ACCOUNTABILITY FOR CROSS-JURISDICTIONAL BODIES

A Senate Lecture, 20 May 2022

Cheryl Saunders, Melbourne Law School

Introduction

When first invited to deliver a Senate Lecture on Accountability for Cross-Jurisdictional Bodies I accepted readily.

- I have a long-standing interest in accountability for intergovernmental arrangements generally.
- The responses to the pandemic have given us new insights, which deserve reflection, into the different contributions that different jurisdictions usefully bring to intergovernmental decision-making.
- Accountability for cross-jurisdictional bodies is, of course, only a sub-set of the wider subject of intergovernmental relations, but it is important in its own right and complex enough, as we will see.

The lecture will be structured as follows.

- I will begin by briefly sketching the arrangements for accountability of intra-jurisdictional bodies. I will focus on the Commonwealth level of government and on political accountability, in particular to Parliament. These arrangements are broadly similar in other Australian jurisdictions, all of which have parliamentary systems and most of which are bicameral.
- In the second part of the lecture, I will explore the range of bodies that we might describe as cross-jurisdictional for present purposes. As the abstract for today's lecture suggests, I will group them loosely into three categories: regulatory, advisory, and political. I will use case studies to illustrate each, examining their constitutions, their functions, and the accountability arrangements presently in place. I do not claim that these categories are exhaustive or, even, watertight, so complex is the intergovernmental terrain, but I think they will do for the purpose. I would welcome embellishments or suggestions of other case studies in question time or afterwards, so that I can take them into account before this lecture is published.
- The final part of the lecture will build on the second, by considering how the cross-jurisdictional character of any of these types of bodies affects, and should affect, the forms and objects of political accountability. It will propose a way forward, as suggestion rather than prescription.

Accountability for intra-jurisdictional bodies

Accountability arrangements in Australia and elsewhere typically are designed to operate within single jurisdictions as, in effect, unitary systems of government. Arrangements for political accountability to Parliament are no exception.

All bodies that exercise public power or spend public moneys are or should be accountable to the institution of Parliament in some way. While the mechanisms are diverse, in Australia they revolve around the principles and practices of parliamentary responsible government. At their core, these are straightforward:

- The executive government for the time being derives its legitimacy from the support of the Parliament
- The government is responsible to the Parliament, collectively and individually.
- Responsibility includes accountability, at least in the sense of answerability, for the exercise of public power and the expenditure of public moneys.
- The ultimate, but by no means the only, sanction is loss of public office.

Of course, the actual picture is much more complicated.

- The role of Upper Houses including, of course, the Senate, needs to be factored in. They do not contribute to making (or, usually, unmaking) governments. Nevertheless, where they exist, they are an integral part of the system of responsible government and have contributed immeasurably to the possibilities for accountability.[1]
- Thanks in part to Upper Houses, but by no means exclusively so, Parliaments have a variety of mechanisms through which to pursue forms of accountability, including for administration. These reach well beyond the activities of the plenary in holding Ministers to account, directly or indirectly or enacting substantive and financial legislation. They include the roles of committees in scrutinising public expenditure aided by the Auditor-General; examining estimates; reporting on delegated legislation; scrutinising bills; reviewing reports that are now required by law to be prepared annually; and overseeing integrity institutions.[2]
- Ministerial accountability seems to have eroded. In part this appears to be attributable to a decline in voluntary compliance with standards, without which parliamentary government cannot operate as it should. It is facilitated, however, by a raft of other developments. These range from reliance on ministerial advisers rather than public service officers, to the contracting out of myriad public services, to increasing reliance on artificial intelligence. All of these 'hollow out' the public sector and offer bases on which ministers can evade accountability to Parliament.[3]
- Both the roles and expectations of public bodies have shifted with fashions in public administration, from a focus on compliance to a focus on, at least formally, results.[4]

Most relevantly for present purposes, the types of public bodies also have diversified in ways that have a bearing on accountability to Parliament. The range is usefully captured in various formats, one of the

[1] *Egan v Willis* (1998) 195 CLR 424
[2] There is a useful account of these in Gareth Griffith, 'Parliament and Accountability: The Role of Parliamentary Oversight Committees', NSW Parliamentary Library Research Service, Briefing Paper No. 12/05.
[3] Ibid.
[4] The shift is traced in Andrew Podger, 'How independent should administration be from politics', in Andrew Podger, Tsai-tsu Su and John Wanna (eds), *Designing Governance Structures for Performance and Accountability,* (ANZSOG, 2000).

