with minimal bureaucracy.

In order to streamline processes and reduce the bureaucracy and congestion associated with meetings, only CFFR and the NCRs will report directly to National Cabinet. These bodies have been commissioned by National Cabinet and are established and operate under traditional Cabinet rules.

The remaining ministerial forums, which are the subject of this Review, are those which have traditionally reported to COAG on high profile projects or have operated as independent cross-government forums. They perform a variety of portfolio-specific regulatory and standard setting roles and pursue national policy development and collaboration. These meetings are intended to be established and operate (as currently applies) outside traditional Cabinet rules. Ongoing meetings that fall into this category will not report to National Cabinet, enabling line ministers to take ownership of their agendas, deal with issues, solve problems and move on.

There is a need to maintain relationships between other governments. New Zealand should continue their involvement in various meetings, where they add value to all parties. The Australian Local Government Association also has an important role in meetings where local governments have significant responsibilities, such as planning, infrastructure and community service provision.

### Key Federation Issues

The reset function is a core aspect of this Review. With the cessation of COAG this Review essentially starts from a blank slate and considers, if there are in effect no ministerial forums, which forums need to be set up and how they should be structured.

Starting from a blank slate, any recrafted architecture should firstly ensure that forums are structured to address the current strategic priorities for the federation:

- COVID-19
- Economy and Jobs (including industrial relations, trade and industry)
- Economic reform, tax and deregulation
- Housing
- Workforce and skills
- Emergency preparedness, response and recovery (health, national security and cyber security, natural disasters, drought, biosecurity)
- Education (education standards, curriculum alignment, transition to work, higher education)
- Early Childhood
- Aged care
- Population and migration
- Regional and northern development (resources, agriculture, tourism)
- Infrastructure and transport (urban, regional and rural)
- Indigenous Affairs



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- Women's safety
  - Disabilities
  - Mental Health
  - Data and digital
  - Environment (including water)
  - Energy and resources
  - Health issues broadly

Some of these priorities will be addressed by CFFR and NCRCs under the new federal relations architecture. The remaining priorities will require ongoing ministers' meetings to progress focused work programs in these areas.

Two key federation issues that may require additional bodies to take forward critical work are aged care and disaster preparedness and response. The current *Royal Commission into Aged Care Quality and Safety* will likely provide recommendations to improve the national aged care system for Australia's older vulnerable citizens requiring interjurisdictional collaboration. Similarly, the current *Royal Commission into National Natural Disaster Arrangements* is likely to provide recommendations on strategic intergovernmental cooperation across jurisdictions when responding to bushfires and other national disasters. Both aged care and disaster preparedness have also emerged as significant issues in the COVID-19 context. While aged care has previously, and could continue to be addressed by the Health Ministers' Meeting, National Cabinet may wish to consider establishing a dedicated body to progress strategic efforts on disaster preparedness. This tasking should cover the full spectrum of emergency management reform issues including relief, recovery, and risk reduction and should ensure we are able to respond in a coordinated manner across all levels of government.

## Criteria and Objectives for Bodies

Three objectives have been developed to assess the roles of existing ministerial forums and the need for their continued operation. A requirement to meet at least two of the objectives listed below has been used to differentiate between forums which demonstrate a rationale for continued operation and those which could be disbanded.

These objectives should also be used in the future to assess whether new ministers' meetings should be established. Proposed new forums should meet a minimum of two objectives listed below:

### **1. To enable national cooperation and consistency on enduring strategic issues.**

Focus on shared, complex and long-term policy areas, where there are vertical interrelated roles between the different levels of government requiring sustained cooperation for effective implementation and service delivery. For example, health is a technically complex issue with defined jurisdictional roles, funding and functions. The seamless provision of health services to the community requires a cross-jurisdictional mechanism to resolve policy issues and encourage equity in service delivery, innovation and reform.

### **2. To address issues requiring cross-border collaboration**

Focus on policy areas and issues where the horizontal alignment between the states and territories and complementarity of government policy or service provision improves delivery of and access to services, or employment opportunities. A recent example was the coordination required to facilitate efficient movement of freight across otherwise closed state borders during the COVID-19 crisis.

### **3. To perform regulatory policy and standard setting functions**

Focus on issues related to shared legislative and regulatory requirements where a cross-jurisdictional mechanism must approve and create or update requirements for policies, standards or codes. For example, national energy policy requires the coordination of legislation, agreements and statutory bodies to coordinate operation of the national energy market, and ensure the secure provision of an affordable, reliable and secure energy grid.



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## Assessment and Categories

Existing ministerial forums were assessed against these three objectives (based on surveys and work plan information provided by forums and consultation with ministers and officials) and grouped into three categories: **Regular and ongoing**; **Time-Limited and When Needed**; and **Disband**.

