

ANZSOG CASE PROGRAM – TEACHING NOTE

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

An ANZSOG Teaching Case by Marinella Padula

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Original article access: This Teaching Note provides a guide to ‘*The National Cabinet and COVID-19: a new future for federal relations?*’ case study.

Summary

This case focuses on the setup of the National Cabinet and its first year of operation. Born out of the COVID-19 crisis and the need to rapidly coordinate government activity, it would soon replace the Council of Australian Governments (COAG) as the nation’s peak intergovernmental forum. However, the haste of its formation (as a committee of the Federal Cabinet) and Australia’s early success in avoiding twin health and economic catastrophes, meant that the National Cabinet was given relatively little scrutiny. Although many (including premiers past and present) were happy to see the back of COAG, and much more satisfied with the new arrangements, it remains to be seen how the National Cabinet will fare over time. The below sections describe key learning objectives before setting out some suggested questions and learning exercises, which are designed to prompt critical thinking and discussion.

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Learning objectives

The case offers a number of different teaching opportunities on topics such as crisis management and state-federal relations. This case will enable students to:

- gain an insight into the formation of the National Cabinet and its operations;
- make comparisons between the National Cabinet and its predecessor COAG;
- identify strengths and weaknesses of the National Cabinet structure and how this might impact intergovernmental decision-making into the future; and
- reflect on what, if any, changes could/should be made to the National Cabinet.

Suggested Teaching Approach

The following outlines a number of questions and suggestions that can be used in class.

1	Question for class discussion	Was dismantling COAG necessary? What other alternatives were there? Were there any real barriers to scheduling frequent COAG meetings, having experts provide direct input or suspending normal COAG business to deal with COVID-19? It wouldn't appear so. Yet at the same time, previous COAG reviews have seemingly failed to address complaints of bloated agendas, excessive bureaucracy, and lengthy deliberations without conclusion. To what extent were COAG's issues the product of its structure versus other factors? Students can discuss whether creating the National Cabinet (or some another alternative) was a necessity and canvass the pros and cons of other potential options. For example: this OECD paper looks at the range of different bodies government have used to inform, plan and coordinate their responses to COVID-19. Many have created purpose-built bodies, but some have relied on existing institutions or blended old ones with new ones. https://www.oecd.org/coronavirus/policy-responses/building-resilience-to-the-covid-19-pandemic-the-role-of-centres-of-government-883d2961/ Meanwhile, this Mandarin article uses recent and historical examples of bipartisan cooperation during major crises to illustrate different approaches. https://www.themandarin.com.au/127352-bipartisanship-in-the-fog-of-war/
2	Question for class discussion and potential assignment topic	What challenges/issues will the National Cabinet face? How can they be addressed? The case study suggests a number of obstacles ahead for the National Cabinet, especially post-pandemic. It's managed to hold together despite disputes and differently weighted priorities: mainly by forgoing the need for complete consensus and giving states the flexibility to implement National Cabinet decisions as they see fit. However, issues such as the vaccination rollout, quarantine management, repatriation, re-opening borders and economic recovery has placed considerable pressure on the National Cabinet and will do for some time. As the COVID crisis fades, a number of underlying problems will likely become more prominent, including: - Electoral cycles changing membership and increasing the incentives for 'politicking';

		- The fiscal imbalance between the Commonwealth and states/territories; - Lack of accountability to respective parliaments ('democratic deficit'); - Lack of transparency around decision making (e.g. cabinet confidentiality); - Lack of constitutional or legislative recognition (National Cabinet is a committee of the Federal Cabinet and technically under its control*); - Inconsistencies in Cabinet guidelines for Cabinet Subcommittees versus the National Cabinet; - Risk of 'agenda creep' or conversely being too narrowly focused; - Balancing the need for flexibility and variation with constancy and uniformity; - Difficulty dealing with complex, detailed negotiations. *The legitimacy of making the National Cabinet as a Federal Cabinet subcommittee was legally challenged. In response, the Federal Government introduced legislation to extend Cabinet secrecy provisions to the National Cabinet. The following reports by constitutional law expert Prof. Cheryl Saunders and CEDA Chief Economist Jarrod Ball consider potential impediments to the National Cabinet's functioning and how they could be dealt with. https://government.unimelb.edu.au/_data/assets/pdf_file/0011/3443258/GDC-Policy-Brief-2_National-Cabinet_final01.07.2020.pdf https://www.ceda.com.au/ResearchAndPolicies/Research/Institutions/Information-paper-Australia-s-Federation-post-(1) Students can consider the above in the context of a class discussion or as the basis of an assignment.
3	Question for class discussion	Does the National Cabinet really represent a new era in intergovernmental relations? Supporters of the National Cabinet have welcomed the reduced formality, focus on rapid decision-making and greater flexibility, anticipating a new era of cooperative federalism. There are reasons (some outlined above) to suspect that this might not be the case. But it arguably represents a further shift towards executive federalism where parliaments are increasingly sidelined. The two pieces below consider this issue, as well as potential implications, and can be used as additional readings or to help spur discussion. Prasser, S. (2020). A funny thing happened on the way to the national cabinet-out goes good policy, one, two, three. <i>Australasian Parliamentary Review</i>, 35(1), 141–156. https://search.informit.org/doi/10.3316/informit.605906978000600 https://www.aspg.org.au/wp-content/uploads/2020/11/A-Funny-Thing-Happened-on-the-Way-to-the-National-Cabinet.pdf Tulich, T., Reilly, B., and Murray, S. (2020) The National Cabinet: Presidentialised Politics, Power-sharing and a Deficit in Transparency, AUSPUBLAW, https://auspublaw.org/2020/10/the-national-cabinet-presidentialised-politics-power-sharing-and-a-deficit-in-transparency/
4	Question for class discussion	Should the National Cabinet have official recognition? COAG was a political solution to a constitutional problem in that the Australian Constitution provides little guidance as to how states, territories and the Commonwealth are to work together on shared problems or areas of interest. There have been many calls to establish some kind of official body with legislative backing

	including this suggestion from Dr Jacob Beem and Jennifer Menzies for a National Federation Commission to support the new National Cabinet. Students can discuss the merits of this particular proposal or be prompted to develop their own. https://www.griffith.edu.au/data/assets/pdf_file/0024/1091373/Supporting-the-National-Cabinet-FINAL.pdf
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Additional resources

Archive of National Cabinet Decisions

[https://content.next.westlaw.com/Document/I53a7ad86694811eaaadfea82903531a62/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=\(sc.Default\)&firstPage=true](https://content.next.westlaw.com/Document/I53a7ad86694811eaaadfea82903531a62/View/FullText.html?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&firstPage=true)

Chronology of State and Territory COVID-19 announcements

https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Chronologies/COVID-19StateTerritoryGovernmentAnnouncements#_Toc52275790

Timeline of key decisions and announcements - Commonwealth

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19/Interim_Report/section?id=committees%2freportsen%2f024513%2f75595

Feedback on Teaching Note use

To assist with continual improvement, if you've used this Teaching Note, we'd greatly appreciate your feedback and suggestions for improvement. To do so, please email caselibrary@anzsog.edu.au with the name of the case and your comments. Many thanks in advance.

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