most useful of which is the *Australian Government Organisations Register* (the Register) prepared by the Department of Finance.[5]

- Bodies not covered by the Register include the Commonwealth Cabinet (without explanation) and the High Court of Australia, apparently 'due to its status under its enabling legislation'.[6]
- Those included are organised in a typology that covers '12 main types of bodies'. Two deal explicitly with cross-jurisdictional bodies and can be set aside for the moment.[7] Several others include a smattering of cross-jurisdictional bodies, either in the category description[8] or as examples of the genre.[9]
- These cases also are held over for the time being. I note in passing, however, that this treatment suggests that there is no clear conceptualisation of cross-jurisdictional bodies as a distinct category that might raise distinct considerations.

The remaining bodies in the Register are intra-governmental and cover a broad spectrum. They are divided between principal, secondary and 'other' Australian Government entities. Bases for distinction include the following:

- Some bodies are covered under the Public Governance, Performance and Accountability Act 2013 (PGPA Act). This Act distinguishes primary entities from others and provides a range of political accountability regimes for them, to both the executive and Parliament.
- Legal form: the typology distinguishes between non-statutory and statutory entities, registered corporations, joint ventures, and bodies linked through contract.[10]
- Function and purpose.
- Proximity to the Australian government including, for example, considerations of 'separate branding'.

Even for intra-jurisdictional bodies, the typology is by no means neat. In all fairness, however, the picture is complicated. In what follows, I use these bodies to make four points on which the rest of this lecture can build.

The first and most obvious is that, because all these entities are public bodies, exercising Commonwealth power within the Commonwealth constitutional framework, accountability for them must lie to the Commonwealth Parliament in some way.

The second point is that the manner of accountability to Parliament clearly differs.

---

[5] https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/australian-government-organisations-register

[6] Apart from the Constitution itself, the enabling legislation for the High Court is the High Court of Australia Act 1979 (Cth). It is not entirely clear to what aspect of 'status' the Register refers.

[7] Ministerial Councils and related bodies and National Law Bodies.

[8] Interjurisdictional and international bodies.

[9]

[10] These distinctions carry through into the PGPA Act.

- Primary non-corporate entities, comprising the departments of state, are accountable through the traditional mechanisms of ministerial responsibility, whatever they may be, embellished by more recent practice.
- Statutory bodies or entities incorporated by registration are accountable through whatever mechanisms their legal form provides in addition, in the case of primary entities, to the requirements of the PGPA Act.
- The accountability of other bodies including, for example, secondary non-statutory entities is more attenuated and may lie through other entities or a minister.

Third, as supporting documentation by the Department of Finance helpfully shows, the public purposes that each body is intended to serve drives the features that shape the manner of its accountability to Parliament. Purposes identified include the need for a degree of independence from government policy and ministerial direction, purposes that require a less bureaucratic and more entrepreneurial orientation, and policy advising on matters that requires a particular range of expertise.

Fourth, the accountability of the body itself to Parliament is only one part of the equation. In every case, Ministers also are accountable, at least in principle, for whatever role that they play and whatever functions they exercise in relation to the body, whether these functions are statutory or not. Ministerial functions in relation in relation to intra-jurisdictional bodies may range from appointments to participation, to receipt of advice, to the overall responsibility of Ministers for government departments.

Cross-jurisdictional bodies

Cross-jurisdictional bodies present additional considerations from the standpoint of accountability. To begin to consider these, some definitions are in order, to identify at least loose parameters for the types of bodies with which we are concerned.

- For present purposes, albeit tentatively, I define bodies with a cross-jurisdictional character as those that rely on the constitutional powers of multiple jurisdictions, and/or rely on membership of multiple jurisdictions, and/or rely on multiple jurisdictions to accept their decisions before they are given effect.
- Again tentatively, I exclude from the definition bodies that play a significant role in making the federation work but rely entirely on the Commonwealth for constitutional power, membership, and implementation. The Commonwealth Grants Commission is one such body.[11] It is formally an intra-jurisdictional body, notwithstanding some intergovernmental characteristics in practice.
- For the moment, at least, I also exclude from the definition arrangements under which a particular Minister or public service officer of one jurisdiction exercises functions conferred by another, with the agreement of both. These are not strictly 'bodies' in the sense in which the term is used in the lecture. They raise similar questions about accountability, however. Answers are complicated by the fact that, in Australia, unlike in some other federations, 'dualism' is the default organising assumption, in the sense that each jurisdiction usually administers its own legislation. I may include these issues in the written version of the lecture. If I do, my present

[11] Commonwealth Grants Commission Act 1973 (Cth).

inclination is to say that the primary lines of accountability should lie in the jurisdiction by which the power is exercised, but with full understanding that the power itself originates elsewhere.