### *Regular and Ongoing*

Forums that met all three of the key objectives were considered essential to maintain and reset as regular, ongoing meetings. Typically, these bodies are addressing key federation issues, have a large ongoing joint strategic policy agenda and priority workloads that warrant regular, formal meetings for the foreseeable future. An ongoing body is required to ensure continuity of oversight and enduring accountability for complex systemic issues. These bodies will be tasked to sharpen their strategic focus by concentrating on two to three priorities with set timeframes of no longer than 12 months. These bodies will need to meet often to ensure they progress their items within the required timeframe. Some may require priority work of other existing bodies to be incorporated into their new form. It is acknowledged some larger reforms will take longer than 12 months to complete, and in these instances, bodies will outline what components of the reform will be achieved within a 12 month block.

In practice, these ministers' meetings should convene virtually as often as required to ensure priority items remain on-track and are delivered within 12 months. Any routine work that requires ministerial sign-off, but not robust discussion, should be progressed by correspondence. For example, responding to a strategic priority may require ministers to hold fortnightly formal video-conferences over a six month period. These meetings should be short and focused on the issue at hand. If the same group of ministers was required to agree a board appointment, annual report, or some other ad hoc item required under legislation, this should not take up time at a formal meeting but should instead be circulated via email for each minister to provide their written decision.

To ensure the intergovernmental system remains focussed on key priorities, bodies in ongoing regular meetings should be reviewed every two years by the First Secretaries Group and National Cabinet. This will allow the system to evolve and adapt, and ensure we have the right composition of permanent meetings as new priorities emerge. The review should not be overly burdensome, the Chair of the meeting should simply submit a one-page summary of their achievements for the previous years and the top three priorities for upcoming year.

### *Time-Limited and When Needed*

Forums that met two of the key objectives have been assigned to the Time-Limited and When Needed category. Many have an ongoing regulatory function (e.g. approving updates of national standards), and assist in resolving key federation issues. These bodies can fulfil their purpose in a flexible manner (e.g. approve regulatory updates by correspondence) and with minimal bureaucratic processes. Meetings will only be called when there are clear strategic tasks that require action in a specific timeframe, making them agile and responsive to issues as they arise.

In practice, these forums should operate similarly to those in the Regular and Ongoing category, but with more of their regulatory functions to be dealt with out-of-session and an expectation that work priorities requires a time-limited sprint effort.

To maintain strategic focus, Time-Limited and When Needed bodies will be tasked with two to three specific priorities and a timeframe of 12 months maximum in which to complete it.

Before convening a new body, a minister should write to their First Minister for approval. Their letter should set out the purpose, outcomes and short duration of the group, demonstrating that it does not overlap with the work of existing ministerial bodies and that there is broad support including from relevant ministers in other jurisdictions as appropriate. The correspondence should be copied to the Secretary of the Department of the Prime Minister and Cabinet so central visibility of ministers' meetings can be maintained.

A body in this category will automatically disband when its specified timeframe is reached. The intent of the timeframe is to ensure that priorities are dealt with urgently and do not keep reappearing on agendas. If ministers are making good progress on a priority item, a small extension may be granted by the Chair's First Minister to allow for completion. This should occur

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only on rare occasions. First Ministers should take a disciplined, common sense approach to ensuring timeframes are honoured and maintained.

If a group considers it essential to re-convene, the Chair or initiating minister must go through the establishment process outlined above and write to their First Minister (copying the PM&C Secretary). If First Ministers are repeatedly reconvening time-limited groups, consideration could be given to elevating these to the status of regular, ongoing meetings at the two yearly review by First Secretaries Group and National Cabinet. Only National Cabinet can establish a regular, ongoing meeting.

### ***Disband***

Forums that did not meet at least two of the objectives are recommended for disbandment, noting some of their responsibilities have been merged with other bodies in the Regular and Ongoing and Time-Limited and When Needed categories. Some existing forums in this category are also a bilateral or multilateral body rather than a national body (for example, the Lake Eyre Basin Ministerial Forum). Forums in the Disband category have fulfilled a specified purpose, not met in any way for a number of years, or have themselves recommended they be disbanded or amalgamated with other bodies. Some forums have not formally met for a number of years, while still achieving outcomes - often with minimal or no formal or bureaucratic processes. It is not expected that there will be need for these ministers to formally meet. A number of the disbanded forums with ongoing legislative responsibilities do not regularly meet or already discharge these responsibilities out-of-session. Many regulatory or standard-setting functions can be finalised through the exchange of letters (correspondence) and/or informal discussions between ministers.

Administrative functions enshrined within legislation, such as reviewing annual reports or confirming statutory appointments, should be delegated to officials where possible, or facilitated by ministers out-of-session.

In practice, where substantive roles must be fulfilled (for example, discussing and agreeing legislative amendments or making emergency determinations under relevant legislation), ministers may choose to meet informally and are to determine for themselves when such a one-off meeting is essential.

Disbanded forums will not be prevented from bilateral/multilateral coordination of legislative responsibilities under various Commonwealth and state and territory legislation. Ministers can discharge their obligations without the formal and bureaucratic structures and processes of a ministerial forum. Within the disband category are a number of forums whose responsibilities can be taken over by continuing meetings:

- Fisheries and Forestry issues can be considered by Agriculture ministers
- Social cohesion coordination can be progressed through ANZCTC
- The National Environment Protection Council, Great Barrier Reef, Lake Eyre Basin and Wet Tropics issues can be managed by Environment ministers.

Where functions of previous forums have been recommended to be taken forward by another ministers' meeting, other relevant ministers could be co-opted to these meetings as appropriate or necessary.

To allow forums in the disband category to conclude existing work, these bodies will cease operating in their current form by 1 February 2021. As is the case now, bodies in this category can continue to work informally, and are encouraged to continue sharing information and guidance outside formal national structures.

## Guidance

As a guide, the below table highlights the general features of bodies under the new Regular and Ongoing, Time-Limited and When Needed and Disband categories.

Feature	Regular and Ongoing	Time-Limited and When Needed	Disband
Process of Establishment	Only by agreement of National Cabinet	Initiating minister to consult with other jurisdictions, write to their First Minister for approval (copying PM&C Secretary) and stipulating purpose and timeframe.	Minister-initiated one-off, informal meeting.
Duration of existence	Ongoing	Maximum 12 months, preferably shorter.	No.
Review	Yes, two-yearly review by First Secretaries Group and National Cabinet.	No - automatic disbanding on task completion, as per sunset clause agreed on establishment. Any reconvening must go through the process of establishment.	No.
Formal Meetings	Yes, on a regular basis.	Only when needed.	No.
Officials Groups	Minimal standing groups.	None or minimal ad hoc groups.	No.
Report to National Cabinet	Only if tasked by National Cabinet.	Only if tasked by National Cabinet.	No.
Chair	Commonwealth minister unless otherwise decided by consensus of meeting members	Commonwealth minister	No.
Formal dedicated secretariat	No (meetings organised by relevant Commonwealth department).	No (meetings organised by relevant Commonwealth department only when needed).	No.
Formal agendas and meeting papers	Agendas for all meetings, papers required for items for decision.	Agendas for all meetings, papers required for items for decision.	No.
Public communication	Communique or press release when necessary to convey key decisions.	Communique or press release when necessary to convey key decisions.	No.

## Maintaining a Streamlined System

A concerted effort to minimise the number of ministers' meetings into the future will ensure these bodies continue to deliver strategic outcomes, and remain lean and relevant. To assist with this focus, the following guidance will apply:

- Ministers will continue to be able to set up meetings to discuss particular issues and share best practice, but before convening a time-limited group the initiating minister should write to their First Minister (copying the PM&C Secretary) outlining the purpose and delivery timeframe for the group to ensure there is sufficient need to establish a new body. They should also clearly demonstrate they have consulted with colleagues from other jurisdictions to ensure there is broad support for the meeting and minimal overlap with existing forums.
- Bodies should not be codified or written in to legislation.

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- Where any new body has been established for a set task (maximum 12 months duration), the body will automatically lapse on its completion.
  - Bodies tasked with ongoing priorities will be assessed every two years by First Secretaries Group and National Cabinet, to ensure they continue to be fit for purpose.

## Work Plans for Ongoing Forums

[Recommendations: 5, 9, 13, 18, 20, 21, 22]

The current system of ministerial forums and formal meetings has become increasingly overrun with bureaucracy and process. Issues are allowed to build for months between meetings and agendas can become inundated with standing items, technical papers and issues involving complex or long-term reform. Many of these items would be better suited to discussion and development by officials. There is a sense of frustration amongst ministers and senior officials, who have suggested that meetings are inefficient, agendas focus on too many things at once, too much time is taken up with items that could be handled out of session and, as a result, issues are not resolved and keep reappearing on agendas.

National Cabinet has proven to be an effective body for making decisions in the national interest, following a model based around streamlining processes and avoiding endless meetings that don't result in action.

This Report provides guidance, but not direction, on how ministers' meetings can follow the National Cabinet model, allowing ministers to focus on items of national strategic significance and critical regulatory and policy work programs that respond to issues confronting our community and economy.

The Terms of Reference state that the Review should make recommendations to National Cabinet on focused regulatory and policy work programs. These should provide for refinement and prioritisation of existing work and for continuity of explicit regulatory functions.