As noted earlier, to assist analysis of the issues and options for accountability I divide cross-jurisdictional bodies into three categories: regulatory, advisory, and political. In what follows I explore each of these in turn, with the assistance of examples that are characteristic, but neither paradigmatic nor exhaustive.

a. Regulatory bodies

The first category comprises bodies with a regulatory function that rely on the constitutional power of two or more jurisdictions.

- Participation always is voluntary and constitutional support could be withdrawn, at least in principle.
- In many, and perhaps most or even all cases, there also is an underlying intergovernmental agreement and a supporting intergovernmental ministerial council with authority of some kind in relation to the body under the agreement, the constituting statute or both.
- All of these features have implications for the ways in which the body exercises its powers and carries out its functions.

Bodies of this kind typically result from arrangements that are designed to achieve uniformity of administration, as well as law, on matters for which constitutional responsibility is divided between Australian jurisdictions. This may be a device that is unique to the Australian federation as, for that matter, may be the insistence on uniform administration itself. In any event, it has evolved as an art form over time.

The result may be achieved in different ways.

- In some cases the body is established by one jurisdiction, often the Commonwealth, and invested with power by others. The Gene Technology Regulator[12] and the Australian Crime Commission[13] are examples.
- In other cases, one 'host' jurisdiction enacts a 'national law' that includes provision for a regulatory authority and that law then is 'adopted' by legislation of other participating jurisdictions so as to create a 'single national entity'. The National Heavy Vehicle Regulator[14] and the Australian Children's Education and Care Quality Authority (ACECQA)[15] are examples.
- Occasionally, participating States may refer power to the Commonwealth, as envisaged by section 51(xxxvii) of the Constitution, to enable it to establish a body with a broader power base, diminishing the need for additional conferrals of power. The Australian Securities and Investment Commission (ASIC) is one body of this kind.[16]

---

[12] Gene Technology Act 2000 (Cth).
[13] Australian Crime Commission Act 2002 (Cth).
[14] Heavy Vehicle National Law Act 2012 (Queensland).
[15] Education and Care Services National Law Act 2010 (Vic).
[16] Australian Securities and Investment Commission Act 2001 (Cth).

Cross-jurisdictional bodies in this category are diverse in form, institutional structure, and intergovernmental characteristics. Reasons for difference include the extent of the respective powers of the Commonwealth and the States and, perhaps, evolving intergovernmental fashion.

At one end of the spectrum is ASIC, based on the broad but incomplete corporations power of the Commonwealth (sec 51(xx)) augmented by references from the States.

- ASIC is established by Commonwealth legislation on the face of which it appears almost, if not quite, an intra-jurisdictional body.
- It nevertheless is the latest phase in a series of intergovernmental projects to harmonise the law and practice of the regulation of corporations in Australia signs of which remain, in the Act itself and in the underlying agreement.[17]
- Amongst other things, the latter restricts the use to which referred powers may be put, requires consultation with the States on appointments to the Commission and requires the establishment of regional offices around the country.

At the other end of the spectrum are national law bodies created by legislation enacted by a host State and given authority elsewhere through adoption by participating jurisdictions.

- Of the two examples given earlier, Queensland is the host for the National Heavy Vehicle Regulator and Victoria for ACECQA.
- Both deal with the regulation of areas in which there is limited secure Commonwealth constitutional power and significant State power, intertwined with other areas of State regulatory responsibility.
- Both schemes are underpinned by an intergovernmental agreement[18] and the cross-jurisdictional character of each scheme infuses its design.

So, in each case, a ministerial council has statutory power to direct the regulator in stipulated ways, is involved in appointments to the Board and approves draft regulations before promulgation.