In conducting the Review, secretariats, senior officials and members of councils and ministerial forums were consulted on their current work programs, key priorities and regulatory and administrative (or "business as usual") type functions to:

- identify key priorities and themes across the groups and provide principles to shape the work programs of new or refreshed forums;
- identify areas of overlap where former and existing forums can be combined;
- set out the priority agenda items for each forum to consider and resolve over the next 12 months; and
- provide guidance for ministers to identify and agree new priority agenda items, in line with the principles, to take forward beyond the initial 12 months.

Consultations revealed some key themes around work programs and agendas. A number of ministers and officials commented that work programs should be set by ministers and that agendas should be kept short and focus on priority items of national interest. Some ministers suggested that where a priority item is identified, it should be dealt with quickly and if it cannot be agreed or resolved within a specific timeframe it should be removed from the agenda as "agenda items should be task oriented and time limited." Generally, ministers were in favour of stripping back work programs and giving them a sense of purpose—reducing bureaucracy, sharpening agendas and having regular meetings focused on decision making.

Based on the common themes arising through consultations with ministers, the Review recommends that six key principles should guide the work programs of ministerial forums going forward:

**1. Ministers should actively shape the direction of their work program. Priority items should be initiated by ministers rather than officials and resolved in a specified time period, generally less than 12 months.**

State, territory and Commonwealth ministers should actively shape the direction of their work program and be actively involved in commissioning, rather than agreeing, agendas, papers and recommendations developed by officials.

**2. Work programs for ministers' meetings should only deal with and resolve national strategic priorities.**

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The Review captured the key priorities identified by ministers for each forum. In general terms this includes, but is not limited to, matters that extend across jurisdictions and levels of government that are of national significance or require national agreement.

**3. Meeting agendas should focus on a small number of priority items with defined timeframes.**

In order to drive focused and robust discussion, meeting agendas should be limited to no more than two or three priority items. This will avoid stifling discussion with a list of routine or technical items. The priority agenda items should be addressed with defined timeframes for delivery or an outcome or decisions. Forums should focus on reviewing issues on an annual basis. If an issue cannot be substantially resolved within 12 months, the issue is removed from work program (and recorded by the relevant Commonwealth secretary as an item that has not progressed), or forums commit to an intensive 6 month extension to resolve it.

**4. Non-priority items should be handled by out-of-session correspondence or delegated to officials.**

To allow ministers to focus on priority items, agendas should only include items for decision and should exclude:

- Updates for noting;
- Matters where jurisdictions can act unilaterally without agreement;
- Routine items that require sign-off by ministers under legislation;
- Technical or administrative matters.

**5. Ministers' meetings will engage with the Council on Federal Financial Relations on all Commonwealth-State funding agreements. CFFR will act as the gatekeeper for new agreements and determine the level of involvement in development and negotiation that CFFR will have.**

**6. Even where a ministerial forum is disbanded, ministers can and should meet where there are decisions to be made in relation to any strategic initiatives they deem worthy. In such cases, these principles may still be used to ensure the work of the group can be executed efficiently.**

As part of the Review, chairs and secretariats for each of the former COAG Councils and ministerial forums were surveyed, and selected commonwealth, state and territory ministers and senior officials were interviewed to gain an understanding of previous COAG comebacks, ongoing regulatory or legislative responsibilities and upcoming critical work. The identified items were assessed against the six principles outlined above.

For continuing forums, the Review has assessed identified items as either:

- **Priority Items** – a small number of high priority tangible deliverables which should be the immediate focus for delivery within the next 12 months. Delivery of these items will provide the justification for ongoing forums' status and drive the need for regular or ad hoc meetings.
- **Work that could be taken forward informally by ministers, out-of-session through correspondence or delegated to officials** – which provides guidance on the type of routine items and longer term that could be dealt with out of session or by correspondence (where ministerial consideration is required) or might be better dealt with by officials (where ministerial consideration is not mandated), allowing ministers to focus on priority strategic issues.

The Review notes that line ministers and departments are the subject matter experts and will have greater insights into the type of items that will require ministerial consideration either as a priority item or as required under legislation. Work plans provided to ministers should be considered as guidance only, noting that consultations may not have identified all items and that one of the key recommendations is that ministers take control in setting the direction and agenda of their meetings.

Some of the priorities identified through surveys and interviews are very broad and ongoing themes. It will fall to ministers to identify individual priority tasks and timeframes to take forward as agenda items under these themes.

In general terms, ministers should focus on two or three time-limited priority items at a time and should meet as often as required to progress those priority items. All other routine, technical or standing items should, where possible, be handled by correspondence without discussion or delegated to officials. Non-immediate priorities (i.e. those not in the top three) may be placed on the forward work program to be considered by ministers as the immediate priorities are dealt with and drop off the agenda. This should help to ensure that priority items are dealt with in a timely and efficient manner and should not remain on agendas for longer than 12 months.