- Both schemes are relatively inventive in the ways in which they go about establishing an 'independent' regulator as a 'single entity' surrounded by all the usual trappings of a public body. Thus, for example, regulations made under both National Laws are published on the NSW legislation website. The Commonwealth's privacy and freedom of information legislation and the NSW State Records legislation are applied to ACECQA by the laws of the participating jurisdictions. [19]

In between these two poles are cross-jurisdictional regulatory bodies in which the power balance between the Commonwealth and the States is, at least arguably, more equal. To illustrate the point,

[17] Corporations Agreement 2002.
[18] Intergovernmental Agreement on Heavy Vehicle Regulatory Reform 2011; National Partnership Agreement 2009.
[19] Education and Care Services National Law secs 263, 264, 265.

both the Gene Technology Regulator and the Australian Crime Commission rely on a range of Commonwealth powers but their functions are extended by legislation of participating States.

- The ACC Act establishes an 'Inter-governmental Committee' with power to monitor and oversee the strategic direction of the body and its Board.[20]
- Under the Gene Technology Act a Ministerial Council, recognised by the Gene Technology Agreement, is required to be consulted on specified appointments, including that of the regulator, and can trigger a review of the Act.[21]

As might be expected, political accountability was taken into account in prescribing the statutory and policy framework for each of these bodies. Inevitably also, perhaps, the forms of accountability vary with the nature of the body and, specifically, with the extent of its intergovernmental character.

Bodies that are deemed to be supported by significant Commonwealth power, including ASIC, the Gene Technology Regulator, and the ACC, are covered by the accountability requirements of the Public Governance, Performance and Accountability Act 2013 (Cth), albeit on various bases.

- Even in these cases, however, there are intergovernmental elements of the accountability regime that applies including, to take only one example, a requirement for the Gene Technology Regulator to give copies of both annual and other reports to the Ministers of participating States.[22]

By contrast, other cross-jurisdictional regulatory bodies that are more dependent on State and Territory authority have relatively comprehensive accountability regimes of their own, adapted to suit the context.

- These necessarily deal with, for example, reporting to Parliament and the scrutiny of delegated legislation.
- In both the cases considered earlier, the Heavy Vehicle Regulator and the ACECQA, the respective bodies are required to report to the Ministers of all participating jurisdictions and the Commonwealth, individually or collectively.
- The reports are required to be tabled in all the Parliaments, and a scheme is devised to enable each Parliament to scrutinise the delegated legislation, without unduly disrupting the scheme.

b. Advisory bodies

A second category of cross-jurisdictional bodies is advisory, in the sense that these bodies have no significant regulatory functions but rely on the acceptance of multiple jurisdictions to give their decisions effect.

---

[20] Sections 8, 9.
[21] Sections 21, 23, 24, 100, 108, 118.
[22] Gene Technology Act 2000 (Cth) secs 136, 137.

- As with regulatory bodies, these may have other cross-jurisdictional features as well, in terms of interaction with an intergovernmental ministerial body or multi-jurisdictional membership, but in considering this category I want to focus on function.
- Typically, such bodies may be established in order to assist with the co-ordination or other form of streamlining of a particular government activity across Australia, while leaving each participating jurisdiction with its own decision-making authority.

Examples that may be useful for considering this category are Infrastructure Australia[23] and the Australian Curriculum and Reporting Authority (ACARA).[24]

- The former audits and develops plans for 'nationally significant' infrastructure across Australia.
- The latter plays a co-ordinating role in relation to curriculum and assessment in the course of which, amongst other things, it develops a 'national curriculum'.

Both bodies are constituted by Commonwealth legislation without any cross-jurisdictional contribution.

- Presumably this reflects an assumption that Commonwealth power is adequate to support essentially advisory functions of these kinds which are emphasised to have 'national' significance.[25]
- The effectiveness of both bodies, nevertheless, depends significantly on take-up of their advice by others with operative authority.
- In each case the Commonwealth has some such authority, through the grants power (sec 96) and direct responsibility for some national infrastructure.
- In each case, also, there are non-state parties with a role to play: owners of and investors in relevant infrastructure in the case of one and private education providers in the case of the other.
- But in each case, also, the preponderance of operative authority is held by the States and territories, including local government; and appropriately so, in accordance with the principle of subsidiarity. The need for States and territories to act on decisions of bodies of this kind, if they choose to do so, give them their intergovernmental character.

This character is reflected in the legal framework for the bodies, albeit in different degrees, again reflecting considerations of the balance of intergovernmental power.