In the case of long term ongoing responsibilities or long-term strategic reform, these items may not lend themselves to being completed within 12 months. This work should be broken down into discrete, tangible deliverables that can appear on an agenda for implementation within 12 months and then drop off the agenda when completed.

In the case of ongoing regulatory work, this should largely be taken forward by officials. Where ministerial sign-off is required under legislation this should happen by exception, by correspondence. Where a ministerial forum is abolished, ministers still have license to meet informally to discuss and agree the direction of regulatory reform if it becomes required. Officials should still progress the regulatory work and seek ministerial sign-off by correspondence.

## Operational Procedures for a New System

[Recommendations: 9, 10, 11, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33]

A main aim of the Review is to better align intergovernmental operations with the revised federal relations architecture, including National Cabinet, CFFR and the NFRC. The recommended operating procedures below are modelled on National Cabinet and CFFR operations, which have proven to be successful in streamlining decision making processes and providing leaders with a forum for responsive decision making on critical and emerging issues. They also reflect the key issues arising from consultation, detailed in Part I.

Noting that rationalising forums through eight past reviews has not addressed ongoing issues affecting ministerial bodies, it must be emphasised that modifying their operational procedures is in many respects more important than the number of ministerial forums. How a ministers' meeting operates largely dictates how successful it will be in effectively and efficiently achieving its objectives. Regardless of whether a body continues, meets on an as needed basis, or is disbanded, each must avoid the perpetual pitfalls that have historically affected ministerial forums. The table below lays out these major issues currently preventing forums from operating effectively and efficiently, and suggests solutions to these issues.

**Table: What prevents ministerial forums from being more productive and responsive?**

Issue	Root Causes	Potential Solutions / Recommendations
<b>Forums are inefficient</b>	Secretariats/officials create work and slow discussion environment (many layers of officials for items to progress through and items stalling when agreement cannot be reached by officials).	Abolish formal, dedicated secretariats. Meeting papers drafted by the jurisdiction leading an item. Do not require consensus at officials' level before escalating to ministers. Rationalise the number of sub-committees and officials groups.
	Deferral of tasking and decision-making creates additional layers and time delays.	Strict time limits on agenda items. Removing agenda items if unresolved by the deadline.
<b>Forums are ineffective</b>	Lack of political will to make decisions on difficult, important issues – no cooperation or consensus.	Ministers set and control agendas. Meetings held via telepresence at a frequency that allows issues to be progressed quickly. Decisions are principles-based. Whilst consensus decision making is the aim, it should not prevent matters being progressed bilaterally or multilaterally.
	Too much theatre in big meetings, ministers are unable to have open discussions and compromise.	Attendance kept to a minimum (ministers plus one official and one adviser).
	Outstanding items continuously unaddressed.	Forums should resolve outstanding issues. Sunset clause any unresolved items.
	Deadlines for finalising agendas leave forums unable to respond flexibly to emerging priorities/crises.	Ad hoc meetings allow issues to be dealt with as needed, rather than piling up. Shorter timeframes for finalising agendas, with less layers of clearance.



	Outcomes deferred to COAG.	No reporting line to National Cabinet, except through specific tasking of items from National Cabinet.
	Aiming for national consistency has blocked achievement of outcomes or resulted in the lowest common denominator prevailing.	Where consensus can't be achieved jurisdictions should progress issues out of session bilaterally or multilaterally. Decisions should be principles-based and allow individual jurisdictions to determine the best way to implement and achieve agreed outcomes.
<b>Ministers don't have sufficient ownership/direction</b>	Agendas are not strategic enough in nature.	Empower ministers to drive agenda with sharp focus and few items. Routine, non-controversial or technical matters are progressed out-of-session or at officials level.
	Infrequent meetings requires issues to be resolved by officials beforehand.	Shorter, virtual meetings when needed – can allow ministers to see issues through from commissioning to design to delivery.
	Inflexible working arrangements, including strict adherence to COAG structures and processes.	Adoption of high-level guidance principles that don't prescribe roles or procedures. Abolish formal, dedicated secretariats. Encourage informal, ad hoc meetings when required.
	Lack of awareness/incentive to set agendas.	Responsibility to sit with minister to drive agenda.
<b>Forums follow the example set by COAG</b>	Tasking from COAG requires following COAG's schedule.	Agility and frequency of National Cabinet meetings has superseded this.
	Verticality: decisions are often deferred upwards to COAG	Ministers are empowered to drive and resolve issues within their forums (and with underpinning jurisdictional cabinet approval).
	COAG announcements carried a significant amount of status.	Authorising environment comes instead from self-directed ministers. Outcomes are publicly communicated via a press release.
	Annual reporting to COAG is burdensome and typically not read.	Remove reporting lines to National Cabinet.
	Formalised environment of COAG results in false "single voice" and carefully crafted communiques.	Decisions should be principles-based. Outcomes are publicly communicated via a press release.
<b>Forums continue to grow in number and languish</b>	Issue-specific groups fail to disband after achieving objectives, wasting resources and time.	Strict time limits on agenda items. Remove agenda items if unresolved by the deadline. Do not enshrine meetings in legislation and review existing legislative responsibilities. Meetings are reviewed regularly to ensure they remain relevant. First Ministers provide oversight of new time-limited meetings. All new meetings to have sunset provisions.
	Status linked to forum membership and participation and coveted by ministers and officials.	Refocus meetings on achieving intended outcomes quickly and effectively.
	Forums are expected to reflect full range of government functions.	Meetings will be focused around key federation issues and emerging national priorities.