- ACARA has a Board with members nominated by the States and territories (amongst others), complies with a Charter approved by a Ministerial Council, is subject to directions from the Council, and reports to the Council.[26]
- The intergovernmental character of Infrastructure Australia is less pronounced but nonetheless evident: the States and territories nominate 3 of the 12 members of the Board, the body advises

[23] Infrastructure Australia Act 2008 (Cth)
[24] Australian Curriculum Assessment and Reporting Authority Act 2008 (Cth).
[25] In the case of ACARA the Act is explicitly based on a familiar smorgasbord of powers, in addition to a claim for support on the basis of nationhood: sec 4.
[26] Secs 13, 7, 43.

all governments, the Commonwealth Minister must have regard to COAG decisions in giving directions and the body is obliged to consult all relevant governments, amongst others, in reaching its conclusions.

Consistently with the assumptions on which both bodies are based, the accountability framework for each of them lies almost entirely within the Commonwealth sphere, both under the PGPA Act 2013 (Cth) to which each is subject, and generally.

- In terms of the scope of accountability, it may be relevant to note that neither the directions to Infrastructure Australia by the Commonwealth Minister nor the directions to ACARA by the Ministerial Council are legislative instruments for the purposes of the Legislation Act 2003 (Cth).[27]
- There are some minor elements of cross-jurisdictional accountability. For example, the annual report of the ACARA also is required by Act to be given to the Ministerial Council.[28]

c. Political bodies

A third category of cross-jurisdictional bodies comprises those that are political in character. These bodies are constituted by the responsible Ministers of participating jurisdictions supported, in many cases, by ancillary bodies of public service officers who prepare the ground for the ministerial meeting. Their activities may range from discussions of policy co-ordination to information exchange to more formal roles under intergovernmental schemes of the kind to which reference has been made already.

As the earlier discussion showed, legislation enacted for the purpose of intergovernmental schemes may sometimes create or at least recognise cross-jurisdictional political bodies and confer decision-making power on them.

- These are the exceptions rather than the rule, however.
- Typically, cross-jurisdictional political bodies are created by agreement between the participants, in the exercise of their collective executive power with little, if anything, by way of a formal, documented framework.
- Typically also, their decisions are not legally binding but depend on implementation by the participating jurisdictions, in the exercise of their own powers and responsibilities.

The most high-profile example of such a body in Australia is the forum in which the heads of government of the Commonwealth, States and Territories meet.

- Once called the Premiers' Conference, then the Council of Australian Governments (COAG), the current iteration of this body is the National Cabinet.[29]
- The significance of its roles in co-ordination of key aspects of public policy and information exchange was evident throughout the course of the pandemic.

---

[27] Infrastructure Australia Act 2008 (Cth) sec 6; ACARA Act 2008 (Cth), sec 7.

[28] Section 43.

[29] https://federation.gov.au/national-cabinet

This forum always is just the tip of a much larger cross-jurisdictional iceberg, the remainder of which comprises meetings of line ministers of various kinds, supported by officials.

- This intergovernmental 'architecture' was redesigned when the National Cabinet was formed.[30]
- It now has a highly complex structure, with a series of (in effect) ministerial councils operating under the aegis of National Cabinet itself, as 'Reform Committees' one of which is the workhouse meeting of treasurers as the Council on Federal Financial Relations (CFFR), another group of Councils that are presented as outside the National Cabinet structure, and a loosely overarching National Federation Reform Council (NFRC) with membership that also includes a representative of local government.

There have never been formal and specific accountability arrangements for cross-jurisdictional political bodies in Australia. Instead, it is implicitly assumed that the members of such a body are accountable for the stance taken and any follow-up action within their own jurisdictions.

- This logic has been somewhat muddled by the characterisation of the current forum as a 'Cabinet' in which conventions of confidentiality and solidarity apply. The critiques of this characterisation are legion and should, sooner rather than later, bear fruit.

In the meantime, even without this complication, it is fair to say that accountability for cross-jurisdictional political bodies is weak in practice, whatever theory.

- Much more could be done within each jurisdiction to make the chain of accountability to Parliament and people more effective, without undermining the relationship of trust between members on which such bodies depend. The initiative of the Chief Minister of the ACT in making a public statement about National Cabinet, from the perspective of his jurisdiction, after each meeting is a welcome step forward in this regard.[31]
- More could be done also to enhance the collective responsibility of such bodies, through public release of their charters and decision-making rules and the provision of information about activities and outcomes that has substantive content.