The recommended operating procedures are designed to address the issues identified above, and support ministers and officials in ensuring meetings continue to meet the key principles guiding this Review. They offer a flexible approach that can easily be adapted to allow for the creation of fit-for-purpose procedures that suit individual meetings. They aim to ensure meetings can achieve desired outcomes through appropriate governance while avoiding prescriptive processes that all meetings must adhere to.

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It is intended that operating procedures will provide guidance to ongoing, time-limited and informal meetings of ministers, so they can all benefit from the learnings of the streamlined approach of National Cabinet. This addresses feedback raised during consultation that guidance for informal meetings would help. Operating procedures will be published in a new *Guidance for Intergovernmental meetings* publication, to replace the existing *Handbook for COAG Council Secretariats: A best practice guide*.

The procedures will not apply to NFRC, CFFR or other bodies that fall under the National Cabinet system, which have their own agreed Cabinet procedures.

## Rationalising groups of officials

There was clear feedback in the consultation that groups of officials had grown unwieldy and should be rationalised. In the last financial year there were 73 meetings of the Education Council and its subgroups of officials with over 600 agenda items and over 250 out-of-session requests (including formal requests from secretariats and informal requests for comments from authors of papers prior to their submission in the national process). The Health Council had 30 groups of officials supporting it, but feedback reported that the Council became much more effective and responsive when a streamlined approach bypassing almost all of these meetings was adopted with the COVID-19 pandemic.

Ministers and departmental heads should rationalise groups of officials that support meetings so these are cut back to a minimum. There are large numbers of groups of officials supporting the health, education, energy and transport and infrastructure meetings. These should all be cut back immediately and all other meetings should similarly review their officials groups with the aim of keeping their structures lean and responsive.

Reducing the number of groups is not intended to diminish the significant role of officials in providing policy expertise and advice on implementation. By reducing the number of groups officials must participate in, and the layers of clearance and bureaucracy around meetings, officials will be able to better focus on the more critical work of advising on and implementing ministers' policy decisions.

## Requirements for regulatory impact analysis

The cessation of COAG also creates an opportunity to re-examine the Regulatory Impact Analysis (RIA) requirements that should, or could, apply to meetings and National Standard Setting bodies.

### ***COAG's RIA requirements applied to a broad range of decisions and decision making bodies***

In effect since March 2007, the COAG RIA requirements applied to all decisions of COAG, ministerial councils and other national standard setting bodies, such as Food Standards Australia New Zealand (FSANZ), Safe Work Australia and the Medical Board of Australia.

COAG Regulation Impact Statements (RISs) were prepared to support informed decision-making on a wide range of proposals, such as recent waste export, energy and energy efficiency initiatives, and contentious work health and safety reforms (covering issues such as industrial manslaughter).

From 2015-16 to 2019-20, OBPR assessed RISs for over 71 proposals considered by COAG bodies.

### ***PM&C administered the COAG RIA requirements on COAG's behalf***

The Office of Best Practice Regulation (OBPR) has administered COAG's RIA requirements, on behalf of COAG, for over 10 years and its role is well-established. Importantly, the OBPR's role does not include supporting any particular regulatory approach or jurisdiction. The OBPR advises on the significance of proposals, and assesses RISs prepared by officials.

OBPR determines whether a COAG RIS was needed, assesses the quality of an analysis, ensures stakeholder consultation and reports on compliance.

Many decisions of these forums are likely to have significant impacts on Australia that warrant high-quality impact analysis. The evidence-based impact analysis needed to satisfy the RIA requirements is a sound and defensible expectation of officials to support decision makers with the best possible analysis and advice.



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### **Resetting what RIA settings apply to Ministerial Councils and national standard setting bodies**

Continuation of RIA requirements to these forums will ensure evidence-based analysis continues to be developed to a high standard, and ensure it is publicly available. PM&C (OBPR) would continue to support these forums to conduct RIA—through offering advice and capability building in terms of conducting impact analysis, and in assessing their work and navigating the RIA requirements.