Reflections on accountability

The lecture so far has sketched a range of cross-jurisdictional bodies in Australia. To assist analysis, it has grouped them in three categories, regulatory, advisory, and political, giving examples of each. In relation to all of these bodies, it has shown that some arrangements for political accountability are in place. These vary with the composition and functions of the body and with what might loosely be described as the depth of its intergovernmental character.

---

[30] The structure is portrayed here: https://www.pmc.gov.au/sites/default/files/federal-relations-architecture-diagram.pdf

[31] ACT Government, 'Statement on National Cabinet', 15 March 2022, https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/barr/2022/statement-on-national-cabinet

In some respects, the challenge of designing mechanisms for political accountability for cross-jurisdictional bodies are similar to those for intra-jurisdictional bodies.

- The tools potentially are much the same: ministerial responsibility, including answerability to Parliament, regular reports and other forms of transparency, scrutiny by parliamentary committees and parliamentary chambers as a whole.
- There is no one-size-fit-all. On the contrary, accountability systems are tailored to key characteristics of public bodies including, for example, considerations of independence, expertise, and confidentiality.
- Effective accountability depends on more than design. Critically, it also depends on implementation in practice. This, in turn, relies on the willingness of Parliaments to transcend political self-interest and the willingness of governments to comply. Both of these key aspects of the political accountability chain have been under stress for some time.

Cross-jurisdictional bodies also differ from their intra-jurisdictional counterparts in at least two important ways.

- First, the lines of political accountability inevitably run to more than one democratically elected Parliament, government, and electorate. To ignore this is to undermine democracy at the sub-national level of government, to the detriment of both federalism and democracy, individually and in the compound form of federal democracy.
- Secondly, any cross-jurisdictional element affects the goals, responsibilities, and modus operandi of a public body. This is not necessarily a negative or, I would say, not a negative at all. As with federalism itself, at least when in co-operative mode, a body with cross-jurisdictional characteristics has the opportunity to draw on insights into conditions and preferences around the country, to respond to difference, and to ensure buy-in in a way that an intra-jurisdictional body may not.

We in Australia have not been very good at thinking through the implications of cross-jurisdictional characteristics for the operations of public bodies and the accountability regimes that apply to them. There is a tendency to assume that, to be really effective, accountability regimes must be confined within a single jurisdiction; usually the Commonwealth.[32]

- There are no doubt that such arrangements are more straightforward, at one level.
- But to the extent that they ignore the cross-jurisdictional character of a body and downplay the significance of accountability of and to State and territory governments, they are problematic. They reflect the habits of mind developed in and for unitary states. For the future, we might be

[32] The statement is explicit in the Department of Finance explanation of its category of 'inter-jurisdictional bodies': 'Some significant governance challenges can arise when bodies are formed that are accountable to more than one government. Clarity of arrangements and responsibilities are normally contained within the framework of a single jurisdiction, and it is crucial to consider this when establishing any inter-jurisdictional body. Different types or levels of accountability to different jurisdictions may ultimately lead to a lack of accountability.': https://www.finance.gov.au/government/managing-commonwealth-resources/structure-australian-government-public-sector/types-australian-government-bodies

more creative in thinking about arrangements for the accountability of cross-jurisdictional bodies that fit the conditions of federal democracy in Australia.

Three steps might be useful towards this end.

- The first is to ensure that the arrangements already in place are actually followed through, in spirit as well as in form, at both levels of government.
- The second is to develop and publicise practices and procedures for ministerial accountability for intergovernmental action, again at both levels of government, which balance the need for confidentiality and the importance of public accountability and transparency.
- The third is to acknowledge the cross-jurisdictional character of a body as an element as important as independence and specialisation in designing accountability arrangements for it and putting them into effect. This would mean, for example, that even where a body is primarily accountable to Commonwealth institutions, its cross-jurisdictional character should be understood, protected, and respected in the manner in which accountability occurs.

These three steps might sound mundane but they would be challenging in practice, requiring significant cultural, as well as some institutional change.

- It would be appropriate for some leadership to come from the Senate, in this regard.
- The historical reality that the Senate has evolved as a house of review rather than as a specifically federal chamber should not be allowed to obscure either the significance of its constitution or its potential to play some federal role.
- One such role, which speaks to the Senate's interests and strengths, is accountability for intergovernmental arrangements, in a form that serves the needs of Australian federal democracy.

I appreciate the opportunity to speak to you about these issues today.