However, given the revised focus of forums towards less bureaucracy and more agile decision making, there is an opportunity to revise the RIA settings to support and align with this approach. Suggested refinements to the RIA settings will collectively streamline and remove inconsistencies between the Australian Government approach to RIA and that of these forums (which will reduce duplication for those officials preparing two different types of RISs).

The most significant of these changes would:

- raise the bar on what requires a RIS, by directing OBPR to reinterpret the threshold for what triggers a RIS to refocus RIA even more towards major items;
  - There is no set numerical threshold for what impact(s) will trigger a RIS, rather it is a judgement decision that rests with OBPR. Having OBPR adjust its interpretation of “major” will have the benefit of refocussing limited OBPR resources to fewer items, to provide more in-depth assistance to officials and potentially deliver higher quality analysis to decision makers.
- align the key questions asked with that of the Australian Government RIA settings;
  - Currently there are eight “principles of RIA” and the key elements are almost identical in structure and content to the Australian Government 7 RIS questions, with minor differences in terminology.
  - The change will not have any effect on the substance of the RIS, but will reduce differences in terminology with the Australian Government RIA settings, reducing confusion for officials where they have to produce similar analysis for different decision making forums.
- introduce flexibility by, in certain cases, no longer requiring both a Consultation RIS (CRIS) and a Decision RIS (DRIS), where a final DRIS alone is sufficient to inform the decision-makers;
  - This would allow officials to propose to OBPR that, in certain cases, a draft RIS for consultation is not required, and that a final RIS is sufficient to inform the decision-maker.
  - This will increase the speed of decision making and also aligns with the Australian Government RIA settings. Clear criteria would have to be set, which would include, for example, that a CRIS is not required where statutory consultation process (or similar) has already been undertaken.
- allow a DRIS to recommend *any* option, with supporting justification, rather than it having to recommend only that option which results in a clear net benefit to the community.
  - While the option with the highest net benefit would ideally always be the recommended option, there are cases where this is not practical, especially where non-quantifiable costs or risks are at play. Of course, the DRIS would have to include reasons for not doing this and be transparent and defensible.

The proposed changes to this RIA framework are distinct and separate to questions around what RIA settings apply to National Cabinet and its supporting National Cabinet Reform Committees.

### **Changes to streamline decision making does bring some risks**

Affected stakeholders in business and the broader community have high expectations for quality RIA. In part, this is due to the well-established nature of the COAG RIA settings, and the ability for all stakeholders to review and contribute to CRISs to ensure the advice to decision makers is as fully informed as possible.

While the previous COAG RIA requirements are relatively inflexible, any streamlining could be perceived as a reduction in commitment to rigorous impact analysis and evidence-based decision making.

Of all the proposed changes, the most sensitive with stakeholders is likely to be the removal of mandatory CRISs. CRISs are seen by many as a critical way to build trust in decision making processes, improve the analysis supporting major decisions and a clear and transparent way for business/community advice to be incorporated and provided to decision makers.

These changes could be operational by February 2021, with current settings to continue in the meantime.

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## Abolishing formal dedicated secretariats

The Review recommends that formal dedicated secretariats should be abolished, with meeting support functions provided by the relevant Commonwealth department. The intent behind this recommendation is to reduce administration and bureaucratic red tape, allowing ministers to take control of their agendas and meet at short notice to make responsive decisions. The Commonwealth minister, as chair of a forum, should schedule meetings and set agendas as required.

The Review recognises that there is a need for some form of officer-level support or logistics around meetings, including coordinating briefing for the Chair, circulating agendas and meeting papers, and recording and tracking outcomes and comebacks. This function can be light touch and should not require an ongoing dedicated secretariat team. An existing policy or coordination area in the Commonwealth department may be able to take on this work as an additional function in the lead up to meetings.

## Replacing the *Handbook for COAG Council Secretariats: A best practice guide*

The Terms of Reference state that the Review should make recommendations on proposed content of a guide to replace the *Handbook for COAG Council Secretariats: A best practice guide*.

In conducting the Review, secretariats were consulted on their use of the COAG handbook. Feedback on this guide was received from 25 secretariats, representing the range of bodies currently in operation, including COAG councils, ministerial forums and informal ministers' meetings.

Consultation with officials currently providing secretariat functions would suggest that the existing handbook is of limited use, with many secretariats indicating that they didn't use the handbook at all. Key themes emerging from this feedback include:

- Many secretariats did not use the COAG handbook, or were not aware that it existed.
- A number of secretariats had developed their own handbooks, operating procedures and templates to meet their specific needs.
- A unanimous desire for any future guidance material to allow for a flexible approach to providing secretariat functions, so that individual forums can tailor operating procedures to suit their needs.
- Alternatives to face-to-face meetings including out-of-session endorsement and videoconferencing have been adopted by most forums as a means of progressing priorities during COVID-19 and found to be successful (although it is worth noting that these operating procedures are included in the existing handbook).
- In considering timing and frequency of ministers' meetings or officials' meetings, particular regard shall be had to the interests of and impacts on smaller or more distant jurisdictions.

The *Guidance for Intergovernmental meetings* will incorporate this feedback and the above recommended operating procedures to provide high-level guidance material for use by all those responsible for supporting intergovernmental meetings.

## Terms of Reference

### Terms of Reference - National Cabinet Review of COAG Councils and Ministerial Forums

<b>Overview</b>	<b>Review purpose:</b> to rationalise and reset the structure and work programs of the former COAG Councils and Ministerial Forums to better align the work of new ministerial forums with the revised federal relations architecture overseen by the National Cabinet and the National Federation Reform Council. <b>The objective</b> of this work is to ensure that the Australian community is served by a federal relations architecture which is responsive to issues confronting our community and economy, makes decisions efficiently with minimal bureaucracy and is able to focus on critical regulatory and policy work programs.
<b>Membership</b>	The review will be led by an eminent person supported by a taskforce within the Department of Prime Minister and Cabinet (PM&C) comprising officials from PM&C, other Commonwealth departments and the states and territories.
<b>Context</b>	On 29 May 2020, the National Cabinet agreed a revised architecture for federal relations. The principal feature of this framework is the ongoing role of National Cabinet to: oversee the suppression strategy for COVID19; and pursue economic recovery in the transition to a COVID Safe community. The National Cabinet agenda will focus on job creation. Reform priorities will be settled by National Cabinet and specific reform projects will be commissioned, with advice from relevant Expert Advisory Groups, to be undertaken by National Cabinet Reform Committees and the Council on Federal Financial Relations (CFFR). National Cabinet also agreed to cease the Council of Australian Governments and to form the National Federation Reform Council (NFRC) as a joint forum for the National Cabinet, the CFFR (with an expanded remit) and the ALGA to consider broader transformation of federal relations and to improve the lives of all Australians. This work will be informed by the Indigenous Affairs Taskforce and the Women's Safety Taskforce. The new federal relations architecture precipitates a review of former COAG Councils and ministerial forums.
<b>Scope of Review</b>	The review will undertake an audit of former COAG Councils and Ministerial Forums ( <a href="#">Attachment A</a> ) and make recommendations to National Cabinet on: <ol style="list-style-type: none"> <li>1. <b>A streamlined structure, scope and reporting arrangements:</b> Options for a streamlined structure and scope for ministerial regulatory councils and forums to progress defined federal relations priorities which are outside the National Cabinet Reform Committee agenda and for reporting, only when essential, to the NFRC.</li> <li>2. <b>Focused regulatory and policy work programs:</b> providing for refinement and prioritisation of existing work programs and for continuity of explicit regulatory functions.</li> <li>3. <b>Guidance on operating procedures:</b> including, but not limited to: <ul style="list-style-type: none"> <li>• membership and chairing arrangements</li> <li>• decision-making and interaction with the CFFR and the NFRC;</li> <li>• secretariat support;</li> <li>• use of expert advisory groups (new or existing);</li> <li>• any requirements to undertake regulatory impact analysis; and</li> <li>• proposed content of a NFRC guide to replace the <i>Handbook for COAG Council Secretariats: A best practice guide</i>.</li> </ul> </li> </ol>
<b>Considerations</b>	The review will consider: <ul style="list-style-type: none"> <li>• how best to support National Cabinet's focus on job creation;</li> <li>• the ability for state and federal ministers to come together to solve issues without requiring bureaucratic structures;</li> <li>• any roles prescribed to ministerial forums under legislation;</li> <li>• current work programs and reporting arrangements, including work previously assigned to the forums by COAG;</li> <li>• the interaction of ministerial forums with CFFR under its new expanded remit (CFFR will now oversee negotiation and funding arrangements under Commonwealth/State funding</li> </ul>

	<p>agreements, including National Partnership Agreements, and will review the current suite of NPAs); and</p> <ul style="list-style-type: none"> <li>any ongoing regulatory and policy priorities for ministerial forums which are outside the scope of commissioned work allocated to the new National Cabinet Reform Committees in the areas of Rural and Regional, Skills, Energy, Infrastructure and Transport, Population and Migration, and Health.</li> </ul>
<b>Consultation</b>	The review will consult First Ministers, members of existing forums, forum secretariats, members of CFFR, the Australian Local Government Association and representatives of the New Zealand Government.
<b>Timing</b>	The review will provide recommendations to National Cabinet by September 2020.
<b>Steering committee</b>	The First Ministers' departments Deputy Senior Officials meeting (DSOM) will act as a steering committee for the review.

## Attachment A – Previous COAG Councils and ministerial forums

The following list is in scope, other bodies may be identified for inclusion through the course of the review.

### COAG Councils

- 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

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- 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)